

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
GENERAL MUNICIPAL LAW
CHAPTER 24 OF THE CONSOLIDATED LAWS
ARTICLE 5-A—PUBLIC CONTRACTS

Current through L.2003, chs. 4 to 19 and 52.

§ 103. Advertising for bids; 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 twenty thousand dollars and all purchase contracts involving an expenditure of more than ten 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. In any case where a responsible bidder'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. 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 its discretion, reject all bids and readvertise for new bids in the manner provided by this section.

1-a. Whenever possible, practical, and feasible and consistent with open competitive bidding, 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 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.

2. Advertisement for bids shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose. 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. Such board or agency may by resolution designate any officer or employee to open the bids at the time and place specified in the notice. Such designee shall make a record of such bids 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. 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.

3. Notwithstanding the provisions of subdivision one of this section, any officer, board or agency of a political subdivision or of any district therein, located in whole or in part in a county, 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 adjoining such county 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. 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 or adjoining county when bids 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.

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, 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 or supplies of more than ten thousand dollars may be awarded by the appropriate officer, board or agency of such political subdivision or any such district therein, to the lowest responsible bidder furnishing the required security after advertisement for sealed bids 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 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 on a contract for public work or purchase advertised for bidding shall be guilty of a misdemeanor as provided in section one hundred three-e of this chapter.

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. Notwithstanding the foregoing provisions of this section to the contrary, a board of education may, on behalf of its school district, separately purchase eggs, livestock, fish, dairy products (excluding milk), juice, grains, and species of fresh fruit and vegetables directly from 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 school district as herein authorized;

(b) the amount that may be expended by a school district in any fiscal year for such purchases shall not exceed an amount equal to fifteen cents multiplied by the total number of days in the school year multiplied by the total enrollment of such school district;

(c) all such purchases shall be administered pursuant to regulations promulgated by the commissioner of education. Such regulations shall ensure that the prices paid by a district for any items so purchased do not exceed the market value of such items and that all producers and growers who desire to sell to a district have equal opportunities to do so.

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, directly from licensed milk processors employing less than forty people 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 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, 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.

CREDIT(S)
1999 Main Volume

(Added L.1953, c. 861, § 18; amended L.1955, c. 434, § 1; L.1955, c. 669, § 1; L.1957, c. 984, §§ 1, 2; L.1958, c. 296, § 1; L.1960, c. 997, §§ 2, 3; L.1962, c. 154, § 1; L.1962, c. 196, § 1; L.1963, c. 597, § 1; L.1967, c. 680, § 65; L.1972, c. 579, § 1; L.1973, c. 336, § 1; L.1973, c. 552, § 1; L.1974, c. 315, § 1; L.1977, c. 897, § 1; L.1978, c. 287, §§ 1, 2; L.1979, c. 595, § 2; L.1980, c. 703, § 1; L.1981, c. 635, § 1; L.1983, c. 453, §§ 1, 2; L.1983, c. 454, § 1; L.1983, c. 848, § 3; L.1986, c. 105, § 1; L.1986, c. 741, § 2; L.1991, c. 413, §§ 54, 55; L.1991, c. 429, § 1; L.1993, c. 490, § 7; L.1995, c. 148, § 1; L.1996, c. 620, § 5; L.1998, c. 622, § 1, eff. Oct. 20, 1998.)

2003 Electronic Update

(As amended L.2001, c. 227, § 1, eff. Sept. 4, 2001.)

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

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This section is popularly known as the "bidding act".

L. 1993, c. 490 legislation

The adjudication as invalid or unconstitutional of any provision of L. 1993, c. 490, or the application thereof, not to affect, impair or invalidate the remainder of such act pursuant to L. 1993, c. 490, § 24, set out as a note

Form E-3