

SENATE, No. 1299

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

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.



1 AN ACT concerning certain State, county, municipal, and school
2 district contracts and amending and supplementing various parts
3 of the statutory law.

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

7
8 1. Section 4 of P.L.1954, c.48 (C.52:34-9) is amended to read
9 as follows:

10 4. Any such purchase, contract or agreement may be made,
11 negotiated or awarded pursuant to section 3 of this act when the
12 subject matter thereof consists of

13 (a) services to be performed by the contractor personally which
14 are **[(a) of a technical and professional nature, or (b)]** to be
15 performed under the supervision of the Director of the Division of
16 Purchase and Property and paid for on a time basis; or

17 (b) the purchase of perishable foods or subsistence supplies; or

18 (c) the lease of such office space, office machinery, specialized
19 equipment, buildings or real property as may be required for the
20 conduct of the State's business; or

21 (d) the acquisition of any real property by gift, grant, purchase
22 or any other lawful manner in the name of and for the use of the
23 State for the purpose of the administration of the State's business in
24 accordance with appropriations made therefor when moneys are
25 required for the acquisition; or

26 (e) supplies or services as to which the bid prices after
27 advertising therefor are not reasonable or have not been
28 independently arrived at in open competition; provided, that no
29 negotiated purchase, contract or agreement may be entered into
30 under this paragraph after the rejection of all bids received unless
31 (a) notification of the intention to negotiate and reasonable
32 opportunity to negotiate shall have been given by the Director of
33 the Division of Purchase and Property to each responsible bidder,
34 (b) the negotiated price is lower than the lowest rejected bid price
35 of a responsible bidder, and (c) such negotiated price is the lowest
36 negotiated price offered by any responsible supplier.

37 (cf: P.L.1954, c.48, s.4)

38
39 2. (New section) a. Any contract for services to be performed
40 by a contractor personally which are of a technical and professional
41 nature, other than a contract for architectural, engineering and land
42 surveying services awarded pursuant to P.L.1997, c.399 (C.52:34-
43 9.1 et seq.), that is to be awarded by a State agency shall be publicly
44 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.

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

6 b. A professional firm that wishes to be qualified to provide
7 technical and professional services to a State agency seeking to
8 negotiate a contract or agreement for the performance of those
9 services shall file with the agency a current statement of
10 qualifications and supporting data. The statement may be filed at
11 any time during a calendar year, and a \$100 fee shall be remitted to
12 the State Treasurer each time a statement is filed. The content of
13 any such statement shall conform to such regulations with respect
14 thereto as the State Treasurer, in accordance with the
15 "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et
16 seq.), shall promulgate. No statement that shall have been filed
17 more than two years prior to the publication of an advertisement
18 pursuant to this section shall be deemed to be a current statement
19 with respect to qualifications of the firm.

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

38 d. For each proposed contract, an agency shall evaluate current
39 statements of qualifications and supporting data on file with the
40 agency. The agency may solicit proposals or expressions of interest
41 unique to the specific contract that would in narrative form outline
42 concepts and methods of approach to the contract. The agency shall
43 select, in order of preference, based upon the criteria included in the
44 advertisement required by this section, at least three professional
45 firms deemed to be the most highly qualified to provide the services
46 required, except that the agency may select fewer professional firms
47 if fewer such firms responded to the solicitation or meet the
48 qualifications required for the project.

1 e. An agency which intends or expects to make, negotiate or
2 award a contract or agreement for the procurement of technical and
3 professional services shall, before publishing an advertisement of
4 notice with respect to any such contract or agreement, have
5 adopted by regulation and have promulgated, in accordance with the
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
7 seq.), the criteria by which it shall make, with respect to any such
8 contract or agreement, the selection of qualified firms as prescribed
9 by this section.

