

ASSEMBLY, No. 2267

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires certain public contract bid advertisements to contain certified cost estimate ranges, specifies grounds for rejection of all bids, and requires 50% guaranty on bids; designated as the Fairness in Bidding Act.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/27/2020)

1 **AN ACT** concerning certain bid advertising requirements for State,
2 State college, county college, school, and local public
3 construction contracts and designated as the Fairness in Bidding
4 Act, and amending and supplementing various parts of the
5 statutory law.

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

9
10 1. N.J.S.18A:18A-21 is amended to read as follows:

11 18A:18A-21. a. Except as provided in section 5 of
12 P.L.1985, c.490 (C.18A:18A-55), all advertisements for bids shall
13 be published in an official newspaper sufficiently in advance of the
14 date fixed for receiving the bids to promote competitive bidding,
15 but in no event less than 10 days prior to such date. For all
16 contracts, the date fixed for receiving the bids shall not fall on a
17 Monday, or any day directly following a State or federal holiday.
18 The advertisement for bids for construction projects projected to
19 cost in excess of \$500,000 shall include the board of education's or
20 its purchasing agent's projected cost estimate ranges for the base bid
21 contract and any specified alternate proposal, such estimate ranges
22 having been attested to as reasonable by the individual or firm
23 preparing the cost estimate ranges. The highest amount of a cost
24 estimate range shall not be greater than five percent more than the
25 lowest amount. The projected cost estimate ranges shall be attested
26 no more than 30 days prior to the bid advertisement date.

27 For purposes of this subsection:

28 "Specified alternate proposal" means a requirement of the bid
29 specification for bidders to submit prices for reduced, modified, or
30 supplemental work in addition to the base proposal which may
31 include, but not be limited to, a change in project scope or the use
32 of alternative materials or methods of construction.

33 b. The advertisement shall designate the manner of submitting
34 and of receiving the bids and the time and place at which the bids
35 will be received. If the published specifications provide for receipt
36 of bids by mail or hand delivery, only one copy of the bid
37 documents shall be required, and those bids which are mailed to the
38 board of education shall be sealed and shall be opened only for
39 examination at such time and place as all bids received are unsealed
40 and announced. At such time and place the purchasing agent of the
41 board of education shall publicly receive the bids and thereupon
42 immediately proceed to unseal them and publicly announce the
43 contents, which announcement shall be made in the presence of any
44 parties bidding or their agents who are then and there present. A
45 proper record of the prices and terms shall be made in the minutes

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 of the board. No bids shall be received after the time designated in
2 the advertisement.

3 c. Notice of revisions or addenda to advertisements or bid
4 documents shall be provided as follows:

5 (1) For all contracts except those for construction work, notice
6 shall be published no later than seven days, Saturdays, Sundays, and
7 holidays excepted, prior to the date for acceptance of bids, in an
8 official newspaper of the board of education and be provided to any
9 person who has submitted a bid or who has received a bid package,
10 in one of the following ways: (a) in writing by certified mail or (b)
11 by certified facsimile transmission, meaning that the sender's
12 facsimile machine produces a receipt showing date and time of
13 transmission and that the transmission was successful or (c) by a
14 delivery service that provides certification of delivery to the sender.

15 (2) For all contracts for construction work, notice shall be
16 provided no later than seven days, Saturdays, Sundays, or holidays
17 excepted, prior to the date for acceptance of bids, to any person who
18 has submitted a bid or who has received a bid package in any of the
19 following ways: i) in writing by certified mail or ii) by certified
20 facsimile transmission, meaning that the sender's facsimile machine
21 produces a receipt showing date and time of transmission and that
22 the transmission was successful or iii) by a delivery service that
23 provides certification of delivery to the sender.

24 d. Failure of the board of education to advertise for the receipt
25 of bids or to provide proper notification of revisions or addenda to
26 advertisements or bid documents related to bids as prescribed by
27 this section shall prevent the board of education from accepting the
28 bids and require the readvertisement for bids pursuant to subsection
29 a. of this section. Failure to obtain a receipt when good faith notice
30 is sent or delivered to the address or telephone facsimile number on
31 file with the board of education shall not be considered failure by
32 the board of education to provide notice.

33 (cf: P.L.2007, c.4, s.2)

34

35 2. N.J.S.18A:18A-22 is amended to read as follows:

36 18A:18A-22. Rejection of bids. A board of education may
37 reject all bids only for any of the following publicly stated bona
38 fide reasons:

39 a. The lowest bid substantially exceeds the published and
40 attested cost estimates or estimate ranges for the goods or services;

41 b. The lowest bid substantially exceeds the board of education's
42 appropriation, if any, for the goods or services;

43 c. The board of education decides to abandon the project for
44 provision or performance of the goods or services;

45 d. The board of education wants to substantially revise the
46 scope and specifications for the goods or services;

47 e. The purposes or provisions or both of N.J.S.18A:18A-1 et
48 seq. are being violated; and

1 f. The board of education decides to use the State authorized
2 contract pursuant to N.J.S.18A:18A-10.

