

ASSEMBLY, No. 1206

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Clarifies ability of certain contracting units to specify use of inherently safer technologies for contracts involving extraordinarily hazardous substances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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2

1 AN ACT concerning certain contracts involving extraordinarily
2 hazardous substances and amending various parts of the statutory
3 law and supplementing Title 52 of the Revised Statutes.
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
9 read 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,
16 which is not a State board, commission, committee, authority or
17 agency, and which has administrative jurisdiction over any district
18 other than a school district, project, or facility, included or
19 operating in whole or in part, within the territorial boundaries of
20 any county or municipality which exercises functions which are
21 appropriate for the exercise by one or more units of local
22 government, and which has statutory power to make purchases and
23 enter into contracts awarded by a contracting agent for the provision
24 or performance of goods or services.

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

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

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

37 "Contracting unit" shall not include a duly incorporated nonprofit
38 entity that has entered into a contract for management and operation
39 services with a municipal hospital authority established pursuant to
40 P.L.2006, c.46 (C.30:9-23.15 et al.).

41 (2) "Governing body" means:

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

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.

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- 1 (b) The governing body of the municipality, when the purchase
2 is to be made or the contract or agreement is to be entered into by,
3 or on behalf of, a municipality; or
- 4 (c) Any board, commission, committee, authority or agency of
5 the character described in subsection (1) (c) of this section.
- 6 (3) "Contracting agent" means the governing body of a
7 contracting unit, or its authorized designee, which has the power to
8 prepare the advertisements, to advertise for and receive bids and, as
9 permitted by this act, to make awards for the contracting unit in
10 connection with purchases, contracts or agreements.
- 11 (4) "Purchase" means a transaction, for a valuable consideration,
12 creating or acquiring an interest in goods, services and property,
13 except real property or any interest therein.
- 14 (5) (Deleted by amendment, P.L.1999, c.440.)
- 15 (6) "Professional services" means services rendered or
16 performed by a person authorized by law to practice a recognized
17 profession, whose practice is regulated by law, and the performance
18 of which services requires knowledge of an advanced type in a field
19 of learning acquired by a prolonged formal course of specialized
20 instruction and study as distinguished from general academic
21 instruction or apprenticeship and training. Professional services
22 may also mean services rendered in the provision or performance of
23 goods or services that are original and creative in character in a
24 recognized field of artistic endeavor.
- 25 (7) "Extraordinary unspecifiable services" means services which
26 are specialized and qualitative in nature requiring expertise,
27 extensive training and proven reputation in the field of endeavor.
- 28 (8) (Deleted by amendment, P.L.1999, c.440.)
- 29 (9) "Work" includes services and any other activity of a tangible
30 or intangible nature performed or assumed pursuant to a contract or
31 agreement with a contracting unit.
- 32 (10) "Homemaker--home health services" means at home
33 personal care and home management provided to an individual or
34 members of the individual's family who reside with the individual,
35 or both, necessitated by the individual's illness or incapacity.
36 "Homemaker--home health services" includes, but is not limited to,
37 the services of a trained homemaker.
- 38 (11) "Recyclable material" means those materials which would
39 otherwise become municipal solid waste, and which may be
40 collected, separated or processed and returned to the economic
41 mainstream in the form of raw materials or products.
- 42 (12) "Recycling" means any process by which materials which
43 would otherwise become solid waste are collected, separated or
44 processed and returned to the economic mainstream in the form of
45 raw materials or products.
- 46 (13) "Marketing" means the sale, disposition, assignment, or
47 placement of designated recyclable materials with, or the granting

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

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

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

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

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

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

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

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

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

1 contracting unit for the vendor's right to perform a service, such as,
2 but not limited to, operating a concession.

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

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

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

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

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

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

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

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

43 (30) "Purchasing agent" means the individual duly assigned the
44 authority, responsibility, and accountability for the purchasing
45 activity of the contracting unit, and who has such duties as are
46 defined by an authority appropriate to the form and structure of the

1 contracting unit, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.)
2 and who possesses a qualified purchasing agent certificate.

3 (31) "Quotation" means the response to a formal or informal
4 request made by a contracting agent by a vendor for provision or
5 performance of goods or services, when the aggregate cost is less
6 than the bid threshold. Quotations may be in writing, or taken
7 verbally if a record is kept by the contracting agent.

8 (32) "Responsible" means able to complete the contract in
9 accordance with its requirements, including but not limited to
10 requirements pertaining to experience, moral integrity, operating
11 capacity, financial capacity, credit, and workforce, equipment, and
12 facilities availability.

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

16 (34) "Public works" means building, altering, repairing,
17 improving or demolishing any public structure or facility
18 constructed or acquired by a contracting unit to house local
19 government functions or provide water, waste disposal, power,
20 transportation, and other public infrastructures.

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

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

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

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

43 (39) "Proprietary" means goods or services of a specialized
44 nature, that may be made or marketed by a person or persons having
45 the exclusive right to make or sell them, when the need for such
46 goods or services has been certified in writing by the governing

1 body of the contracting unit to be necessary for the conduct of its
2 affairs.

3 (40) "Service or services" means the performance of work, or the
4 furnishing of labor, time, or effort, or any combination thereof, not
5 involving or connected to the delivery or ownership of a specified
6 end product or goods or a manufacturing process. Service or
7 services may also include an arrangement in which a vendor
8 compensates the contracting unit for the vendor's right to operate a
9 concession.

10 (41) "Qualified purchasing agent certificate" means a certificate
11 granted by the director pursuant to section 9 of P.L.1971, c.198
12 (C.40A:11-9).

13 (42) "Extraordinarily hazardous substance" or "EHS" means a
14 chemical or chemical compound identified in subsection a. of
15 section 4 of P.L.1985, c.403 (C.13:1K-22) on the initial
16 extraordinarily hazardous substance list.

17 (43) "Inherently safer technology" means the principles or
18 techniques that can be incorporated in a covered process to
19 minimize or eliminate the potential for an EHS release and that
20 have been determined to be feasible in accordance with rules and
21 regulations promulgated by the Department of Environmental
22 Protection pursuant to the "Toxic Catastrophe Prevention Act,"
23 P.L.1985, c.403 (C.13:1K-19 et seq.) and any other applicable
24 source of authority.

25 (44) "Covered process" means a process that has an EHS present.

26 (45) "EHS release" means a discharge or emission of an EHS
27 from a piece of EHS equipment in which it is contained, excluding
28 discharges or emissions occurring pursuant to and in compliance
29 with the conditions of any State permit or regulation.

30 (46) "EHS accident" means an unplanned, unforeseen or
31 unintended incident, situation, condition, or set of circumstances
32 which directly or indirectly results in an EHS release.

33 (47) "EHS equipment" means that equipment within a covered
34 process whose failure or improper operation could directly or
35 indirectly result in or contribute to an EHS accident, including, but
36 not limited to, vessels, piping, compressors, pumps, instrumentation
37 and electrical equipment. EHS equipment includes fire suppression,
38 risk mitigation, EHS release detection equipment, and EHS
39 shipping container handling equipment.

