

5307--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 22, 2013

Introduced by M. of A. OTIS, PAULIN -- read once and referred to the Committee on Local Governments -- recommitted to the Committee on Local Governments in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 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

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

LBD05128-03-4

1 contracts must be authorized by local law or, in the case of a district
2 corporation, school district or board of cooperative educational
3 services, by rule, regulation or resolution adopted at a public meeting.
4 In any case where a responsible bidder's or responsible offerer's gross
5 price is reducible by an allowance for the value of used machinery,
6 equipment, apparatus or tools to be traded in by a political subdivi-
7 sion, the gross price shall be reduced by the amount of such allowance,
8 for the purpose of determining the best value. In cases where two or
9 more responsible bidders furnishing the required security submit identi-
10 cal bids as to price, such officer, board or agency may award the
11 contract to any of such bidders. Such officer, board or agency may, in
12 his or her or its discretion, reject all bids or offers and readvertise
13 for new bids or offers in the manner provided by this section. In deter-
14 mining whether a purchase is an expenditure within the discretionary
15 threshold amounts established by this subdivision, the officer, board or
16 agency of a political subdivision or of any district therein shall
17 consider the reasonably expected aggregate amount of all purchases of
18 the same commodities, services or technology to be made within the
19 twelve-month period commencing on the date of purchase. Purchases of
20 commodities, services or technology shall not be artificially divided
21 for the purpose of satisfying the discretionary buying thresholds estab-
22 lished by this subdivision. A change to or a renewal of a discretionary
23 purchase shall not be permitted if the change or renewal would bring the
24 reasonably expected aggregate amount of all purchases of the same
25 commodities, services or technology from the same provider within the
26 twelve-month period commencing on the date of the first purchase to an
27 amount greater than the discretionary buying threshold amount. For
28 purposes of this section, "sealed bids" and "sealed offers", as that
29 term applies to purchase contracts, (including contracts for service
30 work, but excluding any purchase contracts necessary for the completion
31 of a public works contract pursuant to article eight of the labor law)
32 shall include bids and offers submitted in an electronic format includ-
33 ing submission of the statement of non-collusion required by section one
34 hundred three-d of this article, provided that the governing board of
35 the political subdivision or district, by resolution, has authorized the
36 receipt of bids and offers in such format. Submission in electronic
37 format may, for technology contracts only, be required as the sole meth-
38 od for the submission of bids and offers. Bids and offers submitted in
39 an electronic format shall be transmitted by bidders and offerers to the
40 receiving device designated by the political subdivision or district.
41 Any method used to receive electronic bids and offers shall comply with
42 article three of the state technology law, and any rules and regulations
43 promulgated and guidelines developed thereunder and, at a minimum, must
44 (a) document the time and date of receipt of each bid and offer received
45 electronically; (b) authenticate the identity of the sender; (c) ensure
46 the security of the information transmitted; and (d) ensure the confi-
47 dentiality of the bid or offer until the time and date established for
48 the opening of bids or offers. The timely submission of an electronic
49 bid or offer in compliance with instructions provided for such
50 submission in the advertisement for bids or offers and/or the specifica-
51 tions shall be the responsibility solely of each bidder or offerer or
52 prospective bidder or offerer. No political subdivision or district
53 therein shall incur any liability from delays of or interruptions in the
54 receiving device designated for the submission and receipt of electronic
55 bids and offers. DURING THE PERIOD BEGINNING JUNE FIRST, TWO THOUSAND
56 FOURTEEN, AND ENDING MARCH THIRTY-FIRST, TWO THOUSAND EIGHTEEN, THE

1 VILLAGE OF PORT CHESTER AND THE CITY OF NEW ROCHELLE, IN WESTCHESTER
2 COUNTY MAY, FOR COMMODITY, SERVICE AND TECHNOLOGY CONTRACTS REQUIRE
3 ELECTRONIC SUBMISSION AS THE SOLE METHOD FOR THE SUBMISSION OF BIDS FOR
4 THE SOLICITATION. SUCH MUNICIPALITIES SHALL, DURING THE STATED TIME
5 PERIOD, UNDERTAKE NO MORE THAN FIFTY SUCH ELECTRONIC BID SOLICITATIONS,
6 NONE OF WHICH SHALL BE REVERSE AUCTIONS, PRIOR TO APRIL FIRST, TWO THOU-
7 SAND EIGHTEEN. IN ADDITION, SUCH MUNICIPALITIES MAY CONDUCT UP TO TWENTY
8 REVERSE AUCTIONS THROUGH ELECTRONIC MEANS, PRIOR TO APRIL FIRST, TWO
9 THOUSAND EIGHTEEN. PRIOR TO REQUIRING THE ELECTRONIC SUBMISSION OF
10 BIDS, THE CHIEF FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE
11 VILLAGE OF PORT CHESTER SHALL MAKE A DETERMINATION, WHICH SHALL BE DOCU-
12 MENTED IN THE PROCUREMENT RECORD, THAT ELECTRONIC SUBMISSION AFFORDS A
13 FAIR AND EQUAL OPPORTUNITY FOR OFFERERS TO SUBMIT RESPONSIVE OFFERS.
14 WITHIN THIRTY DAYS OF THE COMPLETION OF THE FIFTIETH ELECTRONIC BID
15 SOLICITATION, OR BY APRIL FIRST, TWO THOUSAND EIGHTEEN, WHICHEVER IS
16 EARLIER, THE CHIEF FISCAL OFFICERS OF THE CITY OF NEW ROCHELLE AND THE
17 VILLAGE OF PORT CHESTER SHALL PREPARE AND ISSUE REPORTS TO THE LEGISLA-
18 TURE ASSESSING THE USE OF ELECTRONIC SUBMISSIONS AND MAKE RECOMMENDA-
19 TIONS REGARDING FUTURE USE OF THIS PROCUREMENT METHOD. IN ADDITION,
20 WITHIN THIRTY DAYS OF THE COMPLETION OF THE TWENTIETH REVERSE AUCTION
21 THROUGH ELECTRONIC MEANS, OR BY APRIL FIRST, TWO THOUSAND EIGHTEEN,
22 WHICHEVER IS EARLIER, THE CHIEF FISCAL OFFICERS OF THE CITY OF NEW
23 ROCHELLE AND THE VILLAGE OF PORT CHESTER SHALL PREPARE AND ISSUE REPORTS
24 TO THE LEGISLATURE ASSESSING THE USE OF REVERSE AUCTIONS THROUGH ELEC-
25 TRONIC MEANS AND MAKE RECOMMENDATIONS REGARDING FUTURE USE OF THIS
26 PROCUREMENT METHOD. SUCH REPORTS SHALL BE PUBLISHED ON THE OFFICIAL
27 WEBSITES OF THE RESPECTIVE MUNICIPALITIES AND SHALL BE PROVIDED ELEC-
28 TRONICALLY TO THE CHAIR OF THE SENATE FINANCE COMMITTEE, THE ASSEMBLY
29 WAYS AND MEANS COMMITTEE AND THE COMMISSIONER OF THE OFFICE OF GENERAL
30 SERVICES.

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