

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1569

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 3, 1997

The Assembly Local Government Committee reports favorably Assembly Bill No. 1569, with committee amendments.

Assembly Bill No. 1569 provides that under the "Local Public Contracts Law" a contracting unit shall not be required to award a contract to the lowest bidder if the contracting unit, because of a prior negative experience with that bidder, determines that it is not in the best interest of the contracting unit to do so. As amended by the committee, the bill defines "prior negative experience" to include the following: within the previous five years the bidder was found liable in an adjudicated case for noncompletion or unsatisfactory job performance for work performed under a prior contract with the contracting unit. As amended by the committee, "prior negative experience" may also be demonstrated if, within the previous three years, the contracting unit determines that the bidder did not complete work under a prior contract with the contracting unit in a timely and satisfactory manner; the contracting unit was required to withhold monies due the contractor to utilize the services of another contractor to correct or complete the project; or the liquidated damage clause of a contract had to be invoked against the contractor. As amended by the committee, under the three-year provision the contracting unit is required to have given the bidder notice, by certified mail, return receipt requested, specifying the nature of the contractual breach and providing for an opportunity for a hearing before the governing body of the contracting unit. The contractor may appeal the determination of the governing body, within 45 days, by a summary proceeding in the Superior Court, Law Division.

Under current law, section 32 of P.L.1971, c.198 (C.40A:11-32), a contracting agent has the authority to reject a bid at any time prior to the award of a contract if, since the time that the prospective bidder was qualified and classified, the circumstances of that bidder have changed in such a way as to convince the contracting unit that the responsibility of the bidder would be affected. In this case, the contracting agent is required to notify the bidder and give the bidder an opportunity to present additional information that might tend to sustain the existing classification. This bill continues to afford the

bidder an opportunity to present information to the department to substantiate the bidder's classification but allows the contracting agent to take final action on the bid if the contracting unit has had a prior negative experience with the bidder pursuant to the provisions of section 6 of P.L.1975, c.353 (C.40A:11-6.1).

The committee amended subsection a. of section 1 of the bill to change the time for a prior negative experience in an adjudicated case from 10 years to five years. The committee also amended subsection b. of section 1 of the bill to change the time for a prior negative experience in a notice by certified mail case from five years to three years. The committee believes that these lower exclusion limits are more reasonable.