

4753--A

Cal. No. 890

2011-2012 Regular Sessions

I N S E N A T E

April 18, 2011

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general municipal law, in relation to obtaining best value for purchase contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The section heading and subdivision 1 of section 103 of
2 the general municipal law, the section heading as amended by chapter 997
3 of the laws of 1960 and subdivision 1 as amended by section 1 of part FF
4 of chapter 56 of the laws of 2010, are amended to read as follows:
5 Advertising for bids AND OFFERS; letting of contracts; criminal
6 conspiracies. 1. Except as otherwise expressly provided by an act of the
7 legislature or by a local law adopted prior to September first, nineteen
8 hundred fifty-three, all contracts for public work involving an expendi-
9 ture of more than thirty-five thousand dollars and all purchase
10 contracts involving an expenditure of more than twenty thousand dollars,
11 shall be awarded by the appropriate officer, board or agency of a poli-
12 tical subdivision or of any district therein including but not limited
13 to a soil conservation district[,] IN THE FOLLOWING MANNER: (A)
14 CONTRACTS FOR PUBLIC WORK SHALL BE AWARDED to the lowest responsible
15 bidder furnishing the required security after advertisement for sealed
16 bids in the manner provided by this section AND, (B) PURCHASE CONTRACTS
17 (INCLUDING CONTRACTS FOR SERVICE WORK, BUT EXCLUDING ANY PURCHASE
18 CONTRACTS NECESSARY FOR THE COMPLETION OF A PUBLIC WORKS CONTRACT PURSU-
19 ANT TO ARTICLE EIGHT OF THE LABOR LAW) SHALL BE AWARDED ON THE BASIS OF
20 BEST VALUE, AS DEFINED IN SECTION ONE HUNDRED SIXTY-THREE OF THE STATE
21 FINANCE LAW, TO A RESPONSIVE AND RESPONSIBLE BIDDER OR OFFERER IN THE
22 MANNER PROVIDED BY THIS SECTION. In any case where a responsible

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD10947-02-1

1 bidder's OR RESPONSIBLE OFFERER'S gross price is reducible by an allow-
2 ance for the value of used machinery, equipment, apparatus or tools to
3 be traded in by a political subdivision, the gross price shall be
4 reduced by the amount of such allowance, for the purpose of determining
5 the [low bid] BEST VALUE. In cases where two or more responsible bidders
6 furnishing the required security submit identical bids as to price, such
7 officer, board or agency may award the contract to any of such bidders.
8 Such officer, board or agency may, in his or her or its discretion,
9 reject all bids OR OFFERS and readvertise for new bids OR OFFERS in the
10 manner provided by this section. In determining whether a purchase is an
11 expenditure within the discretionary threshold amounts established by
12 this subdivision, the officer, board or agency of a political subdivi-
13 sion or of any district therein shall consider the reasonably expected
14 aggregate amount of all purchases of the same commodities, services or
15 technology to be made within the twelve-month period commencing on the
16 date of purchase. Purchases of commodities, services or technology
17 shall not be artificially divided for the purpose of satisfying the
18 discretionary buying thresholds established by this subdivision. A
19 change to or a renewal of a discretionary purchase shall not be permit-
20 ted if the change or renewal would bring the reasonably expected aggre-
21 gate amount of all purchases of the same commodities, services or tech-
22 nology from the same provider within the twelve-month period commencing
23 on the date of the first purchase to an amount greater than the discre-
24 tionary buying threshold amount. For purposes of this section, "sealed
25 bids" AND "SEALED OFFERS", as that term applies to purchase contracts,
26 (INCLUDING CONTRACTS FOR SERVICE WORK, BUT EXCLUDING ANY PURCHASE
27 CONTRACTS NECESSARY FOR THE COMPLETION OF A PUBLIC WORKS CONTRACT PURSU-
28 ANT TO ARTICLE EIGHT OF THE LABOR LAW) shall include bids AND OFFERS
29 submitted in an electronic format including submission of the statement
30 of non-collusion required by section one hundred three-d of this arti-
31 cle, provided that the governing board of the political subdivision or
32 district, by resolution, has authorized the receipt of bids AND OFFERS
33 in such format. Submission in electronic format may, for technology
34 contracts only, be required as the sole method for the submission of
35 bids AND OFFERS. Bids AND OFFERS submitted in an electronic format shall
36 be transmitted by bidders AND OFFERERS to the receiving device desig-
37 nated by the political subdivision or district. Any method used to
38 receive electronic bids AND OFFERS shall comply with article three of
39 the state technology law, and any rules and regulations promulgated and
40 guidelines developed thereunder and, at a minimum, must (a) document the
41 time and date of receipt of each bid AND OFFER received electronically;
42 (b) authenticate the identity of the sender; (c) ensure the security of
43 the information transmitted; and (d) ensure the confidentiality of the
44 bid OR OFFER until the time and date established for the opening of bids
45 OR OFFERS. The timely submission of an electronic bid OR OFFER in
46 compliance with instructions provided for such submission in the adver-
47 tisement for bids OR OFFERS and/or the specifications shall be the
48 responsibility solely of each bidder OR OFFERER or prospective bidder OR
49 OFFERER. No political subdivision or district therein shall incur any
50 liability from delays of or interruptions in the receiving device desig-
51 nated for the submission and receipt of electronic bids AND OFFERS.

