

L Aid ON DESKS 4/13/15
DISCUSSION ONLY 5/7/15
Government Services & Administration

RESOLUTION NO. 2015126

RE: LOCAL LAW NO. _____ OF 2015, A LOCAL LAW ESTABLISHING A
CONSTRUCTION APPRENTICESHIP FOR AGREEMENTS FOR CERTAIN
BRIDGE CONTRACTS IN EXCESS OF \$500,000

Legislators TYNER, FARLEY, JOHNSON, MACAVERY, and STRAWINSKI offer the
following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No.
_____ of 2015 which has been submitted this day for consideration by said Legislature.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution
with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 8th day of June 2015, and that
the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 8th day of June 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. OF 2015

RE: LOCAL LAW NO. OF 2015, A LOCAL LAW ESTABLISHING A
CONSTRUCTION APPRENTICESHIP FOR AGREEMENTS FOR
CERTAIN BRIDGE CONTRACTS IN EXCESS OF \$500,000

BE IT ENACTED, by the County Legislature of the County of Dutchess, New York, as follows:

SECTION 1. INTENT.

The County of Dutchess hereby establishes a policy to promote apprenticeship training as authorized by § 816-b of the New York Labor Law.

SECTION 2. DEFINITIONS.

As used in this Local Law, the following terms shall have the meanings indicated:

CONSTRUCTION CONTRACT: Any contract to which the County of Dutchess shall be a signatory which involves the construction, reconstruction, improvement, rehabilitation, installation, alteration, renovation, demolition of, or otherwise providing for any bridge, culvert or any appurtenance thereto of any kind with a value in excess of \$500,000.

CONTRACTOR or SUBCONTRACTOR: A contractor or subcontractor which directly employs labor under a construction contract for which an apprenticeship program has been approved by the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law.

SECTION 3. REQUIREMENTS AND EXCEPTIONS.

A. The County of Dutchess hereby requires any contractor, prior to entering into a construction contract with the County of Dutchess, or any subcontractor entering into a contract with a contractor who has a construction contract with the County of Dutchess, to have apprenticeship agreements appropriate for the type and scope of work to be performed, which have been registered with, and approved by, the New York State Commissioner of Labor in accordance with Article 23 of the New York State Labor Law, anything in § 103 of the New York General Municipal Law to the contrary notwithstanding.

B. If a specific trade required for performance of a contract or project does not have a New York State Department of Labor-approved apprenticeship training program at the time of the award of a construction contract, such contract is not subject to the provisions of this Local Law.

C. If a single bid is received for a construction contract subject to this Local Law from a contractor that does not maintain an approved apprenticeship training program, the Director of Purchasing may elect, in his/her sole discretion, to award said contract to the single bidder rather than rebidding the construction contract.

D. Notwithstanding anything in this Local Law to the contrary, at its discretion the Director of Purchasing reserves the right to accept any bid, in whole or in part, or reject all bids and readvertise in the manner outlined by §§ 101 and 103 of the General Municipal Law.

SECTION 4. ENFORCEMENT.

The Director of Division of Central Services is hereby authorized, empowered and directed to promulgate such rules and regulations that are lawful, necessary and appropriate for the implementation and enforcement of any provisions of this Local Law.

SECTION 5. APPLICABILITY.

This Local Law shall apply to construction contracts advertised for bids on or after the effective date.

SECTION 6. EFFECTIVE DATE.

This Local Law shall take effect upon filing with the Office of the Secretary of State of the State of New York.

McKinney's Consolidated Laws of New York Annotated
Labor Law (Refs & Annos)
Chapter 31. Of the Consolidated Laws (Refs & Annos)
Article 23. Apprenticeship Training (Refs & Annos)

McKinney's Labor Law § 816-b

§ 816-b. Apprenticeship participation on construction contracts

Effective: December 19, 2001
Currentness

1. For purposes of this section:

(a) "governmental entity" shall mean the state, any state agency, as that term is defined in section two-a of the state finance law, municipal corporation, commission appointed pursuant to law, school district, district corporation, board of education, board of cooperative educational services, soil conservation district, and public benefit corporation; and

(b) "construction contract" shall mean any contract to which a governmental entity may be a direct or indirect party which involves the design, construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for any building, facility or physical structure of any kind.

