

RELEVANT LAW PROVISIONS

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

Currentness

1. [Eff. until June 1, 2028, 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. 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.

1. [Eff. June 1, 2028, 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, 2024, 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.

1-c. [Expires and deemed repealed March 18, 2024, pursuant to L.2017, c. 461, § 4.] 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.

2. [Eff. until June 1, 2028, 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. 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.

2. [Eff. June 1, 2028, 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, 2024, 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, 2024. 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. (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.

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 June 30, 2026, 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; L.2016, c. 62, § 1, eff. June 8, 2016; L.2017, c. 59, pt. YYY, § 39, eff. April 10, 2017, deemed eff., April 1, 2017; L.2017, c. 90, §§ 1, 2, eff. July 21, 2017; L.2017, c. 461, § 2, eff. March 18, 2018; L.2018, c. 371, § 1, eff. July 21, 2017; L.2020, c. 58, pt. JJ, § 1, eff. April 3, 2020; L.2023, c. 58, pt. OO, §§ 1, 2, eff. May 3, 2023; L.2023, c. 668, §§ 1, 2, eff. March 1, 2024.)

Notes of Decisions (987)

McKinney's General Municipal Law § 103, NY GEN MUN § 103

Current through L.2024, chapters 1 to 57, 59, 61 to 119. Some statute sections may be more current, see credits for details.

§ 104. Purchase through office of general services; purchases from other public contracts;
certain federal contracts

Currentness

<[Eff. until July 31, 2024, pursuant to L.2011, c. 97, pt. C, subpt. A, § 9. See, also, § 104, eff. July 31, 2024.]>

1. Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any officer, board or agency of a political subdivision, of a district therein, of a fire company or of a voluntary ambulance service authorized to make purchases of commodities, materials, equipment, technology, food products, supplies or services available pursuant to section one hundred sixty-three of the state finance law, may make such purchases through the office of general services or any other department or agency of the state subject to rules promulgated pursuant to article eleven of the state finance law; provided that any such purchase shall exceed five hundred dollars and that the political subdivision, district, fire company or voluntary ambulance service for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor. All purchases shall be subject to audit and inspection by the political subdivision, district, fire company or voluntary ambulance service for which made. No officer, board or agency of a political subdivision, or a district therein, of a fire company or of a voluntary ambulance service shall make any purchase through such public entity when bids have been received for such purchase by such officer, board or agency, unless such purchase may be made upon the same terms, conditions and specifications at a lower price through such office. Two or more fire companies or voluntary ambulance services may join in making purchases pursuant to this section, and for the purposes of this section such groups shall be deemed “fire companies or voluntary ambulance services.”

2. Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any officer, board or agency of a political subdivision, or of a district therein, may make purchases from federal general service administration supply schedules pursuant to section 211 of the federal e-government act of 2002, P.L. 107-347 and the local preparedness acquisition act, P.L. 110-248, and pursuant to section 1122 of the national defense authorization act for fiscal year 1994, P.L. 103-160 and section 833 of the John Warner national defense authorization act for fiscal year 2007, P.L. 109-364, and the federal supply schedule usage act of 2010, P.L. 111-263, or any successor schedules, in accordance with procedures established in connection therewith. Prior to making such purchases the officer, board or agency shall consider whether such purchases will result in cost savings after all factors, including charges for service, material, and delivery, have been considered.

Credits

(Added L.1953, c. 861, § 18. Amended L.1960, c. 104, § 2; L.1962, c. 37, § 11; L.1978, c. 755, § 2; L.1993, c. 490, § 8; L.1994, c. 170, § 209; L.1995, c. 622, § 1; L.2008, c. 137, § 10, eff. June 30, 2008; L.2011, c. 97, pt. C, subpt. A, § 7, eff. June 24, 2011; L.2012, c. 55, pt. L, § 6, eff. March 30, 2012; L.2013, c. 497, § 2, eff. Nov. 13, 2013.)

Notes of Decisions (20)

McKinney's General Municipal Law § 104, NY GEN MUN § 104

Current through L.2024, chapters 1 to 57, 59, 61 to 119. Some statute sections may be more current, see credits for details.

**§ 104. Purchase through office of general services; purchases from other public contracts;
certain federal contracts**

Currentness

<[Eff. until July 31, 2024, pursuant to L.2011, c. 97, pt. C, subpt. A, § 9. See, also, § 104, eff. July 31, 2024.]>

1. Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any officer, board or agency of a political subdivision, of a district therein, of a fire company or of a voluntary ambulance service authorized to make purchases of commodities, materials, equipment, technology, food products, supplies or services available pursuant to section one hundred sixty-three of the state finance law, may make such purchases through the office of general services or any other department or agency of the state subject to rules promulgated pursuant to article eleven of the state finance law; provided that any such purchase shall exceed five hundred dollars and that the political subdivision, district, fire company or voluntary ambulance service for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor. All purchases shall be subject to audit and inspection by the political subdivision, district, fire company or voluntary ambulance service for which made. No officer, board or agency of a political subdivision, or a district therein, of a fire company or of a voluntary ambulance service shall make any purchase through such public entity when bids have been received for such purchase by such officer, board or agency, unless such purchase may be made upon the same terms, conditions and specifications at a lower price through such office. Two or more fire companies or voluntary ambulance services may join in making purchases pursuant to this section, and for the purposes of this section such groups shall be deemed "fire companies or voluntary ambulance services."

2. Notwithstanding the provisions of section one hundred three of this article or of any other general, special or local law, any officer, board or agency of a political subdivision, or of a district therein, may make purchases from federal general service administration supply schedules pursuant to section 211 of the federal e-government act of 2002, P.L. 107-347 and the local preparedness acquisition act, P.L. 110-248, and pursuant to section 1122 of the national defense authorization act for fiscal year 1994, P.L. 103-160 and section 833 of the John Warner national defense authorization act for fiscal year 2007, P.L. 109-364, and the federal supply schedule usage act of 2010, P.L. 111-263, or any successor schedules, in accordance with procedures established in connection therewith. Prior to making such purchases the officer, board or agency shall consider whether such purchases will result in cost savings after all factors, including charges for service, material, and delivery, have been considered.

Credits

(Added L.1953, c. 861, § 18. Amended L.1960, c. 104, § 2; L.1962, c. 37, § 11; L.1978, c. 755, § 2; L.1993, c. 490, § 8; L.1994, c. 170, § 209; L.1995, c. 622, § 1; L.2008, c. 137, § 10, eff. June 30, 2008; L.2011, c. 97, pt. C, subpt. A, § 7, eff. June 24, 2011; L.2012, c. 55, pt. L, § 6, eff. March 30, 2012; L.2013, c. 497, § 2, eff. Nov. 13, 2013.)

Notes of Decisions (20)

McKinney's General Municipal Law § 104, NY GEN MUN § 104

Current through L.2024, chapters 1 to 57, 59, 61 to 119. Some statute sections may be more current, see credits for details.

SFL§ 163. Purchasing services and commodities

Currentness

<[Expires and deemed repealed June 30, 2026, pursuant to L.1995, c. 83, § 362, subd. 5.]>

1. Definitions. For the purposes of this section, the following terms shall have the following meanings unless otherwise specified:

a. "Consortium" means like entities which agree to collectively purchase commodities at a lower price than would be otherwise achievable through purchase by such entities pursuant to other provisions of this article.

b. "Emergency" means an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

c. "Responsible" or "responsibility" means the financial ability, legal capacity, integrity, and past performance of a business entity and as such terms have been interpreted relative to public procurements.

d. "Responsive" means a bidder or other offerer meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by a state agency.

e. "Specification" or "requirement" means any description of the physical or functional characteristics or the nature of a commodity or construction item, any description of the work to be performed, the service or products to be provided, the necessary qualifications of the offerer, the capacity and capability of the offerer to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform the work. It may include a description of any obligatory testing, inspection or preparation for delivery and use, and may include federally required provisions and conditions where the eligibility for federal funds is conditioned upon the inclusion of such federally required provisions and conditions. Specifications shall be designed to enhance competition, ensuring the commodities or services of any offerer are not given preference except where required by this article.

f. "Procurement record" means documentation of the decisions made and the approach taken in the procurement process.

g. "Sole source" means a procurement in which only one offerer is capable of supplying the required commodities or services.

h. "Single source" means a procurement in which although two or more offerers can supply the required commodities or services, the commissioner or state agency, upon written findings setting forth the material and substantial reasons therefor, may award a contract or non-

technical amendment to a contract to one offerer over the other. The commissioner or state agency shall document in the procurement record the circumstances leading to the selection of the vendor, including the alternatives considered, the rationale for selecting the specific vendor and the basis upon which it determined the cost was reasonable.

i. “Lowest price” means the basis for awarding contracts for commodities among responsive and responsible offerers.

j. “Best value” means the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses, certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law or service-disabled veteran-owned business enterprises as defined in subdivision one of section forty of the veterans' services law to be used in evaluation of offers for awarding of contracts for services.

