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

8255

2011-2012 Regular Sessions

I N A S S E M B L Y

June 9, 2011

Introduced by M. of A. MAGNARELLI, P. RIVERA -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law and the county law, in relation to purchases through the office of general services

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. 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

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

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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 3 of section 103 of the general municipal law, as amended by chapter 343 of the laws of 2007, is amended to read as follows:

3. Notwithstanding the provisions of subdivision one of this section, any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of materials, equipment or supplies, or to contract for services, may make such purchases, or may contract for services, [other than services subject to article eight or nine of the labor law,] when available, through the county in which the political subdivision or district is located or through any county within the state subject to the rules established pursuant to subdivision two of section four hundred eight-a of the county law; provided that the political subdivision or district for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor or contractor. All purchases and all contracts for such services shall be subject to audit and inspection by the political subdivision or district for which made. Prior to making such purchases or contracts the officer, board or agency shall consider whether such contracts will result in cost savings after all factors, including charges for service, material, and delivery, have been considered. No officer, board or agency of a political subdivision or of any district therein shall make any purchase or contract for any such services through the county in which

the political subdivision or district is located or through any county within the state when bids have been received for such purchase or such services by such officer, board or agency, unless such purchase may be made or the contract for such services may be entered into upon the same terms, conditions and specifications at a lower price through the county.

S 3. Section 103 of the general municipal law is amended by adding two new subdivisions 1-b and 14 to read as follows:

1-B. A POLITICAL SUBDIVISION OR ANY DISTRICT THEREIN SHALL HAVE THE OPTION OF PURCHASING INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS HARDWARE, SOFTWARE AND PROFESSIONAL SERVICES THROUGH COOPERATIVE PURCHASING PERMISSIBLE PURSUANT TO FEDERAL GENERAL SERVICES ADMINISTRATION INFORMATION TECHNOLOGY SCHEDULE SEVENTY OR ANY SUCCESSOR SCHEDULE. A POLITICAL SUBDIVISION OR ANY DISTRICT THEREIN THAT PURCHASES THROUGH GENERAL SERVICES ADMINISTRATION SCHEDULE SEVENTY, INFORMATION TECHNOLOGY AND CONSOLIDATED SCHEDULE CONTRACTS SHALL COMPLY WITH FEDERAL SCHEDULE ORDERING PROCEDURES AS PROVIDED IN FEDERAL ACQUISITION REGULATION 8.405-1 OR 8.405-2 OR SUCCESSOR REGULATIONS, WHICHEVER IS APPLICABLE. ADHERENCE TO SUCH PROCEDURES SHALL CONSTITUTE COMPLIANCE WITH THE COMPETITIVE BIDDING REQUIREMENTS UNDER THIS SECTION.

14. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION AND IN ADDITION TO THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION AND SECTION ONE HUNDRED FOUR OF THIS ARTICLE, ANY OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN AUTHORIZED TO MAKE PURCHASES OF SERVICES, MATERIALS, EQUIPMENT AND SUPPLIES MAY MAKE SUCH PURCHASES AS MAY BE REQUIRED BY SUCH POLITICAL SUBDIVISION OR ANY DISTRICT THEREIN THROUGH THE USE OF A CONTRACT LET BY ANY OTHER STATE OR POLITICAL SUBDIVISION IF SUCH CONTRACT WAS LET IN ACCORDANCE WITH COMPETITIVE BIDDING AND WAGE REQUIREMENTS THAT ARE CONSISTENT WITH THIS SECTION AND WITH THE INTENT OF EXTENDING ITS USE TO CERTAIN OTHER GOVERNMENTAL ENTITIES. PRIOR TO MAKING SUCH A PURCHASE, THE GOVERNING BOARD OF THE POLITICAL SUBDIVISION OR DISTRICT MAKING THE PURCHASE SHALL DETERMINE, UPON REVIEW OF ANY NECESSARY DOCUMENTATION AND, AS APPROPRIATE, UPON ADVICE OF ITS COUNSEL, THAT THE REQUIREMENTS OF THIS SUBDIVISION HAVE BEEN MET, AND SHALL CERTIFY, BY RESOLUTION, THAT SUCH PURCHASE IS PERMITTED UNDER THE PROCUREMENT POLICIES AND PROCEDURES OF THE POLITICAL SUBDIVISION OR DISTRICT, ADOPTED PURSUANT TO SECTION ONE HUNDRED FOUR-B OF THIS ARTICLE.

S 4. Section 104 of the general municipal law, as amended by chapter 137 of the laws of 2008, is amended to read as follows:

S 104. Purchase through office of general services; CERTAIN FEDERAL CONTRACTS. 1. Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any officer, board or agency of a political subdivision, of a district therein, of a fire company or of a voluntary ambulance service authorized to make purchases of materials, equipment, food products, or supplies, or services available pursuant to sections one hundred sixty-one and one hundred sixty-seven of the state finance law, may make such purchases, except of printed material, through the office of general services subject to such rules as may be established from time to time pursuant to sections one hundred sixty-three and one hundred sixty-seven of the state finance law [or through the general services administration pursuant to section 1555 of the federal acquisition streamlining act of 1994, P.L. 103-355]; provided that any such purchase shall exceed five hundred dollars and that the political subdivision, district, fire company or voluntary ambulance service for which such officer, board or agency acts

shall accept sole responsibility for any payment due the vendor. All purchases shall be subject to audit and inspection by the political subdivision, district, fire company or voluntary ambulance service for which made. No officer, board or agency of a political subdivision, or a district therein, of a fire company or of a voluntary ambulance service shall make any purchase through such office when bids have been received for such purchase by such officer, board or agency, unless such purchase may be made upon the same terms, conditions and specifications at a lower price through such office. Two or more fire companies or voluntary ambulance services may join in making purchases pursuant to this section, and for the purposes of this section such groups shall be deemed "fire companies or voluntary ambulance services."

2. NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED THREE OF THIS ARTICLE OR OF ANY OTHER GENERAL, SPECIAL OR LOCAL LAW, ANY OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION, OR OF A DISTRICT THEREIN, MAY MAKE PURCHASES FROM FEDERAL GENERAL SERVICE ADMINISTRATION SUPPLY SCHEDULES PURSUANT TO SECTION 211 OF THE FEDERAL E-GOVERNMENT ACT OF 2002, P.L. 107-347, AND PURSUANT TO SECTION 1122 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994, P.L. 103-160, OR ANY SUCCESSOR SCHEDULES IN ACCORDANCE WITH PROCEDURES ESTABLISHED PURSUANT THERETO. PRIOR TO MAKING SUCH PURCHASES THE OFFICER, BOARD OR AGENCY SHALL CONSIDER WHETHER SUCH PURCHASES WILL RESULT IN COST SAVINGS AFTER ALL FACTORS, INCLUDING CHARGES FOR SERVICE, MATERIAL, AND DELIVERY, HAVE BEEN CONSIDERED.

S 5. Subdivision 2 of section 408-a of the county law, as amended by section 2 of part X of chapter 62 of the laws of 2003, is amended to read as follows:

2. The board of supervisors may, in the case of any purchase contract or any contract for services, [other than services subject to article eight or nine of the labor law,] of the county to be awarded to the lowest responsible bidder after advertisement for bids, authorize the inclusion of a provision whereby purchases may be made or such services may be obtained under such contract by any political subdivision or fire company (as both are defined in section one hundred of the general municipal law) or district. In such event, the board shall adopt rules prescribing the conditions under which, and the manner in which, purchases may be made or services may be obtained by such political subdivision, fire company or district.

S 6. This act shall take effect immediately; 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 of such subdivision and shall be deemed to expire therewith.