

SENATE, No. 961

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1996

By Senator INVERSO

1 AN ACT establishing procedures for the awarding of certain contracts
2 and the issuance of certain bonds, notes and other obligations and
3 supplementing Title 52 of the Revised Statutes.

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

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8 1. This act shall be known and may be cited as the "Government
9 Debt Management and Contracting Procedure Reform Act."

10
11 2. The Legislature finds and declares that:

12 a. The policies and procedures of the State with regard to the
13 issuance of bonds, notes and other obligations and the awarding of
14 underwriting, bond counsel, architectural, engineering and other
15 professional contracts were established by Executive Order No. 79
16 (1993) issued on January 12, 1993 and Executive Order No. 92 (1993)
17 issued on May 4, 1993.

18 b. It was recognized that an analysis of the effect of these policies
19 and procedures should be conducted by the Executive Branch after
20 they had been in place for a number of months and that, in connection
21 with such analysis, it was appropriate to solicit the views of the public
22 and of the affected issuers, service providers and professionals.

23 c. Executive Order No. 6 (1994) issued on January 27, 1994
24 created an Advisory Panel on Government Contracting Procedures and
25 directed that the advisory panel make a comprehensive review of the
26 existing procedures for: the issuance of bonds; the selection of
27 underwriters in connection with the issuance of bonds; the retention
28 of attorneys or law firms in connection with the issuance of bonds; and
29 the retention of any engineering, architectural or other professional
30 firms.

31 d. The advisory panel was directed to report its findings and
32 detailed recommendations as to whether the existing procedures
33 should remain in place or be altered in order to better accomplish the
34 goals of achieving the best economic results with the highest quality
35 of service and integrity in the awarding of State contracts at the lowest
36 cost.

37 e. The advisory panel issued its report, dated July 29, 1994, which

1 set forth its recommendations with respect to the policies and
2 procedures that were implemented in accordance with Executive
3 Orders No. 79 and No. 92.

4 f. The advisory panel recommended modifications to the then-
5 existing procedures that will ensure that the citizens of the State are
6 informed of specific criteria applied in the selection of the method of
7 bond sale and the selection of professionals.

8 g. The advisory panel's recommendations were incorporated into
9 Executive Order No. 26 (1994), issued October 25, 1994, but have not
10 yet been adopted as permanent law through statutory enactment.

11 h. Statutory enactment of the advisory panel's recommendations
12 will help to ensure that the methods used by the State, its agencies and
13 authorities for issuing bonds and awarding contracts for professional
14 services will secure public confidence and result in the receipt of the
15 highest quality service at the lowest prices.

16

17 3. As used in this act, unless a different meaning clearly appears
18 from the context:

19 "Advisory Panel on Government Contracting Procedures" or
20 "advisory panel" means the body created by Executive Order No. 6
21 (1994) to review current procedures for the awarding of professional
22 contracts and the issuance of bonds and to make recommendations
23 regarding the improvement of such procedures.

24 "Attorney General" means the Attorney General of the State of
25 New Jersey.

26 "Bonds" means bonds, notes, capital leases, lease purchases,
27 installment obligations, or other debt obligations of an issuer or
28 contracting entity.

29 "Debt and debt service" means the amount of outstanding principal
30 and interest payments due on bonds, or estimated to become due on
31 bonds, as appropriate.

32 "Issuer" or "contracting entity" means an executive or
33 administrative department, or a public authority or other
34 instrumentality of State Government empowered by law to incur debt
35 or enter into contracts, but shall not mean a State college or
36 university.

37 "State" means the State of New Jersey.

38 "State-backed bonds" means bonds that are secured by
39 appropriations from the State's general revenues, by the full faith and
40 credit of the State or are otherwise, either in whole or in part, secured
41 by State revenues.

42 "Treasurer" means the Treasurer of the State of New Jersey.

43

44 4. The sale of bonds by issuers shall be on a competitive basis
45 except that when it is determined, in accordance with this act, that a
46 negotiated sale would better serve the requirements of a particular

1 financing, a negotiated sale may be conducted, unless otherwise
2 prohibited by law. The circumstances under which a negotiated bond
3 sale shall be permitted shall include, but not be limited to, the
4 following:

5 a. Sale of complex bonds including, but not limited to, bonds
6 secured by a variety of revenue sources or complicated leasing
7 structures, or lower credit bonds that are secured by revenue sources
8 which may not be as strong as other sources;

9 b. Sale of a complex financing structure, including those
10 transactions that involve the simultaneous sale of more than one series
11 with each series structured differently;

12 c. Volatile market conditions;

13 d. Large issue size;

14 e. Bonds sold for programs or financial techniques that are new to
15 investors; and

16 f. Variable rate transactions.

