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SENATE: No

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"School construction bill gives districts options," 12-12-99, New Brunswick Home News & Tribune, p. A3.

"School-construction bidding rules eased," 12-21-99, Trenton Times, p. A8.

P.L. 1999, CHAPTER 280, *approved December 20, 1999*
Senate, No. 987 (*Second Reprint*)

1 ANACT concerning certain public contracts and revising various parts
2 of the statutory law.

3

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

6

7 1. N.J.S.18A:18A-18 is amended to read as follows:

8 18A:18A-18. a. In the preparation of plans and specifications for
9 the construction, alteration or repair of any building by a board of
10 education, when the entire cost of the work and materials will exceed
11 the amount set forth in, or calculated by the Governor pursuant to,
12 N.J.S. 18A:18A-3 separate plans and specifications **[shall]** may be
13 prepared for each of the following, and all work and materials kindred
14 thereto to be performed or furnished in connection therewith:

15 **[a.]** (1) The plumbing and gas fitting work;

16 **[b.]** (2) The heating and ventilating systems and equipment;

17 **[c.]** (3) The electrical work, including any electrical power plant;

18 **[d.]** (4) The structural steel and ornamental iron work; and

19 **[e. All]** (5) General construction, which shall include all other
20 work and materials required for the completion of the project.

21 b. The board of education or its contracting agent shall advertise
22 for and receive, in the manner provided by law, (1) separate bids for
23 each of **[said]** the branches of work specified in subsection a. of this
24 section, [and] or (2) bids for all the work and materials required to
25 complete the building to be included in a single overall contract, or (3)
26 both. [There] In the case of a single bid under paragraph (2) or (3)
27 of this subsection, there will be set forth in the bid the name or names
28 of **[, and evidence of performance security from,]** all subcontractors
29 to whom the bidder will subcontract the furnishing of plumbing and
30 gas fitting, and all kindred work, and of the heating and ventilating
31 systems and equipment, and electrical work, structural steel and
32 ornamental iron work, each of which subcontractors shall be qualified
33 in accordance with this chapter.

34 c. Contracts shall be awarded to the lowest responsible bidder in
35 each branch of work in the case of separate bids and to the single
36 lowest responsible bidder in the case of single bids. [The] In the
37 event that a contract is advertised in accordance with paragraph (3) of
38 subsection b. of this section, the contract shall be awarded in the
39 following manner: If the sum total of the amounts bid by the lowest

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:

¹ Senate SBA committee amendments adopted June 11, 1998.

² Senate floor amendments adopted June 25, 1998.

1 responsible bidder for each branch is less than the amount bid by the
2 lowest responsible bidder for all the work and materials, the board of
3 education shall award separate contracts for each of such branches to
4 the lowest responsible bidder therefor, but if the sum total of the
5 amount bid by the lowest responsible bidder for each branch is not less
6 than the amount bid by the lowest responsible bidder for all the work
7 and materials, the board of education shall award a single overall
8 contract to the lowest responsible bidder for all of such work and
9 materials. In every case in which a contract is awarded under
10 paragraph (2) ~~above~~ or (3) of subsection b. of this section, all
11 payments required to be made under such contract for work and
12 materials supplied by a subcontractor ~~shall~~ may, upon the
13 certification of the contractor of the amount due to the subcontractor,
14 be paid directly to the subcontractor. Payments to a subcontractor
15 for work and materials supplied in connection with the contract shall
16 be made within 10 ²calendar² days of the ²completion of receipt of
17 payment for² that work or the delivery of those materials by the
18 subcontractor ²in accordance with the provisions of P.L.1991, c.133
19 (C.2A:30A-1 et seq.), and any regulations promulgated thereunder². ¹

20 ¹d. Notwithstanding the provisions of subsection b. of this
21 section, a bidder who is awarded a single overall contract shall not be
22 obligated to enter into a subcontract with a listed subcontractor unless:
23 (1) the subcontract is for the same price as the subcontractor's pre-bid
24 price and binds the subcontractor, to the extent not inconsistent with
25 the terms and conditions of the subcontract or requirements
26 established by the board, to the same terms and conditions to which
27 the bidder as general contractor is bound in the overall contract with
28 the board; and (2) upon transmission by the bidder to the
29 subcontractor by certified mail, return receipt requested, of a written
30 subcontract, the subcontractor signs and returns the subcontract within
31 five days of receipt of the subcontract.] ¹

32 (cf: P.L.1983, c. 171, s. 5)

33

34 2. Section 11 of P.L.1981, c.120 ¹[(C.52:18A:78.11)] (C.52:18A-
35 78.11) ¹ is amended to read as follows:

36 11. a. The authority, in the exercise of its authority to make and
37 enter into contracts and agreements necessary or incidental to the
38 performance of its duties and the execution of its powers, shall adopt
39 standing rules and procedures providing that no contract on behalf of
40 the authority shall be entered into for the doing of any work, or for the
41 hiring of equipment or vehicles, where the sum to be expended
42 exceeds the sum of \$7,500.00 unless the authority shall first publicly
43 advertise for bids therefor, and shall award the contract to the lowest
44 responsible bidder. Advertising shall not be required where the
45 contract to be entered into is one for the furnishing or performing of
46 services of a professional nature or for the supplying of any product

1 or the rendering of any service by a public utility subject to the
2 jurisdiction of the Board of Public Utilities and tariffs and schedules
3 of the charges made, charged, or exacted by the public utility for any
4 products to be supplied or services to be rendered are filed with the
5 board. This section shall not prevent the authority from having any
6 work done by its own employees, nor shall it apply to repairs, or to
7 the furnishing of materials, supplies or labor, or the hiring of
8 equipment or vehicles, when the safety or protection of its or other
9 public property or the public convenience requires, or the exigency of
10 the accomplishment of the projects will not allow advertisement. In
11 that case, the board of directors of the authority shall, by resolution,
12 declare the exigency or emergency to exist, and set forth in the
13 resolution the nature thereof and the approximate amount to be so
14 expended.

15 b. (1) In undertaking any project where the cost of construction,
16 reconstruction, rehabilitation or improvement will exceed \$25,000.00,
17 the authority shall be subject to the rules and regulations of the
18 Division of Building and Construction concerning procedural
19 requirements for the making, negotiating or awarding of purchases,
20 contracts or agreements; and the authority, with the assistance of the
21 division, **[shall]** may prepare, or cause to be prepared, separate plans
22 and specifications for:

23 **[(1)]** (a) The plumbing and gas fitting and all work and materials
24 kindred thereto,

25 **[(2)]** (b) The steam and hot water heating and ventilating
26 apparatus, steam power plants and all work and materials kindred
27 thereto,

28 **[(3)]** (c) The electrical work,

29 **[(4)]** (d) Structural steel and ornamental iron work and materials,
30 and

31 **[(5) All]** (e) General construction, which shall include all other
32 work and materials required to complete the building; and the].

33 (2) The authority shall receive (a) separate bids for each of **[these]**
34 the branches of **[the]** work **[and]** specified in paragraph (1) of this
35 subsection; or (b) bids for all the work and materials required to
36 complete the project to be included in a single overall contract, in
37 which case there shall be set forth in the bid the name or names of all
38 subcontractors to whom the bidder will subcontract for the furnishing
39 of any of the work and materials specified in **[(a) above]** branches (a)
40 through (d) in paragraph (1) of this subsection; or (c) both.

41 (3) Contracts shall be awarded to the lowest responsible bidder in
42 each branch of work in the case of separate bids and to the single
43 lowest responsible bidder in the case of single bids. In the event that
44 a contract is advertised in accordance with subparagraph (c) of
45 paragraph (2) of this subsection, the contract shall be awarded in the

1 following manner: If the sum total of the amounts bid by the lowest
2 responsible bidder for each branch is less than the amount bid by the
3 lowest responsible bidder for all of the work and materials, the
4 authority shall award separate contracts for each of branches to the
5 lowest responsible bidder therefor, but if the sum total of the amount
6 bid by the lowest responsible bidder for each branch is not less than
7 the amount bid by the lowest responsible bidder for all the work and
8 materials, the authority shall award a single over-all contract to the
9 lowest responsible bidder for all of the work and materials.

