

ASSEMBLY, No. 541

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Allows local contracting unit to accept bid up to five percent more than lowest responsible bid under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the lowest responsible bidder for local public
2 contracts and amending P.L.1971, c.198.

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

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7 1. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to
8 read as follow:

9 4. a. (1) Every contract awarded by the contracting agent for
10 the provision or performance of any goods or services, the cost of
11 which in the aggregate exceeds the bid threshold, shall be awarded
12 only by resolution of the governing body of the contracting unit to
13 the lowest responsible bidder after public advertising for bids and
14 bidding therefor, except as is provided otherwise in **[this act]**
15 P.L.1971, c.198 (C.40A:11-1 et seq.) or specifically by any other
16 law.

17 (2) The governing body of a contracting unit may, by resolution
18 approved by a majority of the governing body and subject to
19 subsections b. and c. of this section, disqualify a bidder who would
20 otherwise be determined to be the lowest responsible bidder, if the
21 governing body finds that it has had prior negative experience with
22 the bidder.

23 (3) The governing body of a contracting unit may, by resolution
24 approved by a majority of the governing body and subject to
25 subsection d. of this section, award a contract to a bidder that offers
26 a price that is within five percent of the price offered by the lowest
27 responsible bidder.

28 b. As used in this section, "prior negative experience" means
29 any of the following:

30 (1) the bidder has been found, through either court adjudication,
31 arbitration, mediation, or other contractually stipulated alternate
32 dispute resolution mechanism, to have: failed to provide or perform
33 goods or services; or failed to complete the contract in a timely
34 manner; or otherwise performed unsatisfactorily under a prior
35 contract with the contracting unit;

36 (2) the bidder defaulted on a contract, thereby requiring the
37 local unit to utilize the services of another contractor to provide the
38 goods or perform the services or to correct or complete the contract;

39 (3) the bidder defaulted on a contract, thereby requiring the
40 local unit to look to the bidder's surety for completion of the
41 contract or tender of the costs of completion; or

42 (4) the bidder is debarred or suspended from contracting with
43 any of the agencies or departments of the executive branch of the
44 State of New Jersey at the time of the contract award, whether or
45 not the action was based on experience with the contracting unit.

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.

1 c. The following conditions apply if the governing body of a
2 contracting unit is contemplating a disqualification based on prior
3 negative experience:

4 (1) The existence of any of the indicators of prior negative
5 experience set forth in this section shall not require that a bidder be
6 disqualified. In each instance, the decision to disqualify shall be
7 made within the discretion of the governing body and shall be
8 rendered in the best interests of the contracting unit.

9 (2) All mitigating factors shall be considered in determining the
10 seriousness of the prior negative experience and in deciding
11 whether disqualification is warranted.

12 (3) The bidder shall be furnished by the governing body with a
13 written notice (a) stating that a disqualification is being considered;
14 (b) setting forth the reason for the disqualification; and (c)
15 indicating that the bidder shall be accorded an opportunity for a
16 hearing before the governing body if the bidder so requests within a
17 stated period of time. At the hearing, the bidder shall show good
18 cause why the bidder should not be disqualified by presenting
19 documents and testimony. If the governing body determines that
20 good cause has not been shown by the bidder, it may vote to find
21 the bidder lacking in responsibility and, thus, disqualified.

22 (4) Disqualification shall be for a reasonable, defined period of
23 time which shall not exceed five years.

24 (5) A disqualification, other than a disqualification pursuant to
25 which a governing body is prohibited by law from entering into a
26 contract with a bidder, may be voided or the period thereof may be
27 reduced, in the discretion of the governing body, upon the
28 submission of a good faith application under oath, supported by
29 documentary evidence, setting forth substantial and appropriate
30 grounds for the granting of relief, such as reversal of a judgment, or
31 actual change of ownership, management or control of the bidder.

32 (6) An opportunity for a hearing need not be offered to a bidder
33 whose disqualification is based on its suspension or debarment by
34 an agency or department of the executive branch of the State of
35 New Jersey. The term of such a disqualification shall be concurrent
36 with the term of the suspension or debarment by the State agency or
37 department.

38 d. A bidder may be awarded a contract if the bidder offers a
39 price for a responsive bid that is within five percent of the price
40 offered by the lowest responsible bidder and the contracting unit, in
41 its discretion, determines either that: (1) the response to the request
42 for bids to be the most advantageous, price and other factors
43 considered, of the lowest responsible bid and all bids within five
44 percent of the lowest responsible bid; or (2) the bidder to be the
45 most responsible, as demonstrated by performance history, of the
46 lowest responsible bidder and all bidders with bids within five
47 percent of the lowest responsible bid. If a bidder is awarded a
48 contract pursuant to this subsection, the award resolution shall

1 explain why the bidder selected is the most advantageous or
2 responsible, as appropriate.

3 (cf: P.L.1999, c.440, s.8)

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5 2. This act shall take effect immediately.

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STATEMENT

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10 This bill would allow local contracting units to accept a bid on a
11 local public contract for a good or service exceeding the bid
12 threshold that is up to five percent higher than the lowest
13 responsible bid. Currently, local contracting units are generally
14 required to award these contracts to the lowest responsible bidder.
15 The “lowest responsible bidder” is defined as the bidder who: a)
16 offers a responsive bid at the lowest price; and b) is responsible.
17 The bill would allow the award of a local public contract to a bidder
18 with a responsive bid that is within five percent of the lowest
19 responsible bid if the local contracting unit deems either: a) the bid
20 response to be the most advantageous; or b) the bidder to have the
21 most responsible track record. This will provide local contracting
22 units with the flexibility to award a local public contract to a low-
23 cost bidder that is best suited to perform the contract.