

STATE OF NEW YORK

7685

2023-2024 Regular Sessions

IN ASSEMBLY

June 5, 2023

Introduced by M. of A. BURGOS, BRAUNSTEIN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the general municipal law, in relation to electronic bidding

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
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. Provided however, the appro-
36 priate officer, board or agency of a city with a population of one
37 million inhabitants or more, or any district, board or agency with
38 jurisdiction exclusively within such city, may authorize or require bids
39 and offers for any contract to be submitted in an electronic format.
40 Bids and offers submitted in an electronic format shall be transmitted
41 by bidders and offerers to the receiving device designated by the poli-
42 tical subdivision or district. Any method used to receive electronic
43 bids and offers shall comply with article three of the state technology
44 law, and any rules and regulations promulgated and guidelines developed
45 thereunder and, at a minimum, must (a) document the time and date of
46 receipt of each bid and offer received electronically; (b) authenticate
47 the identity of the sender; (c) ensure the security of the information
48 transmitted; and (d) ensure the confidentiality of the bid or offer
49 until the time and date established for the opening of bids or offers.
50 The timely submission of an electronic bid or offer in compliance with
51 instructions provided for such submission in the advertisement for bids
52 or offers and/or the specifications shall be the responsibility solely
53 of each bidder or offerer or prospective bidder or offerer. No political
54 subdivision or district therein shall incur any liability from delays of
55 or interruptions in the receiving device designated for the submission
56 and receipt of electronic bids and offers.

§ 2. Subdivision 2 of section 103 of the general municipal law, as amended by section 1 of chapter 367 of the laws of 2014, is amended to read as follows:

2. Advertisement for bids and offers shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose and may be published in the procurement opportunities newsletter pursuant to article four-C of the economic development law. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such notice will be publicly opened and read and where the identity of all offerers will be publicly disclosed, and the designation of the receiving device if the political subdivision or district has authorized the receipt of bids and offers in an electronic format. Such board or agency may by resolution designate any officer or employee to open the bids and offers at the time and place specified in the notice. Such designee shall make a record of such bids and offers in such form and detail as the board or agency shall prescribe and present the same at the next regular or special meeting of such board or agency. All bids received shall be publicly opened and read at the time and place so specified and the identity of all offerers shall be publicly disclosed at the time and place so specified. Provided, however, the appropriate officer, board or agency of a city with a population of one million inhabitants or more, or any district, board or agency with jurisdiction exclusively within such city, may conduct a public opening, reading and identification by means of livestreaming on a publicly accessible website listed in the advertisement at a time and date specified in such advertisement, and post a record of such bids or offers and any other required information on a website maintained or controlled by such district, officer, board or agency on such date within five days. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids and offers.

§ 3. This act shall take effect March 1, 2024; provided, however, that if the chapter of the laws of 2023 amending part X of chapter 62 of the laws of 2003 amending the general business law and other laws generally relating to implementing the state fiscal plan for the 2003-2004 state fiscal year, relating to extending certain provisions of the general municipal law and the local finance law relating to electronic bidding, as proposed in legislative bills numbers S. 7363-A and A. 7445, shall not have taken effect on or before such date then sections one and two of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2023 takes effect; and provided, further, that:

(a) the amendments to subdivisions 1 and 2 of section 103 of the general municipal law made by sections one and two of this act shall not apply to any solicitation released prior to the date upon which this act takes effect; and

(b) the amendments to subdivisions 1 and 2 of section 103 of the general municipal law made by sections one and two of this act shall not affect the expiration and reversion of such subdivisions as provided in subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, and shall expire and be deemed repealed therewith.