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

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

38 h. As used in this section,

39 "State agency" or agency means any of the principal departments
40 in the Executive Branch of the State Government, and any division,
41 board, bureau, office, commission or other instrumentality within or
42 created by such department, the Legislature of the State and any
43 office, board, bureau or commission within or created by the
44 Legislative Branch, and any independent State authority,
45 commission, instrumentality or agency; and

46 "Professional firm" means any individual, firm, partnership,
47 corporation, association or other legal entity permitted by law to
48 provide technical and professional services to this State.

1 3. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to
2 read as follows:

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

7 (1) The subject matter thereof consists of:

8 (a) (i) **Professional services.** The governing body shall in each
9 instance state supporting reasons for its action in the resolution
10 awarding each contract and shall forthwith cause to be printed once,
11 in the official newspaper, a brief notice stating the nature, duration,
12 service and amount of the contract, and that the resolution and
13 contract are on file and available for public inspection in the office
14 of the clerk of the county or municipality, or, in the case of a
15 contracting unit created by more than one county or municipality, of
16 the counties or municipalities creating the contracting unit; or (ii) **]**
17 Extraordinary unspecifiable services. The application of this
18 exception shall be construed narrowly in favor of open competitive
19 bidding, whenever possible, and the Division of Local Government
20 Services is authorized to adopt and promulgate rules and regulations
21 after consultation with the Commissioner of Education limiting the
22 use of this exception in accordance with the intention herein
23 expressed. The governing body shall in each instance state
24 supporting reasons for its action in the resolution awarding each
25 contract and shall forthwith cause to be printed, in the manner set
26 forth in subsection (1) (a) (i) of this section, a brief notice of the
27 award of the contract;

28 (b) The doing of any work by employees of the contracting unit;

29 (c) The printing of legal briefs, records, and appendices to be
30 used in any legal proceeding in which the contracting unit may be a
31 party;

32 (d) The furnishing of a tax map or maps for the contracting unit;

33 (e) The purchase of perishable foods as a subsistence supply;

34 (f) The supplying of any product or the rendering of any service
35 by a public utility, which is subject to the jurisdiction of the Board
36 of Public Utilities or the Federal Energy Regulatory Commission or
37 its successor, in accordance with tariffs and schedules of charges
38 made, charged or exacted, filed with the board or commission;

39 (g) The acquisition, subject to prior approval of the Attorney
40 General, of special equipment for confidential investigation;

41 (h) The printing of bonds and documents necessary to the
42 issuance and sale thereof by a contracting unit;

43 (i) Equipment repair service if in the nature of an extraordinary
44 unspecifiable service and necessary parts furnished in connection
45 with the service, which exception shall be in accordance with the
46 requirements for extraordinary unspecifiable services;

47 (j) The publishing of legal notices in newspapers as required by
48 law;

- 1 (k) The acquisition of artifacts or other items of unique intrinsic,
2 artistic or historical character;
- 3 (l) Those goods and services necessary or required to prepare
4 and conduct an election;
- 5 (m) Insurance, including the purchase of insurance coverage and
6 consultant services, which exception shall be in accordance with the
7 requirements for extraordinary unspecifiable services;
- 8 (n) The doing of any work by persons with disabilities
9 employed by a sheltered workshop;
- 10 (o) The provision of any goods or services including those of a
11 commercial nature, attendant upon the operation of a restaurant by
12 any nonprofit, duly incorporated, historical society at or on any
13 historical preservation site;
- 14 (p) (Deleted by amendment, P.L.1999, c.440.)
- 15 (q) Library and educational goods and services;
- 16 (r) (Deleted by amendment, P.L.2005, c.212).
- 17 (s) The marketing of recyclable materials recovered through a
18 recycling program, or the marketing of any product intentionally
19 produced or derived from solid waste received at a resource
20 recovery facility or recovered through a resource recovery program,
21 including, but not limited to, refuse-derived fuel, compost materials,
22 methane gas, and other similar products;
- 23 (t) (Deleted by amendment, P.L.1999, c.440.)
- 24 (u) Contracting unit towing and storage contracts, provided that
25 all of the contracts shall be pursuant to reasonable non-exclusionary
26 and non-discriminatory terms and conditions, which may include
27 the provision of the services on a rotating basis, at the rates and
28 charges set by the municipality pursuant to section 1 of P.L.1979,
29 c.101 (C.40:48-2.49). All contracting unit towing and storage
30 contracts for services to be provided at rates and charges other than
31 those established pursuant to the terms of this paragraph shall only
32 be awarded to the lowest responsible bidder in accordance with the
33 provisions of the "Local Public Contracts Law," P.L.1971, c.198
34 (C.40A:11-1 et seq.) and without regard for the value of the
35 contract therefor;
- 36 (v) The purchase of steam or electricity from, or the rendering
37 of services directly related to the purchase of steam or electricity
38 from a qualifying small power production facility or a qualifying
39 cogeneration facility as defined pursuant to 16 U.S.C. s.796;
- 40 (w) The purchase of electricity or administrative or dispatching
41 services directly related to the transmission of purchased electricity
42 by a contracting unit engaged in the generation of electricity;
- 43 (x) The printing of municipal ordinances or other services
44 necessarily incurred in connection with the revision and
45 codification of municipal ordinances;
- 46 (y) An agreement for the purchase of an equitable interest in a
47 water supply facility or for the provision of water supply services
48 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or

