SENATE, No. 1545

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

SYNOPSIS
Provides awarding of contracts for professional services by State, county, municipal, and school district through competitive contracting process

CURRENT VERSION OF TEXT
As introduced.
An Act concerning certain State, county, municipal, and school
district contracts and amending and supplementing various parts
of the statutory law.

Be it enacted by the Senate and General Assembly of the State
of New Jersey:

1. Section 4 of P.L.1954, c.48 (C.52:34-9) is amended to read
as follows:
   4. Any such purchase, contract or agreement may be made,
negotiated or awarded pursuant to section 3 of this act when the
subject matter thereof consists of
   (a) services to be performed by the contractor personally which
are [(a) of a technical and professional nature, or (b)] to be
performed under the supervision of the Director of the Division of
Purchase and Property and paid for on a time basis; or
   (b) the purchase of perishable foods or subsistence supplies; or
   (c) the lease of such office space, office machinery, specialized
equipment, buildings or real property as may be required for the
conduct of the State's business; or
   (d) the acquisition of any real property by gift, grant, purchase
or any other lawful manner in the name of and for the use of the
State for the purpose of the administration of the State's business in
accordance with appropriations made therefor when moneys are
required for the acquisition; or
   (e) supplies or services as to which the bid prices after
advertising therefor are not reasonable or have not been
independently arrived at in open competition; provided, that no
negotiated purchase, contract or agreement may be entered into
under this paragraph after the rejection of all bids received unless
(a) notification of the intention to negotiate and reasonable
opportunity to negotiate shall have been given by the Director of
the Division of Purchase and Property to each responsible bidder,
(b) the negotiated price is lower than the lowest rejected bid price
of a responsible bidder, and (c) such negotiated price is the lowest
negotiated price offered by any responsible supplier.
   (cf: P.L.1954, c.48, s.4)

2. (New section) a. Any contract for services to be performed
by a contractor personally which are of a technical and professional
nature, other than a contract for architectural, engineering and land
surveying services awarded pursuant to P.L.1997, c.399 (C.52:34-
9.1 et seq.), that is to be awarded by a State agency shall be publicly
announced prior to being awarded and contracts for these services

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.
shall be negotiated on the basis of demonstrated competence and
qualifications for the type of technical and professional service
required and at fair and reasonable compensation and awarded
pursuant to a competitive contracting process in the manner
provided by this section.

b. A professional firm that wishes to be qualified to provide
technical and professional services to a State agency seeking to
negotiate a contract or agreement for the performance of those
services shall file with the agency a current statement of
qualifications and supporting data. The statement may be filed at
any time during a calendar year, and a $100 fee shall be remitted to
the State Treasurer each time a statement is filed. The content of
any such statement shall conform to such regulations with respect
thereto as the State Treasurer, in accordance with the
seq.), shall promulgate. No statement that shall have been filed
more than two years prior to the publication of an advertisement
pursuant to this section shall be deemed to be a current statement
with respect to qualifications of the firm.

c. Notwithstanding the provisions of any other law to the
contrary, a contract or agreement with an agency for the
procurement of technical and professional services shall be publicly
advertised prior to the solicitation of proposals or expressions of
interest from interested firms. To the extent consistent with the
purposes and provisions of this section, the advertisement shall
conform to the requirements applicable under subsections (a) and
(b) of section 7 of P.L.1954, c.48 (C.52:34-12) or may be publicly
advertised through electronic means. The advertisement shall
include a statement of the criteria by which the agency seeking to
procure those services shall evaluate the qualifications of
professional firms and determine the order of preference to be used
in designating the firms most highly qualified to perform the
services. In addition, the advertisement shall include notice that
professional firms wishing to be considered for selection as a
potential provider of such services in connection with a proposed
project must have submitted to the agency a current statement of
qualifications and supporting data as provided in this section.