3 (cf: P.L.1999, c.440, s.68)
4

5 3. N.J.S.A.18A:18A-24 is amended to read as follows:

6 18A:18A-24. Security to accompany bid; amount. There may be
7 required from any person bidding on any contract, advertised in
8 accordance with law, that the bid be accompanied by a guarantee
9 payable to the board of education that, if the contract is awarded to
10 the bidder, the bidder will enter into a contract therefor and will
11 furnish any performance bond or other security required as a
12 guarantee or indemnification. The guarantee shall be in the amount
13 of ~~【10%】~~ 50 percent of the bid, but not in excess of ~~【\$20,000.00】~~
14 \$100,000, except as otherwise provided herein, and may be given,
15 at the option of the bidder, by certified check, cashier's check or bid
16 bond. In the event that any law or regulation of the United States
17 imposes any condition upon the awarding of a monetary grant to
18 any board of education, which condition requires the depositing of a
19 guarantee in an amount other than ~~【10%】~~ 50 percent of the bid or in
20 excess of ~~【\$20,000.00】~~ \$100,000, the provisions of this section
21 shall not apply and the requirements of the law or regulation of the
22 United States shall govern.

23 (cf: P.L.1999, c.440, s.69)
24

25 4. Section 14 of P.L.1986, c.43 (C.18A:64-65) is amended to
26 read as follows:

27 14. a. All advertisements for bids shall be published in a legal
28 newspaper sufficiently in advance of the date fixed for receiving the
29 bids to promote competitive bidding but in no event less than 10
30 days prior to that date for any construction projects or any other
31 contract or purchase. In addition to being published in a legal
32 newspaper, advertisements may also be posted using electronic data
33 or media services, including the internet. The advertisement for
34 bids for construction projects projected to cost in excess of
35 \$500,000 shall include the State college's or its purchasing agent's
36 projected cost estimate ranges for the base bid contract and any
37 specified alternate proposal, such estimate ranges having been
38 attested to as reasonable by the individual or firm preparing the cost
39 estimate ranges. The highest amount of a cost estimate range shall
40 not be greater than five percent more than the lowest amount. The
41 projected cost estimate ranges shall be attested no more than 30
42 days prior to the bid advertisement date. The advertisement shall
43 designate the manner of submitting and of receiving the bids and
44 the time and place at which the bids will be received. If the
45 published specifications provide for receipt of bids by mail or hand
46 delivery, only one copy of the bid documents shall be required, and
47 those bids which are mailed to the State college shall be sealed and
48 shall be opened only at such time and place as all bids received are

1 unsealed and announced. At that time and place, the contracting
2 agent of the State college shall publicly receive the bids and
3 thereupon immediately proceed to unseal them and publicly
4 announce the contents, which announcement shall be made in the
5 presence of any parties bidding or their agents who are then and
6 there present. A proper record of the prices and terms shall be
7 made. No bids shall be received after the time designated in the
8 advertisement.

9 For purposes of this subsection:

10 "Specified alternate proposal" means a requirement of the bid
11 specification for bidders to submit prices for reduced, modified, or
12 supplemental work in addition to the base proposal which may
13 include, but not be limited to, a change in project scope or the use
14 of alternative materials or methods of construction.

15 b. Notice of revisions or addenda to advertisements or bid
16 documents relating to bids shall be published in a legal newspaper
17 or newspapers no later than seven days, Saturdays, Sundays and
18 holidays excepted, prior to the bid due date. The notice shall be
19 provided to any person who has submitted a bid or who has
20 received a bid package, in one of the following ways: (a) in writing
21 by certified mail or (b) by certified facsimile transmission, meaning
22 that the sender's facsimile machine produces a receipt showing date
23 and time of transmission and that the transmission was successful or
24 (c) by a delivery service that provides certification of delivery to the
25 sender. Failure to advertise or provide proper notification of
26 revisions or addenda to advertisements or bid documents related to
27 bids as prescribed by this section shall prevent the acceptance of
28 bids and require the readvertisement for bids.

29 Failure to obtain a receipt when good faith notice is sent or
30 delivered to the address or telephone facsimile number on file with
31 the State college shall not be considered failure by the State college
32 to provide notice.