40 (cf: P.L.2009, c.166, s.1)

41

42 2. Section 4 of P.L.1999, c.440 (C.40A:11-4.4) is amended to
43 read as follows:

44 4. The competitive contracting process shall utilize request for
45 proposals documentation in accordance with the following
46 provisions:

- 1 a. (1) The purchasing agent or counsel or administrator shall
2 prepare or have prepared a request for proposal documentation,
3 which shall include: all requirements deemed appropriate and
4 necessary to allow for full and free competition between vendors;
5 information necessary for potential vendors to submit a proposal;
6 and a methodology by which the contracting unit will evaluate and
7 rank proposals received from vendors.
- 8 (2) If contained in the governing body resolution authorizing the
9 use of competitive contracting pursuant to section 3 of P.L.1999,
10 c.440 (C.40A:11-4.3), request for proposal documentation for the
11 provision or performance of goods or services involving the
12 generation, storage, or handling of an extraordinarily hazardous
13 substance may restrict, condition or limit the award of the contract
14 to prospective vendors that minimize or eliminate the potential of
15 an extraordinarily hazardous substance release by incorporating the
16 principles or techniques of inherently safer technologies.
- 17 b. The methodology for the awarding of competitive contracts
18 shall be based on an evaluation and ranking, which shall include
19 technical, management, and cost related criteria, and may include a
20 weighting of criteria, all developed in a way that is intended to meet
21 the specific needs of the contracting unit, and where such criteria
22 shall not unfairly or illegally discriminate against or exclude
23 otherwise capable vendors. When an evaluation methodology uses
24 a weighting of criteria, at the option of the contracting unit the
25 weighting to be accorded to each criterion may be disclosed to
26 vendors prior to receipt of the proposals. The methodology for
27 awarding competitive contracts shall comply with such rules and
28 regulations as the director may adopt, after consultation with the
29 Commissioner of Education, pursuant to the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
- 31 c. At no time during the proposal solicitation process shall the
32 purchasing agent or counsel or administrator convey information,
33 including price, to any potential vendor which could confer an
34 unfair advantage upon that vendor over any other potential vendor.
35 If a purchasing agent or counsel or administrator desires to change
36 proposal documentation, the purchasing agent or counsel or
37 administrator shall notify only those potential vendors who received
38 the proposal documentation of any and all changes in writing and
39 all existing documentation shall be changed appropriately.
- 40 d. All proposals and contracts shall be subject to the provisions
41 of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission
42 of a statement of corporate ownership and the provisions of
43 P.L.1975, c.127(C.10:5-31 et seq.) concerning equal employment
44 opportunity and affirmative action.
45 (cf: P.L.1999, c.440, s.4)

1 3. Section 2 of P.L.2007, c.332, (C.40A:11-9.1) is amended to
2 read as follows:

3 2. The State Treasurer, through the Division of Purchase and
4 Property, in consultation with the Department of Environmental
5 Protection and any other appropriate State agencies, shall develop a
6 list of sources for green product purchasing by contracting units,
7 and provide regular revisions of the list, on the Internet web page of
8 the Department of the Treasury and shall have the authority to
9 specify appropriate and reasonable standards for the identification
10 of a list of sources for green products. The list of sources for green
11 product purchasing shall set forth commodities and services that
12 minimize or eliminate the potential of an extraordinarily hazardous
13 substance release by incorporating the principles or techniques of
14 inherently safer technologies.

15 (cf: P.L.2007, c.332, s.2)

16

17 4. Section 13 of P.L.1971, c.198, (C.40A:11-13) is amended to
18 read as follows:

19 13. Specifications. Any specifications for the provision or
20 performance of goods or services under this act shall be drafted in a
21 manner to encourage free, open and competitive bidding. In
22 particular, no specifications under this act may:

23 (a) Require any standard, restriction, condition or limitation not
24 directly related to the purpose, function or activity for which the
25 contract is awarded; or

26 (b) Require that any bidder be a resident of, or that the bidder's
27 place of business be located in, the county or municipality in which
28 the contract will be awarded or performed, unless the physical
29 proximity of the bidder is requisite to the efficient and economical
30 performance of the contract; except that no specification for a
31 contract for the collection and disposal of municipal solid waste
32 shall require any bidder to be a resident of, or that the bidder's place
33 of business be located in, the county or municipality in which the
34 contract will be performed; or

35 (c) Discriminate on the basis of race, religion, sex, national
36 origin, creed, color, ancestry, age, marital status, affectional or
37 sexual orientation, familial status, liability for service in the Armed
38 Forces of the United States, or nationality; or

39 (d) Require, with regard to any contract, the furnishing of any
40 "brand name," but may in all cases require "brand name or
41 equivalent," except that if the goods or services to be provided or
42 performed are proprietary, such goods or services may be purchased
43 by stipulating the proprietary goods or services in the bid
44 specification in any case in which the resolution authorizing the
45 contract so indicates, and the special need for such proprietary
46 goods or services is directly related to the performance, completion
47 or undertaking of the purpose for which the contract is awarded; or

1 (e) Fail to include any option for renewal, extension, or release
2 which the contracting unit may intend to exercise or require; or any
3 terms and conditions necessary for the performance of any extra
4 work; or fail to disclose any matter necessary to the substantial
5 performance of the contract.

6 Any specification which knowingly excludes prospective bidders
7 by reason of the impossibility of performance, bidding or
8 qualification by any but one bidder, except as provided herein, shall
9 be null and void and of no effect and shall be readvertised for
10 receipt of new bids, and the original contract shall be set aside by
11 the governing body.

12 Any specification for a contract for the collection and disposal of
13 municipal solid waste shall conform to the uniform bid
14 specifications for municipal solid waste collection contracts
15 established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-
16 7.22).

17 Any specification may include an item for the cost, which shall
18 be paid by the contractor, of creating a file to maintain the notices
19 of the delivery of labor or materials required by N.J.S.2A:44-128.

20 Any prospective bidder who wishes to challenge a bid
21 specification shall file such challenges in writing with the
22 contracting agent no less than three business days prior to the
23 opening of the bids. Challenges filed after that time shall be
24 considered void and having no impact on the contracting unit or the
25 award of a contract.

26 Any specifications for the provision or performance of goods or
27 services involving the generation, storage, or handling of an
28 extraordinarily hazardous substance may restrict, condition or limit
29 the award of the contract to prospective bidders that minimize or
30 eliminate the potential of an extraordinarily hazardous substance
31 release by incorporating the principles or techniques of inherently
32 safer technologies.

33 (cf: P.L.1999, c.440, s.19)

34

35 5. R.S.58:5-20 is amended to read as follows:

36 58:5-20. a. Whenever any work to be performed or material to
37 be furnished involves an expenditure exceeding \$7,500.00 or the
38 amount determined pursuant to subsection b. of this section, the
39 commission shall cause to be prepared, and shall approve in public
40 meeting, such form of contract or alternative contracts for the
41 execution of the work or the furnishing of the materials, and
42 payment therefor, as will in its judgment secure the execution of the
43 work and the furnishing of the materials most efficiently,
44 economically and expeditiously.

45 This subsection shall not prevent the commission from having
46 any work done by its own employees, nor shall it apply to repairs,
47 or to the furnishing of materials, supplies or labor, or the hiring of

1 equipment or vehicles, when the safety or protection of its or other
2 public property or the public convenience requires, or the exigency
3 of the commission's service will not admit of such advertisement.
4 In such case the commission shall, by resolution, passed by the
5 affirmative vote of a majority of its members, declare the exigency
6 or emergency to exist, and set forth in the resolution the nature
7 thereof and the approximate amount to be so expended.

8 Thereupon the commission shall designate the time when it will
9 meet at its usual place of meeting to receive proposals in writing for
10 doing the work or furnishing the materials in accordance with, and
11 upon the terms and conditions of, such form of contract or
12 alternative contracts, and shall order its clerk to give notice, by
13 advertisement inserted at least 10 days before the time of such
14 meeting in at least two newspapers printed and circulating in the
15 county or counties in which the municipalities in said water supply
16 project are situated, of the work to be done and the materials to be
17 furnished, particular plans and specifications of which shall, at the
18 time of such order, be filed in the office of the commission.

19 Plans and specifications for work to be performed or material to
20 be furnished involving the generation, storage, or handling of an
21 extraordinarily hazardous substance may restrict, condition or limit
22 the award of the contract to prospective bidders that minimize or
23 eliminate the potential of an extraordinarily hazardous substance
24 release by incorporating the principles or techniques of inherently
25 safer technologies.

