

2055

2013-2014 Regular Sessions

I N   S E N A T E

January 10, 2013

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Introduced by Sen. LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

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  
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.

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

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

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

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