

**SENATE, No. 2947**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED SEPTEMBER 17, 2018

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Senator Stack**

**SYNOPSIS**

Requires release of bid list prior to bid date under "Local Public Contracts Law."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/29/2019)**

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1 AN ACT concerning certain local public contracts and amending  
2 P.L.1971, c.198 and P.L.1999, c.39.

3

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

6

7 1. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to  
8 read as follows:

9 23. a. All advertisements for bids shall be published in an  
10 official newspaper of the contracting unit sufficiently in advance of  
11 the date fixed for receiving the bids to promote competitive  
12 bidding, but in no event less than 10 days prior to such date; except  
13 that all advertisements for bids on contracts for the collection and  
14 disposal of municipal solid waste shall be published in an official  
15 newspaper of the contracting unit circulating in the county or  
16 municipality, and in at least one newspaper of general circulation  
17 published in the State, sufficiently in advance of the date fixed for  
18 receiving the bids to promote competitive bidding, but not less than  
19 60 days prior to that date. For all contracts, the date fixed for  
20 receiving the bids shall not fall on a Monday, or any day directly  
21 following a State or federal holiday.

22 b. The advertisement shall designate the manner of submitting  
23 and the method of receiving the bids and the time and place at  
24 which the bids will be received. If the published specifications  
25 provide for receipt of bids by mail, those bids which are mailed to  
26 the contracting unit shall be sealed and shall only be opened for  
27 examination at such time and place as all bids received are unsealed  
28 and announced. At such time and place the contracting agent of the  
29 contracting unit shall publicly receive the bids, and thereupon  
30 immediately proceed to unseal them and publicly announce the  
31 contents, which announcement shall be made in the presence of any  
32 parties bidding or their agents, who are then and there present, and  
33 shall also make proper record of the prices and terms, upon the  
34 minutes of the governing body, if the award is to be made by the  
35 governing body of the contracting unit, or in a book kept for that  
36 purpose, if the award is to be made by other than the governing  
37 body, and in such latter case it shall be reported to the governing  
38 body of the contracting unit for its action thereon, when such action  
39 thereon is required. No bids shall be received after the time  
40 designated in the advertisement.

41 c. Notice of revisions or addenda to advertisements or bid  
42 documents shall be provided as follows:

43 1) For all contracts except those for construction work and  
44 municipal solid waste collection and disposal service, notice shall  
45 be published no later than seven days, Saturdays, Sundays, and

**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.**

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1 holidays excepted, prior to the date for acceptance of bids, in an  
2 official newspaper of the contracting unit and be provided to any  
3 person who has submitted a bid or who has received a bid package,  
4 in one of the following ways: i) in writing by certified mail or ii)  
5 by certified facsimile transmission, meaning that the sender's  
6 facsimile machine produces a receipt showing date and time of  
7 transmission and that the transmission was successful or iii) by a  
8 delivery service that provides certification of delivery to the sender.

9 2) For all contracts for construction work, notice shall be  
10 provided no later than seven days, Saturdays, Sundays, or holidays  
11 excepted, prior to the date for acceptance of bids, to any person who  
12 has submitted a bid or who has received a bid package in any of the  
13 following ways: i) in writing by certified mail or ii) by certified  
14 facsimile transmission, meaning that the sender's facsimile machine  
15 produces a receipt showing date and time of transmission and that  
16 the transmission was successful or iii) by a delivery service that  
17 provides certification of delivery to the sender. Notwithstanding  
18 section 1 of P.L.1995, c.23 (C.47:1A-1.1) concerning the  
19 confidentiality of government records containing information  
20 which, if disclosed, would give an advantage to competitors or  
21 bidders, when three or more parties have received bid documents,  
22 upon request by any person the contracting unit shall make  
23 available the names of all parties who have received the bid  
24 documents. This information shall be made available in a timely  
25 manner and in accordance with P.L.1963, c.73 (C.47:1A-1 et seq.).  
26 Alternatively, if the contracting unit maintains its own website, the  
27 contracting unit may post the information on that site.

