

# ASSEMBLY, No. 2399

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED FEBRUARY 6, 2014

**Sponsored by:**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblyman JOSEPH A. LAGANA**

**District 38 (Bergen and Passaic)**

**Assemblyman JAY WEBBER**

**District 26 (Essex, Morris and Passaic)**

**SYNOPSIS**

Authorizes use of electronic bidding by contracting units under “Local Public Contracts Law.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/11/2014)**

1 AN ACT authorizing electronic bidding under the “Local Public  
2 Contracts Law,” amending and supplementing P.L.1971, c.198,  
3 and amending P.L.1999, c.440.

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,  
17 except as provided pursuant to P.L.2013, c.4, or agency, and which  
18 has administrative jurisdiction over any district other than a school  
19 district, project, or facility, included or operating in whole or in  
20 part, within the territorial boundaries of any county or municipality  
21 which exercises functions which are appropriate for the exercise by  
22 one or more units of local government, including functions  
23 exercised in relation to the administration and oversight of a  
24 tourism district located in a municipality in which authorized casino  
25 gaming occurs, and which has statutory power to make purchases  
26 and enter into contracts awarded by a contracting agent for the  
27 provision or performance of goods or services.

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

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

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

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

44 (2) "Governing body" means:

**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 (a) The governing body of the county, when the purchase is to  
2 be made or the contract or agreement is to be entered into by, or in  
3 behalf of, a county; or
- 4 (b) The governing body of the municipality, when the purchase  
5 is to be made or the contract or agreement is to be entered into by,  
6 or on behalf of, a municipality; or
- 7 (c) Any board, commission, committee, authority or agency of  
8 the character described in subsection (1) (c) of this section.
- 9 (3) "Contracting agent" means the governing body of a  
10 contracting unit, or appointed membership of a State authority  
11 authorized to enter into a cooperative purchasing agreement  
12 pursuant to P.L.2013, c.4, or its authorized designee, which has the  
13 power to prepare the advertisements, to advertise for and receive  
14 bids and, as permitted by this act, to make awards for the  
15 contracting unit in connection with purchases, contracts or  
16 agreements.
- 17 (4) "Purchase" means a transaction, for a valuable consideration,  
18 creating or acquiring an interest in goods, services and property,  
19 except real property or any interest therein.
- 20 (5) (Deleted by amendment, P.L.1999, c.440.)
- 21 (6) "Professional services" means services rendered or  
22 performed by a person authorized by law to practice a recognized  
23 profession, whose practice is regulated by law, and the performance  
24 of which services requires knowledge of an advanced type in a field  
25 of learning acquired by a prolonged formal course of specialized  
26 instruction and study as distinguished from general academic  
27 instruction or apprenticeship and training. Professional services  
28 may also mean services rendered in the provision or performance of  
29 goods or services that are original and creative in character in a  
30 recognized field of artistic endeavor.
- 31 (7) "Extraordinary unspecifiable services" means services which  
32 are specialized and qualitative in nature requiring expertise,  
33 extensive training and proven reputation in the field of endeavor.
- 34 (8) (Deleted by amendment, P.L.1999, c.440.)
- 35 (9) "Work" includes services and any other activity of a tangible  
36 or intangible nature performed or assumed pursuant to a contract or  
37 agreement with a contracting unit.
- 38 (10) "Homemaker--home health services" means at home  
39 personal care and home management provided to an individual or  
40 members of the individual's family who reside with the individual,  
41 or both, necessitated by the individual's illness or incapacity.  
42 "Homemaker--home health services" includes, but is not limited to,  
43 the services of a trained homemaker.
- 44 (11) "Recyclable material" means those materials which would  
45 otherwise become municipal solid waste, and which may be  
46 collected, separated or processed and returned to the economic  
47 mainstream in the form of raw materials or products.

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

5 (13) "Marketing" means the sale, disposition, assignment, or  
6 placement of designated recyclable materials with, or the granting  
7 of a concession to, a reseller, processor, materials recovery facility,  
8 or end-user of recyclable material, in accordance with a district  
9 solid waste management plan adopted pursuant to P.L.1970, c.39  
10 (C.13:1E-1 et seq.) and shall not include the collection of such  
11 recyclable material when collected through a system of routes by  
12 local government unit employees or under a contract administered  
13 by a local government unit.

