

P.L. 2005, CHAPTER 191, *approved August 18, 2005*
Senate, No. 1937 (*First Reprint*)

1 **AN ACT** concerning certain contract bidding requirements and
2 amending various parts of statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.18A:18A-21 is amended to read as follows:

8 18A:18A-21. a. Except as provided in section 5 of P.L.1985,
9 c.490 (C.18A:18A-55), all advertisements for bids shall be published
10 in an official newspaper sufficiently in advance of the date fixed for
11 receiving the bids to promote competitive bidding, but in no event less
12 than 10 days prior to such date.

13 b. The advertisement shall designate the manner of submitting and
14 of receiving the bids and the time and place at which the bids will be
15 received. If the published specifications provide for receipt of bids by
16 mail, those bids which are mailed to the board of education shall be
17 sealed and shall be opened only for examination at such time and place
18 as all bids received are unsealed and announced. At such time and
19 place the purchasing agent of the board of education shall publicly
20 receive the bids and thereupon immediately proceed to unseal them
21 and publicly announce the contents, which announcement shall be
22 made in the presence of any parties bidding or their agents who are
23 then and there present. A proper record of the prices and terms shall
24 be made in the minutes of the board. No bids shall be received after
25 the time designated in the advertisement.

26 c. Notice of revisions or addenda to advertisements or bid
27 documents shall be provided as follows:

28 (1) For all contracts except those for construction work, notice
29 shall be published no later than **[five]** seven days, Saturdays, Sundays,
30 and holidays excepted, prior to the date for acceptance of bids, in an
31 official newspaper of the board of education and be provided to any
32 person who has submitted a bid or who has received a bid package, in
33 one of the following ways: (a) in writing by certified mail or (b) by
34 certified facsimile transmission, meaning that the sender's facsimile
35 machine produces a receipt showing date and time of transmission and
36 that the transmission was successful or (c) by a delivery service that
37 provides certification of delivery to the sender.

38 (2) For all contracts for construction work, notice shall be
39 provided no later than seven days, Saturdays, Sundays, or holidays
40 excepted, prior to the date for acceptance of bids, to any person who

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSG committee amendments adopted March 7, 2005.

1 has submitted a bid or who has received a bid package in any of the
2 following ways: i) in writing by certified mail or ii) by certified
3 facsimile transmission, meaning that the sender's facsimile machine
4 produces a receipt showing date and time of transmission and that the
5 transmission was successful or iii) by a delivery service that provides
6 certification of delivery to the sender.

7 d. Failure of the board of education to advertise for the receipt of
8 bids or to provide proper notification of revisions or addenda to
9 advertisements or bid documents related to bids as prescribed by this
10 section shall prevent the board of education from accepting the bids
11 and require the readvertisement for bids pursuant to subsection a. of
12 this section. Failure to obtain a receipt when good faith notice is sent
13 or delivered to the address or telephone facsimile number on file with
14 the board of education shall not be considered failure by the board of
15 education to provide notice.

16 (cf: P.L.1999, c.440, s.67)

17
18 2. Section 14 of P.L.1986, c.43 (C.18A:64-65) is amended to read
19 as follows:

20 14. a. All advertisements for bids shall be published in a legal
21 newspaper sufficiently in advance of the date fixed for receiving the
22 bids to promote competitive bidding but in no event less than 10 days
23 prior to that date for any construction projects or any other contract
24 or purchase. The advertisement shall designate the manner of
25 submitting and of receiving the bids and the time and place at which
26 the bids will be received. If the published specifications provide for
27 receipt of bids by mail, those bids which are mailed to the State
28 college shall be sealed and shall be opened only at such time and place
29 as all bids received are unsealed and announced. At that time and
30 place, the contracting agent of the State college shall publicly receive
31 the bids and thereupon immediately proceed to unseal them and
32 publicly announce the contents, which announcement shall be made in
33 the presence of any parties bidding or their agents who are then and
34 there present. A proper record of the prices and terms shall be made.
35 No bids shall be received after the time designated in the
36 advertisement.

37 b. Notice of revisions or addenda to advertisements or bid
38 documents relating to bids shall be published in a legal newspaper or
39 newspapers no later than seven days, Saturdays, Sundays and holidays
40 excepted, prior to the bid due date. The notice shall be provided to
41 any person who has submitted a bid or who has received a bid
42 package, in one of the following ways: (a) in writing by certified mail
43 or (b) by certified facsimile transmission, meaning that the sender's
44 facsimile machine produces a receipt showing date and time of
45 transmission and that the transmission was successful or (c) by a
46 delivery service that provides certification of delivery to the sender.

1 Failure to advertise or provide proper notification of revisions or
2 addenda to advertisements or bid documents related to bids as
3 prescribed by this section shall prevent the acceptance of bids and
4 require the readvertisement for bids.

