

ASSEMBLY, No. 1221

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman AUGUSTINE

1 AN ACT exempting certain public contracts from bidding requirements
2 and amending P.L.1971, 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 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read
8 as follows:

9 5. Exceptions. Any purchase, contract or agreement of the
10 character described in section 4 of P.L.1971, c.198 (C.40A:11-4) may
11 be made, negotiated or awarded by the governing body without public
12 advertising for bids and bidding therefor if:

13 (1) The subject matter thereof consists of:

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

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 (b) The doing of any work by employees of the contracting unit;
- 2 (c) The printing of legal briefs, records and appendices to be used
3 in any legal proceeding in which the contracting party may be a party;
- 4 (d) The furnishing of a tax map or maps for the contracting party;
- 5 (e) The purchase of perishable foods as a subsistence supply;
- 6 (f) The supplying of any product or the rendering of any service by
7 a public utility, which is subject to the jurisdiction of the Board of
8 Regulatory Commissioners or the U.S. Federal Energy Regulatory
9 Commission or its successor, in accordance with tariffs and schedules
10 of charges made, charged or exacted, filed with the board or
11 commission;
- 12 (g) The acquisition, subject to prior approval of the Attorney
13 General, of special equipment for confidential investigation;
- 14 (h) The printing of bonds and documents necessary to the issuance
15 and sale thereof by a contracting unit;
- 16 (i) Equipment repair service if in the nature of an extraordinary
17 unspecifiable service and necessary parts furnished in connection with
18 such service, which exception shall be in accordance with the
19 requirements for extraordinary unspecifiable services;
- 20 (j) The publishing of legal notices in newspapers as required by
21 law;
- 22 (k) The acquisition of artifacts or other items of unique intrinsic,
23 artistic or historical character;
- 24 (l) Election expenses;
- 25 (m) Insurance, including the purchase of insurance coverage and
26 consultant services, which exception shall be in accordance with the
27 requirements for extraordinary unspecifiable services;
- 28 (n) The doing of any work by handicapped persons employed by a
29 sheltered workshop;
- 30 (o) The provision of any service or the furnishing of materials
31 including those of a commercial nature, attendant upon the operation
32 of a restaurant by any nonprofit, duly incorporated, historical society
33 at or on any historical preservation site;
- 34 (p) Homemaker--home health services performed by voluntary,
35 nonprofit agencies;
- 36 (q) The purchase of materials and services for a law library
37 established pursuant to R.S.40:33-14, including books, periodicals,
38 newspapers, documents, pamphlets, photographs, reproductions,
39 microforms, pictorial or graphic works, copyright and patent materials,
40 maps, charts, globes, sound recordings, slides, films, filmstrips, video
41 and magnetic tapes, and other audiovisual, printed, or published
42 material of a similar nature; necessary binding or rebinding of law
43 library materials; and specialized library services;
- 44 (r) On-site inspections undertaken by private agencies pursuant to
45 the "State Uniform Construction Code Act," P.L.1975, c.217
46 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;

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

7 (t) Emergency medical services provided by a hospital to the
8 residents of a municipality or county, provided that: (a) such
9 exception be allowed only after the governing body determines that the
10 emergency services are available only from one provider; and (b) if
11 the contract is awarded without advertising for bids or bidding the
12 governing body shall in each instance state supporting reasons for its
13 action in a resolution awarding the contract and cause to be printed
14 once in a newspaper authorized by law to publish its legal
15 advertisements a brief notice stating the nature, duration, service, and
16 amount of the contract; and (c) the contract shall be kept on file for
17 public inspection in the office of the clerk of the municipality;

18 (u) Contracting unit towing and storage contracts, provided that
19 all such contracts shall be pursuant to reasonable non-exclusionary and
20 non-discriminatory terms and conditions, which may include the
21 provision of such services on a rotating basis, at the rates and charges
22 set by the municipality pursuant to section 1 of P.L.1979, c.101
23 (C.40:48-2.49). All contracting unit towing and storage contracts for
24 services to be provided at rates and charges other than those
25 established pursuant to the terms of this paragraph shall only be
26 awarded to the lowest responsible bidder in accordance with the
27 provision of the "Local Public Contracts Law" and without regard for
28 the value of the contract therefor. Each of the aforementioned means
29 of contracting shall be subject to any regulations adopted by the
30 Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8
31 (C.17:33B-47);

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

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

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

43 (y) An agreement for the purchase of an equitable interest in a
44 water supply facility or for the provision of water supply services
45 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
46 an agreement entered into pursuant to P.L.1989, c.109

1 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
2 later than six months after the effective date of this act; or

3 (z) The purchase of, contract for, or agreement for computer
4 equipment, software, technical support, or consultative services.

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

9 (3) The contracting agent has advertised for bids pursuant to
10 section 4 on two occasions and (a) has received no bids on both
11 occasions in response to its advertisement, or (b) the governing body
12 has rejected such bids on two occasions because the contracting agent
13 has determined that they are not reasonable as to price, on the basis of
14 cost estimates prepared for or by the contracting agent prior to the
15 advertising therefor, or have not been independently arrived at in open
16 competition, or (c) on one occasion no bids were received pursuant
17 to (a) and on one occasion all bids were rejected pursuant to (b), in
18 whatever sequence; any such contract or agreement may then be
19 negotiated and may be awarded upon adoption of a resolution by a
20 two-thirds affirmative vote of the authorized membership of the
21 governing body authorizing such contract or agreement; provided,
22 however, that:

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

29 (ii) The terms, conditions, restrictions and specifications set forth
30 in the negotiated contract or agreement are not substantially different
31 from those which were the subject of competitive bidding pursuant to
32 section 4 of this act; and

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

1 Whenever a contracting unit shall determine that a bid was not
2 arrived at independently in open competition pursuant to subsection
3 (3) of this section it shall thereupon notify the county prosecutor of
4 the county in which the contracting unit is located and the Attorney
5 General of the facts upon which its determination is based, and when
6 appropriate, it may institute appropriate proceedings in any State or
7 federal court of competent jurisdiction for a violation of any State or
8 federal antitrust law or laws relating to the unlawful restraint of trade.
9 (cf: P.L.1993, c. 381, s.4)

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11 2. This act shall take effect immediately.

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STATEMENT

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16 This bill exempts purchases of, or contracts or agreements for
17 computer equipment, software, technical support, or consultative
18 services by local contracting units from the bidding requirements of
19 the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
20 seq.).

21 Due to the great expense and highly technical nature of computer
22 purchases, it is important that local governing bodies have flexibility
23 in choosing which computer system is best for their particular needs,
24 and that they not be limited to accepting a bid which may not, in some
25 instances, be the best option for them.

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30 Exempts contracting unit purchases of computer equipment, software,
31 and support services from public bidding requirements.