

CHAPTER 156

AN ACT authorizing the electronic purchase of certain commodities and services and sale of surplus personal property by local units of government and school districts, supplementing P.L.1971, c.198 (C.40A:11-1 et seq.), amending P.L.1971, c.199, N.J.S.18A:20-6, and P.L.1978, c.91, and repealing P.L.2001, c.30.

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

C.40A:11-4.7 Short title.

1. This act shall be known and may be cited as the "Local Unit Electronic Procurement Act."

C.40A:11-4.8 Findings, declarations relative to electronic purchase of certain commodities.

2. The Legislature finds and declares that advances in electronic technology offer opportunities to enhance governmental efficiencies. In order to explore these avenues of improved government efficiency and commerce, it is in the best interests of this State to allow local units of government to adopt proven technologies for the procurement of goods, services, public works construction, and sale of surplus personal and real property through means of electronic technology, and to allow the Department of Community Affairs to promulgate standards for the use of these technologies that provide for the integrity and procedural protections of sealed public bidding and competitive contracting translated to an electronic environment.

C.40A:11-4.9 Definitions relative to electronic purchase of certain commodities.

3. As used in P.L.2018, c.156 (C.40A:11-4.7 et al.):

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs;

"Electronic procurement" means the use of computer technology and the Internet for the advertising and submission of public bids, providing notice of revisions or addenda to advertisements or bid documents, the receipt of proposals and quotations, competitive contracting, the use of reverse auctions, and related practices to assist in determining the lowest responsible bidder or proposer who is most advantageous, price and other factors considered, as appropriate, for goods and services, the sale of personal property, and other public procurement-related activities and services as may be determined appropriate by the director;

"Goods and services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to N.J.S.12A:2-101 et seq.;

"Local unit" means a school district as defined in the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or a contracting unit as defined in the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.);

"Public works construction" means any contract that is subject to the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); and

"Real property" shall include, in addition to the usual connotations thereof, development rights or easements, or any right, interest, or estate in the area extending above any real property, or capital improvement thereon, to such a height or altitude as any title, interest, or estate in real property may extend, commonly known as "air rights," and subject to, but not limited to, the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

C.40A:11-4.10 Authorization for local units to use electronic purchase of certain commodities.

4. Local units are authorized to use electronic procurement practices for such purposes as may be authorized by the governing body of the local unit, and subject to the provisions of P.L.2018, c.156 (C.40A:11-4.7 et al.).

C.40A:11-4.11 Authorization for local unit, joint purchasing unit, or cooperative pricing system to use electronic purchase of certain commodities.

5. A local unit or joint purchasing unit or cooperative pricing system is also authorized to use electronic procurement practices for the following purposes:

(a) to purchase electric generation service, electric related service, gas supply service, or gas related service, either separately or bundled, for its own facilities so long as the purchase otherwise complies with the provisions of the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et al.); and

(b) the sale of surplus personal property that shall otherwise comply with the provisions of section 36 of P.L.1971, c.198 (C.40A:11-36).

Contracts awarded for the administration of electronic procurement practices shall be subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., except that they shall be considered as purposes for which competitive contracting may be used.

C.40A:11-4.12 Rules, regulations.

6. a. The director, in consultation with the State Comptroller and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the provisions of this act.

The rules promulgated pursuant to this section shall include, but shall not be limited to, practices that, notwithstanding any other law to the contrary:

(1) convert the law, principals, safeguards, and procedures related to sealed bidding to an electronic procurement environment;

(2) authorize local units of government to accept commercial standards for electronic forms of bid security; and

(3) establish minimum standards that must be met by systems and services providing and administering electronic procurement activities.

The director shall also consult with the Attorney General to develop safeguards to protect against collusion and bid rigging, with the Division of Purchase and Property in the Department of the Treasury to develop practices used for electronic procurement, and with the Office of Information Technology in, but not of, the Department of the Treasury, to ensure the privacy and security of electronic transactions.

b. With regard to the notices, advertising bids, or requests for proposals required to be published in an official newspaper of the local unit, such notices, advertising bids, or requests for proposals, as appropriate, shall not be eliminated under the provisions of P.L.2018, c.156 (C.40A:11-4.7 et al.), and shall continue to be published as required by law.

c. Notwithstanding any law, rule, or regulation to the contrary, plans and specifications for public works construction contracts that require the seal and signature of a professional engineer, architect, or land surveyor may be included in an electronic file used for electronic procurement as long as the original document from which the electronic file is derived contains a physical or electronic seal and signature as otherwise required by law; however, if and when the State Board of Engineers and Land Surveyors and the New Jersey State Board

of Architects adopt rules to permit digital seals and signatures, those rules shall supersede this provision.