- 1 an agreement entered into pursuant to N.J.S.40A:31-1 et al., so long
2 as the agreement is entered into no later than six months after the
3 effective date of P.L.1993, c.381;
- 4 (z) A contract for the provision of water supply services entered
5 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 6 (aa) The cooperative marketing of recyclable materials recovered
7 through a recycling program;
- 8 (bb) A contract for the provision of wastewater treatment
9 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
10 al.);
- 11 (cc) Expenses for travel and conferences;
- 12 (dd) The provision or performance of goods or services for the
13 support or maintenance of proprietary computer hardware and
14 software, except that this provision shall not be utilized to acquire
15 or upgrade non-proprietary hardware or to acquire or update non-
16 proprietary software;
- 17 (ee) The management or operation of an airport owned by the
18 contracting unit pursuant to R.S.40:8-1 et seq.;
- 19 (ff) Purchases of goods and services at rates set by the Universal
20 Service Fund administered by the Federal Communications
21 Commission;
- 22 (gg) A contract for the provision of water supply services or
23 wastewater treatment services entered into pursuant to section 2 of
24 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
25 construction, operation, or maintenance, or any combination
26 thereof, of a water supply facility as defined in subsection (16) of
27 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
28 treatment system as defined in subsection (19) of section 15 of
29 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
30 thereof, including a water filtration system as defined in subsection
31 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15); or
- 32 (hh) The purchase of electricity generated from a power
33 production facility that is fueled by methane gas extracted from a
34 landfill in the county of the contracting unit.
- 35 (2) It is to be made or entered into with the United States of
36 America, the State of New Jersey, county, or municipality, or any
37 board, body, officer, agency, or authority thereof, or any other state
38 or subdivision thereof.
- 39 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
40 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
41 received on both occasions in response to the advertisement, or (b)
42 the governing body has rejected the bids on two occasions because
43 it has determined that they are not reasonable as to price, on the
44 basis of cost estimates prepared for or by the contracting agent prior
45 to the advertising therefor, or have not been independently arrived
46 at in open competition, or (c) on one occasion no bids were received
47 pursuant to (a) and on one occasion all bids were rejected pursuant
48 to (b), in whatever sequence; a contract may then be negotiated and

1 may be awarded upon adoption of a resolution by a two-thirds
2 affirmative vote of the authorized membership of the governing
3 body authorizing the contract; provided, however, that:

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

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

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

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

37 (4) The contracting unit has solicited and received at least three
38 quotations on materials, supplies, or equipment for which a State
39 contract has been issued pursuant to section 12 of P.L.1971, c.198
40 (C.40A:11-12), and the lowest responsible quotation is at least 10
41 percent less than the price the contracting unit would be charged for
42 the identical materials, supplies, or equipment, in the same
43 quantities, under the State contract. A contract entered into
44 pursuant to this subsection may be awarded only upon adoption of a
45 resolution by the affirmative vote of two-thirds of the full
46 membership of the governing body of the contracting unit at a
47 meeting thereof authorizing the contract. A copy of the purchase
48 order relating to the contract, the requisition for purchase order, if