26 For the purposes of this section:

27 "Extraordinarily hazardous substance" or "EHS" means a
28 chemical or chemical compound, in the quantities indicated,
29 identified in subsection a. of section 4 of P.L.1985, c.403 (C.13:1K-
30 22) on the initial extraordinarily hazardous substance list.

31 "Inherently safer technology" means the principles or techniques
32 that can be incorporated in a covered process to minimize or
33 eliminate the potential for an EHS release and that have been
34 determined to be feasible in accordance with rules and regulations
35 promulgated by the Department of Environmental Protection
36 pursuant to the "Toxic Catastrophe Prevention Act," P.L.1985,
37 c.403 (C.13:1K-19 et seq.) and any other applicable source of
38 authority.

39 "Covered process" means a process that has an EHS present.

40 "EHS release" means a discharge or emission of an EHS from a
41 piece of EHS equipment in which it is contained, excluding
42 discharges or emissions occurring pursuant to and in compliance
43 with the conditions of any State permit or regulation.

44 "EHS accident" means an unplanned, unforeseen or unintended
45 incident, situation, condition, or set of circumstances which directly
46 or indirectly results in an EHS release.

1 “EHS equipment” means that equipment within a covered
2 process whose failure or improper operation could directly or
3 indirectly result in or contribute to an EHS accident, including, but
4 not limited to, vessels, piping, compressors, pumps, instrumentation
5 and electrical equipment. EHS equipment includes fire suppression,
6 risk mitigation, EHS release detection equipment, and EHS
7 shipping container handling equipment.

8 All proposals shall be publicly opened by the commission, which
9 shall award the contract to the lowest responsible and qualified
10 bidder under the form of the contract originally adopted or the form
11 of the alternative contract which shall then be adopted by it as most
12 advantageous.

13 Each contractor shall be required to give bond satisfactory in
14 amount and security to the commission for the faithful performance
15 of his contract.

16 b. The Governor, in consultation with the Department of the
17 Treasury, shall, no later than March 1 of each odd-numbered year,
18 adjust the threshold amount set forth in subsection a. of this section,
19 or subsequent to 1985 the threshold amount resulting from any
20 adjustment under this subsection or section 17 of P.L.1985, c.469,
21 in direct proportion to the rise or fall of the Consumer Price Index
22 for all urban consumers in the New York City and the Philadelphia
23 areas as reported by the United States Department of Labor. The
24 Governor shall, no later than June 1 of each odd-numbered year,
25 notify each commission of the adjustment. The adjustment shall
26 become effective on July 1 of each odd-numbered year.

27 (cf: P.L.1985, c.469, s.15)

28
29 6. R.S.58:14-22 is amended to read as follows:

30 58:14-22 a. Whenever any work to be performed or any
31 material to be furnished shall involve an expenditure of money
32 exceeding the sum of \$7,500.00 or, after June 30, 1985, the amount
33 determined pursuant to subsection b. of this section, the
34 commissioners shall designate the time when they will meet at their
35 usual place of meeting to receive proposals in writing for doing the
36 work and furnishing the material, and the commissioners shall order
37 their clerk to give notice by advertisement, inserted in at least two
38 newspapers printed and circulating, respectively, in two of the
39 counties of the district, at least 10 days before the time of such
40 meeting, of the work to be done and the material to be furnished,
41 particular specifications of which they shall cause to be filed in
42 their office at the time of such order.

43 Specifications for work to be performed or material to be
44 furnished involving the generation, storage, or handling of an
45 extraordinarily hazardous substance may restrict, condition or limit
46 the award of the contract to prospective bidders that minimize or
47 eliminate the potential of an extraordinarily hazardous substance

1 release by incorporating the principles or techniques of inherently
2 safer technologies.

3 For the purposes of this section:

4 “Extraordinarily hazardous substance” means a chemical or
5 chemical compound identified in subsection a. of section 4 of
6 P.L.1985, c.403 (C.13:1K-22) on the initial extraordinarily
7 hazardous substance list.

8 “Inherently safer technology” means the principles or techniques
9 that can be incorporated in a covered process to minimize or
10 eliminate the potential for an EHS release and that have been
11 determined to be feasible in accordance with rules and regulations
12 promulgated by the Department of Environmental Protection
13 pursuant to the "Toxic Catastrophe Prevention Act," P.L.1985,
14 c.403 (C.13:1K-19 et seq.) and any other applicable source of
15 authority.

16 “Covered process” means a process that has an EHS present.

17 “EHS release” means a discharge or emission of an EHS from a
18 piece of EHS equipment in which it is contained, excluding
19 discharges or emissions occurring pursuant to and in compliance
20 with the conditions of any State permit or regulation.

21 “EHS accident” means an unplanned, unforeseen or unintended
22 incident, situation, condition, or set of circumstances which directly
23 or indirectly results in an EHS release.

24 “EHS equipment” means that equipment within a covered
25 process whose failure or improper operation could directly or
26 indirectly result in or contribute to an EHS accident, including, but
27 not limited to, vessels, piping, compressors, pumps, instrumentation
28 and electrical equipment. EHS equipment includes fire suppression,
29 risk mitigation, EHS release detection equipment, and EHS
30 shipping container handling equipment.

31 All proposals received shall be publicly opened by the
32 commissioners or the chief administrative officer of the commission
33 and the commissioners shall award the contract to the lowest
34 responsible bidder. All contractors shall be required to give bond
35 satisfactory in amount and security to the commissioners.

36 b. Commencing January 1, 1985, the Governor, in consultation
37 with the Department of the Treasury, shall, no later than March 1 of
38 each odd-numbered year, adjust the threshold amount set forth in
39 subsection a. of this section, or subsequent to 1985, the threshold
40 amount resulting from any adjustment under this subsection, in
41 direct proportion to the rise or fall of the Consumer Price Index for
42 all urban consumers in the New York City and Philadelphia areas,
43 as reported by the United States Department of Labor. The
44 Governor shall, no later than June 1 of each odd-numbered year,
45 notify the commissioners about the adjustment. The adjustment
46 shall become effective on July 1 of each odd-numbered year.

1 c. Nothing in this act shall prohibit the commissioners from
2 entering into a joint agreement pursuant to section 10 of P.L.1971,
3 c.198 (C.40A:11-10) for the purchase of work related to sewage
4 sludge disposal. All such agreements shall be entered into by
5 resolution of the commissioners and shall be subject to the
6 requirements of P.L.1971, c.198 (C.40A:11-1 et seq.).
7 (cf: P.L.1985, c.452, s.3)

8
9 7. Section 3 of P.L.1985, c.37 (C.58:26-3) is amended to read
10 as follows:

11 3. As used in this act:

12 a. "Contracting unit" means a county, district water supply
13 commission, municipality, municipal or county utilities authority,
14 municipal water district, joint meeting or any other political
15 subdivision of the State authorized pursuant to law to operate or
16 maintain a public water supply system or to construct, rehabilitate,
17 operate, or maintain water supply facilities or otherwise provide
18 water for human consumption;

19 b. "Department" means the Department of Environmental
20 Protection;

21 c. "Division" means the Division of Local Government
22 Services in the Department of Community Affairs;

23 d. "Vendor" means any person financially, technically, and
24 administratively capable of financing, planning, designing,
25 constructing, operating, or maintaining, or any combination thereof,
26 a water filtration system, water supply facilities, or of providing
27 water supply services to a local government unit under the terms of
28 a contract awarded pursuant to the provisions of this act;

