

# STATE OF NEW YORK

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5571

2019-2020 Regular Sessions

## IN ASSEMBLY

February 13, 2019

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

AN ACT to amend the general municipal law, in relation to advertising for bids and offers; letting of 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 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~~] one hundred twenty-five thousand dollars and all  
8 purchase contracts involving an expenditure of more than [~~twenty~~] eighty  
9 thousand dollars, shall be awarded by the appropriate officer, board or  
10 agency of a political subdivision or of any district therein including  
11 but not limited to a soil conservation district to the lowest responsible  
12 bidder furnishing the required security after advertisement for  
13 sealed bids in the manner provided by this section, provided, however,  
14 that purchase contracts (including contracts for service work, but  
15 excluding any purchase contracts necessary for the completion of a  
16 public works contract pursuant to article eight of the labor law) may be  
17 awarded on the basis of best value, as defined in section one hundred  
18 sixty-three of the state finance law, to a responsive and responsible  
19 bidder or offerer in the manner provided by this section except that in  
20 a political subdivision other than a city with a population of one  
21 million inhabitants or more or any district, board or agency with jurisdiction  
22 exclusively therein the use of best value for awarding a  
23 purchase contract or purchase contracts must be authorized by local law  
24 or, in the case of a district corporation, school district or board of  
25 cooperative educational services, by rule, regulation or resolution

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

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1 adopted at a public meeting. In any case where a responsible bidder's or  
2 responsible offerer's gross price is reducible by an allowance for the  
3 value of used machinery, equipment, apparatus or tools to be traded in  
4 by a political subdivision, the gross price shall be reduced by the  
5 amount of such allowance, for the purpose of determining the best value.  
6 In cases where two or more responsible bidders furnishing the required  
7 security submit identical bids as to price, such officer, board or agen-  
8 cy may award the contract to any of such bidders. Such officer, board or  
9 agency may, in his or her or its discretion, reject all bids or offers  
10 and readvertise for new bids or offers in the manner provided by this  
11 section. In determining whether a purchase is an expenditure within the  
12 discretionary threshold amounts established by this subdivision, the  
13 officer, board or agency of a political subdivision or of any district  
14 therein shall consider the reasonably expected aggregate amount of all  
15 purchases of the same commodities, services or technology to be made  
16 within the twelve-month period commencing on the date of purchase.  
17 Purchases of commodities, services or technology shall not be arti-  
18 ficially divided for the purpose of satisfying the discretionary buying  
19 thresholds established by this subdivision. A change to or a renewal of  
20 a discretionary purchase shall not be permitted if the change or renewal  
21 would bring the reasonably expected aggregate amount of all purchases of  
22 the same commodities, services or technology from the same provider  
23 within the twelve-month period commencing on the date of the first  
24 purchase to an amount greater than the discretionary buying threshold  
25 amount. For purposes of this section, "sealed bids" and "sealed offers",  
26 as that term applies to purchase contracts, (including contracts for  
27 service work, but excluding any purchase contracts necessary for the  
28 completion of a public works contract pursuant to article eight of the  
29 labor law) shall include bids and offers submitted in an electronic  
30 format including submission of the statement of non-collusion required  
31 by section one hundred three-d of this article, provided that the  
32 governing board of the political subdivision or district, by resolution,  
33 has authorized the receipt of bids and offers in such format. Submission  
34 in electronic format may, for technology contracts only, be required as  
35 the sole method for the submission of bids and offers. Bids and offers  
36 submitted in an electronic format shall be transmitted by bidders and  
37 offerers to the receiving device designated by the political subdivision  
38 or district. Any method used to receive electronic bids and offers shall  
39 comply with article three of the state technology law, and any rules and  
40 regulations promulgated and guidelines developed thereunder and, at a  
41 minimum, must (a) document the time and date of receipt of each bid and  
42 offer received electronically; (b) authenticate the identity of the  
43 sender; (c) ensure the security of the information transmitted; and (d)  
44 ensure the confidentiality of the bid or offer until the time and date  
45 established for the opening of bids or offers. The timely submission of  
46 an electronic bid or offer in compliance with instructions provided for  
47 such submission in the advertisement for bids or offers and/or the spec-  
48 ifications shall be the responsibility solely of each bidder or offerer  
49 or 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.

53 § 2. Subdivision 1 of section 103 of the general municipal law, as  
54 amended by section 2 of chapter 2 of the laws of 2012, is amended to  
55 read as follows:

1 1. Except as otherwise expressly provided by an act of the legislature  
2 or by a local law adopted prior to September first, nineteen hundred  
3 fifty-three, all contracts for public work involving an expenditure of  
4 more than [~~thirty-five~~] one hundred twenty-five thousand dollars and all  
5 purchase contracts involving an expenditure of more than [~~twenty~~] eighty  
6 thousand dollars, shall be awarded by the appropriate officer, board or  
7 agency of a political subdivision or of any district therein including  
8 but not limited to a soil conservation district to the lowest responsi-  
9 ble bidder furnishing the required security after advertisement for  
10 sealed bids in the manner provided by this section, provided, however,  
11 that purchase contracts (including contracts for service work, but  
12 excluding any purchase contracts necessary for the completion of a  
13 public works contract pursuant to article eight of the labor law) may be  
14 awarded on the basis of best value, as defined in section one hundred  
15 sixty-three of the state finance law, to a responsive and responsible  
16 bidder or offerer in the manner provided by this section except that in  
17 a political subdivision other than a city with a population of one  
18 million inhabitants or more or any district, board or agency with juris-  
19 diction exclusively therein the use of best value of awarding a purchase  
20 contract or purchase contracts must be authorized by local law or, in  
21 the case of a district corporation, school district or board of cooper-  
22 ative educational services, by rule, regulation or resolution adopted at  
23 a public meeting. In determining whether a purchase is an expenditure  
24 within the discretionary threshold amounts established by this subdivi-  
25 sion, the officer, board or agency of a political subdivision or of any  
26 district therein shall consider the reasonably expected aggregate amount  
27 of all purchases of the same commodities, services or technology to be  
28 made within the twelve-month period commencing on the date of purchase.  
29 Purchases of commodities, services or technology shall not be arti-  
30 ficially divided for the purpose of satisfying the discretionary buying  
31 thresholds established by this subdivision. A change to or a renewal of  
32 a discretionary purchase shall not be permitted if the change or renewal  
33 would bring the reasonably expected aggregate amount of all purchases of  
34 the same commodities, services or technology from the same provider  
35 within the twelve-month period commencing on the date of the first  
36 purchase to an amount greater than the discretionary buying threshold  
37 amount. In any case where a responsible bidder's or responsible  
38 offerer's gross price is reducible by an allowance for the value of used  
39 machinery, equipment, apparatus or tools to be traded in by a political  
40 subdivision, the gross price shall be reduced by the amount of such  
41 allowance, for the purpose of determining the low bid or best value. In  
42 cases where two or more responsible bidders furnishing the required  
43 security submit identical bids as to price, such officer, board or agen-  
44 cy may award the contract to any of such bidders. Such officer, board or  
45 agency may, in his, her or its discretion, reject all bids or offers and  
46 readvertise for new bids or offers in the manner provided by this  
47 section.

48 § 3. This act shall take effect immediately, provided that the amend-  
49 ments to subdivision 1 of section 103 of the general municipal law made  
50 by section one of this act shall be subject to the expiration and rever-  
51 sion of such subdivision pursuant to subdivision a of section 41 of part  
52 X of chapter 62 of the laws of 2003, as amended, when upon such date the  
53 provisions of section two of this act shall take effect.