33 (cf: P.L.2005, c.369, s.8)

34
35 5. Section 15 of P.L.1986, c.43 (C.18A:64-66) is amended to
36 read as follows:

37 15. No bid shall be accepted which does not conform to the
38 specifications furnished therefor. Nothing contained in this article
39 shall be construed as depriving any State college of the right to
40 reject all bids except that in the case of bids for construction
41 projects, the State college may reject all bids only for any of the
42 following publicly stated bona fide reasons:

43 a. The lowest bid substantially exceeds the published and
44 attested cost estimates or estimate ranges for the construction
45 project;

46 b. The lowest bid substantially exceeds the State college's
47 appropriation, if any, for the construction project;

- 1 c. The State college decides to abandon the construction
2 project;
3 d. The State college wants to substantially revise the scope and
4 specifications for the construction project;
5 e. Either the purposes or provisions, or both, of the "State
6 College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.) are
7 being violated; and
8 f. The State college decides to use the State authorized contract
9 pursuant to section 9 of P.L.1986, c.43 (C.18A:64-60).
10 (cf: P.L.1986, c.43, s.15)
11

12 6. Section 16 of P.L.1986, c.43 (C.18A:64-67) is amended to
13 read as follows:

14 16. There may be required from any person bidding on any
15 purchase, contract or agreement, advertised in accordance with law,
16 that the bid be accompanied by a guaranty payable to the State
17 college that, if the purchase, contract or agreement is awarded to
18 him, he will enter into a contract therefor. The guaranty shall be in
19 the amount of **【10%】** 50 percent of the bid but not in excess of
20 **【\$20,000.00】** \$100,000, except as otherwise provided herein, and
21 may be given, at the option of the bidder, by certified check,
22 cashier's check or bid bond. For a construction contract the
23 guaranty shall be in the amount of **【10%】** 50 percent of the bid. In
24 the event that any law or regulation of the United States imposes
25 any condition upon the awarding of a monetary grant to any State
26 college, which condition requires a guaranty in an amount other
27 than **【10%】** 50 percent of the bid or in excess of **【\$20,000.00】**
28 \$100,000, the provisions of this section shall not apply and the
29 requirements of the law or regulation of the United States shall
30 govern.

31 The college may require a bid guaranty alone without also
32 requiring a performance bond or other security in the contract.
33 (cf: P.L.2005, c.369, s.9)
34

35 7. Section 14 of P.L.1982, c.189 (C.18A:64A-25.14) is
36 amended to read as follows:

37 14. a. All advertisements for bids shall be published in a legal
38 newspaper sufficiently in advance of the date fixed for receiving the
39 bids to promote competitive bidding but in no event less than 10
40 days prior to such date. The advertisement for bids for construction
41 projects projected to cost in excess of \$500,000 shall include the
42 county college's or its purchasing agent's projected cost estimate
43 ranges for the base bid contract and any specified alternate
44 proposal, such estimate ranges having been attested to as reasonable
45 by the individual or firm preparing the cost estimate ranges. The
46 highest amount of a cost estimate range shall not be greater than
47 five percent more than the lowest amount. The projected cost
48 estimate ranges shall be attested no more than 30 days prior to the

1 bid advertisement date. The advertisement shall designate the
2 manner of submitting and of receiving the bids and the time and
3 place at which the bids will be received. If the published
4 specifications provide for receipt of bids by mail or hand delivery,
5 only one copy of the bid documents shall be required, and those
6 bids which are mailed to the county college shall be sealed and shall
7 be opened only at such time and place as all bids received are
8 unsealed and announced. At such time and place, the contracting
9 agent of the county college shall publicly receive the bids and
10 thereupon immediately proceed to unseal them and publicly
11 announce the contents, which announcement shall be made in the
12 presence of any parties bidding or their agents who are then and
13 there present. A proper record of the prices and terms shall be
14 made. No bids shall be received after the time designated in the
15 advertisement.

16 For purposes of this subsection:

17 "Specified alternate proposal" means a requirement of the bid
18 specification for bidders to submit prices for reduced, modified, or
19 supplemental work in addition to the base proposal which may
20 include, but not be limited to, a change in project scope or the use
21 of alternative materials or methods of construction.

22 b. Notice of revisions or addenda to advertisements or bid
23 documents relating to bids shall be published in a legal newspaper
24 no later than seven days, Saturdays, Sundays and holidays excepted,
25 prior to the bid due date. The notice shall be provided to any
26 person who has submitted a bid or who has received a bid package,
27 in one of the following ways: (a) in writing by certified mail or (b)
28 by certified facsimile transmission, meaning that the sender's
29 facsimile machine produces a receipt showing date and time of
30 transmission and that the transmission was successful or (c) by a
31 delivery service that provides certification of delivery to the sender.
32 Failure to advertise or provide proper notification of revisions or
33 addenda to advertisements or bid documents related to bids as
34 prescribed by this section shall prevent the acceptance of bids and
35 require the readvertisement for bids. Failure to obtain a receipt
36 when good faith notice is sent or delivered to the address or
37 telephone facsimile number on file with the county college shall not
38 be considered failure by the county college to provide notice.