k. “Authorized user” or “non-state agency purchaser” means (i) any officer, body or agency of the state or of a political subdivision or a district therein, or fire company or volunteer ambulance service as such are defined in section one hundred of the general municipal law, to make purchases of commodities, services and technology through the office of general services' centralized contracts, pursuant to the provisions of section one hundred four of the general municipal law; (ii) any county extension service association as authorized under subdivision eight of section two hundred twenty-four of the county law; (iii) any association or other entity as specified in and in accordance with section one hundred nine-a of the general municipal law; (iv) any association, consortium or group of privately owned or municipal, federal or state owned or operated hospitals, medical schools, other health related facilities or voluntary ambulance services, which have entered into a contract and made mutual arrangements for the joint purchase of commodities, services and technology pursuant to section twenty-eight hundred three-a of the public health law; (v) any institution for the instruction of the deaf or of the blind listed in section forty-two hundred one of the education law; (vi) any qualified non-profit-making agency for the blind approved by the commissioner of the office of children and family services or the office of temporary and disability assistance; (vii) any qualified charitable non-profit-making agency for the severely disabled approved by the commissioner of education; (viii) any hospital or residential health care facility as defined in section twenty-eight hundred one of the public health law; (ix) any private not-for-profit mental hygiene facility as defined in section 1.03 of the mental hygiene law; (x) any public authority or public benefit corporation of the state, including the port authority of New York and New Jersey and the interstate environmental commission; (xi) any public library, association library, library system, cooperative library system, the New York Library Association, and the New York State

Association of Library Boards or any other library except those which are operated by for profit entities; (xii) any other association or entity as specified in state law, to make purchases of commodities, services and technology through the office of general services' centralized contracts. Such qualified non-profit-making agencies for the blind and severely disabled may make purchases from the correctional industries program of the department of corrections and community supervision subject to rules pursuant to the correction law.

2. Operating principles. The objective of state procurement is to facilitate each state agency's mission while protecting the interests of the state and its taxpayers and promoting fairness in contracting with the business community. The state's procurement process shall be guided by the following principles:

a. To promote purchasing from responsive and responsible offerers, including small businesses.

b. To be based on clearly articulated procedures which require a clear statement of product specifications, requirements or work to be performed; a documentable process for soliciting bids, proposals or other offers; a balanced and fair method, established in advance of the receipt of offers, for evaluating offers and awarding contracts; contract terms and conditions that protect the state's interests and promote fairness in contracting with the business community; and a regular monitoring of vendor performance.

c. To encourage the investment of the private and not-for-profit sectors in New York state by making reasonable efforts to ensure that offerers are apprised of procurement opportunities; by specifying the elements of a responsive bid and disclosing the process for awarding contracts including, if applicable, the relative importance and/or weight of cost and the overall technical criterion for evaluating offers; and by ensuring the procurement is conducted accordingly.

d. To ensure that contracts are awarded consistent with the best interests of the state. e. To ensure that officers and employees of state entities do not benefit financially or otherwise from the award of state contracts.¹

f. To ensure regular and critical review of the efficiency, integrity and effectiveness of the overall process.

3. General provisions for purchasing commodities.

a. State agency procurement practices for commodities shall incorporate the following:

(i) The purchase of commodities by state agencies including the office of general services shall be conducted in a manner which accords first priority to preferred sources in accordance with

the provisions of this article, second priority to centralized contracts, third priority to agency or multi-agency established contracts and fourth priority to other means of contracting.

(ii) Commodities contracts shall be awarded on the basis of lowest price to a responsive and responsible offerer; or, in the case of multiple awards, in accordance with paragraph c of subdivision ten of this section.

(iii) The commissioner shall be responsible for the standardization and centralized purchase of commodities required by state agencies in a manner which maximizes the purchasing value of public funds.

(iv) The commissioner is authorized to permit purchases of commodities and services for authorized users through the office of general services' centralized contracts. Such authorized users so empowered shall accept sole responsibility for any payment due with respect to such purchases.

(v) Consistent with guidelines issued by the state procurement council, state agencies may competitively purchase commodities procured in accordance with this article in lieu of using centralized contracts when the resultant price is less than the centralized contract price.

(vi) When justified by price, state agencies, and hospitals and facilities managed and controlled by state agencies eligible pursuant to section twenty-eight hundred three-a of the public health law, shall be eligible to make purchases pursuant to guidelines issued by the state procurement council from a consortium or comparable entity in lieu of using centralized contracts for commodities.

(vii) The commissioner is authorized to enter into contracts pursuant to the provisions of section twenty-eight hundred three-a of the public health law.

b. The commissioner shall:

(i) determine, in cooperation with the state procurement council and state agencies, the identity, form, function and utility of those commodities which shall be made available on or through centralized contracts. Criteria may include, but need not be limited to, the availability of a volume discount, prior use of the commodity among state agencies and the relative cost of establishing the contract, its anticipated use and expected actual savings for the state. The commissioner may also act as a broker for state agencies to procure commodities.

(ii) determine the number and scope of centralized contracts for commodities to be let during any period, including the letting of multiple contracts to ensure the sufficient variety and uninterrupted availability of commodities for state agency use.

(iii) maintain lists of firms which produce or manufacture or offer for sale commodities in the form, function and utility required by state agencies. The commissioner shall ensure such lists

are updated regularly. With the assistance of the department of economic development and other state agencies, beginning on July first, two thousand one, ensure the availability to all authorized purchasers of a centralized list which identifies commodities offered by New York state's small businesses and a centralized list which identifies commodities and services offered by businesses certified pursuant to article fifteen-A of the executive law. Such lists shall be updated semiannually and designed to enable effective identification of New York state's small businesses and businesses certified pursuant to article fifteen-A of the executive law.

(iv) ensure the specification of commodities for centralized contracts reflect the form, function and utility required by state agencies and conform, wherever possible, to industry standards. Where necessary, the commissioner may develop specifications for commodities. When not otherwise forthcoming from a particular firm or industry, the commissioner may request information from businesses for the purpose of establishing or improving a specification. The office of general services may assist agencies in developing specifications for agency-procured commodity contracts when industry standards are not available or appropriate. In all cases, specifications shall be consistent with the requirements of state agencies.

(v) With the assistance of the department of economic development and other state agencies, provide a training program once per year, in each economic development region, as established in article eleven of the economic development law, beginning January first, two thousand one, for those businesses certified pursuant to article fifteen-A of the executive law and those interested in becoming certified. Such training program shall provide assistance with respect to participation as a vendor in the procurement process, as established in this article, and including without limitation educating minority and women contractors about surety bonding requirements on state contracts, and identifying resources available to such contractors in obtaining their first bond and in increasing their bonding capacity, including but not limited to the federal small business administration bond guarantee program.

(vi) With the assistance of the department of economic development and other state agencies, provide training once per year for staff of each state agency's minority and women business development office, or if an agency does not have such an office, then an agency's representative. Such training program shall consist of a meeting with such agencies' representatives to inform each agency of how to encourage procurement of commodities and services from businesses certified pursuant to article fifteen-A of the executive law.

(vii) assist the department of agriculture and markets and the department of economic development in providing a training program once per year, in each economic development region, established in article eleven of the economic development law, to encourage and increase participation in the procurement process, pursuant to this article, by small businesses, as defined in section one hundred thirty-one of the economic development law, including farms, selling food or food products, animal or plant fiber products grown, produced,

harvested, or processed in New York state or textile products manufactured from animal or plant fiber grown or produced predominantly in New York state and assist such businesses in identifying such food, food products, or animal or plant fiber products and textile products which may help to meet state agencies' needs.

(viii) maintain a list of contractors which produce or manufacture or offer for sale environmentally-sensitive cleaning and maintenance products in the form, function and utility generally used by elementary and secondary schools in accordance with specifications or guidelines promulgated pursuant to section four hundred nine-i of the education law.

(ix) review and consider prior to issuance of bid solicitations the term of the proposed contract based on factors, including, but not limited to; (A) the nature of the commodity, (B) the complexity of the procurement, (C) the identity and type of purchasers, (D) the suitability of the contract for adding additional contractors during the term, and (E) the estimated contract value. This determination shall be documented in the procurement record.

(x) reasonably consider aggregate amount of public sales by potential vendors.

(xi) review and consider the feasibility of creating regional contracts for commodities being procured by the state.

(xii) maintain a procurement record for each centralized contract procurement identifying, with supporting documentation, decisions made by the commissioner during the procurement process. The procurement record shall include, but not be limited to, each contract amendment, and the justification for each.

(xiii) maintain a list of New York-based firms which produce or manufacture or offer for sale animal or plant fiber textile products containing animal or plant fiber grown or produced predominantly in New York state in the form, function and utility generally purchased for use by state agencies.

c. When commodities are not available in the form, function and utility required by state agencies through preferred sources or centralized contracts, a state agency may, independently or in conjunction with other state agencies, procure commodities in accordance with the provisions of this section. State agencies may maintain listings of firms, including those certified pursuant to article fifteen-A of the executive law, or may use the office of general services' listing of firms and may request assistance from the office of general services. It shall be the responsibility of state agencies to periodically advise the office of general services of those agency-procured commodities which, due to the frequency of purchase or related factors, should be made available through centralized contracts.

d. The commissioner may make, or cause to be made by a duly authorized representative, any investigation which he or she may deem proper for acquiring the necessary information from a

state agency, except state agencies where the head of the agency is not appointed by the governor, including but not limited to the state education department, the department of law, and the department of audit and control, for the exercise of his or her powers and duties under this section. For such purposes the commissioner may subpoena and compel the attendance of witnesses before him or her, or an authorized representative, and may compel the production of books, papers, records or documents. The commissioner or a duly authorized representative may take and hear proofs and testimony and, for that purpose, the commissioner or the duly authorized representative may administer oaths. In addition, the commissioner or the duly authorized representative:

(i) Shall have access at all reasonable times to offices of state agencies;

(ii) May examine all books, papers, records and documents in any such state agency as pertain directly to the purchase, control or distribution of commodities; and

(iii) May require any state agency to furnish such data, information or statement as may be necessary.