d. For each proposed contract, an agency shall evaluate current
statements of qualifications and supporting data on file with the
agency. The agency may solicit proposals or expressions of interest
unique to the specific contract that would in narrative form outline
concepts and methods of approach to the contract. The agency shall
select, in order of preference, based upon the criteria included in the
advertisement required by this section, at least three professional
firms deemed to be the most highly qualified to provide the services
required, except that the agency may select fewer professional firms
if fewer such firms responded to the solicitation or meet the
qualifications required for the project.
e. An agency which intends or expects to make, negotiate or award a contract or agreement for the procurement of technical and professional services shall, before publishing an advertisement of notice with respect to any such contract or agreement, have adopted by regulation and have promulgated, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the criteria by which it shall make, with respect to any such contract or agreement, the selection of qualified firms as prescribed by this section.

f. Once the top three or more ranked firms have been identified, each firm, at the request of the agency, shall submit a fee proposal. The firms shall not be told of their ranking position at that time. Using the three fee proposals to provide a general guideline, an agency shall negotiate a contract with the most qualified professional firm at compensation which the agency determines to be fair and reasonable to the State of New Jersey. In making this determination, the agency shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified at a fee the agency determines to be fair and reasonable, negotiations with that professional firm shall be formally terminated. The agency shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the agency shall formally terminate negotiations. The agency shall then undertake negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

g. Nothing in this section shall preclude a State agency from using procurement processes other than those prescribed herein if those processes are required by the federal government or if an emergency has been declared by the chief executive officer of the agency.

h. As used in this section, "State agency" or agency means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency; and “Professional firm” means any individual, firm, partnership, corporation, association or other legal entity permitted by law to provide technical and professional services to this State.
Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read as follows:

5. Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body if:

(1) The subject matter thereof consists of:
   (a) (i) Professional services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in the official newspaper, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating the contracting unit; or (ii) Extraordinary unspecifiable services. The application of this exception shall be construed narrowly in favor of open competitive bidding, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed, in the manner set forth in subsection (1) (a) (i) of this section, a brief notice of the award of the contract;
   (b) The doing of any work by employees of the contracting unit;
   (c) The printing of legal briefs, records, and appendices to be used in any legal proceeding in which the contracting unit may be a party;
   (d) The furnishing of a tax map or maps for the contracting unit;
   (e) The purchase of perishable foods as a subsistence supply;
   (f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;
   (g) The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation;
   (h) The printing of bonds and documents necessary to the issuance and sale thereof by a contracting unit;
   (i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with the service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
   (j) The publishing of legal notices in newspapers as required by law;
(k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;

(l) Those goods and services necessary or required to prepare and conduct an election;

(m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;

(n) The doing of any work by persons with disabilities employed by a sheltered workshop;

(o) The provision of any goods or services including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;

(p) (Deleted by amendment, P.L.1999, c.440.)

(q) Library and educational goods and services;

(r) (Deleted by amendment, P.L.2005, c.212).

(s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products;

(t) (Deleted by amendment, P.L.1999, c.440.)

(u) Contracting unit towing and storage contracts, provided that all of the contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of the services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and without regard for the value of the contract therefor;

(v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C. s.796;

(w) The purchase of electricity or administrative or dispatching services directly related to the transmission of purchased electricity by a contracting unit engaged in the generation of electricity;

(x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances;

(y) An agreement for the purchase of an equitable interest in a water supply facility or for the provision of water supply services entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
an agreement entered into pursuant to N.J.S.40A:31-1 et al., so long as the agreement is entered into no later than six months after the effective date of P.L.1993, c.381;

(z) A contract for the provision of water supply services entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

(aa) The cooperative marketing of recyclable materials recovered through a recycling program;

(bb) A contract for the provision of wastewater treatment services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

(cc) Expenses for travel and conferences;

(dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;

(ee) The management or operation of an airport owned by the contracting unit pursuant to R.S.40:8-1 et seq.;

(ff) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(gg) A contract for the provision of water supply services or wastewater treatment services entered into pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15); or

(hh) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit.

(2) It is to be made or entered into with the United States of America, the State of New Jersey, county, or municipality, or any board, body, officer, agency, or authority thereof, or any other state or subdivision thereof.