39 (cf: P.L.2005, c.191, s.3)

40

41 8. Section 15 of P.L.1982, c.189 (C.18A:64A-25.15) is
42 amended to read as follows:

43 15. No bid shall be accepted which does not conform to the
44 specifications furnished therefor. Nothing contained in this article
45 shall be construed as depriving any county college of the right to
46 reject all bids except that in the case of bids for construction
47 projects, a county college may reject all bids only for any of the
48 following publicly stated bona fide reasons:

- 1 a. The lowest bid substantially exceeds the published and
2 attested cost estimates or estimate ranges for the construction
3 project;
4 b. The lowest bid substantially exceeds the county college's
5 appropriation, if any, for the construction project;
6 c. The county college decides to abandon the construction
7 project;
8 d. The county college wants to substantially revise the scope
9 and specifications for the construction project;
10 e. Either the purposes or provisions, or both, of the "County
11 College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.)
12 are being violated; and
13 f. The county college decides to use the State authorized
14 contract pursuant to section 9 of P.L.1982, c.189 (C.18A:64A-25.9).
15 (cf: P.L.1982, c.189, s.15)

16
17 9. Section 16 of P.L.1982, c.189, s.16 (C.18A:64A-25.16) is
18 amended to read as follows:

19 16. There may be required from any person bidding on any
20 purchase, contract or agreement, advertised in accordance with law,
21 that the bid be accompanied by a guaranty payable to the county
22 college that, if the purchase, contract or agreement is awarded to
23 him, he will enter into a contract therefor and will furnish any
24 performance bond or other security which may be required pursuant
25 to section 17 of P.L.1982, c.189 (C.18A:64A-25.17). The guaranty
26 shall be in the amount of **【10%】** 50 percent of the bid but not in
27 excess of **【\$20,000.00】** \$100,000, except as otherwise provided
28 herein, and may be given, at the option of the bidder, by certified
29 check, cashier's check or bid bond. For a construction contract the
30 guaranty shall be in the amount of **【10%】** 50 percent of the bid. In
31 the event that any law or regulation of the United States imposes
32 any condition upon the awarding of a monetary grant to any county
33 college, which condition requires a guaranty in an amount other
34 than **【10%】** 50 percent of the bid or in excess of **【\$20,000.00】**
35 \$100,000, the provisions of this section shall not apply and the
36 requirements of the law or regulation of the United States shall
37 govern.

38 The college may require a bid guaranty alone without also
39 requiring a performance bond or other security in the contract.
40 (cf: P.L.1984, c.241, s.5)

41
42 10. Section 21 of P.L.1999, c.440 (C.40A:11-13.2) is amended
43 to read as follows:

44 21. A contracting unit may reject all bids only for any of the
45 following publicly stated bona fide reasons:

- 46 a. The lowest bid substantially exceeds the published and
47 attested cost estimates or estimate ranges for the goods or services;

- 1 b. The lowest bid substantially exceeds the contracting unit's
2 appropriation, if any, for the goods or services;
- 3 c. The governing body of the contracting unit decides to
4 abandon the project for provision or performance of the goods or
5 services;
- 6 d. The contracting unit wants to substantially revise the scope
7 and specifications for the goods or services;
- 8 e. The purposes or provisions or both of P.L.1971, c.198
9 (C.40A:11-1 et seq.) are being violated; and
- 10 f. The governing body of the contracting unit decides to use
11 the State authorized contract pursuant to section 12 of P.L.1971,
12 c.198 (C.40A:11-12).
13 (cf: P.L.1999, c.440, s.21)
14

15 11. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to
16 read as follows:

17 21. A person bidding on a contract for the erection, alteration or
18 repair of a public building, structure, facility or other improvement
19 to real property, the total price of which exceeds \$100,000, shall
20 furnish a guarantee as provided for herein. A contracting unit may
21 provide that a person bidding on any other contract, advertised in
22 accordance with law, shall furnish a guarantee as provided for
23 herein. The guarantee shall be payable to the contracting unit so
24 that if the contract is awarded to the bidder, the bidder will enter
25 into a contract therefor and will furnish any performance bond or
26 other security required as a guarantee or indemnification. The
27 guarantee shall be in the amount of **【10%】** 50 percent of the bid,
28 but not in excess of **【\$20,000.00】** \$100,000, except as otherwise
29 provided herein, and may be given, at the option of the bidder, by
30 certified check, cashier's check or bid bond. In the event that any
31 law or regulation of the United States imposes any condition upon
32 the awarding of a monetary grant to any contracting unit, which
33 condition requires the depositing of a guarantee in an amount other
34 than **【10%】** 50 percent of the bid or in excess of **【\$20,000.00】**
35 \$100,000 the provisions of this section shall not apply and the
36 requirements of the law or regulation of the United States shall
37 govern.
38 (cf: P.L.1999, c.440, s.29)
39

40 12. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to
41 read as follows:

42 23. a. All advertisements for bids shall be published in an
43 official newspaper of the contracting unit sufficiently in advance of
44 the date fixed for receiving the bids to promote competitive
45 bidding, but in no event less than 10 days prior to such date; except
46 that all advertisements for bids on contracts for the collection and
47 disposal of municipal solid waste shall be published in an official
48 newspaper of the contracting unit circulating in the county or