17

18 5. Where issuers engage in similar types of transactions on a
19 regular basis, such issuers may make determinations with respect to
20 the method of sale, consistent with section 4 of this act, which will be
21 utilized for two or more transactions, provided that the transactions
22 are part of a larger bonding program of similarly secured financing. In
23 this instance, issuers shall render public determinations with respect to
24 these financing programs at least annually.

25

26 6. Any decision of an issuer regarding the method of sale for a
27 bond issue shall be made by resolution which shall be made available
28 to the public. If the issuer is the State, the Treasurer shall render a
29 written determination which shall be made available to the public.
30 When an issuer determines that the sale of bonds should be negotiated
31 with an underwriter based on the standards enumerated in section 4 of
32 this act, justification in support of such a decision shall not be stated
33 in general terms, but shall be stated in terms that are specific to the
34 particular bond sale. Such findings shall be filed with the Treasurer
35 within five days of the decision.

36

37 7. Issuers of State-backed bonds shall adhere to the following
38 procedures and criteria in connection with the selection of financial
39 advisors, senior managers and co-managers:

40 a. A request for proposal and criteria for selection shall be
41 developed by the issuer and the Treasurer for each financing. Criteria
42 for such selection shall include, but not be limited to, the following:

43 1) The quality of response regarding the proposed bond structure,
44 and regarding the proposed credit and marketing strategies;

45 2) Sophisticated cash flow capabilities as required by a particular
46 financing;

- 1 3) The development of new and innovative financing techniques
- 2 that may include, but need not be limited to, the use of derivatives and
- 3 other secondary issues of securities;
- 4 4) Demonstrated ability to distribute State securities;
- 5 5) The quality of relevant service to the State in previous
- 6 transactions;
- 7 6) Experience with similar financing in which the firm and its
- 8 proposed financing team participated;
- 9 7) The proposed fees for the particular bond sale and an
- 10 explanation of the manner in which these fees were calculated; and
- 11 8) Sufficient capital to participate in underwriting the issue.
- 12 b. The issuer shall provide particular consideration for firms with
- 13 a presence in the State and for minority-owned and women-owned
- 14 firms.
- 15 c. The issuer and the Treasurer shall select the financial advisor,
- 16 and the senior manager, co-manager or both for the financing.
- 17 d. The names of firms solicited, the firms selected and the criteria
- 18 applied in connection therewith shall be made available to the public.
- 19 e. Selection procedures may include a process whereby a pool of
- 20 financial advisors, and senior managers, co-managers, or both, may be
- 21 utilized for two or more transactions, provided that the transactions
- 22 are part of a larger bonding program of similarly secured financing.
- 23 Issuers may select from such pools without soliciting separate
- 24 proposals provided that the pools are established in accordance with
- 25 procedures and criteria that are consistent with this act.
- 26
- 27 8. Issuers, other than those referred to in section 7 of this act,
- 28 shall:
- 29 a. Formulate procedures consistent with the criteria in section 7 of
- 30 this act for the selection of financial advisors, and senior managers,
- 31 co-managers, or both; such procedures shall provide for an open and
- 32 competitive process. Information regarding the procedures, the firms
- 33 solicited, the firms selected and the criteria applied shall also be made
- 34 available to the public by the issuers; and
- 35 b. Select such financial advisors, and such senior managers,
- 36 co-managers, or both, on the basis of said procedures and criteria.
- 37
- 38 9. Issuers shall undertake the selection process outlined in section
- 39 7 of this act except in those cases in which all of the following three
- 40 criteria have been met:
- 41 a. An innovative approach to financing, which is unique to the
- 42 advisor or manager and which is proprietary in nature, has been
- 43 brought to the issuer;
- 44 b. A request for proposal cannot be constructed without
- 45 communicating the innovative approach; and
- 46 c. The issue would not benefit from a competitive selection

1 process.

2

3 10. Appointments of bond counsel shall be made on a competitive
4 basis when it is determined that the cost of the counsel's services is
5 one of the issues for consideration. The Attorney General shall
6 develop guidelines for the solicitation of such counsel. In those
7 circumstances which may require the appointment of bond counsel
8 with particular expertise, including, but not limited to, unique prior
9 experience with a type of transaction or with the financing of a type of
10 project or program, direct appointments that are not made on a
11 competitive basis shall be permitted.

12

13 11. a. When bond counsel appointments are made pursuant to
14 section 13 of P.L.1944, c. 20 (C.52:17A-13), or when the Attorney
15 General acts as general counsel to an issuer, the Attorney General shall
16 establish procedures for the appointment of bond counsel on a
17 competitive basis and under criteria that place significant weight on the
18 bond counsel's qualifications and suitability for a particular transaction
19 as well as the bond counsel's fee proposal.

