

SENATE, No. 3137

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED OCTOBER 18, 2018

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

The “Electronic Bidding Construction Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/30/2018)

1 AN ACT concerning public contracts and supplementing various
2 parts of the statutory law.

3

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

6

7 1. Sections 1 through 8 of P.L. , c. (C.) (pending
8 before the Legislature as this bill) shall be known and may be cited
9 as the “Electronic Bidding Construction Act.”

10

11 2. The Legislature finds and declares that advances in
12 electronic technology offer opportunities to enhance governmental
13 efficiencies. In order to explore these avenues of improved
14 government efficiency, it is in the best interests of the State to
15 require public entities to adopt proven technologies for the
16 procurement of public works construction through means of
17 electronic technology, and to require the State to promulgate
18 standards for the use of these technologies that provide for the
19 integrity and procedural protections of sealed public bidding and
20 competitive contracting translated to an electronic environment.

21

22 3. As used in P.L. , c. (C.) (pending before the
23 Legislature as this bill):

24 “Public contracting unit” means a government entity that
25 contracts for the procurement of goods, services, or the construction
26 of public works pursuant to the “Public School Contracts Law,”
27 N.J.S.A.18A:18A-1 et seq.; the “State College Contracts Law,”
28 N.J.S.A.18A:64-52 et seq.; the “County College Contracts Law,”
29 N.J.S.A.18A:64A-25.1 et seq.; N.J.S.A.52:18A-235 et seq. (the
30 schools development authority law); the “Local Public Contracts
31 Law,” N.J.S.A.40A:11-1 et seq.; and chapters 32, 33, and 34 of
32 Title 52 of the Revised Statutes (the State and its agencies and
33 instrumentalities).

34 “Electronic procurement” means the use of computer technology
35 and the Internet for the advertising and submission of public bids,
36 providing notice of revisions or addenda to advertisements or bid
37 documents, the receipt of proposals and quotations, and related
38 practices to assist in determining the lowest responsible bidder who
39 is most advantageous, price and other factors considered, as
40 appropriate, for the procurement of public works construction.

41 “Public works construction” means any project that is subject to
42 the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-
43 56.25 et seq.), and is contracted for by a public contracting unit for
44 the purposes of construction, reconstruction, demolition, alteration,
45 custom fabrication, repair work, or maintenance work, including
46 painting and decorating, done under contract and paid for, in whole
47 or in part, out of the funds of a public body. Public works
48 construction also means construction, reconstruction, demolition,

1 alteration, custom fabrication, repair work, or maintenance work,
2 done on any property or premises, whether or not the work is paid
3 for from public funds if at the time of the entering into the contract,
4 the property or premises is owned by the government entity.

5
6 4. Public contracting units shall use an electronic procurement
7 process for public works construction contracts whenever the
8 project's value exceeds \$5,000,000, subject to the provisions of
9 P.L. , c. (C.) (pending before the Legislature as this bill).
10 The State Treasurer, pursuant to the "Administrative Procedure
11 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate
12 regulations to effectuate the electronic procurement of public works
13 construction, in consultation with the State Comptroller, the
14 Commissioner of Community Affairs, the Commissioner of
15 Education, and the Secretary of Higher Education. The regulations
16 shall set forth each of the steps the State Treasurer deems
17 appropriate to be taken by each public contracting unit for contracts
18 that meet those criteria. The regulations shall also set forth a
19 procedure to be followed by a public contracting unit for the
20 awarding of a contract for the administration of the electronic
21 procurement process.

