

CHAPTER 201

AN ACT concerning certain local public contracts and amending P.L.1971, c.198.

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

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

C.40A:11-13 Specifications.

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

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

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

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

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

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

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

(g) As used in this subsection:

“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 asphalt price index for the month preceding the month in which the bids are opened;

“department” means 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; and

“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 determined and published by the New Jersey Department of Transportation.

In addition to the requirements of paragraphs (a) through (e) of this section, any bid specification for the provision or performance of goods or services under P.L.1971, c.198 (C.40A:11-1 et seq.) that includes the purchase or use of 1,000 or more tons of hot mix asphalt shall include a pay item for an asphalt price adjustment reflecting changes in the cost of asphalt cement. The pay item for asphalt price adjustment shall apply to each ton of hot mix asphalt purchased or used by the contracting unit. Any bid specification prepared pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) that includes the purchase or use of less than 1,000 tons of hot mix asphalt shall include a pay item for an asphalt price adjustment applicable to any quantity of hot mix asphalt exceeding 1,000 tons that may be purchased or 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. As set forth in section 7 of P.L.1971, c.198 (C.40A:11-7), no contract shall be divided to disaggregate the quantity of hot mix asphalt or equivalent asphalt cement-based paving product to be purchased or used for the purpose of avoiding compliance with this paragraph.

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.” 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 and the basic asphalt price index.

Every bid specification prepared pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) shall 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 multiplied by the fuel usage factors as determined by the department. The types of fuel furnished shall be at the discretion of the contractor.

The fuel requirement for items not determined by the department 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 same nomenclature, similar pay items shall be combined and the combination must require 500 gallons or more of fuel to be eligible for the fuel price adjustment.

Fuel price index 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 index.

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

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

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

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

2. 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; 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. (Deleted by amendment, P.L.2015, c.201).

e. (Deleted by amendment, P.L.2015, c.201).

f. (Deleted by amendment, P.L.2015, c. 201).

3. This act shall take effect immediately.

Approved January 11, 2016.