1 municipality, and in at least one newspaper of general circulation
2 published in the State, sufficiently in advance of the date fixed for
3 receiving the bids to promote competitive bidding, but not less than
4 60 days prior to that date. For all contracts, the date fixed for
5 receiving the bids shall not fall on a Monday, or any day directly
6 following a State or federal holiday. The advertisement for bids for
7 construction projects projected to cost in excess of \$500,000 shall
8 include the contracting unit's or its purchasing agent's projected cost
9 estimate ranges for the base bid contract and any specified alternate
10 proposal, such estimate ranges having been attested to as reasonable
11 by the individual or firm preparing the cost estimate ranges. The
12 highest amount of a cost estimate range shall not be greater than
13 five percent more than the lowest amount. The projected cost
14 estimate ranges shall be attested no more than 30 days prior to the
15 bid advertisement date.

16 b. The advertisement shall designate the manner of submitting
17 and the method of receiving the bids and the time and place at
18 which the bids will be received. If the published specifications
19 provide for receipt of bids by mail or hand delivery, only one copy
20 of the bid documents shall be required, and those bids which are
21 mailed to the contracting unit shall be sealed and shall only be
22 opened for examination at such time and place as all bids received
23 are unsealed and announced. At such time and place the contracting
24 agent of the contracting unit shall publicly receive the bids, and
25 thereupon immediately proceed to unseal them and publicly
26 announce the contents, which announcement shall be made in the
27 presence of any parties bidding or their agents, who are then and
28 there present, and shall also make proper record of the prices and
29 terms, upon the minutes of the governing body, if the award is to be
30 made by the governing body of the contracting unit, or in a book
31 kept for that purpose, if the award is to be made by other than the
32 governing body, and in such latter case it shall be reported to the
33 governing body of the contracting unit for its action thereon, when
34 such action thereon is required. No bids shall be received after the
35 time designated in the advertisement.

36 c. Notice of revisions or addenda to advertisements or bid
37 documents shall be provided as follows:

38 1) For all contracts except those for construction work and
39 municipal solid waste collection and disposal service, notice shall
40 be published no later than seven days, Saturdays, Sundays, and
41 holidays excepted, prior to the date for acceptance of bids, in an
42 official newspaper of the contracting unit and be provided to any
43 person who has submitted a bid or who has received a bid package,
44 in one of the following ways: i) in writing by certified mail or ii)
45 by certified facsimile transmission, meaning that the sender's
46 facsimile machine produces a receipt showing date and time of
47 transmission and that the transmission was successful or iii) by a
48 delivery service that provides certification of delivery to the sender.

1 2) For all contracts for construction work, notice shall be
2 provided no later than seven days, Saturdays, Sundays, or holidays
3 excepted, prior to the date for acceptance of bids, to any person who
4 has submitted a bid or who has received a bid package in any of the
5 following ways: i) in writing by certified mail or ii) by certified
6 facsimile transmission, meaning that the sender's facsimile machine
7 produces a receipt showing date and time of transmission and that
8 the transmission was successful or iii) by a delivery service that
9 provides certification of delivery to the sender.

10 3) For municipal solid waste collection and disposal contracts,
11 notice shall be published in an official newspaper of the contracting
12 unit and in at least one newspaper of general circulation published
13 in the State no later than seven days, Saturdays, Sundays, and
14 holidays excepted, prior to the date for acceptance of bids.

15 d. Failure of the contracting unit to advertise for the receipt of
16 bids or to provide proper notification of revisions or addenda to
17 advertisements or bid documents related to bids as prescribed by
18 this section shall prevent the contracting unit from accepting the
19 bids and require the readvertisement for bids pursuant to subsection
20 a. of this section. Failure to obtain a receipt when good faith notice
21 is sent or delivered to the address or telephone facsimile number on
22 file with the contracting unit shall not be considered failure by the
23 contracting unit to provide notice.

24 (cf: P.L.2007, c.4, s.1)

25

26 13. Section 9 of P.L.2007, c.137 (C.52:18A-243) is amended to
27 read as follows.

28 9. a. In undertaking any school facilities projects where the cost
29 of construction, reconstruction, rehabilitation or improvement will
30 exceed \$25,000, the development authority may prepare, or cause to
31 be prepared, separate plans and specifications for: (1) the plumbing
32 and gas fitting and all work and materials kindred thereto, (2) the
33 steam and hot water heating and ventilating apparatus, steam power
34 plants and all work and materials kindred thereto, (3) the electrical
35 work, (4) structural steel and miscellaneous iron work and
36 materials, and (5) all general construction, which shall include all
37 other work and materials required to complete the building.

