

ASSEMBLY, No. 1042

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman ANTHONY M. BUCCO

District 25 (Morris and Somerset)

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SYNOPSIS

Exempts contracting units who use cooperative purchasing agreements or cooperative pricing systems from price adjustments in local public contracts for asphalt cement and fuel.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning certain price adjustments in local public
2 contracts and amending P.L.1971, c.198.

3

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

6

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

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

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

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

18 (3) Electrical work;

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

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

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

40 b. Whenever a bid sets forth more than one subcontractor for
41 any of the specialty trade categories (1) through (4) specified in
42 subsection a. of this section, the bidder shall submit to the
43 contracting unit a certificate signed by the bidder listing each
44 subcontractor named in the bid for that category. The certificate
45 shall set forth the scope of work, goods and services for which 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 subcontractor has submitted a price quote and which the bidder has
2 agreed to award to each subcontractor should the bidder be awarded
3 the contract. The certificate shall be submitted to the contracting
4 unit simultaneously with the list of the subcontractors. The
5 certificate may take the form of a single certificate listing all
6 subcontractors or, alternatively, a separate certificate may be
7 submitted for each subcontractor. If a bidder does not submit a
8 certificate or certificates to the contracting unit, the contracting unit
9 shall award the contract to the next lowest responsible bidder.

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

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

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

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

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

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

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

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

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

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

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

36 g. A contracting unit that purchases goods or services through a
37 contract awarded pursuant to a nationally-recognized and accepted
38 cooperative purchasing agreement that was developed utilizing a
39 competitive bidding process, or a contracting unit that purchases
40 goods or services through a contract awarded by a cooperative
41 pricing system that was established pursuant to sections 5 and 6 of
42 P.L.1971, c.198 (C.40A:11-5 and C.40A:11-6) shall be exempt
43 from the provisions of subsections d. and e. of this section.

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

45
46 2. This act shall take effect immediately.

STATEMENT

3 This bill provides that a contracting unit that purchases goods or
4 services through a contract awarded pursuant to a nationally-
5 recognized and accepted cooperative purchasing agreement that was
6 developed utilizing a competitive bidding process, or a contracting
7 unit that purchases goods or services through a contract awarded by
8 a cooperative pricing system that was established pursuant to
9 sections 5 and 6 of P.L.1971, c.198 (C.40A:11-5 and C.40A:11-6)
10 would be exempt from the price adjustments in local public
11 contracts for asphalt cement and fuel set forth in subsections d. and
12 e. of section 16 of P.L.1971, c.198 (C.40A:11-16).