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SENATE, No. 3137

STATE OF NEW JERSEY
218th LEGISLATURE

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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 reported by the Assembly State and Local Government Committee on May 16, 2019, with amendments.



(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 ²“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).²

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
39 ²“who is” , the bidder whose bid is determined to be² most
40 advantageous, price and other factors considered, ²“as appropriate,
41 for the procurement of public works construction” or other agency-
42 appropriate bid or proposal procurement standard².

43 ²“Local public contracting unit” means a government entity that

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:

¹Senate SSG committee amendments adopted December 17, 2018.

²Assembly ASL committee amendments adopted May 16, 2019.

1 contracts for the procurement of goods, services, or the construction
 2 of public works pursuant to the “Public School Contracts Law,”
 3 N.J.S.18A:18A-1 et seq.); the “County College Contracts Law,”
 4 P.L.1982, c.189 (C.18A:64A-25.1 et seq.); and the “Local Public
 5 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.).²

6 “Public works construction” means any project that is subject to
 7 the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-
 8 56.25 et seq.), and is contracted for by a public contracting unit for
 9 the purposes of construction, reconstruction, demolition, alteration,
 10 custom fabrication, repair work, or maintenance work, including
 11 painting and decorating, done under contract and paid for, in whole
 12 or in part, out of the funds of a public body. Public works
 13 construction also means construction, reconstruction, demolition,
 14 alteration, custom fabrication, repair work, or maintenance work,
 15 done on any property or premises, whether or not the work is paid
 16 for from public funds if at the time of the entering into the contract,
 17 the property or premises is owned by the government entity.

18 ²“State public contracting unit” means a government entity that
 19 contracts for the procurement of goods, services, or the construction
 20 of public works pursuant to the “State College Contracts Law,”
 21 P.L.1986, c.43 (C.18A:64-52 et seq.); P.L.2007, c.137 (C.52:18A-
 22 235 et seq.); and chapters 32, 33, and 34 of Title 52 of the Revised
 23 Statutes.²

24
 25 4. ²**[Public]** a. Local public² contracting units shall use an
 26 electronic procurement process for public works construction
 27 contracts whenever the project’s value exceeds \$5,000,000, subject
 28 to the provisions of P.L. , c. (C.) (pending before
 29 the Legislature as this bill).

30 ²b. State public contracting units shall use an electronic
 31 procurement process for public works construction contracts when
 32 the project requires public advertisement, subject to the provisions
 33 of P.L. , c. (C.) (pending before the Legislature as
 34 this bill

35 c.² The State Treasurer, pursuant to the “Administrative
 36 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall
 37 promulgate regulations to effectuate the electronic procurement of
 38 public works construction, in consultation with the State
 39 Comptroller, the Commissioner of Community Affairs, the
 40 Commissioner of Education, and the Secretary of Higher Education.
 41 The regulations shall set forth each of the steps the State Treasurer
 42 deems appropriate to be taken by each ²State or local² public
 43 contracting unit for contracts that meet those criteria. The
 44 regulations shall also set forth a procedure to be followed by a
 45 ¹State or local¹ public contracting unit for the awarding of a
 46 contract for the administration of the electronic procurement
 47 process.

- 1 5. a. The regulations adopted pursuant to section 4 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill) shall require
3 that contracts to be awarded for public works construction pursuant
4 to the provisions of P.L. , c. (C.) (pending before the
5 Legislature as this bill) contain the following bidding components:
6 (1) general conditions of the contract;
7 (2) plans and specifications of the public works construction
8 project;
9 (3) competitive bidding for the contract, if appropriate;
10 (4) ²**prequalification** classification² of firms submitting bids;
11 (5) statement of corporate ownership of the entity or entities
12 submitting bids;
13 (6) bid bond and performance bond security;
14 (7) execution of the contract;
15 (8) certification of financial ability to complete work;
16 (9) commencement of work;
17 (10) ¹**single-prime bids**;
18 (11) ¹**prevailing wage mandate**;
19 ¹**(12)** ²**[11¹]** (11)² acknowledgement of addenda;
20 ¹**(13)** ²**[12¹]** (12)² naming of prime subcontractors;
21 ¹**(14)** ²**[13¹]** (13)² specified alternates;
22 ¹**(15)** ²**[14¹]** explicit retainage amount disclosed;
23 ¹**(16)** ²**[15¹]** (14)² non-collusion affidavit; and
24 ¹**(17)** ²**[16¹]** (15)² political contribution disclosure.
- 25 b. The State Treasurer shall also promulgate a bid proposal
26 form to be used by contractors or vendors bidding for work under
27 P.L. , c. (C.) (pending before the Legislature as
28 this bill).
- 29 c. The regulations shall require that a contractor or vendor
30 seeking a contract for public works construction pursuant to P.L. ,
31 c. (C.) (pending before the Legislature as this bill) be
32 classified with the Division of Property Management and
33 Construction in the Department of ¹the¹ Treasury ¹, or be
34 prequalified by the Department of Transportation, New Jersey
35 Transit, or the New Jersey Turnpike Authority,¹ prior to submitting
36 a bid.
- 37
- 38 6. The regulations adopted pursuant to section 4 of P.L. ,
39 c. (C.) (pending before the Legislature as this bill) shall require
40 that electronic procurement processes meet the following
41 requirements:
42 a. five years of use by a public contracting unit to secure
43 electronic bids;
44 b. allow public contracting units to advertise bids and distribute
45 bidding documents including plans and specifications;

