

# STATE OF NEW YORK

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7362--A

2023-2024 Regular Sessions

## IN SENATE

May 19, 2023

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Introduced by Sens. COONEY, PARKER -- (at request of the NYC Mayor's Office of Contract Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

7 2. Advertisement for bids and offers shall be published in the offi-  
8 cial newspaper or newspapers, if any, or otherwise in a newspaper or  
9 newspapers designated for such purpose and may be published in the  
10 procurement opportunities newsletter pursuant to article four-C of the  
11 economic development law. Such advertisement shall contain a statement  
12 of the time when and place where all bids received pursuant to such  
13 notice will be publicly opened and read and where the identity of all  
14 offerers will be publicly disclosed, and the designation of the receiv-  
15 ing device if the political subdivision or district has authorized the  
16 receipt of bids and offers in an electronic format. Such board or agency  
17 may by resolution designate any officer or employee to open the bids and  
18 offers at the time and place specified in the notice. Such designee  
19 shall make a record of such bids and offers in such form and detail as  
20 the board or agency shall prescribe and present the same at the next  
21 regular or special meeting of such board or agency. All bids received  
22 shall be publicly opened and read at the time and place so specified and  
23 the identity of all offerers shall be publicly disclosed at the time and  
24 place so specified. Provided, however, the appropriate officer, board or  
25 agency of a city with a population of one million inhabitants or more,  
26 or any district, board or agency with jurisdiction exclusively within  
27 such city, may conduct a public opening, reading and identification by  
28 means of livestreaming on a publicly accessible website listed in the  
29 advertisement at a time and date specified in such advertisement, and  
30 post a record of such bids or offers and any other required information  
31 on a website maintained or controlled by such district, officer, board  
32 or agency on such date within five days. At least five days shall elapse  
33 between the first publication of such advertisement and the date so  
34 specified for the opening and reading of bids and offers.

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

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

50 (b) the amendments to subdivisions 1 and 2 of section 103 of the  
51 general municipal law made by sections one and two of this act shall not  
52 affect the expiration and reversion of such subdivisions as provided in  
53 subdivision (a) of section 41 of part X of chapter 62 of the laws of  
54 2003, as amended, and shall expire and be deemed repealed therewith.