10 Whenever a contract is awarded under subparagraph (b) [above]
11 or (c) of paragraph (2) of this subsection, all payments required to be
12 made by the authority under the contract for work and materials
13 supplied by a subcontractor **[shall] may**, upon the certification of the
14 contractor of the amount due to the subcontractor, be paid directly to
15 the subcontractor. ¹Payments to a subcontractor for work and
16 materials supplied in connection with the contract shall be made within
17 10 ²calendar² days of the ²[completion of] receipt of payment for²
18 that work or the delivery of those materials by the subcontractor ²in
19 accordance with the provisions of P.L.1991, c.133 (C.2A:30A-1 et
20 seq.), and any regulations promulgated thereunder² .¹

21 (4) ¹**[Notwithstanding the provisions of paragraph (2) of this**
22 subsection, a bidder who is awarded a single overall contract shall not
23 be obligated to enter into a subcontract with a listed subcontractor
24 unless: (a) the subcontract is for the same price as the subcontractor's
25 pre-bid price and binds the subcontractor, to the extent not
26 inconsistent with the terms and conditions of the subcontract or
27 requirements established by the authority, to the same terms and
28 conditions to which the bidder as general contractor is bound in the
29 overall contract with the authority; and (b) upon transmission by the
30 bidder to the subcontractor by certified mail, return receipt requested,
31 of a written subcontract, the subcontractor signs and returns the
32 subcontract within five days of receipt of the subcontract.

33 (5)¹ All construction, reconstruction, rehabilitation or
34 improvement undertaken by the authority pursuant to this act shall be
35 subject during such undertaking to the supervision of the Division of
36 Building and Construction to the same extent as any project
37 undertaken by the State.

38 c. With respect to the lease or sale of any project or portion
39 thereof to any person, firm, partnership or corporation, for subsequent
40 lease to or purchase by a State agency, no agreement for that lease or
41 sale shall be entered into, unless the authority shall first publicly
42 advertise for bids therefor. The authority shall employ a person, firm,
43 partnership or corporation, independent from any other aspect or
44 component of the financing of or any ownership or leasehold interest
45 in that project, to assist in the bid procedure and evaluation.

46 (cf: P.L.1983, c.138, s.8)

1 3. R.S.52:32-2 is amended to read as follows:

2 52:32-2. a. When the entire cost of the erection, construction,
3 alteration or repair by the State of any public buildings in this State
4 will exceed \$2,000.00, the person preparing the plans and
5 specifications for such work **【shall】** may prepare separate plans and
6 specifications for: (1) the plumbing and gas fitting and all work
7 kindred thereto**【,】**; (2) the steam and hot water heating and
8 ventilating apparatus, steam power plants and all work kindred
9 thereto**【, and】**; (3) electrical work**【,】**; (4) structural steel and
10 ornamental iron work**【,】**; and (5) general construction, which shall
11 include all other work and materials required for the completion of the
12 project.

13 b. The board, body or person authorized by law to award contracts
14 for such work shall advertise for, in the manner provided by law, and
15 receive **【(a)】** (1) separate bids for each of **【said】** the branches of
16 **【the】** work **【and (b)】** specified in subsection a. of this section; or (2)
17 bids for all the work and materials required to complete the project to
18 be included in a single over-all contract, in which case there shall be
19 set forth in the bid the name or names of all subcontractors to whom
20 the bidder will subcontract for the furnishing of any of the work and
21 materials specified in **【(a) above】** branches (1) through (4) in
22 subsection a. of this section, each of which subcontractors shall be
23 qualified in accordance with chapter 35 of Title 52 of the Revised
24 Statutes; or (3) both.

25 c. Contracts shall be awarded to the lowest responsible bidder in
26 each branch of work in the case of separate bids and to the single
27 lowest responsible bidder in the case of single bids. In the event that
28 a contract is advertised in accordance with paragraph (3) of subsection
29 b. of this section, the contract shall be awarded in the following
30 manner: If the sum total of the amounts bid by the lowest responsible
31 bidder for each such branch is less than the amount bid by the lowest
32 responsible bidder for all of the work and materials, the board, body
33 or person authorized to award contracts for such work shall award
34 separate contracts for each of such branches to the lowest responsible
35 bidder therefor, but if the sum total of the amount bid by the lowest
36 responsible bidder for each such branch is not less than the amount
37 bid by the lowest responsible bidder for all the work and materials, the
38 board, body or person authorized to award the contract shall award
39 a single over-all contract to the lowest responsible bidder for all of
40 such work and materials.

41 In every case in which a contract is awarded under **【(b) above】**
42 paragraph (2) or (3) of subsection b. of this section, all payments
43 required to be made by the board, body or person awarding the
44 contract under such contract for work and materials supplied by a
45 subcontractor **【shall】** may, upon the certification of the contractor of

1 the amount due to the subcontractor, be paid directly to the
2 subcontractor. ¹Payments to a subcontractor for work and materials
3 supplied in connection with the contract shall be made within 10
4 ²calendar² days of the ²[completion of] receipt of payment for² that
5 work or the delivery of those materials by the subcontractor ²in
6 accordance with the provisions of P.L.1991, c.133 (C.2A:30A-1 et
7 seq.), and any regulations promulgated thereunder² .¹

8 ¹[d. Notwithstanding the provisions of subsection b. of this
9 section, a bidder who is awarded a single overall contract shall not be
10 obligated to enter into a subcontract with a listed subcontractor unless:
11 (1) the subcontract is for the same price as the subcontractor's pre-bid
12 price and binds the subcontractor, to the extent not inconsistent with
13 the terms and conditions of the subcontract or requirements
14 established by the board, body, or person authorized by law to award
15 the contract, to the same terms and conditions to which the bidder as
16 general contractor is bound in the overall contract with the board,
17 body, or person authorized by law to award the contract; and (2) upon
18 transmission by the bidder to the subcontractor by certified mail,
19 return receipt requested, of a written subcontract, the subcontractor
20 signs and returns the subcontract within five days of receipt of the
21 subcontract.]¹

22 (cf: P.L.1968, c.108, s.1)

23

24 4. This act shall take effect immediately.

25

26

27

28

29 _____
29 Permits certain public entities to solicit separate bids on five categories
30 of work or a single bid on all work or both with regard to contracts for
31 construction work on public buildings.

SENATE, No. 987

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED APRIL 27, 1998

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

Senator EDWARD T. O'CONNOR

District 31 (Hudson)

SYNOPSIS

Permits certain public entities to solicit separate bids on five categories of work or a single bid on all work or both with regard to contracts for construction work on public buildings.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain public contracts and revising various parts
2 of the statutory law.

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

6
7 1. N.J.S.18A:18A-18 is amended to read as follows:

8 18A:18A-18. a. In the preparation of plans and specifications for
9 the construction, alteration or repair of any building by a board of
10 education, when the entire cost of the work and materials will exceed
11 the amount set forth in, or calculated by the Governor pursuant to,
12 N.J.S. 18A:18A-3 separate plans and specifications **[shall]** may be
13 prepared for each of the following, and all work and materials kindred
14 thereto to be performed or furnished in connection therewith:

15 **[a.]** (1) The plumbing and gas fitting work;

16 **[b.]** (2) The heating and ventilating systems and equipment;

17 **[c.]** (3) The electrical work, including any electrical power plant;

18 **[d.]** (4) The structural steel and ornamental iron work; and

19 **[e. All]** (5) General construction, which shall include all other
20 work and materials required for the completion of the project.

21 b. The board of education or its contracting agent shall advertise
22 for and receive, in the manner provided by law, (1) separate bids for
23 each of **[said]** the branches of work specified in subsection a. of this
24 section, [and] or (2) bids for all the work and materials required to
25 complete the building to be included in a single overall contract, or (3)
26 both. [There] In the case of a single bid under paragraph (2) or (3)
27 of this subsection, there will be set forth in the bid the name or names
28 of **[, and evidence of performance security from,]** all subcontractors
29 to whom the bidder will subcontract the furnishing of plumbing and
30 gas fitting, and all kindred work, and of the heating and ventilating
31 systems and equipment, and electrical work, structural steel and
32 ornamental iron work, each of which subcontractors shall be qualified
33 in accordance with this chapter.