4. General provisions for purchasing services. State agency procurement practices for services shall incorporate the following:

a. The purchase of services by state agencies including the office of general services shall be conducted in a manner which accords first priority to preferred sources in accordance with the provisions of this article when the services required are available in the form, function and utility required by state agencies through a preferred source.

b. (i) Centralized contracts for services may be procured by the office of general services at the request of state agencies or as determined by the commissioner. The purchase of services by state agencies, except state agencies where the head of the agency is not appointed by the governor, including but not limited to the state education department, the department of law, and the department of audit and control, shall be conducted in a manner that accords second priority to centralized contracts meeting form, function and utility required by said agency, third priority to agency or multi-agency established contracts and fourth priority to other means of contracting.

(ii) The commissioner shall:

(A) review and consider prior to issuance of bid solicitations the term of the proposed contract based on factors, including, but not limited to, (a) the nature of the service, (b) the complexity of the procurement, (c) the identity and type of purchasers, (d) the suitability of the contract for adding additional contractors during the term, and (e) the estimated contract value. This determination shall be documented in the procurement record.

(B) reasonably consider the aggregate amount of public sales by potential vendors.

(C) review and consider the feasibility of creating regional contracts for services being procured by the state.

(D) maintain a procurement record for each centralized contract procurement identifying with supporting documentation, decisions made by the commissioner during the procurement process. The procurement records shall include, but not be limited to, each contract amendment, and the justification for each.

c. When services are not available from preferred sources consistent with the provisions of this article in the form, function or utility required by state agencies, state agencies may procure services independently or in conjunction with other state agencies in accordance with the provisions of this section.

d. Service contracts shall be awarded on the basis of best value to a responsive and responsible offerer; or, in the case of multiple awards, in accordance with paragraph c of subdivision ten of this section.

e. The commissioner is authorized to permit purchases of services for authorized users through the office of general services' centralized contracts. Such authorized users so empowered shall accept sole responsibility for any payment due with respect to such purchases.

f. Repealed by L.2008, c. 137, § 1, eff. June 30, 2008.

g. All state agencies shall require all contractors, including subcontractors, that provide services for state purposes pursuant to a contract, to submit an annual employment report for each contract for services that includes for each employment category within the contract the number of employees employed to provide services under the contract, the number of hours they work and their total compensation under the contract. Employment reports shall be submitted to the agency that awarded the contract, the department of civil service and the department of audit and control and shall be available for public inspection and copying pursuant to section eighty-seven of the public officers law provided that in disclosing such reports pursuant to the public officers law, the agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document.

5. Process for conducting state procurements. The process for conducting state procurements for services and commodities shall be as follows:

Determination of need. State agencies shall be responsible for determining the need for a given service or commodity:

(i) For commodities, upon such determination of need, state agencies shall ascertain whether the commodity is available in the form, function and utility consistent with their needs from

preferred sources and if so, shall purchase said commodity from a preferred source in accordance with the provisions of this article. If not so available, state agencies shall determine whether the commodity is available in the form, function and utility consistent with their needs on a centralized contract and if so, except as provided in subparagraph (v) of paragraph a of subdivision three of this section, shall purchase said commodity using the centralized contract. If a commodity is not available in the form, function and utility consistent with the needs of the state agency from a preferred source or a centralized contract or as provided for in subparagraph (v) of paragraph a of subdivision three of this section, the state agency may procure the commodity independently or in conjunction with another state agency in accordance with paragraph c of subdivision three of this section.

(ii) For services, upon such determination of need, state agencies shall ascertain whether the service is available in the form, function and utility consistent with their needs from preferred sources and, if so, shall purchase said service through the preferred source in accordance with the provisions of this article. If not so available, state agencies the heads of which are appointed by the governor:

(A) Shall purchase the service if it is available in the form, function and utility consistent with their needs using an established centralized contract procured by either the office of general services or another state agency;

(B) May request that the office of general services procure such a service, particularly with respect to those services having utility and/or benefit to more than one state agency; or

(C) May procure the service independently or in conjunction with another state agency.

6. Discretionary buying thresholds. Pursuant to guidelines established by the state procurement council:

(a) the commissioner may purchase services and commodities for the office of general services or its customer agencies serviced by the office of general services business services center in an amount not exceeding eighty-five thousand dollars without a formal competitive process;

(b) state agencies may purchase services and commodities in an amount not exceeding fifty thousand dollars without a formal competitive process;

(c) state agencies may purchase commodities or services from small business concerns, or commodities or technology that are recycled or remanufactured in an amount not exceeding five hundred thousand dollars without a formal competitive process;

(d) state agencies may purchase commodities or services from those certified pursuant to article fifteen-A of the executive law and article three of the veterans' services law in an amount not exceeding seven hundred fifty thousand dollars without a formal competitive process; and

(e) state agencies may purchase commodities that are food, including milk and milk products, or animal or plant fiber products, grown, produced, harvested, or processed in New York state or textile products manufactured from animal or plant fiber grown or produced predominantly in New York state in an amount not to exceed two hundred thousand dollars without a formal competitive process.

6-a. Discretionary purchases. Notwithstanding the provisions of subdivision two of section one hundred twelve of this chapter relating to the dollar threshold requiring the state comptroller's approval of contracts, the commissioner of general services may make purchases or enter into contracts for the acquisition of commodities and services for the office of general services or its customer agencies serviced by the office of general services business services center having a value not exceeding eighty-five thousand dollars without prior approval by any other state officer or agency in accordance with procedures and requirements set forth in this article.

6-b. Determination of threshold amount. For determination of threshold amount purposes of determining whether a purchase is within the discretionary thresholds established by subdivision six of this section, the commissioner and state agencies shall consider the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within the twelve-month period commencing on the date of purchase. Purchases of services or commodities shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by subdivision six of this section. 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 or services 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.

6-c. Pursuant to the authority provided in subdivision six of this section, for the purchase of commodities that are food, including milk and milk products, or animal or plant fiber products, grown, produced, harvested, or processed in New York state or textile products manufactured from animal or plant fiber grown or produced predominantly in New York state, where such commodities exceed fifty thousand dollars in value, state agencies must advertise the discretionary purchase on the state agency website for a reasonable period of time and make the discretionary purchase based on the lowest price that meets the state agency's form, function and utility.

6-d. Pursuant to the authority provided in subdivision six of this section, state agencies shall report annually on a fiscal year basis by July first of the ensuing year to the director of the division of minority and women-owned business development the total number and total value of contracts awarded to businesses certified pursuant to article fifteen-A of the executive law, and with respect to contracts awarded to businesses certified pursuant to article three of the

veterans' services law such information shall be reported to the division of service-disabled veteran-owned business enterprises for inclusion in their respective annual reports.

7. Method of procurement. Consistent with the requirements of subdivisions three and four of this section, state agencies shall select among permissible methods of procurement including, but not limited to, an invitation for bid, request for proposals or other means of solicitation pursuant to guidelines issued by the state procurement council. State agencies may accept bids electronically including submission of the statement of non-collusion required by section one hundred thirty-nine-d of this chapter, and the statement of certification required by section one hundred thirty-nine-l of this chapter. Except where otherwise provided by law, procurements shall be competitive, and state agencies shall conduct formal competitive procurements to the maximum extent practicable. State agencies shall document the determination of the method of procurement and the basis of award in the procurement record. Where the basis for award is the best value offer, the state agency shall document, in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.

7-a. Notwithstanding the electronic bid provisions set forth in subdivision seven of this section, starting April first, two thousand twenty-three, and ending March thirty-first, two thousand twenty-seven, state agencies may require electronic submission as the sole method for the submission of bids for commodity, service and technology contracts, including submission of the statement of non-collusion required by section one hundred thirty-nine-d of this chapter, and the statement of certification required by section one hundred thirty-nine-l of this chapter, and may require electronic signatures on all documents required for submission of a bid, any resulting contracts, and required submissions during the term of any contract. Prior to requiring the electronic submission of bids, the agency shall make a determination, which shall be documented in the procurement record, that electronic submission affords a fair and equal opportunity for offerers to submit responsive offers, and that the electronic signature complies with the provisions of article three of the state technology law.

7-b. On or before December first, two thousand twenty-six, the commissioner of the office of general services shall submit to the speaker of the assembly and the temporary president of the senate and post on the website of the office of general services a report including, but not limited to, the following information:

(a) which state agencies required electronic submission as the sole method by which bids could be submitted for the period from April first, two thousand twenty-three through March thirty-first, two thousand twenty-six;

(b) the number and types of contracts for which such state agencies required electronic submission as the sole method by which bids could be submitted for the period from April first, two thousand twenty-three through March thirty-first, two thousand twenty-six;

(c) the estimated savings to the state as a result of such state agencies requiring electronic submission as the sole method by which bids could be submitted in response to a solicitation and the basis on which the estimate is made;

(d) to the extent practicable, the size, industry, minority- and women-owned business enterprise composition, service-disabled veteran-owned business enterprise composition, and geographic distribution of those vendors that submitted bids in response to solicitations from state agencies where electronic submission was the sole method by which bids could be submitted for the period from April first, two thousand twenty-three through March thirty-first, two thousand twenty-six;

(e) to the extent practicable, the size, industry, minority- and women-owned business enterprise composition, service-disabled veteran-owned business enterprise composition, and geographic distribution of those vendors that submitted non-electronic bids in response to solicitations from state agencies where electronic submission was accepted but not required for the period from April first, two thousand twenty-three through March thirty-first, two thousand twenty-six; and

(f) recommendations for the future use of electronic bidding as a permissible method of procurement.