20 b. The criteria to be applied pursuant to subsection a. of this
21 section shall include, but not be limited to, the following:

22 1) Experience of the bond counsel and the proposed team with
23 similar transactions;

24 2) Familiarity with the State laws relevant to the proposed bond
25 issue;

26 3) Proficiency in securities, tax and other laws relevant to the
27 financing;

28 4) The quality of the proposed legal strategy with respect to
29 specific questions posed in the request for proposal;

30 5) The quality of any past legal services rendered to the State and
31 its authorities; and

32 6) Fees and other charges.

33 c. Appointment procedures and criteria may include a process
34 whereby a pool of bond counsel firms may be appointed to serve as
35 counsel to frequent bond issuers for a term not to exceed two years.
36 Issuers may select from such pools without soliciting separate
37 proposals for each bond issue, provided that the pools are established
38 in accordance with procedures and criteria consistent with this act.
39 This pooling process shall, where appropriate, involve the
40 establishment of a fee schedule for such transactions at the outset of
41 the term.

42 d. Appointment procedures and criteria may include a process
43 whereby bond counsel may be utilized for two or more transactions,
44 provided that the transactions are part of a larger bonding program of
45 similarly secured financing and further provided such procedures and
46 criteria are consistent with this act.

1 12. In cases where the Attorney General is not required by law to
2 appoint bond counsel or does not serve as general counsel to an issuer,
3 issuers are hereby directed to establish their own competitive
4 appointment processes based on the criteria enumerated in section 11
5 of this act to ensure the selection of the most qualified firms at the
6 lowest possible fees.

7
8 13. In establishing policies and procedures for the selection of
9 bond counsel, issuers and the Attorney General shall provide particular
10 consideration to law firms located within this State and
11 minority-owned and women-owned law firms.

12
13 14. The policies and procedures established by issuers with respect
14 to the appointment of bond counsel, as well as procedures established
15 by the Attorney General in accordance with section 13 of P.L.1944,
16 c.20 (C.52:17A-13), shall be available to the public.

17
18 15. Within 30 days of the closing of a bond issue, the allocation of
19 bonds and fees received by each member of the underwriting syndicate
20 and a breakout of the costs of issuance paid by the issuer shall be
21 reported to the Treasurer and be made available to the public.

22
23 16. a. (1) Each issuer, and each State college and university, shall
24 annually, on or before January 31, render a debt management plan with
25 respect to its bond financing programs to the Treasurer. This plan
26 shall include information on the amount of outstanding debt and debt
27 service costs for the prior fiscal year, the estimated amount for the
28 current fiscal year, and the estimated amount for the subsequent five
29 fiscal years, and shall also describe any proposed bond issues for the
30 year outlining the size and purpose of each transaction, the expected
31 sale date of the issue, the security and expected ratings for each
32 transaction, the expected method of sale and the method of selecting
33 financial professionals consistent with the terms of this act.

34 (2) In addition to other duties that may be imposed by this act, the
35 Treasurer shall aggregate the data from these plans into four
36 categories: State general obligation debt and debt service costs; debt
37 and debt service costs on revenue bonds of authorities and other
38 appropriate entities; debt and debt service costs on bonds backed by
39 revenue of authorities and other appropriate entities combined with
40 payments from the General Fund in the State Treasury; and the total
41 amounts of the above. The results of this aggregation of data, along
42 with the data required pursuant to P.L. , c. (C.)(now pending
43 before the Legislature as Senate Bill No. 960 of 1996) shall be
44 presented in a report to the New Jersey Commission on Capital
45 Budgeting and Planning, no later than 30 days after receipt of the debt
46 management plans.

1 b. In addition to the information required of an issuer pursuant to
2 subsection a. of this section, each issuer shall supply the following to
3 the Treasurer:

4 (1) The investment status of all unexpended bond proceeds, which
5 shall include information on the amount of proceeds, the name of the
6 institution or entity holding the investment, the type of investment
7 program or instrument in which the proceeds are invested, and the
8 maturity date and interest rate of the investment; and

9 (2) An explanation of any change, during the fiscal year
10 immediately preceding the deadline for this report, in the debt
11 retirement schedule for any outstanding bond issue, which shall include
12 information regarding the exercise of redemption provisions, refunding
13 and conversion from short-term to long-term bonds.

14
15 17. a. The State's participation in any financing other than those
16 undertaken by issuers or contracting entities as defined in section 3 of
17 this act shall, to the extent practicable, be conditioned on compliance
18 with the procedures and criteria set forth in this act. As used in this
19 section, "State's participation" includes, but is not limited to, instances
20 in which a financing:

21 (1) Is secured directly or indirectly by the moral obligation of the
22 State;

23 (2) Is secured or financed directly or indirectly by State
24 appropriations; or

25 (3) Includes State financial information as part of the offering
26 statement issued in connection with the proposed financing.

27 b. The determination as to whether it is practicable to apply this
28 section to any such financing shall be made jointly by the Treasurer
29 and Attorney General.

