

58:26-1. Short title

This act shall be known and may be cited as the "New Jersey Water Supply Privatization Act." L. 1985, c. 37, s. 1, eff. Feb. 1, 1985.

58:26-2. Findings, determinations

The Legislature finds that the construction, rehabilitation, operation, and maintenance of modern and efficient water filtration facilities are essential to protecting and improving the State's water quality; that many of the water filtration systems in New Jersey must be replaced or upgraded if an inexorable decline in water quality is to be avoided during the coming decades; that the citizens of this State, in recognition of the crucial role the construction of new and the upgrading of existing water supply facilities play in maintaining and augmenting the natural water resources of the State, and with an understanding that the cost of financing and constructing these systems is beyond the limited financial resource capabilities of local governments and authorities and must be borne by the bonding authority of the State and repaid, in part, through a system of water supply user charges, approved the enactment of the "Water Supply Bond Act of 1981" (P.L. 1981, c. 261); that the water filtration needs of the State are so great that the limited funds allocated for this purpose from the "Water Supply Fund" established by that 1981 bond act are insufficient; that given this inadequate present level of State funding, alternative methods of financing the construction of new or the rehabilitation of antiquated or inadequate existing water filtration systems must be developed and encouraged; that one alternative method of financing these necessary facilities available to local government units consists of contracting with private-sector firms for the financing, construction and operation of these systems; and that for some local government units, contracting for the provision of water supply services, if done in such a way as to protect the interests of water users and to conform with environmentally sound water quality standards will constitute an appropriate method of securing these needed water filtration systems. The Legislature therefore determines that it is in the public interest to establish a comprehensive procedure designed to authorize local government units to contract with private firms for the construction of water filtration systems and the provision of water supply services. L. 1985, c. 37, s. 2, eff. Feb. 1, 1985.

58:26-3. Definitions

As used in this act: a. "Contracting unit" means a county, district water supply commission, municipality, municipal or county utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate, or maintain water supply facilities or otherwise provide water for human consumption; b. "Department" means the Department of Environmental Protection; c. "Division" means the Division of Local Government Services in the Department of Community Affairs; d. "Vendor" means any person financially, technically, and administratively capable of financing, planning, designing, constructing, operating, or maintaining, or any combination thereof, a water filtration system, water supply facilities, or of providing water supply services to a local government unit under the terms of a contract awarded pursuant to the provisions of this act; e. "Water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water in the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; f. "Water supply facilities" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water, and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources; g. "Water supply services" means services provided by a water supply facility. L. 1985, c. 37, s. 3, eff. Feb. 1, 1985.

58:26-4. 40-year contract maximum

The provisions of any other law, or rules and regulations adopted pursuant thereto to the contrary notwithstanding, any contracting unit may enter into a contract for a period not to exceed 40 years, with a vendor for the financing, designing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, including a water filtration system, or for water supply services, pursuant to the provisions of this act. L. 1985, c. 37, s. 4, eff. Feb. 1, 1985.

58:26-5. Notice of intention

5. A contracting unit which intends to enter into a contract with a private vendor for the provision of water supply services pursuant to the provisions of this act shall notify, at least 60 days prior to issuing a request for qualifications from interested vendors pursuant to section 6 of this act, the division, the department and the Board of Public Utilities of its intention, and shall publish notice of its intention in at least one newspaper of general circulation in the jurisdiction which would be served under the terms of the proposed contract. L.1985,c.37,s.5; amended 1994,c.58,s.58.

58:26-6. Request for qualifications

Upon submitting the notices of intent pursuant to section 5 of this act, a contracting unit may issue a request for qualifications of vendors interested in entering into a contract with the contracting unit for the provision of water supply services. The request for qualifications shall include a general description of the water supply services required by the contracting unit, the minimum acceptable qualifications to be possessed by a vendor proposing to enter into a contract for the provision of these services, and the date by which vendors must submit their qualifications. In addition to all other factors bearing on qualifications, the contracting unit shall consider the reputation and experience of the vendor, and may consider information which might result in debarment or suspension of a vendor if the vendor has been debarred or suspended by a State agency. The request for qualifications shall be published in at least one appropriate professional or trade journal, and in at least one newspaper of general circulation in the jurisdiction which would be served under the terms of the proposed contract. L. 1985, c. 37, s. 6, eff. Feb. 1, 1985.

