

Title 52.
Subtitle 5.
Chapter 34A. (New)
Electronic Procurement
§§1-9 -
C.52:34A-1 to 52:34A-9
§10 – C.18A:18A-26.1
§11 – C.18A:64-60.1
§12 – C.18A:64A-25.26a
§13 – C.52:18A-243.1
§14 – C.40A:11-12.7
§15 - Note

P.L. 2020, CHAPTER 59, *approved July 16, 2020*
Senate, No. 2085 (*First Reprint*)

1 **AN ACT** concerning public contracts and supplementing various
2 parts of the statutory law.
3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*
6
7 1. Sections 1 through 8 of P.L. , c. (C.) (pending
8 before the Legislature as this bill) shall be known and may be cited
9 as the “Electronic Construction Procurement Act.”
10
11 2. The Legislature finds and declares that advances in
12 electronic technology offer opportunities to enhance governmental
13 efficiencies. In order to explore these avenues of improved
14 government efficiency, it is in the best interests of the State to
15 require public entities to implement proven electronic technologies
16 for the procurement of public works construction, and to require the
17 promulgation of standards for the use of these technologies that
18 ensure the integrity and procedural protections of sealed public
19 bidding and competitive contracting translated to an electronic
20 environment.
21
22 3. As used in P.L. , c. (C.) (pending before the
23 Legislature as this bill):
24 “Electronic construction procurement” means, for the purposes
25 of public works construction projects, the use of computer
26 technology and the Internet for the advertising and submission of
27 public bids, providing notice of revisions or addenda to
28 advertisements or bid documents, the receipt of proposals and
29 quotations, and related practices to assist in determining the lowest
30 responsible bidder or other agency-appropriate bid or proposal
31 procurement standard.

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.
Matter enclosed in superscript numerals has been adopted as follows:
¹Assembly AAP committee amendments adopted June 25, 2020.

1 “Local contracting unit” means a government entity that
2 contracts for the procurement of goods, services, or the construction
3 of public works pursuant to the “Public School Contracts Law,”
4 N.J.S.18A:18A-1 et seq.; the “County College Contracts Law,”
5 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or the “Local Public
6 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.).

7 “Public works construction” means any project that is subject to
8 the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-
9 56.25 et seq.), and is contracted for by a State or local public
10 contracting unit for the purposes of construction, reconstruction,
11 demolition, alteration, custom fabrication, repair work, or
12 maintenance work, including painting and decorating, done under
13 contract and paid for, in whole or in part, out of the funds of a
14 public body. Public works construction also means construction,
15 reconstruction, demolition, alteration, custom fabrication, repair
16 work, or maintenance work, done on any property or premises,
17 whether or not the work is paid for from public funds if at the time
18 of the entering into the contract, the property or premises is owned
19 by the government entity.

20 “State contracting unit” means a government entity that contracts
21 for the procurement of goods, services, or the construction of public
22 works pursuant to the “State College Contracts Law,” P.L.1986,
23 c.43 (C.18A:64-52 et seq.); P.L.2007, c.137 (C.52:18A-235 et seq.);
24 or chapter 32, 33, or 34 of Title 52 of the Revised Statutes.

25
26 4. A local contracting unit, as defined in section 3 of
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 may use an electronic construction procurement process for public
29 works construction contracts. The electronic construction
30 procurement process to be used by local contracting units pursuant
31 to this section shall be the process developed by the Director of the
32 Division of Local Government Services in the Department of
33 Community Affairs by regulations promulgated for the electronic
34 procurement practices authorized in the “Local Unit Electronic
35 Procurement Act,” P.L.2018, c.156 (C.40A:11-4.7 et al.).

36
37 5. a. A State contracting unit, as defined in section 3 of
38 P.L. , c. (C.) (pending before the Legislature as this
39 bill), shall use an electronic construction procurement process for
40 public works construction contracts whenever the project requires
41 public advertisement, subject to the provisions of
42 P.L. , c. (C.) (pending before the Legislature as this bill).

43 b. The State Treasurer, pursuant to the “Administrative
44 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall
45 promulgate regulations to effectuate the electronic procurement of
46 public works construction by the State. The regulations shall set
47 forth procedures to be followed by each State contracting unit for
48 contracts that meet those criteria as deemed appropriate by the State

1 Treasurer. The regulations shall also set forth a procedure to be
2 followed by a State contracting unit for the awarding of a contract
3 for the administration of the electronic procurement process.