1 applicable, and documentation identifying the price of the materials,
2 supplies or equipment under the State contract and the State
3 contract number shall be filed with the director within five working
4 days of the award of the contract by the contracting unit. The
5 director shall notify the contracting unit of receipt of the material
6 and shall make the material available to the State Treasurer. The
7 contracting unit shall make available to the director upon request
8 any other documents relating to the solicitation and award of the
9 contract, including, but not limited to, quotations, requests for
10 quotations, and resolutions. The director periodically shall review
11 material submitted by contracting units to determine the impact of
12 the contracts on local contracting and shall consult with the State
13 Treasurer on the impact of the contracts on the State procurement
14 process. The director may, after consultation with the State
15 Treasurer, adopt rules in accordance with the "Administrative
16 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the
17 use of this subsection, after considering the impact of contracts
18 awarded under this subsection on State and local contracting, or
19 after considering the extent to which the award of contracts
20 pursuant to this subsection is consistent with and in furtherance of
21 the purposes of the public contracting laws.

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

48 (6) Notwithstanding any provision of law, rule, or regulation to

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

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

26
27 4. Section 1 of P.L.1999, c.440 (C.40A:11-4.1) is amended to
28 read as follows:

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

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

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

44 (1) the operation and management of a wastewater treatment
45 system or a water supply or distribution facility of the type
46 described in subsection (37) of section 15 of P.L.1971, c.198
47 (C.40A:11-15), provided that competitive contracting shall not be

1 used as a means of awarding contracts pursuant to P.L.1985, c.37
2 (C.58:26-1 et al.) and P.L.1985, c.72 (C.58:27-1 et al.);

3 (2) the operation, management or administration of recreation or
4 social service facilities or programs, which shall not include the
5 administration of benefits under the Work First New Jersey
6 program established pursuant to P.L.1997, c.38 (C.44:10-55 et
7 seq.), or under General Assistance;

8 (3) the operation, management or administration of data
9 processing services; or

10 (4) the operation and management of a county hospital pursuant
11 to the "Local Hospital Authority Law," P.L.2006, c.46 (C.30:9-
12 23.15 et al.);

13 c. (Deleted by amendment, P.L.2009, c.4).

14 d. Homemaker--home health services;

15 e. Laboratory testing services;

16 f. Emergency medical services;

17 g. Contracted food services;

18 h. Performance of patient care services by contracted medical
19 staff at county hospitals, correctional facilities and long-term care
20 facilities;

21 i. At the option of the governing body of the contracting unit,
22 any good or service that is exempt from bidding pursuant to section
23 5 of P.L.1971, c.198 (C.40A:11-5);

24 j. Concessions;

25 k. The operation, management or administration of other
26 services, with the approval of the Director of the Division of Local
27 Government Services;

28 l. Maintenance, custodial, and groundskeeping services;

29 m. Consulting services;

30 n. Emergency medical billing services;

31 o. Property appraisal services;

32 p. Reassessment or revaluation services;

33 q. Grant writing services;

34 r. Animal control services; and

35 s. Professional services, other than contracts for architectural,
36 engineering, or land surveying services which shall be awarded
37 pursuant to section 5 of P.L. , c. (C.) (pending before the
38 Legislature as this bill).

39 Any purpose included herein shall not be considered by a
40 contracting unit as an extraordinary unspecifiable service pursuant
41 to subparagraph (ii) of paragraph (a) of subsection (1) of section 5
42 of P.L.1971, c.198 (C.40A:11-5).

43 As used in this section, "stormwater management system" means
44 the same as that term is defined in section 3 of P.L.2019, c.42
45 (C.40A:26B-3).