29 e. "Water filtration system" means any equipment, plants,
30 structures, machinery, apparatus, or land, or any combination
31 thereof, acquired, used, constructed, rehabilitated, or operated for
32 the collection, impoundment, storage, improvement, filtration, or
33 other treatment of drinking water for the purposes of purifying and
34 enhancing water quality and insuring its potability prior to the
35 distribution of the drinking water in the general public for human
36 consumption, including plants and works, and other personal
37 property and appurtenances necessary for their use or operation;

38 f. "Water supply facilities" means and refers to the real
39 property and the plants, structures, interconnections between
40 existing water supply facilities, machinery and equipment and other
41 property, real, personal and mixed, acquired, constructed or
42 operated, or to be acquired, constructed or operated, in whole or in
43 part by or on behalf of a political subdivision of the State or any
44 agency thereof, for the purpose of augmenting the natural water
45 resources of the State and making available an increased supply of
46 water for all uses, or of conserving existing water resources, and
47 any and all appurtenances necessary, useful or convenient for the

1 collecting, impounding, storing, improving, treating, filtering,
2 conserving or transmitting of water, and for the preservation and
3 protection of these resources and facilities and providing for the
4 conservation and development of future water supply resources;

5 g. "Water supply services" means services provided by a water
6 supply facility;

7 h. "Extraordinarily hazardous substance" means a chemical or
8 chemical compound identified in subsection a. of section 4 of
9 P.L.1985, c.403 (C.13:1K-22) on the initial extraordinarily
10 hazardous substance list;

11 i. "Inherently safer technology" means the principles or
12 techniques that can be incorporated in a covered process to
13 minimize or eliminate the potential for an EHS release and that
14 have been determined to be feasible in accordance with rules and
15 regulations promulgated by the Department of Environmental
16 Protection pursuant to the "Toxic Catastrophe Prevention Act,"
17 P.L.1985, c.403 (C.13:1K-19 et seq.) and any other applicable
18 source of authority;

19 j. "Covered process" means a process that has an EHS present;

20 k. "EHS release" means a discharge or emission of an EHS
21 from a piece of EHS equipment in which it is contained, excluding
22 discharges or emissions occurring pursuant to and in compliance
23 with the conditions of any State permit or regulation;

24 l. "EHS accident" means an unplanned, unforeseen or
25 unintended incident, situation, condition, or set of circumstances
26 which directly or indirectly results in an EHS release;

27 m. "EHS equipment" means that equipment within a covered
28 process whose failure or improper operation could directly or
29 indirectly result in or contribute to an EHS accident, including, but
30 not limited to, vessels, piping, compressors, pumps, instrumentation
31 and electrical equipment. EHS equipment includes fire suppression,
32 risk mitigation, EHS release detection equipment, and EHS
33 shipping container handling equipment.

34 (cf: P.L.1985, c.37, s.3)

35

36 8. Section 6 of P.L.1985, c.37 (C.58:26-6) is amended to read
37 as follows:

38 6. Upon submitting the notices of intent pursuant to section 5
39 of **[this act]** P.L.1985, c.37 (C.58:26-5), a contracting unit may
40 issue a request for qualifications of vendors interested in entering
41 into a contract with the contracting unit for the provision of water
42 supply services. The request for qualifications shall include a
43 general description of the water supply services required by the
44 contracting unit, the minimum acceptable qualifications to be
45 possessed by a vendor proposing to enter into a contract for the
46 provision of these services, and the date by which vendors must
47 submit their qualifications. The request for qualifications may

1 require that a vendor proposing to enter into a contract for the
2 provision of water supply services involving the generation,
3 storage, or handling of an extraordinarily hazardous substance shall
4 incorporate the principles or techniques of inherently safer
5 technologies to minimize or eliminate the potential of an
6 extraordinarily hazardous substance release. In addition to all other
7 factors bearing on qualifications, the contracting unit shall consider
8 the reputation and experience of the vendor, and may consider
9 information which might result in debarment or suspension of a
10 vendor if the vendor has been debarred or suspended by a State
11 agency. The request for qualifications shall be published in at least
12 one appropriate professional or trade journal, and in at least one
13 newspaper of general circulation in the jurisdiction which would be
14 served under the terms of the proposed contract.

15 (cf: P.L.1985, c.37, s.6)

16

17 9. Section 8 of P.L.1985, c.37 (C.58:26-8) is amended to read as
18 follows:

19 8. Upon selecting the qualified vendors pursuant to section 7 of
20 **[this act]** P.L.1985, c.37 (C.58:26-7), a contracting unit shall
21 transmit a request for proposals to the qualified vendors, which
22 shall include a detailed description of the water supply facility and
23 services required, the format and procedure to be followed in
24 submitting proposals, the specific information which the vendor
25 must provide in the proposal, a statement setting forth the relative
26 importance of factors, including cost, which the contracting unit
27 will consider in evaluating a proposal submitted by a qualified
28 vendor, and any other information which the contracting unit deems
29 appropriate. The request for proposals may require that a vendor
30 proposing to enter into a contract for the provision of water supply
31 services involving the generation, storage, or handling of an
32 extraordinarily hazardous substance shall incorporate the principles
33 or techniques of inherently safer technologies to minimize or
34 eliminate the potential of an extraordinarily hazardous substance
35 release. The request for proposals shall include the date and time of
36 day by which, and the place at which, the proposals shall be
37 submitted to the contracting unit. The contracting unit may extend
38 the deadline for submission of proposals, but this extension shall
39 apply to all qualified vendors, who shall be provided with
40 simultaneous written notification of this extension.

41 (cf: P.L.1985, c.37, s.8)

42

43 10. Section 3 of P.L.1995, c.101 (C.58:26-21) is amended to
44 read as follows:

45 3. As used in sections 1 through 8 of P.L.1995, c.101 (C.58:26-
46 19 et seq.):

47 "Board" means the New Jersey Board of Public Utilities.

1 "Department" means the New Jersey Department of
2 Environmental Protection.

3 "Division" means the Local Finance Board within the Division of
4 Local Government Services in the Department of Community
5 Affairs.

6 "Governing body" means the board of chosen freeholders in the
7 case of the county; the board of chosen freeholders and the county
8 executive, the county supervisor or the county manager, as
9 appropriate, in the case of a county organized pursuant to the
10 provisions of the "Optional County Charter Law," P.L.1972, c.154
11 (C.40:41A-1 et seq.); the commission, council, board or body, by
12 whatever name it may be known, having charge of the finances of
13 the municipality, in the case of a municipality; and the decision-
14 making body of an authority or commission.

15 "Contract" means a long-term written agreement wherein a
16 private firm agrees to provide water supply services for a public
17 entity and wherein the private firm agrees to provide, during the
18 term of the contract, capital expenditures on behalf of the public
19 entity's water supply facilities, which expenditures are set forth in
20 the contract.

21 "Private firm" means any privately or publicly held company
22 qualified to do business in the State of New Jersey that is
23 financially, technically, and administratively capable of providing
24 water supply services to a public entity under the terms of a contract
25 entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

26 "Proposal document" means the document prepared by or on
27 behalf of a public entity describing the water supply services that
28 the public entity is considering having provided by a private firm
29 pursuant to a contract. The proposal document shall include
30 specific minimum qualifications that a private firm shall meet, as
31 well as the criteria that will be used by a public entity to evaluate a
32 proposal submitted by a private firm.

33 "Public entity" means a county, a municipality, a municipal or
34 county authority or any commission or other political subdivision of
35 the State, or any two or more counties, municipalities, municipal or
36 county utility authorities or any commission or other political
37 subdivision of the State, acting jointly, that are authorized by law to
38 operate or maintain a public water supply system or to construct,
39 rehabilitate, operate, or maintain water supply facilities or
40 otherwise provide water for human consumption.

