

ASSEMBLY, No. 4528

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 10, 2020

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

SYNOPSIS

Revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/13/2020)

1 AN ACT concerning certain aspects of the State procurement
2 process and amending P.L.2012, c.25 and P.L.1954, c.48.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 4 of P.L.2012, c.25 (C.52:32-58) is amended to read
8 as follows:

9 4. a. A State agency shall require a person or entity that
10 submits a bid or proposal or otherwise proposes to enter into or
11 renew a contract to certify, **[at the time the bid is submitted or]**
12 prior to the time a contract is awarded and at the time the contract is
13 renewed, that the person or entity is not identified on a list created
14 pursuant to subsection b. of section 3 of this act as a person or
15 entity engaging in investment activities in Iran described in
16 subsection f. of section 2 of this act.

17 b. The certification required shall be executed on behalf of the
18 applicable person or entity by an authorized officer or
19 representative of the person or entity.

20 c. In the event that a person or entity is unable to make the
21 certification required because it or one of its parents, subsidiaries,
22 or affiliates as defined in subsection e. of section 2 of this act has
23 engaged in one or more of the activities specified in subsection f. of
24 section 2 of this act, the person or entity shall provide to the State
25 agency concerned, prior to the deadline for delivery of such
26 certification, a detailed and precise description of such activities,
27 such description to be provided under penalty of perjury.

28 d. The certifications provided under subsection a. of this
29 section and disclosures provided under subsection c. of this section
30 shall be disclosed to the public.

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

32

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

35 7. a. Whenever advertising is required: (a) specifications and
36 invitations for bids shall permit such full and free competition as is
37 consistent with the procurement of supplies and services necessary
38 to meet the requirements of the using agency and shall, wherever
39 practicable, include such factors as life-cycle costs, sliding
40 percentage preference scales, or other similar analysis as shall be
41 deemed effective by the Director of the Division of Purchase and
42 Property, hereinafter referred to as the director, (b) the
43 advertisement for bids shall be in such newspaper or newspapers
44 and other medium or media selected by the State Treasurer as will
45 best give notice thereof to bidders and shall be sufficiently in

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

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

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

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

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

18
19 3. This act shall take effect immediately.
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21

22 STATEMENT

23
24 This bill revises certain aspects of the State procurement process
25 and permits auction or reverse auction procedures.

26 Under current law, a person or entity that submits a bid or
27 proposal, or otherwise proposes to enter into or renew a contract to
28 certify, must do so at the time the bid is submitted or the contract is
29 renewed. This bill revises the process to require a person or entity
30 to certify prior to the time a contract is awarded and at the time the
31 contract is renewed.

32 This bill also permits the Director of the Division of Purchase
33 and Property to structure an advertisement for bids to include an
34 auction or reverse auction procedure. The procedure will be related
35 to the procurement of goods, services, or both, whereby pricing is
36 revealed to all other qualified bidders during the course of the
37 auction or reverse auction. The director would determine whether
38 to utilize an auction or reverse auction dependent on if that
39 procedure would result in bids being more advantageous to the
40 State, price and other factors considered.