

SENATE, No. 3745

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 30, 2023

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Renames Division of Purchase and Property; revises certain aspects of State procurement process; repeals MacBride principles certification requirement.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT renaming the Division of Purchase and Property and
2 revising certain aspects of the State procurement process,
3 amending various parts of statutory law, supplementing chapter
4 18A of Title 52 of the Revised Statutes, and repealing P.L.1995,
5 c.134.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. Section 2 of P.L.1975, c.127 (C.10:5-32) is amended to read
11 as follows:

12 2. No public works contract shall be awarded by the State, a
13 county, municipality or other political subdivision of the State, or
14 any agency of or authority created by any of the foregoing, nor shall
15 any moneys be paid thereunder when a single contract, or
16 aggregated contracts in a fiscal year, is in excess of 15 percent of
17 the amount of the contracting agency's bid threshold, to any
18 contractor, subcontractor or business firm which has not agreed and
19 guaranteed to afford equal opportunity in performance of the
20 contract and, except with respect to affectional or sexual
21 orientation, and gender identity or expression, in accordance with
22 an affirmative action program approved by the State Treasurer.
23 (cf: P.L.2006, c.100, s.13)

24
25 2. Section 4 of P.L.1975, c.127 (C.10:5-34) is amended to read
26 as follows:

27 4. Each prospective bidder on a public works contract or
28 contracts when a single contract, or aggregated contracts in a fiscal
29 year, is in excess of 15 percent of the amount of the contracting
30 agency's bid threshold, and each subcontract bidder to a prime
31 contract bidder shall formulate and submit to the State Treasurer his
32 or its affirmative action program of equal opportunity whereby he
33 or it guarantees minorities employment in all employment
34 categories; the submission shall be accompanied by a fee in an
35 amount to be fixed by the State Treasurer. For the purposes of this
36 section, equal employment opportunity but not affirmative action is
37 required with respect to persons identified solely by their
38 affectional or sexual orientation and gender identity or expression.
39 The State Treasurer shall notify the bidder of approval or
40 disapproval of his or its program within 60 days of its submission;
41 failure of the State Treasurer to so act within 60 days shall
42 constitute approval of the program. Any existing federally
43 approved or sanctioned affirmative action program shall be
44 approved by the State Treasurer.

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 No subcontract bidder who has less than five employees need
2 comply with the provisions of this section.

3 (cf: P.L.2006, c.100, s.15)

4
5 3. Section 4 of P.L.1999, c.238 (C.34:11-56.51) is amended to read
6 as follows:

7 4. No contractor shall bid on any contract for public work as
8 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26) , or for
9 which payment of the prevailing wage is required by any other
10 provision of law, unless the contractor is registered pursuant to this
11 act prior to contract award. No contractor shall list a subcontractor
12 in a bid proposal for the contract unless the subcontractor is eligible
13 to register, and is registered pursuant to P.L.1999, c.238 (C.34:11-
14 56.48 et seq.) **【at the time the bid is made】** prior to contract award.
15 No contractor or subcontractor, including a subcontractor not listed
16 in the bid proposal, shall engage in the performance of any public
17 work subject to the contract, unless the contractor or subcontractor
18 is registered pursuant to that act. Contractors who bid on any
19 contract for public work that rely solely on subcontractors, or
20 dealers or distributors, to perform installation or maintenance
21 services may rely on the subcontractor's, or dealer's or
22 distributor's, public works registration when bidding on any
23 contract subject to this section.

24 (cf: P.L.2019, c.376, s.2)

25
26 4. Section 1 of P.L.1942, c.176 (C.52:25-24.1) is amended to read
27 as follows:

28 1. The **【State Purchase Commissioner】** Division of Public
29 Procurement in the Department of the Treasury is hereby authorized
30 **【, at any time within five days from the opening of bids,】** to require
31 any bidder to submit **【to him】** a financial statement **【, under oath, in**
32 **response to a questionnaire,】** showing not only the financial
33 responsibility of the bidder, but **【his】** also the ability to furnish the
34 material desired, and such other pertinent and material facts as the
35 **【State Purchase Commissioner】** division may deem desirable. For the
36 purpose of carrying out the provisions of this act the **【State Purchase**
37 **Commissioner】** division is hereby authorized to prepare a standard
38 form of questionnaire to be submitted by the bidder. If no response to
39 the questionnaire is received by the **【State Purchase Commissioner】**
40 division within five days from the time of its mailing **【by said**
41 **purchase commissioner】**, the **【purchase commissioner】** division may
42 reject the bid of any such bidder and award the bid to the next lowest
43 responsible bidder.

