§ 103. Advertising for bids and offers; letting of contracts; criminal conspiracies. * 1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a political subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value for awarding a purchase contract or purchase contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his or her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all

purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. For purposes of this section, "sealed bids" and "sealed offers", as that term applies to purchase contracts, (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) shall include bids and offers submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids and offers in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids and offers. 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 authorize or require bids and offers for any contract to be submitted in an electronic format. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for

such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. No political subdivision or district therein shall incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids and offers.

* NB Effective until June 1, 2028

* 1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a political subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value of awarding a purchase contract or purchase contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of

satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid or best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his, her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section.

* NB Effective June 1, 2028

1-a. Whenever possible, practical, and feasible and consistent with open competitive bidding or competitive offering, the officer, board or agency of any political subdivision or of any district therein charged with the awarding of contracts may use the stock item specifications of manufacturers, producers and/or assemblers located in New York state in developing specifications for items to be let for bid or offer in its purchasing contracts and may use the data and information contained in stock item specifications forms as provided in section one hundred sixty-four-a of the state finance law to assist in his determination of what constitutes a stock item of a manufacturer, producer and/or assembler located in New York state for the purpose of helping to retain jobs, business and industry presently in the state of New York and attracting expanded and new business and industry to the state of New York so as to best promote the public interest.

* 1-b. A political subdivision or any district therein shall have the option of purchasing information technology and telecommunications hardware, software and professional services through cooperative purchasing permissible pursuant to federal general services

administration information technology schedule seventy or any successor schedule. A political subdivision or any district therein that purchases through general services administration schedule seventy, information technology and consolidated schedule contracts shall comply with federal schedule ordering procedures as provided in federal acquisition regulation 8.405-1 or 8.405-2 or successor regulations, whichever is applicable. Adherence to such procedures shall constitute compliance with the competitive bidding requirements under this section.

* NB Repealed July 31, 2029

* 1-c. In determining the lowest responsible bidder, the officer, board or agency of any political subdivision or of any district therein charged with awarding of contracts, shall consider whether or not the bidder, or any "substantially owned-affiliated entity" as defined by paragraph g of subdivision five of section two hundred twenty of the labor law, has been found to be in violation of the Davis-Bacon Act pursuant to 40 U.S.C. 3144, the Copeland Act pursuant to 18 U.S.C. 874 and 40 U.S.C. 3145 or the Contract Work Hours and Safety Standards Act pursuant to 40 U.S.C. 332.

* NB Repealed March 18, 2027

* 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.

* NB Effective until June 1, 2028

* 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. 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. 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.

* NB Effective June 1, 2028

* 3. Notwithstanding the provisions of subdivision one of this section, any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of materials, equipment or supplies, or to contract for services, may make such purchases, or may contract for services, other than services subject to article nine of the labor law, when available, through the county in

which the political subdivision or district is located or through any county within the state subject to the rules established pursuant to subdivision two of section four hundred eight-a of the county law; provided that the political subdivision or district for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor or contractor. All purchases and all contracts for such services shall be subject to audit and inspection by the political subdivision or district for which made. Prior to making such purchases or contracts the officer, board or agency shall consider whether such contracts will result in cost savings after all factors, including charges for service, material, and delivery, have been considered. No officer, board or agency of a political subdivision or of any district therein shall make any purchase or contract for any such services through the county in which the political subdivision or district is located or through any county within the state when bids and offers have been received for such purchase or such services by such officer, board or agency, unless such purchase may be made or the contract for such services may be entered into upon the same terms, conditions and specifications at a lower price through the county.