34 c. Contracts shall be awarded to the lowest responsible bidder in
35 each branch of work in the case of separate bids and to the single
36 lowest responsible bidder in the case of single bids. [The] In the
37 event that a contract is advertised in accordance with paragraph (3) of
38 subsection b. of this section, the contract shall be awarded in the
39 following manner: If the sum total of the amounts bid by the lowest
40 responsible bidder for each branch is less than the amount bid by the
41 lowest responsible bidder for all the work and materials, the board of
42 education shall award separate contracts for each of such branches to

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 the lowest responsible bidder therefor, but if the sum total of the
2 amount bid by the lowest responsible bidder for each branch is not less
3 than the amount bid by the lowest responsible bidder for all the work
4 and materials, the board of education shall award a single overall
5 contract to the lowest responsible bidder for all of such work and
6 materials. In every case in which a contract is awarded under
7 paragraph (2) [above] or (3) of subsection b. of this section, all
8 payments required to be made under such contract for work and
9 materials supplied by a subcontractor **[shall]** may, upon the
10 certification of the contractor of the amount due to the subcontractor,
11 be paid directly to the subcontractor.

12 d. Notwithstanding the provisions of subsection b. of this section,
13 a bidder who is awarded a single overall contract shall not be obligated
14 to enter into a subcontract with a listed subcontractor unless: (1) the
15 subcontract is for the same price as the subcontractor's pre-bid price
16 and binds the subcontractor, to the extent not inconsistent with the
17 terms and conditions of the subcontract or requirements established by
18 the board, to the same terms and conditions to which the bidder as
19 general contractor is bound in the overall contract with the board; and
20 (2) upon transmission by the bidder to the subcontractor by certified
21 mail, return receipt requested, of a written subcontract, the
22 subcontractor signs and returns the subcontract within five days of
23 receipt of the subcontract.

24 (cf: P.L.1983, c. 171, s. 5)

25

26 2. Section 11 of P.L.1981, c.120 (C.52:18A:78.11) is amended to
27 read as follows:

28 11. a. The authority, in the exercise of its authority to make and
29 enter into contracts and agreements necessary or incidental to the
30 performance of its duties and the execution of its powers, shall adopt
31 standing rules and procedures providing that no contract on behalf of
32 the authority shall be entered into for the doing of any work, or for the
33 hiring of equipment or vehicles, where the sum to be expended
34 exceeds the sum of \$7,500.00 unless the authority shall first publicly
35 advertise for bids therefor, and shall award the contract to the lowest
36 responsible bidder. Advertising shall not be required where the
37 contract to be entered into is one for the furnishing or performing of
38 services of a professional nature or for the supplying of any product
39 or the rendering of any service by a public utility subject to the
40 jurisdiction of the Board of Public Utilities and tariffs and schedules
41 of the charges made, charged, or exacted by the public utility for any
42 products to be supplied or services to be rendered are filed with the
43 board. This section shall not prevent the authority from having any
44 work done by its own employees, nor shall it apply to repairs, or to
45 the furnishing of materials, supplies or labor, or the hiring of
46 equipment or vehicles, when the safety or protection of its or other

1 public property or the public convenience requires, or the exigency of
2 the accomplishment of the projects will not allow advertisement. In
3 that case, the board of directors of the authority shall, by resolution,
4 declare the exigency or emergency to exist, and set forth in the
5 resolution the nature thereof and the approximate amount to be so
6 expended.

7 b. (1) In undertaking any project where the cost of construction,
8 reconstruction, rehabilitation or improvement will exceed \$25,000.00,
9 the authority shall be subject to the rules and regulations of the
10 Division of Building and Construction concerning procedural
11 requirements for the making, negotiating or awarding of purchases,
12 contracts or agreements; and the authority, with the assistance of the
13 division, **[shall]** may prepare, or cause to be prepared, separate plans
14 and specifications for:

15 **[(1)]** (a) The plumbing and gas fitting and all work and materials
16 kindred thereto,

17 **[(2)]** (b) The steam and hot water heating and ventilating
18 apparatus, steam power plants and all work and materials kindred
19 thereto,

20 **[(3)]** (c) The electrical work,

21 **[(4)]** (d) Structural steel and ornamental iron work and materials,
22 and

23 **[(5) All]** (e) General construction, which shall include all other
24 work and materials required to complete the building[; and the].

25 (2) The authority shall receive (a) separate bids for each of **[these]**
26 the branches of [the] work [and] specified in paragraph (1) of this
27 subsection; or (b) bids for all the work and materials required to
28 complete the project to be included in a single overall contract, in
29 which case there shall be set forth in the bid the name or names of all
30 subcontractors to whom the bidder will subcontract for the furnishing
31 of any of the work and materials specified in **[(a) above]** branches (a)
32 through (d) in paragraph (1) of this subsection; or (c) both.

33 (3) Contracts shall be awarded to the lowest responsible bidder in
34 each branch of work in the case of separate bids and to the single
35 lowest responsible bidder in the case of single bids. In the event that
36 a contract is advertised in accordance with subparagraph (c) of
37 paragraph (2) of this subsection, the contract shall be awarded in the
38 following manner: If the sum total of the amounts bid by the lowest
39 responsible bidder for each branch is less than the amount bid by the
40 lowest responsible bidder for all of the work and materials, the
41 authority shall award separate contracts for each of branches to the
42 lowest responsible bidder therefor, but if the sum total of the amount
43 bid by the lowest responsible bidder for each branch is not less than
44 the amount bid by the lowest responsible bidder for all the work and
45 materials, the authority shall award a single over-all contract to the

1 lowest responsible bidder for all of the work and materials.

2 Whenever a contract is awarded under subparagraph (b) [above]
3 or (c) of paragraph (2) of this subsection, all payments required to be
4 made by the authority under the contract for work and materials
5 supplied by a subcontractor **[shall]** may, upon the certification of the
6 contractor of the amount due to the subcontractor, be paid directly to
7 the subcontractor.

8 (4) Notwithstanding the provisions of paragraph (2) of this
9 subsection, a bidder who is awarded a single overall contract shall not
10 be obligated to enter into a subcontract with a listed subcontractor
11 unless: (a) the subcontract is for the same price as the subcontractor's
12 pre-bid price and binds the subcontractor, to the extent not
13 inconsistent with the terms and conditions of the subcontract or
14 requirements established by the authority, to the same terms and
15 conditions to which the bidder as general contractor is bound in the
16 overall contract with the authority; and (b) upon transmission by the
17 bidder to the subcontractor by certified mail, return receipt requested,
18 of a written subcontract, the subcontractor signs and returns the
19 subcontract within five days of receipt of the subcontract.

20 (5) All construction, reconstruction, rehabilitation or improvement
21 undertaken by the authority pursuant to this act shall be subject during
22 such undertaking to the supervision of the Division of Building and
23 Construction to the same extent as any project undertaken by the
24 State.

25 c. With respect to the lease or sale of any project or portion
26 thereof to any person, firm, partnership or corporation, for subsequent
27 lease to or purchase by a State agency, no agreement for that lease or
28 sale shall be entered into, unless the authority shall first publicly
29 advertise for bids therefor. The authority shall employ a person, firm,
30 partnership or corporation, independent from any other aspect or
31 component of the financing of or any ownership or leasehold interest
32 in that project, to assist in the bid procedure and evaluation.

33 (cf: P.L.1983, c.138, s.8)

34

35 3. R.S.52:32-2 is amended to read as follows:

36 52:32-2. a. When the entire cost of the erection, construction,
37 alteration or repair by the State of any public buildings in this State
38 will exceed \$2,000.00, the person preparing the plans and
39 specifications for such work **[shall]** may prepare separate plans and
40 specifications for: (1) the plumbing and gas fitting and all work
41 kindred thereto[.]; (2) the steam and hot water heating and
42 ventilating apparatus, steam power plants and all work kindred
43 thereto[, and]; (3) electrical work[.]; (4) structural steel and
44 ornamental iron work[.]; and (5) general construction, which shall
45 include all other work and materials required for the completion of the
46 project.