52 S 2. Subdivision 1 of section 103 of the general municipal law, as
53 amended by section 2 of part FF of chapter 56 of the laws of 2010, is
54 amended to read as follows:

55 1. Except as otherwise expressly provided by an act of the legislature
56 or by a local law adopted prior to September first, nineteen hundred

1 fifty-three, all contracts for public work involving an expenditure of
2 more than thirty-five thousand dollars and all purchase contracts
3 involving an expenditure of more than twenty thousand dollars, shall be
4 awarded by the appropriate officer, board or agency of a political
5 subdivision or of any district therein including but not limited to a
6 soil conservation district[,] IN THE FOLLOWING MANNER: (A) CONTRACTS FOR
7 PUBLIC WORK SHALL BE AWARDED to the lowest responsible bidder furnishing
8 the required security after advertisement for sealed bids in the manner
9 provided by this section AND, (B) PURCHASE CONTRACTS (INCLUDING
10 CONTRACTS FOR SERVICE WORK, BUT EXCLUDING ANY PURCHASE CONTRACTS NECES-
11 SARY FOR THE COMPLETION OF A PUBLIC WORKS CONTRACT PURSUANT TO ARTICLE
12 EIGHT OF THE LABOR LAW) SHALL BE AWARDED ON THE BASIS OF BEST VALUE, AS
13 DEFINED IN SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, TO
14 A RESPONSIVE AND RESPONSIBLE BIDDER OR OFFERER IN THE MANNER PROVIDED BY
15 THIS SECTION. In determining whether a purchase is an expenditure within
16 the discretionary threshold amounts established by this subdivision, the
17 officer, board or agency of a political subdivision or of any district
18 therein shall consider the reasonably expected aggregate amount of all
19 purchases of the same commodities, services or technology to be made
20 within the twelve-month period commencing on the date of purchase.
21 Purchases of commodities, services or technology shall not be arti-
22 ficially divided for the purpose of satisfying the discretionary buying
23 thresholds established by this subdivision. A change to or a renewal of
24 a discretionary purchase shall not be permitted if the change or renewal
25 would bring the reasonably expected aggregate amount of all purchases of
26 the same commodities, services or technology from the same provider
27 within the twelve-month period commencing on the date of the first
28 purchase to an amount greater than the discretionary buying threshold
29 amount. In any case where a responsible bidder's OR RESPONSIBLE
30 OFFERER'S gross price is reducible by an allowance for the value of used
31 machinery, equipment, apparatus or tools to be traded in by a political
32 subdivision, the gross price shall be reduced by the amount of such
33 allowance, for the purpose of determining the low bid OR BEST VALUE. In
34 cases where two or more responsible bidders furnishing the required
35 security submit identical bids as to price, such officer, board or agen-
36 cy may award the contract to any of such bidders. Such officer, board or
37 agency may, in his, her or its discretion, reject all bids OR OFFERS and
38 readvertise for new bids OR OFFERS in the manner provided by this
39 section.

