

CHAPTER 59

AN ACT concerning local public bid documents and amending various parts of the statutory law.

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

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

Preparation of separate plans, specifications for certain construction work, goods and services; bidding; awarding of contracts.

18A:18A-18. a. In the preparation of plans and specifications for the construction, alteration or repair of any building by a board of education, when the entire cost of the work will exceed the bid threshold, separate plans and specifications may be prepared for each of the following branches of work in the following categories, and all work kindred thereto to be performed or furnished in connection therewith:

- (1) The plumbing and gas fitting work;
- (2) The refrigeration, heating and ventilating systems and equipment;
- (3) The electrical work, including any electrical power plant, tele-data, fire alarm, or security system;
- (4) The structural steel and ornamental iron work;
- (5) General construction, which shall include all other work required for the completion of the project.

b. With regard to the branch work categories in subsection a. of this section, the board of education or its purchasing agent shall advertise for and receive, in the manner provided by law, (1) separate bids for each of the branches of work specified in subsection a. of this section, or (2) single bids by general contractors for all the work, goods and services required to complete the public building to be included in a single overall contract, or (3) both. In the case of separate bids under paragraph (1) or (3) of this subsection, contractors for categories (1) through (4) of subsection a. of this section shall not be required to name subcontractors in their bid. In the case of a single bid under paragraph (2) or (3) of this subsection, there will be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the heating and ventilating systems and equipment, and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with N.J.S.18A:18A-1 et seq. for categories (1) through (4) of subsection a. of this section. Subcontractors who furnish general construction work pursuant to category (5) of subsection a. of this section or subcontractors who furnish work to named subcontractors pursuant to categories (1) through (4) of subsection a. of this section shall not be named in the bid. Notwithstanding the foregoing provisions of this subsection, a contracting unit may choose to require in its bid specification that a subcontractor shall be named in a bid when, in the case of paragraph (1) of subsection b., separate bids for each category, the work of that subcontractor exceeds 35 percent of the contracting unit's estimated amount of value of the work, which shall be set forth in the bid specification. The school district shall require evidence of performance security to be submitted simultaneously with the list of the subcontractors. Evidence of performance security may be supplied by the bidder on behalf of himself and any or all subcontractors, or by each respective subcontractor, or by any combination thereof which results in evidence of performance security equaling, but in no event exceeding, the total amount bid.

c. Contracts shall be awarded to the lowest responsible bidder in each branch of work in the case of separate bids and to the single lowest responsible bidder in the case of single bids. In the event that a contract is advertised in accordance with paragraph (3) of subsection b. of this section, the contract shall be awarded in the following manner: If the sum total of the amounts bid by the lowest responsible bidder for each branch is less than the amount bid by the lowest responsible bidder for all the work, goods and services, the board of education shall award separate contracts for each of such branches to the lowest responsible bidder therefor, but if the sum total of the amount bid by the lowest responsible bidder for each branch is not less than the amount bid by the lowest responsible bidder for all the work, goods and services, the board of education shall award a single overall contract to the lowest responsible bidder for all of such work, goods and services. In every case in which a contract is awarded under paragraph (2) or (3) of subsection b. of this section, all payments required to be made under such contract for work, goods and services supplied by a subcontractor may, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor. Payments to a subcontractor for work and materials supplied in connection with the contract shall 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 any regulations promulgated thereunder.

2. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to read as follows:

C.18A:64-76.1 Advertisements by contracting agent for bids; award of contracts.

2. a. Whenever the entire cost for the construction, alteration or repair of any building by a State college will exceed the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), the contracting agent shall advertise for and receive in the manner provided by law:

(1) separate bids for branches of work in the following categories:

(a) the plumbing and gas fitting work;

(b) the refrigeration, heating and ventilating systems and equipment;

(c) the electrical work, including any electrical power plants, tele-date, fire alarm, or security systems;

(d) the structural steel and ornamental iron work;

(e) general construction, which shall include all other work and materials required for the completion of the project, or

(2) bids for all work and materials required to complete the entire project if awarded as a single contract, or

(3) both (1) and (2) above.