41 "Water supply facility" means the plants, structures, or other real
42 or personal property acquired, constructed or operated, or to be
43 acquired, constructed or operated, by or on behalf of a public entity
44 for the collection, impoundment, storage, improvement, treatment,
45 filtration, conservation, protection, transmission or distribution of
46 water.

1 "Water supply services" means the financing, designing,
2 construction, improvement, operation, maintenance, administration,
3 or any combination thereof, of a water supply facility which
4 services are provided pursuant to P.L.1995, c.101 (C.58:26-19 et
5 al.).

6 "Extraordinarily hazardous substance" means a chemical or
7 chemical compound identified in subsection a. of section 4 of
8 P.L.1985, c.403 (C.13:1K-22) on the initial extraordinarily
9 hazardous substance list.

10 "Inherently safer technology" means the principles or techniques
11 that can be incorporated in a covered process to minimize or
12 eliminate the potential for an EHS release and that have been
13 determined to be feasible in accordance with rules and regulations
14 promulgated by the Department of Environmental Protection
15 pursuant to the "Toxic Catastrophe Prevention Act," P.L.1985,
16 c.403 (C.13:1K-19 et seq.) and any other applicable source of
17 authority.

18 "Covered process" means a process that has an EHS present.

19 "EHS release" means a discharge or emission of an EHS from a
20 piece of EHS equipment in which it is contained, excluding
21 discharges or emissions occurring pursuant to and in compliance
22 with the conditions of any State permit or regulation.

23 "EHS accident" means an unplanned, unforeseen or unintended
24 incident, situation, condition, or set of circumstances which directly
25 or indirectly results in an EHS release.

26 "EHS equipment" means that equipment within a covered
27 process whose failure or improper operation could directly or
28 indirectly result in or contribute to an EHS accident, including, but
29 not limited to, vessels, piping, compressors, pumps, instrumentation
30 and electrical equipment. EHS equipment includes fire suppression,
31 risk mitigation, EHS release detection equipment, and EHS
32 shipping container handling equipment.

33 (cf: P.L.1995, c.101, s.3)

34

35 11. Section 5 of P.L.1995,c.101 (C.58:26-23) is amended to read
36 as follows:

37 5. a. A public entity shall publish notice of its intent to enter
38 into a contract pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in at
39 least one newspaper of general circulation in the jurisdiction or
40 service area that will receive water supply services under the terms
41 of a contract and one newspaper of broad regional circulation, at
42 least 60 days prior to conducting the public hearing required under
43 section 6 of P.L.1995, c.101 (C.58:26-24). In addition, a public
44 entity that intends to enter into a contract with a private firm for the
45 provision of water supply services shall notify in writing the board,
46 department and division of its intent.

1 b. The public notice required under subsection a. of this section
2 shall describe the type of services desired and provide the name,
3 address and phone number of the person who can provide additional
4 information and a proposal document to an interested party. The
5 proposal document may require that a private firm proposing to
6 enter into a contract for the provision of water supply services
7 involving the generation, storage, or handling of an extraordinarily
8 hazardous substance shall incorporate the principles or techniques
9 of inherently safer technologies to minimize or eliminate the
10 potential of an extraordinarily hazardous substance release. The
11 notice shall specify a deadline, that shall be not less than 30 days
12 from the date of the publication of the notice for the submission of
13 proposals by private firms to the public entity. The public entity
14 may at any time revise the proposal document and each private firm
15 that received a proposal document shall be provided with the
16 revised proposal document.

17 c. The public entity shall conduct a review of the proposals
18 submitted by private firms to determine which proposals meet the
19 minimum qualifications and standards. The review shall be
20 conducted in a manner that avoids disclosure of the contents of a
21 proposal to any private firm submitting a competing proposal. The
22 public entity may conduct discussions with a private firm
23 submitting a qualified proposal for the purpose of clarifying the
24 information submitted in the proposal. The public entity may at any
25 time revise its proposal document after the review of the submitted
26 proposals if it notifies simultaneously and in writing each private
27 firm that submitted a proposal of the revision and provides a
28 uniform time within which a firm may submit a revised proposal for
29 review.

30 d. A public entity shall select one qualified proposal from
31 among those submitted. The public entity shall negotiate a contract
32 with the private firm that submitted the selected proposal. If the
33 public entity is unable to negotiate a satisfactory contract with the
34 selected private firm, it may select another qualified proposal from
35 among those submitted and proceed to negotiate a contract with the
36 private firm that submitted the proposal. The public entity shall set
37 forth in writing the reasons for the selection of the qualified
38 proposal submitted by the private firm with which the public entity
39 has negotiated a proposed contract and shall make this document
40 available to the public along with the proposed contract upon
41 request and during the public hearing conducted pursuant to section
42 6 of P.L.1995, c.101 (C.58:26-24).

43 e. A contract entered into pursuant to P.L.1995, c.101
44 (C.58:26-19 et al.) shall include provisions addressing the
45 following:

- 1 (1) The charges, rates, fees or formulas to be used to determine
2 the charges, rates, or fees to be charged by the public entity for the
3 water supply services to be provided.
- 4 (2) The allocation of the risks of financing and constructing
5 planned capital additions or upgrades to existing water supply
6 facilities.
- 7 (3) The allocation of the risks of operating and maintaining the
8 water supply facility.
- 9 (4) The allocation of the risks associated with circumstances or
10 occurrences beyond the control of the parties to the contract.
- 11 (5) The defaulting and termination of the contract.
- 12 (6) The employment of current employees of the public entity
13 whose positions or employment will be affected by the terms of the
14 contract.
- 15 (7) The private firm's authority and the extent, or the procedures
16 for the use, of that authority to initiate, negotiate and finalize the
17 terms for a bulk sale of surplus water. The contract shall either
18 grant the private firm such authority or specifically state that the
19 firm is denied that authority. Nothing in P.L.1995, c.101 (C.58:26-
20 19. et al.) shall be construed to authorize a public entity that enters
21 into a contract pursuant to P.L.1995, c.101 (C.58:26-19 et al.) to
22 provide for the bulk sale, lease or transfer of water if the water
23 being transferred, leased or sold has been supplied to the public
24 entity either by the New Jersey Water Supply Authority or by the
25 North Jersey District Water Supply Commission, unless the
26 authority pursuant to P.L.1981, c.293 (C.58:1B-1 et seq.) or the
27 district pursuant to R.S.58:5-1 et seq., as appropriate, has agreed to
28 the bulk sale, lease or transfer.
- 29 (8) The requirements for the provision of a performance bond by
30 the private firm, if so required by the public entity. A contract may
31 contain any other terms and conditions that have been negotiated by
32 the public entity and the private firm.
- 33 f. If a dispute over contract compliance, performance or
34 termination cannot be resolved by the public entity and the private
35 firm pursuant to the procedures set forth in the contract, either party
36 to the contract may file with the Superior Court which has
37 appropriate jurisdiction a request for an order either to terminate the
38 contract based on the reasons stated in the request or for an order
39 for other appropriate relief to the dispute. The court may take such
40 action as it may deem necessary to facilitate the expeditious
41 resolution of the dispute and an expeditious response to the request,
42 including ordering the parties to undertake a dispute resolution or
43 mediation process. The court shall use, as it deems necessary, the
44 services of a financial expert in the area of water supply service
45 contracts in its analysis of the contract and the issues before it.
46 Within 90 days after the filing of a request, the court shall either
47 grant the request or deny the request. If the request is granted, the

1 court shall order such appropriate relief measures or remedies as it
2 deems appropriate and necessary.

3 g. A public entity that has negotiated a contract with a private
4 firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) shall obtain the
5 written opinion of bond counsel as to effect of the contract on the
6 tax exempt status of existing and future financing instruments
7 executed by the public entity given the terms of the contract and the
8 federal laws or regulations concerning this matter.