8. Public notice. All procurements by state agencies, including, without limitation, the state university of New York and the city university of New York, in excess of fifty thousand dollars shall be advertised in the state's procurement opportunities newsletter in accordance with article four-C of the economic development law.

9. Soliciting and accepting offers. For purchases from sources other than preferred sources and for purchases in excess of the discretionary buying threshold established in subdivision six of this section:

a. The commissioner or a state agency shall select a formal competitive procurement process in accordance with guidelines established by the state procurement council and document its determination in the procurement record. The process shall include, but is not limited to, a clear statement of need; a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerers to submit responsive offers; and a balanced and fair method of award. Where the basis for the award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of

proposals and the evaluation results, or, where not practicable, such other justification which demonstrates that best value will be achieved.

b. The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a state agency in its determination of best value.

c. Where provided in the solicitation, state agencies may require clarification from offerers for purposes of assuring a full understanding of responsiveness to the solicitation requirements. Where provided for in the solicitation, revisions may be permitted from all offerers determined to be susceptible of being selected for contract award, prior to award. Offerers shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers. A state agency shall, upon request, provide a debriefing to any unsuccessful offerer that responded to a request for proposal or an invitation for bids, regarding the reasons that the proposal or bid submitted by the unsuccessful offerer was not selected for an award. The opportunity for an unsuccessful offerer to seek a debriefing shall be stated in the solicitation.

(i) A debriefing shall be requested by the unsuccessful offerer within fifteen calendar days of release by the state agency of a notice in writing or electronically that the offerer's offer is unsuccessful.

(ii) Such notice shall be provided to all unsuccessful offerers by the state agency for the specific procurement.

(iii) The state agency, upon a request made within fifteen days of release of the written or electronic notice from the unsuccessful offerer for a debriefing, shall schedule the debriefing to occur within a reasonable time of such request. Debriefings shall be conducted by the state agency with the unsuccessful offerer in-person, provided, however, the parties may mutually agree to utilize other means such as, but not limited to, by telephone, video-conferencing or other types of electronic communications. State agency personnel participating in the debriefing discussion shall have been involved with and knowledgeable about the procurement and the evaluation and selection of the successful offerer or offerers.

(iv) Such debriefing shall include, but need not be limited to: (A) the reasons that the proposal, bid or offer submitted by the unsuccessful offerer was not selected for award; (B) the qualitative and quantitative analysis employed by the agency in assessing the relative merits of the proposals, bids or offers; (C) the application of the selection criteria to the unsuccessful offerer's proposal; and (D) when the debriefing is held after the final award, the reasons for the selection of the winning proposal, bid or offer. The debriefing shall also provide, to the extent

practicable, general advice and guidance to the unsuccessful offerer concerning potential ways that their future proposals, bids or offers could be more responsive.

d. All offers may be rejected. Where provided in the solicitation, separable portions of offers may be rejected.

e. Every offer shall be firm and not revocable for a period of sixty days from the bid opening, or such other period of time specified in the solicitation to the extent not inconsistent with section 2-205 of the uniform commercial code. Subsequent to such sixty day or other specified period, any offer is subject to withdrawal communicated in a writing signed by the offeror.

f. Prior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor which shall supplement, as appropriate, but not supersede the determination of responsibility that may be required pursuant to section one hundred thirty-nine-k of this chapter.

g. A procurement record shall be maintained for each procurement identifying, with supporting documentation, decisions made by the commissioner or state agency during the procurement process. The procurement record shall include, but not be limited to each contract amendment and the justification for each.

10. Letting of contracts. Contracts for commodities shall be awarded on the basis of lowest price to a responsive and responsible offerer. Contracts for services shall be awarded on the basis of best value from a responsive and responsible offerer. Multiple awards for services and commodities shall be conducted in accordance with paragraph c of this subdivision.

a. Selection and award shall be a written determination in the procurement record made by the commissioner or a state agency in a manner consistent with the provisions of the solicitation. In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient or, when price and other factors are found to be substantially equivalent, the determination of the commissioner or agency head to award a contract to one or more of such bidders shall be final. The basis for determining the award shall be documented in the procurement record.

b. (i) Single or sole source procurements for services or commodities, or procurements made to meet emergencies arising from unforeseen causes, may be made without a formal competitive process and shall only be made under unusual circumstances and shall include a determination by the commissioner or the state agency that the specifications or requirements for said purchase have been designed in a fair and equitable manner. The purchasing agency shall document in the procurement record, subject to review by the state comptroller, the bases for a determination to purchase from a single source or sole source, or the nature of the emergency giving rise to the procurement.

(ii) State agencies shall minimize the use of single source procurements and shall use single source procurements only when a formal competitive process is not feasible. State agencies shall document in the procurement record the circumstances and the material and substantial reasons why a formal competitive process is not feasible. The term of a single source procurement contract shall be limited to the minimum period of time necessary to ameliorate the circumstances which created the material and substantial reasons for the single source award. Not later than thirty days after the contract award, state agencies shall, for all single source procurement contracts, make available for public inspection on the agency website, a summary of the circumstances and material and substantial reasons why a competitive procurement is not feasible. Any information which the contracting agency is otherwise prohibited by law from disclosing pursuant to sections eighty-seven and eighty-nine of the public officers law, shall be redacted from the documentation published on the agency website.

c. The commissioner or state agency may elect to award a contract to one or more responsive and responsible offerers provided, however, that the basis for the selection among multiple contracts at the time of purchase shall be the most practical and economical alternative and shall be in the best interests of the state, and further provided that the requirements set forth herein shall not preclude the commissioner from establishing multiple award contracts for reasons including increased opportunities for small businesses to participate in state contracts.

d. It shall be in the discretion of the commissioner or state agency to require a bond or other guarantee of performance, and to approve the amount, form and sufficiency thereof.

e. The commissioner may authorize purchases required by state agencies or other authorized purchasers by letting a contract pursuant to a written agreement, or by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states. A state agency purchaser shall document in the procurement record its rationale for the use of a contract let by any department, agency or instrumentality of the United States government or any department, agency, office, political subdivision or instrumentality of any other state or states. Such rationale shall include, but need not be limited to, a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner is not in the best interest of the state, and the reasonableness of cost.

f. The commissioner is authorized to let centralized contracts, in accordance with the procedures of this section, for joint purchasing by New York state and any department, agency or instrumentality of the United States government and/or any state including the political subdivisions thereof; provided however that any entity incurring a liability under such contract shall be responsible for discharging said liability.

11. Reasonableness of results. It shall be the responsibility of the head of each state agency to periodically sample the results of the procurement process to test for reasonableness; to ensure that the results withstand public scrutiny and that the quality and the price of the purchase makes sense; and to ensure that purchasing is conducted in a manner consistent with the best interests of the state.

12. Review by the office of the state comptroller. Review by the office of the state comptroller shall be in accordance with section one hundred twelve of this chapter. If the contracting agency has not complied with one or more provisions of this article, the state comptroller may approve the awarded contract if:

a. the contracting agency determines that the noncompliance was a non-material deviation from one or more provisions of this article. For the purposes of this subdivision "non-material deviation" shall mean that such noncompliance did not prejudice or favor any vendor or potential vendor, such noncompliance did not substantially affect the fairness of the competitive process, and that a new procurement would not be in the best interest of the state. Such determination by the contracting agency and the state comptroller shall be documented in the procurement record; and

b. the state comptroller concurs in such determination.

13. Technological procurement improvements. The state procurement council may request that the office of general services provide, or recommend to the state comptroller to provide for the utilization of technological advances and efficiencies in the procurement process including, but not limited to, electronic ordering and payment, procurement cards and similar improvements.

