

# ASSEMBLY, No. 4222

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 27, 2011

**Sponsored by:**

**Assemblywoman LINDA STENDER**

**District 22 (Middlesex, Somerset and Union)**

**SYNOPSIS**

Requires local public contracts to contain provision for renegotiation upon key construction material's price change based on recognized industry price index.

**CURRENT VERSION OF TEXT**

As introduced.



1   **AN ACT** requiring renegotiation provision in certain local public  
2       contracts to stabilize prices for public projects and address  
3       dramatic fluctuations in the cost of construction materials, and  
4       amending P.L.1971, c.198.

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

8  
9       1. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to  
10      read as follows:

11      16. a. In the preparation of plans and specifications for the  
12      construction, alteration or repair of any public building by any  
13      contracting unit, when the entire cost of the work will exceed the  
14      bid threshold, the architect, engineer or other person preparing the  
15      plans and specifications may prepare separate plans and  
16      specifications for

17          (1) The plumbing and gas fitting and all kindred work;

18          (2) Steam power plants, steam and hot water heating and  
19      ventilating apparatus and all kindred work;

20          (3) Electrical work;

21          (4) Structural steel and ornamental iron work; and

22          (5) All other work required for the completion of the project.

23      The contracting agent shall advertise for and receive, in the  
24      manner provided by law, either (a) separate bids for each of said  
25      branches of work, or (b) bids for all the work, goods and services  
26      required to complete the building to be included in a single overall  
27      contract, or (c) both. In the case of a single bid under (b) or (c),  
28      there shall be set forth in the bid the name or names of all  
29      subcontractors to whom the bidder will subcontract the furnishing  
30      of plumbing and gas fitting, and all kindred work, and of the steam  
31      and hot water heating and ventilating apparatus, steam power plants  
32      and kindred work, and electrical work, structural steel and  
33      ornamental iron work, each of which subcontractors shall be  
34      qualified in accordance with P.L.1971, c.198 (C.40A:11-1 et seq.).  
35      The contracting unit shall require evidence of performance security  
36      to be submitted simultaneously with the list of the subcontractors.  
37      Evidence of performance security may be supplied by the bidder on  
38      behalf of himself and any or all subcontractors, or by each  
39      respective subcontractor, or by any combination thereof which  
40      results in evidence of performance security equaling, but in no  
41      event exceeding, the total amount bid.

42      b. Whenever a bid sets forth more than one subcontractor for  
43      any of the specialty trade categories (1) through (4) specified in  
44      subsection a. of this section, the bidder shall submit to the  
45      contracting unit a certificate signed by the bidder listing each

**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 subcontractor named in the bid for that category. The certificate  
2 shall set forth the scope of work, goods and services for which the  
3 subcontractor has submitted a price quote and which the bidder has  
4 agreed to award to each subcontractor should the bidder be awarded  
5 the contract. The certificate shall be submitted to the contracting  
6 unit simultaneously with the list of the subcontractors. The  
7 certificate may take the form of a single certificate listing all  
8 subcontractors or, alternatively, a separate certificate may be  
9 submitted for each subcontractor. If a bidder does not submit a  
10 certificate or certificates to the contracting unit, the contracting unit  
11 shall award the contract to the next lowest responsible bidder.

12 c. Contracts shall be awarded to the lowest responsible bidder.  
13 In the event that a contract is advertised for both separate bids for  
14 each branch of work and for bids for all work, goods, and services,  
15 said contract shall be awarded in the following manner: If the sum  
16 total of the amounts bid by the lowest responsible bidder for each  
17 branch is less than the amount bid by the lowest responsible bidder  
18 for all the work, goods and services, the contracting unit shall  
19 award separate contracts for each of such branches to the lowest  
20 responsible bidder therefor, but if the sum total of the amounts bid  
21 by the lowest responsible bidder for each branch is not less than the  
22 amount bid by the lowest responsible bidder for all the work, goods  
23 and services, the contracting unit shall award a single overall  
24 contract to the lowest responsible bidder for all of such work, goods  
25 and services. In every case in which a contract is awarded for a  
26 single overall contract, all payments required to be made under such  
27 contract for work, goods and services supplied by a subcontractor  
28 shall, upon the certification of the contractor of the amount due to  
29 the subcontractor, be paid directly to the subcontractor.

30 d. Any bid specification prepared pursuant to this section that  
31 includes the use of 1,000 or more tons of hot mix asphalt, shall  
32 include a pay item for any asphalt price adjustment reflecting  
33 changes in the cost of asphalt cement. Any bid specification  
34 prepared pursuant to this section that includes the use of less than  
35 1,000 tons of hot mix asphalt, shall include a pay item for an  
36 asphalt price adjustment for any quantity of hot mix asphalt  
37 exceeding 1,000 tons that may be used in the work in the event that  
38 performance of the work, including change orders, requires more  
39 than 1,000 tons of hot mix asphalt.

40 The asphalt price adjustment shall be calculated in accordance  
41 with the formula and relevant instructions published in the most  
42 recent edition of the New Jersey Department of Transportation  
43 Standard Specifications for Road and Bridge Construction as  
44 revised by the "Standard Inputs" periodically issued by the  
45 department. All invoices for payment shall be accompanied by the  
46 calculation of any asphalt price adjustment and a showing of the  
47 current month's Asphalt Price Index, the Basic Asphalt Price Index.

1 e. (1) Every bid specification prepared pursuant to this section  
2 may be eligible for a fuel price adjustment. Fuel that is eligible for  
3 a fuel price adjustment shall be the sum of the quantities of the  
4 eligible pay items in the contract times the fuel usage factors as  
5 determined by the Department of Transportation. The types of fuel  
6 furnished shall be at the option of the contractor.