30
31 18. The State and its contracting entities shall continue to utilize,
32 to the fullest extent practicable, competitive practices for the selection
33 of architects, engineers and accountants. Contracting entities shall
34 establish their own procedures for competitive selection of architects,
35 engineers and accountants. Such practices shall be aimed at the
36 fundamental goals of ensuring that each contracting entity of the State
37 will receive the best services at the lowest costs. Information
38 regarding such procedures shall be made available to the public.

39
40 19. Any selection of architects, engineers and accountants shall
41 include particular consideration of minority-owned and women-owned
42 firms.

43
44 20. The advisory panel is hereby directed to report back to the
45 Governor and the Legislature within one year from the effective date
46 of this act. The report shall review the implementation of this act and

1 recommend any modification deemed necessary to better achieve the
2 objectives of this act.

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4 21. This act shall take effect immediately and shall apply to any
5 bond issuance initiated or contract entered into on and after the
6 effective date.

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STATEMENT

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11 This bill establishes certain procedures to be followed by the State
12 and certain of its agencies, authorities and other entities with regard
13 to the issuance of bonds and the awarding of professional contracts.
14 In addition to State departments and agencies, the bill applies to
15 authorities and other entities which are authorized to incur debt or
16 enter into contracts. The procedural requirements would not apply to
17 State colleges and universities, although certain reporting requirements
18 would.

19 The bill recognizes that there are certain circumstances in which a
20 negotiated sale of State-backed bonds will better serve the
21 requirements of a particular financing even though State policy is
22 generally to require State-backed bonds to be sold on a competitive
23 basis. Essentially consistent with Executive Order No. 26 (1994), the
24 bill provides that negotiated sales can be utilized where the sale
25 involves complex bonds involving a variety of revenue sources or
26 complicated leasing structures, lower credit bonds backed by revenue
27 sources that may not be as strong as other sources, a new and
28 innovative financing structure which is proprietary in nature, volatile
29 market conditions, large issue size, or other novel programs or
30 financial techniques and variable rate transactions which generally
31 involve greater interaction between the underwriter and issuer.

32 The bill requires issuers of State-backed bonds to follow certain
33 procedures in the selection of financial advisors, senior managers and
34 co-managers. The procedures to be followed include development of
35 a request for proposal and criteria applicable to the proposal, joint
36 selection of advisors and managers by the issuer and the State
37 Treasurer for each financing, providing particular consideration for
38 firms located in the State and for minority owned and women-owned
39 firms, the publication of the names of the firms solicited and selected
40 and the criteria used and the use of a pool of advisors and managers
41 for multiple transactions.

42 In situations involving bonds issued by the State, its agencies,
43 authorities or other entities which are not State-backed bonds, i.e., are
44 not secured by the State's general revenues, the State's full faith and
45 credit or otherwise secured, in whole or in part by State revenues, the
46 bill requires the issuer to develop procedures governing the sale of

1 such bonds which are consistent with those required of State-backed
2 bonds.

3 The bill provides for exceptions from the selection process required
4 for issuers of State-backed bonds in cases where an innovative idea is
5 brought to the issuer, a request for proposal cannot be developed
6 without communicating the idea and the issue would not benefit from
7 a competitive selection process.

8 The bill requires bond counsel appointments to be made on a
9 competitive basis in accordance with guidelines to be developed by the
10 Attorney General. The guidelines shall incorporate certain criteria
11 specified in the bill including the experience of the bond counsel and
12 the counsel's associates, the counsel's familiarity with State law
13 relating to the bond issue, particular abilities with securities, tax and
14 other financing law, the quality of the legal strategy and past legal
15 services, and the counsel's fees.

16 The bill allows for direct appointments of bond counsel, on a
17 noncompetitive basis, in those cases in which a transaction requires a
18 bond counsel with particular expertise such as unique prior experience.

19 This bill also requires other professional service contracts with
20 architects, engineers and accountants to be awarded by the State, its
21 agencies or authorities on a competitive basis, whenever practicable,
22 provided that the procedures followed promote the goal of ensuring
23 the best services at the lowest costs.

24 Finally, the bill requires each issuer, and each State college and
25 university, to submit a debt management plan to the State Treasurer
26 on or before January 31 of each year. The plan shall describe the bond
27 financing programs of each issuer.

28 The Advisory Panel on Government Contracting Procedures,
29 created by Executive Order No. 6 (1994) issued on January 27, 1994,
30 is required to report back to the Governor and the Legislature within
31 one year of the effective date of the bill.

32 The advisory panel's report shall contain a review of the program's
33 first year of operation together with any recommendations for
34 improving its effectiveness.

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39 Establishes procedures for the awarding of certain contracts and
40 issuance of certain bonds, notes and other obligations.