5 Failure to obtain a receipt when good faith notice is sent or
6 delivered to the address or telephone facsimile number on file with the
7 ¹[board of education] State college¹ shall not be considered failure by
8 the ¹[board of education] State college¹ to provide notice.

9 (cf: P.L.1994, c.48, s.115)

10
11 3. Section 14 of P.L.1982, c.189 (C.18A:64A-25.14) is amended
12 to read as follows:

13 14. a. All advertisements for bids shall be published in a legal
14 newspaper sufficiently in advance of the date fixed for receiving the
15 bids to promote competitive bidding but in no event less than 10 days
16 prior to such date. The advertisement shall designate the manner of
17 submitting and of receiving the bids and the time and place at which
18 the bids will be received. If the published specifications provide for
19 receipt of bids by mail, those bids which are mailed to the county
20 college shall be sealed and shall be opened only at such time and place
21 as all bids received are unsealed and announced. At such time and
22 place, the contracting agent of the county college shall publicly receive
23 the bids and thereupon immediately proceed to unseal them and
24 publicly announce the contents, which announcement shall be made in
25 the presence of any parties bidding or their agents who are then and
26 there present. A proper record of the prices and terms shall be made.
27 No bids shall be received after the time designated in the
28 advertisement.

29 b. Notice of revisions or addenda to advertisements or bid
30 documents relating to bids shall be published in a legal newspaper no
31 later than seven days, Saturdays, Sundays and holidays excepted, prior
32 to the bid due date. The notice shall be provided to any person who
33 has submitted a bid or who has received a bid package, in one of the
34 following ways: (a) in writing by certified mail or (b) by certified
35 facsimile transmission, meaning that the sender's facsimile machine
36 produces a receipt showing date and time of transmission and that the
37 transmission was successful or (c) by a delivery service that provides
38 certification of delivery to the sender. Failure to advertise or provide
39 proper notification of revisions or addenda to advertisements or bid
40 documents related to bids as prescribed by this section shall prevent
41 the acceptance of bids and require the readvertisement for bids.
42 Failure to obtain a receipt when good faith notice is sent or delivered
43 to the address or telephone facsimile number on file with the ¹[board
44 of education] county college¹ shall not be considered failure by the
45 ¹[board of education] county college¹ to provide notice.

46 (cf: P.L.1982, c.189, s.14)

1 4. Section 52 of P.L.2000, c.72 (C.34:1B-5.7) is amended to read
2 as follows:

3 52. a. In undertaking any school facilities projects where the cost
4 of construction, reconstruction, rehabilitation or improvement will
5 exceed \$25,000, the authority may prepare, or cause to be prepared,
6 separate plans and specifications for: (1) the plumbing and gas fitting
7 and all work and materials kindred thereto, (2) the steam and hot
8 water heating and ventilating apparatus, steam power plants and all
9 work and materials kindred thereto, (3) the electrical work, (4)
10 structural steel and miscellaneous iron work and materials, and (5) all
11 general construction, which shall include all other work and materials
12 required to complete the building.

13 b. The authority shall advertise and receive (1) separate bids for
14 each of the branches of work specified in subsection a. of this section;
15 or (2) bids for all the work and materials required to complete the
16 school facilities project to be included in a single overall contract, in
17 which case there shall be set forth in the bid the name or names of all
18 subcontractors to whom the bidder will subcontract for the furnishing
19 of any of the work and materials specified in branches (1) through (4)
20 in subsection a. of this section; or (3) both.

21 c. Contracts shall be awarded as follows: (1) if bids are received in
22 accordance with paragraph (1) of subsection b. of this section, the
23 authority shall determine the responsible bidder for each branch whose
24 bid, conforming to the invitation for bids, will be most advantageous
25 to the authority, price and other factors considered; (2) if bids are
26 received in accordance with paragraph (2) of subsection b. of this
27 section, the authority shall determine the responsible bidder for the
28 single overall contract whose bid, conforming to the invitation for
29 bids, will be the most advantageous to the authority, price and other
30 factors considered; or (3) if bids are received in accordance with
31 paragraph (3) of subsection b. of this section, the authority shall award
32 separate contracts for each branch of work specified in subsection a.
33 of this section if the sum total of the amounts bid by the responsible
34 bidders for each branch, as determined pursuant to paragraph (1) of
35 this subsection, is less than the amount bid by the responsible bidder
36 for all of the work and materials, as determined pursuant to paragraph
37 (2) of this subsection; but if the sum total of the amounts bid by the
38 responsible bidder for each branch, as determined pursuant to
39 paragraph (1) of this subsection is not less than the amount bid by the
40 responsible bidder for all of the work and materials, as determined
41 pursuant to paragraph (2) of this subsection, the authority shall award
42 a single over-all contract to the responsible bidder for all of the work
43 and materials as determined pursuant to paragraph (2) of this
44 subsection.

