

7511

I N S E N A T E

May 30, 2012

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and
when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general municipal law, in relation to letting of
certain contracts

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 chapter 2 of the laws of 2012, is amended to read as
3 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, provided, however, that purchase contracts
14 (including contracts for service work, but excluding any purchase
15 contracts necessary for the completion of a public works contract pursuant
16 to article eight of the labor law) may be awarded on the basis of
17 best value, as defined in section one hundred sixty-three of the state
18 finance law, to a responsive and responsible bidder or offerer in the
19 manner provided by this section except that in a political subdivision
20 other than a city with a population of one million inhabitants or more
21 or any district, board or agency with jurisdiction exclusively therein
22 the use of best value for awarding a purchase contract or purchase
23 contracts must be authorized by local law or, in the case of a district
24 corporation, school district or board of cooperative educational
25 services, by rule, regulation or resolution adopted at a public meeting.
26 In any case where a responsible bidder's or responsible offerer's gross
27 price is reducible by an allowance for the value of used machinery,
28 equipment, apparatus or tools to be traded in by a political subdivi-

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

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1 sion, the gross price shall be reduced by the amount of such allowance,
2 for the purpose of determining the best value. In cases where two or
3 more responsible bidders furnishing the required security submit identi-
4 cal bids as to price, such officer, board or agency may award the
5 contract to any of such bidders. Such officer, board or agency may, in
6 his or her or its discretion, reject all bids or offers and readvertise
7 for new bids or offers in the manner provided by this section. In deter-
8 mining whether a purchase is an expenditure within the discretionary
9 threshold amounts established by this subdivision, the officer, board or
10 agency of a political subdivision or of any district therein shall
11 consider the reasonably expected aggregate amount of all purchases of
12 the same commodities, services or technology to be made within the
13 twelve-month period commencing on the date of purchase. Purchases of
14 commodities, services or technology shall not be artificially divided
15 for the purpose of satisfying the discretionary buying thresholds estab-
16 lished by this subdivision. A change to or a renewal of a discretionary
17 purchase shall not be permitted if the change or renewal would bring the
18 reasonably expected aggregate amount of all purchases of the same
19 commodities, services or technology from the same provider within the
20 twelve-month period commencing on the date of the first purchase to an
21 amount greater than the discretionary buying threshold amount. For
22 purposes of this section, "sealed bids" and "sealed offers", as that
23 term applies to purchase contracts, (including contracts for service
24 work, but excluding any purchase contracts necessary for the completion
25 of a public works contract pursuant to article eight of the labor law)
26 shall include bids and offers submitted in an electronic format includ-
27 ing submission of the statement of non-collusion required by section one
28 hundred three-d of this article, provided that the governing board of
29 the political subdivision or district, by resolution, has authorized the
30 receipt of bids and offers in such format. Submission in electronic
31 format may, for technology contracts only, be required as the sole meth-
32 od for the submission of bids and offers. Bids and offers submitted in
33 an electronic format shall be transmitted by bidders and offerers to the
34 receiving device designated by the political subdivision or district.
35 Any method used to receive electronic bids and offers shall comply with
36 article three of the state technology law, and any rules and regulations
37 promulgated and guidelines developed thereunder and, at a minimum, must
38 (a) document the time and date of receipt of each bid and offer received
39 electronically; (b) authenticate the identity of the sender; (c) ensure
40 the security of the information transmitted; and (d) ensure the confi-
41 dentiality of the bid or offer until the time and date established for
42 the opening of bids or offers. The timely submission of an electronic
43 bid or offer in compliance with instructions provided for such
44 submission in the advertisement for bids or offers and/or the specifica-
45 tions shall be the responsibility solely of each bidder or offerer or
46 prospective bidder or offerer. No political subdivision or district
47 therein shall incur any liability from delays of or interruptions in the
48 receiving device designated for the submission and receipt of electronic
49 bids and offers. DURING THE PERIOD BEGINNING JUNE FIRST, TWO THOUSAND
50 TWELVE, AND ENDING MARCH THIRTY-FIRST, TWO THOUSAND SIXTEEN, THE VILLAGE
51 OF PORT CHESTER AND THE CITY OF NEW ROCHELLE, IN WESTCHESTER COUNTY MAY,
52 FOR COMMODITY, SERVICE AND TECHNOLOGY CONTRACTS REQUIRE ELECTRONIC
53 SUBMISSION AS THE SOLE METHOD FOR THE SUBMISSION OF BIDS FOR THE SOLIC-
54 ITATION. SUCH MUNICIPALITIES SHALL, DURING THE STATED TIME PERIOD,
55 UNDERTAKE NO MORE THAN FIFTY SUCH ELECTRONIC BID SOLICITATIONS, NONE OF
56 WHICH SHALL BE REVERSE AUCTIONS, PRIOR TO APRIL FIRST, TWO THOUSAND

1 SIXTEEN. IN ADDITION, SUCH MUNICIPALITIES MAY CONDUCT UP TO TWENTY
2 REVERSE AUCTIONS THROUGH ELECTRONIC MEANS, PRIOR TO APRIL FIRST, TWO
3 THOUSAND SIXTEEN. PRIOR TO REQUIRING THE ELECTRONIC SUBMISSION OF BIDS,
4 THE CHIEF FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE VILLAGE OF
5 PORT CHESTER SHALL MAKE A DETERMINATION, WHICH SHALL BE DOCUMENTED IN
6 THE PROCUREMENT RECORD, THAT ELECTRONIC SUBMISSION AFFORDS A FAIR AND
7 EQUAL OPPORTUNITY FOR OFFERERS TO SUBMIT RESPONSIVE OFFERS. WITHIN THIR-
8 TY DAYS OF THE COMPLETION OF THE FIFTIETH ELECTRONIC BID SOLICITATION,
9 OR BY APRIL FIRST, TWO THOUSAND SIXTEEN, WHICHEVER IS EARLIER, THE CHIEF
10 FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE VILLAGE OF PORT
11 CHESTER SHALL PREPARE AND ISSUE REPORTS TO THE LEGISLATURE ASSESSING THE
12 USE OF ELECTRONIC SUBMISSIONS AND MAKE RECOMMENDATIONS REGARDING FUTURE
13 USE OF THIS PROCUREMENT METHOD. IN ADDITION, WITHIN THIRTY DAYS OF THE
14 COMPLETION OF THE TWENTIETH REVERSE AUCTION THROUGH ELECTRONIC MEANS, OR
15 BY APRIL FIRST, TWO THOUSAND SIXTEEN, WHICHEVER IS EARLIER, THE CHIEF
16 FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE VILLAGE OF PORT
17 CHESTER SHALL PREPARE AND ISSUE REPORTS TO THE LEGISLATURE ASSESSING THE
18 USE OF REVERSE AUCTIONS THROUGH ELECTRONIC MEANS AND MAKE RECOMMENDA-
19 TIONS REGARDING FUTURE USE OF THIS PROCUREMENT METHOD. SUCH REPORTS
20 SHALL BE PUBLISHED ON THE OFFICIAL WEBSITES OF THE RESPECTIVE MUNICI-
21 PALITIES AND SHALL BE PROVIDED ELECTRONICALLY TO THE CHAIR OF THE SENATE
22 FINANCE COMMITTEE, THE ASSEMBLY WAYS AND MEANS COMMITTEE AND THE COMMIS-
23 SIONER OF THE OFFICE OF GENERAL SERVICES.

24 S 2. This act shall take effect immediately; provided that the amend-
25 ments to subdivision 1 of section 103 of the general municipal law made
26 by section one of this act shall not affect the expiration and reversion
27 of such subdivision and shall expire therewith.