(3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected the bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; a contract may then be negotiated and
may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing the contract; provided, however, that:

(i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit;

(ii) The terms, conditions, restrictions, and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

(iii) Any minor amendment or modification of any of the terms, conditions, restrictions, and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding the contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award the contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for goods or services.

Whenever a contracting unit shall determine that a bid was not arrived at independently in open competition pursuant to subsection (3) of this section it shall thereupon notify the county prosecutor of the county in which the contracting unit is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

(4) The contracting unit has solicited and received at least three quotations on materials, supplies, or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12), and the lowest responsible quotation is at least 10 percent less than the price the contracting unit would be charged for the identical materials, supplies, or equipment, in the same quantities, under the State contract. A contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit at a meeting thereof authorizing the contract. A copy of the purchase order relating to the contract, the requisition for purchase order, if
applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of the contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of the contracts on local contracting and shall consult with the State Treasurer on the impact of the contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.

(5) Notwithstanding any provision of law, rule, or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products, provided that in lieu of engaging in public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing the services. Within 30 days after receipt of the written description the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section, "collection" means the physical removal of recyclable materials from curbside or any other location selected by the contracting unit.

(6) Notwithstanding any provision of law, rule, or regulation to
the contrary, the contract is for the provision of electricity by a
contracting unit engaged in the distribution of electricity for retail
sale, for the provision of wholesale electricity by a municipal
shared services energy authority as defined pursuant to section 3 of
P.L.2015, c.129 (C.40A:66-3), or for the provision of administrative
or dispatching services related to the transmission of electricity,
provided that in lieu of engaging in public advertising for bids and
the bidding therefor, the contracting unit shall, prior to commencing
the procurement process, submit for approval to the Director of the
Division of Local Government Services, a written detailed
description of the process to be followed in securing these services.
The process shall be designed in a way that is appropriate to and
commensurate with industry practices, and the integrity of the
government contracting process. Within 30 days after receipt of the
written description, the director shall, if the director finds that the
process provides for fair competition and integrity in the
negotiation process, approve, in writing, the description submitted
by the contracting unit. If the director finds that the process does
not provide for fair competition and integrity in the negotiation
process, the director shall advise the contracting unit of the
deficiencies that must be remedied. If the director fails to respond
in writing to the contracting unit within 30 days, the procurement
process, as submitted to the director pursuant to this section, shall
be deemed approved.

(cf: P.L.2017, c.131, s.174)

4. Section 1 of P.L.1999, c.440 (C.40A:11-4.1) is amended to
read as follows:

1. Notwithstanding the provisions of any law, rule or regulation
to the contrary, competitive contracting may be used, and shall be
used in the case of contracts for professional services under
paragraph s. of subsection b. of this section, by local contracting
units in lieu of public bidding for procurement of specialized goods
and services the price of which exceeds the bid threshold, for the
following purposes:

a. The purchase or licensing of proprietary computer software
designed for contracting unit purposes, which may include
hardware intended for use with the proprietary software. This
subsection shall not be utilized for the purpose of acquiring general
purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity
incorporated under Title 15A of the New Jersey Statutes for the
purpose of:

(1) the operation and management of a wastewater treatment
system or a water supply or distribution facility of the type
described in subsection (37) of section 15 of P.L.1971, c.198
(C.40A:11-15), provided that competitive contracting shall not be
used as a means of awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et al.) and P.L.1985, c.72 (C.58:27-1 et al.);
(2) the operation, management or administration of recreation or social service facilities or programs, which shall not include the administration of benefits under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.), or under General Assistance;
(3) the operation, management or administration of data processing services; or
(4) the operation and management of a county hospital pursuant to the "Local Hospital Authority Law," P.L.2006, c.46 (C.30:9-23.15 et al.);
c. (Deleted by amendment, P.L.2009, c.4).
d. Homemaker--home health services;
e. Laboratory testing services;
f. Emergency medical services;
g. Contracted food services;
h. Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities;
i. At the option of the governing body of the contracting unit, any good or service that is exempt from bidding pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);
j. Concessions;
k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services;
l. Maintenance, custodial, and groundskeeping services;
m. Consulting services;
n. Emergency medical billing services;
o. Property appraisal services;
p. Reassessment or revaluation services;
q. Grant writing services;
r. Animal control services; and
s. Professional services, other than contracts for architectural, engineering, or land surveying services which shall be awarded pursuant to section 5 of P.L. ___, c. ___ (C. ___) (pending before the Legislature as this bill).
Any purpose included herein shall not be considered by a contracting unit as an extraordinary unspecifiable service pursuant to subparagraph (ii) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5).
(cf: P.L.2016, c.55, s.9)
5. (New section) a. It is the policy of this State that contracts to be awarded by a contracting unit, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), for architectural, engineering and land surveying services shall be publicly announced prior to being
awarded and that contracts for these services shall be negotiated on
the basis of demonstrated competence and qualifications for the
type of professional services required and at fair and reasonable
compensation.

b. As used in this section:
"Compensation" means the basis of payment by a contracting
unit for professional architectural, engineering or land surveying
services;
"Professional firm” means any individual, firm, partnership,
corporation, association or other legal entity permitted by law to
provide professional architectural, engineering, or land surveying
services in this State; and
"Professional architectural, engineering and land surveying
services” means those services, including planning, environmental,
and construction inspection services required for the development
and construction of projects, within the scope of the practice of
architecture, professional engineering or professional land
surveying as defined by the laws of this State or those performed by
an architect, professional engineer or professional land surveyor in
connection with his professional employment practice.

c. A professional firm which wishes to be considered qualified
to provide professional architectural, engineering, or land surveying
services to a contracting unit seeking to negotiate a contract or
agreement for the performance of such services shall file or shall
have filed with the contracting unit a current statement of
qualifications and supporting data. Such a statement may be filed at
any time during a calendar year, and a $100 fee shall be remitted to
the contracting unit by the professional firm at the time each
statement is filed. No statement which shall have been filed more
than two years prior to the publication of an advertisement pursuant
to the provisions of this section shall be deemed to be a current
statement with respect to qualification of the firm which shall have
filed the statement to provide professional architectural,
engineering, or land surveying services under any contract or
agreement of which notice is given through that advertisement.

A statement of qualifications and supporting data filed with a
contracting unit under this subsection shall be a public record for all
purposes of P.L.1963, c.73 (C.47:1A-1 et seq.).

d. Notwithstanding any other provision of the Local Public
Contracts Law, P.L.1971, c.198 (C.40A:11-1 et seq.) to the
contrary, a contract or agreement with an contracting unit for the
procurement of professional architectural, engineering, or land
surveying services shall be publicly advertised prior to the
solicitation of proposals or expressions of interest from interested
firms. To the extent consistent with the purposes and provisions of
this section, the advertisement shall conform to the requirements
applicable to publicly bid contracts or may be publicly advertised
through electronic means. The advertisement shall include a
statement of the criteria by which the contracting unit seeking to
procure those professional services shall evaluate the technical
qualifications of professional firms and determine the order of
preference to be used in designating the firms most highly qualified
to perform the services; this statement shall either set forth
explicitly and in full the terms of those criteria or identify them by
reference to the regulation or regulations in which those criteria
shall have been promulgated as required by this section. In
addition, the advertisement shall include notice that professional
firms wishing to be considered for selection as a potential provider
of such services in connection with a proposed project must have
submitted to the contracting unit a current statement of
qualifications and supporting data as prescribed in this section.

e. In the procurement of architectural, engineering and land
surveying services, no contracting unit shall make, negotiate, or
award a contract or agreement for the performance of such services
with or to any professional firm which has not filed with the
contracting unit a current statement of qualifications and supporting
data as prescribed by this section.