58:26-7. Qualified vendors

After reviewing the qualifications submitted by vendors pursuant to section 6 of this act, a contracting unit shall establish a list of all vendors responding to the request for qualifications, and shall designate the vendor or vendors which the contracting unit has determined to be qualified to provide the water supply services described in the request for qualifications. This list shall include a statement setting forth the criteria applied by the contracting unit in selecting qualified vendors, and shall be published in the same publications in which the requests for qualifications were published pursuant to section 6 of this act. L. 1985, c. 37, s. 7, eff. Feb. 1, 1985.

58:26-8. Request for proposals

Upon selecting the qualified vendors pursuant to section 7 of this act, a contracting unit shall transmit a request for proposals to the qualified vendors, which shall include a detailed description of the water supply facility and services required, the format and procedure to be followed in submitting proposals, the specific information which the vendor must provide in the proposal, a statement setting forth the relative importance of factors, including cost, which the contracting unit will consider in evaluating a proposal submitted by a qualified vendor, and any other information which the contracting unit deems appropriate. The request for proposals shall include the date and time of day by which, and the place at which, the proposals shall be submitted to the contracting unit. The contracting unit may extend the deadline for submission of proposals, but this extension shall apply to all qualified vendors, who shall be provided with simultaneous written notification of this extension. L. 1985, c. 37, s. 8, eff. Feb. 1, 1985.

58:26-9. Review of proposals; revisions

A contracting unit shall review proposals submitted by vendors pursuant to section 8 of this act in such a manner as to avoid disclosure of the contents of any proposal to vendors submitting competing proposals. If provided for in the request for proposals, the contracting unit may conduct discussions with qualified vendors who have submitted proposals for the purpose of clarifying any information submitted in the proposal, or assuring that the vendor fully understood and responded to the requirements set forth in the request for proposals. If, as a result of these discussions, the contracting unit decides to revise the request

for proposals, it shall immediately notify in writing each qualified vendor which has submitted a proposal of any such revision or revisions to the request for proposals. In the event of any revision to the request for proposals, a qualified vendor shall be permitted to submit revisions to its proposal. L. 1985, c. 37, s. 9, eff. Feb. 1, 1985.

58:26-10. Designation of vendor

After reviewing the proposals submitted by qualified vendors pursuant to section 9 of this act, a contracting unit shall designate in writing the selected vendor or vendors. This designation shall include a list of the qualified vendors submitting proposals, the basis on which the selected vendor or vendors was chosen, and a finding that the proposal submitted by the selected vendor or vendors constitutes the proposal most advantageous to the jurisdiction to be served under the terms of the proposal, based upon the evaluation factors included in the request for proposals. This designation shall be published in at least one newspaper in general circulation in the jurisdiction to be served under the terms of the proposal. L. 1985, c. 37, s. 10, eff. Feb. 1, 1985.

58:26-11. Proposed contract with vendors

11. Upon designating the selected vendor or vendors pursuant to section 10 of this act, a contracting unit shall negotiate with the selected vendor or vendors a proposed contract, which shall include the accepted proposal and the provisions required pursuant to section 15 of this act. Upon negotiating a proposed contract, the contracting unit shall make the proposed contract available to the public at its main offices, and shall transmit a copy of the proposed contract to the division, the department and the Board of Public Utilities. L.1985,c.37,s.11; amended 1994,c.58,s.59.

