

P.L. 2009, CHAPTER 187, *approved January 12, 2010*
Assembly, No. 436 (*Second Reprint*)

1 AN ACT concerning certain price adjustments in local public
2 contracts and ²[supplementing] amending² P.L.1971, c.198
3 ²[(C.40A:11-1 et seq.)]².

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 ²[¹1. For the purposes of this act:

9 "Asphalt Price Index" means the Asphalt Price Index as
10 determined and published by the New Jersey Department of
11 Transportation.

12 "Basic Asphalt Price Index" means the Basic Asphalt Price Index
13 as published by the New Jersey Department of Transportation in its
14 "Standard Specifications for Road and Bridge Construction," as
15 revised by the "Standard Inputs" periodically issued by the New
16 Jersey Department of Transportation.

17 "Basic Fuel Price Index" means the Basic Fuel Price Index as
18 published by the New Jersey Department of Transportation in its
19 "Standard Specifications for Road and Bridge Construction," as
20 revised by the "Standard Inputs" periodically issued by the New
21 Jersey Department of Transportation.

22 "Department" means the New Jersey Department of
23 Transportation.

24 "Fuel Price Index" means the Fuel Price Index as determined and
25 published by the New Jersey Department of Transportation.

26 "Pay Item" means a specifically described item of work for
27 which the bidder provides a per unit or lump sum price in a bid
28 specification.¹²

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30 ²1. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to
31 read as follows:

32 16. **[Separate plans for various types of work; bids; contracts.]**

33 a. In the preparation of plans and specifications for the
34 construction, alteration or repair of any public building by any
35 contracting unit, when the entire cost of the work will exceed the
36 bid threshold, the architect, engineer or other person preparing the
37 plans and specifications may prepare separate plans and
38 specifications for

39 (1) The plumbing and gas fitting and all kindred work;

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted May 7, 2009.

²Senate SCU committee amendments adopted November 23, 2009.

1 (2) Steam power plants, steam and hot water heating and
2 ventilating apparatus and all kindred work;

3 (3) Electrical work;

4 (4) Structural steel and ornamental iron work; and

5 (5) All other work required for the completion of the project.

6 The contracting agent shall advertise for and receive, in the
7 manner provided by law, either (a) separate bids for each of said
8 branches of work, or (b) bids for all the work, goods and services
9 required to complete the building to be included in a single overall
10 contract, or (c) both. In the case of a single bid under (b) or (c),
11 there shall be set forth in the bid the name or names of all
12 subcontractors to whom the bidder will subcontract the furnishing
13 of plumbing and gas fitting, and all kindred work, and of the steam
14 and hot water heating and ventilating apparatus, steam power plants
15 and kindred work, and electrical work, structural steel and
16 ornamental iron work, each of which subcontractors shall be
17 qualified in accordance with P.L.1971, c.198 (C.40A:11-1 et seq.).
18 The contracting unit shall require evidence of performance security
19 to be submitted simultaneously with the list of the subcontractors.
20 Evidence of performance security may be supplied by the bidder on
21 behalf of himself and any or all subcontractors, or by each
22 respective subcontractor, or by any combination thereof which
23 results in evidence of performance security equaling, but in no
24 event exceeding, the total amount bid.

25 b. Whenever a bid sets forth more than one subcontractor for
26 any of the specialty trade categories (1) through (4) specified
27 **【hereinabove】** in subsection a. of this section, the bidder shall
28 submit to the contracting unit a certificate signed by the bidder
29 listing each subcontractor named in the bid for that category. The
30 certificate shall set forth the scope of work, goods and services for
31 which the subcontractor has submitted a price quote and which the
32 bidder has agreed to award to each subcontractor should the bidder
33 be awarded the contract. The certificate shall be submitted to the
34 contracting unit simultaneously with the list of the subcontractors.
35 The certificate may take the form of a single certificate listing all
36 subcontractors or, alternatively, a separate certificate may be
37 submitted for each subcontractor. If a bidder does not submit a
38 certificate or certificates to the contracting unit, the contracting unit
39 shall award the contract to the next lowest responsible bidder.