38 Commencing in the fifth year after the year in which P.L.2007,
39 c.137 (C.52:18A-235 et al.) takes effect, and every five years
40 thereafter, the Governor, in consultation with the Department of the
41 Treasury, shall adjust the amount set forth in this subsection or the
42 amount resulting from any adjustment under this subsection in
43 direct proportion to the rise or fall of the index rate as defined in
44 this subsection, and shall round the adjustment to the nearest
45 \$1,000. The Governor shall, no later than June 1 of every fifth
46 year, notify the development authority of the adjustment. The
47 adjustment shall become effective on July 1 of the year in which it
48 is made.

1 For the purposes of this subsection, "index rate" means the rate
2 of annual percentage increase, rounded to the nearest half-percent,
3 in the Implicit Price Deflator for State and Local Government
4 Purchases of Goods and Services, computed and published quarterly
5 by the United States Department of Commerce, Bureau of
6 Economic Analysis.

7 b. The development authority shall advertise and receive (1)
8 separate bids for each of the branches of work specified in
9 subsection a. of this section; or (2) bids for all the work and
10 materials required to complete the school facilities project to be
11 included in a single overall contract, in which case there shall be set
12 forth in the bid the name or names of all subcontractors to whom
13 the bidder will subcontract for the furnishing of any of the work and
14 materials specified in branches (1) through (4) in subsection a. of
15 this section; or (3) both.

16 c. Contracts shall be awarded as follows: (1) if bids are
17 received in accordance with paragraph (1) of subsection b. of this
18 section, the development authority shall determine the responsible
19 bidder for each branch whose bid, conforming to the invitation for
20 bids, will be most advantageous to the development authority, price
21 and other factors considered; (2) if bids are received in accordance
22 with paragraph (2) of subsection b. of this section, the development
23 authority shall determine the responsible bidder for the single
24 overall contract whose bid, conforming to the invitation for bids,
25 will be the most advantageous to the development authority, price
26 and other factors considered; or (3) if bids are received in
27 accordance with paragraph (3) of subsection b. of this section, the
28 development authority shall award separate contracts for each
29 branch of work specified in subsection a. of this section if the sum
30 total of the amounts bid by the responsible bidders for each branch,
31 as determined pursuant to paragraph (1) of this subsection, is less
32 than the amount bid by the responsible bidder for all of the work
33 and materials, as determined pursuant to paragraph (2) of this
34 subsection; but if the sum total of the amounts bid by the
35 responsible bidder for each branch, as determined pursuant to
36 paragraph (1) of this subsection is not less than the amount bid by
37 the responsible bidder for all of the work and materials, as
38 determined pursuant to paragraph (2) of this subsection, the
39 development authority shall award a single over-all contract to the
40 responsible bidder for all of the work and materials as determined
41 pursuant to paragraph (2) of this subsection.

42 d. For the purposes of this section, "other factors" means the
43 evaluation by the development authority of the ability of the single
44 contractor or the abilities of the multiple contractors to complete the
45 contract in accordance with its requirements and includes
46 requirements relating to the experience and qualifications of the
47 contractor or contractors and their key personnel in projects of
48 similar type and complexity; the performance of the contractor or

1 contractors on prior contracts with the development authority, the
2 State, or districts; the experience and capability of the contractor or
3 contractors and their key personnel in respect to any special
4 technologies, techniques or expertise that the project may require;
5 the contractor's understanding of the means and methods needed to
6 complete the project on time and within budget; the timetable to
7 complete the project; the contractor's plan for quality assurance and
8 control; the contractor's demonstrated experience in regard to
9 affirmative action; and other similar types of factors. The "other
10 factors" to be considered in evaluating bids and the weights
11 assigned to price and these "other factors" shall be determined by
12 the development authority prior to the advertisement for bids for
13 school facilities projects. In its evaluation of bids, the consideration
14 given to price by the development authority shall be at least equal to
15 the consideration given to the combination of all "other factors."

16 e. The development authority shall require from all contractors
17 to which it awards contracts pursuant to P.L.2000, c.72 (C.18A:7G-
18 1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.), the delivery of a
19 payment and performance bond issued in accordance with
20 N.J.S.2A:44-143 et seq.

21 f. The development authority shall adopt regulations to
22 implement this section which shall include, but not be limited to,
23 the procedural requirements for: (1) the evaluation and weighting of
24 price and "other factors" in the awarding of contracts; and (2) the
25 appealing of a prequalification classification and rating, a bid
26 rejection, and a contract award recommendation.

27 The rules and regulations promulgated by the New Jersey
28 Schools Construction Corporation pursuant to the provisions of
29 P.L.2000, c.72 (C.18A:7G-1 et al.) shall remain in full force and
30 effect unless subsequently revised by the development authority
31 following the enactment of P.L.2007, c.137 (C.52:18A-235 et al.).

32 g. Each evaluation committee selected by the development
33 authority to review and evaluate bids shall, at a minimum, contain a
34 representative from the district in which the school facilities project
35 is located if the district elects to participate.

