

**SENATE, No. 1888**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

INTRODUCED MAY 10, 2010

**Sponsored by:**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Senator JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**SYNOPSIS**

Requires Director of Division of Local Government Services, in consultation with State Comptroller, to promulgate rules and regulations concerning best practices in public contracts.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/11/2010)**

1 AN ACT concerning best practices in public contracts and amending  
2 P.L.1971, c.198.

3

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

6

7 1. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to  
8 read as follows:

9 3. a. When the cost or price of any contract awarded by the  
10 contracting agent in the aggregate does not exceed in a contract year  
11 the total sum of \$17,500, the contract may be awarded by a  
12 purchasing agent or other employee so designated by the governing  
13 body when so authorized by ordinance or resolution, as appropriate  
14 to the contracting unit, without public advertising for bids, except  
15 that the governing body of any contracting unit may adopt an  
16 ordinance or resolution to set a lower threshold for the receipt of  
17 public bids or the solicitation of competitive quotations. If a  
18 purchasing agent has been appointed, the governing body of the  
19 contracting unit may establish that the bid threshold may be up to  
20 \$25,000 or the threshold amount adjusted by the Governor pursuant  
21 to subsection c. of this section. Such authorization may be granted  
22 for each contract or by a general delegation of the power to  
23 negotiate and award such contracts pursuant to this section.

24 b. Any contract made pursuant to this section may be awarded  
25 for a period of 24 consecutive months, except that contracts for  
26 professional services pursuant to subparagraph (i) of paragraph (a)  
27 of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may  
28 be awarded for a period not exceeding 12 consecutive months. The  
29 Division of Local Government Services shall adopt and promulgate  
30 rules and regulations concerning the methods of accounting for all  
31 contracts that do not coincide with the contracting unit's fiscal year.

32 c. The Governor, in consultation with the Department of the  
33 Treasury, shall, no later than March 1 of every fifth year beginning  
34 in the fifth year after the year in which P.L.1999, c.440 takes effect,  
35 adjust the threshold amount, in direct proportion to the rise or fall of  
36 the index rate as that term is defined in section 2 of P.L.1971, c.198  
37 (C.40A:11-2), and shall round the adjustment to the nearest \$1,000.  
38 The Governor shall, no later than June 1 of every fifth year, notify  
39 each governing body of the adjustment. The adjustment shall  
40 become effective on July 1 of the year in which it is made.

41 d. The Director of the Division of Local Government Services,  
42 in consultation with the State Comptroller, shall promulgate rules  
43 and regulations concerning best practices for contracts that do not  
44 exceed the bid threshold, to include, but not be limited to, the  
45 following:

**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       (1) Ensuring that the pool of vendors solicited for competitive  
2 quotations is as expansive as possible;
- 3       (2) Ensuring that the eligibility requirements for a vendor  
4 seeking to compete for a contract are limited only by concerns  
5 related to the vendor's responsibility;
- 6       (3) Ensuring that requests for proposals contain a clear and  
7 detailed statement of work to be undertaken, and that the  
8 contracting unit includes a clear, complete, and specific statement  
9 of work in the final executed contract with the vendor, both of  
10 which emphasize the result to be achieved, rather than detailing the  
11 process for accomplishing that goal;
- 12       (4) Ensuring that proposals are judged on the basis of  
13 predetermined, merit-based evaluative criteria, which are made  
14 known to vendors before proposals are submitted, and disclosed to  
15 prospective vendors as early as possible in the procurement process,  
16 such as in the request for proposals or other solicitation document;
- 17       (5) Ensuring that weighing of evaluative criteria is used if some  
18 criteria are determined to be more important than others. The  
19 weight assigned to each criterion generally should be disclosed in  
20 the request for proposals;
- 21       (6) Ensuring that the evaluative criteria are judged by a  
22 qualified evaluation committee, which is established before  
23 proposals are received, and which is sufficiently qualified to  
24 evaluate the strengths and weaknesses of the proposals submitted.  
25 Potential evaluation committee members should be screened  
26 meticulously for conflicts of interest;
- 27       (7) Ensuring that the evaluation process should be explainable  
28 to evaluators and competing vendors, and capable of withstanding  
29 scrutiny under a protest challenge, and ensuring that the meaning of  
30 each criterion and the reason each criterion is part of the evaluative  
31 analysis is explained to evaluators before judging;
- 32       (8) Ensuring that each member of the qualified evaluation  
33 committee scores each proposal and provides comments that  
34 explain the score assigned to each criterion, and that the scoring  
35 process and award recommendations should be well-documented  
36 and retained;
- 37       (9) Ensuring that every step in the evaluative process should be  
38 documented through scoring sheets, a written record of what  
39 transpired during any permitted negotiations between vendors and  
40 procurement officials, a written comparative analysis of competing  
41 proposals, and a written award recommendation;
- 42       (10) Ensuring that the written award recommendation explains  
43 the factors that led to the award decision, offers qualitative  
44 discussion of the leading competing proposals, and describes the  
45 specific characteristics of the winning vendor's proposal that  
46 resulted in its selection over the others; and
- 47       (11) Ensuring that the period of time for the preservation of  
48 procurement materials should be set by the contracting unit.