7 (2) The fuel requirement for items not determined by the  
8 Department of Transportation to be eligible, and for pay items in  
9 the bid specifications calling for less than 500 gallons of fuel, shall  
10 not be eligible for a fuel price adjustment. If more than one pay  
11 item has the same nomenclature but with different thicknesses,  
12 depths, or types, each individual pay item must require 500 gallons  
13 or more of fuel to be eligible for a fuel price adjustment. If more  
14 than one pay item has the exact same nomenclature, similar pay  
15 items shall be combined and this combination must require 500  
16 gallons or more of fuel to be eligible for the fuel price adjustment.

17 (3) Fuel price adjustments shall not be made in those months for  
18 which the monthly fuel price index has changed by less than five  
19 percent from the basic fuel price.

20 f. As used in subsections d. and e. of this section:

21 "Asphalt Price Index" means the Asphalt Price Index as  
22 determined and published by the New Jersey Department of  
23 Transportation.

24 "Basic Asphalt Price Index" means the Basic Asphalt Price Index  
25 as published by the New Jersey Department of Transportation in its  
26 "Standard Specifications for Road and Bridge Construction," as  
27 revised by the "Standard Inputs" periodically issued by the New  
28 Jersey Department of Transportation.

29 "Fuel Price Index" means the Fuel Price Index as determined and  
30 published by the New Jersey Department of Transportation.

31 "Pay Item" means a specifically described item of work for  
32 which the bidder provides a per unit or lump sum price in a bid  
33 specification as determined and published by the New Jersey  
34 Department of Transportation.

35 g. Any bid specification prepared pursuant to this section shall  
36 include in the contract a material price stabilization clause that  
37 provides for adjusting the price of a material, not already covered  
38 by subsections d. and e. of this section, purchased during the term  
39 of the contract, the value of which exceeds five percent of the  
40 contract value, if the material's price increases or decreases by at  
41 least two times the percentage change in the Consumer Price Index  
42 for that geographic region, at any time during the term of the  
43 contract. The contractor may provide to the project owner a list of  
44 those items included in the contract, and subcontracts, which exceed  
45 the five percent threshold. These items shall be deemed eligible  
46 items. No price adjustment shall be made for any item not  
47 identified as an eligible item by the contractor at the time of bid.  
48 The contractor awarded the project shall disclose to the project

1 owner the price included in the contractor's bid for eligible items,  
2 and shall be required to document the actual cost for the purchase of  
3 the eligible items to be deemed eligible for a material price  
4 adjustment. The material price stabilization clause shall be  
5 applicable to every party to the contract, including subcontractors.

6 In the case of a subcontract, of any tier, "contract value" in this  
7 subsection means the total value of that individual subcontractor's  
8 contract with the prime contractor, general contractor, or higher tier  
9 subcontractor.

10 The baseline for any price adjustment shall be specified in the  
11 contract and shall be a recognized industry index for the specific  
12 material. A recognized industry index includes, but is not limited  
13 to, the Engineering News Record's "Materials Cost Index," and the  
14 "Cost of Construction Inputs," as determined by the United States  
15 Department of Labor, Bureau of Labor Statistics, for the month  
16 immediately preceding the contract award. The index used as a  
17 basis for adjustment shall be the same index used to determine the  
18 baseline, and the adjustment shall be paid on a lump sum basis, as  
19 appropriate, to either a contracting unit in the event of a downward  
20 adjustment, or to a contractor or subcontractor in the event of an  
21 upward adjustment.

22 Any funds awarded to a contracting unit as a result of a  
23 downward adjustment in the price of the material as provided under  
24 the material stabilization clause of a contract shall be paid or  
25 credited by the contractor, or subcontractor of any tier which  
26 actually purchased the material.

27 Any funds awarded to a contractor or subcontractor of any tier as  
28 a result of an upward adjustment in the price of the material, as  
29 provided under the material stabilization clause of the contract,  
30 shall be paid by the contracting unit to the contractor or  
31 subcontractor of any tier which actually purchased the material.

32 (cf: P.L.2009, c.187, s.1)

33  
34 2. This act shall take effect immediately.  
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## 37 STATEMENT

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39 This bill would require each construction contract entered into  
40 pursuant to the "Local Public Contracts Law," (C.40A:11-1 et seq.),  
41 to contain a provision that requires renegotiation when the price of  
42 a key construction material fluctuates by at least two times the  
43 change in the Consumer Price Index during the term of the contract.  
44 This bill would ultimately lower the cost of projects for the  
45 taxpayer by providing greater certainty to project bidders, thus  
46 lessening the impact of contingency pricing currently included in  
47 bids. Additionally, public entities will benefit by earning credit for

1 any qualified materials that decrease in price during the term of a  
2 contract.

3 Materials which exceed five percent of the total contract value  
4 would trigger the renegotiation clause and the renegotiated price  
5 would be measured using a baseline price for a particular material,  
6 which this bill would require to be a recognized industry price  
7 index.

8 The bill provides that any funds awarded to a contracting unit as  
9 a result of a downward adjustment in the price of the material as  
10 provided under the material stabilization clause of a contract shall  
11 be paid or credited by the contractor, or subcontractor of any tier  
12 which actually purchased the material. In addition, any funds  
13 awarded to a contractor or subcontractor of any tier as a result of an  
14 upward adjustment in the price of the material, as provided under  
15 the material stabilization clause of the contract, shall be paid by the  
16 contracting unit to the contractor or subcontractor of any tier which  
17 actually purchased the material.