

SENATE, No. 297

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Senator ANDREW R. CIESLA

District 10 (Monmouth and Ocean)

Senator 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

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/14/2004)

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
42 behalf of, a municipality; or

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

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.

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

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

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

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

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

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

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

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

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

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

41 (13) "Marketing" means the sale, disposition, assignment, or
42 placement of designated recyclable materials with, or the granting of
43 a concession to, a reseller, processor, materials recovery facility, or
44 end-user of recyclable material, in accordance with a district solid
45 waste management plan adopted pursuant to P.L.1970, c.39
46 (C.13:1E-1 et seq.) and shall not include the collection of such

1 recyclable material when collected through a system of routes by local
2 government unit employees or under a contract administered by a local
3 government unit.

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

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

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

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

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

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

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

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

44 (22) "Contract year" means the period of 12 consecutive months
45 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
47 a record is kept by the contracting agent.

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

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

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

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

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

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

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

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

40 (40) "Service or services" means the performance of work, or the
41 furnishing of labor, time, or effort, or any combination thereof, not
42 involving or connected to the delivery or ownership of a specified end
43 product or goods or a manufacturing process. Service or services may
44 also include an arrangement in which a vendor compensates the
45 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 building,
 15 structure or other improvement to real property, when the total price
 16 of the contract equals or exceeds \$2,000,000, shall include a value
 17 engineering clause stating that after the contract is awarded, the
 18 contractor may submit a value engineering proposal for consideration
 19 by the contracting unit. The contracting unit shall have the sole
 20 discretion to approve or disapprove a value engineering proposal. If
 21 a value engineering proposal is approved by the contracting unit, the
 22 contractor and the contracting unit shall share equally in any cost
 23 savings generated on the contract as a result of the proposal. The
 24 contractor shall have no claim against the contracting unit as a result
 25 of the contracting unit's disapproval of a value engineering proposal.
 26 A contracting unit may utilize value engineering procedures
 27 established by the New Jersey Department of Transportation or any
 28 other appropriate State agency.

29
 30 3. This act shall take effect immediately.

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

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