40 S 3. Subdivision 1-a of section 103 of the general municipal law, as
41 added by chapter 595 of the laws of 1979, is amended to read as follows:

42 1-a. Whenever possible, practical, and feasible and consistent with
43 open competitive bidding OR COMPETITIVE OFFERING, the officer, board or
44 agency of any political subdivision or of any district therein charged
45 with the awarding of contracts may use the stock item specifications of
46 manufacturers, producers and/or assemblers located in New York state in
47 developing specifications for items to be let for bid OR OFFER in its
48 purchasing contracts and may use the data and information contained in
49 stock item specifications forms as provided in section one hundred
50 sixty-four-a of the state finance law to assist in his determination of
51 what constitutes a stock item of a manufacturer, producer and/or assem-
52 bler located in New York state for the purpose of helping to retain
53 jobs, business and industry presently in the state of New York and
54 attracting expanded and new business and industry to the state of New
55 York so as to best promote the public interest.

1 S 4. Subdivision 2 of section 103 of the general municipal law, as
2 amended by section 5 of part X of chapter 62 of the laws of 2003, is
3 amended to read as follows:

4 2. Advertisement for bids AND OFFERS shall be published in the offi-
5 cial newspaper or newspapers, if any, or otherwise in a newspaper or
6 newspapers designated for such purpose. Such advertisement shall contain
7 a statement of the time when and place where all bids received pursuant
8 to such notice will be publicly opened and read AND WHERE THE IDENTITY
9 OF ALL OFFERERS WILL BE PUBLICLY DISCLOSED, and the designation of the
10 receiving device if the political subdivision or district has authorized
11 the receipt of bids AND OFFERS in an electronic format. Such board or
12 agency may by resolution designate any officer or employee to open the
13 bids AND OFFERS at the time and place specified in the notice. Such
14 designee shall make a record of such bids AND OFFERS in such form and
15 detail as the board or agency shall prescribe and present the same at
16 the next regular or special meeting of such board or agency. All bids
17 received shall be publicly opened and read at the time and place so
18 specified AND THE IDENTITY OF ALL OFFERERS SHALL BE PUBLICLY DISCLOSED
19 AT THE TIME AND PLACE SO SPECIFIED. At least five days shall elapse
20 between the first publication of such advertisement and the date so
21 specified for the opening and reading of bids AND OFFERS.

22 S 5. Subdivision 2 of section 103 of the general municipal law, as
23 amended by chapter 296 of the laws of 1958, is amended to read as
24 follows:

25 2. Advertisement for bids AND OFFERS shall be published in the offi-
26 cial newspaper or newspapers, if any, or otherwise in a newspaper or
27 newspapers designated for such purpose. Such advertisement shall contain
28 a statement of the time when and place where all bids received pursuant
29 to such notice will be publicly opened and read AND WHERE THE IDENTITY
30 OF ALL OFFERERS WILL BE PUBLICLY DISCLOSED. Such board or agency may by
31 resolution designate any officer or employee to open the bids AND OFFERS
32 at the time and place specified in the notice. Such designee shall make
33 a record of such bids AND OFFERS in such form and detail as the board or
34 agency shall prescribe and present the same at the next regular or
35 special meeting of such board or agency. All bids received shall be
36 publicly opened and read at the time and place so specified AND THE
37 IDENTITY OF ALL OFFERERS SHALL BE PUBLICLY DISCLOSED AT THE TIME AND
38 PLACE SO SPECIFIED. At least five days shall elapse between the first
39 publication of such advertisement and the date so specified for the
40 opening and reading of bids AND OFFERS.

41 S 6. Subdivision 3 of section 103 of the general municipal law, as
42 amended by chapter 343 of the laws of 2007, is amended to read as
43 follows:

44 3. Notwithstanding the provisions of subdivision one of this section,
45 any officer, board or agency of a political subdivision or of any
46 district therein authorized to make purchases of materials, equipment or
47 supplies, or to contract for services, may make such purchases, or may
48 contract for services, other than services subject to article eight or
49 nine of the labor law, when available, through the county in which the
50 political subdivision or district is located or through any county with-
51 in the state subject to the rules established pursuant to subdivision
52 two of section four hundred eight-a of the county law; provided that the
53 political subdivision or district for which such officer, board or agen-
54 cy acts shall accept sole responsibility for any payment due the vendor
55 or contractor. All purchases and all contracts for such services shall
56 be subject to audit and inspection by the political subdivision or

1 district for which made. Prior to making such purchases or contracts the
2 officer, board or agency shall consider whether such contracts will
3 result in cost savings after all factors, including charges for service,
4 material, and delivery, have been considered. No officer, board or agen-
5 cy of a political subdivision or of any district therein shall make any
6 purchase or contract for any such services through the county in which
7 the political subdivision or district is located or through any county
8 within the state when bids AND OFFERS have been received for such
9 purchase or such services by such officer, board or agency, unless such
10 purchase may be made or the contract for such services may be entered
11 into upon the same terms, conditions and specifications at a lower price
12 through the county.