28 3) For municipal solid waste collection and disposal contracts,  
29 notice shall be published in an official newspaper of the contracting  
30 unit and in at least one newspaper of general circulation published  
31 in the State no later than seven days, Saturdays, Sundays, and  
32 holidays excepted, prior to the date for acceptance of bids.

33 d. Failure of the contracting unit to advertise for the receipt of  
34 bids **[or]**, to provide proper notification of revisions or addenda to  
35 advertisements or bid documents related to bids, or to provide the  
36 names of all parties receiving the bid documents to any requesting  
37 person or by posting that information on its website, as prescribed  
38 by this section shall prevent the contracting unit from accepting the  
39 bids and require the readvertisement for bids pursuant to subsection  
40 a. of this section. Failure to obtain a receipt when good faith notice  
41 is sent or delivered to the address or telephone facsimile number on  
42 file with the contracting unit shall not be considered failure by the  
43 contracting unit to provide notice.

44 (cf: P.L.2007, c.4, s.1)

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46 2. Section 1 of P.L.1999, c.39 (C.40A:11-23.1) is amended to  
47 read as follows:

48 1. All plans, specifications and bid proposal documents for the  
49 erection, alteration, or repair of a building, structure, facility or

1 other improvement to real property, the total price of which exceeds  
2 the amount set forth in, or the amount calculated by the Governor  
3 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), shall  
4 include:

5 a. a document for the bidder to acknowledge the bidder's  
6 receipt of any notice or revisions or addenda to the advertisement or  
7 bid documents; and

8 b. a form listing those documentary and informational forms,  
9 certifications, and other documents that the contracting agent  
10 requires each bidder to submit with the bid. The form shall list each  
11 of the items to be submitted with the bid proposal and a place for  
12 the bidder to indicate, by initialing each entry, that the bidder has  
13 included those required items with the completed bid proposal.  
14 Each bidder shall complete this form and submit it with the bid  
15 proposal in addition to those documentary and informational forms,  
16 certifications, and other documents that are listed on the form; and

17 c. a statement indicating whether uniformed law enforcement  
18 officers will be required for the project. The statement shall include  
19 a line item allowance, which shall be a good faith effort on the part  
20 of the contracting unit, to reasonably estimate the total cost of  
21 traffic control personnel, vehicles, equipment, administrative, or  
22 any other costs associated with additional traffic control  
23 requirements required by the contracting unit, or any other public  
24 entity affected by the project, above and beyond the bidder's traffic  
25 control personnel, vehicles, equipment, and administrative costs.  
26 The individuals responsible for the assignment of uniformed law  
27 enforcement officers for any municipalities affected by a project  
28 shall be required to determine where traffic safety control is needed  
29 for a project, and calculate the number and placement of all  
30 necessary personnel, equipment, and the costs associated with these,  
31 including hourly rates, and submit this information to the  
32 contracting unit.

33 The contracting unit shall not be responsible for additional traffic  
34 control costs beyond the number of working days specified in the  
35 construction contract in accordance with section 17 of P.L.1971,  
36 c.198 (C.40A:11-17), when such a delay is caused by the contractor  
37 and liquidated damages have been assessed.

38 The statement prescribed under this subsection shall not be  
39 required if the contracting unit will provide for the direct payment  
40 of uniformed law enforcement officers and any additional costs  
41 directly associated with the provision of those officers; and

42 d. at the option of the contracting unit, specified alternate  
43 proposals in addition to a base specification. When the contracting  
44 unit specifies alternate proposals, the determination of which  
45 bidder's response to a request for bids offers the lowest price shall  
46 be made on the basis of the price of: (i) the base specification plus  
47 the price of any selected specified alternate proposals; or (ii) a  
48 choice of specified alternative proposals within the limit of funds  
49 that may be made available for a project. If a contracting unit

