

[First Reprint]

ASSEMBLY, No. 3785

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 5, 2020

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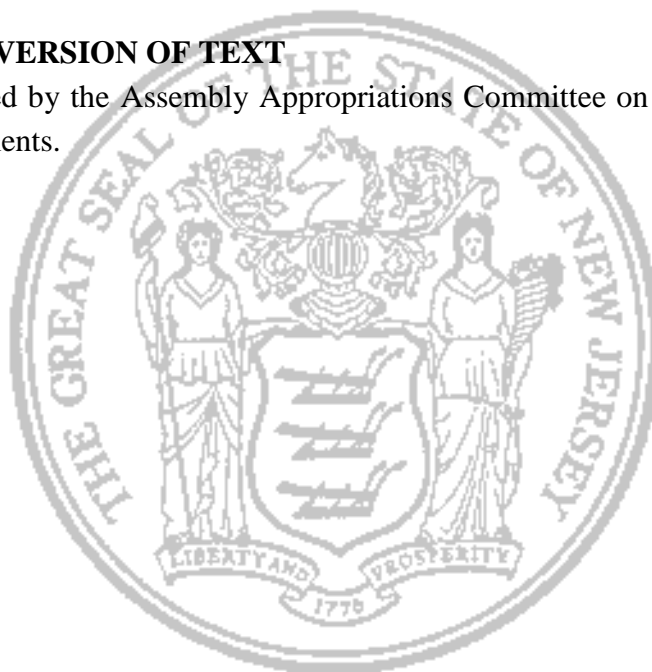
**Assemblymen Space, Wirths, Freiman, Assemblywoman Swain,
Assemblyman Tully and Assemblywoman DiMaso**

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
45 public body. Public works construction also means construction,

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

6 “State contracting unit” means a government entity that contracts
7 for the procurement of goods, services, or the construction of public
8 works pursuant to the “State College Contracts Law,”
9 P.L.1986, c.43 (C.18A:64-52 et seq.); P.L.2007, c.137 (C.52:18A-
10 235 et seq.); or chapter 32, 33, or 34 of Title 52 of the Revised
11 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 as
29 this bill) shall require that electronic procurement processes meet
30 ¹certain criteria which may include, but shall not be limited to,¹ the
31 following requirements:

32 a. ¹five 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;

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- 9 h. allow bids to be withdrawn and resubmitted by the vendor or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

1 Treasury to develop practices used for electronic procurement; and
2 the Office of Information Technology in, but not of, the Department
3 of the Treasury, to ensure the privacy and security of electronic
4 transactions.

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

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

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

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

41
42 12. Notwithstanding any provisions of the “County College
43 Contracts Law,” P.L.1982, c.189 (C.18A:64A-25.1 et seq.) to the
44 contrary, a county college may use electronic procurement
45 processes for public works construction contracts, pursuant to the
46 requirements of section 4 of P.L. , c. (C.) (pending before the
47 Legislature as this bill). ¹**【A county college shall not incur any**

1 costs or fees related to the use of the electronic procurement process
2 required by this section, including, but not limited to, any cost or
3 fee related to the use or purchase of any required equipment or
4 software.¹

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

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

23
24 15. This act shall take effect on the first day of the ¹**[thirteenth]**
25 ninth¹ month next following enactment.