7. Section 13 of P.L.1971, c.199 (C.40A:12-13) is amended to read as follows:

C.40A:12-13 Sales of real property, capital improvements or personal property; exceptions; procedure.

13. Sales of real property, capital improvements or personal property; exceptions; procedure. Any county or municipality may sell any real property, capital improvement or personal property, or interests therein, not needed for public use, as set forth in the resolution or ordinance authorizing the sale, other than county or municipal lands, real property otherwise dedicated or restricted pursuant to law, and, except as otherwise provided by law, all such sales shall be made by one of the following methods:

(a) By open public sale at auction to the highest bidder after advertisement thereof in a newspaper circulating in the municipality or municipalities in which the lands are situated, by two insertions at least once a week during two consecutive weeks, the last publication to be not earlier than seven days prior to such sale. In the case of public sales, the governing body may by resolution fix a minimum price or prices, with or without the reservation of the right to reject all bids where the highest bid is not accepted. Notice of such reservation shall be included in the advertisement of the sale and public notice thereof shall be given at the time of sale. Such resolution may provide, without fixing a minimum price, that upon the completion of the bidding, the highest bid may be accepted or all the bids may be rejected. The invitation to bid may also impose restrictions on the use to be made of such real property, capital improvement or personal property, and any conditions of sale as to buildings or structures, or as to the type, size, or other specifications of buildings or structures to be constructed thereon, or as to demolition, repair, or reconstruction of buildings or structures, and the time within which such conditions shall be operative, or any other conditions of sale, in like manner and to the same extent as by any other vendor. Such conditions shall be included in the advertisement, as well as the nature of the interest retained by the county or municipality. Such restrictions or conditions shall be related to a lawful public purpose and encourage and promote fair and competitive bidding of the county or municipality and shall not, in the case of a municipality, be inconsistent with or impose a special or higher standard than any zoning ordinance or building, plumbing, electrical, or similar code or ordinance then in effect in the municipality.

In any case in which a county or municipality intends to retain an estate or interest in any real property, capital improvement or personal property, in the nature of an easement, contingent or reversionary, the invitation to bid and the advertisement required herein shall require each bidder to submit one bid under each Option A and Option B below.

(1) Option A shall be for the real property, capital improvement or personal property subject to the conditions or restrictions imposed, or interest or estate retained, which the county or municipality proposes to retain or impose.

(2) Option B shall be for the real property, capital improvement or personal property to be sold free of all such restrictions, conditions, interests or estates on the part of the county or municipality.

The county or the municipality may elect or reject either or both options and the highest bid for each. Such acceptance or rejection shall be made not later than at the second regular meeting of the governing body following the sale, and, if the governing body shall not so accept such highest bid, or reject all bids, said bids shall be deemed to have been rejected.

Any such sale may be adjourned at the time advertised for not more than one week without readvertising.

(b) At private sale, when authorized by resolution, in the case of a county, or by ordinance, in the case of a municipality, in the following cases:

(1) A sale to any political subdivision, agency, department, commission, board or body corporate and politic of the State of New Jersey or to an interstate agency or body of which the State of New Jersey is a member or to the United States of America or any department or agency thereof.

(2) A sale to a person submitting a bid pursuant to subsection (a) of this section, where all bids have been rejected, provided that the terms and price agreed to shall in no event be less than the highest bid rejected, and provided further that the terms and conditions of sale shall remain identical.