40 c. Contracts shall be awarded to the lowest responsible bidder.
41 In the event that a contract is advertised **【in accordance with c.**
42 **above】** for both separate bids for each branch of work and for bids
43 for all work, goods, and services, said contract shall be awarded in
44 the following manner: If the sum total of the amounts bid by the
45 lowest responsible bidder for each branch is less than the amount
46 bid by the lowest responsible bidder for all the work, goods and
47 services, the contracting unit shall award separate contracts for each

1 of such branches to the lowest responsible bidder therefor, but if the
2 sum total of the amounts bid by the lowest responsible bidder for
3 each branch is not less than the amount bid by the lowest
4 responsible bidder for all the work, goods and services, the
5 contracting unit shall award a single overall contract to the lowest
6 responsible bidder for all of such work, goods and services. In
7 every case in which a contract is awarded 【under (b) above】 for a
8 single overall contract, all payments required to be made under such
9 contract for work, goods and services supplied by a subcontractor
10 shall, upon the certification of the contractor of the amount due to
11 the subcontractor, be paid directly to the subcontractor.

12 d. Any bid specification prepared pursuant to this section that
13 includes the use of 1,000 or more tons of hot mix asphalt, shall
14 include a pay item for any asphalt price adjustment reflecting
15 changes in the cost of asphalt cement. Any bid specification
16 prepared pursuant to this section that includes the use of less than
17 1,000 tons of hot mix asphalt, shall include a pay item for an
18 asphalt price adjustment for any quantity of hot mix asphalt
19 exceeding 1,000 tons that 【was】 maybe used in the work in the
20 event that performance of the work, including change orders,
21 requires more than 1,000 tons of hot mix asphalt.

22 The asphalt price adjustment shall be calculated in accordance
23 with the formula and relevant instructions published in the most
24 recent edition of the New Jersey Department of Transportation
25 Standard Specifications for Road and Bridge Construction as
26 revised by the "Standard Inputs" periodically issued by the
27 department. All invoices for payment shall be accompanied by the
28 calculation of any asphalt price adjustment and a showing of the
29 current month's Asphalt Price Index, the Basic Asphalt Price Index.

30 e. (1) Every bid specification prepared pursuant to this section
31 may be eligible for a fuel price adjustment. Fuel that is eligible for
32 a fuel price adjustment shall be the sum of the quantities of the
33 eligible pay items in the contract times the fuel usage factors as
34 determined by the Department of Transportation. The types of fuel
35 furnished shall be at the option of the contractor.

36 (2) The fuel requirement for items not determined by the
37 Department of Transportation to be eligible, and for pay items in
38 the bid specifications calling for less than 500 gallons of fuel, shall
39 not be eligible for a fuel price adjustment. If more than one pay
40 item has the same nomenclature but with different thicknesses,
41 depths, or types, each individual pay item must require 500 gallons
42 or more of fuel to be eligible for a fuel price adjustment. If more
43 than one pay item has the exact same nomenclature, similar pay
44 items shall be combined and the this combination must require 500
45 gallons ore more of fuel to be eligible for the fuel price adjustment.

46 (3) Fuel price adjustments shall not be made in those months for
47 which the monthly fuel price index has changed by less than five

1 percent from the basic fuel price.

2 f. As used in subsections d. and e. of this section:

3 "Asphalt Price Index" means the Asphalt Price Index as
4 determined and published by the New Jersey Department of
5 Transportation.

6 "Basic Asphalt Price Index" means the Basic Asphalt Price Index
7 as published by the New Jersey Department of Transportation in its
8 "Standard Specifications for Road and Bridge Construction," as
9 revised by the "Standard Inputs" periodically issued by the New
10 Jersey Department of Transportation.

11 "Fuel Price Index" means the Fuel Price Index as determined and
12 published by the New Jersey Department of Transportation.

