

ASSEMBLY, No. 58

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KAVANAUGH

1 **AN ACT** concerning specifications for certain public contracts and
2 amending various parts of the statutory law.

3

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

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7 1. N.J.S.18A:18A-15 is amended to read as follows:

8 18A:18A-15. Specifications generally. Any specifications for an
9 acquisition under this chapter, whether by purchase, contract or
10 agreement, shall be drafted in a manner to encourage free, open and
11 competitive bidding. In particular, no specifications under this chapter
12 may:

13 a. Require any standard, restriction, condition or limitation not
14 directly related to the purpose, function or activity for which the
15 purchase, contract or agreement is made; or

16 b. Require that any bidder be a resident of, or that his place of
17 business be located in, the county or school district in which the
18 purchase will be made or the contract or agreement performed, unless
19 the physical proximity of the bidder is requisite to the efficient and
20 economical purchase or performance of the contract or agreement; or

21 c. Discriminate on the basis of race, religion, sex, national origin;
22 or

23 d. Require, with regard to any purchase, contract or agreement, the
24 furnishing of any "brand name," but may in all cases require "brand
25 name or equivalent[.]" provided that at least three comparable
26 suppliers or manufacturers are named for each category of materials
27 listed in the specifications, except that if the materials to be supplied
28 or purchased are patented or copyrighted or are available only from a
29 single source, such materials or supplies may be purchased by
30 specification in any case in which the resolution authorizing the
31 purchase, contract, sale or agreement so indicates[, and]; the special
32 need for such patented [or], copyrighted or single-source materials or

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

Matter underlined thus is new matter.

1 supplies is directly related to the performance, completion or
2 undertaking of the purpose for which the purchase, contract or
3 agreement is made; in the case of materials specified as being available
4 only from a single source, the specification thereof includes a full
5 description of those materials and an explanation of how their use is
6 directly related to such performance, completion or undertaking,
7 which specification shall be void upon demonstration by a bidder that
8 materials which meet that description are available from at least one
9 alternative source; and a copy of the resolution is included in the
10 specifications; or

11 e. Fail to include any option for renewal, extension, or release
12 which the board of education may intend to exercise or require; or any
13 terms and conditions necessary for the performance of any extra work;
14 or fail to disclose any matter necessary to the substantial performance
15 of the contract or agreement.

16 The specifications for every contract for public work, the entire
17 cost whereof will exceed \$20,000.00, shall provide that the board of
18 education, through its authorized agent, shall upon completion of the
19 contract report to the department as to the contractor's performance,
20 and shall also furnish such report from time to time during
21 performance if the contractor is then in default.

22 Any specification adopted by the board of education which
23 knowingly excludes prospective bidders by reason of the impossibility
24 of performance, bidding or qualification by any but one bidder, except
25 as provided herein, or which does not name at least three comparable
26 suppliers or manufacturers for each category of materials listed in the
27 specifications in any case in which "brand name or equivalent" is
28 required, shall be null and void and of no effect and such purchase,
29 contract or agreement shall be readvertised, and the original purchase,
30 contract or agreement shall be set aside by the board of education.

31 No provision in this section shall be construed to prevent a board
32 of education from designating that a contract, subcontract or other
33 means of procurement of goods, services, equipment or construction
34 shall be awarded to a small business enterprise, a minority business
35 enterprise or a women's business enterprise pursuant to P.L.1985,
36 c.490 (C.18A:18A-51 et seq.).

37 (cf: P.L.1988, c.37, s.10)

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39 2. Section 13 of P.L.1986, c.43 (C.18A:64-64) is amended to read
40 as follows:

41 13. All specifications for any purchase, contract or agreement
42 governed by this article shall be drafted in a manner to encourage free,
43 open and competitive bidding. In particular, no specifications under
44 this article may:

45 a. Require a standard, restriction, condition or limitation not
46 directly related to the purpose, function or activity for which the