f. For each proposed project, a contracting unit shall evaluate
current statements of qualifications and supporting data on file with
the contracting unit. The contracting unit may solicit proposals or
expressions of interest unique to the specific project which would in
narrative form outline design concepts and proposed methods of
approach to the assignment. The contracting unit shall select, in
order of preference, based upon the criteria included in the
advertisement required by this section, at least three professional
firms deemed to be the most highly qualified to provide the services
required, except that the contracting unit may select fewer
professional firms if fewer such firms responded to the solicitation
or meet the qualifications required for the project.

g. A contracting unit which intends or expects to make,
negotiate or award a contract or agreement for the procurement of
professional architectural, engineering, or land surveying services
shall, before publishing an advertisement of notice with respect to
any such contract or agreement, have adopted the criteria by which
it shall with respect to any such contract or agreement make the
selection of qualified firms as prescribed by this section.

h. Once the top three or more ranked firms have been
identified, each firm, at the request of the contracting unit, shall
submit a fee proposal. The firms shall not be told of their ranking
position at that time. Using the three fee proposals to provide a
general guideline, a contracting unit shall negotiate a contract with
the most technically qualified professional firm for architectural,
engineering or land surveying services at compensation which the
contracting unit determines to be fair and reasonable to the
contracting unit. In making this determination, the contracting unit
shall take into account the estimated value of the services to be
rendered and the scope, complexity, and professional nature thereof.
Should the contracting unit be unable to negotiate a satisfactory
contract with the professional firm considered to be the most
qualified at a fee the contracting unit determines to be fair and
reasonable, negotiations with that professional firm shall be
formally terminated. The contracting unit shall then undertake
negotiations with the second most qualified professional firm.
Failing accord with the second most qualified professional firm, the
contracting unit shall formally terminate negotiations. The
contracting unit shall then undertake negotiations with the third
most qualified professional firm. Should the contracting unit be
unable to negotiate a satisfactory contract with any of the selected
professional firms, it shall select additional professional firms in
order of their competence and qualifications and it shall continue
negotiations in accordance with this section until an agreement is
reached.

i. Notwithstanding the provisions of any other law to the
contrary, the provisions of this section shall only apply to contracts
for architectural, engineering and land surveying services in excess
of the bid threshold established by law.

j. Nothing in this section shall preclude a contracting unit from
using procurement processes other than those prescribed herein if
those processes have been approved by the federal government or
other State statute or if an emergency has been declared by the chief
executive officer of the contracting unit.

k. The Director of Division of Local Government Services in
the Department of Community Affairs shall adopt, in accordance
with the "Administrative Procedure Act," P.L.1968, c.410
(C.52:14B-1 et seq.), such rules and regulations as be necessary to
implement the provisions of this section.

6. N.J.S.18A:18A-5 is amended to read as follow:
18A:18A-5. Exceptions to requirement for advertising. Any
contract, the amount of which exceeds the bid threshold, shall be
negotiated and awarded by the board of education by resolution at a
public meeting without public advertising for bids and bidding
therefor if

a. The subject matter thereof consists of:

   (1) [Professional services. The board of education shall in each
   instance state supporting reasons for its action in the resolution
   awarding each contract and shall forthwith cause to be printed once,
   in an official newspaper, a brief notice stating the nature, duration,
   service and amount of the contract, and that the resolution and
   contract are on file and available for public inspection in the office
   of the board of education] Deleted by amendment, P.L.____,
c. (pending before the Legislature as this bill):

