

SENATE, No. 2085

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator O'Scanlon

SYNOPSIS

“Electronic Construction Procurement Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/28/2020)

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,
46 reconstruction, demolition, alteration, custom fabrication, repair
47 work, or maintenance work, done on any property or premises,
48 whether or not the work is paid for from public funds if at the time

1 of the entering into the contract, the property or premises is owned
2 by the government entity.

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

8
9 4. A local contracting unit, as defined in section 3 of
10 P.L. , c. (C.) (pending before the Legislature as this bill),
11 may use an electronic construction procurement process for public
12 works construction contracts. The electronic construction
13 procurement process to be used by local contracting units pursuant
14 to this section shall be the process developed by the Director of the
15 Division of Local Government Services in the Department of
16 Community Affairs by regulations promulgated for the electronic
17 procurement practices authorized in the “Local Unit Electronic
18 Procurement Act,” P.L.2018, c.156 (C.40A:11-4.7 et al.).

19
20 5. a. A State contracting unit, as defined in section 3 of
21 P.L. , c. (C.) (pending before the Legislature as this
22 bill), shall use an electronic construction procurement process for
23 public works construction contracts whenever the project requires
24 public advertisement, subject to the provisions of
25 P.L. , c. (C.) (pending before the Legislature as this bill).

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

35
36 6. a. The regulations promulgated by the State Treasurer
37 pursuant to section 5 of P.L. , c. (C.) (pending before the
38 Legislature as this bill) shall require that contracts to be awarded for
39 State construction projects pursuant to the provisions of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 contain the following bidding components:

- 42 (1) general conditions of the contract;
43 (2) plans and specifications of the public works construction
44 project;
45 (3) competitive bidding for the contract, if appropriate;
46 (4) classification of firms submitting bids;
47 (5) statement of corporate ownership of the entity or entities
48 submitting bids;

- 1 (6) bid bond and performance bond security;
- 2 (7) execution of the contract;
- 3 (8) certification of financial ability to complete work;
- 4 (9) commencement of work;
- 5 (10) prevailing wage mandate;
- 6 (11) acknowledgement of addenda;
- 7 (12) naming of prime subcontractors;
- 8 (13) specified alternates;
- 9 (14) non-collusion affidavit; and
- 10 (15) political contribution disclosure.

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

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

22
23 7. The regulations promulgated by the State Treasurer pursuant
24 to section 5 of P.L. , c. (C.) (pending before the Legislature as
25 this bill) shall require that electronic procurement processes meet
26 the following requirements:

27 a. five years of use by a public contracting unit to secure
28 electronic bids;

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

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

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

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

39 f. use digital signature technology and provide for identity
40 verification;

41 g. allow for electronic bid validation;

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

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

46 j. provide capabilities to create and edit templates of bid
47 forms;

- 1 k. provide the means for the State to require data types,
- 2 including but not limited to numeric prices;
- 3 l. calculate extensions for contractors, bidders or vendors
- 4 based on price and quality when applicable;
- 5 m. alert contractors, vendors, and bidders of missing required
- 6 data;
- 7 n. provide email notification to contractors, vendors, and
- 8 bidders of issuance of bid advertisement and addenda;
- 9 o. provide commodity or classification codes as required by the
- 10 contracting agency to allow for targeted notifications to contractors,
- 11 vendors, and bidders;
- 12 p. provide system implementation services and training to
- 13 public contracting units at no cost; and
- 14 q. offer scheduled training webinars for contractors, vendors,
- 15 and bidders at no cost.
- 16
- 17 8. a. Notwithstanding any other law to the contrary, the
- 18 regulations promulgated by the State Treasurer pursuant to section 5
- 19 of P.L. , c. (C.) (pending before the Legislature as this
- 20 bill) shall include, but not be limited to, practices that,
- 21 notwithstanding any other law to the contrary:
- 22 (1) convert the current statutory, regulatory, and policy
- 23 procedures related to sealed bidding to an electronic procurement
- 24 environment;
- 25 (2) authorize public contracting units to accept commercial
- 26 standards for electronic forms of bid security; and
- 27 (3) establish minimum standards that shall be met by systems
- 28 and services that provide and administer electronic procurement
- 29 processes.
- 30 b. The State Treasurer shall also consult with: the Attorney
- 31 General to develop safeguards to protect against collusion and bid
- 32 rigging; the Division of Purchase and Property and the Division of
- 33 Property Management and Construction in the Department of the
- 34 Treasury to develop practices used for electronic procurement; and
- 35 the Office of Information Technology in, but not of, the Department
- 36 of the Treasury, to ensure the privacy and security of electronic
- 37 transactions.
- 38 c. Notwithstanding any law, rule, or regulation to the contrary,
- 39 plans and specifications for public works construction contracts that
- 40 require the seal and signature of a professional engineer, architect,
- 41 or land surveyor may be included in an electronic file used for
- 42 electronic procurement as long as the original document from which
- 43 the electronic file is derived contains a physical or electronic seal
- 44 and signature as otherwise required by law. If the State Board of
- 45 Engineers and Land Surveyors and the New Jersey State Board of
- 46 Architects adopt rules to permit digital seals and signatures, those
- 47 rules shall supersede this subsection.