58:26-12. Public hearing

12. a. A contracting unit shall conduct a public hearing or hearings on the charges, rates, or fees, or the formula for determining these charges, rates, or fees, and the other provisions contained in a proposed contract negotiated pursuant to section 11 of this act. The contracting unit shall provide at least 90 days' public notice of this public hearing to prospective consumers and other interested parties. This notice shall be published in at least one newspaper of general circulation in the jurisdiction to be served under the terms of the proposed contract. Within 45 days after giving notice of the public hearing, the contracting unit shall hold a meeting with prospective consumers and other interested parties to explain the terms and conditions of the proposed contract, and to receive written questions which will be part of the record of the public hearing. At the public hearing, the selected vendor or vendors shall be present, and the contracting unit shall have the burden to answer the questions received at the meeting, and to show that the proposed contract complies with the provisions of section 15 of this act, and that it constitutes the best means of securing the required water supply services among available alternatives. The contracting unit shall provide that a verbatim record be kept of the public hearing, and that a written transcript of this record be printed and made available to the public within 30 days of the close of the public hearing. After the public hearing the contracting unit and the vendor may agree to make changes to the proposed contract, and shall transmit the proposed contract, a copy of the printed transcript of the public hearing, and a statement summarizing the major issues raised at the public hearing and the response of the contracting unit to these issues, to the division, the department, the Board of Public Utilities, and to all persons who attended the public hearing. b. If the Division of Rate Counsel in the Department of the Public Advocate represents the public interest at a public hearing or hearings conducted pursuant to this section, the Division of Rate Counsel shall be entitled to assess the vendor for costs incurred in this representation in the manner provided in section 20 of P.L.1974, c.27 (C.52:27E-19). The basis of the assessment shall be the prospective first year's revenue realized by the vendor from the provision of the water supply services pursuant to the terms of the proposed contract. c. If a contract awarded pursuant to the provisions of this act is renegotiated, the contracting unit shall conduct a public hearing on the renegotiated contract pursuant to the provisions of this section. L.1985,c.37,s.12; amended 1994,c.58,s.60.

58:26-13. Approval; conditional approval

a. The department, within 60 days of receipt of a proposed contract submitted to it by a contracting unit pursuant to section 12 of this act, shall approve or conditionally approve the proposed contract. If the department approves the proposed contract, it shall accompany its approval with a written finding that the proposed contract will meet appropriate environmental and water quality standards, and that it is consistent

with the State primary drinking water regulations or requirements for the jurisdiction to be served under the terms of the proposed contract pursuant to the "Safe Drinking Water Act," P.L. 1977, c. 224 (C. 58:12A-1 et seq.). If the department conditionally approves a proposed contract, it shall state in writing the revisions which must be made to the proposed contract prior to receiving approval, and shall inform the contracting unit if the revisions to be made to the proposed contract warrant a public hearing. After revising the contract, the contracting unit may resubmit the proposed contract to the department for approval. b. The division, within 60 days of receipt of a proposed contract transmitted to it by a contracting unit pursuant to section 12 of this act, shall approve or conditionally approve the proposed contract. If the division approves the proposed contract, it shall accompany its approval with a written finding that the proposed contract complies with the provisions of section 15 of this act, and that the proposed contract is compatible with the fiscal and financial capabilities of the contracting unit. If the division conditionally approves the proposed contract, it shall state in writing the revisions which must be made to the proposed contract prior to receiving approval, and shall inform the contracting unit if the revisions to be made to the proposed contract warrant a public hearing. After revising the proposed contract, the contracting unit may resubmit the proposed contract to the division for approval. c. If the contracting unit is subject to the jurisdiction of the Board of Public Utilities, the board within 60 days of receipt of a proposed contract submitted to it by a contracting unit pursuant to section 12 of this act, shall approve or conditionally approve the proposed contract if the board finds the proposed contract to be in the public interest. If the Board of Public Utilities conditionally approves the proposed contract because the contract is not in the public interest, the board shall notify the contracting unit in writing of the changes needed in the proposed contract in order for it to be in the public interest, and shall inform the contracting unit if the revisions to be made warrant a public hearing. After revising the proposed contract, the contracting unit may resubmit the proposed contract to the board for approval. In reviewing and approving the proposed contract, the Board of Public Utilities shall not determine a rate base for, or otherwise regulate the tariffs or return of, the proposed water supply facility or the provision of water supply services. The board shall not, thereafter, conduct any further review of the contract. d. Notwithstanding the provisions of subsection c. of this section, all parties to any proposed contract may request the Board of Public Utilities to determine a rate base for the proposed water supply facility or the provision of water supply services, in which case the board may make that determination and the terms of any proposed contract so approved shall be subject to the continuing jurisdiction of the board. L. 1985, c. 37, s. 13, eff. Feb. 1, 1985.