In the case of separate bids under paragraph (1) or (3) of this subsection, prime contractors for categories (a) through (d) shall not be required to name subcontractors in their bid. In the case of a single bid under paragraph (2) or (3), all bids submitted shall set forth the names and license numbers of all subcontractors to whom the general contractor will subcontract the work described in the foregoing categories (a) through (d). Subcontractors who furnish non-specialty trade work pursuant to category (e) in paragraph (1) of this subsection or subcontractors who furnish work to named subcontractors pursuant to categories (a) through (d) in paragraph (1) of this subsection shall not be named in the bid. Notwithstanding the foregoing provisions of this subsection, a State college may choose to require in its bid specification that a subcontractor shall be named in a bid when, in the case

of paragraph (1), separate bids for each category, the work of that subcontractor exceeds 35 percent of the State college's estimated amount of value of the work, which shall be set forth in the bid specification.

b. Contracts shall be awarded to the lowest responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the State college. Whenever two or more bids of equal amounts are the lowest bids submitted by responsible parties, the college may award the contract to any of the parties, as, in its discretion, it may determine.

3. Section 25 of P.L.1982, c.189 (C.18A:64A-25.25) is amended to read as follows:

C.18A:64A-25.25 Cost over threshold level; separate plans and specifications; bids; advertisement; award of contract; payment to subcontractor.

25. a. In the preparation of plans and specifications for the construction, alteration or repair of any building by a county college, when the entire cost of the work and materials will exceed \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3), separate plans and specifications may be prepared for each of the following branches of work in the following categories, to include all work and materials related thereto or to be performed or furnished in connection therewith:

- (a) The plumbing and gas fitting work;
- (b) The refrigeration, heating and ventilating systems and equipment;
- (c) The electrical work, including any electrical power plants, tele-data, fire alarm, or security systems;
- (d) The structural steel and ornamental iron work;
- (e) General construction, which shall include all other work and materials required for the completion of the project.

b. With regard to the branch work categories in subsection a. of this section, the contracting agent shall advertise for and receive in the manner provided by law (1) separate bids for each of the foregoing categories (a) through (e), or (2) single bids by general contractors for all work and materials required to complete the entire project, if awarded as a single contract, or (3) both. In the case of separate bids under paragraph (1) or (3) of this subsection for categories (a) through (d) of subsection a. of this section, prime contractors shall not be required to name subcontractors in their bid. In the case of a single bid under paragraph (2) or (3), all bids submitted shall set forth the name or names of, and evidence of performance security from, all subcontractors to whom the general contractor will subcontract the work described in the foregoing categories (a) through (d) of subsection a. of this section. Subcontractors who furnish non-specialty trade work pursuant to category (e) or subcontractors who furnish work to named subcontractors pursuant to categories (a) through (d) shall not be named in the bid. Notwithstanding the foregoing provisions of this subsection, a county college may choose to require in its bid specification that a subcontractor shall be named in a bid when, in the case of paragraph (1) of subsection b. of this section, separate bids for each category, the work of that subcontractor exceeds 35 percent of the county college's estimated amount of value of the work, which shall be set forth in the bid specification.

c. Contracts shall be awarded to the lowest responsible bidder. In the event that a contract is advertised in accordance with (3) above, the contract shall be awarded in the following manner: if the sum total of the amounts bid by the lowest responsible bidder for each category (a) through (e) is less than the amount bid by the lowest responsible bidder for

all the work and materials, the county college shall award separate contracts for each of such categories to the lowest responsible bidder therefor, but if the sum total of the amount bid by the lowest responsible bidder for each category is not less than the amount bid by the lowest responsible bidder for all the work and materials, the county college shall award a single contract to the lowest responsible bidder for all of such work and materials. In every case in which a contract is awarded under (2) above, all payments required to be made under the contract for work and materials supplied by a subcontractor shall, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor.

4. N.J.S.18A:72A-5 is amended to read as follows:

Authority's powers.

18A:72A-5. The authority shall have power:

- (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (b) To adopt and have an official common seal and alter the same at pleasure;
- (c) To maintain an office at such place or places within the State as it may designate;
- (d) To sue and be sued in its own name, and plead and be impleaded;
- (e) To borrow money and to issue bonds and notes and other obligations of the authority and to provide for the rights of the holders thereof as provided in this chapter;
- (f) To acquire, lease as lessee, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter;
- (g) To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land or interest therein and other property which it may determine is reasonably necessary for any project, including any lands held by any county, municipality or other governmental subdivision of the State; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes;
- (h) To receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants, loans and contributions may be made;
- (i) To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of projects for participating colleges under the provisions of this chapter, and from time to time to modify such plans, specifications, designs or estimates;
- (j) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges; however, in any contract or contracts undertaken by the authority for the construction, reconstruction, rehabilitation or improvement of any public college project where the cost of such work will exceed \$25,000, the contracting agent shall advertise for and receive in the manner provided by law:
 - (1) separate bids for branches of work in the following categories:
 - (a) the plumbing and gas fitting work;
 - (b) the refrigeration, heating and ventilating systems and equipment;

(c) the electrical work, including any electrical power plants, tele-data, fire alarm, or security system;

(d) the structural steel and ornamental iron work;

(e) general construction, which shall include all other work and materials required for the completion of the project, or

(2) bids for all work and materials required to complete the entire project if awarded as a single contract; or

(3) both (1) and (2) above.