1 **b.** The board, body or person authorized by law to award contracts
2 for such work shall advertise for, in the manner provided by law, and
3 receive **[(a)] (1)** separate bids for each of **[said] the** branches of
4 **[the] work [and (b)]** specified in subsection a. of this section; or (2)
5 bids for all the work and materials required to complete the project to
6 be included in a single over-all contract, in which case there shall be
7 set forth in the bid the name or names of all subcontractors to whom
8 the bidder will subcontract for the furnishing of any of the work and
9 materials specified in **[(a) above]** branches (1) through (4) in
10 subsection a. of this section, each of which subcontractors shall be
11 qualified in accordance with chapter 35 of Title 52 of the Revised
12 Statutes; or (3) both.

13 **c.** Contracts shall be awarded to the lowest responsible bidder in
14 each branch of work in the case of separate bids and to the single
15 lowest responsible bidder in the case of single bids. In the event that
16 a contract is advertised in accordance with paragraph (3) of subsection
17 b. of this section, the contract shall be awarded in the following
18 manner: If the sum total of the amounts bid by the lowest responsible
19 bidder for each such branch is less than the amount bid by the lowest
20 responsible bidder for all of the work and materials, the board, body
21 or person authorized to award contracts for such work shall award
22 separate contracts for each of such branches to the lowest responsible
23 bidder therefor, but if the sum total of the amount bid by the lowest
24 responsible bidder for each such branch is not less than the amount
25 bid by the lowest responsible bidder for all the work and materials, the
26 board, body or person authorized to award the contract shall award
27 a single over-all contract to the lowest responsible bidder for all of
28 such work and materials.

29 In every case in which a contract is awarded under **[(b) above]**
30 paragraph (2) or (3) of subsection b. of this section, all payments
31 required to be made by the board, body or person awarding the
32 contract under such contract for work and materials supplied by a
33 subcontractor **[shall] may**, upon the certification of the contractor of
34 the amount due to the subcontractor, be paid directly to the
35 subcontractor.

36 **d.** Notwithstanding the provisions of subsection b. of this section,
37 a bidder who is awarded a single overall contract shall not be obligated
38 to enter into a subcontract with a listed subcontractor unless: (1) the
39 subcontract is for the same price as the subcontractor's pre-bid price
40 and binds the subcontractor, to the extent not inconsistent with the
41 terms and conditions of the subcontract or requirements established by
42 the board, body, or person authorized by law to award the contract,
43 to the same terms and conditions to which the bidder as general
44 contractor is bound in the overall contract with the board, body, or
45 person authorized by law to award the contract; and (2) upon
46 transmission by the bidder to the subcontractor by certified mail,

1 return receipt requested, of a written subcontract, the subcontractor
2 signs and returns the subcontract within five days of receipt of the
3 subcontract.

4 (cf: P.L.1968, c.108, s.1)

5
6 4. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill concerns public contracts for the construction, renovation,
12 alteration, or repair of public buildings by the State, the New Jersey
13 Building Authority and school boards. The provisions of the bill are
14 as follows:

15 (1) The bill eliminates the current requirement that school boards,
16 the State, and the New Jersey Building Authority must seek both
17 separate bids on five categories of work (plumbing and gas fitting
18 work, heating and ventilating systems and equipment, electrical work,
19 structural steel and ornamental iron work, and general construction
20 work which shall include the remaining work and materials required
21 for completion of a project) and single bids on all the work and
22 materials required, and instead provides that those entities may solicit
23 separate bids, single bids, or both.

24 (2) The bill frees a bidder who is awarded a single overall contract
25 from the obligation to enter into a contract with a subcontractor listed
26 in the bid unless: (a) the subcontract is for the same price as the
27 subcontractor's pre-bid price and binds the subcontractor, to the extent
28 not inconsistent with the terms and conditions of the subcontract or
29 requirements established by the public entity, to the same terms and
30 conditions to which the bidder as general contractor is bound in the
31 overall contract with the public entity; and (b) upon transmission by
32 the bidder to the subcontractor by certified mail, return receipt
33 requested, of a written subcontract, the subcontractor signs and
34 returns the subcontract within five days of receipt of the subcontract.

35 (3) The bill makes permissive the current requirement that if a
36 single overall contract is awarded, the public entity must pay the
37 subcontractors directly.

38 (4) The bill clarifies and makes uniform the requirement that, in the
39 case of a single bid, the bidder must list the subcontractors for all the
40 specified categories of work except for the general construction
41 category. This reflects the current mode of operation.

42 (5) The bill eliminates the current requirement that, in the case of
43 a single bid, the subcontractors must provide evidence of performance
44 security. In practice, the single bidder provides evidence of
45 performance security.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 987

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1999

The Assembly State Government Committee reports without recommendation Senate, No. 987 (2R).

This bill revises the bid solicitation procedures applicable to contracts awarded by the State, the New Jersey Building Authority, and school boards on projects for the construction, renovation, alteration, or repair of public buildings.

Current law requires that these public entities, when undertaking such projects, seek separate bids on each of five categories of work: plumbing and gas fitting; heating and ventilating systems and equipment; electrical work; structural steel and ornamental iron work; and general construction work (comprising all work not included in the four other categories) as well as single bids on an overall contract for all the work and materials required. If the lowest bids received for the five separate categories total less than the lowest bid for all the work, separate contracts will be awarded, and if the reverse is the case, a single overall contract will be awarded.

The bill provides that these entities may continue to solicit both types of bids on a project, or they may solicit separate bids only or single bids only, with the contracts going to the lowest bidders or bidder, as appropriate.

Under current law, bids on construction work for the affected public entities must identify the names of all subcontractors to whom the bidder will subcontract work included in any of the four "specialized" categories. The bill clarifies that this provision applies only to single bids on the overall contract.

The bill also (1) makes permissive the current requirement that if a single overall contract is awarded, the public entity must pay the subcontractors directly; (2) requires that payments to a subcontractor for work and materials supplied in connection with a contract are to be made within 10 calendar days of the receipt of payment for that work or the delivery of those materials by the subcontractor in accordance with the provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.) and its regulations; and (3) eliminates an existing requirement, applicable only to school board building projects, that in the case of a single bid, the subcontractors must provide evidence of performance security.

Senate, No. 987 (2R) is identical to Assembly, No. 2999.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 987

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1998

The Senate Budget and Appropriations Committee reports without recommendation Senate Bill No. 987, with committee amendments.

This bill makes several revisions in the bid solicitation procedures applicable to contracts awarded by the State, the New Jersey Building Authority, and school boards on projects for the construction, renovation, alteration, or repair of public buildings.

(1) Under present law, the affected public entities are required, when undertaking these projects, to seek separate bids on each of five categories of work: plumbing and gas fitting; heating and ventilating systems and equipment; electrical work; structural steel and ornamental iron work; and general construction work (comprising all work not included in the four other categories). They must also seek single bids on an overall contract for all the work and materials required. Under the bill, these entities could, as at present, solicit both types of bids on the project, or they could solicit separate bids only, or single bids only.

(2) Current law contains a provision that bids on construction work for the affected public entities shall identify the names of all subcontractors to whom the bidder will subcontract work included in any of the four "specialized" categories. The bill clarifies that this provision is to apply only to single bids on the overall contract.

(3) Under current law, if a single overall contract for the project is awarded, the public entity must pay the subcontractors directly upon certification of the general contractor of the amount due to the subcontractor. Under the bill, such direct payments to a subcontractor under an overall contract would be allowed, but not required. Any payments to a subcontractor under such a contract are to be made within 10 days of the completion of work or delivery of materials by the subcontractor.

(4) The bill eliminates an existing requirement, applicable only to school board building projects, that in the case of a single bid, the subcontractors must provide evidence of performance security.