44 (cf: P.L.1942, c.176, s.1)

45
46 5. Section 1 of P.L.1977, c.33 (C.52:25-24.2) is amended to read
47 as follows:

1 1. No corporation, partnership, or limited liability company
2 shall be awarded any contract nor shall any agreement be entered
3 into for the performance of any work or the furnishing of any
4 materials or supplies, the cost of which is to be paid with or out of
5 any public funds, by the State, or any county, municipality or
6 school district, or any subsidiary or agency of the State, or of any
7 county, municipality or school district, or by any authority, board,
8 or commission which exercises governmental functions, unless
9 prior to **the receipt of the bid or accompanying the bid, of** the
10 time the contract is awarded to said corporation, said partnership, or
11 said limited liability company there is submitted a statement setting
12 forth the names and addresses of all stockholders in the corporation
13 who own 10 percent or more of its stock, of any class, or of all
14 individual partners in the partnership who own a 10 percent or
15 greater interest therein, or of all members in the limited liability
16 company who own a 10 percent or greater interest therein, as the
17 case may be. If one or more such stockholder or partner or member
18 is itself a corporation or partnership or limited liability company,
19 the stockholders holding 10 percent or more of that corporation's
20 stock, or the individual partners owning 10 percent or greater
21 interest in that partnership, or the members owning 10 percent or
22 greater interest in that limited liability company, as the case may be,
23 shall also be listed. The disclosure shall be continued until names
24 and addresses of every noncorporate stockholder, and individual
25 partner, and member, exceeding the 10 percent ownership criteria
26 established in this act, has been listed.

27 To comply with this section, a bidder with any direct or indirect
28 parent entity which is publicly traded may submit the name and
29 address of each publicly traded entity and the name and address of
30 each person that holds a 10 percent or greater beneficial interest in
31 the publicly traded entity as of the last annual filing with the federal
32 Securities and Exchange Commission or the foreign equivalent,
33 and, if there is any person that holds a 10 percent or greater
34 beneficial interest, also shall submit links to the websites containing
35 the last annual filings with the federal Securities and Exchange
36 Commission or the foreign equivalent and the relevant page
37 numbers of the filings that contain the information on each person
38 that holds a 10 percent or greater beneficial interest.

39 (cf: P.L.2016, c.43, s.1)
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41 6. (New section) The Division of Purchase and Property in the
42 Department of the Treasury, created and established by P.L.1948,
43 c.92 (C.52:18A-1 et seq.), shall be known and referred to as the
44 Division of Public Procurement. Any reference in a law, rule,
45 regulation, judicial or administrative proceeding, or otherwise to the
46 Division of Purchase and Property shall mean and refer to the
47 Division of Public Procurement.
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49 7. P.L.1995, c.134 (C.52:34-12.2) is repealed.

1 8. This act shall take effect immediately.

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STATEMENT

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6 This bill renames the Division of Purchase and Property in the
7 Department of the Treasury as the Division of Public Procurement.

8 Additionally, this bill revises certain aspects of the State
9 procurement process. This bill would also repeal the statutory
10 requirement requiring a bidder to submit a MacBride principles
11 certification.

12 Under this bill, the current Division of Purchase and Property
13 will be renamed as the Division of Public Procurement. This new
14 name aligns with the division's purpose of serving as the State's
15 central procurement agency.

16 The bill revises certain aspects of the State procurement process.
17 Specifically, the bill amends existing law to:

- 18 • change the timeframe for submission of the ownership
19 disclosure statement from at the time of bidding to prior to
20 the contract award;
- 21 • exempt vendors when a single contract, or aggregated
22 contracts in a fiscal year, is 15 percent or less of the amount
23 of the contracting agency's bid threshold from filing the
24 Equal Employment Opportunity (EEO)/Affirmative Action
25 (AA) form and exempts these vendors from paying the
26 current fee to obtain an EEO/AA certificate;
- 27 • change the timeframe for submission of financial statements
28 from immediately after bid opening to prior to the contract
29 award; and
- 30 • provide that in order to bid on a contract for public work a
31 contractor or a subcontractor must be eligible to register as a
32 contractor or subcontractor pursuant to law.

33 Under this bill, the current MacBride principles certification
34 requirement would be repealed. Repealing this certification
35 requirement would reduce the number of statutorily required forms
36 that a bidder is required to submit in response to a proposal or in
37 connection with a contract award. The current certification form
38 requires a bidder to certify that it has no business operations in
39 Northern Ireland or that it will take lawful steps in good faith to
40 conduct any business operations it has in Northern Ireland in
41 accordance with the MacBride principles of nondiscrimination in
42 employment.