

[First Reprint]

SENATE, No. 2085

STATE OF NEW JERSEY
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SYNOPSIS

“Electronic Construction Procurement Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 25, 2020,
with amendments.



(Sponsorship Updated As Of: 6/29/2020)

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.

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

38 “Public works construction” means any project that is subject to
39 the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-
40 56.25 et seq.), and is contracted for by a State or local public
41 contracting unit for the purposes of construction, reconstruction,
42 demolition, alteration, custom fabrication, repair work, or
43 maintenance work, including painting and decorating, done under
44 contract and paid for, in whole or in part, out of the funds of a

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 public body. Public works construction also means construction,
2 reconstruction, demolition, alteration, custom fabrication, repair
3 work, or maintenance work, done on any property or premises,
4 whether or not the work is paid for from public funds if at the time
5 of the entering into the contract, the property or premises is owned
6 by the government entity.

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

12

13 4. A local contracting unit, as defined in section 3 of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 may use an electronic construction procurement process for public
16 works construction contracts. The electronic construction
17 procurement process to be used by local contracting units pursuant
18 to this section shall be the process developed by the Director of the
19 Division of Local Government Services in the Department of
20 Community Affairs by regulations promulgated for the electronic
21 procurement practices authorized in the “Local Unit Electronic
22 Procurement Act,” P.L.2018, c.156 (C.40A:11-4.7 et al.).

23

24 5. a. A State contracting unit, as defined in section 3 of
25 P.L. , c. (C.) (pending before the Legislature as this
26 bill), shall use an electronic construction procurement process for
27 public works construction contracts whenever the project requires
28 public advertisement, subject to the provisions of
29 P.L. , c. (C.) (pending before the Legislature as this bill).

30 b. The State Treasurer, pursuant to the “Administrative
31 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall
32 promulgate regulations to effectuate the electronic procurement of
33 public works construction by the State. The regulations shall set
34 forth procedures to be followed by each State contracting unit for
35 contracts that meet those criteria as deemed appropriate by the State
36 Treasurer. The regulations shall also set forth a procedure to be
37 followed by a State contracting unit for the awarding of a contract
38 for the administration of the electronic procurement process.

39

40 6. a. The regulations promulgated by the State Treasurer
41 pursuant to section 5 of P.L. , c. (C.) (pending before the
42 Legislature as this bill) shall require that contracts to be awarded for
43 State construction projects pursuant to the provisions of
44 P.L. , c. (C.) (pending before the Legislature as this bill)
45 contain the following bidding components:

46 (1) general conditions of the contract;

47 (2) plans and specifications of the public works construction
48 project;

- 1 (3) competitive bidding for the contract, if appropriate;
- 2 (4) classification of firms submitting bids;
- 3 (5) statement of corporate ownership of the entity or entities
- 4 submitting bids;
- 5 (6) bid bond and performance bond security;
- 6 (7) execution of the contract;
- 7 (8) certification of financial ability to complete work;
- 8 (9) commencement of work;
- 9 (10) prevailing wage mandate;
- 10 (11) acknowledgement of addenda;
- 11 (12) naming of prime subcontractors;
- 12 (13) specified alternates;
- 13 (14) non-collusion affidavit; and
- 14 (15) political contribution disclosure.

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

19 c. The regulations shall require that a contractor or vendor
20 seeking a contract for public works construction pursuant to
21 P.L. , c. (C.) (pending before the Legislature as this bill) be
22 classified with the Division of Property Management and
23 Construction in the Department of the Treasury, or be prequalified
24 by the Department of Transportation, New Jersey Transit, or the
25 New Jersey Turnpike Authority, prior to submitting a bid.

26

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

32 a. '[five years of use by a public contracting unit to secure
33 electronic bids] allow for a business or company that creates or
34 provides software to effectuate electronic procurement to provide
35 those services pursuant to P.L. , c. (C.) (pending before
36 the Legislature as this bill), if the business or company has prior
37 experience providing electronic procurement services to the State
38 and to other public entities, including, but not limited to, experience
39 prior to the effective date of P.L. , c. (C.) (pending
40 before the Legislature as this bill)'¹;

