

ASSEMBLY, No. 1569

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Assemblymen GARCIA and STANLEY

1 AN ACT concerning local public contracts and amending P.L.1975,  
2 c.353 and 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 6 of P.L.1975, c.353 (C.40A:11-6.1) is amended to read  
8 as follows:

9 6. All purchases, contracts or agreements which require public  
10 advertisement for bids shall be awarded to the lowest responsible  
11 bidder. For the purposes of this section a contracting unit may  
12 determine that a bidder is not "responsible" if the contracting unit has  
13 had a prior negative experience with that bidder. "Prior negative  
14 experience" means, concerning a prior contract with the contracting  
15 unit:

16 a. within the previous 10 years, the bidder has been found liable in  
17 an adjudicated case, through either a court proceeding or arbitration,  
18 for noncompletion of work, failing to complete work in a timely  
19 manner, or for unsatisfactory job performance; or

20 b. within the previous five years, the bidder was given notice by  
21 certified mail, return receipt requested, of noncompletion of work,  
22 failing to complete work in a timely manner, or of unsatisfactory job  
23 performance, that required the contracting unit to either withhold  
24 monies due the bidder in order to utilize the services of another  
25 contractor to correct or complete the project or invoke a liquidated  
26 damages clause in the prior contract with the bidder.

27 Every notice to a contractor pursuant to subsection b. of this  
28 section that the contracting unit has determined that the contractor  
29 shall not be considered a responsible bidder shall specify the nature of  
30 the contract breach and shall provide for an opportunity to be heard  
31 before the governing body of the contracting unit. The contractor may  
32 appeal the determination of the governing body by instituting, within  
33 45 days of the determination of the governing body and in accordance  
34 with the New Jersey Court Rules, a summary proceeding in the

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 Superior Court, Law Division, venued in the county in which the  
2 contracting unit is located, which action shall be tried de novo.

3 Prior to the award of any other purchase, contract or agreement,  
4 the contracting agent shall, except in the case of the performance of  
5 professional services, solicit quotations, whenever practicable, on any  
6 such purchase, contract or agreement the estimated cost or price of  
7 which is \$1,000.00 or more, and the award thereof shall be made, in  
8 accordance with sections 3 (C. 40A:11-3) or 4 (C. 40A:11-4), as the  
9 case may be, of the Local Public Contracts Law, on the basis of the  
10 lowest responsible quotation received, which quotation is most  
11 advantageous to the contracting unit, price and other factors  
12 considered; provided, however, that if the contracting agent deems it  
13 impracticable to solicit competitive quotations in the case of  
14 extraordinary, unspecifiable service, or, in the case of such or any  
15 other purchase, contract or agreement awarded hereunder, having  
16 sought such quotations determines that it should not be awarded on  
17 the basis of the lowest quotation received, the contracting agent shall  
18 file a statement of explanation of the reason or reasons therefor,  
19 which shall be placed on file with said purchase, contract or  
20 agreement.

21 (cf: P.L.1983, c.418)

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23 2. Section 32 of P.L.1971, c.198 (C.40A:11-32) is amended to  
24 read as follows:

25 32. Nothing herein contained shall be construed as depriving any  
26 contracting agent of the right to reject a bid at any time prior to the  
27 actual award of a public work or contract, where the circumstances of  
28 the prospective bidder have changed subsequent to the qualification  
29 and classification of the said bidder, which in the opinion of the  
30 awarding contracting unit would adversely affect the responsibility of  
31 the bidder. Before taking final action on any such bid, the contracting  
32 agent concerned shall notify the said bidder and afford him an  
33 opportunity to present any additional information which might tend to  
34 sustain the existing classification; except that the contracting agent  
35 may take final action on the bid if the contracting unit has had a prior  
36 negative experience with the bidder pursuant to the provisions of  
37 section 6 of P.L.1975, c.353 (C.40A:11-6.1).

38 No person shall be qualified to bid on any public work or contract  
39 unless he shall have submitted a statement or answers as herein  
40 required within a period of 6 months preceding the date of opening of  
41 bids for the public work or contract, if the bidders thereon are  
42 required to be classified hereunder. In any case where the contracting  
43 unit shall require classification of the bidders in compliance with these  
44 sections, each bidder on any public work or contract shall be required

1 to submit a statement listing the changes in the statement or answers  
2 herein required as part of his bid submission.  
3 (cf: P.L.1971, c.198, s.32)

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5 3. This act shall take effect immediately.

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8 STATEMENT

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10 This bill provides that under the "Local Public Contracts Law" a  
11 contracting unit shall not be required to award a contract to the lowest  
12 bidder if the contracting unit, because of a prior negative experience  
13 with that bidder, determines that it is not in the best interest of the  
14 contracting unit to do so. The bill defines "prior negative experience"  
15 to include the following: within the previous 10 years the bidder was  
16 found liable in an adjudicated case for noncompletion or unsatisfactory  
17 job performance for work performed under a prior contract with the  
18 contracting unit. "Prior negative experience" may also be  
19 demonstrated if, within the previous five years, the contracting unit  
20 determines that the bidder did not complete work under a prior  
21 contract with the contracting unit in a timely and satisfactory manner;  
22 the contracting unit was required to withhold monies due the  
23 contractor to utilize the services of another contractor to correct or  
24 complete the project; or the liquidated damage clause of a contract had  
25 to be invoked against the contractor. Under the five-year provision  
26 the contracting unit is required to have given the bidder notice, by  
27 certified mail, return receipt requested, specifying the nature of the  
28 contractual breach and providing for an opportunity for a hearing  
29 before the governing body of the contracting unit. The contractor may  
30 appeal the determination of the governing body, within 45 days, by a  
31 summary proceeding in the Superior Court, Law Division.

32 Under current law, section 32 of P.L.1971, c.198 (C.40A:11-32),  
33 a contracting agent has the authority to reject a bid at any time prior  
34 to the award of a contract if, since the time that the prospective bidder  
35 was qualified and classified, the circumstances of that bidder have  
36 changed in such a way as to convince the contracting unit that the  
37 responsibility of the bidder would be affected. In this case, the  
38 contracting agent is required to notify the bidder and give the bidder  
39 an opportunity to present additional information that might tend to  
40 sustain the existing classification. This bill continues to afford the  
41 bidder an opportunity to present information to the department to  
42 substantiate the bidder's classification but allows the contracting agent  
43 to take final action on the bid if the contracting unit has had a prior  
44 negative experience with the bidder pursuant to the provisions of  
45 section 6 of P.L.1975, c.353 (C.40A:11-6.1).

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3 Allows local contracting unit to disqualify bidder if contracting unit

4 has had prior negative experience with that bidder.