9 h. If a public entity entering a contract consists of multiple
10 municipalities, a concession fee or other monetary benefit paid by a
11 private firm as a result of the contract shall be paid directly to the
12 municipalities constituting that public entity. Any concession fee or
13 monetary benefit paid by a private firm to a public entity shall be
14 used for the purpose of reducing or off-setting property taxes.

15 (cf: P.L.1995, c.101, s.5)

16

17 12. Section 3 of P.L.1985, c.72 (C.58:27-3) is amended to read
18 as follows:

19 3. As used in this act:

20 a. "Contracting unit" means a county, municipality, municipal
21 or county sewerage or utility authority, municipal sewerage district,
22 joint meeting or any other political subdivision of the State
23 authorized pursuant to law to construct wastewater treatment
24 systems or provide wastewater treatment services.

25 b. "Department" means the Department of Environmental
26 Protection.

27 c. "Division" means the Division of Local Government
28 Services in the Department of Community Affairs.

29 d. "Vendor" means any person financially, technically, and
30 administratively capable of financing, planning, designing,
31 constructing, operating, or maintaining, or any combination thereof,
32 a wastewater treatment system, or of providing wastewater
33 treatment services to a local government unit under the terms of a
34 contract awarded pursuant to the provisions of this act.

35 e. "Wastewater" means residential, commercial, industrial, or
36 agricultural liquid waste, sewerage, storm water runoff, or any
37 combination thereof, or other liquid residue discharged or collected
38 into a sewer system or storm water system, or any combination
39 thereof.

40 f. "Wastewater treatment system" means any equipment,
41 plants, structures, machinery, apparatus, or land, or any
42 combination thereof, acquired, used, constructed or operated for the
43 storage, collection, reduction, recycling, reclamation, disposal,
44 separation, or other treatment of wastewater or sewage sludge, or
45 for the final disposal of residues resulting from the treatment of
46 wastewater, including, but not limited to, pumping and ventilating
47 stations, facilities, plants and works, connections, outfall sewers,

1 interceptors, trunk lines, and other personal property and
2 appurtenances necessary for their use or operation.

3 g. "Wastewater treatment services" means services provided by
4 a wastewater treatment system.

5 h. "Extraordinarily hazardous substance" means a chemical or
6 chemical compound identified in subsection a. of section 4 of
7 P.L.1985, c.403 (C.13:1K-22) on the initial extraordinarily
8 hazardous substance list.

9 i. "Inherently safer technology" means the principles or
10 techniques that can be incorporated in a covered process to
11 minimize or eliminate the potential for an EHS release and that
12 have been determined to be feasible in accordance with rules and
13 regulations promulgated by the Department of Environmental
14 Protection pursuant to the "Toxic Catastrophe Prevention Act,"
15 P.L.1985, c.403 (C.13:1K-19 et seq.) and any other applicable
16 source of authority.

17 j. "Covered process" means a process that has an EHS present.

18 k. "EHS release" means a discharge or emission of an EHS from
19 a piece of EHS equipment in which it is contained, excluding
20 discharges or emissions occurring pursuant to and in compliance
21 with the conditions of any State permit or regulation.

22 l. "EHS accident" means an unplanned, unforeseen or
23 unintended incident, situation, condition, or set of circumstances
24 which directly or indirectly results in an EHS release.

25 m. "EHS equipment" means that equipment within a covered
26 process whose failure or improper operation could directly or
27 indirectly result in or contribute to an EHS accident, including, but
28 not limited to, vessels, piping, compressors, pumps, instrumentation
29 and electrical equipment. EHS equipment includes fire suppression,
30 risk mitigation, EHS release detection equipment, and EHS
31 shipping container handling equipment.

32 (cf: P.L.1985, c.72, s.3)

33

34 13. Section 6 of P.L.1985, c.72 (C.58:27-6) is amended to read
35 as follows:

36 6. Upon submitting the notices of intent pursuant to section 5
37 of **[this act]** P.L.1985, c.72 (C.58:27-5), a contracting unit may
38 issue a request for qualifications of vendors interested in entering
39 into a contract with the contracting unit for the provision of
40 wastewater treatment services. The request for qualifications shall
41 include a general description of the wastewater treatment services
42 required by the contracting unit, the minimum acceptable
43 qualifications to be possessed by a vendor proposing to enter into a
44 contract for the provision of these services, and the date by which
45 vendors must submit their qualifications. In addition to all other
46 factors bearing on qualifications, the contracting unit shall consider
47 the reputation and experience of the vendor, and may consider

1 information which might result in debarment or suspension of a
2 vendor from State contracting and may disqualify a vendor if the
3 vendor has been debarred or suspended by a State agency. The
4 request for qualifications may require that a vendor proposing to
5 enter into a contract for the provision of wastewater treatment
6 services involving the generation, storage, or handling of an
7 extraordinarily hazardous substance shall incorporate the principles
8 or techniques of inherently safer technologies to minimize or
9 eliminate the potential of an extraordinarily hazardous substance
10 release. The request for qualifications shall be published in at least
11 one appropriate professional or trade journal, and in at least one
12 newspaper of general circulation in the jurisdiction which would be
13 served under the terms of the proposed contract.

14 (cf: P.L.1985, c.72, s.6)

15

16 14. Section 8 of P.L.1985, c.72 (C.58:27-8) is amended to read
17 as follows:

18 8. Upon selecting the qualified vendors pursuant to section 7 of
19 **[this act]** P.L.1985, c.72 (C.58:27-7), a contracting unit shall
20 transmit a request for proposals to the qualified vendors, which
21 shall include a detailed description of the wastewater treatment
22 system and services required, the format and procedure to be
23 followed in submitting proposals, the specific information which
24 the vendor must provide in the proposal, a statement setting forth
25 the relative importance of factors, including cost, which the
26 contracting unit will consider in evaluating a proposal submitted by
27 a qualified vendor, and any other information which the contracting
28 unit deems appropriate. The request for proposals may require that
29 a vendor proposing to enter into a contract for the provision of
30 wastewater treatment services involving the generation, storage, or
31 handling of an extraordinarily hazardous substance shall incorporate
32 the principles or techniques of inherently safer technologies to
33 minimize or eliminate the potential of an extraordinarily hazardous
34 substance release. The request for proposals shall include the date
35 and time of day by which, and the place at which, the proposals
36 shall be submitted to the contracting unit. The contracting unit may
37 extend the deadline for submission of proposals, but this extension
38 shall apply to all qualified vendors, who shall be provided with
39 simultaneous written notification of this extension.

40 (cf: P.L.1985, c.72, s.8)

41

42 15. Section 3 of P.L.1995, c.216 (C.58:27-21) is amended to
43 read as follows:

44 3. As used in sections 1 through 9 of P.L.1995, c.216 (C.58:27-
45 19 through 58:27-27):

46 "Concession fee" means a payment from a private firm or a
47 public authority to a public entity, regardless of when it is received,

1 that is exclusive of or exceeds any contractually specified
2 reimbursement of direct costs incurred by the public entity;

3 "Contract" means a long-term written agreement wherein a
4 private firm or a public authority agrees to provide wastewater
5 treatment services for a public entity and wherein the private firm
6 or public authority agrees to provide, during the term of the
7 contract, capital expenditures on behalf of the public entity's
8 wastewater treatment system, which expenditures are set forth in
9 the contract;

10 "Covered process" means a process that has an EHS present;

11 "Department" means the New Jersey Department of
12 Environmental Protection;

13 "Division" means the Local Finance Board within the Division of
14 Local Government Services in the Department of Community
15 Affairs;

16 "Extraordinarily hazardous substance" or "EHS" means a
17 chemical or chemical compound, in the quantities indicated,
18 identified in subsection a. of section 4 of P.L.1985, c.403 (C.13:1K-
19 22) on the initial extraordinarily hazardous substance list;

