

# **ASSEMBLY, No. 3060**

## **STATE OF NEW JERSEY**

### **210th LEGISLATURE**

INTRODUCED DECEMBER 9, 2002

**Sponsored by:**

**Assemblyman PAUL SARLO**

**District 36 (Bergen, Essex and Passaic)**

#### **SYNOPSIS**

Requires value engineering clause in specifications for certain construction contracts under Local Public Contracts Law.

#### **CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT requiring a value engineering clause in the specifications for  
2 certain public contracts and amending and supplementing P.L.1971,  
3 c.198.

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

7  
8 1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read  
9 as follows:

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

12 (1) "Contracting unit" means:

13 (a) Any county; or

14 (b) Any municipality; or

15 (c) Any board, commission, committee, authority or agency, which  
16 is not a State board, commission, committee, authority or agency, and  
17 which has administrative jurisdiction over any district other than a  
18 school district, project, or facility, included or operating in whole or  
19 in part, within the territorial boundaries of any county or municipality  
20 which exercises functions which are appropriate for the exercise by  
21 one or more units of local government, and which has statutory power  
22 to make purchases and enter into contracts awarded by a contracting  
23 agent for the provision or performance of goods or services.

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

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

31 "Contracting unit" shall not include a duly incorporated nonprofit  
32 association that has entered into a contract with the governing body  
33 of a city of the first class for the provision of water supply services or  
34 wastewater treatment services pursuant to section 2 of P.L.2002, c.47  
35 (C.40A:11-5.1).

36 (2) "Governing body" means:

37 (a) The governing body of the county, when the purchase is to be  
38 made or the contract or agreement is to be entered into by, or in behalf  
39 of, a county; or

40 (b) The governing body of the municipality, when the purchase is  
41 to be made or the contract or agreement is to be entered into by, or on  
42 behalf of, a municipality; or

43 (c) Any board, commission, committee, authority or agency of 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 character described in subsection (1) (c) of this section.

2 (3) "Contracting agent" means the governing body of a contracting  
3 unit, or its authorized designee, which has the power to prepare the  
4 advertisements, to advertise for and receive bids and, as permitted by  
5 this act, to make awards for the contracting unit in connection with  
6 purchases, contracts or agreements.

7 (4) "Purchase" means a transaction, for a valuable consideration,  
8 creating or acquiring an interest in goods, services and property,  
9 except real property or any interest therein.

10 (5) (Deleted by amendment, P.L.1999, c.440.)

11 (6) "Professional services" means services rendered or performed  
12 by a person authorized by law to practice a recognized profession,  
13 whose practice is regulated by law, and the performance of which  
14 services requires knowledge of an advanced type in a field of learning  
15 acquired by a prolonged formal course of specialized instruction and  
16 study as distinguished from general academic instruction or  
17 apprenticeship and training. Professional services may also mean  
18 services rendered in the provision or performance of goods or services  
19 that are original and creative in character in a recognized field of  
20 artistic endeavor.

21 (7) "Extraordinary unspecifiable services" means services which are  
22 specialized and qualitative in nature requiring expertise, extensive  
23 training and proven reputation in the field of endeavor.

24 (8) (Deleted by amendment, P.L.1999, c.440.)

25 (9) "Work" includes services and any other activity of a tangible or  
26 intangible nature performed or assumed pursuant to a contract or  
27 agreement with a contracting unit.

28 (10) "Homemaker--home health services" means at home personal  
29 care and home management provided to an individual or members of  
30 the individual's family who reside with the individual, or both,  
31 necessitated by the individual's illness or incapacity.  
32 "Homemaker--home health services" includes, but is not limited to, the  
33 services of a trained homemaker.

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

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

42 (13) "Marketing" means the sale, disposition, assignment, or  
43 placement of designated recyclable materials with, or the granting of  
44 a concession to, a reseller, processor, materials recovery facility, or  
45 end-user of recyclable material, in accordance with a district solid  
46 waste management plan adopted pursuant to P.L.1970, c.39

1 (C.13:1E-1 et seq.) and shall not include the collection of such  
2 recyclable material when collected through a system of routes by local  
3 government unit employees or under a contract administered by a local  
4 government unit.