1       e. The Director of the Division of Local Government Services,  
2 in consultation with the State Comptroller, shall review these rules  
3 and regulations at least once every two years after their initial  
4 promulgation, and make any revisions necessary to ensure that  
5 current best practices in the procurement of goods or services are  
6 followed by all contracting units.

7 (cf: P.L.2009, c.166, s.2)

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9       2. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to  
10 read as follows:

11       4. a. Every contract awarded by the contracting agent for the  
12 provision or performance of any goods or services, the cost of  
13 which in the aggregate exceeds the bid threshold, shall be awarded  
14 only by resolution of the governing body of the contracting unit to  
15 the lowest responsible bidder after public advertising for bids and  
16 bidding therefor, except as is provided otherwise in this act or  
17 specifically by any other law. The governing body of a contracting  
18 unit may, by resolution approved by a majority of the governing  
19 body and subject to subsections b. and c. of this section, disqualify  
20 a bidder who would otherwise be determined to be the lowest  
21 responsible bidder, if the governing body finds that it has had prior  
22 negative experience with the bidder.

23       b. As used in this section, "prior negative experience" means  
24 any of the following:

25       (1) the bidder has been found, through either court adjudication,  
26 arbitration, mediation, or other contractually stipulated alternate  
27 dispute resolution mechanism, to have: failed to provide or perform  
28 goods or services; or failed to complete the contract in a timely  
29 manner; or otherwise performed unsatisfactorily under a prior  
30 contract with the contracting unit;

31       (2) the bidder defaulted on a contract, thereby requiring the  
32 local unit to utilize the services of another contractor to provide the  
33 goods or perform the services or to correct or complete the contract;

34       (3) the bidder defaulted on a contract, thereby requiring the  
35 local unit to look to the bidder's surety for completion of the  
36 contract or tender of the costs of completion; or

37       (4) the bidder is debarred or suspended from contracting with  
38 any of the agencies or departments of the executive branch of the  
39 State of New Jersey at the time of the contract award, whether or  
40 not the action was based on experience with the contracting unit.

41       c. The following conditions apply if the governing body of a  
42 contracting unit is contemplating a disqualification based on prior  
43 negative experience:

44       (1) The existence of any of the indicators of prior negative  
45 experience set forth in this section shall not require that a bidder be  
46 disqualified. In each instance, the decision to disqualify shall be  
47 made within the discretion of the governing body and shall be  
48 rendered in the best interests of the contracting unit.

1 (2) All mitigating factors shall be considered in determining the  
2 seriousness of the prior negative experience and in deciding  
3 whether disqualification is warranted.

4 (3) The bidder shall be furnished by the governing body with a  
5 written notice (a) stating that a disqualification is being considered;  
6 (b) setting forth the reason for the disqualification; and (c)  
7 indicating that the bidder shall be accorded an opportunity for a  
8 hearing before the governing body if the bidder so requests within a  
9 stated period of time. At the hearing, the bidder shall show good  
10 cause why the bidder should not be disqualified by presenting  
11 documents and testimony. If the governing body determines that  
12 good cause has not been shown by the bidder, it may vote to find  
13 the bidder lacking in responsibility and, thus, disqualified.

