

ASSEMBLY, No. 98

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen ROONEY and BUCCO

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

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

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

9 16. Separate plans for various types of work; bids; contracts
10 In the preparation of plans and specifications for the erection,
11 alteration or repair of any public building by any contracting unit,
12 when the entire cost of the work will exceed the amount set forth in,
13 or the amount calculated by the Governor pursuant to, section 3 of
14 P.L.1971, c.198 (C.40A:11-3), the architect, engineer or other person
15 preparing the plans and specifications may prepare separate plans and
16 specifications for

- 17 (1) The plumbing and gas fitting and all kindred work;
18 (2) Steam power plants, steam and hot water heating and
19 ventilating apparatus and all kindred work;
20 (3) Electrical work;
21 (4) Structural steel and ornamental iron work; and
22 (5) All other work required for the completion of the project.

23 The contracting unit or its contracting agent shall advertise for and
24 receive, in the manner provided by law, either (a) separate bids for
25 each of said branches of work, or (b) bids for all the work and
26 materials required to complete the building to be included in a single
27 overall contract, or (c) both. There will be set forth in the bid the
28 name or names of all subcontractors to whom the bidder will
29 subcontract the furnishing of plumbing and gas fitting, and all kindred
30 work, and of the steam and hot water heating and ventilating
31 apparatus, steam power plants and kindred work, and electrical work,
32 structural steel and ornamental iron work, each of which

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 subcontractors shall be qualified in accordance with this act. The
2 contracting unit shall require evidence of performance security to be
3 submitted simultaneously with the list of the subcontractors. Evidence
4 of performance security may be supplied by the bidder on behalf of
5 himself and any or all subcontractors, or by each respective
6 subcontractor, or by any combination thereof which results in evidence
7 of performance security equalling, but in no event exceeding, the total
8 amount bid.

9 Whenever a bid sets forth more than one subcontractor for a
10 particular specialty trade category the bidder shall submit to the
11 contracting unit a certificate signed by the bidder listing each
12 subcontractor named in the bid for that category. The certificate shall
13 set forth the scope of work for which the subcontractor has submitted
14 a quote and that the bidder has agreed to award to each subcontractor
15 should the bidder be awarded the contract. The certificate shall be
16 submitted to the contracting unit simultaneously with the list of the
17 subcontractors. A separate certificate may be submitted for each
18 subcontractor. If a bidder does not submit a certificate or certificates
19 to the contracting unit, the contracting unit shall award the contract to
20 the next lowest bidder.

21 Contracts shall be awarded to the lowest responsible bidder. In the
22 event that a contract is advertised in accordance with (c) above said
23 contract shall be awarded in the following manner: If the sum total of
24 the amounts bid by the lowest responsible bidder for each branch is
25 less than the amount bid by the lowest responsible bidder for all the
26 work and materials, the contracting unit shall award separate contracts
27 for each of such branches to the lowest responsible bidder therefor,
28 but if the sum total of the amounts bid by the lowest responsible bidder
29 for each branch is not less than the amount bid by the lowest
30 responsible bidder for all the work and materials, the contracting unit
31 shall award a single overall contract to the lowest responsible bidder
32 for all of such work and materials. In every case in which a contract
33 is awarded under (b) above, all payments required to be made under
34 such contract for work and materials supplied by a subcontractor shall,
35 upon the certification of the contractor of the amount due to the
36 subcontractor, be paid directly to the subcontractor.

37 (cf: P.L.1987, c.48, s.1)

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39 2. This act shall take effect immediately.

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STATEMENT

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44 This bill would clarify the provision (C.40A:11-16) of the "Local
45 Public Contracts Law" governing the responsibility of a general
46 contractor who submits a bid for construction work to a county,

1 municipality, or other local government contracting unit to identify in
2 that bid the persons to whom that general contractor will subcontract
3 certain specialty work if the bid is accepted.

4 Current law provides that such a bid by a general contractor shall
5 "set forth . . . the name or names of all subcontractors to whom the
6 bidder will subcontract the furnishing of plumbing and gas fitting, and
7 all kindred work, and of the steam and hot water heating and
8 ventilating apparatus, steam power plants and kindred work, and
9 electrical work, structural steel and ornamental iron work, each of
10 which subcontractors shall be qualified in accordance with this act."

11 Under the bill, whenever a bid sets forth more than one
12 subcontractor for a particular specialty trade category, the bidder must
13 submit to the contracting unit certificates signed by the bidder listing
14 each subcontractor named in the bid for that category. The certificate
15 is to set forth the scope of work for which the subcontractor has
16 submitted a quote and that the bidder has agreed to award to that
17 subcontractor if the contracting unit awards the bidder the underlying
18 contract. The certificate is to be submitted to the contracting unit
19 simultaneously with the bid. Separate certificates may be submitted
20 for each subcontractor. In the event the bidder fails to submit
21 certificates to the contracting unit, the contracting unit shall award the
22 contract to the next lowest bidder.

23 Implementation of these procedures would curtail the practice of
24 post-award bid shopping among subcontractors in which some general
25 contractors are said to engage. Such bid shopping is thought to be
26 detrimental both to subcontractors, who may be pitted against one
27 another in order to be awarded a larger subcontract, and to contracting
28 units, who derive no benefit from the practice. Under the bill,
29 negotiations between contractor and subcontractor would be
30 completed prior to submission of the underlying general contractor
31 bids, so that those bids will represent the bidders' lowest possible
32 price.

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37 Requires certain public bidders to specify subcontractor's scope of
38 work.