(3) A sale by any county or municipality, when it has or shall have conveyed its right, title and interest in any real property, capital improvement or personal property not needed for public use, and it was assumed and intended that there should be conveyed a good and sufficient title in fee simple to said real property, capital improvement or personal property, free of all encumbrances and the full consideration has been paid therefor, and it shall thereafter appear that the title conveyed was insufficient or that said county or municipality at the time of said conveyance was not the owner of some estate or interest in said real property, capital improvement or personal property or of some encumbrances thereon, and the county or municipality shall thereafter acquire a good and sufficient title in fee simple, free of all encumbrances of said real property, capital improvement or personal property or shall acquire such outstanding estate or interest therein or outstanding encumbrance thereon and said county or municipality, by resolution of the governing body and without the payment of any additional consideration, has deemed to convey or otherwise transfer to said purchaser, his heirs or assigns, such after-acquired title, or estate or interest in, or encumbrance upon, such real property, capital improvement or personal property to perfect the title or interest previously conveyed.

(4) A sale of an easement upon any real property previously conveyed by any county or municipality may be made when the governing body of any county, by resolution, or any municipality, by ordinance, has elected to release the public rights in the nature of easements, in, on, over or under any real property within the county or the municipality, as the case may be, upon such terms as shall be agreed upon with the owner of such lands, if the use of such rights is no longer desirable, necessary or required for public purposes.

(5) A sale to the owner of the real property contiguous to the real property being sold; provided that the property being sold is less than the minimum size required for development under the municipal zoning ordinance and is without any capital improvement thereon; except that when there is more than one owner with real property contiguous thereto, said property shall be sold to the highest bidder from among all such owners. Any such sale shall be for not less than the fair market value of said real property. When there is only one owner with real property contiguous to the property being sold, and the property is less than an eighth of the minimum size required for development under the municipal zoning ordinance and is without any capital improvement thereon, the fair market value of that property may be determined by negotiation between the local unit and the owner of the contiguous real property. The negotiated sum shall be subject to approval by resolution of the governing body, but in no case shall that sum be less than one dollar.

In the case of any sale of real property hereafter made pursuant to subsection (b) of this section, in no event shall the price agreed upon with the owner be less than the difference

between the highest bid accepted for the real property subject to easements (Option A) and the highest bid rejected for the real property not subject to easements (Option B). After the adoption of the resolution or ordinance, and compliance by the owner of said real property with the terms thereof, said real property shall be free, and entirely discharged of and from such rights of the public and of the county or municipality, as the case may be, but no such release shall affect the right of lawful occupancy or use of any such real property by any municipal or private utility to occupy or use any such real property lawfully occupied or used by it.

A list of the property so authorized to be sold, pursuant to subsection (b) of this section, together with the minimum prices, respectively, as determined by the governing body, shall be included in the resolution or ordinance authorizing the sale, and said list shall be posted on the bulletin board or other conspicuous space in the building which the governing body usually holds its regular meetings, and advertisement thereof made in a newspaper circulating in the municipality or municipalities in which the real property, capital improvement or personal property is situated, within five days following enactment of said resolution or ordinance. Offers for any or all properties so listed may thereafter be made to the governing body or its designee for a period of 20 days following the advertisement herein required, at not less than said minimum prices, by any prospective purchaser, real estate broker, or other authorized representative. In any such case, the governing body may reconsider its resolution or ordinance, not later than 30 days after its enactment, and advertise the real property, capital improvement, or personal property in question for public sale pursuant to subsection (a) of this section.

Any county or municipality selling any real property, capital improvement or personal property pursuant to subsection (b) of this section shall file with the Director of the Division of Local Government Services in the Department of Community Affairs, sworn affidavits verifying the publication of advertisements as required by this subsection.

(c) By private sale of a municipality in the following case: A sale to a private developer by a municipality, when acting in accordance with the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.).

(d) A county or municipality is also authorized to use electronic procurement practices in accordance with the provisions of P.L.2018, c.156 (C.40A:11-4.7 et al.) for the sale or lease of real property pursuant to the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

All sales, either public or private, may be made for cash or upon credit. A deposit not exceeding 10% of the minimum price or value of the property to be sold may be required of all bidders. When made upon credit, the county or municipality may accept a purchase-money mortgage, upon terms and conditions which shall be fixed by the resolution of the governing body; provided, however, that such mortgage shall be fully payable within five years from the date of the sale and shall bear interest at a rate equal to that authorized under Title 31 of the Revised Statutes, as amended and supplemented, and the regulations issued pursuant thereto, or the rate last paid by the county or municipality upon any issue of notes pursuant to the "Local Bond Law" (N.J.S.40A:2-1 et seq.), whichever is higher. The governing body may, by resolution, fix the time for closing of title and payment of the consideration.

