

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1221

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 16, 1996

Sponsored 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 2 of P.L.1971, c.198 (C.40A-11-2) is amended to read
8 as follows:

9 2. 2. As used herein the following words have the following
10 definitions, unless the context otherwise indicates:

11 (1) "Contracting unit" means:

12 (a) Any county; or

13 (b) Any municipality; or

14 (c) Any board, commission, committee, authority or
15 agency, which is not a State board, commission, committee, authority
16 or agency, and which has administrative jurisdiction over any district
17 other than a school district, project, or facility, included or operating
18 in whole or in part, within the territorial boundaries of any county or
19 municipality which exercises functions which are appropriate for the
20 exercise by one or more units of local government, and which has
21 statutory power to make purchases and enter into contracts or
22 agreements for the performance of any work or the furnishing or hiring
23 of any materials or supplies usually required, the cost or contract price
24 of which is to be paid with or out of public funds.

25 The term shall not include a private firm that has entered into a
26 contract with a public entity for the provision of water supply services
27 pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

28 "Contracting unit" shall not include a private firm or public
29 authority that has entered into a contract with a public entity for the
30 provision of wastewater treatment services pursuant to P.L.1995,
31 c.216 (C.58:27-19 et al.).

32 (2) "Governing body" means:

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 (a) The governing body of the county, when the purchase
2 is to be made or the contract or agreement is to be entered into by, or
3 in behalf of, a county; or
- 4 (b) The governing body of the municipality, when the
5 purchase is to be made or the contract or agreement is to be entered
6 into by, or on behalf of, a municipality; or
- 7 (c) Any board, commission, committee, authority or agency
8 of the character described in subsection (1) (c) of this section.
- 9 (3) "Contracting agent" means the governing body of a
10 contracting unit, or any board, commission, committee, officer,
11 department, branch or agency which has the power to prepare the
12 advertisements, to advertise for and receive bids and, as permitted by
13 this act, to make awards for the contracting unit in connection with
14 purchases, contracts or agreements.
- 15 (4) "Purchase" is a transaction, for a valuable consideration,
16 creating or acquiring an interest in goods, services and property,
17 except real property or any interest therein.
- 18 (5) "Materials" includes goods and property subject to
19 chapter 2 of Title 12A of the New Jersey Statutes, apparatus, or any
20 other tangible thing, except real property or any interest therein.
- 21 (6) "Professional services" means services rendered or
22 performed by a person authorized by law to practice a recognized
23 profession, whose practice is regulated by law, and the performance
24 of which services requires knowledge of an advanced type in a field of
25 learning acquired by a prolonged formal course of specialized
26 instruction and study as distinguished from general academic
27 instruction or apprenticeship and training. Professional services may
28 also mean services rendered in the performance of work that is original
29 and creative in character in a recognized field of artistic endeavor, or
30 computer programming, or computer system design services.
- 31 (7) "Extraordinary unspecifiable services" means services
32 which are specialized and qualitative in nature requiring expertise,
33 extensive training and proven reputation in the field of endeavor.
- 34 (8) "Project" means any work, undertaking, program,
35 activity, development, redevelopment, construction or reconstruction
36 of any area or areas.
- 37 (9) "Work" includes services and any other activity of a
38 tangible or intangible nature performed or assumed pursuant to a
39 contract or agreement with a contracting unit.
- 40 (10) "Homemaker--home health services" means at home
41 personal care and home management provided to an individual or
42 members of his family who reside with him, or both, necessitated by
43 the individual's illness or incapacity. "Homemaker--home health
44 services" includes, but is not limited to, the services of a trained
45 homemaker.

1 (11) "Recyclable material" means those materials which
2 would otherwise become municipal solid waste, and which may be
3 collected, separated or processed and returned to the economic
4 mainstream in the form of raw materials or products.

5 (12) "Recycling" means any process by which materials
6 which would otherwise become solid waste are collected, separated or
7 processed and returned to the economic mainstream in the form of raw
8 materials or products.

9 (13) "Marketing" means the marketing of designated
10 recyclable materials source separated in a municipality which entails
11 a marketing cost less than the cost of transporting the recyclable
12 materials to solid waste facilities and disposing of the materials as
13 municipal solid waste at the facility utilized by the municipality.

14 (14) "Municipal solid waste" means all residential,
15 commercial and institutional solid waste generated within the
16 boundaries of a municipality.

17 (15) "Distribution" (when used in relation to electricity)
18 means the process of conveying electricity from a contracting unit who
19 is a generator of electricity or a wholesale purchaser of electricity to
20 retail customers or other end users of electricity.

21 (16) "Transmission" (when used in relation to electricity)
22 means the conveyance of electricity from its point of generation to a
23 contracting unit who purchases it on a wholesale basis for resale.

24 (17) "Disposition" means the transportation, placement,
25 reuse, sale, donation, transfer or temporary storage of recyclable
26 materials for all possible uses except for disposal as municipal solid
27 waste.