COMMITTEE AMENDMENTS

The committee adopted amendments to the bill to:

(1) Incorporate the requirement that subcontractors under a single overall contract be paid within 10 days of their completion of work or delivery of materials; and

(2) Delete a provision that a bidder who is awarded a single overall contract would not be obligated to enter into a contract with a subcontractor listed in the bid unless (a) the subcontract is for the same price as the subcontractor's pre-bid price and binds the subcontractor, to the extent not inconsistent with the terms of the subcontract or requirements established by the public entity, to the same terms as those to which the general contractor is bound in the overall contract, and (b) upon the general contractor's transmission of a written subcontract to the subcontractor by certified mail, return receipt requested, the subcontractor signs and returns the subcontract within five days of receiving it.

FISCAL IMPACT

This bill has not been certified as requiring a fiscal note.

STATEMENT TO
[First Reprint]
SENATE, No. 987

with Senate Floor Amendments
(Proposed By Senators KYRILLOS and O'CONNOR)

ADOPTED: JUNE 25, 1998

These amendments clarify that the bill's provisions for the payment of subcontractors are intended, with respect to the date upon which those payments are due, the requirement to pay interest upon late payments, and all other provisions applicable to the payment of subcontractors, to conform with the applicable provisions of the prompt payment law (N.J.S.A. 2A:30A-1 et seq.) and any rules and regulations promulgated pursuant thereto.

ASSEMBLY, No. 2999

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MARCH 15, 1999

Sponsored by:

Assemblyman ALEX DECROCE

District 26 (Essex, Morris and Passaic)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

Co-Sponsored by:

Assemblyman Garcia

SYNOPSIS

Permits certain public entities to solicit separate bids on five categories of work or a single bid on all work or both with regard to contracts for construction work on public buildings.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/16/1999)

1 AN ACT concerning certain public contracts and revising various parts
2 of the statutory law.

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

6
7 1. N.J.S.18A:18A-18 is amended to read as follows:

8 18A:18A-18. a. In the preparation of plans and specifications for
9 the construction, alteration or repair of any building by a board of
10 education, when the entire cost of the work and materials will exceed
11 the amount set forth in, or calculated by the Governor pursuant to,
12 N.J.S. 18A:18A-3 separate plans and specifications **[shall]** may be
13 prepared for each of the following, and all work and materials kindred
14 thereto to be performed or furnished in connection therewith:

15 **[a.]** (1) The plumbing and gas fitting work;

16 **[b.]** (2) The heating and ventilating systems and equipment;

17 **[c.]** (3) The electrical work, including any electrical power plant;

18 **[d.]** (4) The structural steel and ornamental iron work; and

19 **[e.** All] (5) General construction, which shall include all other
20 work and materials required for the completion of the project.

21 b. The board of education or its contracting agent shall advertise
22 for and receive, in the manner provided by law, (1) separate bids for
23 each of **[said]** the branches of work specified in subsection a. of this
24 section, [and] or (2) bids for all the work and materials required to
25 complete the building to be included in a single overall contract, or (3)
26 both. **[There]** In the case of a single bid under paragraph (2) or (3)
27 of this subsection, there will be set forth in the bid the name or names
28 of **[, and evidence of performance security from,]** all subcontractors
29 to whom the bidder will subcontract the furnishing of plumbing and
30 gas fitting, and all kindred work, and of the heating and ventilating
31 systems and equipment, and electrical work, structural steel and
32 ornamental iron work, each of which subcontractors shall be qualified
33 in accordance with this chapter.

34 c. Contracts shall be awarded to the lowest responsible bidder in
35 each branch of work in the case of separate bids and to the single
36 lowest responsible bidder in the case of single bids. **[The]** In the
37 event that a contract is advertised in accordance with paragraph (3) of
38 subsection b. of this section, the contract shall be awarded in the
39 following manner: If the sum total of the amounts bid by the lowest
40 responsible bidder for each branch is less than the amount bid by the
41 lowest responsible bidder for all the work and materials, the board of
42 education shall award separate contracts for each of such branches to

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 the lowest responsible bidder therefor, but if the sum total of the
2 amount bid by the lowest responsible bidder for each branch is not less
3 than the amount bid by the lowest responsible bidder for all the work
4 and materials, the board of education shall award a single overall
5 contract to the lowest responsible bidder for all of such work and
6 materials. In every case in which a contract is awarded under
7 paragraph (2) [above] or (3) of subsection b. of this section, all
8 payments required to be made under such contract for work and
9 materials supplied by a subcontractor **[shall]** may, upon the
10 certification of the contractor of the amount due to the subcontractor,
11 be paid directly to the subcontractor. Payments to a subcontractor for
12 work and materials supplied in connection with the contract shall be
13 made within 10 calendar days of the receipt of payment for that work
14 or the delivery of those materials by the subcontractor in accordance
15 with the provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
16 regulations promulgated thereunder.
17 (cf: P.L.1983, c.171, s.5)

18

19 2. Section 11 of P.L.1981, c.120 (C.52:18A-78.11) is amended to
20 read as follows:

21 11. a. The authority, in the exercise of its authority to make and
22 enter into contracts and agreements necessary or incidental to the
23 performance of its duties and the execution of its powers, shall adopt
24 standing rules and procedures providing that no contract on behalf of
25 the authority shall be entered into for the doing of any work, or for the
26 hiring of equipment or vehicles, where the sum to be expended
27 exceeds the sum of \$7,500.00 unless the authority shall first publicly
28 advertise for bids therefor, and shall award the contract to the lowest
29 responsible bidder. Advertising shall not be required where the
30 contract to be entered into is one for the furnishing or performing of
31 services of a professional nature or for the supplying of any product
32 or the rendering of any service by a public utility subject to the
33 jurisdiction of the Board of Public Utilities and tariffs and schedules
34 of the charges made, charged, or exacted by the public utility for any
35 products to be supplied or services to be rendered are filed with the
36 board. This section shall not prevent the authority from having any
37 work done by its own employees, nor shall it apply to repairs, or to
38 the furnishing of materials, supplies or labor, or the hiring of
39 equipment or vehicles, when the safety or protection of its or other
40 public property or the public convenience requires, or the exigency of
41 the accomplishment of the projects will not allow advertisement. In
42 that case, the board of directors of the authority shall, by resolution,
43 declare the exigency or emergency to exist, and set forth in the
44 resolution the nature thereof and the approximate amount to be so
45 expended.

46 b. (1) In undertaking any project where the cost of construction,

1 reconstruction, rehabilitation or improvement will exceed \$25,000.00,
2 the authority shall be subject to the rules and regulations of the
3 Division of Building and Construction concerning procedural
4 requirements for the making, negotiating or awarding of purchases,
5 contracts or agreements; and the authority, with the assistance of the
6 division, **[shall]** may prepare, or cause to be prepared, separate plans
7 and specifications for:

8 **[(1)]** (a) The plumbing and gas fitting and all work and materials
9 kindred thereto,

10 **[(2)]** (b) The steam and hot water heating and ventilating
11 apparatus, steam power plants and all work and materials kindred
12 thereto,

13 **[(3)]** (c) The electrical work,

14 **[(4)]** (d) Structural steel and ornamental iron work and materials,
15 and

16 **[(5) All]** (e) General construction, which shall include all other
17 work and materials required to complete the building; and the].

18 (2) The authority shall receive (a) separate bids for each of [these]
19 the branches of [the] work [and] specified in paragraph (1) of this
20 subsection; or (b) bids for all the work and materials required to
21 complete the project to be included in a single overall contract, in
22 which case there shall be set forth in the bid the name or names of all
23 subcontractors to whom the bidder will subcontract for the furnishing
24 of any of the work and materials specified in [(a) above] branches (a)
25 through (d) in paragraph (1) of this subsection; or (c) both.

26 (3) Contracts shall be awarded to the lowest responsible bidder in
27 each branch of work in the case of separate bids and to the single
28 lowest responsible bidder in the case of single bids. In the event that
29 a contract is advertised in accordance with subparagraph (c) of
30 paragraph (2) of this subsection, the contract shall be awarded in the
31 following manner: If the sum total of the amounts bid by the lowest
32 responsible bidder for each branch is less than the amount bid by the
33 lowest responsible bidder for all of the work and materials, the
34 authority shall award separate contracts for each of branches to the
35 lowest responsible bidder therefor, but if the sum total of the amount
36 bid by the lowest responsible bidder for each branch is not less than
37 the amount bid by the lowest responsible bidder for all the work and
38 materials, the authority shall award a single over-all contract to the
39 lowest responsible bidder for all of the work and materials.

