

LEGISLATIVE HISTORY OF R.S. 52:34-6 through 19
(Public works, contracts, etc.)

- L. 1954, Chapter 48 - A457
Introduced May 24 by Mr. Salsburg.
Bill not amended during passage.
Bill had statement (copy enclosed).

No hearings or reports on this legislation were located.

The following report may serve as background:

J351.71 New Jersey Taxpayers Association.
T23 New Jersey's State Procurement
System. 1950.

RS/PC

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ASSEMBLY, No. 457

STATE OF NEW JERSEY

INTRODUCED MAY 24, 1954

By Mr. SALSBURG

Referred to Committee on Judiciary

AN ACT concerning public contracts, supplementing chapter 34 of Title 52 of the Revised Statutes, and repealing sections 52:34-1, 52:34-2, 52:34-3, 52:34-4 and 52:34-5 of the Revised Statutes.

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

1 1. All purchases, contracts or agreements, the cost or contract price
2 whereof is to be paid with or out of State funds shall, except as otherwise
3 provided in this act, be made or awarded only after public advertisement for
4 bids therefor, in the manner provided in this act.

1 2. Any such purchase, contract or agreement may be made, negotiated,
2 or awarded by the Director of the Division of Purchase and Property with-
3 out advertising if the aggregate amount involved does not exceed \$2,500.00,
4 in any manner which he may deem effective to promote full and free com-
5 petition whenever competition is practicable.

1 3. Any such purchase, contract or agreement where the cost or contract
2 price exceeds \$2,500.00 may, with the written approval of the State Treas-
3 urer, be made, negotiated or awarded by the Director of the Division of
4 Purchase and Property without advertising, when the subject matter
5 thereof is that described in section 4 of this act or when the purchase, con-
6 tract or agreement is made or awarded under the circumstances described in
7 section 5 of this act, in any manner which the director may deem effective
8 to promote full and free competition whenever competition is practicable.

1 4. Any such purchase, contract or agreement may be made, negotiated or
2 awarded pursuant to section 3 of this act when the subject matter thereof
3 consists of

4 (a) services to be performed by the contractor personally which are (a)
5 of a technical and professional nature, or (b) to be performed under the
6 supervision of the Director of the Division of Purchase and Property and
7 paid for on a time basis; or

8 (b) the purchase of perishable foods or subsistence supplies; or

9 (c) The lease of such office space, office machinery, specialized equip-
10 ment, buildings or real property as may be required for the conduct of the
11 State's business; or

12 (d) the acquisition of any real property by gift, grant, purchase or any
13 other lawful manner in the name of and for the use of the State for the pur-
14 pose of the administration of the State's business in accordance with ap-
15 propriations made therefor when moneys are required for the acquisition; or

16 (e) supplies or services as to which the bid prices after advertising
17 therefor are not reasonable or have not been independently arrived at in
18 open competition; provided, that no negotiated purchase, contract or agree-
19 ment may be entered into under this paragraph after the rejection of all
20 bids received unless (a) notification of the intention to negotiate and reason-
21 able opportunity to negotiate shall have been given by the Director of the
22 Division of Purchase and Property to each responsible bidder, (b) the negoti-
23 ated price is lower than the lowest rejected bid price of a responsible bidder,
24 and (c) such negotiated price is the lowest negotiated price offered by any
25 responsible supplier.

1 5. Any such purchase, contract or agreement may be made, negotiated
2 or awarded pursuant to section 3 of this act when

3 (a) the purchase is to be made from, or the contract to be made with, the
4 Federal or any State Government or any agency or political subdivision
5 thereof; or

6 (b) the public exigency requires the immediate delivery of the articles
7 or performance of the service; or

8 (c) only 1 source of supply is available; or

9 (d) more favorable terms can be obtained from a primary source of
10 supply; or

11 (e) articles of wearing apparel are to be purchased which are styled or
12 seasonal in character, or

13 (f) commodities traded on a national commodity exchange are to be
14 purchased and fluctuations of the market require immediate action; or

15 (g) the equipment to be purchased is of a technical nature and the
16 procurement thereof without advertising is necessary in order to assure
17 standardization of equipment and interchangeability of parts in the public
18 interest.

1 6. Notice of such purchases, contracts or agreements made, negotiated
2 or awarded under section 3 of this act, and written approvals thereof, shall
3 be given to the State Auditor.

1 7. Whenever advertising is required: (a) specifications and invitations
2 for bids shall permit such full and free competition as is consistent with
3 the procurement of supplies and services necessary to meet the require-
4 ments of the using agency; (b) the advertisement for bids shall be in such
5 newspaper or newspapers selected by the State Treasurer as will best give
6 notice thereof to bidders and shall be sufficiently in advance of the purchase or
7 contract to promote competitive bidding; (c) the advertisement shall designate
8 the time and place when and where sealed proposals shall be received and
9 publicly opened and read, the amount of the cash or certified check, if any,
10 which must accompany each bid, and such other terms as the State Treas-
11 urer may deem proper; (d) award shall be made with reasonable prompt-
12 ness by written notice to that responsible bidder whose bid, conforming to
13 the invitation for bids, will be most advantageous to the State, price and
14 other factors considered. Any or all bids may be rejected when the State

15 Treasurer or the Director of the Division of Purchase and Property de-
16 termines that it is in the public interest so to do.