46 (cf: P.L.2019, c.42, s.21)

1 5. (New section) a. It is the policy of this State that contracts
2 to be awarded by a contracting unit, as defined in section 2 of
3 P.L.1971, c.198 (C.40A:11-2), for architectural, engineering and
4 land surveying services shall be publicly announced prior to being
5 awarded and that contracts for these services shall be negotiated on
6 the basis of demonstrated competence and qualifications for the
7 type of professional services required and at fair and reasonable
8 compensation.

9 b. As used in this section:

10 "Compensation" means the basis of payment by a contracting
11 unit for professional architectural, engineering or land surveying
12 services;

13 "Professional firm" means any individual, firm, partnership,
14 corporation, association or other legal entity permitted by law to
15 provide professional architectural, engineering, or land surveying
16 services in this State; and

17 "Professional architectural, engineering and land surveying
18 services" means those services, including planning, environmental,
19 and construction inspection services required for the development
20 and construction of projects, within the scope of the practice of
21 architecture, professional engineering or professional land
22 surveying as defined by the laws of this State or those performed by
23 an architect, professional engineer or professional land surveyor in
24 connection with his professional employment practice.

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

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

43 d. Notwithstanding any other provision of the Local Public
44 Contracts Law, P.L.1971, c.198 (C.40A:11-1 et seq.) to the
45 contrary, a contract or agreement with an contracting unit for the
46 procurement of professional architectural, engineering, or land
47 surveying services shall be publicly advertised prior to the
48 solicitation of proposals or expressions of interest from interested

1 firms. To the extent consistent with the purposes and provisions of
2 this section, the advertisement shall conform to the requirements
3 applicable to publicly bid contracts or may be publicly advertised
4 through electronic means. The advertisement shall include a
5 statement of the criteria by which the contracting unit seeking to
6 procure those professional services shall evaluate the technical
7 qualifications of professional firms and determine the order of
8 preference to be used in designating the firms most highly qualified
9 to perform the services; this statement shall either set forth
10 explicitly and in full the terms of those criteria or identify them by
11 reference to the regulation or regulations in which those criteria
12 shall have been promulgated as required by this section. In
13 addition, the advertisement shall include notice that professional
14 firms wishing to be considered for selection as a potential provider
15 of such services in connection with a proposed project must have
16 submitted to the contracting unit a current statement of
17 qualifications and supporting data as prescribed in this section.

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

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

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

43 h. Once the top three or more ranked firms have been
44 identified, each firm, at the request of the contracting unit, shall
45 submit a fee proposal. The firms shall not be told of their ranking
46 position at that time. Using the three fee proposals to provide a
47 general guideline, a contracting unit shall negotiate a contract with
48 the most technically qualified professional firm for architectural,

1 engineering or land surveying services at compensation which the
2 contracting unit determines to be fair and reasonable to the
3 contracting unit. In making this determination, the contracting unit
4 shall take into account the estimated value of the services to be
5 rendered and the scope, complexity, and professional nature thereof.
6 Should the contracting unit be unable to negotiate a satisfactory
7 contract with the professional firm considered to be the most
8 qualified at a fee the contracting unit determines to be fair and
9 reasonable, negotiations with that professional firm shall be
10 formally terminated. The contracting unit shall then undertake
11 negotiations with the second most qualified professional firm.
12 Failing accord with the second most qualified professional firm, the
13 contracting unit shall formally terminate negotiations. The
14 contracting unit shall then undertake negotiations with the third
15 most qualified professional firm. Should the contracting unit be
16 unable to negotiate a satisfactory contract with any of the selected
17 professional firms, it shall select additional professional firms in
18 order of their competence and qualifications and it shall continue
19 negotiations in accordance with this section until an agreement is
20 reached.