22
23 5. a. The regulations adopted pursuant to section 4 of P.L. ,
24 c. (C.) (pending before the Legislature as this bill) shall require
25 that contracts to be awarded for public works construction pursuant
26 to the provisions of P.L. , c. (C.) (pending before the
27 Legislature as this bill) contain the following bidding components:

- 28 (1) general conditions of the contract;
- 29 (2) plans and specifications of the public works construction
30 project;
- 31 (3) competitive bidding for the contract, if appropriate;
- 32 (4) prequalification of firms submitting bids;
- 33 (5) statement of corporate ownership of the entity or entities
34 submitting bids;
- 35 (6) bid bond and performance bond security;
- 36 (7) execution of the contract;
- 37 (8) certification of financial ability to complete work;
- 38 (9) commencement of work;
- 39 (10) single-prime bids;
- 40 (11) prevailing wage mandate;
- 41 (12) acknowledgement of addenda;
- 42 (13) naming of prime subcontractors;
- 43 (14) specified alternates;
- 44 (15) explicit retainage amount disclosed;
- 45 (16) non-collusion affidavit; and
- 46 (17) political contribution disclosure.

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- 1 b. The State Treasurer shall also promulgate a bid proposal form
2 to be used by contractors or vendors bidding for work under P.L. ,
3 c. (C.) (pending before the Legislature as this bill).
4 c. The regulations shall require that a contractor or vendor
5 seeking a contract for public works construction pursuant to P.L. ,
6 c. (C.) (pending before the Legislature as this bill) be
7 classified with the Division of Property Management and
8 Construction in the Department of Treasury prior to submitting a
9 bid.
10
- 11 6. The regulations adopted pursuant to section 4 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill) shall require
13 that electronic procurement processes meet the following
14 requirements:
15 a. five years of use by a public contracting unit to secure
16 electronic bids;
17 b. allow public contracting units to advertise bids and distribute
18 bidding documents including plans and specifications;
19 c. be a closed loop system that allows contractors, vendors, and
20 bidders, to receive bid solicitations and documentation, as well as
21 submit bids electronically;
22 d. provide a digital lockbox that ensures bid information cannot
23 be accessed by a third party before the bid deadline, including an
24 electronic bidding servicer or the State;
25 e. allow bids to be encrypted upon submission and when in the
26 digital lockbox;
27 f. use digital signature technology and provide for identity
28 verification;
29 g. allow for electronic bid validation;
30 h. allow bids to be edited or withdrawn by the vendor or bidder
31 at any point up to the published bid deadline;
32 i. allow addenda to be issued electronically with addenda
33 automatically applied to the online bid form;
34 j. provide capabilities to create and edit templates of bid forms;
35 k. provide the means for the State to require data types,
36 including but not limited to numeric prices;
37 l. calculate extensions for contractors, bidders or vendors based
38 on price and quality when applicable;
39 m. alert contractors, vendors, and bidders of missing required
40 data;
41 n. provide email notification to contractors, vendors, and bidders
42 of issuance of bid advertisement and addenda;
43 o. provide commodity codes to allow for targeted notifications
44 to contractors, vendors, and bidders;
45 p. provide system implementation services and training to public
46 contracting units at no cost; and
47 q. offer scheduled training webinars for contractors, vendors,
48 and bidders at no cost.

1 7. a. The regulations promulgated by the State Treasurer
2 pursuant to section 4 of P.L. , c. (C.) (pending before the
3 Legislature as this bill) shall include, but not be limited to, practices
4 that, notwithstanding any other law to the contrary:

5 (1) convert the current statutory, regulatory, and policy
6 procedures related to sealed bidding to an electronic procurement
7 environment;

8 (2) authorize public contracting units to accept commercial
9 standards for electronic forms of bid security; and

10 (3) establish minimum standards that shall be met by systems
11 and services that provide and administer electronic procurement
12 processes.

13 b. The State Treasurer shall also consult with: the Attorney
14 General to develop safeguards to protect against collusion and bid
15 rigging; the Division of Purchase and Property in the Department of
16 the Treasury to develop practices used for electronic procurement;
17 and the Office of Information Technology in, but not of, the
18 Department of the Treasury, to ensure the privacy and security of
19 electronic transactions.