5 (14) "Municipal solid waste" means, as appropriate to the  
6 circumstances, all residential, commercial and institutional solid waste  
7 generated within the boundaries of a municipality; or the formal  
8 collection of such solid wastes or recyclable material in any  
9 combination thereof when collected through a system of routes by  
10 local government unit employees or under a contract administered by  
11 a local government unit.

12 (15) "Distribution" (when used in relation to electricity) means the  
13 process of conveying electricity from a contracting unit that is a  
14 generator of electricity or a wholesale purchaser of electricity to retail  
15 customers or other end users of electricity.

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

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

22 (18) "Cooperative marketing" means the joint marketing by two or  
23 more contracting units of the source separated recyclable materials  
24 designated in a district recycling plan required pursuant to section 3 of  
25 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative  
26 agreement entered into by the participating contracting units thereof.

27 (19) "Aggregate" means the sums expended or to be expended for  
28 the provision or performance of any goods or services in connection  
29 with the same immediate purpose or task, or the furnishing of similar  
30 goods or services, during the same contract year through a contract  
31 awarded by a contracting agent.

32 (20) "Bid threshold" means the dollar amount set in section 3 of  
33 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall  
34 advertise for and receive sealed bids in accordance with procedures set  
35 forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

36 (21) "Contract" means any agreement, including but not limited to  
37 a purchase order or a formal agreement, which is a legally binding  
38 relationship enforceable by law, between a vendor who agrees to  
39 provide or perform goods or services and a contracting unit which  
40 agrees to compensate a vendor, as defined by and subject to the terms  
41 and conditions of the agreement. A contract also may include an  
42 arrangement whereby a vendor compensates a contracting unit for the  
43 vendor's right to perform a service, such as, but not limited to,  
44 operating a concession.

45 (22) "Contract year" means the period of 12 consecutive months  
46 following the award of a contract.

1 (23) "Competitive contracting" means the method described in  
2 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru  
3 40A:11-4.5) of contracting for specialized goods and services in which  
4 formal proposals are solicited from vendors; formal proposals are  
5 evaluated by the purchasing agent or counsel or administrator; and the  
6 governing body awards a contract to a vendor or vendors from among  
7 the formal proposals received.

8 (24) "Goods and services" or "goods or services" means any work,  
9 labor, commodities, equipment, materials, or supplies of any tangible  
10 or intangible nature, except real property or any interest therein,  
11 provided or performed through a contract awarded by a contracting  
12 agent, including goods and property subject to N.J.S.12A:2-101 et  
13 seq.

14 (25) "Library and educational goods and services" means  
15 textbooks, copyrighted materials, student produced publications and  
16 services incidental thereto, including but not limited to books,  
17 periodicals, newspapers, documents, pamphlets, photographs,  
18 reproductions, microfilms, pictorial or graphic works, musical scores,  
19 maps, charts, globes, sound recordings, slides, films, filmstrips, video  
20 and magnetic tapes, other printed or published matter and audiovisual  
21 and other materials of a similar nature, necessary binding or rebinding  
22 of library materials, and specialized computer software used as a  
23 supplement or in lieu of textbooks or reference material.

24 (26) "Lowest price" means the least possible amount that meets all  
25 requirements of the request of a contracting agent.

26 (27) "Lowest responsible bidder or vendor" means the bidder or  
27 vendor: (a) whose response to a request for bids offers the lowest  
28 price and is responsive; and (b) who is responsible.

29 (28) "Official newspaper" means any newspaper designated by the  
30 contracting unit pursuant to R.S.35:1-1 et seq.

31 (29) "Purchase order" means a document issued by the contracting  
32 agent authorizing a purchase transaction with a vendor to provide or  
33 perform goods or services to the contracting unit, which, when  
34 fulfilled in accordance with the terms and conditions of a request of a  
35 contracting agent and other provisions and procedures that may be  
36 established by the contracting unit, will result in payment by the  
37 contracting unit.

38 (30) "Purchasing agent" means the individual duly assigned the  
39 authority, responsibility, and accountability for the purchasing activity  
40 of the contracting unit, and who has such duties as are defined by an  
41 authority appropriate to the form and structure of the contracting unit,  
42 and P.L.1971, c.198 (C.40A:11-1 et seq.).