2. Notwithstanding any other provision of this article, of section one hundred three of the general municipal law, of section one hundred thirty-five of the state finance law, of section one hundred fifty-one of the public housing law, or of any other general, special or local law or administrative code, in entering into any construction contract, a governmental entity which is to be a direct or indirect party to such contract may require that any contractors and subcontractors have, prior to entering into such contract, apprenticeship agreements appropriate for the type and scope of work to be performed, that have been registered with, and approved by, the commissioner pursuant to the requirements found in this article. Whenever utilizing this requirement, the governmental entity may, in addition to whatever considerations are required by law, consider the degree to which career opportunities in apprenticeship training programs approved by the commissioner may be provided.

Credits

(Added L.2001, c. 571, § 1, eff. Dec. 19, 2001.)

McKinney's Labor Law § 816-b, NY LABOR § 816-b
Current through L.2015, chapters 1 to 13, 50 to 54, 61.

McKinney's Consolidated Laws of New York Annotated
Labor Law (Refs & Annos)
Chapter 31. Of the Consolidated Laws (Refs & Annos)
Article 23. Apprenticeship Training (Refs & Annos)

McKinney's Labor Law § 810

§ 810. Statement of public policy

Currentness

Skilled manpower constitutes a great resource in this state. Apprenticeship programs, through supervised training and education, develop skilled craftsmen and help meet the increasing needs for such workers in the state's labor force. The continuing development of skilled manpower is essential for individual self-realization and for an expanding industrial economy. To these ends, it is the declared public policy of the state of New York to develop sound apprenticeship training standards and to encourage industry and labor to institute training programs.

Credits

(Added L.1961, c. 482, § 2.)

Notes of Decisions (3)

McKinney's Labor Law § 810, NY LABOR § 810

Current through L.2015, chapters 1 to 13, 50 to 54, 61.

End of Document

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McKinney's Consolidated Laws of New York Annotated
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 5-a. Public Contracts (Refs & Annos)

McKinney's General Municipal Law § 103

§ 103. Advertising for bids and offers; letting of contracts; criminal conspiracies

Effective: December 31, 2014

Currentness

1. [Eff. until June 1, 2018, pursuant to L.2003, c. 62, pt. X, § 41. See, also, subd. 1 below.] 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. 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.

1. [Eff. June 1, 2018, pursuant to L.2003, c. 62, pt. X, § 41. See, also, subd. 1, above.] 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.

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. [Expires and deemed repealed July 31, 2019, pursuant to L.2011, c. 97, pt. C. subpt. A, § 9.] 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.

2. [Eff. until June 1, 2018, pursuant to L.2003, c. 62, pt. X, § 41. See, also, subd. 2, below.] 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. 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.

2. [Eff. June 1, 2018, pursuant to L.2003, c. 62, pt. X, § 41. See, also, subd. 2, above.] 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.

3. [Eff. until July 31, 2019, pursuant to L.2011, c. 97, pt. C. subpt. A, § 9. See, also, subd. 3 below.] 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.

3. [Eff. July 31, 2019. See, also, subd. 3 above.] 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.

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. 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 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 school district as herein authorized, provided however, that a school district may apply to the commissioner of education for permission to purchase from an association of more than ten owners of such farms when no other producers or growers have offered to sell to such school;

(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 twenty 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: 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 the 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 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 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 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; develop guidelines for approval of purchases of items from associations of more than ten growers and producers; and, to the maximum extent practicable, minimize additional paperwork, recordkeeping and other similar requirements on both growers and producers and school districts.

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 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.

13. Repealed by L.2010, c. 469, § 2, eff. Dec. 31, 2014.

14. Repealed by L.2008, c. 8, § 7, eff. April 27, 2008.

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. [Expires and deemed repealed July 31, 2017, pursuant to L.2012, c. 308, § 2.] 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.

