

CHAPTER 59

AN ACT concerning public contracts and supplementing various parts of the statutory law.

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

C.52:34A-1 Short title.

1. Sections 1 through 8 of P.L.2020, c.59 (C.52:34A-1 through C.52:34A-8) shall be known and may be cited as the “Electronic Construction Procurement Act.”

C.52:34A-2 Findings, declarations relative to use of electronic technology.

2. The Legislature finds and declares that advances in electronic technology offer opportunities to enhance governmental efficiencies. In order to explore these avenues of improved government efficiency, it is in the best interests of the State to require public entities to implement proven electronic technologies for the procurement of public works construction, and to require the promulgation of standards for the use of these technologies that ensure the integrity and procedural protections of sealed public bidding and competitive contracting translated to an electronic environment.

C.52:34A-3 Definitions relative to use of electronic technology.

3. As used in P.L.2020, c.59 (C.52:34A-1 et al.):

“Electronic construction procurement” means, for the purposes of public works construction projects, the use of computer technology and the Internet for the advertising and submission of public bids, providing notice of revisions or addenda to advertisements or bid documents, the receipt of proposals and quotations, and related practices to assist in determining the lowest responsible bidder or other agency-appropriate bid or proposal procurement standard.

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

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

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

C.52:34A-4 Local contracting unit may use electronic construction procurement process.

4. A local contracting unit, as defined in section 3 of P.L.2020, c.59 (C.52:34A-3), may use an electronic construction procurement process for public works construction contracts. The electronic construction procurement process to be used by local contracting units

pursuant to this section shall be the process developed by the Director of the Division of Local Government Services in the Department of Community Affairs by regulations promulgated for the electronic procurement practices authorized in the “Local Unit Electronic Procurement Act,” P.L.2018, c.156 (C.40A:11-4.7 et al.).

C.52:34A-5 State contracting unit to use electronic construction procurement process.

5. a. A State contracting unit, as defined in section 3 of P.L.2020, c.59 (C.52:34A-3), shall use an electronic construction procurement process for public works construction contracts whenever the project requires public advertisement, subject to the provisions of P.L.2020, c.59 (C.52:34A-1 et al.).

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

C.52:34A-6 Required bidding components.

6. a. The regulations promulgated by the State Treasurer pursuant to section 5 of P.L.2020, c.59 (C.52:34A-5) shall require that contracts to be awarded for State construction projects pursuant to the provisions of P.L.2020, c.59 (C.52:34A-1 et al.) contain the following bidding components:

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

b. The State Treasurer shall also promulgate a bid proposal form to be used by contractors or vendors bidding for work under P.L.2020, c.59 (C.52:34A-1 et al.).

c. The regulations shall require that a contractor or vendor seeking a contract for public works construction pursuant to P.L.2020, c.59 (C.52:34A-1 et al.) be classified with the Division of Property Management and Construction in the Department of the Treasury, or be prequalified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, prior to submitting a bid.

C.52:34A-7 Criteria required for electronic procurement processes.

7. The regulations promulgated by the State Treasurer pursuant to section 5 of P.L.2020, c.59 (C.52:34A-5) shall require that electronic procurement processes meet certain criteria, which may include, but shall not be limited to, the following requirements:

- a. allow for a business or company that creates or provides software to effectuate electronic procurement to provide those services pursuant to P.L.2020, c.59 (C.52:34A-1 et al.), if the business or company has prior experience providing electronic procurement services to the State and to other public entities, including, but not limited to, experience prior to the effective date of P.L.2020, c.59 (C.52:34A-1 et al.);
- b. allow public contracting units to advertise bids and distribute bidding documents including plans and specifications;
- c. be a closed loop system that allows contractors, vendors, and bidders, to receive bid solicitations and documentation, as well as submit bids electronically;
- d. provide a digital lockbox that ensures bid information cannot be accessed by a third party before the bid deadline, including an electronic bidding servicer or the State;
- e. allow bids to be encrypted upon submission and when in the digital lockbox;
- f. use digital signature technology and provide for identity verification;
- g. allow for electronic bid validation;
- h. allow bids to be withdrawn and resubmitted by the vendor or bidder at any point up to the published bid deadline;
- i. allow addenda to be issued electronically with addenda automatically applied to the online bid form;
- j. provide capabilities to create and edit templates of bid forms;
- k. provide the means for the State to require data types, including but not limited to numeric prices;
- l. alert contractors, vendors, and bidders of missing required data;
- m. provide email notification to contractors, vendors, and bidders of issuance of bid advertisement and addenda;
- n. provide commodity or classification codes as required by the contracting agency to allow for targeted notifications to contractors, vendors, and bidders;
- o. provide system implementation services and training to public contracting units at no cost; and
- p. offer scheduled training webinars for contractors, vendors, and bidders at no cost.

C.52:34A-8 Practices included in regulations.

8. a. Notwithstanding any other law to the contrary, the regulations promulgated by the State Treasurer pursuant to section 5 of P.L.2020, c.59 (C.52:34A-5) shall include, but not be limited to, practices that, notwithstanding any other law to the contrary:

- (1) convert the current statutory, regulatory, and policy procedures related to sealed bidding to an electronic procurement environment;
- (2) authorize public contracting units to accept commercial standards for electronic forms of bid security; and
- (3) establish minimum standards that shall be met by systems and services that provide and administer electronic procurement processes.

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

and security of electronic transactions.

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

C.52:34A-9 Use of electronic procurement processes for public works construction contracts.

9. Notwithstanding any provisions of chapters 32, 33, and 34 of Title 52 of the Revised Statutes to the contrary, the State, and any agency or instrumentality of the State, shall use electronic procurement processes for public works construction contracts whenever the project requires public advertisement pursuant to section 7 of P.L.1954, c.48 (C.52:34-12), in accordance with the provisions of P.L.2020, c.59 (C.52:34A-1 et al.).

C.18A:18A-26.1 Board of education may use electronic procurement processes.

10. Notwithstanding any provisions of the “Public School Contracts Law,” N.J.S.18A:18A-1 et seq. to the contrary, a board of education may use electronic procurement processes for public works construction contracts, pursuant to the requirements of section 4 of P.L.2020, c.59 (C.52:34A-4).

C.18A:64-60.1 State colleges may use electronic procurement processes.

11. Notwithstanding any provisions of the “State College Contracts Law,” P.L.1986, c.43 (C.18A:64-52 et seq.) to the contrary, a State college shall use electronic procurement processes for public works construction contracts whenever the project requires public advertisement, in accordance with the provisions of P.L.2020, c.59 (C.52:34A-1 et al.).

C.18A:64A-25.26a County colleges may use electronic procurement processes.

12. Notwithstanding any provisions of the “County College Contracts Law,” P.L.1982, c.189 (C.18A:64A-25.1 et seq.) to the contrary, a county college may use electronic procurement processes for public works construction contracts, pursuant to the requirements of section 4 of P.L.2020, c.59 (C.52:34A-4).

C.52:18A-243.1 New Jersey Schools Development Authority to use electronic procurement processes.

13. Notwithstanding any provisions of P.L.2007, c.137 (C.52:18A-235 et seq.) to the contrary, the New Jersey Schools Development Authority shall use electronic procurement processes for public works construction contracts whenever the project requires public advertisement, in accordance with the provisions of P.L.2020, c.59 (C.52:34A-1 et al.).

C.40A:11-12.7 Contracting unit may use electronic procurement processes.

14. Notwithstanding any provisions of the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) to the contrary, a contracting unit may use electronic procurement processes for public works construction contracts pursuant to the requirements of section 4 of P.L.2020, c.59 (C.52:34A-4).

15. This act shall take effect on the first day of the ninth month next following enactment.

Approved July 16, 2020.