40 Whenever a contract is awarded under subparagraph (b) [above]
41 or (c) of paragraph (2) of this subsection, all payments required to be
42 made by the authority under the contract for work and materials
43 supplied by a subcontractor **[shall]** may, upon the certification of the
44 contractor of the amount due to the subcontractor, be paid directly to
45 the subcontractor. Payments to a subcontractor for work and

1 materials supplied in connection with the contract shall be made within
2 10 calendar days of the receipt of payment for that work or the
3 delivery of those materials by the subcontractor in accordance with the
4 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
5 regulations promulgated thereunder.

6 (4) All construction, reconstruction, rehabilitation or improvement
7 undertaken by the authority pursuant to this act shall be subject during
8 such undertaking to the supervision of the Division of Building and
9 Construction to the same extent as any project undertaken by the
10 State.

11 c. With respect to the lease or sale of any project or portion
12 thereof to any person, firm, partnership or corporation, for subsequent
13 lease to or purchase by a State agency, no agreement for that lease or
14 sale shall be entered into, unless the authority shall first publicly
15 advertise for bids therefor. The authority shall employ a person, firm,
16 partnership or corporation, independent from any other aspect or
17 component of the financing of or any ownership or leasehold interest
18 in that project, to assist in the bid procedure and evaluation.

19 (cf: P.L.1983, c.138, s.8)

20
21 3. R.S.52:32-2 is amended to read as follows:

22 52:32-2. a. When the entire cost of the erection, construction,
23 alteration or repair by the State of any public buildings in this State
24 will exceed \$2,000.00, the person preparing the plans and
25 specifications for such work **【shall】** may prepare separate plans and
26 specifications for: (1) the plumbing and gas fitting and all work
27 kindred thereto**【,】**; (2) the steam and hot water heating and ventilating
28 apparatus, steam power plants and all work kindred
29 thereto**【, and】**; (3) electrical work**【,】**; (4) structural steel and
30 ornamental iron work**【,】**; and (5) general construction, which shall
31 include all other work and materials required for the completion of the
32 project.

33 b. The board, body or person authorized by law to award contracts
34 for such work shall advertise for, in the manner provided by law, and
35 receive **【(a)】** (1) separate bids for each of **【said】** the branches of
36 **【the】** work **【and (b)】** specified in subsection a. of this section; or (2)
37 bids for all the work and materials required to complete the project to
38 be included in a single over-all contract, in which case there shall be
39 set forth in the bid the name or names of all subcontractors to whom
40 the bidder will subcontract for the furnishing of any of the work and
41 materials specified in **【(a) above】** branches (1) through (4) in
42 subsection a. of this section, each of which subcontractors shall be
43 qualified in accordance with chapter 35 of Title 52 of the Revised
44 Statutes; or (3) both.

45 c. Contracts shall be awarded to the lowest responsible bidder in
46 each branch of work in the case of separate bids and to the single

1 lowest responsible bidder in the case of single bids. In the event that
2 a contract is advertised in accordance with paragraph (3) of subsection
3 b. of this section, the contract shall be awarded in the following
4 manner: If the sum total of the amounts bid by the lowest responsible
5 bidder for each such branch is less than the amount bid by the lowest
6 responsible bidder for all of the work and materials, the board, body
7 or person authorized to award contracts for such work shall award
8 separate contracts for each of such branches to the lowest responsible
9 bidder therefor, but if the sum total of the amount bid by the lowest
10 responsible bidder for each such branch is not less than the amount
11 bid by the lowest responsible bidder for all the work and materials, the
12 board, body or person authorized to award the contract shall award
13 a single over-all contract to the lowest responsible bidder for all of
14 such work and materials.

15 In every case in which a contract is awarded under **[(b) above]**
16 paragraph (2) or (3) of subsection b. of this section, all payments
17 required to be made by the board, body or person awarding the
18 contract under such contract for work and materials supplied by a
19 subcontractor **[shall] may**, upon the certification of the contractor of
20 the amount due to the subcontractor, be paid directly to the
21 subcontractor. Payments to a subcontractor for work and materials
22 supplied in connection with the contract shall be made within 10
23 calendar days of the receipt of payment for that work or the delivery
24 of those materials by the subcontractor in accordance with the
25 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
26 regulations promulgated thereunder.

27 (cf: P.L.1968, c.108, s.1)

28

29 4. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill revises the bid solicitation procedures applicable to
35 contracts awarded by school boards, the New Jersey Building
36 Authority, and the State on projects for the construction, renovation,
37 alteration, or repair of public buildings.

38 Current law requires that these public entities, when undertaking
39 such projects, seek separate bids on each of five categories of work:
40 plumbing and gas fitting; heating and ventilating systems and
41 equipment; electrical work; structural steel and ornamental iron work;
42 and general construction work (comprising all work not included in
43 the four other categories) as well as single bids on an overall contract
44 for all the work and materials required. If the lowest bids received for
45 the five separate categories total less than the lowest bid for all the
46 work, separate contracts will be awarded, and if the reverse is the

1 case, a single overall contract will be awarded.

2 The bill provides that these public entities may continue to solicit
3 both types of bids on a project, or they may solicit separate bids only
4 or single bids only, with the contracts going to the lowest bidders or
5 bidder, as appropriate.

6 Under current law, bids on construction work for the affected
7 public entities must identify the names of all subcontractors to whom
8 the bidder will subcontract work included in any of the four
9 "specialized" categories. The bill clarifies that this provision applies
10 only to single bids on the overall contract.

11 The bill also (1) makes permissive the current requirement that if a
12 single overall contract is awarded, the public entity must pay the
13 subcontractors directly; (2) requires that payments to a subcontractor
14 for work and materials supplied in connection with a contract are to
15 be made within 10 calendar days of the receipt of payment for that
16 work or the delivery of those materials by the subcontractor in
17 accordance with the provisions of N.J.S.A.2A:30A-1 et seq. and its
18 regulations; and (3) eliminates an existing requirement, applicable only
19 to school board building projects, that in the case of a single bid, the
20 subcontractors must provide evidence of performance security.

ASSEMBLY, No. 2277

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JUNE 29, 1998

Sponsored by:

Assemblyman ALEX DECROCE

District 26 (Essex, Morris and Passaic)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

Co-Sponsored by:

Assemblymen Talarico, Garcia, Steele, Cohen, Felice, Suliga, B.Smith,

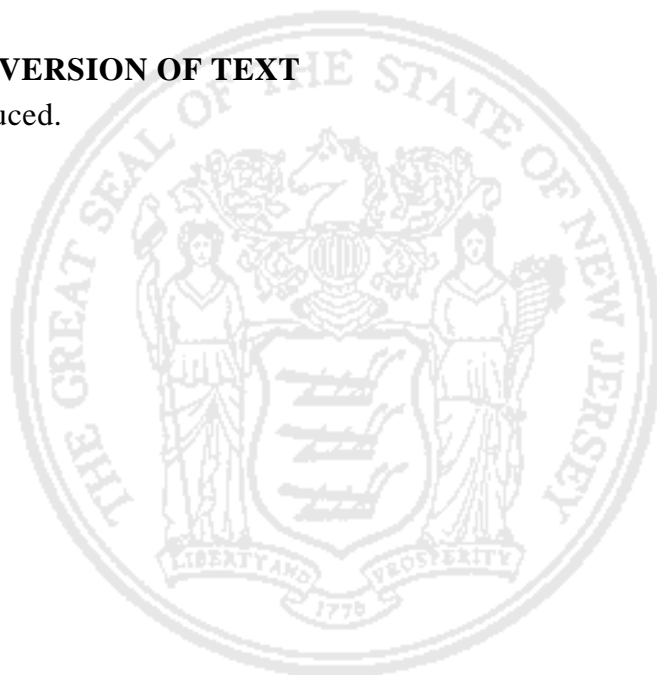
Assemblywoman Weinberg, Assemblymen Cottrell, Payne and Jones