43 (31) "Quotation" means the response to a formal or informal  
44 request made by a contracting agent by a vendor for provision or  
45 performance of goods or services, when the aggregate cost is less than  
46 the bid threshold. Quotations may be in writing, or taken verbally if

1 a record is kept by the contracting agent.

2 (32) "Responsible" means able to complete the contract in  
3 accordance with its requirements, including but not limited to  
4 requirements pertaining to experience, moral integrity, operating  
5 capacity, financial capacity, credit, and workforce, equipment, and  
6 facilities availability.

7 (33) "Responsive" means conforming in all material respects to the  
8 terms and conditions, specifications, legal requirements, and other  
9 provisions of the request.

10 (34) "Public works" means building, altering, repairing, improving  
11 or demolishing any public structure or facility constructed or acquired  
12 by a contracting unit to house local government functions or provide  
13 water, waste disposal, power, transportation, and other public  
14 infrastructures.

15 (35) "Director" means the Director of the Division of Local  
16 Government Services in the Department of Community Affairs.

17 (36) "Administrator" means a municipal administrator appointed  
18 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business  
19 administrator, a municipal manager or a municipal administrator  
20 appointed pursuant to the "Optional Municipal Charter Law,"  
21 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed  
22 pursuant to "the municipal manager form of government law,"  
23 R.S.40:79-1 et seq.; or the person holding responsibility for the overall  
24 operations of an authority that falls under the "Local Authorities Fiscal  
25 Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

26 (37) "Concession" means the granting of a license or right to act  
27 for or on behalf of the contracting unit, or to provide a service  
28 requiring the approval or endorsement of the contracting unit, and  
29 which may or may not involve a payment or exchange, or provision of  
30 services by or to the contracting unit.

31 (38) "Index rate" means the rate of annual percentage increase,  
32 rounded to the nearest half-percent, in the Implicit Price Deflator for  
33 State and Local Government Purchases of Goods and Services,  
34 computed and published quarterly by the United States Department of  
35 Commerce, Bureau of Economic Analysis.

36 (39) "Proprietary" means goods or services of a specialized nature,  
37 that may be made or marketed by a person or persons having the  
38 exclusive right to make or sell them, when the need for such goods or  
39 services has been certified in writing by the governing body of the  
40 contracting unit to be necessary for the conduct of its affairs.

41 (40) "Service or services" means the performance of work, or the  
42 furnishing of labor, time, or effort, or any combination thereof, not  
43 involving or connected to the delivery or ownership of a specified end  
44 product or goods or a manufacturing process. Service or services may  
45 also include an arrangement in which a vendor compensates the  
46 contracting unit for the vendor's right to operate a concession.

(42) "Value engineering proposal" means a cost reduction proposal that results in savings to the contracting unit based upon a value engineering analysis, without impairing any of the essential functions or characteristics of the project or any portion of the work involved. (cf: P.L.2002, c.47, s.7)

3. This act shall take effect immediately.

This bill would require that specifications and bid proposal documents for the erection, alteration, or repair of a building, structure or other improvement to real property, when the total price of the contract equals or exceeds \$2,000,000, must include a value engineering clause stating that after the contract is awarded, the contractor may submit a value engineering proposal for consideration by the contracting unit. A value engineering proposal is a cost reduction proposal that results in savings to the contracting unit based upon a value engineering analysis, without impairing any of the essential functions or characteristics of the project or any portion of the work involved. A value engineering analysis is an analysis by a contractor of the functions, systems, equipment, facilities, services,

1 supplies, and any other item needed for the performance of a contract  
2 for the purpose of achieving the essential functions of the contract at  
3 the lowest life-cycle cost consistent with required performance,  
4 reliability, quality, and safety. The contracting unit would have the sole  
5 discretion to approve or disapprove a value engineering proposal. If  
6 a value engineering proposal is approved by the contracting unit, the  
7 contractor and the contracting unit would share equally in any cost  
8 savings generated on the contract as a result of the proposal. The  
9 contractor would have no claim against the contracting unit as a result  
10 of the disapproval of a value engineering proposal. The bill authorizes  
11 a contracting unit to utilize value engineering procedures established  
12 by the New Jersey Department of Transportation or any other  
13 appropriate State agency.