

[Second Reprint]

ASSEMBLY, No. 2809

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED MAY 13, 2004

Sponsored by:

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District 22 (Middlesex, Somerset and Union)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

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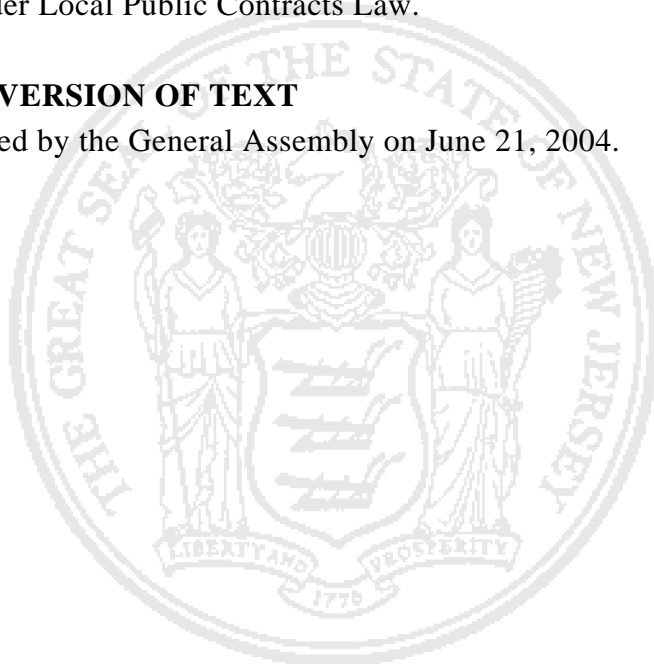
Assemblyman Eagler and Assemblywoman Greenstein

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 21, 2004.



(Sponsorship Updated As Of: 6/25/2004)

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted June 17, 2004.

² Assembly floor amendments adopted June 21, 2004.

1 behalf of, a municipality; or

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

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

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

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

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

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

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

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

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

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

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

44 (13) "Marketing" means the sale, disposition, assignment, or
45 placement of designated recyclable materials with, or the granting of
46 a concession to, a reseller, processor, materials recovery facility, or

1 end-user of recyclable material, in accordance with a district solid
2 waste management plan adopted pursuant to P.L.1970, c.39
3 (C.13:1E-1 et seq.) and shall not include the collection of such
4 recyclable material when collected through a system of routes by local
5 government unit employees or under a contract administered by a local
6 government unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (31) "Quotation" means the response to a formal or informal
46 request made by a contracting agent by a vendor for provision or
47 performance of goods or services, when the aggregate cost is less than

1 the bid threshold. Quotations may be in writing, or taken verbally if
2 a record is kept by the contracting agent.

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

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

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

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

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

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

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

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

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

1 (41) "Value engineering analysis" means an analysis by a contractor
2 of the functions, systems, equipment, facilities, services, supplies, and
3 any other item needed for the performance of a contract for the
4 purpose of achieving the essential functions of the contract at the
5 lowest life-cycle cost consistent with required performance, reliability,
6 quality, and safety.

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

12
13 2. (New section) All contract specifications and bid proposal
14 documents for the erection, alteration, or repair of a ¹[building,]¹
15 structure or other improvement to real property, ¹other than the
16 construction, reconstruction, demolition, or renovation of a public
17 building.¹ when the total price of the contract equals or exceeds
18 \$2,000,000, shall include a value engineering clause stating that after
19 the contract is awarded, the contractor may submit a value engineering
20 proposal for consideration by the contracting unit. ¹The contractor
21 shall be liable for all reasonable costs associated with the technical
22 evaluation and engineering review of the value engineering proposal
23 by the public entity.¹ The contracting unit shall have the sole
24 discretion to approve or disapprove a value engineering proposal. If
25 a value engineering proposal is approved by the contracting unit, the
26 contractor and the contracting unit shall share equally in any cost
27 savings generated on the contract as a result of the proposal. The
28 contractor shall have no claim against the contracting unit as a result
29 of the contracting unit's disapproval of a value engineering proposal.
30 A contracting unit may utilize value engineering procedures
31 established by the New Jersey Department of Transportation or any
32 other appropriate State agency. ²A contracting unit may also develop
33 value engineering procedures based on those established by the New
34 Jersey Department of Transportation or any other appropriate State
35 agency.²

36
37 3. This act shall take effect immediately.