14 (4) Disqualification shall be for a reasonable, defined period of  
15 time which shall not exceed five years.

16 (5) A disqualification, other than a disqualification pursuant to  
17 which a governing body is prohibited by law from entering into a  
18 contract with a bidder, may be voided or the period thereof may be  
19 reduced, in the discretion of the governing body, upon the  
20 submission of a good faith application under oath, supported by  
21 documentary evidence, setting forth substantial and appropriate  
22 grounds for the granting of relief, such as reversal of a judgment, or  
23 actual change of ownership, management or control of the bidder.

24 (6) An opportunity for a hearing need not be offered to a bidder  
25 whose disqualification is based on its suspension or debarment by  
26 an agency or department of the executive branch of the State of  
27 New Jersey. The term of such a disqualification shall be concurrent  
28 with the term of the suspension or debarment by the State agency or  
29 department.

30 d. The Director of the Division of Local Government Services,  
31 in consultation with the State Comptroller, shall promulgate rules  
32 and regulations concerning best practices for contracts which  
33 exceed the bid threshold, to include, but not be limited to, the  
34 following:

35 (1) Ensuring that the pool of prospective bidders reached by the  
36 advertising is as expansive as possible;

37 (2) Ensuring that the eligibility requirements for a vendor  
38 seeking to compete for a contract are limited only by concerns  
39 related to the vendor's responsibility;

40 (3) Ensuring that requests for bids contain a clear and detailed  
41 statement of work to be undertaken, and that the contracting unit  
42 includes a clear, complete, and specific statement of work in the  
43 final executed contract with the vendor, both of which emphasize  
44 the result to be achieved, rather than detailing the process for  
45 accomplishing that goal;

46 (4) Ensuring that bid submissions are judged on the basis of  
47 predetermined, merit-based evaluative criteria, which are made  
48 known to vendors before bids are submitted, and disclosed to

1 prospective bidders as early as possible in the procurement process,  
2 such as in the request for bids or other solicitation document;

3 (5) Ensuring that weighing of evaluative criteria is used if some  
4 criteria are determined to be more important than others. The  
5 weight assigned to each criterion generally should be disclosed in  
6 the request for bids;

7 (6) Ensuring that the evaluative criteria are judged by a  
8 qualified evaluation committee, which is established before bids are  
9 received, and which is sufficiently qualified to evaluate the  
10 strengths and weaknesses of the bids submitted. Potential  
11 evaluation committee members should be screened meticulously for  
12 conflicts of interest;

13 (7) Ensuring that the evaluation process should be explainable  
14 to evaluators and competing vendors, and capable of withstanding  
15 scrutiny under a protest challenge, and ensuring that the meaning of  
16 each criterion and the reason each criterion is part of the evaluative  
17 analysis is explained to evaluators before judging;

18 (8) Ensuring that each member of the qualified evaluation  
19 committee scores each bid and provides comments that explain the  
20 score assigned to each criterion, and that the scoring process and  
21 award recommendations should be well-documented and retained;

22 (9) Ensuring that every step in the evaluative process should be  
23 documented through scoring sheets, a written record of what  
24 transpired during any permitted negotiations between vendors and  
25 procurement officials, a written comparative analysis of competing  
26 bid proposals, and a written award recommendation;

27 (10) Ensuring that the written award recommendation explains  
28 the factors that led to the award decision, offers qualitative  
29 discussion of the leading competing bid proposals, and describes  
30 the specific characteristics of the winning vendor's bid proposal  
31 that resulted in its selection over the others; and

32 (11) Ensuring that the period of time for the preservation of  
33 procurement materials should be set by the contracting unit.

34 e. The Director of the Division of Local Government Services,  
35 in consultation with the State Comptroller, shall review these rules  
36 and regulations at least once every two years after their initial  
37 promulgation, and make any revisions necessary to ensure that  
38 current best practices in the procurement of goods or services are  
39 followed by all contracting units.

