

STATE OF NEW YORK

3766--A

2013-2014 Regular Sessions

IN SENATE

February 14, 2013

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to allowing the purchase of apparatus, materials, equipment and supplies and related services through the use of certain contracts let by other government entities, and authorizing the use of certain federal contracts as an exception to certain bidding requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 16 of section 103 of the general municipal law,
2 as added by chapter 308 of the laws of 2012, is amended to read as
3 follows:
4 16. Notwithstanding the provisions of subdivisions one, two and three
5 of this section, and section one hundred four of this article, any offi-
6 cer, board or agency of a [county,] political subdivision or of any
7 district therein authorized to make purchases of apparatus, materials,
8 equipment or supplies, or to contract for services related to the
9 installation, maintenance or repair of apparatus, materials, equipment,
10 and supplies, may make such purchases, or may contract for such services
11 related to the installation, maintenance or repair of apparatus, materi-
12 als, equipment, and supplies, as may be required by such [county,] poli-
13 tical subdivision or district therein through the use of a contract let
14 by the United States of America or any agency thereof, any state or any
15 other [county or] political subdivision or district therein if such
16 contract was let TO THE LOWEST RESPONSIBLE BIDDER OR ON THE BASIS OF
17 BEST VALUE in a manner [that constitutes competitive bidding] consistent
18 with [state law] THIS SECTION and made available for use by other
19 governmental entities; PROVIDED, HOWEVER, THAT NO POLITICAL SUBDIVISION
20 OR DISTRICT THEREIN, OTHER THAN A CITY WITH A POPULATION OF ONE MILLION

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

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1 OR MORE INHABITANTS OR ANY DISTRICT, BOARD OR AGENCY WITH JURISDICTION
2 EXCLUSIVELY THEREIN, MAY MAKE SUCH PURCHASES OR CONTRACT FOR SUCH
3 SERVICES THROUGH THE USE OF SUCH A CONTRACT LET ON THE BASIS OF BEST
4 VALUE IN A MANNER CONSISTENT WITH THIS SECTION UNLESS THE POLITICAL
5 SUBDIVISION OR DISTRICT SHALL FIRST ADOPT A LOCAL LAW, RULE, REGULATION
6 OR RESOLUTION, AS THE CASE MAY BE, PURSUANT TO SUBDIVISION ONE OF THIS
7 SECTION, AUTHORIZING THE USE OF BEST VALUE FOR AWARDING PURCHASE
8 CONTRACTS.

9 The authority provided to [counties,] political subdivisions and
10 districts therein pursuant to this subdivision shall not relieve any
11 obligation of such [county,] political subdivision or district therein
12 to comply with any applicable minority and women-owned business enter-
13 prise program mandates and the preferred source requirements of section
14 one hundred sixty-two of the state finance law.

15 S 2. Subdivision 2 of section 104 of the general municipal law, as
16 added by section 7 of subpart A of part C of chapter 97 of the laws of
17 2011, is amended to read as follows:

18 2. Notwithstanding the provisions of section one hundred three of this
19 article or of any other general, special or local law, any officer,
20 board or agency of a political subdivision, or of a district therein,
21 may make purchases from federal general service administration supply
22 schedules pursuant to section 211 of the federal e-government act of
23 2002, P.L. 107-347 AND THE LOCAL PREPAREDNESS ACQUISITION ACT, P.L.
24 110-248, and pursuant to section 1122 of the national defense authori-
25 zation act for fiscal year 1994, P.L. 103-160 AND SECTION 833 OF THE
26 JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007,
27 P.L. 109-364, AND THE FEDERAL SUPPLY SCHEDULE USAGE ACT OF 2010, P.L.
28 111-263, or any successor schedules, in accordance with procedures
29 established [pursuant thereto] IN CONNECTION THEREWITH. Prior to making
30 such purchases the officer, board or agency shall consider whether such
31 purchases will result in cost savings after all factors, including
32 charges for service, material, and delivery, have been considered.

33 S 3. This act shall take effect immediately; provided, however, that
34 the amendments to subdivision 16 of section 103 of the general municipal
35 law made by section one of this act shall not affect the repeal of such
36 subdivision and shall be deemed repealed therewith; and provided
37 further, however, that the amendments to subdivision 2 of section 104 of
38 the general municipal law made by section two of this act shall not
39 affect the expiration of such subdivision and shall be deemed to expire
40 therewith.

Memo

BILL NUMBER: S3766A

TITLE OF BILL: An act to amend the general municipal law, in relation to allowing the purchase of apparatus, materials, equipment and supplies and related services through the use of certain contracts let by other government entities, and authorizing the use of certain federal contracts as an exception to certain bidding requirements

PURPOSE: To afford political subdivisions mandate relief, by allowing the use of contracts let by the United States of America or any agency thereof, any state or any other county, political subdivision or district therein, provided the contract has been let to the lowest responsible bidder or on the basis of best value in a manner consistent with section 103 of the General Municipal Law, and to authorize political subdivisions to make purchases by participating in certain federal programs available to local governments, as exceptions to the requirements of section 103 of the General Municipal Law.

