

CHAPTER 4

AN ACT concerning certain aspects of the State procurement process and amending P.L.2012, c.25 and P.L.1954, c.48.

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

1. Section 4 of P.L.2012, c.25 (C.52:32-58) is amended to read as follows:

C.52:32-58 Certification required.

4. a. A State agency shall require a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract to certify, prior to the time a contract is awarded and at the time the contract is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 of this act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 of this act.

b. The certification required shall be executed on behalf of the applicable person or entity by an authorized officer or representative of the person or entity.

c. In the event that a person or entity is unable to make the certification required because it or one of its parents, subsidiaries, or affiliates as defined in subsection e. of section 2 of this act has engaged in one or more of the activities specified in subsection f. of section 2 of this act, the person or entity shall provide to the State agency concerned, prior to the deadline for delivery of such certification, a detailed and precise description of such activities, such description to be provided under penalty of perjury.

d. The certifications provided under subsection a. of this section and disclosures provided under subsection c. of this section shall be disclosed to the public.

2. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read as follows:

C.52:34-12 State advertisement for bids.

7. a. Whenever advertising is required: (a) 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 using agency and shall, wherever practicable, include such factors as life-cycle costs, sliding percentage preference scales, or other similar analysis as shall be deemed effective by the Director of the Division of Purchase and Property, hereinafter referred to as the director, (b) the advertisement for bids shall be in such newspaper or newspapers and other medium or media selected by the State Treasurer as will best give notice thereof to bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding; (c) the advertisement shall designate the time and secure location when and where proposals, which may be submitted in electronic or other format designated by the director, shall be received, opened and publicly announced, the amount of the cash or certified check, if any, which must accompany each bid, and such other terms as the State Treasurer may deem proper; (d) notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a newspaper or newspapers and other medium or media selected by the State Treasurer to give notice to bidders at least seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date; (e) failure to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by subsection (d) of this section shall prevent the acceptance of bids and require the readvertisement for bids; (f) for any procurement, other than a contract for the construction or maintenance of a public work procured by other than the director of the Division of Purchase and Property, the State Treasurer or the director may negotiate with bidders the final terms and

conditions of any procurement, including price; such ability to so negotiate must be expressly set forth in the applicable invitation to bid and (i) such bids shall not be publicly accessible until after negotiations have been completed and the notice of intent to award the contract has been issued or (ii) notwithstanding subparagraph (i) of subparagraph (f), bids or portions thereof, may be publicly accessible if the State Treasurer or the director is procuring via a reverse auction process and the bids, or portions thereof, have been de-identified; (g) award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered; and (h) the Treasurer shall require, with respect to contracts for information technology goods and services, a limitation of liability determined by the Director of the Division of Purchase and Property. When negotiations occur pursuant to subparagraph f. of this section, a written record of the nature and content of the negotiations, as well as the dates and persons involved, shall become a public record when the notice of intent to award the contract is issued. Notwithstanding the provisions of this subsection, the Director of the Division of Purchase and Property may structure an advertisement for bids to include an auction or reverse auction procedure, related to the procurement of goods, services, or both, with the exception of contracts for the provision of hospital, surgical, obstetrical, and other covered health care services and benefits or for the provider network for those services in connection with the State Health Benefits Program, the School Employees' Health Benefits Program, and Medicaid Managed Care Program, except for a pharmacy benefit management contract, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction, whenever the director determines that the use of such procedure will result in bids being more advantageous to the State, price and other factors considered.

Any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do. The State Treasurer or designee may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement the provisions of this section.

This section shall apply to all bids received on and after the date of enactment of P.L.1999, c.440.

b. Whenever by law a State independent authority may negotiate with bidders, after bid opening, the final terms and conditions of any procurement, including price, and such ability to so negotiate is expressly set forth in the applicable invitation to bid, a written record of the nature and content of the negotiations, as well as the dates and persons involved, shall not be publicly accessible until after the notice of intent to award the contract is issued.

3. This act shall take effect immediately.

Approved January 29, 2021.