1 8. The State Treasurer shall determine the terms and conditions of the
2 various types of agreements or contracts, including provisions for adequate
3 security, the time and amount or percentage of each payment thereon and
4 the amount to be withheld pending completion of the contract, and he shall
5 issue and publish rules and regulations concerning such terms and condi-
6 tions, standard contract forms and such other rules and regulations con-
7 cerning purchasing or procurement, not inconsistent with any applicable
8 law, as he may deem advisable to promote competition and to implement this
9 act.

1 9. Where the State House Commission is empowered to make, award or
2 authorize the award of any agreement or contract, such agreement or con-
3 tract may be made, awarded or authorized without publicly advertising for
4 bids therefor when

5 (a) the cost or contract price involved does not exceed \$2,500.00; or

6 (b) the subject matter thereof is personal or professional services; or

7 (c) the purchase is to be made from, or the contract to be made with, the
8 Federal or any State Government or any agency or political subdivision
9 thereof; or

10 (d) the subject matter thereof is perishable food or subsistence sup-
11 plies; or

12 (e) the commission first shall have adopted a resolution that the interest
13 of the State will be best served by not so advertising.

1 10. Every contract or agreement negotiated, awarded or made pursuant
2 to this act shall contain a suitable warranty by the contractor that no person
3 or selling agency has been employed or retained to solicit or secure such con-
4 tract upon an agreement or understanding for a commission, percentage,
5 brokerage or contingent fee, except bona fide employees or bona fide estab-
6 lished commercial or selling agencies maintained by the contractor for the
7 purpose of securing business, for the breach or violation of which warranty

8 the State shall have the right to annul such contract without liability or in
9 its discretion to deduct from the contract price or consideration the full
10 amount of such commission, percentage, brokerage or contingent fee.

1 11. The Director of the Division of Purchase and Property may, with
2 the approval of the State Treasurer, designate a deputy to act during the
3 absence of the director and to exercise the powers and duties of the director
4 under this act during such absence. Such designation shall be in writing
5 and shall be filed with the Secretary of State.

1 12. Contracts or agreements for the printing of legal briefs, records and
2 appendices to be used in any proceeding in which the State may be inter-
3 ested may be negotiated, awarded or made without advertising by the
4 Attorney-General.

1 13. Any person willfully authorizing, consenting to, making or procuring
2 to be made any purchase, contract or agreement in violation of any of the
3 provisions of this act or willfully making or procuring to be made payment
4 of State funds for or on account of any purchase, contract or agreement
5 known to him to have been made or entered into in violation of any of the
6 provisions of this act shall be guilty of a misdemeanor.

1 14. The payment of any fee, commission or compensation of any kind or
2 the granting of any gift or gratuity of any kind, either directly or indirectly,
3 whether or not in connection with any purchase, sale or contract, to any
4 person employed by the State in the Department of the Treasury, or to any
5 other person in the employ of the State having any duties or responsibilities
6 in connection with the purchase or acquisition of any property or services by
7 the State or any department, commission, authority, agency or instru-
8 mentality thereof, by or on behalf of any seller or supplier who has made,
9 negotiated, solicited or offered to make any contract to sell or furnish real
10 or personal property or services to the State or to any department, officer,
11 commission, authority, agency or instrumentality thereof, is hereby pro-
12 hibited. Any person offering, paying, giving, soliciting or receiving any

13 fee, commission, compensation, gift or gratuity in violation of this section
14 shall be guilty of a misdemeanor.

1 15. Sections 52:34-1, 52:34-2, 52:34-3, 52:34-4, and 52:34-5 of the
2 Revised Statutes are repealed.

1 16. This act shall take effect immediately.

STATEMENT

This bill has been prepared, pursuant to the direction of the State House Commission, in co-operation with the Attorney-General, the State Treasurer and the Division of Purchase and Property.

The amount of the contracts required to be advertised has been changed to \$2,500.00 to reflect the present economic conditions and changes since the enactment of the present statute in 1930.

The provisions for exceptions where the contract is in excess of \$2,500.00 are based upon the exceptions in the existing law, the Federal procurement act and the past practice in this State where waivers of advertising were obtained in advance. The exceptions are limited to those situations where advertising is of no practical utility or the nature of the transaction is such that time is an essential element and delay incident to obtaining a waiver from the State House Commission prevents the State from securing the most favorable terms.

In all cases, whether advertising is required or not, the purchase or contract must be made in such manner as to promote the maximum competition among sellers and suppliers.

The Treasurer is required to issue rules, regulations and forms covering the various types of purchases and contracts. This will facilitate and improve State procurement by permitting clarification of State purchasing practices and allowing the use of standard form contracts in conformity with the practice in the various trades and industries which do business with the State.

The Attorney-General is authorized to make contracts for printing legal briefs, records and appendices. This provision is necessary to avoid late filing by the State because of the limited time allowed by the Rules of the Supreme Court.