SYNOPSIS

Permits certain public entities to solicit separate bids on five categories of work or a single bid on all work or both with regard to contracts for construction work on public buildings.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/1999)

1 AN ACT concerning certain public contracts and revising various parts
2 of the statutory law.

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

6
7 1. N.J.S.18A:18A-18 is amended to read as follows:

8 18A:18A-18. a. In the preparation of plans and specifications for
9 the construction, alteration or repair of any building by a board of
10 education, when the entire cost of the work and materials will exceed
11 the amount set forth in, or calculated by the Governor pursuant to,
12 N.J.S.18A:18A-3 separate plans and specifications **[shall]** may be
13 prepared for each of the following, and all work and materials kindred
14 thereto to be performed or furnished in connection therewith:

15 **[a.]** (1) The plumbing and gas fitting work;

16 **[b.]** (2) The heating and ventilating systems and equipment;

17 **[c.]** (3) The electrical work, including any electrical power plant;

18 **[d.]** (4) The structural steel and ornamental iron work; and

19 **[e. All]** (5) General construction, which shall include all other
20 work and materials required for the completion of the project.

21 b. The board of education or its contracting agent shall advertise
22 for and receive, in the manner provided by law, (1) separate bids for
23 each of **[said]** the branches of work specified in subsection a. of this
24 section, [and] or (2) bids for all the work and materials required to
25 complete the building to be included in a single overall contract, or (3)
26 both. [There] In the case of a single bid under paragraph (2) or (3)
27 of this subsection, there will be set forth in the bid the name or names
28 of **[, and evidence of performance security from,]** all subcontractors
29 to whom the bidder will subcontract the furnishing of plumbing and
30 gas fitting, and all kindred work, and of the heating and ventilating
31 systems and equipment, and electrical work, structural steel and
32 ornamental iron work, each of which subcontractors shall be qualified
33 in accordance with this chapter.

34 c. Contracts shall be awarded to the lowest responsible bidder in
35 each branch of work in the case of separate bids and to the single
36 lowest responsible bidder in the case of single bids. [The] In the
37 event that a contract is advertised in accordance with paragraph (3) of
38 subsection b. of this section, the contract shall be awarded in the
39 following manner: If the sum total of the amounts bid by the lowest
40 responsible bidder for each branch is less than the amount bid by the
41 lowest responsible bidder for all the work and materials, the board of
42 education shall award separate contracts for each of such branches to

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 the lowest responsible bidder therefor, but if the sum total of the
2 amount bid by the lowest responsible bidder for each branch is not less
3 than the amount bid by the lowest responsible bidder for all the work
4 and materials, the board of education shall award a single overall
5 contract to the lowest responsible bidder for all of such work and
6 materials. In every case in which a contract is awarded under
7 paragraph (2) [above] or (3) of subsection b. of this section, all
8 payments required to be made under such contract for work and
9 materials supplied by a subcontractor **[shall] may**, upon the
10 certification of the contractor of the amount due to the subcontractor,
11 be paid directly to the subcontractor.

12 d. Notwithstanding the provisions of subsection b. of this section,
13 a bidder who is awarded a single overall contract shall not be obligated
14 to enter into a subcontract with a listed subcontractor unless: (1) the
15 subcontract is for the same price as the subcontractor's pre-bid price
16 and binds the subcontractor, to the extent not inconsistent with the
17 terms and conditions of the subcontract or requirements established by
18 the board, to the same terms and conditions to which the bidder as
19 general contractor is bound in the overall contract with the board; and
20 (2) upon transmission by the bidder to the subcontractor by certified
21 mail, return receipt requested, of a written subcontract, the
22 subcontractor signs and returns the subcontract within five days of
23 receipt of the subcontract.

24 (cf: P.L.1983, c. 171, s. 5)

25

26 2. Section 11 of P.L.1981, c.120 (C.52:18A:78.11) is amended to
27 read as follows:

28 11. a. The authority, in the exercise of its authority to make and
29 enter into contracts and agreements necessary or incidental to the
30 performance of its duties and the execution of its powers, shall adopt
31 standing rules and procedures providing that no contract on behalf of
32 the authority shall be entered into for the doing of any work, or for the
33 hiring of equipment or vehicles, where the sum to be expended
34 exceeds the sum of \$7,500.00 unless the authority shall first publicly
35 advertise for bids therefor, and shall award the contract to the lowest
36 responsible bidder. Advertising shall not be required where the
37 contract to be entered into is one for the furnishing or performing of
38 services of a professional nature or for the supplying of any product
39 or the rendering of any service by a public utility subject to the
40 jurisdiction of the Board of Public Utilities and tariffs and schedules
41 of the charges made, charged, or exacted by the public utility for any
42 products to be supplied or services to be rendered are filed with the
43 board. This section shall not prevent the authority from having any
44 work done by its own employees, nor shall it apply to repairs, or to
45 the furnishing of materials, supplies or labor, or the hiring of
46 equipment or vehicles, when the safety or protection of its or other

1 public property or the public convenience requires, or the exigency of
2 the accomplishment of the projects will not allow advertisement. In
3 that case, the board of directors of the authority shall, by resolution,
4 declare the exigency or emergency to exist, and set forth in the
5 resolution the nature thereof and the approximate amount to be so
6 expended.

7 b. (1) In undertaking any project where the cost of construction,
8 reconstruction, rehabilitation or improvement will exceed \$25,000.00,
9 the authority shall be subject to the rules and regulations of the
10 Division of Building and Construction concerning procedural
11 requirements for the making, negotiating or awarding of purchases,
12 contracts or agreements; and the authority, with the assistance of the
13 division, ~~shall~~ may prepare, or cause to be prepared, separate plans
14 and specifications for:

15 ~~[(1)]~~ (a) The plumbing and gas fitting and all work and materials
16 kindred thereto,

17 ~~[(2)]~~ (b) The steam and hot water heating and ventilating
18 apparatus, steam power plants and all work and materials kindred
19 thereto,

20 ~~[(3)]~~ (c) The electrical work,

21 ~~[(4)]~~ (d) Structural steel and ornamental iron work and materials,
22 and

23 ~~[(5) All]~~ (e) General construction, which shall include all other
24 work and materials required to complete the building; and the].

25 ~~(2) The~~ authority shall receive (a) separate bids for each of ~~these~~
26 the branches of [the] work [and] specified in paragraph (1) of this
27 subsection; or (b) bids for all the work and materials required to
28 complete the project to be included in a single overall contract, in
29 which case there shall be set forth in the bid the name or names of all
30 subcontractors to whom the bidder will subcontract for the furnishing
31 of any of the work and materials specified in ~~[(a) above]~~ branches (a)
32 through (d) in paragraph (1) of this subsection; or (c) both.

33 (3) Contracts shall be awarded to the lowest responsible bidder in
34 each branch of work in the case of separate bids and to the single
35 lowest responsible bidder in the case of single bids. In the event that
36 a contract is advertised in accordance with subparagraph (c) of
37 paragraph (2) of this subsection, the contract shall be awarded in the
38 following manner: If the sum total of the amounts bid by the lowest
39 responsible bidder for each branch is less than the amount bid by the
40 lowest responsible bidder for all of the work and materials, the
41 authority shall award separate contracts for each of branches to the
42 lowest responsible bidder therefor, but if the sum total of the amount
43 bid by the lowest responsible bidder for each branch is not less than
44 the amount bid by the lowest responsible bidder for all the work and
45 materials, the authority shall award a single over-all contract to the

1 lowest responsible bidder for all of the work and materials.

2 Whenever a contract is awarded under subparagraph (b) [above]
3 or (c) of paragraph (2) of this subsection, all payments required to be
4 made by the authority under the contract for work and materials
5 supplied by a subcontractor **[shall] may**, upon the certification of the
6 contractor of the amount due to the subcontractor, be paid directly to
7 the subcontractor.

