

SENATE, No. 1729

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 29, 2016

Sponsored by:

Senator JIM WHELAN

District 2 (Atlantic)

SYNOPSIS

Authorizes local units of government subject to “Local Public Contracts Law” and “Public School Contracts Law” to use electronic procurement technologies.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT authorizing the electronic purchase of certain commodities
2 and services and sale of surplus personal property by local units
3 of government and school districts, supplementing P.L.1971,
4 c.198 (C.40A:11-1 et seq.); and repealing P.L.2001, c.30.

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

8
9 1. This act shall be known and may be cited as the "Local Unit
10 Electronic Procurement Act."

11
12 2. The Legislature finds and declares that advances in electronic
13 technology offer opportunities to enhance governmental
14 efficiencies. In order to explore these avenues of improved
15 government efficiency and commerce, it is in the best interests of
16 this State to allow local units of government to adopt proven
17 technologies for the procurement of goods, services, public works
18 construction, and sale of surplus personal and real property through
19 means of electronic technology, and to allow the Department of
20 Community Affairs to promulgate standards for the use of these
21 technologies that provide for the integrity and procedural
22 protections of sealed public bidding and competitive contracting
23 translated to an electronic environment.

24
25 3. As used in this P.L. c. (c.) (pending before the
26 Legislature as this bill):

27 "Director" means the Director of the Division of Local
28 Government Services in the Department of Community Affairs;

29 "Electronic procurement" means the use of computer technology
30 and the Internet for the advertising and submission of public bids,
31 the receipt of proposals and quotations, competitive contracting, the
32 use of reverse auctions, and related practices to assist in
33 determining the lowest responsible bidder or proposer who is most
34 advantageous, price and other factors considered, as appropriate, for
35 goods and services, the sale of personal property, and other public
36 procurement-related activities and services as may be determined
37 appropriate by the director;

38 "Goods and services" means any work, labor, commodities,
39 equipment, materials, or supplies of any tangible or intangible
40 nature, except real property or any interest therein, provided or
41 performed through a contract awarded by a contracting agent,
42 including goods and property subject to N.J.S.12A:2-101 et seq.;

43 "Local unit" means a school district as defined in the "Public
44 School Contracts Law," N.J.S.18A:18A-1 et seq., or a contracting
45 unit as defined in the "Local Public Contracts Law," P.L.1971,
46 c.198 (C.40A:11-1 et seq.);

47 "Public works construction" means any contract that is subject to
48 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-

1 56.25 et seq.); and

2 “Real property” shall include, in addition to the usual
3 connotations thereof, development rights or easements, or any right,
4 interest, or estate in the area extending above any real property, or
5 capital improvement thereon, to such a height or altitude as any
6 title, interest, or estate in real property may extend, commonly
7 known as “air rights,” and subject to, but not limited to, the “Local
8 Lands and Buildings Law,” P.L.1971, c.199 (C.40A:12-1 et seq.).

9
10 4. Local units are authorized to use electronic procurement
11 practices for such purposes as may be authorized by the governing
12 body of the local unit, and subject to the provisions of P.L. ,
13 c. (C.) (pending before the Legislature as this bill).

14
15 5. A local unit or joint purchasing unit or cooperative pricing
16 system is also authorized to use electronic procurement practices
17 for the following purposes:

18 a) to purchase electric generation service, electric related
19 service, gas supply service, or gas related service, either separately
20 or bundled, for its own facilities so long as the purchase otherwise
21 complies with the provisions of the "Electric Discount and Energy
22 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.);

23 b) the sale of surplus personal property that shall otherwise
24 comply with the provisions of section 36 of P.L.1971,
25 c.198 (C.40A:11-36); and

26 c) the sale of real property that shall otherwise comply with the
27 sale and lease provisions of the “Local Lands and Buildings Law,”
28 P.L.1971, c.199 (C.40A:12-1).

29 Contracts awarded for the administration of electronic
30 procurement practices shall be subject to the requirements of the
31 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.)
32 and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.,
33 except that they shall be considered as purposes for which
34 competitive contracting may be used.

35
36 6. a. The director, in consultation with the State Comptroller
37 and pursuant to the “Administrative Procedure Act,” P.L.1968,
38 c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to
39 effectuate the provisions of this act.

40 The rules promulgated pursuant to this section shall include, but
41 shall not be limited to, practices that, notwithstanding any other law
42 to the contrary:

43 (1) convert the law, principals, safeguards, and procedures
44 related to sealed bidding to an electronic procurement environment;

45 (2) authorize local units of government to accept commercial
46 standards for electronic forms of bid security; and

47 (3) establish minimum standards that must be met by systems
48 and services providing and administering electronic procurement

1 activities.

2 The director shall also consult with the Attorney General to
3 develop safeguards to protect against collusion and bid rigging,
4 with the Division of Purchase and Property in the Department of
5 Treasury to develop practices used for electronic procurement, and
6 with the Office of Information Technology in, but not of, the
7 Department of Treasury, to ensure the privacy and security of
8 electronic transactions.

9 b. With regard to the otherwise required notices, advertising
10 bids, or requests for proposals in an official newspaper of the local
11 unit, such notices shall not be eliminated, but may be limited to a
12 notice announcing the purpose of the action, sue date, and location
13 of the full notice that is posted on a website. The local unit may
14 waive public advertising for electronic procurement of electric
15 generation service, electric related service, gas supply service, or
16 gas related service if notification is made directly to eligible Board
17 of Public Utilities approved providers of such services.

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

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29 7. P.L.2001, c.30 is repealed.

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31 8. This act shall take effect on the first day of the 10th month
32 next following enactment.

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STATEMENT

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37 This bill would authorize local units of government that are
38 subject to the “Local Public Contracts Law” and “Public School
39 Contracts Law” to use electronic procurement technologies. The
40 bill authorizes local units to use electronic procurement practices
41 for such purposes as may be authorized by the governing body of
42 the local unit, and subject to the provisions of the bill.

43 Under the bill, a local unit, joint purchasing unit, or cooperative
44 pricing system is also authorized to use electronic procurement
45 practices for the following purposes:

46 a) to purchase electric generation service, electric related
47 service, gas supply service, or gas related service, either separately
48 or bundled, for its own facilities so long as the purchase otherwise

1 complies with the provisions of the "Electric Discount and Energy
2 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.);
3 b) the sale of surplus personal property shall comply with the
4 provisions of section 36 of P.L.1971, c.198 (C.40A:11-36); and
5 c) the sale of real property that shall otherwise comply with the
6 sale and lease provisions of the "Local Lands and Buildings Law,"
7 P.L.1971, c.199 (C.40A:12-1).
8 Contracts awarded for the administration of electronic
9 procurement practices pursuant to the substitute bill shall be subject
10 to the requirements of the "Local Public Contracts Law," P.L.1971,
11 c.198 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"
12 N.J.S.18A:18A-1 et seq., except that they shall be considered as
13 purposes for which competitive contracting may be used.
14 The bill also requires the Director of the Division of Local
15 Government Services in the Department of Community Affairs, in
16 consultation with other State government entities, to promulgate
17 rules and regulations to effectuate the provisions of the substitute
18 bill.