

# 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.

LBD05516-01-9

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.