

18A:64A-25.13 et al.
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2014 **CHAPTER:** 52

NJSA: 18A:64A-25.13 et al. (Limits when bidders can be required to submit a financial statement in order to bid on a local public contract or county college contract)

BILL NO: A1794 (Substituted for S1048)

SPONSOR(S) O'Donnell and others

DATE INTRODUCED: January 16, 2014

COMMITTEE: ASSEMBLY: State and Local Government

SENATE: Community and Urban Affairs

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: June 23, 2014

SENATE: June 30, 2014

DATE OF APPROVAL: September 10, 2014

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced version of bill enacted) Yes

A1794

SPONSOR'S STATEMENT: (Begins on page 5 of introduced bill): Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S1048

SPONSOR'S STATEMENT: (Begins on page 5 of introduced bill) Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

P.L.2014, CHAPTER 52, *approved September 10, 2014*
Assembly, No. 1794

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

4

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

7

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

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

14 a. Require a standard, restriction, condition or limitation not
15 directly related to the purpose, function or activity for which the
16 purchase, contract or agreement is made; or

17 b. Require that any bidder be a resident of, or that his place of
18 business be located in, the county in which the purchase will be
19 made or the contract or agreement performed, unless the physical
20 proximity of the bidder is requisite to the efficient and economical
21 purchase or performance of the contract or agreement; or

22 c. Discriminate on the basis of race, religion, sex or national
23 origin; or

24 d. Require with regard to any purchase, contract or agreement
25 the furnishing of any **["brand name",]** "brand name," although
26 specifications may in all cases require "brand name or equivalent,"
27 nor shall materials or supplies which are patented or copyrighted be
28 specified, unless the resolution authorizing the purchase, contract or
29 agreement sets forth the manner in which the special need for such
30 patented or copyrighted materials or supplies is directly related to
31 the performance or purpose for which the purchase, contract or
32 agreement is made; or

33 e. Fail to include any option for renewal, extension or release
34 which the county college may intend to exercise or require; or

35 f. Fail to include any terms and conditions necessary for the
36 performance of any extra work; or

37 g. Fail to disclose any matter necessary to the substantial
38 performance of the contract or agreement; or

39 h. Require that any bidder submit a financial statement if either
40 a guarantee, by certified check, cashier's check or bid bond, or a
41 surety company certificate is also required to be furnished by the

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.

1 bidder, unless any law or regulation of the United States imposes a
2 condition upon the awarding of a monetary grant to be used for the
3 purchase, contract or agreement, which condition requires that a
4 financial statement be submitted.

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

12 (cf: P.L.1982, c.189, s.13)

13

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

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

19 a. The purchasing agent or counsel or administrator shall
20 prepare or have prepared a request for proposal documentation,
21 which shall include: all requirements deemed appropriate and
22 necessary to allow for full and free competition between vendors,
23 but no financial statement shall be required of vendors if either a
24 guarantee, by certified check, cashier's check or bid bond, or a
25 surety company certificate is also required to be furnished by the
26 bidder, unless any law or regulation of the United States imposes a
27 condition upon the awarding of a monetary grant to be used for the
28 purchase, contract or agreement, which condition requires that a
29 financial statement be submitted; information necessary for
30 potential vendors to submit a proposal; and a methodology by
31 which the contracting unit will evaluate and rank proposals received
32 from vendors.

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

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

10 d. All proposals and contracts shall be subject to the provisions
11 of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission
12 of a statement of corporate ownership and the provisions of
13 P.L.1975, c.127(C.10:5-31 et seq.) concerning equal employment
14 opportunity and affirmative action.
15 (cf: P.L.1999, c.440, s.4)

16

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

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

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

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

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

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

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

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

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

19 Any specification for a contract for the collection and disposal of
20 municipal solid waste shall conform to the uniform bid
21 specifications for municipal solid waste collection contracts
22 established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-
23 7.22).

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

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

33 (cf: P.L.1999, c.440, s.19)

34

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

38

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40

41

42 Limits when bidders can be required to submit a financial
43 statement in order to bid on a local public contract or county college
44 contract.

ASSEMBLY, No. 1794

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman JASON O'DONNELL

District 31 (Hudson)

Assemblyman ROBERT D. CLIFTON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Limits when bidders can be required to submit a financial statement in order to bid on a local public contract or county college contract.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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18 business be located in, the county in which the purchase will be
19 made or the contract or agreement performed, unless the physical
20 proximity of the bidder is requisite to the efficient and economical
21 purchase or performance of the contract or agreement; or

22 c. Discriminate on the basis of race, religion, sex or national
23 origin; or

24 d. Require with regard to any purchase, contract or agreement
25 the furnishing of any **["brand name",]** "brand name," although
26 specifications may in all cases require "brand name or equivalent,"
27 nor shall materials or supplies which are patented or copyrighted be
28 specified, unless the resolution authorizing the purchase, contract or
29 agreement sets forth the manner in which the special need for such
30 patented or copyrighted materials or supplies is directly related to
31 the performance or purpose for which the purchase, contract or
32 agreement is made; or

33 e. Fail to include any option for renewal, extension or release
34 which the county college may intend to exercise or require; or

35 f. Fail to include any terms and conditions necessary for the
36 performance of any extra work; or

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5 no effect, and such purchase, contract or agreement shall be
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24 proximity of the bidder is requisite to the efficient and economical
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28 of business be located in, the county or municipality in which the
29 contract will be performed; or

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31 origin, creed, color, ancestry, age, marital status, affectional or
32 sexual orientation, familial status, liability for service in the Armed
33 Forces of the United States, or nationality; or

34 (d) Require, with regard to any contract, the furnishing of any
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37 performed are proprietary, such goods or services may be purchased
38 by stipulating the proprietary goods or services in the bid
39 specification in any case in which the resolution authorizing the
40 contract so indicates, and the special need for such proprietary
41 goods or services is directly related to the performance, completion
42 or undertaking of the purpose for which the contract is awarded; or

43 (e) Fail to include any option for renewal, extension, or release
44 which the contracting unit may intend to exercise or require; or any
45 terms and conditions necessary for the performance of any extra
46 work; or fail to disclose any matter necessary to the substantial
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25 opening of the bids. Challenges filed after that time shall be
26 considered void and having no impact on the contracting unit or the
27 award of a contract.

28 (cf: P.L.1999, c.440, s.19)

29
30 4. This act shall take effect immediately and shall be applicable
31 to proposals for bids advertised on or after the first day of the
32 month next following the date of enactment.

33 34 35 STATEMENT

36
37 This bill would prohibit the practice of requiring bidders to
38 submit a financial statement in order to bid on local or county
39 college public contracts if the bidders are also required to furnish
40 either a guarantee, by certified check, cashier's check or bid bond,
41 or a surety company certificate. While a financial statement can be
42 helpful to determining the financial capability of a bidder, it can
43 also be onerous, costly, and time consuming to generate. Requiring
44 financial statements has also led to public disclosure of confidential
45 information, bid challenges and project delays. As a guarantee or a
46 surety company certificate also demonstrates the financial
47 capability of a bidder, requiring a financial statement as well

A1794 O'DONNELL, CLIFTON

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1 unnecessarily wastes time and resources and should not be
2 permitted.

3 This bill would provide an exception for instances in which a law
4 or regulation of the United States imposes a condition upon the
5 awarding of a monetary grant to be used for the purchase, contract
6 or agreement if the condition requires the submission of a financial
7 statement, ensuring that no federal funding opportunities are lost.

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1794

STATE OF NEW JERSEY

DATED: JUNE 12, 2014

The Assembly State and Local Government Committee reports favorably Assembly Bill No. 1794.

This bill prohibits the practice of requiring bidders to submit a financial statement in order to bid on local or county college public contracts if the bidders are also required to furnish either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate. While a financial statement can be helpful in determining the financial capability of a bidder, it can be onerous, costly, and time consuming to generate. In addition, requiring financial statements has led to public disclosure of confidential information, bid challenges and project delays. As a guarantee or a surety company certificate also demonstrates the financial capability of a bidder, requiring a financial statement as well unnecessarily wastes time and resources.

The bill provides an exception for instances in which a 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 if the condition requires the submission of a financial statement, ensuring that no federal funding opportunities are lost.

This bill was prefiled for introduction in the 2014-2015 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

Assembly Bill No. 1794 is identical to Senate Bill No. 1048 of 2014.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1794

STATE OF NEW JERSEY

DATED: JUNE 26, 2014

The Senate Community and Urban Affairs Committee reports favorably Assembly Bill No. 1794.

This bill would prohibit the practice of requiring bidders to submit a financial statement in order to bid on local or county college public contracts if the bidders are also required to furnish either a guarantee, by certified check, cashier's check, or bid bond, or a surety company certificate. A guarantee or a surety company certificate also demonstrates the financial capability of a bidder.

This bill would provide an exception for instances in which a 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 if the condition requires the submission of a financial statement, ensuring that no federal funding opportunities are lost.

This bill is identical to Senate Bill No. 1048, which the committee also reported on this date.

SENATE, No. 1048

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JANUARY 30, 2014

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:

Senator Oroho

SYNOPSIS

Limits when bidders can be required to submit a financial statement in order to bid on a local public contract or county college contract.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/1/2014)

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42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

43 c. At no time during the proposal solicitation process shall the
44 purchasing agent or counsel or administrator convey information,
45 including price, to any potential vendor which could confer an
46 unfair advantage upon that vendor over any other potential vendor.
47 If a purchasing agent or counsel or administrator desires to change
48 proposal documentation, the purchasing agent or counsel or

1 administrator shall notify only those potential vendors who received
2 the proposal documentation of any and all changes in writing and
3 all existing documentation shall be changed appropriately.

4 d. All proposals and contracts shall be subject to the provisions
5 of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission
6 of a statement of corporate ownership and the provisions of
7 P.L.1975, c.127(C.10:5-31 et seq.) concerning equal employment
8 opportunity and affirmative action.
9 (cf: P.L.1999, c.440, s.4)

10

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

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

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

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

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

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

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

47 (f) Require that any bidder submit a financial statement if either
48 a guarantee, by certified check, cashier's check or bid bond, or a

1 surety company certificate is also required to be furnished by the
2 bidder, unless any law or regulation of the United States imposes a
3 condition upon the awarding of a monetary grant to be used for the
4 purchase, contract or agreement, which condition requires that a
5 financial statement be submitted.

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

12 Any specification for a contract for the collection and disposal of
13 municipal solid waste shall conform to the uniform bid
14 specifications for municipal solid waste collection contracts
15 established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-
16 7.22).

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

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

26 (cf: P.L.1999, c.440, s.19)

27

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

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STATEMENT

34

35 This bill would prohibit the practice of requiring bidders to
36 submit a financial statement in order to bid on local or county
37 college public contracts if the bidders are also required to furnish
38 either a guarantee, by certified check, cashier's check or bid bond,
39 or a surety company certificate. While a financial statement can be
40 helpful to determining the financial capability of a bidder, it can
41 also be onerous, costly, and time consuming to generate. Requiring
42 financial statements has also led to public disclosure of confidential
43 information, bid challenges and project delays. As a guarantee or a
44 surety company certificate also demonstrates the financial
45 capability of a bidder, requiring a financial statement as well
46 unnecessarily wastes time and resources and should not be
47 permitted.

S1048 BATEMAN, VAN DREW

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1 This bill would provide an exception for instances in which a law
2 or regulation of the United States imposes a condition upon the
3 awarding of a monetary grant to be used for the purchase, contract
4 or agreement if the condition requires the submission of a financial
5 statement, ensuring that no federal funding opportunities are lost.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1048

STATE OF NEW JERSEY

DATED: JUNE 26, 2014

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 1048.

This bill would prohibit the practice of requiring bidders to submit a financial statement in order to bid on local or county college public contracts if the bidders are also required to furnish either a guarantee, by certified check, cashier's check, or bid bond, or a surety company certificate. A guarantee or a surety company certificate also demonstrates the financial capability of a bidder.

This bill would provide an exception for instances in which a 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 if the condition requires the submission of a financial statement, ensuring that no federal funding opportunities are lost.

This bill is identical to Assembly Bill No. 1794, which the committee also reported on this date.