8 (4) Notwithstanding the provisions of paragraph (2) of this
9 subsection, a bidder who is awarded a single overall contract shall not
10 be obligated to enter into a subcontract with a listed subcontractor
11 unless: (a) the subcontract is for the same price as the subcontractor's
12 pre-bid price and binds the subcontractor, to the extent not
13 inconsistent with the terms and conditions of the subcontract or
14 requirements established by the authority, to the same terms and
15 conditions to which the bidder as general contractor is bound in the
16 overall contract with the authority; and (b) upon transmission by the
17 bidder to the subcontractor by certified mail, return receipt requested,
18 of a written subcontract, the subcontractor signs and returns the
19 subcontract within five days of receipt of the subcontract.

20 (5) All construction, reconstruction, rehabilitation or improvement
21 undertaken by the authority pursuant to this act shall be subject during
22 such undertaking to the supervision of the Division of Building and
23 Construction to the same extent as any project undertaken by the
24 State.

25 c. With respect to the lease or sale of any project or portion
26 thereof to any person, firm, partnership or corporation, for subsequent
27 lease to or purchase by a State agency, no agreement for that lease or
28 sale shall be entered into, unless the authority shall first publicly
29 advertise for bids therefor. The authority shall employ a person, firm,
30 partnership or corporation, independent from any other aspect or
31 component of the financing of or any ownership or leasehold interest
32 in that project, to assist in the bid procedure and evaluation.

33 (cf: P.L.1983, c.138, s.8)

34

35 3. R.S.52:32-2 is amended to read as follows:

36 52:32-2. a. When the entire cost of the erection, construction,
37 alteration or repair by the State of any public buildings in this State
38 will exceed \$2,000.00, the person preparing the plans and
39 specifications for such work **[shall] may** prepare separate plans and
40 specifications for: (1) the plumbing and gas fitting and all work
41 kindred thereto[.]; (2) the steam and hot water heating and
42 ventilating apparatus, steam power plants and all work kindred
43 thereto[, and]; (3) electrical work[.]; (4) structural steel and
44 ornamental iron work[.]; and (5) general construction, which shall
45 include all other work and materials required for the completion of the
46 project.

1 b. The board, body or person authorized by law to award contracts
2 for such work shall advertise for, in the manner provided by law, and
3 receive [(a)] (1) separate bids for each of [said] the branches of
4 [the] work [and (b)] specified in subsection a. of this section; or (2)
5 bids for all the work and materials required to complete the project to
6 be included in a single over-all contract, in which case there shall be
7 set forth in the bid the name or names of all subcontractors to whom
8 the bidder will subcontract for the furnishing of any of the work and
9 materials specified in [(a) above] branches (1) through (4) in
10 subsection a. of this section, each of which subcontractors shall be
11 qualified in accordance with chapter 35 of Title 52 of the Revised
12 Statutes; or (3) both.

13 c. Contracts shall be awarded to the lowest responsible bidder in
14 each branch of work in the case of separate bids and to the single
15 lowest responsible bidder in the case of single bids. In the event that
16 a contract is advertised in accordance with paragraph (3) of subsection
17 b. of this section, the contract shall be awarded in the following
18 manner: If the sum total of the amounts bid by the lowest responsible
19 bidder for each such branch is less than the amount bid by the lowest
20 responsible bidder for all of the work and materials, the board, body
21 or person authorized to award contracts for such work shall award
22 separate contracts for each of such branches to the lowest responsible
23 bidder therefor, but if the sum total of the amount bid by the lowest
24 responsible bidder for each such branch is not less than the amount
25 bid by the lowest responsible bidder for all the work and materials, the
26 board, body or person authorized to award the contract shall award
27 a single over-all contract to the lowest responsible bidder for all of
28 such work and materials.

29 In every case in which a contract is awarded under [(b) above]
30 paragraph (2) or (3) of subsection b. of this section, all payments
31 required to be made by the board, body or person awarding the
32 contract under such contract for work and materials supplied by a
33 subcontractor [shall] may, upon the certification of the contractor of
34 the amount due to the subcontractor, be paid directly to the
35 subcontractor.

36 d. Notwithstanding the provisions of subsection b. of this section,
37 a bidder who is awarded a single overall contract shall not be obligated
38 to enter into a subcontract with a listed subcontractor unless: (1) the
39 subcontract is for the same price as the subcontractor's pre-bid price
40 and binds the subcontractor, to the extent not inconsistent with the
41 terms and conditions of the subcontract or requirements established by
42 the board, body, or person authorized by law to award the contract,
43 to the same terms and conditions to which the bidder as general
44 contractor is bound in the overall contract with the board, body, or
45 person authorized by law to award the contract; and (2) upon
46 transmission by the bidder to the subcontractor by certified mail,

1 return receipt requested, of a written subcontract, the subcontractor
2 signs and returns the subcontract within five days of receipt of the
3 subcontract.

4 (cf: P.L.1968, c.108, s.1)

5
6 4. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill concerns public contracts for the construction, renovation,
12 alteration, or repair of public buildings by the State, the New Jersey
13 Building Authority and school boards. The provisions of the bill are
14 as follows:

15 (1) The bill eliminates the current requirement that school boards,
16 the State, and the New Jersey Building Authority must seek both
17 separate bids on five categories of work (plumbing and gas fitting
18 work, heating and ventilating systems and equipment, electrical work,
19 structural steel and ornamental iron work, and general construction
20 work which shall include the remaining work and materials required
21 for completion of a project) and single bids on all the work and
22 materials required, and instead provides that those entities may solicit
23 separate bids, single bids, or both.

24 (2) The bill frees a bidder who is awarded a single overall contract
25 from the obligation to enter into a contract with a subcontractor listed
26 in the bid unless: (a) the subcontract is for the same price as the
27 subcontractor's pre-bid price and binds the subcontractor, to the extent
28 not inconsistent with the terms and conditions of the subcontract or
29 requirements established by the public entity, to the same terms and
30 conditions to which the bidder as general contractor is bound in the
31 overall contract with the public entity; and (b) upon transmission by
32 the bidder to the subcontractor by certified mail, return receipt
33 requested, of a written subcontract, the subcontractor signs and
34 returns the subcontract within five days of receipt of the subcontract.

35 (3) The bill makes permissive the current requirement that if a
36 single overall contract is awarded, the public entity must pay the
37 subcontractors directly.

38 (4) The bill clarifies and makes uniform the requirement that, in the
39 case of a single bid, the bidder must list the subcontractors for all the
40 specified categories of work except for the general construction
41 category. This reflects the current mode of operation.

42 (5) The bill eliminates the current requirement that, in the case of
43 a single bid, the subcontractors must provide evidence of performance
44 security. In practice, the single bidder provides evidence of
45 performance security.

Office of the Governor
NEWS RELEASE

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RELEASE: December 20, 1999

**GOVERNOR SIGNS LEGISLATION GRANTING SCHOOL BOARDS MORE
FLEXIBILITY IN AWARDING CONSTRUCTION CONTRACTS**

Gov. Christie Whitman today signed legislation, which gives schools boards and the state more flexibility with regard to bidding and awarding contracts for construction work on public buildings.

"This legislation will give school boards and state officials additional tools to use in the bidding process to help lower construction costs and save taxpayer dollars," the Governor said. "This system is similar to the bidding process already available to municipalities, counties and the federal government."

The bill provides schools boards and state entities with the authority to choose whether to use single prime bidding, multiple bidding or both methods when awarding construction contracts.

Under previous law, school boards, the State and the State Building Authority, were required to bid each contract using both the single and multiple methods, and were locked into the lowest price without being able to consider other factors, such as the likelihood of construction delays and cost overruns or the overall management of the contract.

The flexibility in this bill had been long sought by school boards and school business administrators as a way to save taxpayer dollars.

The legislation, S-987, was sponsored by Senators Joseph M. Kyrillos, Jr. (R-Middlesex/Monmouth) and Edward T. O'Connor, Jr. (D-Hudson) and Assembly Members Alex DeCroce (R-Essex/Morris/Passaic) and Joseph V. Doria, Jr. (D-Hudson).