

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:

1 Section 1. Subdivision 1 of section 103 of the general municipal law,
2 as amended by section 1 of part FF of chapter 56 of the laws of 2010, is
3 amended to read as follows:
4 1. Except as otherwise expressly provided by an act of the legislature
5 or by a local law adopted prior to September first, nineteen hundred
6 fifty-three, all contracts for public work involving an expenditure of
7 more than thirty-five thousand dollars and all purchase contracts
8 involving an expenditure of more than twenty thousand dollars, shall be
9 awarded by the appropriate officer, board or agency of a political
10 subdivision or of any district therein including but not limited to a
11 soil conservation district, to the lowest responsible bidder furnishing
12 the required security after advertisement for sealed bids in the manner
13 provided by this section. In any case where a responsible bidder's gross
14 price is reducible by an allowance for the value of used machinery,
15 equipment, apparatus or tools to be traded in by a political subdivi-
16 sion, the gross price shall be reduced by the amount of such allowance,
17 for the purpose of determining the low bid. NOTWITHSTANDING THE FOREGO-
18 ING, IN ANY CASE WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE
19 RESIDENT, FIRM OR CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURI-
20 TY IS FOUND BY SUCH OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF
21 THE BID OF THE LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY
22 MAY PREFER SUCH RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER
23 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.

LBD06381-01-1

1 WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFI-
2 CER, BOARD OR AGENCY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPON-
3 SIBLE BIDDER SUBMITTING THE LOWEST BID. In cases where two or more
4 responsible bidders furnishing the required security submit identical
5 bids as to price, such officer, board or agency may award the contract
6 to any of such bidders. Such officer, board or agency may, in his or her
7 or its discretion, reject all bids and readvertise for new bids in the
8 manner provided by this section. In determining whether a purchase is an
9 expenditure within the discretionary threshold amounts established by
10 this subdivision, the officer, board or agency of a political subdivi-
11 sion or of any district therein shall consider the reasonably expected
12 aggregate amount of all purchases of the same commodities, services or
13 technology to be made within the twelve-month period commencing on the
14 date of purchase. Purchases of commodities, services or technology
15 shall not be artificially divided for the purpose of satisfying the
16 discretionary buying thresholds established by this subdivision. A
17 change to or a renewal of a discretionary purchase shall not be permit-
18 ted if the change or renewal would bring the reasonably expected aggre-
19 gate amount of all purchases of the same commodities, services or tech-
20 nology from the same provider within the twelve-month period commencing
21 on the date of the first purchase to an amount greater than the discre-
22 tionary buying threshold amount. For purposes of this section, "sealed
23 bids", as that term applies to purchase contracts, shall include bids
24 submitted in an electronic format including submission of the statement
25 of non-collusion required by section one hundred three-d of this arti-
26 cle, provided that the governing board of the political subdivision or
27 district, by resolution, has authorized the receipt of bids in such
28 format. Submission in electronic format may, for technology contracts
29 only, be required as the sole method for the submission of bids. Bids
30 submitted in an electronic format shall be transmitted by bidders to the
31 receiving device designated by the political subdivision or district.
32 Any method used to receive electronic bids shall comply with article
33 three of the state technology law, and any rules and regulations promul-
34 gated and guidelines developed thereunder and, at a minimum, must (a)
35 document the time and date of receipt of each bid received electron-
36 ically; (b) authenticate the identity of the sender; (c) ensure the
37 security of the information transmitted; and (d) ensure the confiden-
38 tiality of the bid until the time and date established for the opening
39 of bids. The timely submission of an electronic bid in compliance with
40 instructions provided for such submission in the advertisement for bids
41 and/or the specifications shall be the responsibility solely of each
42 bidder or prospective bidder. No political subdivision or district ther-
43 ein shall incur any liability from delays of or interruptions in the
44 receiving device designated for the submission and receipt of electronic
45 bids.

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

49 1. Except as otherwise expressly provided by an act of the legislature
50 or by a local law adopted prior to September first, nineteen hundred
51 fifty-three, all contracts for public work involving an expenditure of
52 more than thirty-five thousand dollars and all purchase contracts
53 involving an expenditure of more than twenty thousand dollars, shall be
54 awarded by the appropriate officer, board or agency of a political
55 subdivision or of any district therein including but not limited to a
56 soil conservation district, to the lowest responsible bidder furnishing

1 the required security after advertisement for sealed bids in the manner
2 provided by this section. In determining whether a purchase is an
3 expenditure within the discretionary threshold amounts established by
4 this subdivision, the officer, board or agency of a political subdivi-
5 sion or of any district therein shall consider the reasonably expected
6 aggregate amount of all purchases of the same commodities, services or
7 technology to be made within the twelve-month period commencing on the
8 date of purchase. Purchases of commodities, services or technology shall
9 not be artificially divided for the purpose of satisfying the discre-
10 tionary buying thresholds established by this subdivision. A change to
11 or a renewal of a discretionary purchase shall not be permitted if the
12 change or renewal would bring the reasonably expected aggregate amount
13 of all purchases of the same commodities, services or technology from
14 the same provider within the twelve-month period commencing on the date
15 of the first purchase to an amount greater than the discretionary buying
16 threshold amount. In any case where a responsible bidder's gross price
17 is reducible by an allowance for the value of used machinery, equipment,
18 apparatus or tools to be traded in by a political subdivision, the gross
19 price shall be reduced by the amount of such allowance, for the purpose
20 of determining the low bid. NOTWITHSTANDING THE FOREGOING, IN ANY CASE
21 WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR
22 CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURITY IS FOUND BY SUCH
23 OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF THE BID OF THE
24 LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY MAY PREFER SUCH
25 RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER AND AWARD THE
26 CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER, WHERE MORE THAN
27 ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFICER, BOARD OR AGEN-
28 CY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMIT-
29 TING THE LOWEST BID. In cases where two or more responsible bidders
30 furnishing the required security submit identical bids as to price, such
31 officer, board or agency may award the contract to any of such bidders.
32 Such officer, board or agency may, in his, her or its discretion, reject
33 all bids and readvertise for new bids in the manner provided by this
34 section.

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

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

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