SUMMARY OF PROVISIONS: Section one of this bill would amend subdivision 16 of section 103 to the General Municipal Law, which authorizes a "county, political subdivision or of any district therein" to make purchases of apparatus, materials, equipment and supplies, and to contract for services related to the installation, maintenance or repair of such items, through a contract let by the United States of America or any agency thereof, any state or any other county, political subdivision or district therein, to replace the requirement that such contracts be "let in a manner that constitutes competitive bidding consistent with state law" with a requirement that the contract be let to the lowest responsible bidder or on the basis of best value in a manner consistent with section 103 of the General Municipal Law. Section one of the bill also would delete unnecessary references to counties.

Section two of this bill would amend subdivision 2 of section 104 of the General Municipal Law to authorize political subdivisions to purchase through certain federal programs available to local governments as exceptions to the requirements of section 103 of the General Municipal Law.

Section three of the bill provides for the effective date.

JUSTIFICATION: This bill would amend subdivision 16 of section 103 to the General Municipal Law, which was added by chapter 308 of the Laws of 2012 as an exception to the requirements of General Municipal Law 103 (1). As enacted by chapter 308, subdivision 16 authorizes a "county, political subdivision or of any district therein" to make purchases of apparatus, materials, equipment and supplies, and to contract for services related to the installation, maintenance or repair of such items, through a contract let by the United States of America or any agency thereof, any state or any other county, political subdivision or district therein if several prerequisites are met. Among the current prerequisites is that the contract "was let in a manner that constitutes competitive bidding consistent with state law...."

In 2012, General Municipal Law § 103 was amended to give political subdivisions the option of letting contracts based on "best value," as an alternative to letting contracts to the "lowest responsible bidder" (L 2011, chapter 608 as amended by L 2012, chapter 2). Political subdivisions other than New York City are required to first authorize the use of "best value" awards by local law, or in the case of district corporations, school districts and BOCES, by rule, regulation, or resolution.

The "best value" amendments, in numerous places, made a distinction between the award of a contract based on competitive "bidding" and competitive "offering," with the latter

referring to the "best value" option (see e.g. General Municipal Law §§ 103 (1), (1-a), (4), (6), (7); see also General Municipal Law § 103, section heading). Based on this distinction between a competitive "bid" and "offer" as set forth in the "best value" amendments, it is not apparent that the reference to "competitive bidding" in General Municipal Law § 103 (16) encompasses "best value" awards.

We are informed, however, that it has been the expectation of local governments that, notwithstanding the specific reference to "competitive bidding" in section 103 (16), the mandate relief provided by General Municipal Law § 103 (16) would permit political subdivisions to use this "piggybacking" exception for contracts let either to the lowest responsible bidder or pursuant to a "best value" process. This bill would ensure that General Municipal Law § 103 (16) provides the full extent of the expected mandate relief by allowing political subdivisions to use contracts let by the United States of America or any agency thereof, any state or any other county, political subdivision or district therein, when the contract has been let either to the lowest responsible bidder or on the basis of best value in a manner consistent with section 103 of the General Municipal Law.

Consistent with the "best value" amendments, no political subdivision or district therein, other than New York City, may use such a contract let on the basis of "best value" unless it shall first adopt a local law, rule, regulation or resolution, as the case may be, pursuant to General Municipal Law § 103 (1), authorizing the use of best value for awarding purchase contracts. All other requirements set forth in subdivision 16 remain the same.

This bill also makes a minor technical amendment to avoid a redundancy. Section 103 (16) currently lists both a "county" and a "political subdivision" as entities authorized to use the "piggybacking" exception. However, the word "county" is unnecessary. Counties are already included within the definition of "political subdivision" for purposes of General Municipal Law Article 5-A (§ 100, et seq.). General Municipal Law § 100 (1) defines "political subdivision" to include a "municipal corporation." General Municipal Law § 2, in turn, defines "municipal corporation" to include a town, village, city and county. Therefore, the reference to "county" in General Municipal Law § 103 (16) is redundant and potentially could raise questions as to the applicability of other provisions of the General Municipal Law Article 5-A to counties. Although a minor, technical point, the word "county" should be deleted.

Finally, General Municipal Law §§ 103(1-b) and 104(2) presently allow political subdivisions to make purchase by participating in certain federal purchasing programs. Access to these federal contracts has the potential to save localities money by lowering purchase costs, as well as administrative expenses. To provide additional opportunities for potential savings to localities, this bill authorizes political subdivisions to make use of additional federal programs available to local governments as exceptions to the requirements of General Municipal Law § 103. The programs are pursuant to: the federal "Local Preparedness Acquisition Act," P.L. 110-248 ("Schedule 84"), which includes alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purposes clothing, and related services; and section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007, which includes products and services to be used to facilitate recovery from major disasters declared by the president under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or to facilitate recovery from terrorism or nuclear, biological, chemical or radiological attack.

PRIOR LEGISLATIVE HISTORY: New Bill.

FISCAL IMPLICATIONS: None to the State.

EFFECTIVE DATE: This act shall take effect immediately; provided, however, that the amendments to subdivision 16 of section 103 of the general municipal law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed to