

SENATE: Yes State Gov., Wagering, Tourism
& Hist. Preservation
Budget & Appropriations

(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: Yes 8-28-2020
9-23-2020

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: Yes

Commission meeting of Disparity in State Procurement Study Commission
March 3, 2020
Library call number: 974.90 F491, 2020d
Available online at <https://hdl.handle.net/10929/57078>

NEWSPAPER ARTICLES: No

RH/CL

P.L. 2021, CHAPTER 4, *approved January 29, 2021*
Assembly, No. 4528 (*Second Reprint*)

1 AN ACT concerning certain aspects of the State procurement
2 process and amending P.L.2012, c.25 and P.L.1954, c.48.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 4 of P.L.2012, c.25 (C.52:32-58) is amended to read
8 as follows:

9 4. a. A State agency shall require a person or entity that
10 submits a bid or proposal or otherwise proposes to enter into or
11 renew a contract to certify, **[at the time the bid is submitted or]**
12 prior to the time a contract is awarded and at the time the contract is
13 renewed, that the person or entity is not identified on a list created
14 pursuant to subsection b. of section 3 of this act as a person or
15 entity engaging in investment activities in Iran described in
16 subsection f. of section 2 of this act.

17 b. The certification required shall be executed on behalf of the
18 applicable person or entity by an authorized officer or
19 representative of the person or entity.

20 c. In the event that a person or entity is unable to make the
21 certification required because it or one of its parents, subsidiaries,
22 or affiliates as defined in subsection e. of section 2 of this act has
23 engaged in one or more of the activities specified in subsection f. of
24 section 2 of this act, the person or entity shall provide to the State
25 agency concerned, prior to the deadline for delivery of such
26 certification, a detailed and precise description of such activities,
27 such description to be provided under penalty of perjury.

28 d. The certifications provided under subsection a. of this
29 section and disclosures provided under subsection c. of this section
30 shall be disclosed to the public.

31 (cf: P.L.2012, c.25, s.4)

32
33 2. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read as
34 follows:

35 7. a. Whenever advertising is required: (a) specifications and
36 invitations for bids shall permit such full and free competition as is
37 consistent with the procurement of supplies and services necessary to
38 meet the requirements of the using agency and shall, wherever
39 practicable, include such factors as life-cycle costs, sliding percentage
40 preference scales, or other similar analysis as shall be deemed
41 effective by the Director of the Division of Purchase and Property,
42 hereinafter referred to as the director, (b) the advertisement for bids

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted September 17, 2020.

²Assembly floor amendments adopted January 11, 2021.

1 shall be in such newspaper or newspapers and other medium or media
2 selected by the State Treasurer as will best give notice thereof to
3 bidders and shall be sufficiently in advance of the purchase or contract
4 to promote competitive bidding; (c) the advertisement shall designate
5 the time and secure location when and where proposals, which may be
6 submitted in electronic or other format designated by the director, shall
7 be received, opened and publicly announced, the amount of the cash or
8 certified check, if any, which must accompany each bid, and such
9 other terms as the State Treasurer may deem proper; (d) notice of
10 revisions or addenda to advertisements or bid documents relating to
11 bids shall be published in a newspaper or newspapers and other
12 medium or media selected by the State Treasurer to give notice to
13 bidders at least seven days, Saturdays, Sundays and holidays excepted,
14 prior to the bid due date; (e) failure to advertise for the receipt of bids
15 or to provide proper notification of revisions or addenda to
16 advertisements or bid documents related to bids as prescribed by
17 subsection (d) of this section shall prevent the acceptance of bids and
18 require the readvertisement for bids; (f) for any procurement, other
19 than a contract for the construction or maintenance of a public work
20 procured by other than the director of the Division of Purchase and
21 Property, the State Treasurer or the director may negotiate with
22 bidders the final terms and conditions of any procurement, including
23 price; such ability to so negotiate must be expressly set forth in the
24 applicable invitation to bid and (i) such bids shall not be publicly
25 accessible until after negotiations have been completed and the notice
26 of intent to award the contract has been issued or (ii) notwithstanding
27 subsubparagraph (i) of subparagraph (f), bids or portions thereof, may
28 be publicly accessible if the State Treasurer or the director is procuring
29 via a reverse auction process and the bids, or portions thereof, have
30 been de-identified; (g) award shall be made with reasonable
31 promptness, after negotiation with bidders where authorized, by
32 written or electronic notice to that responsible bidder whose bid,
33 conforming to the invitation for bids, will be most advantageous to the
34 State, price and other factors considered; and (h) the Treasurer shall
35 require, with respect to contracts for information technology goods and
36 services, a limitation of liability determined by the Director of the
37 Division of Purchase and Property. When negotiations occur pursuant
38 to subparagraph f. of this section, a written record of the nature and
39 content of the negotiations, as well as the dates and persons involved,
40 shall become a public record when the notice of intent to award the
41 contract is issued. Notwithstanding the provisions of this subsection,
42 the Director of the Division of Purchase and Property may structure an
43 advertisement for bids to include an auction or reverse auction
44 procedure, related to the procurement of goods, services, or both, ¹with
45 the exception of contracts for the provision of hospital, surgical,
46 obstetrical, and other covered health care services and benefits or for
47 the provider network for those services in connection with the State
48 Health Benefits Program, the School Employees' Health Benefits

1 Program, and Medicaid Managed Care Program, except for a
2 pharmacy benefit management contract ²[as may be allowed by
3 existing law]² .¹ whereby pricing is revealed to all other qualified
4 bidders during the course of the auction or reverse auction, whenever
5 the director determines that the use of such procedure will result in
6 bids being more advantageous to the State, price and other factors
7 considered.

8 Any or all bids may be rejected when the State Treasurer or the
9 Director of the Division of Purchase and Property determines that it is
10 in the public interest so to do. The State Treasurer or designee may
11 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
12 c.410 (C.52:14B-1 et seq.), such rules and regulations as may be
13 necessary to implement the provisions of this section.

14 This section shall apply to all bids received on and after the date of
15 enactment of P.L.1999, c.440.

16 b. Whenever by law a State independent authority may negotiate
17 with bidders, after bid opening, the final terms and conditions of any
18 procurement, including price, and such ability to so negotiate is
19 expressly set forth in the applicable invitation to bid, a written record
20 of the nature and content of the negotiations, as well as the dates and
21 persons involved, shall not be publicly accessible until after the notice
22 of intent to award the contract is issued.

23 (cf: P.L.2005, c.336, s.14)

24

25 3. This act shall take effect immediately.

26

27

28

29

30 Revises certain aspects of the State procurement process and
31 permits auction or reverse auction procedures.

ASSEMBLY, No. 4528

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 10, 2020

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

SYNOPSIS

Revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/13/2020)

1 AN ACT concerning certain aspects of the State procurement
2 process and amending P.L.2012, c.25 and P.L.1954, c.48.

3

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

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7 1. Section 4 of P.L.2012, c.25 (C.52:32-58) is amended to read
8 as follows:

9 4. a. A State agency shall require a person or entity that
10 submits a bid or proposal or otherwise proposes to enter into or
11 renew a contract to certify, **[at the time the bid is submitted or]**
12 prior to the time a contract is awarded and at the time the contract is
13 renewed, that the person or entity is not identified on a list created
14 pursuant to subsection b. of section 3 of this act as a person or
15 entity engaging in investment activities in Iran described in
16 subsection f. of section 2 of this act.

17 b. The certification required shall be executed on behalf of the
18 applicable person or entity by an authorized officer or
19 representative of the person or entity.

20 c. In the event that a person or entity is unable to make the
21 certification required because it or one of its parents, subsidiaries,
22 or affiliates as defined in subsection e. of section 2 of this act has
23 engaged in one or more of the activities specified in subsection f. of
24 section 2 of this act, the person or entity shall provide to the State
25 agency concerned, prior to the deadline for delivery of such
26 certification, a detailed and precise description of such activities,
27 such description to be provided under penalty of perjury.

28 d. The certifications provided under subsection a. of this
29 section and disclosures provided under subsection c. of this section
30 shall be disclosed to the public.

31 (cf: P.L.2012, c.25, s.4)

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36 invitations for bids shall permit such full and free competition as is
37 consistent with the procurement of supplies and services necessary
38 to meet the requirements of the using agency and shall, wherever
39 practicable, include such factors as life-cycle costs, sliding
40 percentage preference scales, or other similar analysis as shall be
41 deemed effective by the Director of the Division of Purchase and
42 Property, hereinafter referred to as the director, (b) the
43 advertisement for bids shall be in such newspaper or newspapers
44 and other medium or media selected by the State Treasurer as will
45 best give notice thereof to bidders and shall be sufficiently in

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 advance of the purchase or contract to promote competitive bidding;
2 (c) the advertisement shall designate the time and secure location
3 when and where proposals, which may be submitted in electronic or
4 other format designated by the director, shall be received, opened
5 and publicly announced, the amount of the cash or certified check,
6 if any, which must accompany each bid, and such other terms as the
7 State Treasurer may deem proper; (d) notice of revisions or addenda
8 to advertisements or bid documents relating to bids shall be
9 published in a newspaper or newspapers and other medium or
10 media selected by the State Treasurer to give notice to bidders at
11 least seven days, Saturdays, Sundays and holidays excepted, prior
12 to the bid due date; (e) failure to advertise for the receipt of bids or
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15 subsection (d) of this section shall prevent the acceptance of bids
16 and require the readvertisement for bids; (f) for any procurement,
17 other than a contract for the construction or maintenance of a public
18 work procured by other than the director of the Division of
19 Purchase and Property, the State Treasurer or the director may
20 negotiate with bidders the final terms and conditions of any
21 procurement, including price; such ability to so negotiate must be
22 expressly set forth in the applicable invitation to bid and (i) such
23 bids shall not be publicly accessible until after negotiations have
24 been completed and the notice of intent to award the contract has
25 been issued or (ii) notwithstanding subsubparagraph (i) of
26 subparagraph (f), bids or portions thereof, may be publicly
27 accessible if the State Treasurer or the director is procuring via a
28 reverse auction process and the bids, or portions thereof, have been
29 de-identified; (g) award shall be made with reasonable promptness,
30 after negotiation with bidders where authorized, by written or
31 electronic notice to that responsible bidder whose bid, conforming
32 to the invitation for bids, will be most advantageous to the State,
33 price and other factors considered; and (h) the Treasurer shall
34 require, with respect to contracts for information technology goods
35 and services, a limitation of liability determined by the Director of
36 the Division of Purchase and Property. When negotiations occur
37 pursuant to subparagraph f. of this section, a written record of the
38 nature and content of the negotiations, as well as the dates and
39 persons involved, shall become a public record when the notice of
40 intent to award the contract is issued. Notwithstanding the
41 provisions of this subsection, the Director of the Division of
42 Purchase and Property may structure an advertisement for bids to
43 include an auction or reverse auction procedure, related to the
44 procurement of goods, services, or both, whereby pricing is
45 revealed to all other qualified bidders during the course of the
46 auction or reverse auction, whenever the director determines that
47 the use of such procedure will result in bids being more
48 advantageous to the State, price and other factors considered.

1 Any or all bids may be rejected when the State Treasurer or the
2 Director of the Division of Purchase and Property determines that it
3 is in the public interest so to do. The State Treasurer or designee
4 may adopt, pursuant to the "Administrative Procedure Act,"
5 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as
6 may be necessary to implement the provisions of this section.

7 This section shall apply to all bids received on and after the date
8 of enactment of P.L.1999, c.440.

9 b. Whenever by law a State independent authority may
10 negotiate with bidders, after bid opening, the final terms and
11 conditions of any procurement, including price, and such ability to
12 so negotiate is expressly set forth in the applicable invitation to bid,
13 a written record of the nature and content of the negotiations, as
14 well as the dates and persons involved, shall not be publicly
15 accessible until after the notice of intent to award the contract is
16 issued.

17 (cf: P.L.2005, c.336, s.14)

18

19 3. This act shall take effect immediately.

20

21

22

STATEMENT

23

24 This bill revises certain aspects of the State procurement process
25 and permits auction or reverse auction procedures.

26 Under current law, a person or entity that submits a bid or
27 proposal, or otherwise proposes to enter into or renew a contract to
28 certify, must do so at the time the bid is submitted or the contract is
29 renewed. This bill revises the process to require a person or entity
30 to certify prior to the time a contract is awarded and at the time the
31 contract is renewed.

32 This bill also permits the Director of the Division of Purchase
33 and Property to structure an advertisement for bids to include an
34 auction or reverse auction procedure. The procedure will be related
35 to the procurement of goods, services, or both, whereby pricing is
36 revealed to all other qualified bidders during the course of the
37 auction or reverse auction. The director would determine whether
38 to utilize an auction or reverse auction dependent on if that
39 procedure would result in bids being more advantageous to the
40 State, price and other factors considered.

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4528

STATE OF NEW JERSEY

DATED: AUGUST 13, 2020

The Assembly State and Local Government Committee reports favorably Assembly Bill No. 4528.

This bill revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

Under current law, a person or entity that submits a bid or proposal, or otherwise proposes to enter into or renew a contract to certify, must do so at the time the bid is submitted or the contract is renewed. This bill revises the process to require a person or entity to certify prior to the time a contract is awarded and at the time the contract is renewed.

This bill also permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director would determine whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4528

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 15, 2020

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4528.

As amended, this bill prohibits an auction or reverse auction procedure on bids for advertisement for certain contracts.

The bill permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director is required to determine whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

As amended and reported by the committee, Assembly Bill No. 4528 is identical to Senate Bill No. 2838, which also was amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments prohibit a reverse auction procedure on bids for advertisement for contracts for the provision of hospital, surgical, obstetrical, and other covered health care services and benefits or for the provider network for those services in connection with the State Health Benefits Program, the School Employees' Health Benefits Program and Medicaid Managed Care Program, except for a pharmacy benefit management contract as may be allowed by existing law.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill could potentially result in an indeterminate reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process.

In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4528

with Assembly Floor Amendments
(Proposed by Assemblyman DEANGELO)

ADOPTED: JANUARY 11, 2021

These Assembly amendments make a revision to the exception for reverse auction procedures on pharmacy benefit management contracts as may be allowed by existing law. The amendments remove the language that the exception may be allowed by existing law.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4528
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 28, 2020

SUMMARY

- Synopsis:** Revises certain aspects of State procurement process and permits auction or reverse auction procedures.
- Type of Impact:** Potential annual reduction in State General Fund expenditures.
- Agencies Affected:** Division of Purchase and Property, Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Savings		Indeterminate	

- The Office of Legislative Services (OLS) estimates that the bill could potentially result in an indeterminate reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process.
- In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

BILL DESCRIPTION

This bill revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

Under current law, a person or entity that submits a bid or proposal, or otherwise proposes to enter into or renew a contract to certify, must do so at the time the bid is submitted or the contract is renewed. This bill revises the process to require a person or entity to certify prior to the time a contract is awarded and at the time the contract is renewed.

This bill also permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director would determine

whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS considers the cost of this bill to be indeterminate at this time, but estimates that it could potentially result in a reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process. In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

Section: State Government

*Analyst: Kimberly M. Clemmensen
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4528

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: SEPTEMBER 23, 2020

SUMMARY

- Synopsis:** Revises certain aspects of State procurement process and permits auction or reverse auction procedures.
- Type of Impact:** Potential annual reduction in State General Fund expenditures.
- Agencies Affected:** Division of Purchase and Property, Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Savings		Indeterminate	

- The Office of Legislative Services (OLS) estimates that the bill could potentially result in an indeterminate reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process.
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This bill also permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure, with the exception of

contracts for the provision of hospital, surgical, obstetrical, and other covered health care services and benefits or for the provider network for those services in connection with the State Health Benefits Program, the School Employees' Health Benefits Program, and Medicaid Managed Care Program, except for a pharmacy benefit management contract as may be allowed by existing law. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director would determine whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS considers the cost of this bill to be indeterminate at this time, but estimates that it could potentially result in a reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process. In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

Section: State Government
Analyst: Kimberly M. Clemmensen
Lead Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2838

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 17, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

Revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain aspects of the State procurement
2 process and amending P.L.2012, c.25 and P.L.1954, c.48.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
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13 renewed, that the person or entity is not identified on a list created
14 pursuant to subsection b. of section 3 of this act as a person or
15 entity engaging in investment activities in Iran described in
16 subsection f. of section 2 of this act.

17 b. The certification required shall be executed on behalf of the
18 applicable person or entity by an authorized officer or
19 representative of the person or entity.

20 c. In the event that a person or entity is unable to make the
21 certification required because it or one of its parents, subsidiaries,
22 or affiliates as defined in subsection e. of section 2 of this act has
23 engaged in one or more of the activities specified in subsection f. of
24 section 2 of this act, the person or entity shall provide to the State
25 agency concerned, prior to the deadline for delivery of such
26 certification, a detailed and precise description of such activities,
27 such description to be provided under penalty of perjury.

28 d. The certifications provided under subsection a. of this
29 section and disclosures provided under subsection c. of this section
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41 deemed effective by the Director of the Division of Purchase and
42 Property, hereinafter referred to as the director, (b) the
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44 and other medium or media selected by the State Treasurer as will
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6 if any, which must accompany each bid, and such other terms as the
7 State Treasurer may deem proper; (d) notice of revisions or addenda
8 to advertisements or bid documents relating to bids shall be
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16 and require the readvertisement for bids; (f) for any procurement,
17 other than a contract for the construction or maintenance of a public
18 work procured by other than the director of the Division of
19 Purchase and Property, the State Treasurer or the director may
20 negotiate with bidders the final terms and conditions of any
21 procurement, including price; such ability to so negotiate must be
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23 bids shall not be publicly accessible until after negotiations have
24 been completed and the notice of intent to award the contract has
25 been issued or (ii) notwithstanding subsubparagraph (i) of
26 subparagraph (f), bids or portions thereof, may be publicly
27 accessible if the State Treasurer or the director is procuring via a
28 reverse auction process and the bids, or portions thereof, have been
29 de-identified; (g) award shall be made with reasonable promptness,
30 after negotiation with bidders where authorized, by written or
31 electronic notice to that responsible bidder whose bid, conforming
32 to the invitation for bids, will be most advantageous to the State,
33 price and other factors considered; and (h) the Treasurer shall
34 require, with respect to contracts for information technology goods
35 and services, a limitation of liability determined by the Director of
36 the Division of Purchase and Property. When negotiations occur
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38 nature and content of the negotiations, as well as the dates and
39 persons involved, shall become a public record when the notice of
40 intent to award the contract is issued. Notwithstanding the
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43 include an auction or reverse auction procedure, related to the
44 procurement of goods, services, or both, whereby pricing is
45 revealed to all other qualified bidders during the course of the
46 auction or reverse auction, whenever the director determines that
47 the use of such procedure will result in bids being more
48 advantageous to the State, price and other factors considered.

1 Any or all bids may be rejected when the State Treasurer or the
2 Director of the Division of Purchase and Property determines that it
3 is in the public interest so to do. The State Treasurer or designee
4 may adopt, pursuant to the "Administrative Procedure Act,"
5 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as
6 may be necessary to implement the provisions of this section.

7 This section shall apply to all bids received on and after the date
8 of enactment of P.L.1999, c.440.

9 b. Whenever by law a State independent authority may
10 negotiate with bidders, after bid opening, the final terms and
11 conditions of any procurement, including price, and such ability to
12 so negotiate is expressly set forth in the applicable invitation to bid,
13 a written record of the nature and content of the negotiations, as
14 well as the dates and persons involved, shall not be publicly
15 accessible until after the notice of intent to award the contract is
16 issued.

17 (cf: P.L.2005, c.336, s.14)

18

19 3. This act shall take effect immediately.

20

21

22 STATEMENT

23

24 This bill revises certain aspects of the State procurement process
25 and permits auction or reverse auction procedures.

26 Under current law, a person or entity that submits a bid or
27 proposal, or otherwise proposes to enter into or renew a contract,
28 must certify certain information, at the time the bid is submitted or
29 the contract is renewed. This bill revises the process to require a
30 person or entity to certify prior to the time a contract is awarded and
31 at the time the contract is renewed.

32 This bill also permits the Director of the Division of Purchase
33 and Property to structure an advertisement for bids to include an
34 auction or reverse auction procedure. The procedure will be related
35 to the procurement of goods, services, or both, whereby pricing is
36 revealed to all other qualified bidders during the course of the
37 auction or reverse auction. The director would determine whether
38 to utilize an auction or reverse auction dependent on if that
39 procedure would result in bids being more advantageous to the
40 State, price and other factors considered.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE, No. 2838

STATE OF NEW JERSEY

DATED: AUGUST 20, 2020

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably Senate Bill No. 2838.

This bill revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

Under current law, a person or entity that submits a bid or proposal, or otherwise proposes to enter into or renew a contract, must certify certain information, at the time the bid is submitted or the contract is renewed. This bill revises the process to require a person or entity to certify prior to the time a contract is awarded and at the time the contract is renewed.

This bill also permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director would determine whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2838

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 15, 2020

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2838.

As amended, this bill prohibits an auction or reverse auction procedure on bids for advertisement for certain contracts.

The bill permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director is required to determine whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

As amended and reported by the committee, Senate Bill No. 2838 is identical to Assembly Bill No. 4528, which also was amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments prohibit an auction or reverse auction procedure on bids for advertisement for contracts for the provision of hospital, surgical, obstetrical, and other covered health care services and benefits or for the provider network for those services in connection with the State Health Benefits Program, the School Employees' Health Benefits Program and Medicaid Managed Care Program, except for a pharmacy benefit management contract as may be allowed by existing law.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill could potentially result in an indeterminate reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process.

In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2838
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 28, 2020

SUMMARY

Synopsis: Revises certain aspects of State procurement process and permits auction or reverse auction procedures.

Type of Impact: Potential annual reduction in State General Fund expenditures.

Agencies Affected: Division of Purchase and Property, Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Savings		Indeterminate	

- The Office of Legislative Services (OLS) estimates that the bill could potentially result in an indeterminate reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process.
- In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

BILL DESCRIPTION

This bill revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

Under current law, a person or entity that submits a bid or proposal, or otherwise proposes to enter into or renew a contract to certify, must do so at the time the bid is submitted or the contract is renewed. This bill revises the process to require a person or entity to certify prior to the time a contract is awarded and at the time the contract is renewed.

This bill also permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director would determine

whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS considers the cost of this bill to be indeterminate at this time, but estimates that it could potentially result in a reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process. In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

Section: State Government

*Analyst: Kimberly M. Clemmensen
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2838 STATE OF NEW JERSEY 219th LEGISLATURE

DATED: SEPTEMBER 23, 2020

SUMMARY

- Synopsis:** Revises certain aspects of State procurement process and permits auction or reverse auction procedures.
- Type of Impact:** Potential annual reduction in State General Fund expenditures.
- Agencies Affected:** Division of Purchase and Property, Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Savings		Indeterminate	

- The Office of Legislative Services (OLS) estimates that the bill could potentially result in an indeterminate reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process.
- In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

BILL DESCRIPTION

This bill revises certain aspects of the State procurement process and permits auction or reverse auction procedures.

Under current law, a person or entity that submits a bid or proposal, or otherwise proposes to enter into or renew a contract to certify, must do so at the time the bid is submitted or the contract is renewed. This bill revises the process to require a person or entity to certify prior to the time a contract is awarded and at the time the contract is renewed.

This bill also permits the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure, with the exception of

contracts for the provision of hospital, surgical, obstetrical, and other covered health care services and benefits or for the provider network for those services in connection with the State Health Benefits Program, the School Employees' Health Benefits Program, and Medicaid Managed Care Program, except for a pharmacy benefit management contract as may be allowed by existing law. The procedure will be related to the procurement of goods, services, or both, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction. The director would determine whether to utilize an auction or reverse auction dependent on if that procedure would result in bids being more advantageous to the State, price and other factors considered.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS considers the cost of this bill to be indeterminate at this time, but estimates that it could potentially result in a reduction in annual State expenditures. The OLS does not have access to a list of projects that the Division of Purchase and Property intends to advertise using a reverse auction procurement process. In general, reverse auctions are conducted electronically, and because bidders are generally approved contractors, reverse auctions are competitive on price and lead to lower contract prices.

Section: State Government

Analyst: Kimberly M. Clemmensen
Lead Fiscal Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).