14. Reporting by the state comptroller. To support transparency in the state's procurement process and prudent procurement management, oversight and policy-making, the state comptroller shall submit a report to the state procurement council, the governor, the commissioner of the office of general services, the director of the budget, and the legislative fiscal committees containing data related to state agency contracts. Such report shall be made annually, on a fiscal year basis by the first of July of the next succeeding year.

a. For state agency contracts, such report shall include:

(i) a list of all active contracts as of the end of the fiscal year;

(ii) a list of all contracts reviewed by the office of the state comptroller during the fiscal year;

(iii) a list of contract award protests reviewed by the office of the state comptroller and the resolution thereof; and

(iv) for consulting contracts subject to approval of the state comptroller, a report of planned and actual employment under each contract.

b. The lists required pursuant to subparagraphs (i) and (ii) of paragraph a of this subdivision shall include, to the extent reasonably available, the following information related to each contract:

(i) the state agency letting the contract;

(ii) the state agency for which the contract is let, if different;

(iii) whether an agency contract or centralized contract;

(iv) vendor name and address;

(v) a description of the contract. For contracts let under section nine of the public buildings law, the description shall denote the scope of work of the contract and the nature of the emergency for which it was let;

(vi) contract start and end dates;

(vii) the dollar value of the contract;

(viii) for contracts subject to approval by the state comptroller, whether approved or non-approved, the date of such approval/non-approval, and if non-approved, the reason or reasons therefor;

(ix) life to date and fiscal year expenditures against the contract and by which agencies;

(x) major contract category, including, but not limited to, consultant, construction, equipment, grants, leases, land claim, miscellaneous services, printing, repayment agreements, revenue agreements, intergovernmental agreements, and commodities;

(xi) source selection method, including "lowest price", "best value", sole source, single source, negotiated and/or emergency procurement;

(xii) number of bids/proposals received by the contracting agency; and

(xiii) subtotals as deemed applicable.

c. The report required pursuant to subparagraph (iv) of paragraph a of this subdivision shall include:

(i) information required to be reported by the contractor annually by the employment category within the contract, including the planned number of employees to provide services under the contract, the planned number of hours to be worked under the contract, and the total compensation planned under the contract; and

(ii) information required to be reported by the contractor annually pursuant to paragraph g of subdivision four of this section, specifically, the actual number of employees, by employment

category within the contract, employed to provide services under the contract, the number of hours worked and total compensation under the contract.

d. For the purposes of the report required pursuant to subparagraph (iv) of paragraph a of this subdivision, a “contract for consulting services” shall mean any contract entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services. Such report shall be available for public inspection and copying pursuant to section eighty-seven of the public officers law provided that in disclosing such reports pursuant to the public officers law, the agency making the disclosure shall redact the name, social security number and other personal information of any individual employee or consultant that is included in such document.

e. The information required by this subdivision shall be provided in electronic format in such form as prescribed by the state comptroller such that the data can be searched and sorted.

f. All reports required under this subdivision shall be available for public inspection and copying pursuant to section eighty-seven of the public officers law provided that in disclosing such reports pursuant to the public officers law, the agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document.

15. Reporting by agencies. a. State agencies shall report annually, on a fiscal year basis, by July first of the ensuing year to the state procurement council, the governor, the legislative fiscal committees and the state comptroller the total number and total dollar value of single source contracts awarded by the agency during the fiscal year, and the percentage such contracts represent of the agency's total number and total dollar value of contract awards during the reporting period.

b. Each state agency shall include with its report an assessment by the agency head of the agency's efforts to minimize the award of single source contracts.

c. All reports required under this subdivision shall be available for public inspection and copying pursuant to section eighty-seven of the public officers law provided that in disclosing such reports pursuant to the public officers law, the agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document.

Credits

(Added L.1995, c. 83, § 33. Amended L.1997, c. 430, § 7, eff. Aug. 20, 1997; L.2000, c. 95, §§ 3, 4, 6-a, 9 to 12, 21, 22, 25, eff. July 1, 2000; L.2005, c. 1, § 15, eff. Jan. 1, 2006; L.2005, c.

584, § 3, eff. Sept. 1, 2005; L.2006, c. 10, §§ 4, 5, eff. June 19, 2006; L.2006, c. 56, pt. D, §§ 3, 4, eff. April 10, 2006; L.2008, c. 137, §§ 1 to 4, 11 to 17, 20, eff. June 30, 2008; L.2009, c. 361, § 6, eff. Aug. 26, 2009; L.2010, c. 56, pt. FF, § 10, eff. June 22, 2010; L.2010, c. 173, § 1, eff. Oct. 13, 2010; L.2011, c. 62, pt. C, subpt. B, § 165, eff. March 31, 2011; L.2012, c. 55, pt. L, §§ 2 to 5, 7, 9, 10, 12, 36, eff. March 30, 2012; L.2013, c. 55, pt. P, §§ 1, 2, eff. March 28, 2013; L.2014, c. 173, § 2, eff. July 22, 2014; L.2014, c. 317, § 3, eff. Aug. 11, 2014; L.2014, c. 381, § 3, eff. Sept. 23, 2014; L.2015, c. 569, §§ 1, 2, eff. Dec. 21, 2015; L.2016, c. 57, pt. F, §§ 2-a, 2-b, eff. April 13, 2016, deemed eff. April 1, 2016; L.2018, c. 57, pt. KK, subpt. A, § 2, eff. Jan. 1, 2019; L.2019, c. 96, § 9, eff. Jan. 11, 2020; L.2021, c. 257, §§ 1, 2, eff. July 16, 2021; L.2022, c. 56, pt. PP, § 28, eff. April 1, 2023; L.2022, c. 572, §§ 10, 11, eff. Jan. 1, 2023; L.2023, c. 55, pt. R, §§ 1 to 3, eff. May 3, 2023; L.2024, c. 110, § 2, eff. Dec. 8, 2023.)

Notes of Decisions (66)

Footnotes

McKinney's State Finance Law § 163, NY STATE FIN § 163

Current through L.2024, chapters 1 to 57, 59, 61 to 119. Some statute sections may be more current, see credits for details.

McKinney's Public Authorities Law § 2879

§ 2879. Procurement contracts

Currentness

1. Every public authority and public benefit corporation, a majority of the members of which consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, or a combination thereof, (such entities to be hereinafter in this section referred to as "corporation") shall adopt by resolution comprehensive guidelines which detail the corporation's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. Guidelines approved by the corporation shall be annually reviewed and approved by the corporation.

2. For purposes of this section, procurement contracts shall mean any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars or more.

3. The guidelines approved by the corporation shall include, but not be limited to the following:

(a) A description of the types of goods purchased, and for procurement contracts for services, a description of those areas of responsibility and oversight requiring the use of personal services and the reasons for the use of personal services in such areas.

(b) Requirements regarding the selection of contractors, which shall include provisions:

(i) for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition, including, notwithstanding any other provision of law requiring competition, the purchase of goods or services from small business concerns those certified as minority or women-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not to exceed five hundred thousand dollars without a formal competitive process;

(ii) describing when the award of procurement contracts shall require approval of the board by resolution, provided that any contract involving services to be rendered over a period in excess of one year shall require the approval of the board by resolution and an annual review of the contract by the board;

(iii) setting forth responsibilities of contractors;

(iv) as used in this subparagraph, the term "professional firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.

The corporation shall not refuse to negotiate with a professional firm solely because the ratio of the “allowable indirect costs” to direct labor costs of the professional firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the corporation should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all “allowable indirect costs,” other direct costs, and negotiated profit of the professional firm. “Allowable indirect costs” of a professional firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

(c) An identification of those areas or types of contracts for which minority or women-owned business enterprises may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises. For the purposes of this section, a minority business enterprise means any business enterprise, including a sole proprietorship, partnership or corporation that is:

(i) at least fifty-one percent owned by one or more minority group members or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group members;

(ii) an enterprise in which the minority ownership is real, substantial and continuing;

(iii) an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(d) For the purposes of this section, a minority group member means a United States citizen or permanent resident noncitizen who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

(iv) Native American persons having origins in any of the original peoples of North America.

(e) For the purposes of this section, a women-owned business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation which is:

(i) at least fifty-one percent owned by one or more United States citizens or permanent resident noncitizens who are women or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident noncitizens who are women;

(ii) an enterprise in which the ownership interest of women is real, substantial and continuing;

(iii) an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(f) Requirements for the designation of one or more senior staff of the corporation to oversee the corporation's programs established to promote and assist: (i) participation by certified minority or women-owned business enterprises in the corporation's procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (ii) the utilization of certified minority and women-owned business enterprises as subcontractors and suppliers by entities having procurement contracts with the corporation; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified minority and women-owned business enterprises and other entities having procurement contracts with the corporation. Such staff shall be familiar with the procurement of the types of construction, financial, legal or professional services utilized by the corporation, report directly to the corporation's executive director, president or chief executive officer and either directly or through their designees participate in the procurement process.

(g) Requirements for providing notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve minority and women-owned business enterprises providing the types of services procured by the corporation.

(h) Procedures for maintaining lists of qualified certified minority and women-owned business enterprises, including professional firms that have expressed an interest in doing business with the corporation and ensuring that such lists are updated regularly. The corporation shall also consult the lists of certified minority and women-owned business enterprises maintained by the department of economic development pursuant to article fifteen-A of the executive law.

(i) The establishment of appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the corporation and for the utilization of minority and women-owned enterprises as subcontractors and suppliers by

entities having procurement contracts with the corporation. Statewide numerical participation target goals shall be established by each authority based on the findings of the two thousand ten disparity study.