20 c. Notwithstanding any law, rule, or regulation to the contrary,
21 plans and specifications for public works construction contracts that
22 require the seal and signature of a professional engineer, architect,
23 or land surveyor may be included in an electronic file used for
24 electronic procurement as long as the original document from which
25 the electronic file is derived contains a physical or electronic seal
26 and signature as otherwise required by law. If the State Board of
27 Engineers and Land Surveyors and the New Jersey State Board of
28 Architects adopt rules to permit digital seals and signatures, those
29 rules shall supersede this subsection.
30

31 8. Notwithstanding any provisions of chapters 32, 33, and 34 of
32 Title 52 of the Revised Statutes to the contrary, the State, and any
33 agency or instrumentality of the State, shall use electronic
34 procurement processes for public works construction contracts
35 whenever the project's value exceeds \$5,000,000, in accordance
36 with the provisions of P.L. , c. (C.) (pending before the
37 Legislature as this bill).
38

39 9. Notwithstanding any provisions of the "Public School
40 Contracts Law," N.J.S.18A:18A-1 et seq. to the contrary, a board of
41 education shall use electronic procurement processes for public
42 works construction contracts whenever the project's value exceeds
43 \$5,000,000, in accordance with the provisions of P.L. , c. (C.)
44 (pending before the Legislature as this bill).
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46 10. Notwithstanding any provisions of the "State College
47 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.) to the
48 contrary, a State college shall use electronic procurement processes

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1 for public works construction contracts whenever the project's
2 value exceeds \$5,000,000, in accordance with the provisions of
3 P.L. , c. (C.) (pending before the Legislature as this bill).

4
5 11. Notwithstanding any provisions of the "County College
6 Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.) to the
7 contrary, a county college shall use electronic procurement
8 processes for public works construction contracts whenever the
9 project's value exceeds \$5,000,000, in accordance with the
10 provisions of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12
13 12. Notwithstanding any provisions of P.L.2007, c.137
14 (C.52:18A-235 et seq.) to the contrary, the development authority
15 shall use electronic procurement processes for public works
16 construction contracts whenever the project's value exceeds
17 \$5,000,000, in accordance with the provisions of P.L. , c. (C.)
18 (pending before the Legislature as this bill).

19
20 13. Notwithstanding any provisions of the "Local Public
21 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) to the
22 contrary, a contracting unit shall use electronic procurement
23 processes for public works construction contracts whenever the
24 project's value exceeds \$5,000,000, subject to the provisions of
25 P.L. , c. (C.) (pending before the Legislature as this bill).

26
27 14. This act shall take effect on the first day of the sixth month
28 next following enactment.

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30

31 STATEMENT

32

33 This bill would require public contracting agencies that contract
34 for the construction of public works to use electronic procurement
35 technologies for public works construction projects when a
36 project's value exceeds \$5,000,000. These entities include those
37 subject to the "Public School Contracts Law," N.J.S.A.18A:18A-1
38 et seq.; the "State College Contracts Law," N.J.S.A.18A:64-52 et
39 seq.; the "County College Contracts Law," N.J.S.A.18A:64A-25.1
40 et seq.; N.J.S.A.52:18A-235 et seq. (the schools development
41 authority law), the "Local Public Contracts Law," N.J.S.A.40A:11-
42 1 et seq.; and chapters 32, 33, and 34 of Title 52 of the Revised
43 Statutes (the State and its agencies and instrumentalities).

44 The bill requires the State Treasurer to promulgate regulations to
45 effectuate the electronic procurement of public works as required by
46 the bill. The regulations must set forth each of the steps the
47 treasurer deems appropriate to be taken by each public contracting
48 unit when a public works project project's value exceeds

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1 \$5,000,000. The regulations must also create a procedure to be
2 followed by a public contracting unit for the awarding of a contract
3 for the administration of the electronic procurement process, and all
4 aspects of electronic procurement.

5 The regulations must also require that a contractor or vendor
6 seeking a contract for public works under the bill be classified with
7 the Division of Property Management and Construction in the
8 Department of the Treasury prior to submitting a bid.

9 The regulations must also require certain bidding components
10 specified in the bill.

11 The regulations promulgated by the treasurer must also set
12 qualifications to be met by firms providing electronic procurement
13 processes under the bill.