

STATE OF NEW YORK

7009

2019-2020 Regular Sessions

IN ASSEMBLY

April 3, 2019

Introduced by M. of A. FINCH, KOLB -- Multi-Sponsored by -- M. of A. MORINELLO -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to authorizing the city of Auburn to prefer businesses located in the county of Cayuga in awarding public 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 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 provided further, however, that in the city of Auburn, for public works
4 and purchase contracts up to one hundred thousand dollars, such
5 contracts may be awarded to the responsible bidder whose bid is within
6 five percent of the bid of the lowest responsible bidder and if the
7 principal place of business of such bidder is located within the county
8 of Cayuga. In any case where a responsible bidder's or responsible

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

1 therein shall incur any liability from delays of or interruptions in the
2 receiving device designated for the submission and receipt of electronic
3 bids and offers.

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

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

1 lowest responsible bidder and if the principal place of business of such
2 bidder is located within the county of Cayuga.

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