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

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:

Section 1. Subdivision 1 of section 103 of the general municipal law, as amended by chapter 2 of the laws of 2012, 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, 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) 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 for 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 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 subdivi-

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

LBD15771-02-2

sion, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the 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 or her or its discretion, reject all bids or offers and readvertise for new bids or offers 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" and "sealed offers", as that term applies to 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 include bids and offers 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 and offers in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids and offers. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers 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 and offer 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 or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. 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 and offers. DURING THE PERIOD BEGINNING JUNE FIRST, TWO THOUSAND TWELVE, AND ENDING MARCH THIRTY-FIRST, TWO THOUSAND SIXTEEN, THE VILLAGE OF PORT CHESTER AND THE CITY OF NEW ROCHELLE, IN WESTCHESTER COUNTY MAY, FOR COMMODITY, SERVICE AND TECHNOLOGY CONTRACTS REQUIRE ELECTRONIC SUBMISSION AS THE SOLE METHOD FOR THE SUBMISSION OF BIDS FOR THE SOLICITATION. SUCH MUNICIPALITIES SHALL, DURING THE STATED TIME PERIOD, UNDERTAKE NO MORE THAN FIFTY SUCH ELECTRONIC BID SOLICITATIONS, NONE OF WHICH SHALL BE REVERSE AUCTIONS, PRIOR TO APRIL FIRST, TWO THOUSAND

SIXTEEN. IN ADDITION, SUCH MUNICIPALITIES MAY CONDUCT UP TO TWENTY REVERSE AUCTIONS THROUGH ELECTRONIC MEANS, PRIOR TO APRIL FIRST, TWO THOUSAND SIXTEEN. PRIOR TO REQUIRING THE ELECTRONIC SUBMISSION OF BIDS, THE CHIEF FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE VILLAGE OF PORT CHESTER SHALL MAKE A DETERMINATION, WHICH SHALL BE DOCUMENTED IN THE PROCUREMENT RECORD, THAT ELECTRONIC SUBMISSION AFFORDS A FAIR AND EQUAL OPPORTUNITY FOR OFFERERS TO SUBMIT RESPONSIVE OFFERS. WITHIN THIRTY DAYS OF THE COMPLETION OF THE FIFTIETH ELECTRONIC BID SOLICITATION, OR BY APRIL FIRST, TWO THOUSAND SIXTEEN, WHICHEVER IS EARLIER, THE CHIEF FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE VILLAGE OF PORT CHESTER SHALL PREPARE AND ISSUE REPORTS TO THE LEGISLATURE ASSESSING THE USE OF ELECTRONIC SUBMISSIONS AND MAKE RECOMMENDATIONS REGARDING FUTURE USE OF THIS PROCUREMENT METHOD. IN ADDITION, WITHIN THIRTY DAYS OF THE COMPLETION OF THE TWENTIETH REVERSE AUCTION THROUGH ELECTRONIC MEANS, OR BY APRIL FIRST, TWO THOUSAND SIXTEEN, WHICHEVER IS EARLIER, THE CHIEF FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE VILLAGE OF PORT CHESTER SHALL PREPARE AND ISSUE REPORTS TO THE LEGISLATURE ASSESSING THE USE OF REVERSE AUCTIONS THROUGH ELECTRONIC MEANS AND MAKE RECOMMENDATIONS REGARDING FUTURE USE OF THIS PROCUREMENT METHOD. SUCH REPORTS SHALL BE PUBLISHED ON THE OFFICIAL WEBSITES OF THE RESPECTIVE MUNICIPALITIES AND SHALL BE PROVIDED ELECTRONICALLY TO THE CHAIR OF THE SENATE FINANCE COMMITTEE, THE ASSEMBLY WAYS AND MEANS COMMITTEE AND THE COMMISSIONER OF THE OFFICE OF GENERAL SERVICES.

S 2. This act shall take effect immediately; provided 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 and shall expire therewith.