In all sales made pursuant to this section, the governing body of any county or municipality may provide for the payment of a commission to any real estate broker, or authorized representative other than the purchaser actually consummating such sale; provided, however, that no commission shall be paid unless notice of the governing body's

intention to pay such a commission shall have been included in the advertisement of sale and the recipient thereof shall have filed an affidavit with the governing body stating that said recipient is not the purchaser. Said commissions shall not exceed, in the aggregate, 5% of the sale price, and be paid, where there has been a public sale, only in the event that the sum of the commission and the highest bid price does not exceed the next highest bid price (exclusive of any real estate broker's commission). As used in this section, "purchaser" shall mean and include any person, corporation, company, association, society, firm, partnership, or other business entity owning or controlling, directly or indirectly, more than 10% of the purchasing entity.

8. N.J.S.18A:20-6 is amended to read as follows:

Public sale; advertisement; exceptions.

18A:20-6. Any lands or rights or interests therein sold by any board of education, except lands conveyed as part of a lease purchase agreement pursuant to N.J.S. 18A:20-4.2(f), shall be sold, after advertisement of public sale, to the highest bidder. A board of education is authorized to use electronic procurement practices in accordance with P.L.2018, c.156 (C.40A:11-4.7 et al.) for the advertisement of sale or lease of land and real property thereon, and shall also publish advertisement of the sale or lease in a newspaper published in the district, or, if none is published therein, then in a newspaper circulating in the district, in which the same is situate, at least once a week for two weeks prior to the sale, unless:

- a. The same are sold to the State, or a political subdivision thereof, in which case they may be sold at private sale without advertisement; or
- b. The sale or other disposition thereof in some other manner is provided for in this Title.

9. Section 1 of P.L.1978, c.91 (C.18A:20-8.2) is amended to read as follows:

C.18A:20-8.2 Lease of school lands.

1. a. Except as otherwise provided pursuant to section 14 of P.L.2007, c.137 (C.18A:7G-45), whenever any board of education shall by resolution determine that any tract of land, whether there is a building thereon or not, or part or all of a school building, is not necessary for school purposes, but which it does not desire to dispose of for reason that the property may, at some future time, again be required for school purposes, it may authorize the lease thereof for a term extending beyond the official life of the board; provided that the noneducational uses of such building or tract of land are compatible with the establishment and operation of a school, as determined by the Commissioner of Education, if joint occupancy of such site is considered. A board of education is authorized to use electronic procurement practices in accordance with the provisions of P.L.2018, c.156 (C.40A:11-4.7 et al.) for the advertisement of lease of land, and any building on that land. The lease shall be binding upon the successor board as follows:

(1) After advertisement of the request for bids to lease to the highest bidder in a newspaper published in the school district, or, if none is published therein, then in a newspaper circulating in the district in which the same is situate, at least once a week for two weeks prior to the date fixed for the receipt and opening of bids, and, at the discretion of the board of education, electronic advertisement, unless:

(2) The same is leased to the federal government, State, a political subdivision thereof, another school district, any board, body or commission of a municipality within the school

district, any volunteer fire company or rescue squad actively engaged in the protection of life and property and duly incorporated under the laws of the State of New Jersey, or to any American Legion post, Veterans of Foreign Wars, or other recognized veterans' organization of the United States of America, located in the municipality or the county, as a meeting place for such organization, or to a nonprofit child care service organization duly incorporated under the laws of the State of New Jersey, or to a nonprofit hospital duly licensed under the laws of the State of New Jersey, or to a nonprofit organization duly licensed under the laws of the State of New Jersey to provide emergency shelter for the homeless, or to a nonprofit senior citizen organization, or to a nonprofit historic preservation organization duly incorporated under the laws of the State of New Jersey, in which case the same may be leased by private agreement for a nominal fee without advertisement for bids.

b. Any lease in excess of five years shall be approved by the Commissioner of Education.

Repealer.

10. P.L.2001, c.30 is repealed.

11. This act shall take effect on the first day of the 10th month next following enactment.

Approved December 17, 2018.