- 1 c. be a closed loop system that allows contractors, vendors, and
- 2 bidders, to receive bid solicitations and documentation, as well as
- 3 submit bids electronically;
- 4 d. provide a digital lockbox that ensures bid information cannot
- 5 be accessed by a third party before the bid deadline, including an
- 6 electronic bidding servicer or the State;
- 7 e. allow bids to be encrypted upon submission and when in the
- 8 digital lockbox;
- 9 f. use digital signature technology and provide for identity
- 10 verification;
- 11 g. allow for electronic bid validation;
- 12 h. allow bids to be ²[edited or]² withdrawn ²and resubmitted²
- 13 by the vendor or bidder at any point up to the published bid
- 14 deadline;
- 15 i. allow addenda to be issued electronically with addenda
- 16 automatically applied to the online bid form;
- 17 j. provide capabilities to create and edit templates of bid
- 18 forms;
- 19 k. provide the means for the State to require data types,
- 20 including but not limited to numeric prices;
- 21 l. calculate extensions for contractors, bidders or vendors
- 22 based on price and quality when applicable;
- 23 m. alert contractors, vendors, and bidders of missing required
- 24 data;
- 25 n. provide email notification to contractors, vendors, and
- 26 bidders of issuance of bid advertisement and addenda;
- 27 o. provide commodity ²or classification² codes ²as required by
- 28 the contracting agency² to allow for targeted notifications to
- 29 contractors, vendors, and bidders;
- 30 p. provide system implementation services and training to
- 31 public contracting units at no cost; and
- 32 q. offer scheduled training webinars for contractors, vendors,
- 33 and bidders at no cost.
- 34
- 35 7. a. The regulations promulgated by the State Treasurer
- 36 pursuant to section 4 of P.L. , c. (C.) (pending before the
- 37 Legislature as this bill) shall include, but not be limited to, practices
- 38 that, notwithstanding any other law to the contrary:
- 39 (1) convert the current statutory, regulatory, and policy
- 40 procedures related to sealed bidding to an electronic procurement
- 41 environment;
- 42 (2) authorize public contracting units to accept commercial
- 43 standards for electronic forms of bid security; and
- 44 (3) establish minimum standards that shall be met by systems
- 45 and services that provide and administer electronic procurement
- 46 processes.
- 47 b. The State Treasurer shall also consult with: the Attorney
- 48 General to develop safeguards to protect against collusion and bid

1 rigging; the Division of Purchase and Property ²and the Division of
2 Property Management and Construction² in the Department of the
3 Treasury to develop practices used for electronic procurement; and
4 the Office of Information Technology in, but not of, the Department
5 of the Treasury, to ensure the privacy and security of electronic
6 transactions.

7 c. Notwithstanding any law, rule, or regulation to the contrary,
8 plans and specifications for public works construction contracts that
9 require the seal and signature of a professional engineer, architect,
10 or land surveyor may be included in an electronic file used for
11 electronic procurement as long as the original document from which
12 the electronic file is derived contains a physical or electronic seal
13 and signature as otherwise required by law. If the State Board of
14 Engineers and Land Surveyors and the New Jersey State Board of
15 Architects adopt rules to permit digital seals and signatures, those
16 rules shall supersede this subsection.

17
18 8. Notwithstanding any provisions of chapters 32, 33, and 34 of
19 Title 52 of the Revised Statutes to the contrary, the State, and any
20 agency or instrumentality of the State, shall use electronic
21 procurement processes for public works construction contracts
22 whenever the ²[project's value exceeds \$5,000,000,] project
23 requires public advertisement pursuant to section 7 of P.L.1954,
24 c.48 (C.52:34-12).² in accordance with the provisions of P.L. ,
25 c. (C.) (pending before the Legislature as this bill).

26
27 9. Notwithstanding any provisions of the "Public School
28 Contracts Law," N.J.S.18A:18A-1 et seq. to the contrary, a board of
29 education shall use electronic procurement processes for public
30 works construction contracts whenever the project's value exceeds
31 \$5,000,000, in accordance with the provisions of P.L. , c. (C.)
32 (pending before the Legislature as this bill).

33
34 10. Notwithstanding any provisions of the "State College
35 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.) to the
36 contrary, a State college shall use electronic procurement processes
37 for public works construction contracts whenever the ²[project's
38 value exceeds \$5,000,000] project requires public advertisement²,
39 in accordance with the provisions of P.L. , c. (C.)
40 (pending before the Legislature as this bill).

41
42 11. Notwithstanding any provisions of the "County College
43 Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.) to the
44 contrary, a county college shall use electronic procurement
45 processes for public works construction contracts whenever the
46 project's value exceeds \$5,000,000, in accordance with the

1 provisions of P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3
4 12. Notwithstanding any provisions of P.L.2007, c.137
5 (C.52:18A-235 et seq.) to the contrary, the development authority
6 shall use electronic procurement processes for public works
7 construction contracts whenever the ²**[project's value exceeds**
8 **\$5,000,000]** project requires public advertisement², in accordance
9 with the provisions of P.L. , c. (C.) (pending before the
10 Legislature as this bill).

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

18
19 14. This act shall take effect on the first day of the ²**[sixth]**
20 thirteenth² month next following enactment.