

CHAPTER 52

AN ACT concerning local public contracts and county college contracts and amending P.L.1982, c.189, P.L.1999, c.440, and P.L.1971, c.198.

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

1. Section 13 of P.L.1982, c.189 (C.18A:64A-25.13) is amended to read as follows:

C.18A:64A-25.13 Specifications generally.

13. All specifications for any purchase, contract or agreement governed by this article shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this article may:

- a. Require a standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the purchase, contract or agreement is made; or
- b. Require that any bidder be a resident of, or that his place of business be located in, the county in which the purchase will be made or the contract or agreement performed, unless the physical proximity of the bidder is requisite to the efficient and economical purchase or performance of the contract or agreement; or
- c. Discriminate on the basis of race, religion, sex or national origin; or
- d. Require with regard to any purchase, contract or agreement the furnishing of any "brand name," although specifications may in all cases require "brand name or equivalent," nor shall materials or supplies which are patented or copyrighted be specified, unless the resolution authorizing the purchase, contract or agreement sets forth the manner in which the special need for such patented or copyrighted materials or supplies is directly related to the performance or purpose for which the purchase, contract or agreement is made; or
- e. Fail to include any option for renewal, extension or release which the county college may intend to exercise or require; or
- f. Fail to include any terms and conditions necessary for the performance of any extra work; or
- g. Fail to disclose any matter necessary to the substantial performance of the contract or agreement; or
- h. Require that any bidder submit a financial statement if either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate is also required to be furnished by the bidder, unless any law or regulation of the United States imposes a condition upon the awarding of a monetary grant to be used for the purchase, contract or agreement, which condition requires that a financial statement be submitted.

Any specification adopted by the county college which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect, and such purchase, contract or agreement shall be readvertised, and the original purchase, contract or agreement shall be set aside by the board of trustees of the county college.

2. Section 4 of P.L.1999, c.440 (C.40A:11-4.4) is amended to read as follows:

C.40A:11-4.4 Request for proposals; documentation; provisions.

4. The competitive contracting process shall utilize request for proposals documentation in accordance with the following provisions:

- a. The purchasing agent or counsel or administrator shall prepare or have prepared a request for proposal documentation, which shall include: all requirements deemed

appropriate and necessary to allow for full and free competition between vendors, but no financial statement shall be required of vendors if either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate is also required to be furnished by the bidder, unless any law or regulation of the United States imposes a condition upon the awarding of a monetary grant to be used for the purchase, contract or agreement, which condition requires that a financial statement be submitted; information necessary for potential vendors to submit a proposal; and a methodology by which the contracting unit will evaluate and rank proposals received from vendors.

b. The methodology for the awarding of competitive contracts shall be based on an evaluation and ranking, which shall include technical, management, and cost related criteria, and may include a weighting of criteria, all developed in a way that is intended to meet the specific needs of the contracting unit, and where such criteria shall not unfairly or illegally discriminate against or exclude otherwise capable vendors. When an evaluation methodology uses a weighting of criteria, at the option of the contracting unit the weighting to be accorded to each criterion may be disclosed to vendors prior to receipt of the proposals. The methodology for awarding competitive contracts shall comply with such rules and regulations as the director may adopt, after consultation with the Commissioner of Education, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. At no time during the proposal solicitation process shall the purchasing agent or counsel or administrator convey information, including price, to any potential vendor which could confer an unfair advantage upon that vendor over any other potential vendor. If a purchasing agent or counsel or administrator desires to change proposal documentation, the purchasing agent or counsel or administrator shall notify only those potential vendors who received the proposal documentation of any and all changes in writing and all existing documentation shall be changed appropriately.

d. All proposals and contracts shall be subject to the provisions of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a statement of corporate ownership and the provisions of P.L.1975, c.127 (C.10:5-31 et seq.) concerning equal employment opportunity and affirmative action.

3. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to read as follows:

C.40A:11-13 Specifications.

13. Specifications. Any specifications for the provision or performance of goods or services under this act shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the contract is awarded; or

(b) Require that any bidder be a resident of, or that the bidder's place of business be located in, the county or municipality in which the contract will be awarded or performed, unless the physical proximity of the bidder is requisite to the efficient and economical performance of the contract; except that no specification for a contract for the collection and disposal of municipal solid waste shall require any bidder to be a resident of, or that the bidder's place of business be located in, the county or municipality in which the contract will be performed; or

(c) Discriminate on the basis of race, religion, sex, national origin, creed, color, ancestry, age, marital status, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality; or

(d) Require, with regard to any contract, the furnishing of any "brand name," but may in all cases require "brand name or equivalent," except that if the goods or services to be provided or performed are proprietary, such goods or services may be purchased by stipulating the proprietary goods or services in the bid specification in any case in which the resolution authorizing the contract so indicates, and the special need for such proprietary goods or services is directly related to the performance, completion or undertaking of the purpose for which the contract is awarded; or

(e) Fail to include any option for renewal, extension, or release which the contracting unit may intend to exercise or require; or any terms and conditions necessary for the performance of any extra work; or fail to disclose any matter necessary to the substantial performance of the contract; or

(f) Require that any bidder submit a financial statement if either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate is also required to be furnished by the bidder, unless any law or regulation of the United States imposes a condition upon the awarding of a monetary grant to be used for the purchase, contract or agreement, which condition requires that a financial statement be submitted.

Any specification which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect and shall be readvertised for receipt of new bids, and the original contract shall be set aside by the governing body.

Any specification for a contract for the collection and disposal of municipal solid waste shall conform to the uniform bid specifications for municipal solid waste collection contracts established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-7.22).

Any specification may include an item for the cost, which shall be paid by the contractor, of creating a file to maintain the notices of the delivery of labor or materials required by N.J.S.2A:44-128.

Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the contracting agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract.

4. This act shall take effect immediately and shall be applicable to proposals for bids advertised on or after the first day of the month next following the date of enactment.

Approved September 10, 2014.