

## CHAPTER 128

AN ACT concerning the award of certain contracts by the New Jersey Transit Corporation and amending P.L.1979, c.150.

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

1. Section 11 of P.L.1979, c.150 (C.27:25-11) is amended to read as follows:

C.27:25-11 Purchases, contractors or agreements; award; advertisement for bids; exemptions; bid bond; qualification of bidders.

11. a. All purchases, contracts or agreements pursuant to this act shall be made or awarded directly by the corporation, except as otherwise provided in this act, only after public advertisement for bids therefor, in the manner provided in this act, notwithstanding the provisions to the contrary of P.L.1948, c.92 (C.52:18A-1 et seq.) and chapters 25, 32, 33, 34 and 35 of Title 52 of the Revised Statutes.

b. Whenever advertising is required: (1) specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the corporation; (2) the advertisement for bids shall be in such newspaper or newspapers selected by the corporation as will best give notice thereof to bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding; (3) the advertisement shall designate the time and place when and where sealed proposals shall be received and publicly opened and read, the amount of the cash, certified check, cashier's check or bank check, if any, which shall accompany each bid, and such other terms as the corporation may deem proper.

c. The corporation may reject any or all bids not in accord with the advertisement of specifications, or may reject any or all bids if the price of the work materials is excessively above the estimate cost or when the corporation shall determine that it is in the public interest to do so. The corporation shall prepare a list of the bids, including any rejected and the cause therefor. The corporation may accept bids containing minor informalities. Awards shall be made by the corporation with reasonable promptness by written notice to:

(1) the responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the State, price and other factors considered, for contracts other than contracts for the construction or improvement of capital facilities; or

(2) the lowest responsible bidder for contracts for the construction or improvement of capital facilities. The provisions of this paragraph shall not limit the corporation's right to extend, add or resume suspended work on any project. Nor shall the provisions of this paragraph apply to the procurement process for design-build projects or design-build, maintain and operate projects. Those projects shall be bid and contracts awarded in accordance with applicable regulations promulgated by the corporation. Nor shall the provisions of this paragraph affect the corporation's minority and women's business enterprise program, equal employment opportunity program or any affirmative action program.

d. A bid bond in an amount, not to exceed 50% of the bid, to be determined by the corporation with such sureties as shall be approved by the corporation in favor of the State of New Jersey, or a deposit consisting of a cashier's check, certified check or letter of credit in an amount set forth by the corporation, shall accompany each bid and shall be held as security for the faithful performance of the contractor in that, if awarded the contract, the bidder will deliver the contract within 10 working days after the notice, of award, properly executed and secured by satisfactory bonds in accordance with the provisions of N.J.S.2A:44-143 through N.J.S.2A:44-147 and specifications for the project. The corporation may require in addition to the bid bond or deposit such additional evidence of the ability of a contractor to perform the work required by the contract as it may deem necessary and advisable. All bid bonds or deposits which have been delivered with the bids, except those of the two lowest responsible bidders, shall be returned within 30 working days after such bids are received.

e. If the bidder fails to provide a satisfactory bid bond or deposit as provided in subsection d. of this section, the bid shall be rejected.

f. The corporation shall determine the terms and conditions of the various types of agreements or contracts, including provisions for adequate security, the time and amount or percentage of each payment thereon and the amount to be withheld pending completion of the

contract, and it shall issue and publish rules and regulations concerning such terms and conditions, standard contract forms and such other rules and regulations concerning purchasing or procurement, not inconsistent with any applicable law, as it may deem advisable to promote competition and to protect the public interest.

g. Any purchase, contract or agreement pursuant to subsection a. hereof may be made, negotiated or awarded by the corporation without advertising under the following circumstances:

(1) When the aggregate amount involved does not exceed the amount determined pursuant to section 2 of P.L.1954, c.48 (C.52:34-7); or

(2) In all other cases when the corporation seeks:

(a) To acquire public or private entities engaged in the provision of public transportation service, used public transportation equipment or existing public transportation facilities or rights of way; or

(b) To acquire subject matter which is that described in section 4 of P.L.1954, c.48 (C.52:34-9); or

(c) To make a purchase or award or make a contract or agreement under the circumstances described in section 5 of P.L.1954, c.48 (C.52:34-10); or

(d) To contract pursuant to section 6 of P.L.1979, c.150 (C.27:25-6); or

(e) To acquire or overhaul motorbuses, light rail vehicles, rail cars, locomotives, signal systems or fare collection systems.

h. The corporation shall require that all persons proposing to submit bids on improvements to capital facilities and equipment shall first be classified by the corporation as to the character or amount or both of the work on which they shall be qualified to submit bids. Bids shall be accepted only from persons qualified in accordance with such classification.

2. This act shall take effect on the first day of the fourth month following enactment.

Approved September 21, 2000.