58:26-14. 3 approvals required

A contracting unit may award a contract negotiated pursuant to the provisions of this act to a vendor only after the department, the Board of Public Utilities, and the division have approved the proposed contract pursuant to section 13 of this act. L. 1985, c. 37, s. 14, eff. Feb. 1, 1985.

58:26-15. Mandatory contract provisions

Any contract for the provision of water supply services negotiated and awarded to a vendor by a contracting unit pursuant to this act, or the "Local Public Contracts Law," P.L. 1971, c. 198 (C. 40A:11-1 et seq.), shall include, but shall not be limited to, provisions concerning: a. The allocation of the risks of financing and constructing a water supply facility including delays in completion of the construction of the system, construction and financing cost overruns and increased costs resulting from change orders, construction changes required by revisions in applicable laws, rules, or regulations, failure of the system to achieve its required operating performance or efficiency, changes in tax benefits, and the need for equity contributions in addition to those provided for in the contract; b. The allocation of the risks of operating and maintaining a water supply facility, including excessive or nonscheduled periods of inoperation or technical failure, excess labor and materials costs due to underestimation, changes in operating procedures required by revisions in applicable laws, rules, or regulations, changes in the quantity or composition of water delivered for filtration or treatment, excessive operation or maintenance costs due to poor management, and increased costs of distribution of the water resulting from costs associated with filtration or treatment; c. The allocation of the risks associated with circumstances or occurrences beyond the control of the parties to the contract; d. The defaulting and termination of the contract; e. The periodic preparation by the vendor of an operating performance report and an audited balance statement of the water supply facility, which shall be submitted to the contracting unit, the department and the division; f. The intervals at which the contract shall be renegotiated; g. The employment of current employees of the contracting unit whose positions or employment will be affected by the terms of the contract; and h. The

formulas to be used to determine the charges, rates, or fees to be charged for the water supply services, and the methodology or methodologies used to develop these formulas. L. 1985, c. 37, s. 15, eff. Feb. 1, 1985.

58:26-16. Lease to vendor

A contracting unit which has awarded a contract for the provision of water supply services to a vendor pursuant to this act or the "Local Public Contracts Law," P.L. 1971, c. 198 (C. 40A:11-1 et seq.) may lease to the vendor, for a fair market price, the property to be used as a site for a water supply facility, the provisions of any other laws or rules and regulations adopted pursuant thereto to the contrary notwithstanding. L. 1985, c. 37, s. 16, eff. Feb. 1, 1985.

58:26-17. Prior negotiations

Any contracting unit which, prior to the effective date of this act, has issued a request for qualifications and a request for proposals from vendors for the provision of water supply services, or has initiated negotiations with a vendor for the provision of water supply services, may petition the department and the Board of Public Utilities for certification as being substantially and materially in compliance with the provisions of this act, and, upon receiving this certification, may award a contract for the provision of water supply services pursuant to the provisions of this act. L. 1985, c. 37, s. 17, eff. Feb. 1, 1985.

58:26-18. Rules, regulations

The department, the Board of Public Utilities, and the division may adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to carry out their respective responsibilities under this act. L. 1985, c. 37, s. 18, eff. Feb. 1, 1985. HG4
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