40 (cf: P.L.1999, c.440, s.8)

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42 3. Section 4 of P.L.1999, c.440 (C.40A:11-4.4) is amended to  
43 read as follows:

44 4. The competitive contracting process shall utilize request for  
45 proposals documentation in accordance with the following  
46 provisions:

47 a. The purchasing agent or counsel or administrator shall  
48 prepare or have prepared a request for proposal documentation,

1 which shall include: all requirements deemed appropriate and  
2 necessary to allow for full and free competition between vendors;  
3 information necessary for potential vendors to submit a proposal;  
4 and a methodology by which the contracting unit will evaluate and  
5 rank proposals received from vendors.

6 b. The methodology for the awarding of competitive contracts  
7 shall be based on an evaluation and ranking, which shall include  
8 technical, management, and cost related criteria, and may include a  
9 weighting of criteria, all developed in a way that is intended to meet  
10 the specific needs of the contracting unit, and where such criteria  
11 shall not unfairly or illegally discriminate against or exclude  
12 otherwise capable vendors. When an evaluation methodology uses  
13 a weighting of criteria, at the option of the contracting unit the  
14 weighting to be accorded to each criterion may be disclosed to  
15 vendors prior to receipt of the proposals. The methodology for  
16 awarding competitive contracts shall comply with such rules and  
17 regulations as the director may adopt, after consultation with the  
18 Commissioner of Education, pursuant to the "Administrative  
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

20 c. At no time during the proposal solicitation process shall the  
21 purchasing agent or counsel or administrator convey information,  
22 including price, to any potential vendor which could confer an  
23 unfair advantage upon that vendor over any other potential vendor.  
24 If a purchasing agent or counsel or administrator desires to change  
25 proposal documentation, the purchasing agent or counsel or  
26 administrator shall notify only those potential vendors who received  
27 the proposal documentation of any and all changes in writing and  
28 all existing documentation shall be changed appropriately.

29 d. All proposals and contracts shall be subject to the provisions  
30 of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission  
31 of a statement of corporate ownership and the provisions of  
32 P.L.1975, c.127 (C.10:5-31 et seq.) concerning equal employment  
33 opportunity and affirmative action.

34 e. The Director of the Division of Local Government Services,  
35 in consultation with the State Comptroller, shall promulgate rules  
36 and regulations concerning best practices in competitive  
37 contracting, to include, but not be limited to, the following:

38 (1) Ensuring that the pool of vendors solicited is as expansive as  
39 possible;

40 (2) Ensuring that the eligibility requirements for a vendor  
41 seeking to compete for a contract are limited only by concerns  
42 related to the vendor's responsibility;

43 (3) Ensuring that requests for proposals contain a clear and  
44 detailed statement of work to be undertaken, and that the  
45 contracting unit includes a clear, complete, and specific statement  
46 of work in the final executed contract with the vendor, both of  
47 which emphasize the result to be achieved, rather than detailing the  
48 process for accomplishing that goal;

1       (4) Ensuring that proposals are judged on the basis of  
2 predetermined, merit-based evaluative criteria, which are made  
3 known to vendors before proposals are submitted, and disclosed to  
4 prospective vendors as early as possible in the procurement process,  
5 such as in the request for proposals or other solicitation document;

6       (5) Ensuring that weighing of evaluative criteria is used if some  
7 criteria are determined to be more important than others. The  
8 weight assigned to each criterion generally should be disclosed in  
9 the request for proposals;

10       (6) Ensuring that the evaluative criteria are judged by a  
11 qualified evaluation committee, which is established before  
12 proposals are received, and which is sufficiently qualified to  
13 evaluate the strengths and weaknesses of the proposals submitted.  
14 Potential evaluation committee members should be screened  
15 meticulously for conflicts of interest;

16       (7) Ensuring that the evaluation process should be explainable  
17 to evaluators and competing vendors, and capable of withstanding  
18 scrutiny under a protest challenge, and ensuring that the meaning of  
19 each criterion and the reason each criterion is part of the evaluative  
20 analysis is explained to evaluators before judging;