* NB Effective until July 31, 2029

* 3. Notwithstanding the provisions of subdivision one of this section, any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of materials, equipment or supplies, or to contract for services, may make such purchases, or may contract for services, other than services subject to article eight or nine of the labor law, when available, through the county in which the political subdivision or district is located or through any county within the state subject to the rules established pursuant to subdivision two of section four hundred eight-a of the county law; provided that the political subdivision or district for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor or contractor. All purchases and all contracts for such services shall be subject to audit and inspection by the political subdivision or district for which made. Prior to making such purchases or contracts the officer, board or agency shall consider whether such contracts will result in cost savings after all factors, including charges for service, material, and delivery, have

been considered. No officer, board or agency of a political subdivision or of any district therein shall make any purchase or contract for any such services through the county in which the political subdivision or district is located or through any county within the state when bids and offers have been received for such purchase or such services by such officer, board or agency, unless such purchase may be made or the contract for such services may be entered into upon the same terms, conditions and specifications at a lower price through the county.

* NB Effective July 31, 2029

4. Notwithstanding the provisions of subdivision one of this section, in the case of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of a political subdivision or district therein, require immediate action which cannot await competitive bidding or competitive offering, contracts for public work or the purchase of supplies, material or equipment may be let by the appropriate officer, board or agency of a political subdivision or district therein.

5. Upon the adoption of a resolution by a vote of at least three-fifths of all the members of the governing body of a political subdivision or district therein stating that, for reasons of efficiency or economy, there is need for standardization, purchase contracts for a particular type or kind of equipment, material, supplies or services in excess of the monetary threshold fixed for purchase contracts in this section may be awarded by the appropriate officer, board or agency of such political subdivision or any such district therein, to the lowest responsible bidder or responsible offerer furnishing the required security after advertisement for sealed bids or sealed offers therefor in the manner provided in this section. Such resolution shall contain a full explanation of the reasons for its adoption.

6. Surplus and second-hand supplies, material or equipment may be purchased without competitive bidding or competitive offering from the federal government, the state of New York or from any other political subdivision, district or public benefit corporation.

7. A person or corporation who conspires to prevent competitive bidding or competitive offering on a contract for public work or purchase advertised for bidding or offering shall be guilty of a misdemeanor as provided in section one hundred three-e of this article.

8. Where municipal hospitals or nutrition programs that receive federal, state, or local funding purchase goods, supplies and services under joint contracts and arrangements entered into pursuant to section twenty-eight hundred three-a of the public health law, they shall not be required to comply with the provisions of subdivision one of this section.

8-a. (a) Notwithstanding the foregoing provisions of this section, a political subdivision, when letting contracts in accordance with this subdivision for the purchase of food products, may require provisions that mandate that the essential components of such food products are grown, produced or harvested in New York state, or that any processing of such food products take place in facilities located within New York state.

(b) The commissioner of agriculture and markets shall determine, using uniform criteria, those food products for which the requirements of this subdivision are deemed beneficial. The commissioner shall promulgate a list of such food products and ascertain those periods of time each year that the listed food products are available in sufficient quantity for competitive purchasing and shall forward such information upon request to such political subdivisions that shall make determinations as provided herein. The commissioner of agriculture and markets shall update such list as often as he deems necessary.

(c) (i) Such political subdivision shall specify, with the advice of the commissioner of agriculture and markets, the percentage of each food product required to be grown, produced, harvested or processed within New York state.

(ii) Upon a determination by such political subdivision that such food products are not available in sufficient quantity for purchasing, the specifications requiring such purchase shall be waived for that specific food product until the next contract for such food product is let out

for bid.

(iii) Upon a determination by such political subdivision that food processing facilities are not available for the processing of food products purchased under specifications required by this section, the specifications requiring such processing shall be waived.

(iv) In the event that such a political subdivision receives no acceptable bids it may waive the provisions of this section and shall award a contract in accordance with other applicable statutes. In addition, if the commissioners of agriculture and markets and economic development agree as to any deleterious economic impact of specifications requiring such purchase, the provisions of this subdivision may be waived by a political subdivision for such purchase.

