S T A T E O F N E W Y O R K

3285

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. WRIGHT, HOOPER, SCHROEDER -- Multi-Sponsored by -- M. of A. AUBRY, COLTON, COOK, MAGEE, MILLMAN, PHEFFER, REILLY -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law and the state finance law, in relation to granting preferences to New York state domiciliaries in the awarding of contracts for public work

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

Section 1. Subdivision 1 of section 103 of the general municipal law, as amended by section 1 of part FF of chapter 56 of the laws of 2010, 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, to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section. In any case where a responsible bidder'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. NOTWITHSTANDING THE FOREGOING, IN ANY CASE WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURITY IS FOUND BY SUCH OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF THE BID OF THE LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY MAY PREFER SUCH RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER AND AWARD THE CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER,

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

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WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFICER, BOARD OR AGENCY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMITTING THE LOWEST BID. 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 or her or its discretion, reject all bids and readvertise for new bids in the manner provided by this section. 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. For purposes of this section, "sealed bids", as that term applies to purchase contracts, shall include bids submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids. Bids submitted in an electronic format shall be transmitted by bidders to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid until the time and date established for the opening of bids. The timely submission of an electronic bid in compliance with instructions provided for such submission in the advertisement for bids and/or the specifications shall be the responsibility solely of each bidder or prospective bidder. No political subdivision or district therein shall incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids.

S 2. Subdivision 1 of section 103 of the general municipal law, as amended by section 2 of part FF of chapter 56 of the laws of 2010, 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, to the lowest responsible bidder furnishing

the required security after advertisement for sealed bids in the manner provided by this section. 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 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. NOTWITHSTANDING THE FOREGOING, IN ANY CASE WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURITY IS FOUND BY SUCH OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF THE BID OF THE LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY MAY PREFER SUCH RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER AND AWARD THE CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER, WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFICER, BOARD OR AGENCY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMITTING THE LOWEST BID. 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 and readvertise for new bids in the manner provided by this section.

S 3. Section 135 of the state finance law is amended by adding a new closing paragraph to read as follows:

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHENEVER THE LOWEST RESPONSIBLE BIDDER IS A FOREIGN OR OUT-OF-STATE INDIVIDUAL, FIRM OR CORPORATION AND AT LEAST ONE NEW YORK STATE RESIDENT, FIRM OR CORPORATION HAS SUBMITTED A RESPONSIBLE BID WHICH IS WITHIN TWO PERCENT OF THE LOWEST RESPONSIBLE BID, THE CONTRACT MAY BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR CORPORATION; PROVIDED, HOWEVER, WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFICER, BOARD OR AGENCY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMITTING THE LOWEST BID.

S 4. This act shall take effect on the first of September next succeeding the date on which it shall have become a law; provided, however, that the amendments to subdivision 1 of section 103 of the general municipal law made by section one of this act shall not affect the expiration and reversion of such subdivision as provided in subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section two of this act shall take effect.