

ASSEMBLY, No. 1147

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Revises certain aspects of State procurement process.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** revising certain aspects of the State procurement process
2 and 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:*

6

7 1. Section 4 of P.L.1999, c.238 (C.34:11-56.51) is amended to
8 read as follows:

9 4. No contractor shall bid on any contract for public work as
10 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26) unless the
11 contractor is **【registered】** eligible to register pursuant to this act
12 prior to the contract award. No contractor shall list a subcontractor
13 in a bid proposal for the contract unless the subcontractor is
14 **【registered】** eligible to register pursuant to P.L.1999, c.238
15 (C.34:11-56.48 et seq.) **【at the time the bid is made】** prior to
16 contract award. No contractor or subcontractor, including a
17 subcontractor not listed in the bid proposal, shall engage in the
18 performance of any public work subject to the contract, unless the
19 contractor or subcontractor is registered pursuant to that act.
20 (cf: P.L.2003, c.91, s.2)

21

22 2. Section 1 of P.L.1977, c.3 (C.52:25-24.2) is amended to read
23 as follows:

24 1. No corporation, partnership, or limited liability company
25 shall be awarded any contract nor shall any agreement be entered
26 into for the performance of any work or the furnishing of any
27 materials or supplies, the cost of which is to be paid with or out of
28 any public funds, by the State, or any county, municipality or
29 school district, or any subsidiary or agency of the State, or of any
30 county, municipality or school district, or by any authority, board,
31 or commission which exercises governmental functions, unless
32 prior to **【the receipt of the bid or accompanying the bid, of】** the
33 time the contract is awarded to said corporation, said partnership, or
34 said limited liability company there is submitted a statement setting
35 forth the names and addresses of all stockholders in the corporation
36 who own 10 percent or more of its stock, of any class, or of all
37 individual partners in the partnership who own a 10 percent or
38 greater interest therein, or of all members in the limited liability
39 company who own a 10 percent or greater interest therein, as the
40 case may be. If one or more such stockholder or partner or member
41 is itself a corporation or partnership or limited liability company,
42 the stockholders holding 10 percent or more of that corporation's
43 stock, or the individual partners owning 10 percent or greater
44 interest in that partnership, or the members owning 10 percent or
45 greater interest in that limited liability company, as the case may be,

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 shall also be listed. The disclosure shall be continued until names
2 and addresses of every noncorporate stockholder, and individual
3 partner, and member, exceeding the 10 percent ownership criteria
4 established in this act, has been listed.

5 To comply with this section, a bidder with any direct or indirect
6 parent entity which is publicly traded may submit the name and
7 address of each publicly traded entity and the name and address of
8 each person that holds a 10 percent or greater beneficial interest in
9 the publicly traded entity as of the last annual filing with the federal
10 Securities and Exchange Commission or the foreign equivalent,
11 and, if there is any person that holds a 10 percent or greater
12 beneficial interest, also shall submit links to the websites containing
13 the last annual filings with the federal Securities and Exchange
14 Commission or the foreign equivalent and the relevant page
15 numbers of the filings that contain the information on each person
16 that holds a 10 percent or greater beneficial interest.

17 (cf: P.L.2016, c.43, s.1)

18
19 3. Section 4 of P.L.2012, c.25 (C.52:32-58) is amended to read
20 as follows:

21 4. a. A State agency shall require a person or entity that
22 submits a bid or proposal or otherwise proposes to enter into or
23 renew a contract to certify, **at the time the bid is submitted or**
24 prior to the time a contract is awarded and at the time the contract is
25 renewed, that the person or entity is not identified on a list created
26 pursuant to subsection b. of section 3 of this act as a person or
27 entity engaging in investment activities in Iran described in
28 subsection f. of section 2 of this act.

29 b. The certification required shall be executed on behalf of the
30 applicable person or entity by an authorized officer or
31 representative of the person or entity.

32 c. In the event that a person or entity is unable to make the
33 certification required because it or one of its parents, subsidiaries,
34 or affiliates as defined in subsection e. of section 2 of this act has
35 engaged in one or more of the activities specified in subsection f. of
36 section 2 of this act, the person or entity shall provide to the State
37 agency concerned, prior to the deadline for delivery of such
38 certification, a detailed and precise description of such activities,
39 such description to be provided under penalty of perjury.