45 d. For the purposes of this section, "other factors" means the
46 evaluation by the authority of the ability of the single contractor or the

1 abilities of the multiple contractors to complete the contract in
2 accordance with its requirements and includes requirements relating to
3 the experience and qualifications of the contractor or contractors and
4 their key personnel in projects of similar type and complexity; the
5 performance of the contractor or contractors on prior contracts with
6 the authority or the State; the experience and capability of the
7 contractor or contractors and their key personnel in respect to any
8 special technologies, techniques or expertise that the project may
9 require; the contractor's understanding of the means and methods
10 needed to complete the project on time and within budget; the
11 timetable to complete the project; the contractor's plan for quality
12 assurance and control; and other similar types of factors. The "other
13 factors" to be considered in evaluating bids and the weights assigned
14 to price and these "other factors" shall be determined by the authority
15 prior to the advertisement for bids for school facilities projects. In its
16 evaluation of bids, the consideration given to price by the authority
17 shall be at least equal to the consideration given to the combination of
18 all "other factors."

19 e. The authority shall require from all contractors to which it
20 awards contracts pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.), the
21 delivery of a payment performance bond issued in accordance with
22 N.J.S.2A:44-143 et seq.

23 f. The authority shall adopt regulations to implement this section
24 which shall include, but not be limited to, the procedural requirements
25 for: (1) the evaluation and weighting of price and "other factors" in the
26 awarding of contracts; and (2) the appealing of a prequalification
27 classification and rating, a bid rejection and a contract award
28 recommendation.

29 g. Each evaluation committee selected by the authority to review
30 and evaluate bids shall, at a minimum, contain a representative from
31 the district in which the school facilities project is located if such
32 district elects to participate.

33 h. ¹All advertisements for bids shall be published in a legal
34 newspaper sufficiently in advance of the date fixed for receiving the
35 bids to promote competitive bidding but in no event less than 10 days
36 prior to such date.¹ Notice of revisions or addenda to advertisements
37 or bid documents relating to bids shall be advertised to best give
38 notice to bidders no later than seven days, Saturdays, Sundays and
39 holidays excepted, prior to the bid due date. The notice shall be
40 provided to any person who has submitted a bid or who has received
41 a bid package, in one of the following ways: (a) in writing by certified
42 mail or (b) by certified facsimile transmission, meaning that the
43 sender's facsimile machine produces a receipt showing date and time
44 of transmission and that the transmission was successful or (c) by a
45 delivery service that provides certification of delivery to the sender.
46 Failure to advertise or provide proper notification of revisions or

1 addenda to advertisements or bid documents related to bids as
2 prescribed by this section shall prevent the acceptance of bids and
3 require the readvertisement for bids. Failure to obtain a receipt when
4 good faith notice is sent or delivered to the address or telephone
5 facsimile number on file with the ¹[board of education] authority¹
6 shall not be considered failure by the ¹[board of education] authority¹
7 to provide notice.

8 (cf: P.L.2000, c.72, s.52)

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10 5. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to
11 read as follows:

12 23. a. All advertisements for bids shall be published in an official
13 newspaper of the contracting unit sufficiently in advance of the date
14 fixed for receiving the bids to promote competitive bidding, but in no
15 event less than 10 days prior to such date; except that all
16 advertisements for bids on contracts for the collection and disposal of
17 municipal solid waste shall be published in an official newspaper of the
18 contracting unit circulating in the county or municipality, and in at
19 least one newspaper of general circulation published in the State,
20 sufficiently in advance of the date fixed for receiving the bids to
21 promote competitive bidding, but not less than 60 days prior to that
22 date.

23 b. The advertisement shall designate the manner of submitting and
24 the method of receiving the bids and the time and place at which the
25 bids will be received. If the published specifications provide for
26 receipt of bids by mail, those bids which are mailed to the contracting
27 unit shall be sealed and shall only be opened for examination at such
28 time and place as all bids received are unsealed and announced. At
29 such time and place the contracting agent of the contracting unit shall
30 publicly receive the bids, and thereupon immediately proceed to unseal
31 them and publicly announce the contents, which announcement shall
32 be made in the presence of any parties bidding or their agents, who are
33 then and there present, and shall also make proper record of the prices
34 and terms, upon the minutes of the governing body, if the award is to
35 be made by the governing body of the contracting unit, or in a book
36 kept for that purpose, if the award is to be made by other than the
37 governing body, and in such latter case it shall be reported to the
38 governing body of the contracting unit for its action thereon, when
39 such action thereon is required. No bids shall be received after the time
40 designated in the advertisement.