20 "EHS accident" means an unplanned, unforeseen or unintended
21 incident, situation, condition, or set of circumstances which directly
22 or indirectly results in an EHS release;

23 "EHS equipment" means that equipment within a covered
24 process whose failure or improper operation could directly or
25 indirectly result in or contribute to an EHS accident, including, but
26 not limited to, vessels, piping, compressors, pumps, instrumentation
27 and electrical equipment. EHS equipment includes fire suppression,
28 risk mitigation, EHS release detection equipment, and EHS
29 shipping container handling equipment;

30 "EHS release" means a discharge or emission of an EHS from a
31 piece of EHS equipment in which it is contained, excluding
32 discharges or emissions occurring pursuant to and in compliance
33 with the conditions of any State permit or regulation;

34 "Governing body" means the board of chosen freeholders in the
35 case of the county; the board of chosen freeholders and the county
36 executive, the county supervisor or the county manager, as
37 appropriate, in the case of a county organized pursuant to the
38 provisions of the "Optional County Charter Law," P.L.1972, c.154
39 (C.40:41A-1 et seq.); the commission, council, board or body, by
40 whatever name it may be known, having charge of the finances of
41 the municipality, in the case of a municipality; and the decision-
42 making body of an authority, joint meeting or commission;

43 "Inherently safer technology" means the principles or techniques
44 that can be incorporated in a covered process to minimize or
45 eliminate the potential for an EHS release and that have been
46 determined to be feasible in accordance with rules and regulations
47 promulgated by the Department of Environmental Protection

1 pursuant to the "Toxic Catastrophe Prevention Act," P.L.1985,
2 c.403 (C.13:1K-19 et seq.) and any other applicable source of
3 authority;

4 "Private firm" means any privately or publicly held company
5 qualified to do business in the State of New Jersey that is
6 financially, technically, and administratively capable of providing
7 wastewater treatment services to a public entity under the terms of a
8 contract entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
9 al.);

10 "Proposal document" means the document prepared by or on
11 behalf of a public entity describing the wastewater treatment
12 services that the public entity is considering having provided by a
13 private firm or a public authority pursuant to a contract. The
14 proposal document shall include specific minimum qualifications
15 that a private firm or a public authority shall meet, as well as the
16 criteria that will be used by a public entity to evaluate a proposal
17 submitted by a private firm or a public authority;

18 "Public authority" means a municipal or county authority,
19 commission, municipal or county utility authority, sewerage
20 authority, or joint meeting, which is authorized by law to construct,
21 rehabilitate, operate or maintain a wastewater treatment system or
22 arrange for the provision of wastewater treatment service;

23 "Public entity" means a county, a municipality, a municipal or
24 county authority or any commission or other political subdivision of
25 the State, or any two or more counties, municipalities, municipal or
26 county utilities authorities, sewerage authorities, joint meetings, or
27 any commission or other political subdivisions of the State, acting
28 jointly, that are authorized by law to construct, rehabilitate, operate
29 or maintain wastewater treatment systems or arrange for the
30 provision of wastewater treatment services;

31 "Wastewater" means residential, commercial, industrial, or
32 agricultural liquid waste, sewage, septage, stormwater runoff, or
33 any combination thereof, or other liquid residue discharged or
34 collected into a sewer system or stormwater runoff system, or
35 directly into surface or ground waters, or any combination thereof;

36 "Wastewater treatment services" means the financing, designing,
37 construction, improvement, operation, maintenance, administration,
38 or any combination thereof, of a wastewater treatment system,
39 which services are provided pursuant to P.L.1995, c.216 (C.58:27-
40 19 et al.);

41 "Wastewater treatment system" means any equipment, plants,
42 structures, machinery, apparatus, or land, or any combination
43 thereof, acquired, used, constructed or operated by, or on behalf of,
44 a public entity for the storage, collection, reduction, recycling,
45 processing, reclamation, disposal, separation, or other treatment of
46 wastewater or sewage sludge, or for the collection or treatment, or
47 both, of stormwater runoff and wastewater, or for the final disposal

1 of residues resulting from the treatment of wastewater, including,
2 but not limited to, pumping and ventilating stations, treatment
3 plants and works, connections, outfall sewers, interceptors, trunk
4 lines, stormwater runoff collection systems, and other personal
5 property and appurtenances necessary for their use or operation.
6 (cf: P.L.1995, c.216, s.3)

7
8 16. Section 5 of P.L.1995, c.216 (C.58:27-23) is amended to
9 read as follows:

10 5. a. A public entity shall publish notice of its intent to enter
11 into a contract pursuant to P.L.1995, c.216 (C.58:27-19 et al.) in at
12 least one newspaper of general circulation in the jurisdiction or
13 service area that will receive wastewater treatment services under
14 the terms of the contract and one newspaper of broad regional
15 circulation, at least 60 days prior to conducting the public hearing
16 required under section 6 of P.L.1995, c.216 (C.58:27-24).

17 b. The public notice required under subsection a. of this section
18 shall describe the type of services desired and provide the name,
19 address and phone number of the person who can provide additional
20 information and a proposal document to an interested party. The
21 proposal document may require that a private firm or a public
22 authority proposing to enter into a contract for the provision of
23 wastewater treatment services involving the generation, storage, or
24 handling of an extraordinarily hazardous substance shall incorporate
25 the principles or techniques of inherently safer technologies to
26 minimize or eliminate the potential of an extraordinarily hazardous
27 substance release. The notice shall specify a deadline, which shall
28 be not less than 30 days from the date of the publication of the
29 notice for the submission of proposals by private firms or public
30 authorities to the public entity. The public entity may at any time
31 revise the proposal document and each private firm or public
32 authority that received a proposal document shall be provided with
33 the revised proposal document.

34 c. The public entity shall conduct a review of the proposals
35 submitted by private firms and public authorities to determine
36 which proposals meet the minimum qualifications and standards.
37 The review shall be conducted in a manner that avoids disclosure of
38 the contents of a proposal to any private firm and public authority
39 submitting a competing proposal. The public entity may conduct
40 discussions with a private firm and public authority submitting a
41 qualified proposal for the purpose of clarifying the information
42 submitted in the proposal. The public entity may at any time revise
43 its proposal document after the review of the submitted proposals if
44 it notifies simultaneously, and in writing, each private firm and
45 public authority that submitted a proposal of the revision and
46 provides a uniform time within which a firm and an authority may
47 submit a revised proposal for review.

1 d. The public entity shall select one qualified proposal from
2 among those submitted. The public entity shall negotiate a contract
3 with the private firm or public authority that submitted the selected
4 proposal. If the public entity is unable to negotiate a satisfactory
5 contract with the selected private firm or public authority, it may
6 select another qualified proposal from among those submitted and
7 proceed to negotiate a contract with the private firm or public
8 authority that submitted the proposal. The public entity shall set
9 forth, in writing, the reasons for the selection of the qualified
10 proposal submitted by the private firm or public authority with
11 which the public entity has negotiated a proposed contract and shall
12 make this document available to the public along with the proposed
13 contract, upon request, and during the public hearing conducted
14 pursuant to section 6 of P.L.1995, c.216 (C.58:27-24).