40 d. The certifications provided under subsection a. of this
41 section and disclosures provided under subsection c. of this section
42 shall be disclosed to the public.

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

44
45 4. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read
46 as follows:

47 7. a. Whenever advertising is required: (a) specifications and
48 invitations for bids shall permit such full and free competition as is

1 consistent with the procurement of supplies and services necessary
2 to meet the requirements of the using agency and shall, wherever
3 practicable, include such factors as life-cycle costs, sliding
4 percentage preference scales, or other similar analysis as shall be
5 deemed effective by the Director of the Division of Purchase and
6 Property, hereinafter referred to as the director, (b) the
7 advertisement for bids shall be in such newspaper or newspapers
8 and other medium or media selected by the State Treasurer as will
9 best give notice thereof to bidders and shall be sufficiently in
10 advance of the purchase or contract to promote competitive bidding;
11 (c) the advertisement shall designate the time and secure location
12 when and where proposals, which may be submitted in electronic or
13 other format designated by the director, shall be received, opened
14 and publicly announced, the amount of the cash or certified check,
15 if any, which must accompany each bid, and such other terms as the
16 State Treasurer may deem proper; (d) notice of revisions or addenda
17 to advertisements or bid documents relating to bids shall be
18 published in a newspaper or newspapers and other medium or
19 media selected by the State Treasurer to give notice to bidders at
20 least seven days, Saturdays, Sundays and holidays excepted, prior
21 to the bid due date; (e) failure to advertise for the receipt of bids or
22 to provide proper notification of revisions or addenda to
23 advertisements or bid documents related to bids as prescribed by
24 subsection (d) of this section shall prevent the acceptance of bids
25 and require the readvertisement for bids; (f) for any procurement,
26 the State Treasurer or the director may negotiate with bidders the
27 final terms and conditions of any procurement, including price;
28 such ability to so negotiate must be expressly set forth in the
29 applicable invitation to bid and such bids shall not be publicly
30 accessible until after negotiations have been completed and the
31 notice of intent to award the contract has been issued; (g) award
32 shall be made with reasonable promptness, after negotiation with
33 bidders where authorized, by written or electronic notice to that
34 responsible bidder whose bid, conforming to the invitation for bids,
35 will be most advantageous to the State, price and other factors
36 considered; and (h) the Treasurer shall require, with respect to
37 contracts for information technology goods and services, a
38 limitation of liability determined by the Director of the Division of
39 Purchase and Property. When negotiations occur pursuant to
40 subparagraph f. of this section, a written record of the nature and
41 content of the negotiations, as well as the dates and persons
42 involved, shall become a public record when the notice of intent to
43 award the contract is issued. The Director of the Division of
44 Purchase and Property may structure an advertisement for bids to
45 include an auction or reverse auction procedure, whereby pricing is
46 revealed to all other qualified bidders during the course of the
47 auction or reverse auction, when it is determined that best value will
48 result.

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

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

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

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

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19 5. This act shall take effect immediately.
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22 STATEMENT
23

24 This bill revises certain aspects of the State procurement process.
25 Specifically, the bill amends existing law to:

26 provide that in order to bid on a contract for a public work a
27 contractor or a subcontractor must be eligible to register as a
28 contractor or subcontractor pursuant to law and not registered as
29 such when submitting a bid as is currently required;

30 change the deadline by which a prospective bidder must submit a
31 statement of its owners having more than a 10 percent ownership
32 interest from the time a bid is received to the time the contract is
33 awarded;

34 change the deadline by which a bidder must certify that the
35 bidder is not engaged in activities in Iran from the time the bid is
36 submitted to the time the contract is awarded or renewed; and

37 authorize the Director of the Division of Purchase and Property
38 to structure an advertisement for bids to include an auction or
39 reverse auction procedure, whereby pricing is revealed to all other
40 qualified bidders during the course of the auction or reverse
41 auction, when it is determined that best value will result.