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

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

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

35

36 6. N.J.S.18A:18A-5 is amended to read as follow:

37 18A:18A-5. Exceptions to requirement for advertising. Any
38 contract, the amount of which exceeds the bid threshold, shall be
39 negotiated and awarded by the board of education by resolution at a
40 public meeting without public advertising for bids and bidding
41 therefor if

42 a. The subject matter thereof consists of:

43 (1) **Professional services.** The board of education shall in each
44 instance state supporting reasons for its action in the resolution
45 awarding each contract and shall forthwith cause to be printed once,
46 in an official newspaper, a brief notice stating the nature, duration,
47 service and amount of the contract, and that the resolution and
48 contract are on file and available for public inspection in the office

- 1 of the board of education] Deleted by amendment, P.L. _____,
2 c. _____ (pending before the Legislature as this bill);
- 3 (2) Extraordinary unspecifiable services which cannot
4 reasonably be described by written specifications. The application
5 of this exception as to extraordinary unspecifiable services shall be
6 construed narrowly in favor of open competitive bidding where
7 possible and the Director of the Division of Local Government
8 Services in the Department of Community Affairs is authorized to
9 establish rules and regulations after consultation with the
10 Commissioner of Education limiting its use in accordance with the
11 intention herein expressed; and the board of education shall in each
12 instance state supporting reasons for its action in the resolution
13 awarding the contract for extraordinary unspecifiable services and
14 shall forthwith cause to be printed, in the manner set forth in
15 paragraph (1) of this subsection, a brief notice of the award of such
16 contract;
- 17 (3) The doing of any work by employees of the board of
18 education;
- 19 (4) The printing of all legal notices; and legal briefs, records and
20 appendices to be used in any legal proceeding in which the board of
21 education may be a party;
- 22 (5) Library and educational goods and services;
- 23 (6) Food supplies, including food supplies for home economics
24 classes, when purchased pursuant to rules and regulations of the
25 State board and in accordance with the provisions of
26 N.J.S.18A:18A-6;
- 27 (7) The supplying of any product or the rendering of any service
28 by a public utility, which is subject to the jurisdiction of the Board
29 of Public Utilities, in accordance with the tariffs and schedules of
30 charges made, charged and exacted, filed with said board;
- 31 (8) The printing of bonds and documents necessary to the
32 issuance and sale thereof by a board of education;
- 33 (9) Equipment repair service if in the nature of an extraordinary
34 unspecifiable service and necessary parts furnished in connection
35 with such services, which exception shall be in accordance with the
36 requirements for extraordinary unspecifiable services;
- 37 (10) Insurance, including the purchase of insurance coverage and
38 consultant services, which exception shall be in accordance with the
39 requirements for extraordinary unspecifiable services;
- 40 (11) Publishing of legal notices in newspapers as required by
41 law;
- 42 (12) The acquisition of artifacts or other items of unique
43 intrinsic, artistic or historic character;
- 44 (13) Those goods and services necessary or required to prepare
45 and conduct an election;
- 46 (14) (Deleted by amendment, P.L.1999, c.440)
- 47 (15) (Deleted by amendment, P.L.1999, c.270)
- 48 (16) (Deleted by amendment, P.L.1999, c.440)

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

3 (18) Expenses for travel and conferences;

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

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

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

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

21 (23) Vending machines providing food or drink.

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

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

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

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

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

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

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

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

44

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

47 45. Notwithstanding the provisions of any law, rule or regulation
48 to the contrary, competitive contracting may be used, and shall be

1 used in the case of contracts for professional services under
2 paragraph 1. of subsection b. of this section, by boards of education
3 in lieu of public bidding for procurement of specialized goods and
4 services the price of which exceeds the bid threshold, for the
5 following purposes:

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

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

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

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

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

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

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

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

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

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

36 i. Laboratory testing services;

37 j. Concessions;

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

41 l. Professional services, other than contracts for architectural,
42 engineering, or land surveying services which shall be awarded
43 pursuant to section 8 of P.L. , c. (C.) (pending before the
44 Legislature as this bill) .