36 h. All advertisements for bids shall be published in a legal
37 newspaper and be posted on the development authority's website
38 sufficiently in advance of the date fixed for receiving the bids to
39 promote competitive bidding but in no event less than 10 days prior
40 to such date. The advertisement for bids for construction projects
41 projected to cost in excess of \$500,000 shall include the
42 development authority's projected cost estimate ranges for the base
43 bid contract and any specified alternate proposal, such estimate
44 ranges having been attested to as reasonable by the individual or
45 firm preparing the cost estimate ranges. The highest amount of a
46 cost estimate range shall not be greater than five percent more than
47 the lowest amount. The projected cost estimate ranges shall be
48 attested no more than 30 days prior to the bid advertisement date.

1 Notice of revisions or addenda to advertisements or bid documents
2 relating to bids shall be advertised on the development authority's
3 website to best give notice to bidders no later than seven days,
4 Saturdays, Sundays and holidays excepted, prior to the bid due date.
5 The notice shall be provided to any person who has submitted a bid,
6 in one of the following ways: (a) in writing by certified mail or (b)
7 by certified facsimile transmission, meaning that the sender's
8 facsimile machine produces a receipt showing date and time of
9 transmission and that the transmission was successful or (c) by a
10 delivery service that provides certification of delivery to the sender.
11 Failure to advertise or provide proper notification of revisions or
12 addenda to advertisements or bid documents related to bids as
13 prescribed by this section shall prevent the acceptance of bids and
14 require the readvertisement for bids. Failure to obtain a receipt
15 when good faith notice is sent or delivered to the address or
16 telephone facsimile number on file with the development authority
17 shall not be considered failure by the development authority to
18 provide notice.

19 For purposes of this subsection:

20 "Specified alternate proposal" means a requirement of the bid
21 specification for bidders to submit prices for reduced, modified, or
22 supplemental work in addition to the base proposal which may
23 include, but not be limited to, a change in project scope or the use
24 of alternative materials or methods of construction.

25 i. Any purchase, contract, or agreement may be made,
26 negotiated, or awarded by the development authority without public
27 bid or advertising when the public exigency so requires.

28 j. Any purchase, contract, or agreement may be made,
29 negotiated, or awarded by the development authority without public
30 bid or advertising when the authority has advertised for bids on two
31 occasions and has received no bids on both occasions in response to
32 its advertisements. Any purchase, contract, or agreement may be
33 negotiated by the development authority after public bid or
34 advertising when the authority receives only a single responsive
35 bid, provided however that negotiation with that single responsive
36 bidder shall be limited to price.

37 k. The development authority may reject all bids for a
38 construction project only for any of the following publicly stated
39 bona fide reasons:

40 (1) The lowest bid substantially exceeds the published and
41 attested cost estimates or estimate ranges for the construction
42 project;

43 (2) The lowest bid substantially exceeds the appropriation, if
44 any, for the construction project;

45 (3) The development authority decides to abandon the
46 construction project; and

1 (4) The development authority wants to substantially revise the
2 scope and specifications for the construction project.

3 (cf: P.L.2007, c.137, s.9)
4

5 14. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read
6 as follows:

7 7. a. Whenever advertising is required: (a) specifications and
8 invitations for bids shall permit such full and free competition as is
9 consistent with the procurement of supplies and services necessary
10 to meet the requirements of the using agency and shall, wherever
11 practicable, include such factors as life-cycle costs, sliding
12 percentage preference scales, or other similar analysis as shall be
13 deemed effective by the Director of the Division of Purchase and
14 Property, hereinafter referred to as the director, (b) the
15 advertisement for bids shall be in such newspaper or newspapers
16 and other medium or media selected by the State Treasurer as will
17 best give notice thereof to bidders and shall be sufficiently in
18 advance of the purchase or contract to promote competitive bidding;
19 (c) the advertisement shall designate the time and secure location
20 when and where proposals, which may be submitted in electronic or
21 other format designated by the director, shall be received, opened
22 and publicly announced, the amount of the cash or certified check,
23 if any, which must accompany each bid, and such other terms as the
24 State Treasurer may deem proper; (d) notice of revisions or addenda
25 to advertisements or bid documents relating to bids shall be
26 published in a newspaper or newspapers and other medium or
27 media selected by the State Treasurer to give notice to bidders at
28 least seven days, Saturdays, Sundays and holidays excepted, prior
29 to the bid due date; (e) failure to advertise for the receipt of bids or
30 to provide proper notification of revisions or addenda to
31 advertisements or bid documents related to bids as prescribed by
32 subsection (d) of this section shall prevent the acceptance of bids
33 and require the readvertisement for bids; (f) for any procurement,
34 the State Treasurer or the director may negotiate with bidders the
35 final terms and conditions of any procurement, including price;
36 such ability to so negotiate must be expressly set forth in the
37 applicable invitation to bid and such bids shall not be publicly
38 accessible until after negotiations have been completed and the
39 notice of intent to award the contract has been issued; (g) award
40 shall be made with reasonable promptness, after negotiation with
41 bidders where authorized, by written or electronic notice to that
42 responsible bidder whose bid, conforming to the invitation for bids,
43 will be most advantageous to the State, price and other factors
44 considered; **【and】** (h) the Treasurer shall require, with respect to
45 contracts for information technology goods and services, a
46 limitation of liability determined by the Director of the Division of
47 Purchase and Property; and (i) the advertisement for bids for
48 construction projects projected to cost in excess of \$500,000 shall