4
5 6. a. The regulations promulgated by the State Treasurer
6 pursuant to section 5 of P.L. , c. (C.) (pending before the
7 Legislature as this bill) shall require that contracts to be awarded for
8 State construction projects pursuant to the provisions of
9 P.L. , c. (C.) (pending before the Legislature as this bill)
10 contain the following bidding components:

- 11 (1) general conditions of the contract;
12 (2) plans and specifications of the public works construction
13 project;
14 (3) competitive bidding for the contract, if appropriate;
15 (4) classification of firms submitting bids;
16 (5) statement of corporate ownership of the entity or entities
17 submitting bids;
18 (6) bid bond and performance bond security;
19 (7) execution of the contract;
20 (8) certification of financial ability to complete work;
21 (9) commencement of work;
22 (10) prevailing wage mandate;
23 (11) acknowledgement of addenda;
24 (12) naming of prime subcontractors;
25 (13) specified alternates;
26 (14) non-collusion affidavit; and
27 (15) political contribution disclosure.

28 b. The State Treasurer shall also promulgate a bid proposal
29 form to be used by contractors or vendors bidding for work under
30 P.L. , c. (C.) (pending before the Legislature as
31 this bill).

32 c. The regulations shall require that a contractor or vendor
33 seeking a contract for public works construction pursuant to
34 P.L. , c. (C.) (pending before the Legislature as this bill) be
35 classified with the Division of Property Management and
36 Construction in the Department of the Treasury, or be prequalified
37 by the Department of Transportation, New Jersey Transit, or the
38 New Jersey Turnpike Authority, prior to submitting a bid.

39
40 7. The regulations promulgated by the State Treasurer pursuant
41 to section 5 of P.L. , c. (C.) (pending before the Legislature
42 as this bill) shall require that electronic procurement processes meet
43 'certain criteria, which may include, but shall not be limited to,'¹ the
44 following requirements:

45 a. '[five years of use by a public contracting unit to secure
46 electronic bids] allow for a business or company that creates or
47 provides software to effectuate electronic procurement to provide
48 those services pursuant to P.L. , c. (C.) (pending before

1 the Legislature as this bill), if the business or company has prior
2 experience providing electronic procurement services to the State
3 and to other public entities, including, but not limited to, experience
4 prior to the effective date of P.L. , c. (C,) (pending
5 before the Legislature as this bill)¹;

6 b. allow public contracting units to advertise bids and distribute
7 bidding documents including plans and specifications;

8 c. be a closed loop system that allows contractors, vendors, and
9 bidders, to receive bid solicitations and documentation, as well as
10 submit bids electronically;

11 d. provide a digital lockbox that ensures bid information cannot
12 be accessed by a third party before the bid deadline, including an
13 electronic bidding servicer or the State;

14 e. allow bids to be encrypted upon submission and when in the
15 digital lockbox;

16 f. use digital signature technology and provide for identity
17 verification;

18 g. allow for electronic bid validation;

19 h. allow bids to be withdrawn and resubmitted by the vendor or
20 bidder at any point up to the published bid deadline;

21 i. allow addenda to be issued electronically with addenda
22 automatically applied to the online bid form;

23 j. provide capabilities to create and edit templates of bid
24 forms;

25 k. provide the means for the State to require data types,
26 including but not limited to numeric prices;

27 l. ¹calculate extensions for contractors, bidders or vendors
28 based on price and quality when applicable;

29 m.]¹ alert contractors, vendors, and bidders of missing required
30 data;

31 ¹[n.] m.¹ provide email notification to contractors, vendors, and
32 bidders of issuance of bid advertisement and addenda;

33 ¹[o.] n.¹ provide commodity or classification codes as required
34 by the contracting agency to allow for targeted notifications to
35 contractors, vendors, and bidders;

36 ¹[p.] o.¹ provide system implementation services and training to
37 public contracting units at no cost; and

38 ¹[q.] p.¹ offer scheduled training webinars for contractors,
39 vendors, and bidders at no cost.