21       (8) Ensuring that each member of the qualified evaluation  
22 committee scores each proposal and provides comments that  
23 explain the score assigned to each criterion, and that the scoring  
24 process and award recommendations should be well-documented  
25 and retained;

26       (9) Ensuring that every step in the evaluative process should be  
27 documented through scoring sheets, a written record of what  
28 transpired during any permitted negotiations between vendors and  
29 procurement officials, a written comparative analysis of competing  
30 proposals, and a written award recommendation;

31       (10) Ensuring that the written award recommendation explains  
32 the factors that led to the award decision, offers qualitative  
33 discussion of the leading competing proposals, and describes the  
34 specific characteristics of the winning vendor's proposal that  
35 resulted in its selection over the others; and

36       (11) Ensuring that the period of time for the preservation of  
37 procurement materials should be set by the contracting unit.

38       f. The Director of the Division of Local Government Services,  
39 in consultation with the State Comptroller, shall review these rules  
40 and regulations at least once every two years after their initial  
41 promulgation, and make any revisions necessary to ensure that  
42 current best practices in the procurement of goods or services are  
43 followed by all contracting units.

44 (cf: P.L.2009, c.4, s.7)

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46       4. This act shall take effect immediately.

STATEMENT

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This bill requires the Director of the Division of Local Government Services, in consultation with the State Comptroller, to promulgate rules and regulations concerning best practices in all forms of contracting for the procurement of goods and services by contracting units, to include, but not be limited to, the following:

(1) Ensuring that the pool of vendors solicited is as expansive as possible;

(2) Ensuring that the eligibility requirements for a vendor seeking to compete for a contract are limited only by concerns related to the vendor's responsibility;

(3) Ensuring that requests for proposals contain a clear and detailed statement of work to be undertaken, and that the contracting unit includes a clear, complete, and specific statement of work in the final executed contract with the vendor, both of which emphasize the result to be achieved, rather than detailing the process for accomplishing that goal;

(4) Ensuring that proposals are judged on the basis of predetermined, merit-based evaluative criteria, which are made known to vendors before proposals are submitted, and disclosed to prospective vendors as early as possible in the procurement process, such as in the request for proposals, request for bids, or other solicitation document;

(5) Ensuring that weighing of evaluative criteria is used if some criteria are determined to be more important than others. The weight assigned to each criterion generally should be disclosed in the request for proposals;

(6) Ensuring that the evaluative criteria are judged by a qualified evaluation committee, which is established before proposals are received, and which is sufficiently qualified to evaluate the strengths and weaknesses of the bids or proposals submitted. Potential evaluation committee members should be screened meticulously for conflicts of interest;

(7) Ensuring that the evaluation process should be explainable to evaluators and competing vendors, and capable of withstanding scrutiny under a protest challenge, and ensuring that the meaning of each criterion and the reason each criterion is part of the evaluative analysis is explained to evaluators before judging;

(8) Ensuring that each member of the qualified evaluation committee scores each proposal and provides comments that explain the score assigned to each criterion, and that the scoring process and award recommendations should be well-documented and retained;

(9) Ensuring that every step in the evaluative process should be documented through scoring sheets, a written record of what transpired during any permitted negotiations between vendors and

1 procurement officials, a written comparative analysis of competing  
2 bids or proposals, and a written award recommendation;

3 (10) Ensuring that the written award recommendation explains  
4 the factors that led to the award decision, offers qualitative  
5 discussion of the leading competing bids or proposals, and  
6 describes the specific characteristics of the winning vendor's bid or  
7 proposal that resulted in its selection over the others; and

8 (11) Ensuring that the period of time for the preservation of  
9 procurement materials should be set by the contracting unit.

10 The bill requires the Director of the Division of Local  
11 Government Services, in consultation with the State Comptroller, to  
12 review these rules and regulations at least once every two years  
13 after their initial promulgation, and make any revisions necessary to  
14 ensure that current best practices in the procurement of goods or  
15 services are followed by all contracting units.