   (2) Extraordinary unspecifiable services which cannot
reasonably be described by written specifications. The application
of this exception as to extraordinary unspecifiable services shall be
construed narrowly in favor of open competitive bidding where
possible and the Director of the Division of Local Government
Services in the Department of Community Affairs is authorized to
establish rules and regulations after consultation with the
Commissioner of Education limiting its use in accordance with the
intention herein expressed; and the board of education shall in each
instance state supporting reasons for its action in the resolution
awarding the contract for extraordinary unspecifiable services and
shall forthwith cause to be printed, in the manner set forth in
paragraph (1) of this subsection, a brief notice of the award of such
contract;
   (3) The doing of any work by employees of the board of
education;
   (4) The printing of all legal notices; and legal briefs, records and
appendices to be used in any legal proceeding in which the board of
education may be a party;
   (5) Library and educational goods and services;
   (6) Food supplies, including food supplies for home economics
classes, when purchased pursuant to rules and regulations of the
State board and in accordance with the provisions of
N.J.S.18A:18A-6;
   (7) The supplying of any product or the rendering of any service
by a public utility, which is subject to the jurisdiction of the Board
of Public Utilities, in accordance with the tariffs and schedules of
charges made, charged and exacted, filed with said board;
   (8) The printing of bonds and documents necessary to the
issuance and sale thereof by a board of education;
   (9) Equipment repair service if in the nature of an extraordinary
unspecifiable service and necessary parts furnished in connection
with such services, which exception shall be in accordance with the
requirements for extraordinary unspecifiable services;
   (10) Insurance, including the purchase of insurance coverage and
consultant services, which exception shall be in accordance with the
requirements for extraordinary unspecifiable services;
   (11) Publishing of legal notices in newspapers as required by
law;
   (12) The acquisition of artifacts or other items of unique
intrinsic, artistic or historic character;
   (13) Those goods and services necessary or required to prepare
and conduct an election;
   (14) (Deleted by amendment, P.L.1999, c.440)
   (15) (Deleted by amendment, P.L.1999, c.270)
   (16) (Deleted by amendment, P.L.1999, c.440)
   (17) The doing of any work by persons with disabilities
employed by a sheltered workshop;
   (18) Expenses for travel and conferences;
(19) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or acquire or update non-proprietary software;

(20) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(21) Goods and services paid with funds that: are raised by or collected from students to support the purchase of student-oriented items or materials, such as yearbooks, school photographs or portraits, class rings, and a class gift; and are deposited in school or student activity accounts; and require no budget appropriation from the board of education;

(22) Food services provided by food service management companies pursuant to procedures established by the New Jersey Department of Agriculture, Bureau of Child Nutrition Programs;

(23) Vending machines providing food or drink.

b. It is to be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, agency, authority or board of education or any other state or subdivision thereof.

c. Bids have been advertised pursuant to N.J.S.18A:18A-4 on two occasions and (1) no bids have been received on both occasions in response to the advertisement, or (2) the board of education has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the board of education prior to the advertising therefor, or have not been independently arrived at in open competition, or (3) on one occasion no bids were received pursuant to (1) and on one occasion all bids were rejected pursuant to (2), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the board of education authorizing such a contract; provided, however, that:

(a) A reasonable effort is first made by the board of education to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the board of education is located, or any municipality in close proximity to the board of education;

(b) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to N.J.S.18A:18A-4; and

(c) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications which were the subject of competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated in
the resolution awarding the contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the board of education shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the board of education shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services.

d. Whenever a board of education shall determine that a bid was not arrived at independently in open competition pursuant to subsection c.(2) of N.J.S.18A:18A-5, it shall thereupon notify the county prosecutor of the county in which the board of education is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

e. The board of education has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to N.J.S.18A:18A-10, and the lowest responsible quotation is at least 10% less than the price the board would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract or agreement entered into pursuant to subsection c. or subsection e. may be made, negotiated or awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the board of education at a meeting thereof authorizing such a contract or agreement. The purchase order relating to any such contract shall include a notation that the material, supplies, or equipment was purchased at least 10% below the State contract price. The board of education shall make available to the Director of the Division of Local Government Services in the Department of Community Affairs, upon request, any documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions.

(cf: P.L.2007, c.42, s.2)

7. Section 45 of P.L.1999, c.440 (C.18A:18A-4.1) is amended to read as follows:

45. Notwithstanding the provisions of any law, rule or regulation to the contrary, competitive contracting may be used, and shall be used in the case of contracts for professional services under paragraph l. of subsection b. of this section, by boards of education in lieu of public bidding for procurement of specialized goods and
services the price of which exceeds the bid threshold, for the following purposes:

a. The purchase or licensing of proprietary computer software designed for board of education purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

   (1) the operation, management or administration of recreation or social service facilities or programs; or

