

STATE OF NEW YORK

5571

2019-2020 Regular Sessions

IN ASSEMBLY

February 13, 2019

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 responsi-
12 ble 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 juris-
22 diction 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.