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

9
10 10. Notwithstanding any provisions of the “Public School
11 Contracts Law,” N.J.S.18A:18A-1 et seq. to the contrary, a board of
12 education may use electronic procurement processes for public
13 works construction contracts, pursuant to the requirements of
14 section 4 of P.L. , c. (C.) (pending before the Legislature as
15 this bill). A board of education shall not incur any costs or fees
16 related to the use of the electronic procurement process required by
17 this section, including, but not limited to, any cost or fee related to
18 the use or purchase of any required equipment or software.

19
20 11. Notwithstanding any provisions of the “State College
21 Contracts Law,” P.L.1986, c.43 (C.18A:64-52 et seq.) to the
22 contrary, a State college shall use electronic procurement processes
23 for public works construction contracts whenever the project
24 requires public advertisement, in accordance with the provisions of
25 P.L. , c. (C.) (pending before the Legislature as this bill).

26
27 12. Notwithstanding any provisions of the “County College
28 Contracts Law,” P.L.1982, c.189 (C.18A:64A-25.1 et seq.) to the
29 contrary, a county college may use electronic procurement
30 processes for public works construction contracts, pursuant to the
31 requirements of section 4 of P.L. , c. (C.) (pending before the
32 Legislature as this bill). A county college shall not incur any costs
33 or fees related to the use of the electronic procurement process
34 required by this section, including, but not limited to, any cost or
35 fee related to the use or purchase of any required equipment or
36 software.

37
38 13. Notwithstanding any provisions of P.L.2007, c.137
39 (C.52:18A-235 et seq.) to the contrary, the New Jersey Schools
40 Development Authority shall use electronic procurement processes
41 for public works construction contracts whenever the project
42 requires public advertisement, in accordance with the provisions of
43 P.L. , c. (C.) (pending before the Legislature as this bill).

44
45 14. Notwithstanding any provisions of the “Local Public
46 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) to the
47 contrary, a contracting unit may use electronic procurement
48 processes for public works construction contracts pursuant to the

1 requirements of section 4 of P.L. , c. (C.) (pending before
2 the Legislature as this bill). A contracting unit shall not incur any
3 costs or fees related to the use of the electronic procurement process
4 required by this section, including, but not limited to, any cost or
5 fee related to the use or purchase of any required equipment or
6 software.

7
8 15. This act shall take effect on the first day of the thirteenth
9 month next following enactment.

10
11
12 STATEMENT

13
14 This bill would require State contracting units, including State
15 colleges, to use an electronic procurement process for public works
16 construction contracts when the project requires public
17 advertisement.

18 The bill requires the State Treasurer to promulgate regulations to
19 effectuate the electronic procurement of public works construction
20 as required in the bill. The regulations shall set forth each of the
21 steps the State Treasurer deems appropriate to be taken by each
22 State contracting unit for contracts that meet those criteria. The
23 regulations shall also set forth a procedure to be followed for the
24 awarding of a contract for the administration of the electronic
25 procurement process.

26 The bill permits local units of government, county colleges, and
27 school districts to use an electronic procurement process for public
28 works construction contracts. The electronic construction
29 procurement process to be used by those public entities will be the
30 process developed by the Director of the Division of Local
31 Government Services in the Department of Community Affairs by
32 regulations promulgated for the electronic procurement practices
33 authorized in the “Local Unit Electronic Procurement Act,”
34 P.L.2018, c.156 (C.40A:11-4.7 et al.).