- 1 purchase, contract or agreement is made; or
- 2 b. Require that any bidder be a resident of, or that his place of
3 business be located in, the county in which the purchase will be made
4 or the contract or agreement performed, unless the physical proximity
5 of the bidder is requisite to the efficient and economical purchase or
6 performance of the contract or agreement; or
- 7 c. Discriminate on the basis of race, religion, sex or national origin;
8 or
- 9 d. Require with regard to any purchase, contract or agreement the
10 furnishing of any "brand name," although specifications may in all
11 cases require "brand name or equivalent[.]" provided that at least three
12 comparable suppliers or manufacturers are named for each category of
13 materials listed in the specifications, nor shall materials or supplies
14 which are patented or copyrighted or available only from a single
15 source be specified unless the resolution authorizing the purchase,
16 contract or agreement sets forth the manner in which the special need
17 for the patented [or], copyrighted or single-source materials or
18 supplies is directly related to the performance or purpose for which the
19 purchase, contract or agreement is made; in the case of materials
20 specified as being available only from a single source, the specification
21 thereof includes a full description of those materials and an explanation
22 of how their use is directly related to such performance or purpose,
23 which specification shall be void upon demonstration by a bidder that
24 materials which meet that description are available from at least one
25 alternative source; and a copy of the resolution is included in the
26 specifications; or
- 27 e. Fail to include any option for renewal, extension or release
28 which the State college may intend to exercise or require; or
- 29 f. Fail to include any terms and conditions necessary for the
30 performance of any extra work; or
- 31 g. Fail to disclose any matter necessary to the substantial
32 performance of the contract or agreement.
- 33 Any specification adopted by the State college which knowingly
34 excludes prospective bidders by reason of the impossibility of
35 performance, bidding or qualification by any but one bidder, except as
36 provided herein, or which does not name at least three suppliers or
37 manufacturers for each category of materials listed in the specifications
38 in any case in which "brand name or equivalent" is required, shall be
39 null and void and of no effect, and the purchase, contract or agreement
40 shall be readvertised, and the original purchase, contract or agreement
41 shall be set aside by the board of trustees of the State college.
- 42 (cf: P.L.1986, c.43, s.13)
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- 44 3. Section 13 of P.L.1982, c.189 (C.18A:64A-25.13) is amended
45 to read as follows:
- 46 13. All specifications for any purchase, contract or agreement

1 governed by this article shall be drafted in a manner to encourage free,
2 open and competitive bidding. In particular, no specifications under
3 this article may:

4 a. Require a standard, restriction, condition or limitation not
5 directly related to the purpose, function or activity for which the
6 purchase, contract or agreement is made; or

7 b. Require that any bidder be a resident of, or that his place of
8 business be located in, the county in which the purchase will be made
9 or the contract or agreement performed, unless the physical proximity
10 of the bidder is requisite to the efficient and economical purchase or
11 performance of the contract or agreement; or

12 c. Discriminate on the basis of race, religion, sex or national origin;
13 or

14 d. Require with regard to any purchase, contract or agreement the
15 furnishing of any "brand name" , although specifications may in all
16 cases require "brand name or equivalent[,]"provided that at least three
comparable suppliers or manufacturers are named for each category of
materials listed in the specifications, nor shall materials or supplies
19 which are patented or copyrighted or available only from a single
20 source be specified, unless the resolution authorizing the purchase,
21 contract or agreement sets forth the manner in which the special need
22 for such patented [or], copyrighted or single-source materials or
23 supplies is directly related to the performance or purpose for which the
24 purchase, contract or agreement is made; in the case of materials
specified as being available only from a single source, the specification
26 thereof includes a full description of those materials and an explanation
27 of how their use is directly related to such performance or purpose,
28 which specification shall be void upon demonstration by a bidder that
29 materials which meet that description are available from at least one
30 alternative source; and a copy of the resolution is included in the
31 specifications; or

32 e. Fail to include any option for renewal, extension or release
33 which the county college may intend to exercise or require; or

34 f. Fail to include any terms and conditions necessary for the
35 performance of any extra work; or

36 g. Fail to disclose any matter necessary to the substantial
37 performance of the contract or agreement.

38 Any specification adopted by the county college which knowingly
39 excludes prospective bidders by reason of the impossibility of
40 performance, bidding or qualification by any but one bidder, except as
41 provided herein, or which does not name at least three comparable
suppliers or manufacturers for each category of materials listed in the
specifications in any case in which "brand name or equivalent" is
44 required, shall be null and void and of no effect, and such purchase,
45 contract or agreement shall be readvertised, and the original purchase,

1 contract or agreement shall be set aside by the board of trustees of the
2 county college.