15 e. A contract entered into pursuant to P.L.1995, c.216
16 (C.58:27-19 et al.) shall include provisions addressing the
17 following:

18 (1) The charges, rates, fees or formulas to be used to determine
19 the charges, rates, or fees to be charged by the public entity for the
20 wastewater treatment services to be provided;

21 (2) The allocation of the risks of financing and constructing
22 planned capital additions or upgrades to existing wastewater
23 treatment systems;

24 (3) The allocation of the risks of operating and maintaining the
25 wastewater treatment system;

26 (4) The allocation of the risks associated with circumstances or
27 occurrences beyond the control of the parties to the contract;

28 (5) The defaulting and termination of the contract;

29 (6) The employment of current employees of the public entity
30 whose positions or employment will be affected by the terms of the
31 contract;

32 (7) The requirements for the provision of a performance bond by
33 the private firm or public authority, if so required by the public
34 entity; and

35 (8) The financial cost of compliance with all relevant permits. A
36 contract may contain any other terms and conditions that have been
37 negotiated by the public entity and the private firm or public
38 authority.

39 f. If a dispute over contract compliance, performance or
40 termination cannot be resolved by the public entity and the private
41 firm or public authority pursuant to the procedures set forth in the
42 contract, either party to the contract may file with the Superior
43 Court which has appropriate jurisdiction a request for an order
44 either to terminate the contract based on the reasons stated in the
45 request or for an order for other appropriate relief to the dispute.
46 The court may take such action as it may deem necessary to
47 facilitate the expeditious resolution of the dispute and an

1 expeditious response to the request, including ordering the parties to
2 undertake a dispute resolution or mediation process. The court
3 shall use, as it deems necessary, the services of a financial expert in
4 the area of wastewater treatment service contracts in its analysis of
5 the contract and the issues before it. Within 90 days after the filing
6 of a request, the court shall either grant the request or deny the
7 request. If the request is granted, the court shall order such
8 appropriate relief measures or remedies as it deems appropriate and
9 necessary.

10 g. A public entity that has negotiated a contract with a private
11 firm or a public authority pursuant to P.L.1995, c.216 (C.58:27-19
12 et al.) shall obtain the written opinion of bond counsel as to the
13 effect of the contract on the tax exempt status of existing and future
14 financing instruments executed by the public entity given the terms
15 of the contract and the federal laws or regulations concerning this
16 matter.

17 h. If a public entity entering into a contract pursuant to
18 P.L.1995, c.216 (C.58:27-19 et al.) consists of multiple
19 municipalities, or is an authority subject to the provisions of
20 P.L.1983, c.313 (C.40A:5A-1 et seq.), a concession fee paid by a
21 private firm or public authority as a result of the contract shall be
22 paid directly to the municipality or municipalities that created or
23 constitute that public entity. Any concession fee paid by a private
24 firm or a public authority to a public entity shall be used for the
25 purpose of reducing or off-setting property taxes, reducing
26 wastewater treatment services rates, one-time nonrecurring
27 expenses or capital asset expenditures; provided, however, nothing
28 herein shall preclude the public entity from using all or part of the
29 concession fees for the purpose of the public entity's qualification
30 for relief from the repayment of federal grant awards associated
31 with the wastewater treatment system as may be required by federal
32 law or regulation. Any disagreement as to whether a payment
33 constitutes a concession fee as that term is defined pursuant to
34 section 3 of this act shall be resolved by the division.

35 (cf: P.L.1995, c.216, s.5)

36
37 17. (New section) Notwithstanding any provision of law to the
38 contrary, whenever a state contracting agency prepares plans,
39 specifications or bid proposal documents of any kind for work to be
40 performed or material to be furnished that involves the generation,
41 storage, or handling of an extraordinarily hazardous substance, the
42 state contracting agency may include in those plans, specifications
43 or bid proposal documents provisions that restrict, condition or limit
44 the award of the contract to prospective bidders that minimize or
45 eliminate the potential of an extraordinarily hazardous substance
46 release by incorporating the principles or techniques of inherently
47 safer technologies.

1 For the purposes of this section:

2 “Extraordinarily hazardous substance” or “EHS” means a
3 chemical or chemical compound, in the quantities indicated,
4 identified in subsection a. of section 4 of P.L.1985, c.403 (C.13:1K-
5 22) on the initial extraordinarily hazardous substance list.

6 "Inherently safer technology" means the principles or techniques
7 that can be incorporated in a covered process to minimize or
8 eliminate the potential for an EHS release and that have been
9 determined to be feasible in accordance with rules and regulations
10 promulgated by the Department of Environmental Protection
11 pursuant to the "Toxic Catastrophe Prevention Act," P.L.1985,
12 c.403 (C.13:1K-19 et seq.) and any other applicable source of
13 authority.

14 “Covered process” means a process that has an EHS present.

15 "EHS release" means a discharge or emission of an EHS from a
16 piece of EHS equipment in which it is contained, excluding
17 discharges or emissions occurring pursuant to and in compliance
18 with the conditions of any State permit or regulation.

19 "EHS accident" means an unplanned, unforeseen or unintended
20 incident, situation, condition, or set of circumstances which directly
21 or indirectly results in an EHS release.

22 “EHS equipment” means that equipment within a covered
23 process whose failure or improper operation could directly or
24 indirectly result in or contribute to an EHS accident, including, but
25 not limited to, vessels, piping, compressors, pumps, instrumentation
26 and electrical equipment. EHS equipment includes fire suppression,
27 risk mitigation, EHS release detection equipment, and EHS
28 shipping container handling equipment.

29 "State contracting agency" means any of the principal
30 departments in the Executive Branch of State Government, and any
31 division, board, bureau, office, commission or other instrumentality
32 created by a principal department.

33

34 18. This act shall take effect immediately.

35

36

37

STATEMENT

38

39 This bill protects against potential releases of extraordinarily
40 hazardous substances (EHS) by clarifying the authority of public
41 entities to ensure that contracts involving the generation, storage, or
42 handling of an EHS are awarded to firms that use inherently safer
43 technologies (ISTs). ISTs are principles or techniques that can
44 minimize or eliminate the potential of an EHS release and that have
45 been determined to be feasible by the Department of Environmental
46 Protection.

1 The "Toxic Catastrophe Prevention Act," P.L.1985, c.403
2 (C.13:1K-19 et seq.), lists seven chemicals or chemical compounds,
3 in specified quantities, as extraordinarily hazardous substances:
4 hydrogen chloride (HCl) and allyl chloride in quantities of 2,000
5 pounds or more; hydrogen cyanide (HCN), hydrogen fluoride (HF),
6 chlorine (Cl₂), phosphorus trichloride, and hydrogen sulfide (H₂S)
7 in quantities of 500 pounds or more; and phosgene, bromine, methyl
8 isocyanate (MIC), and toluene-2, 4-diisocyanate (TDS) in quantities
9 of 100 pounds or more. By clarifying the ability of public entities
10 to limit the pool of eligible contractors to those that utilize ISTs,
11 this bill will encourage public entities to include IST standards in
12 their qualifications and specifications and result in safer public
13 projects. Furthermore, by clarifying the ability of public entities to
14 specify the use of ISTs as a condition for a private firm's eligibility
15 for a public contract, the bill will encourage private firms that have
16 not adopted these technologies to do so which will result in
17 enhancing the safety of public and private projects alike.

18 Specifically, the bill would apply to contracting units entering
19 into contracts pursuant to the "Local Public Contracts Law,"
20 P.L.1971, c.198 (C.40A:11-1 et seq.), the "New Jersey Water
21 Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et seq.), the
22 "New Jersey Water Supply Public-Private Contracting Act,"
23 P.L.1995, c.101 (C.58:26-19 et seq.), the "New Jersey Wastewater
24 Treatment Privatization Act," P.L.1985, c.72, (C.58:27-1 et seq.),
25 the "New Jersey Wastewater Treatment Public-Private Contracting
26 Act." P.L.1995, c.216 (C.58:27-19 through 58:27-27) as well as to
27 the North Jersey District Water Supply Commission, R.S.58:5-1 et
28 seq., the Passaic Valley Sewerage Commissioners, R.S.58:14-1 et
29 seq., and the State of New Jersey.