In the case of separate bids pursuant to paragraph (1) or (3) of this subsection, prime contractors shall not be required to name subcontractors for categories (a) through (d) in their bid. In the case of a single bid under paragraph (2) or (3), all bids submitted shall set forth the names and license numbers of, and evidence of performance security from, all subcontractors to whom the general contractor will subcontract the work described in the foregoing categories (a) through (d) in paragraph (1). Subcontractors who furnish non-specialty trade work pursuant to category (e), or subcontractors who furnish work to named subcontractors pursuant to categories (a) through (d), shall not be named in the bid. Notwithstanding the foregoing provisions of this subsection, an authority may choose to require in its bid specification that a subcontractor shall be named in a bid when, in the case of paragraph (1), separate bids for each category, the work of that subcontractor exceeds 35 percent of the authority's estimated amount of value of the work, which shall be set forth in the bid specification.

Contracts shall be awarded to the lowest responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the authority;

(k) To determine the location and character of any project to be undertaken pursuant to the provisions of this chapter, and to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same; to enter into contracts for any or all such purposes; to enter into contracts for the management and operation of a project, and to designate a participating college as its agent to determine the location and character of a project undertaken by such participating college under the provisions of this chapter and, as the agent of the authority, to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all such purposes including contracts for the management and operation of such project;

(l) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating college as its agent to establish rules and regulations for the use of a project undertaken by such participating college;

(m) Generally to fix and revise from time to time and to charge and collect rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation or other body, public or private, in respect thereof;

(n) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this chapter;

(o) To invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in such obligations as are authorized by law for the investment of trust funds in the custody of the State Treasurer;

(p) To enter into any lease relating to higher education equipment with a public or private institution of higher education pursuant to the provisions of P.L.1993, c.136 (C.18A:72A-40 et al.);

(q) To enter into loan agreements with any county, to hold bonds or notes of the county evidencing those loans, and to issue bonds or notes of the authority to finance county college capital projects pursuant to the provisions of the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

(r) To issue bonds and notes and other obligations of the authority under the direction of law for the purpose of providing financial assistance for the installation of fire prevention and safety systems in dormitories.

5. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to read as follows:

C.40A:11-16 Separate plans, specifications for work on public building; contracts.

16. a. (1) In the preparation of plans and specifications for the construction, alteration or repair of any public building by any contracting unit, when the entire cost of the work will exceed the bid threshold, the architect, engineer or other person preparing the plans and specifications may prepare separate plans and specifications for branches of work in the following categories:

(1) The plumbing and gas fitting and all kindred work;

(2) Steam power plants, steam and hot water heating and ventilating and refrigeration apparatus and all kindred work;

(3) Electrical work, including any electrical power plants, tele-data, fire alarm, or security system;

(4) Structural steel and ornamental iron work; and

(5) General construction, which shall include all other work required for the completion of the project.

(2) With regard to the branch work categories in paragraph (1) of this subsection, the contracting agent shall advertise for and receive, in the manner provided by law, either (a) separate bids for each of said categories, or (b) single bids by general contractors for all the work, goods and services required to complete the public building to be included in a single overall contract, or (c) both. In the case of separate bids under (a) or (c) of this paragraph, contractors for categories (1) through (4) shall not be required to name subcontractors in their bid. In the case of a single bid under (b) or (c), there shall be set forth in the bid the name or names of all subcontractors to whom the general contractor will subcontract for categories (1) through (4). Subcontractors who furnish general construction work pursuant to category (5), or subcontractors who furnish work to named subcontractors pursuant to categories (1) through (4) shall not be named in the bid. Notwithstanding the foregoing provisions of this paragraph, a contracting unit may choose to require in its bid specification that a subcontractor shall be named in a bid when, in the case of (a) of this paragraph, separate bids for each category, the work of that subcontractor exceeds 35 percent of the contracting unit's estimated amount of value of the work, which shall be set forth in the bid specification.