3 (cf: P.L.1982, c.189, s.13)

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5 4. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to
6 read as follows:

7 13. Specifications. Any specifications for an acquisition under this
8 act, whether by purchase, contract or agreement, shall be drafted in a
9 manner to encourage free, open and competitive bidding. In particular,
10 no specifications under this act may:

11 (a) Require any standard, restriction, condition or limitation not
12 directly related to the purpose, function or activity for which the
13 purchase, contract or agreement is made; or

14 (b) Require that any bidder be a resident of, or that his place of
15 business be located in, the county or municipality in which the
16 purchase will be made or the contract or agreement performed, unless
17 the physical proximity of the bidder is requisite to the efficient and
18 economical purchase or performance of the contract or agreement;
19 except that no specification for a contract for the collection and
20 disposal of municipal solid waste shall require any bidder to be a
21 resident of, or that his place of business be located in, the county or
22 municipality in which the contract will be performed; or

23 (c) Discriminate on the basis of race, religion, sex, national origin;
24 or

25 (d) Require, with regard to any purchase, contract or agreement,
26 the furnishing of any "brand name," but may in all cases require "brand
27 name or equivalent[.]" provided that at least three comparable
28 suppliers or manufacturers are named for each category of materials
29 listed in the specifications, except that if the materials to be supplied
30 or purchased are patented or copyrighted or are available only from a
31 single source, such materials or supplies may be purchased by
32 specification in any case in which the ordinance or resolution
33 authorizing the purchase, contract, sale or agreement so indicates[,
34 and]; the special need for such patented [or], copyrighted or
35 single-source materials or supplies is directly related to the
36 performance, completion or undertaking of the purpose for which the
37 purchase, contract or agreement is made; in the case of materials
38 specified as being available only from a single source, the specification
39 thereof includes a full description of those materials and an explanation
40 of how their use is directly related to such performance, completion or
41 undertaking, which specification shall be void upon demonstration by
42 a bidder that materials which meet that description are available from
43 at least one alternative source; and a copy of the resolution is included
44 in the specifications; or

45 (e) Fail to include any option for renewal, extension, or release
46 which the contracting unit may intend to exercise or require; or any

1 terms and conditions necessary for the performance of any extra work;
2 or fail to disclose any matter necessary to the substantial performance
3 of the contract or agreement.

4 Any specification adopted by the governing body, which knowingly
5 excludes prospective bidders by reason of the impossibility of
6 performance, bidding or qualification by any but one bidder, except as
7 provided herein, or which does not name at least three comparable
suppliers or manufacturers for each category of materials listed in the
specifications in any case in which "brand name or equivalent" is
10 required shall be null and void and of no effect and subject purchase,
11 contract or agreement shall be readvertised, and the original purchase,
12 contract or agreement shall be set aside by the governing body.

13 Any specification adopted by the governing body for a contract for
14 the collection and disposal of municipal solid waste shall conform to
15 the uniform bid specifications for municipal solid waste collection
16 contracts established pursuant to section 22 of P.L.1991, c.381
17 (C.48:13A-7.22).

18 (cf: P.L.1991, c.381, s.48)

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20 5. This act shall take effect immediately.

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23 STATEMENT

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25 This bill would amend the several statutes governing the awarding
26 of public contracts by school districts, by State colleges, by county
27 colleges, and by counties, municipalities and certain other local public
28 contracting units. In particular, the bill addresses a provision in each
29 of those statutes concerning specification in such contracts of "brand
30 name or equivalent" materials.

31 Under current law, the inclusion in a public contract for goods or
32 services of any requirement for the furnishing of a particular brand
33 name of materials is generally prohibited; specification of "brand name
34 or equivalent" materials is, however, permitted. Materials and supplies
35 which are patented or copyrighted may be purchased by specification
36 only if the ordinance or resolution authorizing the contract so indicates
37 and the special need therefor is directly related to the purpose for
38 which the contract is to be made.

39 Under this bill:

40 (1) Whenever the specifications for a contract require "brand name
41 or equivalent" materials, those specifications shall name at least three
42 comparable suppliers or manufacturers for each category of materials
43 so specified. (This provision is patterned after guidelines used by the
44 Department of the Treasury's Division of Building and Construction
45 in the awarding of State construction contracts.) Any specification
46 which does not include such identification of comparable sources for

1 each category of materials for which "brand name or equivalent" is
2 required shall be void, the original contract shall be set aside, and the
3 subject matter shall be readvertised.

4 (2) In the case of the purchase of patented, copyrighted or
5 single-source materials, the bill provides that, in addition to meeting
6 the current requirements, the contracting agency shall include in the
7 specifications a copy of the resolution indicating authorization for that
8 purchase. A specification of "single-source" materials would have to
9 include a full description of those materials and an explanation of how
10 their use is directly related to the performance or purpose of the
11 contract. If a bidder could demonstrate that materials which meet that
12 description are available from at least one alternative source, then the
13 single-source specification would be void.

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18 Provides that specifications for certain public contracts must name at
19 least three comparable suppliers or manufacturers.