41 c. Notice of revisions or addenda to advertisements or bid
42 documents shall be provided as follows:

43 1) For all contracts except those for construction work and
44 municipal solid waste collection and disposal service, notice shall be
45 published no later than ~~[five]~~ seven days, Saturdays, Sundays, and
46 holidays excepted, prior to the date for acceptance of bids, in an

1 official newspaper of the contracting unit and be provided to any
2 person who has submitted a bid or who has received a bid package, in
3 one of the following ways: i) in writing by certified mail or ii) by
4 certified facsimile transmission, meaning that the sender's facsimile
5 machine produces a receipt showing date and time of transmission and
6 that the transmission was successful or iii) by a delivery service that
7 provides certification of delivery to the sender.

8 2) For all contracts for construction work, notice shall be provided
9 no later than seven days, Saturdays, Sundays, or holidays excepted,
10 prior to the date for acceptance of bids, to any person who has
11 submitted a bid or who has received a bid package in any of the
12 following ways: i) in writing by certified mail or ii) by certified
13 facsimile transmission, meaning that the sender's facsimile machine
14 produces a receipt showing date and time of transmission and that the
15 transmission was successful or iii) by a delivery service that provides
16 certification of delivery to the sender.

17 3) For municipal solid waste collection and disposal contracts,
18 notice shall be published in an official newspaper of the contracting
19 unit and in at least one newspaper of general circulation published in
20 the State no later than [five] seven days, Saturdays, Sundays, and
21 holidays excepted, prior to the date for acceptance of bids.

22 d. Failure of the contracting unit to advertise for the receipt of bids
23 or to provide proper notification of revisions or addenda to
24 advertisements or bid documents related to bids as prescribed by this
25 section shall prevent the contracting unit from accepting the bids and
26 require the readvertisement for bids pursuant to subsection a. of this
27 section. Failure to obtain a receipt when good faith notice is sent or
28 delivered to the address or telephone facsimile number on file with the
29 contracting unit shall not be considered failure by the contracting unit
30 to provide notice.

31 (cf: P.L.1999, c.440, s.31)

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33 6. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read as
34 follows:

35 7. Whenever advertising is required: (a) specifications and
36 invitations for bids shall permit such full and free competition as is
37 consistent with the procurement of supplies and services necessary to
38 meet the requirements of the using agency and shall, wherever
39 practicable, include such factors as life-cycle costs, sliding percentage
40 preference scales, or other similar analysis as shall be deemed effective
41 by the Director of the Division of Purchase and Property, hereinafter
42 referred to as the director, (b) the advertisement for bids shall be in
43 such newspaper or newspapers selected by the State Treasurer as will
44 best give notice thereof to bidders and shall be sufficiently in advance
45 of the purchase or contract to promote competitive bidding; (c) the
46 advertisement shall designate the time and place when and where

1 sealed proposals shall be received and publicly opened and read, the
2 amount of the cash or certified check, if any, which must accompany
3 each bid, and such other terms as the State Treasurer may deem
4 proper; (d) notice of revisions or addenda to advertisements or bid
5 documents relating to bids shall be published in a newspaper or
6 newspapers as selected by the State Treasurer to best give notice to
7 bidders and sent to the prospective bidder no later than ~~five~~ seven
8 days, Saturdays, Sundays and holidays excepted, prior to the bid due
9 date; (e) failure to advertise for the receipt of bids or to provide
10 proper notification of revisions or addenda to advertisements or bid
11 documents related to bids as prescribed by subsection (d) of this
12 section shall prevent the acceptance of bids and require the
13 readvertisement for bids; (f) for any procurement, the State Treasurer
14 or the director may negotiate with bidders, after bid opening, the final
15 terms and conditions of any procurement, including price; such ability
16 to so negotiate must be expressly set forth in the applicable invitation
17 to bid; (g) award shall be made with reasonable promptness, after
18 negotiation with bidders where authorized, by written notice to that
19 responsible bidder whose bid, conforming to the invitation for bids,
20 will be most advantageous to the State, price and other factors
21 considered. Any or all bids may be rejected when the State Treasurer
22 or the Director of the Division of Purchase and Property determines
23 that it is in the public interest so to do. The State Treasurer or
24 designee may adopt, pursuant to the "Administrative Procedure Act,"
25 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as
26 may be necessary to implement the provisions of this section.

27 This section shall apply to all bids received on and after the date of
28 enactment of P.L.1999, c.440.

29 (cf: P.L.1999, c.440, s.96)

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31 7. This act shall take effect immediately but shall be inoperative
32 until the 90th day after enactment.

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37 Provides uniform period for certain contracting entities to issue
38 changes or addenda to bid advertisements.