45 Any purpose included herein shall not be considered by a board
46 of education as an extraordinary unspecifiable service pursuant to
47 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

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

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

9 b. As used in this section:

10 "Compensation" means the basis of payment by a board of
11 education for professional architectural, engineering or land
12 surveying services;

13 "Professional firm" means any individual, firm, partnership,
14 corporation, association or other legal entity permitted by law to
15 provide professional architectural, engineering, or land surveying
16 services in this State; and

17 "Professional architectural, engineering and land surveying
18 services" means those services, including planning, environmental,
19 and construction inspection services required for the development
20 and construction of projects, within the scope of the practice of
21 architecture, professional engineering or professional land
22 surveying as defined by the laws of this State or those performed by
23 an architect, professional engineer or professional land surveyor in
24 connection with his professional employment practice.

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

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

43 d. Notwithstanding any other provision of the Public School
44 Contracts Law, N.J.S.18A:18A-1 et seq.) to the contrary, a contract
45 or agreement with an board of education for the procurement of
46 professional architectural, engineering, or land surveying services
47 shall be publicly advertised prior to the solicitation of proposals or
48 expressions of interest from interested firms. To the extent

1 consistent with the purposes and provisions of this section, the
2 advertisement shall conform to the requirements applicable to
3 publicly bid contracts or may be publicly advertised through
4 electronic means. The advertisement shall include a statement of
5 the criteria by which the board of education seeking to procure
6 those professional services shall evaluate the technical
7 qualifications of professional firms and determine the order of
8 preference to be used in designating the firms most highly qualified
9 to perform the services; this statement shall either set forth
10 explicitly and in full the terms of those criteria or identify them by
11 reference to the regulation or regulations in which those criteria
12 shall have been promulgated as required by this section. In
13 addition, the advertisement shall include notice that professional
14 firms wishing to be considered for selection as a potential provider
15 of such services in connection with a proposed project must have
16 submitted to the board of education a current statement of
17 qualifications and supporting data as prescribed in this section.

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

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

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

44 h. Once the top three or more ranked firms have been
45 identified, each firm, at the request of the board of education, shall
46 submit a fee proposal. The firms shall not be told of their ranking
47 position at that time. Using the three fee proposals to provide a
48 general guideline, a board of education shall negotiate a contract

1 with the most technically qualified professional firm for
2 architectural, engineering or land surveying services at
3 compensation which the board of education determines to be fair
4 and reasonable to the board of education. In making this
5 determination, the board of education shall take into account the
6 estimated value of the services to be rendered and the scope,
7 complexity, and professional nature thereof. Should the board of
8 education be unable to negotiate a satisfactory contract with the
9 professional firm considered to be the most qualified at a fee the
10 board of education determines to be fair and reasonable,
11 negotiations with that professional firm shall be formally
12 terminated. The board of education shall then undertake
13 negotiations with the second most qualified professional firm.
14 Failing accord with the second most qualified professional firm, the
15 board of education shall formally terminate negotiations. The board
16 of education shall then undertake negotiations with the third most
17 qualified professional firm. Should the board of education be
18 unable to negotiate a satisfactory contract with any of the selected
19 professional firms, it shall select additional professional firms in
20 order of their competence and qualifications and it shall continue
21 negotiations in accordance with this section until an agreement is
22 reached.

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

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

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

36

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

46

47 10. (New section) Notwithstanding the provisions of any other
48 law to the contrary, a unit of local government shall have discretion

1 to continue a professional services contract for legal services
2 beyond its date of expiration without following a competitive
3 contracting process to enter into a new contract when the expertise
4 of that particular provider of legal services is essential for the
5 completion of pending litigation, the completion of any construction
6 contract, or the need to properly complete other legal services, and
7 any potential change in the provider would be detrimental to the
8 public interest.

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

20
21 12. This act shall take effect immediately.
22
23

24 STATEMENT

25
26 Under existing law, contracts for professional and technical
27 services to be awarded by State agencies, including independent
28 authorities, or by counties, municipalities, and school districts may
29 be negotiated and awarded without being publicly advertising for
30 bids. This bill would provide, instead, that these contracts would be
31 subject to a competitive bidding process.

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

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

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