1 provides for more than one specified alternate proposal, the  
2 contracting unit shall specify in the bid specification the criteria or  
3 ranked order by which specified alternate proposals shall be  
4 selected and included in the award of the contract by the governing  
5 body, provided that this requirement shall only apply to a project  
6 with a total estimated cost, including specified alternate proposals,  
7 of greater than \$500,000. The aggregate dollar value of accepted  
8 specified alternative proposals shall not exceed 50 percent of the  
9 base bid. If a contracting unit is found in a court of law to have  
10 chosen specific alternative proposals in a manner intended to award  
11 a contract to a specific vendor, the bids shall be voided, the  
12 contracting unit shall rebid the project, and a plaintiff who prevails  
13 in any proceeding shall be entitled to a reasonable attorney's fee.

14 For the purposes of this subsection:

15 "Specified alternate proposal" means a requirement of the bid  
16 specification for bidders to submit prices for reduced, modified or  
17 supplemental work in addition to the base proposal which may  
18 include, but not be limited to, a change in project scope or the use  
19 of alternative materials or methods of construction;

20 "Base specification" means the plans and specifications for the  
21 erection, alteration or repair of the building, structure, facility or  
22 other improvement to real property that are required to be met by all  
23 bidders without exception; and

24 e. in the case of a project that includes the removal of soil from  
25 the site, disclosure of any documentation relative to the known soil  
26 conditions at the site including, but not limited to, any test results  
27 specifying the level of contamination, if any, of the soil that has  
28 been found at the site of the project, or if a project is located on a  
29 site with historical or suspected contamination, a line item  
30 allowance or minimum unit price line item for soil testing and  
31 contaminated soil disposal, which shall be a good faith effort on the  
32 part of the contracting unit to reasonably estimate the total cost of  
33 testing the soil and disposing of it; and

34 f. a bidder's affidavit of non-collusion to ensure that the bidder  
35 has not participated in any collusion with any other bidder or owner  
36 representative or otherwise taken any action in restraint of free and  
37 competitive bidding.

38 (cf: P.L.2012, c.73, s.1)

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40 3. This act shall take effect on the first day of the fourth month  
41 next following enactment.

42

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#### STATEMENT

44

45 This bill amends the "Local Public Contracts Law," P.L.1971,  
46 c.198 (C.40A:11-1 et seq.) to provide that once three or more  
47 parties have received bid documents, the local contracting unit  
48 would be required to release the names of all parties who have  
49 received bid documents, upon request.

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1       The local contracting unit would be required to make the  
2 information available in a timely manner and in accordance with  
3 P.L.1963, c.73 (C.47:1A-1 et seq.). Alternatively, if the contracting  
4 unit maintains its own website, the contracting unit may post the  
5 information on that site. Failure to release or post the information  
6 would prevent the contracting unit from accepting bids and require  
7 the readvertisement of bids.

8       The purpose of this bill is to allow subcontractors, including  
9 minority-owned and women-owned subcontracting businesses, to  
10 have timely access to bidders on public projects so that they can  
11 submit subcontracting bids to those bidders for the purpose of  
12 enabling those bidders to put together their lowest possible bids to  
13 the benefit of the local contracting unit. Under the current system,  
14 if the names of the parties who have received bid documents is not  
15 released or made public, then only subcontractors specifically  
16 contacted by a bidder are able to submit bids on subcontracting  
17 work. By expanding the pool of subcontractors vying for a job, the  
18 cost should be reduced and the bidder able to submit a lower cost  
19 proposal. The bill would also help ensure that minority-owned and  
20 women-owned subcontracting businesses get fair opportunity to  
21 compete for work on public projects.

22       Additionally, the bill would require bid proposal documents for  
23 contracts to erect, alter, repair or improve real property, the total  
24 price of which exceeds the Local Public Contracts Law bid  
25 threshold, to include a bidder's affidavit of non-collusion. This  
26 requirement is being imposed to ensure that bidders have not  
27 participated in collusion with other bidders or owner  
28 representatives, or otherwise taken any action in restraint of free  
29 and competitive bidding.