

[First Reprint]

SENATE, No. 2838

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 17, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator VIN GOPAL

District 11 (Monmouth)

Co-Sponsored by:

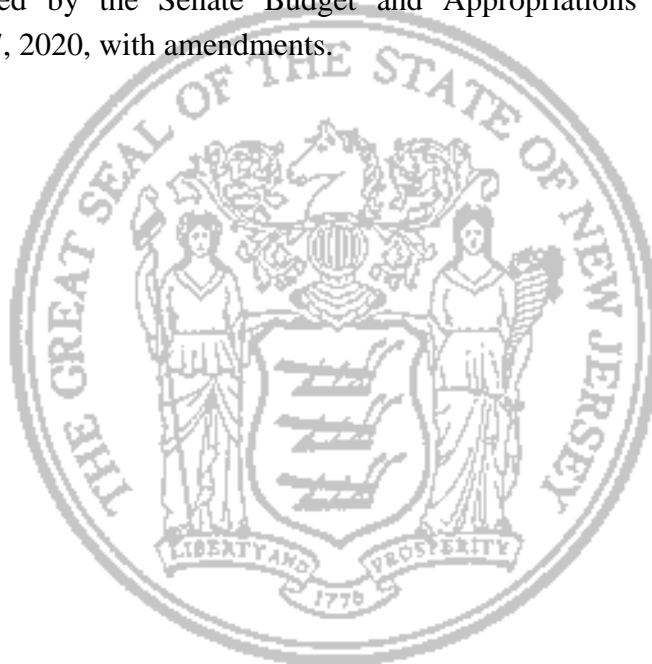
Senator Pou

SYNOPSIS

Revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on September 17, 2020, with amendments.



(Sponsorship Updated As Of: 9/24/2020)

1 AN ACT concerning certain aspects of the State procurement
2 process and amending P.L.2012, c.25 and P.L.1954, c.48.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 4 of P.L.2012, c.25 (C.52:32-58) is amended to read
8 as follows:

9 4. a. A State agency shall require a person or entity that
10 submits a bid or proposal or otherwise proposes to enter into or
11 renew a contract to certify, **[at the time the bid is submitted or]**
12 prior to the time a contract is awarded and at the time the contract is
13 renewed, that the person or entity is not identified on a list created
14 pursuant to subsection b. of section 3 of this act as a person or
15 entity engaging in investment activities in Iran described in
16 subsection f. of section 2 of this act.

17 b. The certification required shall be executed on behalf of the
18 applicable person or entity by an authorized officer or
19 representative of the person or entity.

20 c. In the event that a person or entity is unable to make the
21 certification required because it or one of its parents, subsidiaries,
22 or affiliates as defined in subsection e. of section 2 of this act has
23 engaged in one or more of the activities specified in subsection f. of
24 section 2 of this act, the person or entity shall provide to the State
25 agency concerned, prior to the deadline for delivery of such
26 certification, a detailed and precise description of such activities,
27 such description to be provided under penalty of perjury.

28 d. The certifications provided under subsection a. of this
29 section and disclosures provided under subsection c. of this section
30 shall be disclosed to the public.

31 (cf: P.L.2012, c.25, s.4)

32

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

35 7. a. 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
41 effective by the Director of the Division of Purchase and Property,
42 hereinafter referred to as the director, (b) the advertisement for bids
43 shall be in such newspaper or newspapers and other medium or media
44 selected by the State Treasurer as will best give notice thereof to

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 SBA committee amendments adopted September 17, 2020.

1 bidders and shall be sufficiently in advance of the purchase or contract
2 to promote competitive bidding; (c) the advertisement shall designate
3 the time and secure location when and where proposals, which may be
4 submitted in electronic or other format designated by the director, shall
5 be received, opened and publicly announced, the amount of the cash or
6 certified check, if any, which must accompany each bid, and such
7 other terms as the State Treasurer may deem proper; (d) notice of
8 revisions or addenda to advertisements or bid documents relating to
9 bids shall be published in a newspaper or newspapers and other
10 medium or media selected by the State Treasurer to give notice to
11 bidders at least seven days, Saturdays, Sundays and holidays excepted,
12 prior to the bid due date; (e) failure to advertise for the receipt of bids
13 or to provide proper notification of revisions or addenda to
14 advertisements or bid documents related to bids as prescribed by
15 subsection (d) of this section shall prevent the acceptance of bids and
16 require the readvertisement for bids; (f) for any procurement, other
17 than a contract for the construction or maintenance of a public work
18 procured by other than the director of the Division of Purchase and
19 Property, the State Treasurer or the director may negotiate with
20 bidders the final terms and conditions of any procurement, including
21 price; such ability to so negotiate must be expressly set forth in the
22 applicable invitation to bid and (i) such bids shall not be publicly
23 accessible until after negotiations have been completed and the notice
24 of intent to award the contract has been issued or (ii) notwithstanding
25 subsubparagraph (i) of subparagraph (f), bids or portions thereof, may
26 be publicly accessible if the State Treasurer or the director is procuring
27 via a reverse auction process and the bids, or portions thereof, have
28 been de-identified; (g) award shall be made with reasonable
29 promptness, after negotiation with bidders where authorized, by
30 written or electronic notice to that responsible bidder whose bid,
31 conforming to the invitation for bids, will be most advantageous to the
32 State, price and other factors considered; and (h) the Treasurer shall
33 require, with respect to contracts for information technology goods and
34 services, a limitation of liability determined by the Director of the
35 Division of Purchase and Property. When negotiations occur pursuant
36 to subparagraph f. of this section, a written record of the nature and
37 content of the negotiations, as well as the dates and persons involved,
38 shall become a public record when the notice of intent to award the
39 contract is issued. Notwithstanding the provisions of this subsection,
40 the Director of the Division of Purchase and Property may structure an
41 advertisement for bids to include an auction or reverse auction
42 procedure, related to the procurement of goods, services, or both, ¹with
43 the exception of contracts for the provision of hospital, surgical,
44 obstetrical, and other covered health care services and benefits or for
45 the provider network for those services in connection with the State
46 Health Benefits Program, the School Employees' Health Benefits
47 Program, and Medicaid Managed Care Program, except for a
48 pharmacy benefit management contract as may be allowed by existing

1 law,¹ whereby pricing is revealed to all other qualified bidders during
2 the course of the auction or reverse auction, whenever the director
3 determines that the use of such procedure will result in bids being
4 more advantageous to the State, price and other factors considered.

5 Any or all bids may be rejected when the State Treasurer or the
6 Director of the Division of Purchase and Property determines that it is
7 in the public interest so to do. The State Treasurer or designee may
8 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
9 c.410 (C.52:14B-1 et seq.), such rules and regulations as may be
10 necessary to implement the provisions of this section.

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

13 b. Whenever by law a State independent authority may negotiate
14 with bidders, after bid opening, the final terms and conditions of any
15 procurement, including price, and such ability to so negotiate is
16 expressly set forth in the applicable invitation to bid, a written record
17 of the nature and content of the negotiations, as well as the dates and
18 persons involved, shall not be publicly accessible until after the notice
19 of intent to award the contract is issued.

20 (cf: P.L.2005, c.336, s.14)

21

22 3. This act shall take effect immediately.