(j) Requirements to conduct procurements in a manner that will enable the corporation to achieve the maximum feasible portion of the goals established pursuant to paragraph (i) of this subdivision and that eliminates barriers to participation by minority and women-owned business enterprises in the corporation's procurements. Such procurement requirements shall include the following:

(A) Measures and procedures to ensure that certified businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the corporation's identification of those state contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of state contracts so as to facilitate the corporation's achievement of the maximum feasible portion of the goals for state contracts to such businesses;

(B) Provisions designating the division of minority and women-owned business development to certify and decertify minority and women-owned business enterprises for all corporations through a single process that meets applicable state and federal requirements;

(C) A requirement that each contract solicitation document accompanying each solicitation set forth the expected degree of minority and women-owned business enterprise participation based, in part, on:

I. the potential subcontract opportunities available in the prime procurement contract; and

II. the availability of certified minority and women-owned business enterprises to respond competitively to the potential subcontract opportunities;

(D) A requirement that each corporation provide a current list of certified minority business enterprises to each prospective contractor;

(E) Provisions relating to joint ventures, under which a bidder may count toward meeting its minority business enterprise participation goal, the minority and women-owned business enterprise portion of the joint venture;

(F) Provisions under which the corporation may waive obligations of the contractor relating to minority and women-owned business enterprise participation after a showing of good faith efforts to comply with the requirements of this act pursuant to the waiver provisions contained in subdivision six of section three hundred thirteen of the executive law;

(G) A requirement that the corporation verify that minority and women-owned business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

(H) In the implementation of this section, the contracting corporation shall:

I. consider, where practicable, the severability of construction projects and other bundled contracts;

II. implement a program that will enable the corporation to evaluate each contract to determine the appropriateness of the goal pursuant to paragraph (i) of this subdivision;

III. consider compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of this section; and

IV. consult the most recent disparity study pursuant to article fifteen-A of the executive law.

(k) A listing of the types of provisions to be contained in procurement contracts, including provisions concerning the nature and monitoring of the work to be performed, the use of corporate supplies and facilities, the use of corporate personnel and any other provisions.

(l) Provisions regarding procurement contracts which involve former officers or employees of the corporation.

(m) Procedures regarding procurement contracts which are exempt from the publication requirements of article four-C of the economic development law.

(n) Policies to promote the participation by New York state business enterprises and New York state residents in procurement contracts, including, but not limited to:

(i) providing for the corporation to collect and to consult the specifications of New York state business enterprises in developing specifications for any procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding, except for procurement contracts for which the corporation would be expending funds received from another state. The corporation shall, where feasible, make use of the stock item specification forms prepared by the commissioner of general services, and where necessary, consult with the commissioner of the office of general services, in developing such specifications and make such determinations; and

(ii) with the cooperation of the department of economic development and through cooperative efforts with contractors, providing for the notification of New York state business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars and

promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York state business enterprises including certified minority and women-owned business, or (b) contacted the New York state department of economic development to obtain listings of New York state business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York state, or (d) participated in bidder outreach conferences. If the contractor determines that New York state business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent; and

(iii) except for procurement contracts for which the corporation would be expending funds received from another state, the corporation shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority and women-owned businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services; and

(iv) with the cooperation of the community services division of the department of labor and through cooperative efforts with contractors, providing for the notification of New York state residents of employment opportunities arising in New York state out of procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars; and promulgating procedures which will assure compliance by contractors with such notification by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements; and

(v) including in each set of documents soliciting bids on procurement contracts to let by the corporation a statement notifying potential bidders located in foreign countries that the corporation may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York state; providing for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to

third parties located in New York state, in accordance with the written directions of the commissioner of economic development; and providing for the corporation to otherwise cooperate with the department of economic development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York state created by such procurement contracts; and

(vi) promulgating procedures which will assure compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261),¹ as amended, by contractors of the corporation.

(o) For the purposes of this section, a “New York state business enterprise” means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York state, or services which are sought by the corporation and which are substantially performed within New York state.

(p) For the purposes of this section, a “New York resident” means a natural person who maintains a fixed, permanent and principal home located within New York state and to which such person, whenever temporarily located, always intends to return.

4. Each corporation shall have the power from time to time to amend such procurement contract guidelines in accordance with the provisions of this section.

5. (a) Each corporation shall notify the commissioner of economic development of the award of a procurement contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder therefor. No corporation shall thereafter enter into a procurement contract for said goods or services until at least fifteen days has elapsed, except for procurement contracts awarded on an emergency or critical basis, or where the commissioner of economic development waives the provisions of this sentence. The notification to the commissioner of economic development shall include the name, address and telephone and facsimile number of the foreign business enterprise, a brief description of the goods or services to be obtained pursuant to the proposed procurement contract, the amount of the proposed procurement contract, the term of the proposed procurement contract, and the name of the individual at the foreign business enterprise or acting on behalf of the same who is principally responsible for the proposed procurement contract. Such notification shall be used by the commissioner of economic development solely to provide notification to New York state business enterprises of opportunities to participate as subcontractors and suppliers on such procurement contracts, to promote and encourage the location and development of new business in the state, to assist New York state business enterprises in obtaining offset credits from foreign countries, and to otherwise investigate, study and undertake means of promoting

and encouraging the prosperous development and protection of the legitimate interest and welfare of New York state business enterprises, industry and commerce.

(b) As used in this section, the following terms shall have the following meanings, unless a different meaning appears from the context:

(i) "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods which are sought by the corporation and which are substantially produced outside New York state, or services, other than construction services, sought by the corporation which are substantially performed outside New York state. For purposes of construction services, foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York state.

(ii) "New York state business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York state, or services, other than construction services, which are sought by the corporation and which are substantially performed within New York state. For purposes of construction services, a New York state business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York state.

(iii) "Discriminatory jurisdiction" shall mean any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms or license, authorization, or funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or non-governmental entity influenced by the same to discriminate against a New York state business enterprise.

(c) In including any additional business enterprises on invitations to bid for the procurement of goods or services, the chief executive officer of the corporation shall not include any foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law, except, however, business enterprises which are New York state business enterprises as defined by this section. The corporation may waive the application of the provisions of this section whenever

the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

(d) A corporation shall not enter into a contract with a foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law. The provisions of this section may be waived by the chief executive officer of the corporation if the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

6. Each corporation, as part of the guidelines established pursuant to subdivision three of this section, shall establish policies regarding the preparation of publicly available reports on procurement contracts entered into by such corporation. Such policies shall provide, at the minimum, for the preparation of a report no less frequently than annually, summarizing procurement activity by such corporation for the period of the report, including a listing of all procurement contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, all contracts entered into with certified minority or women-owned business enterprises and the subject matter and value thereof, all referrals made and all penalties imposed pursuant to section three hundred sixteen of the executive law, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement contracts.

7. Each corporation shall annually prepare and approve a report on procurement contracts which shall include the guidelines, as specified in subdivision three of this section, an explanation of the guidelines and any amendments thereto since the last annual report. Such report on procurement contracts may be a part of any other annual report that the corporation is required to make.

8. (a) Each corporation shall annually submit its report on procurement contracts to the division of the budget and copies thereof to the department of audit and control, the department of economic development, the senate finance committee and the assembly ways and means committee. Such report shall include the total number and total dollar value of contracts awarded to certified minority and women-owned business enterprises pursuant to subparagraph (i) of paragraph (b) of subdivision three of this section.

(b) Each corporation shall make available to the public copies of its report on procurement contracts upon reasonable request therefor.

9. Nothing contained in this section shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of this section.

Credits

(Added L.1983, c. 838, § 24, eff. Jan. 1, 1984. Amended L.1988, c. 564, § 2; L.1990, c. 862, §§ 2, 3; L.1992, c. 844, §§ 2 to 5; L.1993, c. 531, §§ 1, 2; L.1994, c. 45, § 2; L.1994, c. 383, § 2; L.1994, c. 684, §§ 2, 3; L.2000, c. 383, §§ 2 to 4, eff. Aug. 30, 2000; L.2010, c. 174, §§ 2 to 4, eff. Oct. 13, 2010; L.2019, c. 96, § 10, eff. Jan. 11, 2020; L.2022, c. 669, § 65, eff. Dec. 9, 2022.)

McKinney's Public Authorities Law § 2879, NY PUB AUTH § 2879

Current through L.2024, chapters 1 to 57, 59, 61 to 119. Some statute sections may be more current, see credits for details.

§ 2879–a. Comptroller approval of contracts

Currentness

1. Except as set forth in subdivision three of this section, where the comptroller determines pursuant to his or her authority to supervise the accounts of public corporations, that contracts or categories of contracts in excess of one million dollars (a) to be awarded by a state authority to a single source, a sole source or pursuant to any other method of procurement that is not competitive, or (b) which are to be paid in whole or in part from monies appropriated by the state to a state authority for such contractual expenditure, require supervision in the form of prior review and approval of such contracts, and the comptroller so notifies such authority of such determination, then any such contract entered into subsequent to such notification shall be submitted to the comptroller for his or her approval and shall not be a valid enforceable contract unless it shall first have been approved by the comptroller. Such notification shall identify the process for submission, the categories of contracts at issue and the time period for which such submission is to take place. The comptroller shall promulgate such rules and regulations as may be necessary to carry out his or her responsibilities under this section, including but not limited to the standards for determining which contracts will be subject to his or her review and for approving such contracts.

2. Where the comptroller, pursuant to subdivision one of this section, has notified a state authority that any contract or category of contracts shall be subject to his or her approval, such authority shall include or cause to be included in each such contract a provision informing the other party that such contract is subject to the comptroller's approval pursuant to the comptroller's authority to supervise the accounts of public corporations. If the comptroller has not approved or disapproved any contract subject to his or her approval within ninety days of submission to his or her office, such contract shall become valid and enforceable without such approval.

