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I N S E N A T E

(PREFILED)

January 4, 2012

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Local Government

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 103 of the general municipal law,
2 as amended by section 1 of a chapter of the laws of 2011, amending the
3 general municipal law relating to obtaining best value for purchase
4 contracts, as proposed in legislative bills numbers S. 4753-A and A.
5 7357-A, is amended to read as follows:
6 1. Except as otherwise expressly provided by an act of the legislature
7 or by a local law adopted prior to September first, nineteen hundred
8 fifty-three, all contracts for public work involving an expenditure of
9 more than thirty-five thousand dollars and all purchase contracts
10 involving an expenditure of more than twenty thousand dollars, shall be
11 awarded by the appropriate officer, board or agency of a political
12 subdivision or of any district therein including but not limited to a
13 soil conservation district [in the following manner: (a) contracts for
14 public work shall be awarded] to the lowest responsible bidder furnish-
15 ing the required security after advertisement for sealed bids in the
16 manner provided by this section [and, (b)], PROVIDED, HOWEVER, THAT
17 purchase contracts (including contracts for service work, but excluding
18 any purchase contracts necessary for the completion of a public works
19 contract pursuant to article eight of the labor law) [shall] MAY be
20 awarded on the basis of best value, as defined in section one hundred
21 sixty-three of the state finance law, to a responsive and responsible
22 bidder or offerer in the manner provided by this section EXCEPT THAT IN
23 A POLITICAL SUBDIVISION OTHER THAN A CITY WITH A POPULATION OF ONE
24 MILLION INHABITANTS OR MORE OR ANY DISTRICT, BOARD OR AGENCY WITH JURIS-
25 DICTION EXCLUSIVELY THEREIN THE USE OF BEST VALUE FOR AWARDED A
26 PURCHASE CONTRACT OR PURCHASE CONTRACTS MUST BE AUTHORIZED BY LOCAL LAW
27 OR, IN THE CASE OF A DISTRICT CORPORATION, SCHOOL DISTRICT OR BOARD OF

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

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1 COOPERATIVE EDUCATIONAL SERVICES, BY RULE, REGULATION OR RESOLUTION
2 ADOPTED AT A PUBLIC MEETING. In any case where a responsible bidder's
3 or responsible offerer's gross price is reducible by an allowance for
4 the value of used machinery, equipment, apparatus or tools to be traded
5 in by a political subdivision, the gross price shall be reduced by the
6 amount of such allowance, for the purpose of determining the best value.
7 In cases where two or more responsible bidders furnishing the required
8 security submit identical bids as to price, such officer, board or agen-
9 cy may award the contract to any of such bidders. Such officer, board or
10 agency may, in his or her or its discretion, reject all bids or offers
11 and readvertise for new bids or offers in the manner provided by this
12 section. In determining whether a purchase is an expenditure within the
13 discretionary threshold amounts established by this subdivision, the
14 officer, board or agency of a political subdivision or of any district
15 therein shall consider the reasonably expected aggregate amount of all
16 purchases of the same commodities, services or technology to be made
17 within the twelve-month period commencing on the date of purchase.
18 Purchases of commodities, services or technology shall not be arti-
19 ficially divided for the purpose of satisfying the discretionary buying
20 thresholds established by this subdivision. A change to or a renewal of
21 a discretionary purchase shall not be permitted if the change or renewal
22 would bring the reasonably expected aggregate amount of all purchases of
23 the same commodities, services or technology from the same provider
24 within the twelve-month period commencing on the date of the first
25 purchase to an amount greater than the discretionary buying threshold
26 amount. For purposes of this section, "sealed bids" and "sealed offers",
27 as that term applies to purchase contracts, (including contracts for
28 service work, but excluding any purchase contracts necessary for the
29 completion of a public works contract pursuant to article eight of the
30 labor law) shall include bids and offers submitted in an electronic
31 format including submission of the statement of non-collusion required
32 by section one hundred three-d of this article, provided that the
33 governing board of the political subdivision or district, by resolution,
34 has authorized the receipt of bids and offers in such format.
35 Submission in electronic format may, for technology contracts only, be
36 required as the sole method for the submission of bids and offers. Bids
37 and offers submitted in an electronic format shall be transmitted by
38 bidders and offerers to the receiving device designated by the political
39 subdivision or district. Any method used to receive electronic bids and
40 offers shall comply with article three of the state technology law, and
41 any rules and regulations promulgated and guidelines developed there-
42 under and, at a minimum, must (a) document the time and date of receipt
43 of each bid and offer received electronically; (b) authenticate the
44 identity of the sender; (c) ensure the security of the information tran-
45 smitted; and (d) ensure the confidentiality of the bid or offer until
46 the time and date established for the opening of bids or offers. The
47 timely submission of an electronic bid or offer in compliance with
48 instructions provided for such submission in the advertisement for bids
49 or offers and/or the specifications shall be the responsibility solely
50 of each bidder or offerer or prospective bidder or offerer. No poli-
51 tical subdivision or district therein shall incur any liability from
52 delays of or interruptions in the receiving device designated for the
53 submission and receipt of electronic bids and offers.

54 S 2. Subdivision 1 of section 103 of the general municipal law, as
55 amended by section 2 of a chapter of the laws of 2011, amending the
56 general municipal law relating to obtaining best value for purchase

contracts, as proposed in legislative bills numbers S. 4753-A and A. 7357-A, is amended to read as follows:

1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district [in the following manner: (a) contracts for public work shall be awarded] to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section [and, (b)], PROVIDED, HOWEVER, THAT purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) [shall] MAY be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section EXCEPT THAT IN A POLITICAL SUBDIVISION OTHER THAN A CITY WITH A POPULATION OF ONE MILLION INHABITANTS OR MORE OR ANY DISTRICT, BOARD OR AGENCY WITH JURISDICTION EXCLUSIVELY THEREIN THE USE OF BEST VALUE OF AWARDING A PURCHASE CONTRACT OR PURCHASE CONTRACTS MUST BE AUTHORIZED BY LOCAL LAW OR, IN THE CASE OF A DISTRICT CORPORATION, SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES, BY RULE, REGULATION OR RESOLUTION ADOPTED AT A PUBLIC MEETING. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid or best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his, her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section.

S 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2011, amending the general municipal law relating to obtaining best value for purchase contracts, as proposed in legislative bills numbers S. 4753-A and A. 7357-A, takes effect.