

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. GANTT -- read once and referred to the Committee
on Local Governments

AN ACT to amend the general municipal law, in relation to giving the
city of Rochester the power to prefer minority and women-owned busi-
nesses in awarding public contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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. In cases where two or
8 more responsible bidders furnishing the required security submit identi-
9 cal bids as to price, such officer, board or agency may award the
10 contract to any of such bidders. Such officer, board or agency may, in
11 his or her or its discretion, reject all bids or offers and readvertise
12 for new bids or offers in the manner provided by this section; PROVIDED,
13 HOWEVER, THAT IN THE CITY OF ROCHESTER, FOR PUBLIC WORKS AND PURCHASE
14 CONTRACTS UP TO ONE HUNDRED THOUSAND DOLLARS, SUCH CONTRACTS MAY BE
15 AWARDED TO THE RESPONSIBLE BIDDER WHOSE BID IS WITHIN FIVE PERCENT OF
16 THE BID OF THE LOWEST RESPONSIBLE BIDDER, IF THE PRINCIPAL PLACE OF
17 BUSINESS OF SUCH BIDDER IS LOCATED WITHIN THE ROCHESTER METROPOLITAN
18 STATISTICAL AREA, SUCH BIDDER IS CERTIFIED BY THE STATE OF NEW YORK AS A
19 MINORITY OR WOMEN-OWNED BUSINESS AND SUCH AWARD IS MADE PURSUANT TO A
20 MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM LAWFULLY ADOPTED BY THE CITY
21 OF ROCHESTER. In determining whether a purchase is an expenditure with-
22 in the discretionary threshold amounts established by this subdivision,
23 the officer, board or agency of a political subdivision or of any
24 district therein shall consider the reasonably expected aggregate amount
25 of all purchases of the same commodities, services or technology to be
26 made within the twelve-month period commencing on the date of purchase.
27 Purchases of commodities, services or technology shall not be arti-
28 ficially divided for the purpose of satisfying the discretionary buying
29 thresholds established by this subdivision. A change to or a renewal of
30 a discretionary purchase shall not be permitted if the change or renewal
31 would bring the reasonably expected aggregate amount of all purchases of
32 the same commodities, services or technology from the same provider
33 within the twelve-month period commencing on the date of the first
34 purchase to an amount greater than the discretionary buying threshold
35 amount. For purposes of this section, "sealed bids" and "sealed offers",
36 as that term applies to purchase contracts, (including contracts for
37 service work, but excluding any purchase contracts necessary for the
38 completion of a public works contract pursuant to article eight of the
39 labor law) shall include bids and offers submitted in an electronic
40 format including submission of the statement of non-collusion required
41 by section one hundred three-d of this article, provided that the
42 governing board of the political subdivision or district, by resolution,
43 has authorized the receipt of bids and offers in such format. Submission
44 in electronic format may, for technology contracts only, be required as
45 the sole method for the submission of bids and offers. Bids and offers
46 submitted in an electronic format shall be transmitted by bidders and
47 offerers to the receiving device designated by the political subdivision
48 or district. Any method used to receive electronic bids and offers shall
49 comply with article three of the state technology law, and any rules and
50 regulations promulgated and guidelines developed thereunder and, at a
51 minimum, must (a) document the time and date of receipt of each bid and
52 offer received electronically; (b) authenticate the identity of the
53 sender; (c) ensure the security of the information transmitted; and (d)
54 ensure the confidentiality of the bid or offer until the time and date
55 established for the opening of bids or offers. The timely submission of
56 an electronic bid or offer in compliance with instructions provided for

1 such submission in the advertisement for bids or offers and/or the spec-
2 ifications shall be the responsibility solely of each bidder or offerer
3 or prospective bidder or offerer. No political subdivision or district
4 therein shall incur any liability from delays of or interruptions in the
5 receiving device designated for the submission and receipt of electronic
6 bids and offers.
7 S 2. This act shall take effect immediately; provided, however, that
8 the amendments to subdivision 1 of section 103 of the general municipal
9 law made by section one of this act shall not affect the expiration of
10 such subdivision and shall be deemed to expire therewith.