1 include the projected cost estimate ranges for the base bid contract
2 and any specified alternate proposal, such estimate ranges having
3 been attested to as reasonable by the individual or firm preparing
4 the estimate ranges; the highest amount of such cost estimate range
5 shall not be greater than five percent more than the lowest amount;
6 such projected cost estimate ranges shall be attested no more than
7 30 days prior to the bid advertisement date.

8 When negotiations occur pursuant to subparagraph **[f.]** (f) of this
9 **[section]** subsection, a written record of the nature and content of
10 the negotiations, as well as the dates and persons involved, shall
11 become a public record when the notice of intent to award the
12 contract is issued.

13 Any or all bids may be rejected when the State Treasurer or the
14 Director of the Division of Purchase and Property determines that it
15 is in the public interest so to do except that bids for construction
16 projects shall be rejected pursuant to the provisions of section 15 of
17 P.L. , c. (C.) (pending before the Legislature as this bill).
18 The State Treasurer or designee may adopt, pursuant to the
19 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.), such rules and regulations as may be necessary to implement
21 the provisions of this section.

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

24 For purposes of this subsection:

25 "Specified alternate proposal" means a requirement of the bid
26 specification for bidders to submit prices for reduced, modified, or
27 supplemental work in addition to the base proposal which may
28 include, but not be limited to, a change in project scope or the use
29 of alternative materials or methods of construction.

30 b. Whenever by law a State independent authority may
31 negotiate with bidders, after bid opening, the final terms and
32 conditions of any procurement, including price, and such ability to
33 so negotiate is expressly set forth in the applicable invitation to bid,
34 a written record of the nature and content of the negotiations, as
35 well as the dates and persons involved, shall not be publicly
36 accessible until after the notice of intent to award the contract is
37 issued.

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

39
40 15. (New section) Bids received for construction projects, the
41 cost or contract price whereof is to be paid with or out of State
42 funds, except as otherwise provided, may all be rejected only for
43 any of the following publicly stated bona fide reasons:

44 a. The lowest bid substantially exceeds the published and
45 attested cost estimates or estimate ranges for the goods or services;

46 b. The lowest bid substantially exceeds the appropriation, if any,
47 for the goods or services;

48 c. A decision is made to abandon the construction project; and

1 d. The scope and specifications for the construction project are
2 substantially revised.

3

4 16. This act shall take effect immediately and apply to bids
5 advertised on or after the first day of the eighth month next
6 following the date of enactment.

7

8

9

STATEMENT

10

11 This bill, designated as the Fairness in Bidding Act, would
12 amend advertising and notice provisions of the "Local Public
13 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.); the "State
14 College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.); the
15 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1
16 et seq.); the "Public School Contracts Law," N.J.S.18A:18A-1 et
17 seq.; P.L.2007, c.137 (C.52:18A-235 et al.); and P.L.1954, c.48
18 (C.52:34-6 et seq.). This bill would require contracting units
19 requesting bids for construction projects projected to cost in excess
20 of \$500,000 to advertise their projected cost estimate ranges of the
21 contract and any alternate. The highest amount of a cost estimate
22 range would be limited at no greater than five percent more than the
23 lowest amount. The cost estimate ranges would be required to be
24 attested as reasonable by the individual or firm preparing them.

25 The bill would also revise the laws authorizing the contracting
26 units to reject, for any of various statutorily specified reasons, all
27 construction project bids. These revisions would (1) limit the
28 grounds for such rejection to those currently specified, (2) require
29 any such rejection to be done in good faith, and (3) require a unit to
30 state publicly its grounds for such a rejection.

31 The bill would also permit contracting units to require a bidder
32 to provide a guaranty in the amount of 50 percent of the bid but not
33 in excess of \$100,000, payable to the contracting unit, to ensure that
34 if the contract is awarded to the bidder, the bidder will enter into a
35 contract. Currently, contracting units are only permitted to require
36 a guaranty of 10 percent of the bid but not in excess of \$20,000.

37 Finally, the bill provides that only one copy of all bid documents
38 shall be required when bids are accepted by mail or hand delivery.

39 This bill would help ensure greater openness in the bidding
40 process and further ensure careful deliberation before a decision is
41 reached to reject all bids.