   (2) the operation, management or administration of data processing services;

c. Services performed by an organization engaged in providing energy conservation education and training services to train employees of a board of education to reduce consumption of energy;

d. Telecommunications transmission or switching services that are not part of a tariff or schedule of charges filed with the Board of Public Utilities;

e. The purchase of specialized machinery or equipment of a technical nature, or servicing thereof, which will not reasonably permit the drawing of specifications;

f. Food services provided by food service management companies when not part of programs administered by the New Jersey Department of Agriculture, Bureau of Child Nutrition Programs;

g. Driver education courses provided by licensed driver education schools;

h. At the option of the board of education, any good or service that is exempt from bidding pursuant to N.J.S.18A:18A-5;

i. Laboratory testing services;

j. Concessions;

k. The operation, management or administration of other services, with the approval of the Division of Local Government Services in the Department of Community Affairs; and

l. Professional services, other than contracts for architectural, engineering, or land surveying services which shall be awarded pursuant to section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill). Any purpose included herein shall not be considered by a board of education as an extraordinary unspecifiable service pursuant to paragraph (2) of subsection a. of N.J.S.18A:18A-5.

(cf: P.L.2009, c.4, s.2)

8. (New section) a. It is the policy of this State that contracts to be awarded by a board of education, as defined in
N.J.S.18A:18A-2, for architectural, engineering and land surveying services shall be publicly announced prior to being awarded and that contracts for these services shall be negotiated on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable compensation.

b. As used in this section:
"Compensation" means the basis of payment by a board of education for professional architectural, engineering or land surveying services;
"Professional firm” means any individual, firm, partnership, corporation, association or other legal entity permitted by law to provide professional architectural, engineering, or land surveying services in this State; and
"Professional architectural, engineering and land surveying services” means those services, including planning, environmental, and construction inspection services required for the development and construction of projects, within the scope of the practice of architecture, professional engineering or professional land surveying as defined by the laws of this State or those performed by an architect, professional engineer or professional land surveyor in connection with his professional employment practice.

c. A professional firm which wishes to be considered qualified to provide professional architectural, engineering, or land surveying services to a board of education seeking to negotiate a contract or agreement for the performance of such services shall file or shall have filed with the board of education a current statement of qualifications and supporting data. Such a statement may be filed at any time during a calendar year, and a $100 fee shall be remitted to the board of education by the professional firm at the time each statement is filed. No statement which shall have been filed more than two years prior to the publication of an advertisement pursuant to the provisions of this section shall be deemed to be a current statement with respect to qualification of the firm which shall have filed the statement to provide professional architectural, engineering, or land surveying services under any contract or agreement of which notice is given through that advertisement.

A statement of qualifications and supporting data filed with a board of education under this subsection shall be a public record for all purposes of P.L.1963, c.73 (C.47:1A-1 et seq.).

d. Notwithstanding any other provision of the Public School Contracts Law, N.J.S.18A:18A-1 et seq.) to the contrary, a contract or agreement with an board of education for the procurement of professional architectural, engineering, or land surveying services shall be publicly advertised prior to the solicitation of proposals or expressions of interest from interested firms. To the extent consistent with the purposes and provisions of this section, the advertisement shall conform to the requirements applicable to
publicly bid contracts or may be publicly advertised through electronic means. The advertisement shall include a statement of the criteria by which the board of education seeking to procure those professional services shall evaluate the technical qualifications of professional firms and determine the order of preference to be used in designating the firms most highly qualified to perform the services; this statement shall either set forth explicitly and in full the terms of those criteria or identify them by reference to the regulation or regulations in which those criteria shall have been promulgated as required by this section. In addition, the advertisement shall include notice that professional firms wishing to be considered for selection as a potential provider of such services in connection with a proposed project must have submitted to the board of education a current statement of qualifications and supporting data as prescribed in this section.

e. In the procurement of architectural, engineering and land surveying services, no board of education shall make, negotiate, or award a contract or agreement for the performance of such services with or to any professional firm which has not filed with the board of education a current statement of qualifications and supporting data as prescribed by this section.

