

ASSEMBLY, No. 1289

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

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District 27 (Essex and Morris)

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SYNOPSIS

Requires plans, specifications, and bid proposal documents for certain local public contracts to address soil contamination.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/3/2012)

1 AN ACT concerning certain local public contracts for projects
2 involving the removal of soil, and amending and supplementing
3 P.L.1999, c.39.
4

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

8 1. Section 1 of P.L.1999, c.39 (C.40A:11-23.1) is amended to
9 read as follows:

10 1. All plans, specifications and bid proposal documents for the
11 erection, alteration, or repair of a building, structure, facility or
12 other improvement to real property, the total price of which exceeds
13 the amount set forth in, or the amount calculated by the Governor
14 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), shall
15 include:

16 a. a document for the bidder to acknowledge the bidder's
17 receipt of any notice or revisions or addenda to the advertisement or
18 bid documents; and

19 b. a form listing those documentary and informational forms,
20 certifications, and other documents that the contracting agent
21 requires each bidder to submit with the bid. The form shall list each
22 of the items to be submitted with the bid proposal and a place for
23 the bidder to indicate, by initialing each entry, that the bidder has
24 included those required items with the completed bid proposal.
25 Each bidder shall complete this form and submit it with the bid
26 proposal in addition to those documentary and informational forms,
27 certifications, and other documents that are listed on the form; and

28 c. a statement indicating whether uniformed law enforcement
29 officers will be required for the project. The statement shall include
30 a line item allowance, which shall be a good faith effort on the part
31 of the contracting unit, to reasonably estimate the total cost of
32 traffic control personnel, vehicles, equipment, administrative, or
33 any other costs associated with additional traffic control
34 requirements required by the contracting unit, or any other public
35 entity affected by the project, above and beyond the bidder's traffic
36 control personnel, vehicles, equipment, and administrative costs.
37 The individuals responsible for the assignment of uniformed law
38 enforcement officers for any municipalities affected by a project
39 shall be required to determine where traffic safety control is needed
40 for a project, and calculate the number and placement of all
41 necessary personnel, equipment, and the costs associated with these,
42 including hourly rates, and submit this information to the
43 contracting unit.

44 The contracting unit shall not be responsible for additional traffic
45 control costs beyond the number of working days specified in 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 construction contract in accordance with section 17 of P.L.1971,
2 c.198 (C.40A:11-17), when such a delay is caused by the contractor
3 and liquidated damages have been assessed.

4 The statement prescribed under this subsection shall not be
5 required if the contracting unit will provide for the direct payment
6 of uniformed law enforcement officers and any additional costs
7 directly associated with the provision of those officers; and

8 d. at the option of the contracting unit, specified alternate
9 proposals in addition to a base specification. When the contracting
10 unit specifies alternate proposals, the determination of which
11 bidder's response to a request for bids offers the lowest price shall
12 be made on the basis of the price of: (i) the base specification plus
13 the price of any selected specified alternate proposals; or (ii) a
14 choice of specified alternative proposals within the limit of funds
15 that may be made available for a project. If a contracting unit
16 provides for more than one specified alternate proposal, the
17 contracting unit shall specify in the bid specification the criteria or
18 ranked order by which specified alternate proposals shall be
19 selected and included in the award of the contract by the governing
20 body, provided that this requirement shall only apply to a project
21 with a total estimated cost, including specified alternate proposals,
22 of greater than \$500,000. The aggregate dollar value of accepted
23 specified alternative proposals shall not exceed 50 percent of the
24 base bid. If a contracting unit is found in a court of law to have
25 chosen specific alternative proposals in a manner intended to award
26 a contract to a specific vendor, the bids shall be voided, the
27 contracting unit shall rebid the project, and a plaintiff who prevails
28 in any proceeding shall be entitled to a reasonable attorney's fee.

29 For the purposes of this subsection:

30 "Specified alternate proposal" means a requirement of the bid
31 specification for bidders to submit prices for reduced, modified or
32 supplemental work in addition to the base proposal which may
33 include, but not be limited to, a change in project scope or the use
34 of alternative materials or methods of construction;

35 "Base specification" means the plans and specifications for the
36 erection, alteration or repair of the building, structure, facility or
37 other improvement to real property that are required to be met by all
38 bidders without exception ; and

39 e. in the case of a project that includes the removal of soil from
40 the site, a statement provided by a laboratory using testing methods
41 approved by the Department of Environmental Protection
42 specifying the level of contamination, if any, of the soil that has
43 been found at the site of the project, or a line item allowance, which
44 shall be a good faith effort on the part of the contracting unit to
45 reasonably estimate the total cost of testing the soil, and if found to
46 be contaminated, the cost of disposal of the contaminated soil .

47 (cf: P.L.2009, c.292, s.1)

1 2. (New section) The Department of Environmental Protection
2 may adopt rules and regulations pursuant to the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing
4 the criteria under which soil testing shall be conducted, and the
5 testing parameters therefor, for projects subject to the provisions of
6 subsection e. of section 1 of P.L.1999, c.39 (C.40A:11-23.1), upon
7 a determination that such rules and regulations are necessary for the
8 protection of public health and safety.

9

10 3. This act shall take effect immediately.

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STATEMENT

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15 This bill amends section 1 of P.L.1999, c.39 (C.40A:11-23.1),
16 the section of law concerning plans, specifications, and bid proposal
17 documents for the erection, alteration, or repair of a building,
18 structure, facility or any other improvement to real property, for
19 which the total price exceeds the amount set forth in, or the amount
20 calculated by the Governor pursuant to, section 3 of P.L.1971, c.198
21 (C.40A:11-3), i.e., the "Local Public Contracts Law."

22 Under this bill, any plans, specifications, and bid proposal
23 documents for such projects that involve the removal of soil from
24 the site would be required to include a statement provided by a
25 laboratory using sampling methods approved by the Department of
26 Environmental Protection specifying the level of contamination of
27 the soil that has been found at the site of the project. In the
28 alternative, a line item allowance would be authorized, which must
29 be a good faith effort on the part of the contracting unit to
30 reasonably estimate the total cost of testing the soil and, if found to
31 be contaminated, the cost of disposal of the contaminated soil.

32 The bill also adds a provision authorizing the Department of
33 Environmental Protection to adopt rules and regulations that
34 establish criteria under which soil testing shall be conducted, and
35 the testing parameters therefor, for projects subject to the provisions
36 of the bill, upon a determination that rules and regulations are
37 necessary for the protection of public health and safety.