3. This section shall not apply to: (a) contracts entered into for the issuance of commercial paper or bonded indebtedness, other than contracts with the state providing for the payment of debt service subject to an appropriation; (b) contracts entered into by an entity established under article ten–C of this chapter that are for: (i) projects approved by the department of health or the public health council in accordance with articles twenty–eight, thirty–six or forty of the public health law or article seven of the social services law; (ii) projects approved by the office of mental health, the office for people with developmental disabilities, or the office of alcoholism and substance abuse services in accordance with articles sixteen, thirty–one, or thirty–two of the mental hygiene law; (iii) services, affiliations or joint ventures for the provision or administration of health care services or scientific research; (iv) payment for direct health care services or goods used in the provision of health care services; or (v) participation in group purchasing arrangements; (c) contracts entered into for the procurement of goods, services or

both goods and services made to meet emergencies arising from unforeseen causes or to effect repairs to critical infrastructure that are necessary to avoid a delay in the delivery of critical services that could compromise the public welfare; (d) contracts of purchase or sale of energy, electricity or ancillary services made by an authority on a recognized market for goods, services, or commodities in question in accordance with standard terms and conditions of purchase or sale at a market price; (e) contracts for the purchase, sale or delivery of power or energy, fuel, costs and services ancillary thereto, or financial products related thereto, with a term of less than five years; and (f) contracts for the sale or delivery of power or energy and costs and services ancillary thereto for economic development purposes pursuant to title one of article five of this chapter or article six of the economic development law, provided, however, that the authority shall file copies of any such contract with the comptroller within sixty days after the execution of such contract.

4. The provisions of this section do not grant or diminish any power or right to review contracts beyond or from that which the comptroller may have pursuant to his or her authority to supervise the accounts of public authorities. If any provisions of this section or its application to any person or circumstance is held invalid by a court of last resort, then this section shall be deemed to be invalid in its entirety.

Credits

(Added L.2009, c. 506, § 14, eff. March 1, 2010. Amended L.2019, c. 672, § 12, eff. Dec. 16, 2019.)

McKinney's Public Authorities Law § 2879–a, NY PUB AUTH § 2879–a

Current through L.2024, chapters 1 to 57, 59, 61 to 119. Some statute sections may be more current, see credits for details.

RELEVANT NEW YORK STATE PENAL LAW PROVISIONS

Article 155. Larceny

§ 155.00 Larceny; definitions of terms

The following definitions are applicable to this title:

1. "Property" means any money, personal property, real property, computer data, computer program, thing in action, evidence of debt or contract, or any article, substance or thing of value, including any gas, steam, water or electricity, which is provided for a charge or compensation.
2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.
3. "Deprive." To "deprive" another of property means (a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.
4. "Appropriate." To "appropriate" property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (b) to dispose of the property for the benefit of oneself or a third person.
5. "Owner." When property is taken, obtained or withheld by one person from another person, an "owner" thereof means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds it from him by larcenous means.

A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

6. “Secret scientific material” means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.

7. “Credit card” means any instrument or article defined as a credit card in [section five hundred eleven of the general business law](#) .

7-a. “Debit card” means any instrument or article defined as a debit card in [section five hundred eleven of the general business law](#) .

7-b. “Public benefit card” means any medical assistance card, food stamp assistance card, public assistance card, or any other identification, authorization card or electronic access device issued by the state or a social services district as defined in [subdivision seven of section two of the social services law](#) , which entitles a person to obtain public assistance benefits under a local, state or federal program administered by the state, its political subdivisions or social services districts.

7-c. “Access device” means any telephone calling card number, credit card number, account number, mobile identification number, electronic serial number or personal identification number that can be used to obtain telephone service.

8. “Service” includes, but is not limited to, labor, professional service, a computer service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. A ticket or equivalent instrument which evidences a right to receive a service is not in itself service but constitutes property within the meaning of subdivision one.

9. “Cable television service” means any and all services provided by or through the facilities of any cable television system or closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

(a) By conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses;

(b) By acquiring lost property.

A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner;

(c) By committing the crime of issuing a bad check, as defined in [section 190.05](#) ;

(d) By false promise.

A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed;

(e) By extortion.

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

(i) Cause physical injury to some person in the future; or

(ii) Cause damage to property; or

(iii) Engage in other conduct constituting a crime; or

- (iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or
- (v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

§ 155.10 Larceny; no defense

The crimes of (a) larceny committed by means of extortion and an attempt to commit the same, and (b) bribe receiving by a labor official as defined in [section 180.20](#) , and bribe receiving as defined in [section 200.05](#) , are not mutually exclusive, and it is no defense to a prosecution for larceny committed by means of extortion or for an attempt to commit the same that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

§ 155.15 Larceny; defenses

1. In any prosecution for larceny committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated under a claim of right made in good faith.
2. In any prosecution for larceny by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

§ 155.20 Larceny; value of stolen property

For the purposes of this title, the value of property shall be ascertained as follows:

1. Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

2. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectable thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(b) The value of a ticket or equivalent instrument which evidences a right to receive a transportation, entertainment or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon the value shall be deemed the price of such ticket or equivalent instrument which the issuer charges the general public.

(c) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

3. Where the property consists of gas, steam, water or electricity, which is provided for charge or compensation, the value shall be the value of the property stolen in any consecutive twelve-month period.

4. When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in subdivisions one and two of this section, its value shall be deemed to be an amount less than two hundred fifty dollars.

§ 155.25 Petit larceny

A person is guilty of petit larceny when he steals property.

Petit larceny is a class A misdemeanor

§ 155.30 Grand Larceny in the fourth degree

A person is guilty of grand larceny in the fourth degree when he steals property and when:

1. The value of the property exceeds one thousand dollars; or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of secret scientific material; or
4. The property consists of a credit card or debit card; or
5. The property, regardless of its nature and value, is taken from the person of another; or
6. The property, regardless of its nature and value, is obtained by extortion; or
7. The property consists of one or more firearms, rifles or shotguns, as such terms are defined in [section 265.00](#) of this chapter; or
8. The value of the property exceeds one hundred dollars and the property consists of a motor vehicle, as defined in [section one hundred twenty-five of the vehicle and traffic law](#) , other than a motorcycle, as defined in section one hundred twenty-three of such law; or
9. The property consists of a scroll, religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith, or other miscellaneous item of property which:
 - (a) has a value of at least one hundred dollars; and
 - (b) is kept for or used in connection with religious worship in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law.
10. The property consists of an access device which the person intends to use unlawfully to obtain telephone service.
11. The property consists of anhydrous ammonia or liquefied ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquefied ammonia gas to manufacture methamphetamine.

Grand larceny in the fourth degree is a class E felony.

§ 155.35 Grand larceny in the third degree

A person is guilty of grand larceny in the third degree when he or she steals property and:

1. when the value of the property exceeds three thousand dollars, or
2. the property is an automated teller machine or the contents of an automated teller machine.

Grand larceny in the third degree is a class D felony.

§ 155.40 Grand larceny in the second degree

A person is guilty of grand larceny in the second degree when he steals property and when:

1. The value of the property exceeds fifty thousand dollars; or
2. The property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Grand larceny in the second degree is a class C felony.

§ 155.42 Grand larceny in the first degree

A person is guilty of grand larceny in the first degree when he steals property and when the value of the property exceeds one million dollars.

Grand larceny in the first degree is a class B felony.

§ 155.43 Aggravated grand larceny of an automated teller machine

A person is guilty of aggravated grand larceny of an automated teller machine when he or she commits the crime of grand larceny in the third degree, as defined in [subdivision two of section 155.35](#) of this article and has been previously convicted of grand larceny in the third degree within the previous five years.

Aggravated grand larceny of an automated teller machine is a class C felony.

§ 155.45 Larceny; pleading and proof

1. Where it is an element of the crime charged that property was taken from the person or obtained by extortion, an indictment for larceny must so specify. In all other cases, an indictment, information or complaint for larceny is sufficient if it alleges that the defendant

stole property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which such property was stolen or the particular theory of larceny involved.

2. Proof that the defendant engaged in any conduct constituting larceny as defined in [section 155.05](#) is sufficient to support any indictment, information or complaint for larceny other than one charging larceny by extortion. An indictment charging larceny by extortion must be supported by proof establishing larceny by extortion.

Title K. Offenses Involving Fraud
Article 170. Forgery and Related Offenses

§ 170.00 Forgery; definitions of terms

1. "Written instrument" means any instrument or article, including computer data or a computer program, containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.
2. "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.
3. "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.
4. "Falsely make." A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof.
5. "Falsely complete." A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
6. "Falsely alter." A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
7. "Forged instrument" means a written instrument which has been falsely made, completed or altered.

8. “Electronic access device” means a mobile identification number or electronic serial number that can be used to obtain telephone service

§ 170.05 Forgery in the third degree

A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument.

Forgery in the third degree is a class A misdemeanor.

§ 170.10 Forgery in the second degree

A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. A deed, will, codicil, contract, assignment, commercial instrument, credit card, as that term is defined in [subdivision seven of section 155.00](#) , or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or
2. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or
3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or
4. Part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services; or
5. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

Forgery in the second degree is a class D felony.

§ 170.15 Forgery in the first degree

A person is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or
2. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

Forgery in the first degree is a class C felony

§ 170.20 Criminal possession of a forged instrument in the third degree

A person is guilty of criminal possession of a forged instrument in the third degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses a forged instrument.

Criminal possession of a forged instrument in the third degree is a class A misdemeanor

§ 170.25 Criminal possession of a forged In the Second Degree

A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in [section 170.10](#) .