(3) The contracting unit shall require evidence of performance security to be submitted simultaneously with the bid. Evidence of performance security may be supplied by the bidder on behalf of himself and any or all subcontractors, or by each respective subcontractor, or by any combination thereof which results in evidence of performance security equaling, but in no event exceeding, the total amount bid.

b. Whenever a bid sets forth more than one subcontractor for any of the categories (1) through (4) in paragraph (1) of subsection a. of this section, the bidder shall submit to the contracting unit a certificate signed by the bidder listing each subcontractor named in the bid

for that category. The certificate shall set forth the scope of work, goods and services for which the subcontractor has submitted a price quote and which the bidder has agreed to award to each subcontractor should the bidder be awarded the contract. The certificate shall be submitted to the contracting unit simultaneously with the list of the subcontractors. The certificate may take the form of a single certificate listing all subcontractors or, alternatively, a separate certificate may be submitted for each subcontractor. If a bidder does not submit a certificate or certificates to the contracting unit, the contracting unit shall award the contract to the next lowest responsible bidder.

c. Contracts shall be awarded to the lowest responsible bidder. In the event that a contract is advertised for both separate bids for each branch of work and for bids for all work, goods, and services, said contract shall be awarded in the following manner: If the sum total of the amounts bid by the lowest responsible bidder for each branch is less than the amount bid by the lowest responsible bidder for all the work, goods and services, the contracting unit shall award separate contracts for each of such branches to the lowest responsible bidder therefor, but if the sum total of the amounts bid by the lowest responsible bidder for each branch is not less than the amount bid by the lowest responsible bidder for all the work, goods and services, the contracting unit shall award a single overall contract to the lowest responsible bidder for all of such work, goods and services. In every case in which a contract is awarded for a single overall contract, all payments required to be made under such contract for work, goods and services supplied by a subcontractor shall, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor.

d. Any bid specification prepared pursuant to this section that includes the use of 1,000 or more tons of hot mix asphalt, shall include a pay item for any asphalt price adjustment reflecting changes in the cost of asphalt cement. Any bid specification prepared pursuant to this section that includes the use of less than 1,000 tons of hot mix asphalt, shall include a pay item for an asphalt price adjustment for any quantity of hot mix asphalt exceeding 1,000 tons that may be used in the work in the event that performance of the work, including change orders, requires more than 1,000 tons of hot mix asphalt.

The asphalt price adjustment shall be calculated in accordance with the formula and relevant instructions published in the most recent edition of the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction as revised by the "Standard Inputs" periodically issued by the department. All invoices for payment shall be accompanied by the calculation of any asphalt price adjustment and a showing of the current month's Asphalt Price Index, the Basic Asphalt Price Index.

e. (1) Every bid specification prepared pursuant to this section may be eligible for a fuel price adjustment. Fuel that is eligible for a fuel price adjustment shall be the sum of the quantities of the eligible pay items in the contract times the fuel usage factors as determined by the Department of Transportation. The types of fuel furnished shall be at the option of the contractor.

(2) The fuel requirement for items not determined by the Department of Transportation to be eligible, and for pay items in the bid specifications calling for less than 500 gallons of fuel, shall not be eligible for a fuel price adjustment. If more than one pay item has the same nomenclature but with different thicknesses, depths, or types, each individual pay item must require 500 gallons or more of fuel to be eligible for a fuel price adjustment. If more than one pay item has the exact same nomenclature, similar pay items shall be combined and this combination must require 500 gallons or more of fuel to be eligible for the fuel price adjustment.

(3) Fuel price adjustments shall not be made in those months for which the monthly fuel price index has changed by less than five percent from the basic fuel price.

f. As used in subsections d. and e. of this section:

"Asphalt Price Index" means the Asphalt Price Index as determined and published by the New Jersey Department of Transportation.

"Basic Asphalt Price Index" means the Basic Asphalt Price Index as published by the New Jersey Department of Transportation in its "Standard Specifications for Road and Bridge Construction," as revised by the "Standard Inputs" periodically issued by the New Jersey Department of Transportation.

"Fuel Price Index" means the Fuel Price Index as determined and published by the New Jersey Department of Transportation.

"Pay Item" means a specifically described item of work for which the bidder provides a per unit or lump sum price in a bid specification as determined and published by the New Jersey Department of Transportation.

6. This act shall take effect on the first day of the third month next following enactment.

Approved September 19, 2012.