13 "Pay Item" means a specifically described item of work for
14 which the bidder provides a per unit or lump sum price in a bid
15 specification as determined and published by the New Jersey
16 Department of Transportation.²

17 (cf: P.L.1999, c.440, s.24)

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19 ²['[1.] 2. a. Any [contract entered into] bid specification
20 prepared] pursuant to section 16 of P.L.1971, c.198 (C.40A:11-16)
21 [, which] that includes the use of 1,000 or more tons of hot mix
22 asphalt, shall include [an adjustment clause for] a pay item for any
23 asphalt price adjustment reflecting] changes in the cost of asphalt
24 cement. [The adjustment clause shall be expressed by the
25 following formula: $A=(MA-BA) \times T$, where:

26

27 A= Asphalt Price Adjustment;

28 MA= Monthly Asphalt Price Index, determined by the New
29 Jersey Department of Transportation each month;

30 BA= Basic Asphalt Price Index in effect at the time of the bid, as
31 published by the New Jersey Department of Transportation in its
32 "Standard Specifications for Road and Bridge Construction," as
33 revised by the "Standard Inputs" periodically issued by the
34 department; and

35 T= Tons of New Asphalt Binder, determined by multiplying the
36 percentage of new asphalt binder in the approved job mix
37 formula

38 by the weight of hot mix asphalt.]¹

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40 b. ¹[Adjustments made in accordance with the provisions of
41 this section shall be paid on a lump sum basis and shall be made
42 monthly.] Any bid specification prepared pursuant to section 16 of
43 P.L.1971, c.198 (C.40A:11-16) that includes the use of less than
44 1,000 tons of hot mix asphalt, shall include a pay item for an
45 asphalt price adjustment for any quantity of hot mix asphalt
46 exceeding 1,000 tons that was used in the work in the event that

1 performance of the work, including change orders, requires more
 2 than 1,000 tons of hot mix asphalt.

3 c. The asphalt price adjustment shall be calculated in
 4 accordance with the formula and relevant instructions published in
 5 the most recent edition of the New Jersey Department of
 6 Transportation Standard Specifications for Road and Bridge
 7 Construction as revised by the "Standard Inputs" periodically issued
 8 by the department. All invoices for payment shall be accompanied
 9 by the calculation of any asphalt price adjustment and a showing of
 10 the current month's Asphalt Price Index, the Basic Asphalt Price
 11 Index.¹]²

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 13 ²[¹[^{2.}] ^{3.} a. Every [¹contract entered into] bid specification
 14 prepared¹ pursuant to section 16 of P.L.1971, c.198 (C.40A:11-16)
 15 'that has pay items that are eligible for a fuel price adjustment,
 16 pursuant to the most recent edition of the New Jersey Department of
 17 Transportation Standard Specifications for Road and Bridge
 18 Construction,¹ shall include a [¹provision] pay item¹ for a fuel
 19 price adjustment. [¹Fuel eligible for fuel price adjustment shall be
 20 the sum of the quantities of the eligible pay items in the contract
 21 multiplied by the fuel usage factor, as published by the New Jersey
 22 Department of Transportation in its "Standard Specifications for
 23 Road and Bridge Construction," as revised by the "Standard Inputs"
 24 periodically issued by the Department. Fuel Price Adjustment shall
 25 be determined on a monthly basis by a the formula: $F = (MF - BF) \times$
 26 G , where:

27
 28 F= Fuel Price Adjustment;

29 MF= Monthly Fuel Price Index, determined by the New Jersey
 30 Department of Transportation each month;

31 BF= Basic Fuel Price Index in effect at the time of bid, as
 32 published by the New Jersey Department of Transportation in its
 33 "Standard Specifications for Road and Bridge Construction," as
 34 revised by the "Standard Inputs" periodically issued by the
 35 Department; and

36 G= Gallons of Fuel Available for Price Adjustment.

37 b. Adjustments made in accordance with the provisions of this
 38 section shall be paid on a lump sum basis and shall be made
 39 monthly.]

40
 41 All invoices for payment shall be accompanied by the calculation of
 42 any fuel price adjustment and showing of the monthly Fuel Price
 43 Index, the Basic Fuel Price Index.¹]²

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 45 ¹[^{3.}] ²[^{4.}] ^{2.} This act shall take effect [¹immediately] on the
 46 first day of the fourth month next following the date of enactment¹.

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Permits price adjustments in local public contracts for asphalt

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cement and fuel.