28 (18) "Cooperative marketing" means the joint marketing by
29 two or more contracting units within the same county, or adjacent or
30 proximate counties, of the source separated recyclable materials
31 designated in a district recycling plan required pursuant to section 3 of
32 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative
33 agreement entered into by the participating contracting units thereof.
34 (cf: P.L.1995, c.216, s.10)

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

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

42 (1) The subject matter thereof consists of:

43 (a) (i) Professional services. The governing body 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,

1 in a newspaper authorized by law to publish its legal advertisements,
2 a brief notice stating the nature, duration, service and amount of the
3 contract, and that the resolution and contract are on file and available
4 for public inspection in the office of the clerk of the county or
5 municipality, or, in the case of a contracting unit created by more than
6 one county or municipality, of the counties or municipalities creating
7 such contracting unit; or (ii) Extraordinary unspecifiable services.
8 The application of this exception shall be construed narrowly in favor
9 of open competitive bidding, where possible, and the Division of Local
10 Government Services is authorized to adopt and promulgate rules and
11 regulations limiting the use of this exception in accordance with the
12 intention herein expressed. The governing body shall in each instance
13 state supporting reasons for its action in the resolution awarding each
14 contract and shall forthwith cause to be printed, in the manner set
15 forth in subsection (1) (a) (i) of this section, a brief notice of the
16 award of such contract;

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

19 (c) The printing of legal briefs, records and appendices to
20 be used in any legal proceeding in which the contracting party may be
21 a party;

22 (d) The furnishing of a tax map or maps for the contracting
23 party;

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

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

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

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

36 (i) Equipment repair service if in the nature of an
37 extraordinary unspecifiable service and necessary parts furnished in
38 connection with such service, which exception shall be in accordance
39 with the requirements for extraordinary unspecifiable services;

40 (j) The publishing of legal notices in newspapers as
41 required by law;

42 (k) The acquisition of artifacts or other items of unique
43 intrinsic, artistic or historical character;

44 (l) Election expenses;

45 (m) Insurance, including the purchase of insurance coverage

- 1 and consultant services, which exception shall be in accordance with
2 the requirements for extraordinary unspecifiable services;
- 3 (n) The doing of any work by handicapped persons
4 employed by a sheltered workshop;
- 5 (o) The provision of any service or the furnishing of
6 materials including those of a commercial nature, attendant upon the
7 operation of a restaurant by any nonprofit, duly incorporated,
8 historical society at or on any historical preservation site;
- 9 (p) Homemaker--home health services performed by
10 voluntary, nonprofit agencies;
- 11 (q) The purchase of materials and services for a law library
12 established pursuant to R.S.40:33-14, including books, periodicals,
13 newspapers, documents, pamphlets, photographs, reproductions,
14 microforms, pictorial or graphic works, copyright and patent materials,
15 maps, charts, globes, sound recordings, slides, films, filmscripts, video
16 and magnetic tapes, and other audiovisual, printed, or published
17 material of a similar nature; necessary binding or rebinding of law
18 library materials; and specialized library services;
- 19 (r) On-site inspections undertaken by private agencies
20 pursuant to the "State Uniform Construction Code Act," P.L.1975,
21 c.217 (C.52:27D-119 et seq.) and the regulations adopted pursuant
22 thereto;
- 23 (s) The marketing of recyclable materials recovered through
24 a recycling program, or the marketing of any product intentionally
25 produced or derived from solid waste received at a resource recovery
26 facility or recovered through a resource recovery program, including,
27 but not limited to, refuse-derived fuel, compost materials, methane
28 gas, and other similar products;
- 29 (t) Emergency medical services provided by a hospital to
30 the residents of a municipality or county, provided that: (a) such
31 exception be allowed only after the governing body determines that the
32 emergency services are available only from one provider; and (b) if
33 the contract is awarded without advertising for bids or bidding the
34 governing body shall in each instance state supporting reasons for its
35 action in a resolution awarding the contract and cause to be printed
36 once in a newspaper authorized by law to publish its legal
37 advertisements a brief notice stating the nature, duration, service, and
38 amount of the contract; and (c) the contract shall be kept on file for
39 public inspection in the office of the clerk of the municipality;
- 40 (u) Contracting unit towing and storage contracts, provided
41 that all such contracts shall be pursuant to reasonable non-exclusionary
42 and non-discriminatory terms and conditions, which may include the
43 provision of such services on a rotating basis, at the rates and charges
44 set by the municipality pursuant to section 1 of P.L.1979, c.101
45 (C.40:48-2.49). All contracting unit towing and storage contracts for

1 services to be provided at rates and charges other than those
2 established pursuant to the terms of this paragraph shall only be
3 awarded to the lowest responsible bidder in accordance with the
4 provisions of the "Local Public Contracts Law" and without regard for
5 the value of the contract therefor. Each of the aforementioned means
6 of contracting shall be subject to any regulations adopted by the
7 Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8
8 (C.17:33B-47);

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

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

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

20 (y) An agreement for the purchase of an equitable interest
21 in a water supply facility or for the provision of water supply services
22 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
23 an agreement entered into pursuant to P.L.1989, c.109
24 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
25 later than six months after the effective date of P.L.1993, c.381;

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

28 (aa) The cooperative marketing of recyclable materials recovered
29 through a recycling program; [or]

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

32 (cc) The purchase of computer software or complete computer
33 systems, and maintenance thereof where such software and systems
34 have been developed for unique and specialized local unit
35 administration and service delivery needs and are dedicated primarily
36 for that function; this exception shall not apply to the purchase of
37 computers, software, and associated equipment not related to the
38 utilization of those unique and specialized purposes, and which may be
39 readily available from commercial sources.

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

44 (3) The contracting agent has advertised for bids pursuant
45 to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and

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

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

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

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

37 Whenever a contracting unit shall determine that a bid was not
38 arrived at independently in open competition pursuant to subsection
39 (3) of this section it shall thereupon notify the county prosecutor of
40 the county in which the contracting unit is located and the Attorney
41 General of the facts upon which its determination is based, and when
42 appropriate, it may institute appropriate proceedings in any State or
43 federal court of competent jurisdiction for a violation of any State or
44 federal antitrust law or laws relating to the unlawful restraint of trade.
45 (cf: P.L.1995, c.216, s.11)

1 3. This act shall take effect immediately.

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