Criminal possession of a forged instrument in the second degree is a class D felony.

§ 170.27 Criminal possession of a forged instrument in the second degree; presumption

A person who possesses two or more forged instruments, each of which purports to be a credit card or debit card, as those terms are defined in subdivisions seven and seven-a of [section 155.00](#) , is presumed to possess the same with knowledge that they are forged and with intent to defraud, deceive or injure another

§ 170.30 Criminal possession of a forged instrument in the first degree

A person is guilty of criminal possession of a forged instrument in the first degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in [section 170.15](#) .

Criminal possession of a forged instrument in the first degree is a class C felony.

§ 170.35 Criminal possession of a forged instrument; no defense

In any prosecution for criminal possession of a forged instrument, it is no defense that the defendant forged or participated in the forgery of the instrument in issue; provided that a

person may not be convicted of both criminal possession of a forged instrument and forgery with respect to the same instrument.

Title L. Offenses Against Public Administration

Article 195. Official Misconduct and Obstruction of Public Servants Generally

§ 195.00 Official misconduct

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or
2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor

§ 195.20 Defrauding the government

A person is guilty of defrauding the government when, being a public servant or party officer, he or she:

- (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:
 - (i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or
 - (ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; and
- (b) so obtains property, services or other resources with a value in excess of one thousand dollars from such state, political subdivision or governmental instrumentality.

Defrauding the government is a class E felony

Article 200. Bribery Involving Public Servants and Related Offenses

§ 200.00 Bribery in the third degree

A person is guilty of bribery in the third degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the third degree is a class D felony

§ 200.03 Bribery in the second degree

A person is guilty of bribery in the second degree when he confers, or offers or agrees to confer, any benefit valued in excess of five thousand dollars upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the second degree is a class C felony

§ 200.04 Bribery in the first degree

A person is guilty of bribery in the first degree when the person confers, or offers or agrees to confer: (1) any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of this part or an attempt to commit any such class A felony; or (2) any benefit valued in excess of one hundred thousand dollars upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the first degree is a class B felony

§ 200.05 Bribery; defense

In any prosecution for bribery, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

§ 200.10 Bribe receiving in the third A public servant is guilty of bribe receiving in the third degree when he or she solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his or her vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the third degree is a class D felony.

§ 200.11 Bribe receiving in the second degree

A public servant is guilty of bribe receiving in the second degree when he or she solicits, accepts or agrees to accept any benefit valued in excess of five thousand dollars from another person upon an agreement or understanding that his or her vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the second degree is a class C felony.

§ 200.12 Bribe receiving in the first degree

A public servant is guilty of bribe receiving in the first degree when he or she solicits, accepts or agrees to accept: (a) any benefit from another person upon an agreement or understanding that his or her vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of this part or an attempt to commit any such class A felony; or (b) any benefit valued in excess of one hundred thousand dollars from another person upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the first degree is a class B felony

§ 200.15 Bribe receiving; no defense

1. The crimes of (a) bribe receiving, and (b) larceny committed by means of extortion, attempt to commit the same, coercion and attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving that, by reason of the same conduct, the defendant also committed one of such other specified crimes.

2. It is no defense to a prosecution pursuant to the provisions of this article that the public servant did not have power or authority to perform the act or omission for which the alleged bribe, gratuity or reward was given

§ 200.20 Rewarding official misconduct in the second degree

A person is guilty of rewarding official misconduct in the second degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct in the second degree is a class E felony.

§ 200.22 Rewarding official misconduct in the first degree

A person is guilty of rewarding official misconduct in the first degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Rewarding official misconduct in the first degree is a class C felony.

§ 200.25 Receiving reward for official misconduct in the second degree

A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony

§ 200.27 Receiving reward for official misconduct in the first degree

A public servant is guilty of receiving reward for official misconduct in the first degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Receiving reward for official misconduct in the first degree is a class C felony

§ 200.30 Giving unlawful gratuities

A person is guilty of giving unlawful gratuities when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Giving unlawful gratuities is a class A misdemeanor.

§ 200.35 Receiving unlawful gratuities

public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

§ 200.40 Bribe giving and bribe receiving for public office; definition of term

As used in [sections 200.45](#) and [200.50](#) , “party officer” means a person who holds any position or office in a political party, whether by election, appointment or otherwise

§ 200.45 Bribe giving for public office

A person is guilty of bribe giving for public office when he confers, or offers or agrees to confer, any money or other property upon a public servant or a party officer upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe giving for public office is a class D felony.

§ 200.50 Bribe receiving for public office

A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a class D felony

§ 200.55 Impairing the integrity of a government licensing examination

A person is guilty of impairing the integrity of a government licensing examination when, with intent to obtain a benefit for himself or herself, or for another person, he or she:

1. Wrongfully alters or changes an applicant's grade on a government licensing examination; or
2. Causes any false or inaccurate grade to be entered into a government licensing registry; or
3. Provides answers, with an intent to wrongfully benefit another, to current questions on a pending government licensing examination; or
4. Wrongfully provides a copy of a current test used to determine competence in a licensed profession, trade, craft or other vocation.

Impairing the integrity of a government licensing examination is a class D felony.

§ 200.56 Corrupt use of position or authority

A person is guilty of corrupt use of position or authority if such person:

1. While holding public office, or being nominated or seeking a nomination therefor, corruptly uses or promises to use, directly, or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or
2. Being a public officer or employee of the state or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal or increase or decrease of salary of any public officer or employee, corruptly promises or threatens to use any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employee, or on account of the vote or political action of such officer or employee; or
3. Corruptly makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or
4. Corruptly makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom.

Corrupt use of position or authority is a class E felony.

Art 215 Other Offenses Relating to Judicial and Other Proceedings

Title Y-2 Corrupting the Government

Article 496. Corrupting the Government

§ 496.01 Definitions

For the purposes of this article, “scheme” means any plan, pattern, device, contrivance, or course of action.

§ 496.02 Corrupting the government in the fourth degree

A person is guilty of corrupting the government in the fourth degree when, being a public servant, or acting in concert with a public servant, he or she engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state to obtain property, actual services or other resources, or obtain property, actual services or other resources from the state, or any political subdivision or governmental instrumentality of the state by false or fraudulent pretenses, representations or promises, and thereby wrongfully obtains such property, actual services or other resources.

Corrupting the government in the fourth degree is a class E felony.

§ 496.03 Corrupting the government in the third degree

A person is guilty of corrupting the government in the third degree when, being a public servant, or acting in concert with a public servant, he or she engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state to obtain property, actual services or other resources, or obtain property, actual services or other resources from the state, or any political subdivision or governmental instrumentality of the state by false or fraudulent pretenses, representations or promises, and thereby wrongfully obtains such property, actual services or other resources with a value in excess of one thousand dollars.

Corrupting the government in the third degree is a class D felony.

§ 496.04 Corrupting the government in the second degree

A person is guilty of corrupting the government in the second degree when, being a public servant, or acting in concert with a public servant, he or she engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state to obtain property, actual services or other resources, or obtain property, actual services or other resources from the state, or any political subdivision or governmental instrumentality of the state by false or fraudulent pretenses, representations or promises, and thereby wrongfully obtains such property, actual services or other resources with a value in excess of twenty thousand dollars.

Corrupting the government in the second degree is a class C felony.

§ 496.05 Corrupting the government in the first degree

A person is guilty of corrupting the government in the first degree when, being a public servant, or acting in concert with a public servant, he or she engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state to obtain property, actual services or other resources, or to obtain property, actual services or other resources from the state, or any political subdivision or governmental instrumentality of the state by false or fraudulent pretenses, representations or promises, and thereby wrongfully obtains such property, actual services or other resources with a value in excess of one hundred thousand dollars.

Corrupting the government in the first degree is a class B felony

§ 496.06 Public corruption

1. A person commits the crime of public corruption when: (a) (i) being a public servant he or she commits a specified offense through the use of his or her public office, or (ii) being a person acting in concert with such public servant he or she commits a specified offense, and (b) the state or any political subdivision thereof or any governmental instrumentality within the state is the owner of the property.

2. A “specified offense” is an offense defined by any of the following provisions of this chapter: [section 155.25](#) (petit larceny); [section 155.30](#) (grand larceny in the fourth degree); [section 155.35](#) (grand larceny in the third degree); [section 155.40](#) (grand larceny in the second degree); [section 155.42](#) (grand larceny in the first degree); [section 190.60](#) (scheme to defraud in the second degree); or [section 190.65](#) (scheme to defraud in the first degree).

§ 496.07 Sentencing

When a person is convicted of the crime of public corruption pursuant to [section 496.06](#) of this article and the specified offense is a class C, D or E felony, the crime shall be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant's conviction for an attempt or conspiracy to commit a specified offense, whichever is applicable.

OTHER LINKS TO RELEVANT DOCUMENTATION

- **Procurement and Contracting in New York**– <https://www.osc.ny.gov/state-agencies/contracts>
- **Guide to Financial Operations**– <https://www.osc.ny.gov/state-agencies/gfo>
- **Open Book**– <https://www.osc.ny.gov/open-book-new-york>
- **Orange County IDA Report** <https://www.osc.ny.gov/files/reports/pdf/joint-investigation-orange-co-ida.pdf>