(d) The commissioner of the office of general services and the commissioner of agriculture and markets may issue such regulations as they deem necessary to implement this subdivision and to assist political subdivisions in complying with this subdivision.

(e) Notwithstanding any other provision of law, the department of agriculture and markets shall supply information required by paragraph (b) of this subdivision to the office of general services within one hundred eighty days of the effective date of this subdivision.

(f) The commissioners of general services, agriculture and markets, and economic development shall provide the legislature with a report on the fifteenth day of January of the second year next succeeding the year in which this subdivision became effective, and in their discretion periodically report thereafter, on the effects of this subdivision and on recommendations on ways to make it more effective.

9. (a) Notwithstanding the foregoing provisions of this section to the contrary, a board of education, on behalf of its school district, or a board of cooperative educational services, may separately purchase eggs, livestock, fish, dairy products (excluding milk), juice, grains, and species of fresh fruit and vegetables, grown, produced or harvested, in New York State, provided that such order is for one hundred fifty thousand dollars or less as herein authorized, provided however, that a school district or board of cooperative educational services may apply to the commissioner of education for permission to purchase orders of more than one hundred fifty thousand dollars from an association of

owners of such farms when no other producers or growers have offered to sell to such school.

(b) All such purchases shall be administered pursuant to regulations promulgated by the commissioner of education. Such regulations shall: be developed in consultation with the commissioner of agriculture and markets to accommodate and promote the provisions of the farm-to-school program established pursuant to subdivision five-b of section sixteen of the agriculture and markets law and subdivision thirty-one of section three hundred five of the education law as added by chapter two of the laws of two thousand two; ensure that the prices paid by a district or board of cooperative educational services for any items so purchased do not exceed the prices of comparable local farm products that are available to districts through their usual purchases of such items; ensure that all producers and growers who desire to sell to school districts or boards of cooperative educational services can readily access information in accordance with the farm-to-school law; include provisions for situations when more than one producer or grower seeks to sell the same product to a district or board of cooperative educational services to ensure that all such producers or growers have an equitable opportunity to do so in a manner similar to the usual purchasing practices of such districts or boards of cooperative educational services; and, to the maximum extent practicable, minimize additional paperwork, recordkeeping and other similar requirements on both growers and producers and school districts.

9-a. Notwithstanding any provision of this section to the contrary, a county may separately purchase eggs, livestock, fish, dairy products, juice, grains, and species of fresh fruit and vegetables directly from New York state producers or growers, or associations of producers and growers, provided that:

(a) such association of producers or growers is comprised of ten or fewer owners of farms who also operate such farms and who have combined to fill the order of a county as herein authorized, provided however, that a county may purchase from an association of more than ten owners of such farms when no other producers or growers have offered to sell to such county;

(b) the amount that may be expended by a county in any fiscal year for

such purchases shall not exceed the greater of:

(i) the expenditure threshold provided in subdivision one of this section; or

(ii) twenty cents multiplied by the total population of such county;

(c) all such purchases shall be administered pursuant to policies and procedures adopted by the county governing board and developed in consultation with the commissioner of agriculture and markets. Such policies and procedures shall ensure that the prices paid by a county for any items so purchased do not exceed the prices of comparable local farm products that are available to the political subdivision or district therein through their usual purchases of such items; include provisions for situations when more than one producer or grower seeks to sell the same product to a county to ensure that all such producers or growers have an equitable opportunity to do so in a manner similar to the usual purchasing practices of such county; include guidelines for the approval of purchases of items from associations of more than ten growers or producers; and, to the maximum extent practicable, minimize additional paperwork, recordkeeping and other similar requirements on both growers and producers and counties.