13 S 7. Subdivision 4 of section 103 of the general municipal law, as
14 amended by chapter 597 of the laws of 1963, is amended to read as
15 follows:

16 4. Notwithstanding the provisions of subdivision one of this section,
17 in the case of a public emergency arising out of an accident or other
18 unforeseen occurrence or condition whereby circumstances affecting
19 public buildings, public property or the life, health, safety or proper-
20 ty of the inhabitants of a political subdivision or district therein,
21 require immediate action which cannot await competitive bidding OR
22 COMPETITIVE OFFERING, contracts for public work or the purchase of
23 supplies, material or equipment may be let by the appropriate officer,
24 board or agency of a political subdivision or district therein.

25 S 8. Subdivision 5 of section 103 of the general municipal law, as
26 amended by section 3 of part FF of chapter 56 of the laws of 2010, is
27 amended to read as follows:

28 5. Upon the adoption of a resolution by a vote of at least three-
29 fifths of all the members of the governing body of a political subdivi-
30 sion or district therein stating that, for reasons of efficiency or
31 economy, there is need for standardization, purchase contracts for a
32 particular type or kind of equipment, material [or], supplies OR
33 SERVICES in excess of the monetary threshold fixed for purchase
34 contracts in this section may be awarded by the appropriate officer,
35 board or agency of such political subdivision or any such district ther-
36 ein, to the lowest responsible bidder OR RESPONSIBLE OFFERER furnishing
37 the required security after advertisement for sealed bids OR SEALED
38 OFFERS therefor in the manner provided in this section. Such resolution
39 shall contain a full explanation of the reasons for its adoption.

40 S 9. Subdivision 6 of section 103 of the general municipal law, as
41 amended by chapter 315 of the laws of 1974, is amended to read as
42 follows:

43 6. Surplus and second-hand supplies, material or equipment may be
44 purchased without competitive bidding OR COMPETITIVE OFFERING from the
45 federal government, the state of New York or from any other political
46 subdivision, district or public benefit corporation.

47 S 10. Subdivision 7 of section 103 of the general municipal law, as
48 amended by chapter 8 of the laws of 2008, is amended to read as follows:

49 7. A person or corporation who conspires to prevent competitive
50 bidding OR COMPETITIVE OFFERING on a contract for public work or
51 purchase advertised for bidding OR OFFERING shall be guilty of a misde-
52 meanor as provided in section one hundred three-e of this article.

53 S 11. The section heading and subdivision 1 of section 103-e of the
54 general municipal law, as added by chapter 1031 of the laws of 1965, are
55 amended to read as follows:

1 Conspiracies to prevent competitive bidding OR COMPETITIVE OFFERING on
2 public contracts. 1. A person or corporation who shall wilfully, know-
3 ingly and with intent to defraud, make or enter into, or attempt to make
4 or enter into, with any other person or corporation, a contract, agree-
5 ment, arrangement or combination to submit a fraudulent or collusive bid
6 OR OFFER, or to refrain from submitting a bona fide competitive bid OR
7 COMPETITIVE OFFER, to any board, officer, agency, department, commission
8 or other agency of the state or of a public corporation on a contract
9 for public work or purchase which has been advertised for bidding OR
10 OFFERING, shall be guilty of a misdemeanor, and on conviction thereof
11 shall, if a natural person, be punished by a fine not exceeding five
12 thousand dollars or by imprisonment for not longer than one year, or by
13 both such fine and imprisonment, and if a corporation by a fine not
14 exceeding twenty thousand dollars. An indictment or information based
15 upon a violation of any provision of this section must be found within
16 three years after its commission.

17 S 12. This act shall take effect immediately and shall apply to any
18 contract let or awarded on or after such date; provided, however, that
19 the amendments to subdivisions 1 and 2 of section 103 of the general
20 municipal law made by sections one and three of this act shall not
21 affect the expiration and reversion of such subdivisions as provided in
22 subdivision (a) of section 41 of part X of chapter 62 of the laws of
23 2003, as amended, when upon such date the provisions of sections two and
24 four of this act shall take effect.