f. For each proposed project, a board of education shall evaluate current statements of qualifications and supporting data on file with the board of education. The board of education may solicit proposals or expressions of interest unique to the specific project which would in narrative form outline design concepts and proposed methods of approach to the assignment. The board of education shall select, in order of preference, based upon the criteria included in the advertisement required by this section, at least three professional firms deemed to be the most highly qualified to provide the services required, except that the board of education may select fewer professional firms if fewer such firms responded to the solicitation or meet the qualifications required for the project.

g. A board of education which intends or expects to make, negotiate or award a contract or agreement for the procurement of professional architectural, engineering, or land surveying services shall, before publishing an advertisement of notice with respect to any such contract or agreement, have adopted the criteria by which it shall with respect to any such contract or agreement make the selection of qualified firms as prescribed by this section.

h. Once the top three or more ranked firms have been identified, each firm, at the request of the board of education, shall submit a fee proposal. The firms shall not be told of their ranking position at that time. Using the three fee proposals to provide a general guideline, a board of education shall negotiate a contract with the most technically qualified professional firm for architectural, engineering or land surveying services at
compensation which the board of education determines to be fair and reasonable to the board of education. In making this determination, the board of education shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof. Should the board of education be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified at a fee the board of education determines to be fair and reasonable, negotiations with that professional firm shall be formally terminated. The board of education shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the board of education shall formally terminate negotiations. The board of education shall then undertake negotiations with the third most qualified professional firm. Should the board of education be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

i. Notwithstanding the provisions of any other law to the contrary, the provisions of this section shall only apply to contracts for architectural, engineering and land surveying services in excess of the bid threshold established by law.

j. Nothing in this section shall preclude a board of education from using procurement processes other than those prescribed herein if those processes have been approved by the federal government or other State statute or if an emergency has been declared by the chief executive officer of the board.

k. The Commissioner of Education shall adopt, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as be necessary to implement the provisions of this section.

9. (New section) Notwithstanding the provisions of any other law to the contrary, a State agency shall have discretion to continue a professional services contract for legal services beyond its date of expiration without following a competitive contracting process to enter into a new contract when the expertise of that particular provider of legal services is essential for the completion of pending litigation, the completion of any construction contract, or the need to properly complete other legal services, and any potential change in the provider would be detrimental to the public interest.

10. (New section) Notwithstanding the provisions of any other law to the contrary, a unit of local government shall have discretion to continue a professional services contract for legal services beyond its date of expiration without following a competitive
contracting process to enter into a new contract when the expertise of that particular provider of legal services is essential for the completion of pending litigation, the completion of any construction contract, or the need to properly complete other legal services, and any potential change in the provider would be detrimental to the public interest.

11. (New section) Notwithstanding the provisions of any other law to the contrary, a board of education shall have discretion to continue a professional services contract for legal services beyond its date of expiration without following a competitive contracting process to enter into a new contract when the expertise of that particular provider of legal services is essential for the completion of pending litigation, the completion of any construction contract, or the need to properly complete other legal services, and any potential change in the provider would be detrimental to the public interest.

12. This act shall take effect immediately.

STATEMENT

Under existing law, contracts for professional and technical services to be awarded by State agencies, including independent authorities, or by counties, municipalities, and school districts may be negotiated and awarded without being publicly advertised for bids. This bill would provide, instead, that these contracts would be subject to a competitive bidding process.

Contracts for architectural, engineering, and land surveying services of local governments and school boards will be awarded pursuant to a competitive contracting process on the basis of demonstrated competence and qualifications that is similar to the process for awarding of such contracts by State agencies.

The bill allows the continuation of a professional services contract for legal services beyond the contract’s expiration date when the expertise of that particular provider of legal services is essential for the completion of pending litigation, any construction contract, or other legal services, and any potential change in the provider would be detrimental to the public interest.

The bill also provides that school board contracts for school photographs or portraits, like similar items that are paid with funds raised by or collected from students such as yearbooks and class rings, will not be required to be publicly advertised for bids.