10. Notwithstanding the foregoing provisions of this section to the contrary, a board of education may, on behalf of its school district, separately purchase milk produced in New York State, directly from licensed milk processors pursuant to the provisions of this subdivision. The amount that may be expended by a school district in any fiscal year pursuant to this section shall not exceed an amount equal to twenty-five cents multiplied by the total number of days in the school year multiplied by the total enrollment of such school district. All purchases made pursuant to this subdivision shall be administered pursuant to regulations promulgated by the commissioner of education. The regulations promulgated by the commissioner of education shall ensure that the prices paid by a school district for items purchased pursuant to this subdivision do not exceed the market value of such items and that all licensed processors who desire to sell to a school district pursuant to this subdivision have equal opportunities to do so.

11. Bid mistake; public projects. (a) In all contracts governed by

this section, where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer, or subdivision in status quo ante.

(b) Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this section shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder. Thereafter, the awarding officer, board or agency may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.

12. Notwithstanding any other provision of this section or any other provision of law, boards of education shall have the authority to determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder for purposes of subdivision one of this section, based upon either or both of the following considerations: (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor; or (b) the bidder's failure to provide information sufficient for boards of education to determine the labor standards applicable to the manufacture of the apparel or sports

equipment.

15. (a) Notwithstanding any general, special or local law or rule or regulation to the contrary, an officer, board or agency of any county, any school district or any political subdivision of the state with a population of fifty thousand or more charged with awarding a contract for public work may establish guidelines governing the qualifications of bidders seeking to bid or enter into such contracts. If such officer, board or agency maintains an appropriate list of qualified bidders, the bidding shall be restricted to those who have qualified prior to the receipt of bids according to standards fixed by such officer, board or agency. In determining whether a prospective bidder qualifies for inclusion on a list of pre-qualified bidders, the officer, board or agency shall consider the experience and record of performance of the prospective bidder in the particular type of work, as well as: (i) the prospective bidder's ability to undertake the particular type and complexity of work; (ii) the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work; (iii) the record of the prospective bidder in complying with existing labor standards and maintaining harmonious labor relations; (iv) the prospective bidder's compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships; and (v) the record of the prospective bidder in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidder's experience modification rate for each of the last three years.

(b) Such public officer, board or agency shall, not less than annually, publish in a newspaper of general circulation in such political subdivision an advertisement requesting prospective bidders to submit qualification statements. Lists of pre-qualified bidders may be established on a project-specific basis. Prequalified lists shall include all bidders that qualify; provided, however, that any such list shall have no less than five bidders but shall remain open for all additional qualified bidders. The public officer, board or agency's procedures for prequalifying bidders shall include an appeals process for those denied a place on a pre-qualified list. Any denial must be

based upon substantial evidence, cannot be arbitrary or capricious, and shall be subject to judicial review pursuant to article seventy-eight of the civil practice law and rules. The public officer, board or agency may move forward on the contract award during such appeals.

(c) Any school district or political subdivision of the state with a population of less than fifty thousand may utilize a list of pre-qualified bidders maintained by the county within which the subdivision is located, if such list is maintained.

* 16. Notwithstanding the provisions of subdivisions one, two and three of this section, and section one hundred four of this article, any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, may make such purchases, or may contract for such services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, as may be required by such political subdivision or district therein through the use of a contract let by the United States of America or any agency thereof, any state or any other political subdivision or district therein if such contract was let to the lowest responsible bidder or on the basis of best value in a manner consistent with this section and made available for use by other governmental entities; provided, however, that no political subdivision or district therein, other than a city with a population of one million or more inhabitants or any district, board or agency with jurisdiction exclusively therein, may make such purchases or contract for such services through the use of such a contract let on the basis of best value in a manner consistent with this section unless the political subdivision or district shall first adopt a local law, rule, regulation or resolution, as the case may be, pursuant to subdivision one of this section, authorizing the use of best value for awarding purchase contracts.

The authority provided to political subdivisions and districts therein pursuant to this subdivision shall not relieve any obligation of such political subdivision or district therein to comply with any applicable minority and women-owned business enterprise program mandates and the

preferred source requirements of section one hundred sixty-two of the state finance law.

* NB Repealed June 30, 2027