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

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

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

- 1 e. allow bids to be encrypted upon submission and when in the
- 2 digital lockbox;
- 3 f. use digital signature technology and provide for identity
- 4 verification;
- 5 g. allow for electronic bid validation;
- 6 h. allow bids to be withdrawn and resubmitted by the vendor or
- 7 bidder at any point up to the published bid deadline;
- 8 i. allow addenda to be issued electronically with addenda
- 9 automatically applied to the online bid form;
- 10 j. provide capabilities to create and edit templates of bid
- 11 forms;
- 12 k. provide the means for the State to require data types,
- 13 including but not limited to numeric prices;
- 14 l. ¹[calculate extensions for contractors, bidders or vendors
- 15 based on price and quality when applicable;
- 16 m.]¹ alert contractors, vendors, and bidders of missing required
- 17 data;
- 18 ¹[n.] m.¹ provide email notification to contractors, vendors, and
- 19 bidders of issuance of bid advertisement and addenda;
- 20 ¹[o.] n.¹ provide commodity or classification codes as required
- 21 by the contracting agency to allow for targeted notifications to
- 22 contractors, vendors, and bidders;
- 23 ¹[p.] o.¹ provide system implementation services and training to
- 24 public contracting units at no cost; and
- 25 ¹[q.] p.¹ offer scheduled training webinars for contractors,
- 26 vendors, and bidders at no cost.
- 27
- 28 8. a. Notwithstanding any other law to the contrary, the
- 29 regulations promulgated by the State Treasurer pursuant to section 5
- 30 of P.L. , c. (C.) (pending before the Legislature as this
- 31 bill) shall include, but not be limited to, practices that,
- 32 notwithstanding any other law to the contrary:
- 33 (1) convert the current statutory, regulatory, and policy
- 34 procedures related to sealed bidding to an electronic procurement
- 35 environment;
- 36 (2) authorize public contracting units to accept commercial
- 37 standards for electronic forms of bid security; and
- 38 (3) establish minimum standards that shall be met by systems
- 39 and services that provide and administer electronic procurement
- 40 processes.
- 41 b. The State Treasurer shall also consult with: the Attorney
- 42 General to develop safeguards to protect against collusion and bid
- 43 rigging; the Division of Purchase and Property and the Division of
- 44 Property Management and Construction in the Department of the
- 45 Treasury to develop practices used for electronic procurement; and
- 46 the Office of Information Technology in, but not of, the Department
- 47 of the Treasury, to ensure the privacy and security of electronic
- 48 transactions.

1 c. Notwithstanding any law, rule, or regulation to the contrary,
2 plans and specifications for public works construction contracts that
3 require the seal and signature of a professional engineer, architect,
4 or land surveyor may be included in an electronic file used for
5 electronic procurement as long as the original document from which
6 the electronic file is derived contains a physical or electronic seal
7 and signature as otherwise required by law. If the State Board of
8 Engineers and Land Surveyors and the New Jersey State Board of
9 Architects adopt rules to permit digital seals and signatures, those
10 rules shall supersede this subsection.

11

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

20

21 10. Notwithstanding any provisions of the “Public School
22 Contracts Law,” N.J.S.18A:18A-1 et seq. to the contrary, a board of
23 education may use electronic procurement processes for public
24 works construction contracts, pursuant to the requirements of
25 section 4 of P.L. , c. (C.) (pending before the Legislature as
26 this bill). ¹【A board of education shall not incur any costs or fees
27 related to the use of the electronic procurement process required by
28 this section, including, but not limited to, any cost or fee related to
29 the use or purchase of any required equipment or software.】¹

30

31 11. Notwithstanding any provisions of the “State College
32 Contracts Law,” P.L.1986, c.43 (C.18A:64-52 et seq.) to the
33 contrary, a State college shall use electronic procurement processes
34 for public works construction contracts whenever the project
35 requires public advertisement, in accordance with the provisions of
36 P.L. , c. (C.) (pending before the Legislature as this bill).

37

38 12. Notwithstanding any provisions of the “County College
39 Contracts Law,” P.L.1982, c.189 (C.18A:64A-25.1 et seq.) to the
40 contrary, a county college may use electronic procurement
41 processes for public works construction contracts, pursuant to the
42 requirements of section 4 of P.L. , c. (C.) (pending before the
43 Legislature as this bill). ¹【A county college shall not incur any
44 costs or fees related to the use of the electronic procurement process
45 required by this section, including, but not limited to, any cost or
46 fee related to the use or purchase of any required equipment or
47 software.】¹

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

7
8 14. Notwithstanding any provisions of the “Local Public
9 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) to the
10 contrary, a contracting unit may use electronic procurement
11 processes for public works construction contracts pursuant to the
12 requirements of section 4 of P.L. , c. (C.) (pending before
13 the Legislature as this bill). ¹**【A contracting unit shall not incur any**
14 **costs or fees related to the use of the electronic procurement process**
15 **required by this section, including, but not limited to, any cost or**
16 **fee related to the use or purchase of any required equipment or**
17 **software.】¹**

18
19 15. This act shall take effect on the first day of the ¹**【thirteenth】**
20 ninth¹ month next following enactment.