40

41 8. a. Notwithstanding any other law to the contrary, the
42 regulations promulgated by the State Treasurer pursuant to section 5
43 of P.L. , c. (C.) (pending before the Legislature as this
44 bill) shall include, but not be limited to, practices that,
45 notwithstanding any other law to the contrary:

46 (1) convert the current statutory, regulatory, and policy
47 procedures related to sealed bidding to an electronic procurement

1 environment;

2 (2) authorize public contracting units to accept commercial
3 standards for electronic forms of bid security; and

4 (3) establish minimum standards that shall be met by systems
5 and services that provide and administer electronic procurement
6 processes.

7 b. The State Treasurer shall also consult with: the Attorney
8 General to develop safeguards to protect against collusion and bid
9 rigging; the Division of Purchase and Property and the Division of
10 Property Management and Construction in the Department of the
11 Treasury to develop practices used for electronic procurement; and
12 the Office of Information Technology in, but not of, the Department
13 of the Treasury, to ensure the privacy and security of electronic
14 transactions.

15 c. Notwithstanding any law, rule, or regulation to the contrary,
16 plans and specifications for public works construction contracts that
17 require the seal and signature of a professional engineer, architect,
18 or land surveyor may be included in an electronic file used for
19 electronic procurement as long as the original document from which
20 the electronic file is derived contains a physical or electronic seal
21 and signature as otherwise required by law. If the State Board of
22 Engineers and Land Surveyors and the New Jersey State Board of
23 Architects adopt rules to permit digital seals and signatures, those
24 rules shall supersede this subsection.

25

26 9. Notwithstanding any provisions of chapters 32, 33, and 34 of
27 Title 52 of the Revised Statutes to the contrary, the State, and any
28 agency or instrumentality of the State, shall use electronic
29 procurement processes for public works construction contracts
30 whenever the project requires public advertisement pursuant to
31 section 7 of P.L.1954, c.48 (C.52:34-12), in accordance with the
32 provisions of P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34

35 10. Notwithstanding any provisions of the “Public School
36 Contracts Law,” N.J.S.18A:18A-1 et seq. to the contrary, a board of
37 education may use electronic procurement processes for public
38 works construction contracts, pursuant to the requirements of
39 section 4 of P.L. , c. (C.) (pending before the Legislature as
40 this bill). ¹ [A board of education shall not incur any costs or fees
41 related to the use of the electronic procurement process required by
42 this section, including, but not limited to, any cost or fee related to
43 the use or purchase of any required equipment or software.]¹

44

45 11. Notwithstanding any provisions of the “State College
46 Contracts Law,” P.L.1986, c.43 (C.18A:64-52 et seq.) to the
47 contrary, a State college shall use electronic procurement processes
48 for public works construction contracts whenever the project

1 requires public advertisement, in accordance with the provisions of
2 P.L. , c. (C.) (pending before the Legislature as this bill).

3
4 12. Notwithstanding any provisions of the “County College
5 Contracts Law,” P.L.1982, c.189 (C.18A:64A-25.1 et seq.) to the
6 contrary, a county college may use electronic procurement
7 processes for public works construction contracts, pursuant to the
8 requirements of section 4 of P.L. , c. (C.) (pending before the
9 Legislature as this bill). ¹ [A county college shall not incur any
10 costs or fees related to the use of the electronic procurement process
11 required by this section, including, but not limited to, any cost or
12 fee related to the use or purchase of any required equipment or
13 software.]¹

14
15 13. Notwithstanding any provisions of P.L.2007, c.137
16 (C.52:18A-235 et seq.) to the contrary, the New Jersey Schools
17 Development Authority shall use electronic procurement processes
18 for public works construction contracts whenever the project
19 requires public advertisement, in accordance with the provisions of
20 P.L. , c. (C.) (pending before the Legislature as this bill).

21
22 14. Notwithstanding any provisions of the “Local Public
23 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) to the
24 contrary, a contracting unit may use electronic procurement
25 processes for public works construction contracts pursuant to the
26 requirements of section 4 of P.L. , c. (C.) (pending before
27 the Legislature as this bill). ¹ [A contracting unit shall not incur any
28 costs or fees related to the use of the electronic procurement process
29 required by this section, including, but not limited to, any cost or
30 fee related to the use or purchase of any required equipment or
31 software.]¹

32
33 15. This act shall take effect on the first day of the ¹ [thirteenth]
34 ninth¹ month next following enactment.

35
36
37 _____
38
39 “Electronic Construction Procurement Act.”