

2949

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 22, 2013

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Introduced by M. of A. WRIGHT, HOOPER -- Multi-Sponsored by -- M. of A. AUBRY, COLTON, COOK, MAGEE, MILLMAN -- 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 chapter 2 of the laws of 2012, is amended to  
3     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, 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 pursu-  
16    ant 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

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

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1 corporation, school district or board of cooperative educational  
2 services, by rule, regulation or resolution adopted at a public meeting.  
3 In any case where a responsible bidder's or responsible offerer's gross  
4 price is reducible by an allowance for the value of used machinery,  
5 equipment, apparatus or tools to be traded in by a political subdivi-  
6 sion, the gross price shall be reduced by the amount of such allowance,  
7 for the purpose of determining the best value. NOTWITHSTANDING THE  
8 FOREGOING, IN ANY CASE WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK  
9 STATE RESIDENT, FIRM OR CORPORATION AND WHO IS FURNISHING THE REQUIRED  
10 SECURITY IS FOUND BY SUCH OFFICER, BOARD OR AGENCY TO BE WITHIN TWO  
11 PERCENT OF THE BID OF THE LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD  
12 OR AGENCY MAY PREFER SUCH RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE  
13 BIDDER AND AWARD THE CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED,  
14 HOWEVER, WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER,  
15 SUCH OFFICER, BOARD OR AGENCY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED  
16 RESPONSIBLE BIDDER SUBMITTING THE LOWEST BID. In cases where two or more  
17 responsible bidders furnishing the required security submit identical  
18 bids as to price, such officer, board or agency may award the contract  
19 to any of such bidders. Such officer, board or agency may, in his or her  
20 or its discretion, reject all bids or offers and readvertise for new  
21 bids or offers in the manner provided by this section. In determining  
22 whether a purchase is an expenditure within the discretionary threshold  
23 amounts established by this subdivision, the officer, board or agency of  
24 a political subdivision or of any district therein shall consider the  
25 reasonably expected aggregate amount of all purchases of the same  
26 commodities, services or technology to be made within the twelve-month  
27 period commencing on the date of purchase. Purchases of commodities,  
28 services or technology shall not be artificially divided for the purpose  
29 of satisfying the discretionary buying thresholds established by this  
30 subdivision. A change to or a renewal of a discretionary purchase shall  
31 not be permitted if the change or renewal would bring the reasonably  
32 expected aggregate amount of all purchases of the same commodities,  
33 services or technology from the same provider within the twelve-month  
34 period commencing on the date of the first purchase to an amount greater  
35 than the discretionary buying threshold amount. For purposes of this  
36 section, "sealed bids" and "sealed offers", as that term applies to  
37 purchase contracts, (including contracts for service work, but excluding  
38 any purchase contracts necessary for the completion of a public works  
39 contract pursuant to article eight of the labor law) shall include bids  
40 and offers submitted in an electronic format including submission of the  
41 statement of non-collusion required by section one hundred three-d of  
42 this article, provided that the governing board of the political subdivi-  
43 sion or district, by resolution, has authorized the receipt of bids  
44 and offers in such format. Submission in electronic format may, for  
45 technology contracts only, be required as the sole method for the  
46 submission of bids and offers. Bids and offers submitted in an electron-  
47 ic format shall be transmitted by bidders and offerers to the receiving  
48 device designated by the political subdivision or district. Any method  
49 used to receive electronic bids and offers shall comply with article  
50 three of the state technology law, and any rules and regulations promul-  
51 gated and guidelines developed thereunder and, at a minimum, must (a)  
52 document the time and date of receipt of each bid and offer received  
53 electronically; (b) authenticate the identity of the sender; (c) ensure  
54 the security of the information transmitted; and (d) ensure the confi-  
55 dentiality of the bid or offer until the time and date established for  
56 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.

S 2. Subdivision 1 of section 103 of the general municipal law, as amended by section 2 of 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 of 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 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 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 subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid or best value. 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

1 AND AWARD THE CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER,  
2 WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFI-  
3 CER, BOARD OR AGENCY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPON-  
4 SIBLE BIDDER SUBMITTING THE LOWEST BID. In cases where two or more  
5 responsible bidders furnishing the required security submit identical  
6 bids as to price, such officer, board or agency may award the contract  
7 to any of such bidders. Such officer, board or agency may, in his, her  
8 or its discretion, reject all bids or offers and readvertise for new  
9 bids or offers in the manner provided by this section.

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

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

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