Credits

(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; L.2001, c. 227, § 1, eff. Sept. 4, 2001; L.2003, c. 62, pt. X, §§ 1, 4, 5, eff. May 15, 2003; L.2003, c. 562, § 3, eff. Sept. 1, 2003; L.2004, c. 269, § 1, eff. Aug. 3, 2004; L.2005, c. 741, § 4, eff. Oct. 18, 2005; L.2007, c. 343, § 1, eff. July 18, 2007; L.2008, c. 7, § 10, eff. April 27, 2008; L.2008, c. 8, §§ 6, 7, eff. April 27, 2008; L.2008, c. 57, pt. MM, § 1-a, eff. July 1, 2008; L.2009, c. 494, pt. D, § 1, eff. Nov. 12, 2009; L.2010, c. 56, pt. FF, §§ 1, 3, eff. June 22, 2010; L.2010, c. 56, pt. FF, § 2; L.2010, c. 469, § 1, eff. Aug. 30, 2010; L.2011, c. 97, pt. C, subpt. A, §§ 4, 5, eff. June 24, 2011; L.2011, c. 608, §§ 1, 3, 4, 6 to 10, eff. Jan. 27, 2012; L.2011, c. 608, §§ 2, 5; L.2012, c. 2, §§ 1, 2; L.2012, c. 308, § 1, eff. Aug. 1, 2012; L.2013, c. 497, § 1, eff. Nov. 13, 2013; L.2014, c. 367, §§ 1, 2, eff. Sept. 23, 2014.)

Notes of Decisions (976)

McKinney's General Municipal Law § 103, NY GEN MUN § 103
Current through L.2015, chapters 1 to 13, 50 to 54, 61.

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McKinney's Consolidated Laws of New York Annotated
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 5-a. Public Contracts (Refs & Annos)

McKinney's General Municipal Law § 101

§ 101. Separate specifications for certain public work

Effective: July 1, 2008

Currentness

1. Except as otherwise provided in section two hundred twenty-two of the labor law, every officer, board or agency of a political subdivision or of any district therein, charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction, reconstruction or alteration of buildings, when the entire cost of such public work shall exceed three million dollars in the counties of the Bronx, Kings, New York, Queens, and Richmond; one million five hundred thousand dollars in the counties of Nassau, Suffolk and Westchester; and five hundred thousand dollars in all other counties within the state, shall prepare separate specifications for the following three subdivisions of the work to be performed:

- a. Plumbing and gas fitting;
- b. Steam heating, hot water heating, ventilating and air conditioning apparatus; and
- c. Electric wiring and standard illuminating fixtures.

2. Such specifications shall be drawn so as to permit separate and independent bidding upon each of the above three subdivisions of work. All contracts awarded by any political subdivision or by an officer, board or agency thereof, or of any district therein, for the erection, construction, reconstruction or alteration of buildings, or any part thereof, shall award the three subdivisions of the above specified work separately in the manner provided by section one hundred three of this chapter. Nothing in this section shall be construed to prevent any political subdivision from performing any such branches of work by or through their regular employees, or in the case of public institutions, by the inmates thereof.

3. In the county of Erie, specifications for public work pertaining to the construction of a county stadium may provide for assignment of responsibility for supervision and coordination of any of the contracts for such work to a single responsible and reliable person, firm or corporation.

4. In the county of Albany, specifications for work pertaining to the construction of a civic center may provide for assignment of responsibility for supervision and coordination of any or all of the contracts for such work to a single responsible and reliable person, firm or corporation.

5. Each bidder on a public work contract, where the preparation of separate specifications is not required, shall submit with its bid a separate sealed list that names each subcontractor that the bidder will use to perform work on the contract, and the agreed-upon amount to be paid to each, for: (a) plumbing and gas fitting, (b) steam heating, hot water heating, ventilating and

air conditioning apparatus and (c) electric wiring and standard illuminating fixtures. After the low bid is announced, the sealed list of subcontractors submitted with such low bid shall be opened and the names of such subcontractors shall be announced, and thereafter any change of subcontractor or agreed-upon amount to be paid to each shall require the approval of the public owner, upon a showing presented to the public owner of legitimate construction need for such change, which shall be open to public inspection. Legitimate construction need shall include, but not be limited to, a change in project specifications, a change in construction material costs, a change to subcontractor status as determined pursuant to paragraph (e) of subdivision two of section two hundred twenty-two of the labor law, or the subcontractor has become otherwise unwilling, unable or unavailable to perform the subcontract. The sealed lists of subcontractors submitted by all other bidders shall be returned to them unopened after the contract award.

Credits

(Added L.1953, c. 861, § 18. Amended L.1964, c. 572, § 1; L.1972, c. 40, § 1; L.1985, c. 375, § 6; L.2008, c. 57, pt. MM, § 1, eff. July 1, 2008.)

Notes of Decisions (45)

McKinney's General Municipal Law § 101, NY GEN MUN § 101

Current through L.2015, chapters 1 to 13, 50 to 54, 61.

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