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)

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

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

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

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

For purposes of this subsection:

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

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

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

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

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

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

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

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

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

18A:18A-22. Rejection of bids. A board of education may reject all bids <u>only</u> for any of the following <u>publicly stated bona fide</u> reasons:

a. The lowest bid substantially exceeds the <u>published and attested</u> cost estimates <u>or estimate ranges</u> for the goods or services;

b. The lowest bid substantially exceeds the board of education's appropriation<u>, if any,</u> for the goods or services;

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

d. The board of education wants to substantially revise the <u>scope and</u> specifications for the goods or services;

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

f. The board of education decides to use the State authorized contract pursuant to N.J.S.18A:18A-10.
(cf: P.L.1999, c.440, s.68)

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

18A:18A-24. Security to accompany bid; amount. There may be required from any person bidding on any contract, advertised in accordance with law, that the bid be accompanied by a guarantee payable to the board of education that, if the contract is awarded to the bidder, the bidder will enter into a contract therefor and will furnish any performance bond or other security required as a guarantee or indemnification. The guarantee shall be in the amount of **[**10%**]** 50 percent of the bid, but not in excess of **[**$20,000.00**]** $100,000, except as otherwise provided herein, and may be given, at the option of the bidder, by certified check, cashier's check or bid bond. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any board of education, which condition requires the depositing of a guarantee in an amount other than **[**10%**]** 50 percent of the bid or in excess of **[**$20,000.00**]** $100,000, the provisions of this section shall not apply and the requirements of the law or regulation of the United States shall govern.
(cf: P.L.1999, c.440, s.69)

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

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

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

For purposes of this subsection:

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

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

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

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

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

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

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

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

c. The State college decides to abandon the construction project;

d. The State college wants to substantially revise the scope and specifications for the construction project;

e. Either the purposes or provisions, or both, of the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.) are being violated; and

f. The State college decides to use the State authorized contract pursuant to section 9 of P.L.1986, c.43 (C.18A:64-60).

(cf: P.L.1986, c.43, s.15)

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

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

The college may require a bid guaranty alone without also requiring a performance bond or other security in the contract.

(cf: P.L.2005, c.369, s.9)

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

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

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

For purposes of this subsection:

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

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

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

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

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

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

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

c. The county college decides to abandon the construction project;

d. The county college wants to substantially revise the scope and specifications for the construction project;

e. Either the purposes or provisions, or both, of the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.) are being violated; and

f. The county college decides to use the State authorized contract pursuant to section 9 of P.L.1982, c.189 (C.18A:64A-25.9).

(cf: P.L.1982, c.189, s.15)

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

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

The college may require a bid guaranty alone without also requiring a performance bond or other security in the contract.

(cf: P.L.1984, c.241, s.5)

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

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

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

b. The lowest bid substantially exceeds the contracting unit's appropriation, if any, for the goods or services;

c. The governing body of the contracting unit decides to abandon the project for provision or performance of the goods or services;

d. The contracting unit wants to substantially revise the scope and specifications for the goods or services;

e. The purposes or provisions or both of P.L.1971, c.198 (C.40A:11-1 et seq.) are being violated; and

f. The governing body of the contracting unit decides to use the State authorized contract pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12).

(cf: P.L.1999, c.440, s.21)

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

21. A person bidding on a contract for the erection, alteration or repair of a public building, structure, facility or other improvement to real property, the total price of which exceeds $100,000, shall furnish a guarantee as provided for herein. A contracting unit may provide that a person bidding on any other contract, advertised in accordance with law, shall furnish a guarantee as provided for herein. The guarantee shall be payable to the contracting unit so that if the contract is awarded to the bidder, the bidder will enter into a contract therefor and will furnish any performance bond or other security required as a guarantee or indemnification. The guarantee shall be in the amount of **[**10%**]** 50 percent of the bid, but not in excess of **[**$20,000.00**]** $100,000, except as otherwise provided herein, and may be given, at the option of the bidder, by certified check, cashier's check or bid bond. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any contracting unit, which condition requires the depositing of a guarantee in an amount other than **[**10%**]** 50 percent of the bid or in excess of **[**$20,000.00**]** $100,000 the provisions of this section shall not apply and the requirements of the law or regulation of the United States shall govern.

(cf: P.L.1999, c.440, s.29)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Contracts shall be awarded as follows: (1) if bids are received in accordance with paragraph (1) of subsection b. of this section, the development authority shall determine the responsible bidder for each branch whose bid, conforming to the invitation for bids, will be most advantageous to the development authority, price and other factors considered; (2) if bids are received in accordance with paragraph (2) of subsection b. of this section, the development authority shall determine the responsible bidder for the single overall contract whose bid, conforming to the invitation for bids, will be the most advantageous to the development authority, price and other factors considered; or (3) if bids are received in accordance with paragraph (3) of subsection b. of this section, the development authority shall award separate contracts for each branch of work specified in subsection a. of this section if the sum total of the amounts bid by the responsible bidders for each branch, as determined pursuant to paragraph (1) of this subsection, is less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection; but if the sum total of the amounts bid by the responsible bidder for each branch, as determined pursuant to paragraph (1) of this subsection is not less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection, the development authority shall award a single over-all contract to the responsible bidder for all of the work and materials as determined pursuant to paragraph (2) of this subsection.

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

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

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

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

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

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

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

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

For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this subsection:

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

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

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

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

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

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

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

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

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

STATEMENT

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

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

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

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

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