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

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

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

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

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

37 (19) "Aggregate" means the sums expended or to be expended  
38 for the provision or performance of any goods or services in  
39 connection with the same immediate purpose or task, or the  
40 furnishing of similar goods or services, during the same contract  
41 year through a contract awarded by a contracting agent.

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

46 (21) "Contract" means any agreement, including but not limited  
47 to a purchase order or a formal agreement, which is a legally  
48 binding relationship enforceable by law, between a vendor who

1 agrees to provide or perform goods or services and a contracting  
2 unit which agrees to compensate a vendor, as defined by and subject  
3 to the terms and conditions of the agreement. A contract also may  
4 include an arrangement whereby a vendor compensates a  
5 contracting unit for the vendor's right to perform a service, such as,  
6 but not limited to, operating a concession.

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

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

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

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

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

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

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

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

47 (30) "Purchasing agent" means the individual duly assigned the  
48 authority, responsibility, and accountability for the purchasing

1 activity of the contracting unit, and who has such duties as are  
2 defined by an authority appropriate to the form and structure of the  
3 contracting unit, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.)  
4 and who possesses a qualified purchasing agent certificate.

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

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

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

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

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

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

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

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

45 (39) "Proprietary" means goods or services of a specialized  
46 nature, that may be made or marketed by a person or persons having  
47 the exclusive right to make or sell them, when the need for such  
48 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) "Mistake" means, for a public works project, a clerical error  
14 that is an unintentional and substantial computational error or an  
15 unintentional omission of a substantial quantity of labor, material,  
16 or both, from the final bid computation.

17 (43) "Electronic bid" means a bid submitted by a contractor  
18 through a contracting unit's electronic bidding system.

19 (44) "Electronic bidding system" means a uniform, secure  
20 interactive electronic system for two-way bidding, whether the  
21 system is created or owned by a contracting unit, or whether it is a  
22 web-based subscription service used by a contracting unit and  
23 bidders.

24 (cf: P.L.2013, c.4, s.2)

25

26 2. (New section) a. Any contracting unit may conduct  
27 procurement activities, including the solicitation, bidding, award,  
28 execution, and administration of a contract, by electronic means  
29 through an electronic bidding system, as that term is defined in  
30 section 2 of P.L.1971, c.198 (C.40A:11-2). If a contracting unit  
31 chooses to use electronic bidding, the contracting unit shall comply  
32 with the requirements of this section.

33 b. The contracting unit may require all of its bids to be  
34 submitted exclusively through an electronic bidding system of its  
35 choice. At the time it first advertises for the solicitation of bids, the  
36 contracting unit may require interested bidders to register to use the  
37 electronic bidding system as part of the contracting unit's electronic  
38 bidding system.

39 c. The contracting unit may provide assistance or training to  
40 interested bidders on the proper use of the electronic bidding  
41 system. The contracting unit may establish a process by which  
42 bidders can receive technical assistance if needed prior to the  
43 submission of any bid. The training or technical assistance may be  
44 in the form of paper or on-line job aides, webinars, classroom  
45 training, or help desk assistance. The contracting unit's technical  
46 assistance, or lack of technical assistance, during the bidding  
47 process shall not relieve the interested bidder of the obligation to  
48 properly submit an electronic bid.

- 1 d. The contracting unit shall include a notice of the availability  
2 of electronic bidding in any legal notice or advertisement of the  
3 project and shall include registration deadlines. All electronic bids  
4 considered by the contracting unit shall be received prior to the  
5 published bid deadline.
- 6 e. Bidding through the electronic bidding system shall  
7 constitute consent by the bidder to conduct by electronic means all  
8 elements of the procurement of that contract which the contracting  
9 unit agrees to conduct by electronic means.
- 10 f. Any modifications of the applicable electronic bid form by  
11 the contracting unit for a specific project shall be announced in an  
12 addendum published through the electronic bidding system.
- 13 g. The contracting unit may require interested bidders to  
14 include supplemental information with their electronic bid. All  
15 unsolicited supplemental bid information submitted by a bidder  
16 shall be ignored by the contracting unit when reviewing the bids  
17 and awarding the contract.
- 18 h. For all bids filed electronically, an electronic copy of the bid  
19 guaranty or other required security, when required by law, shall be  
20 included with all bid submissions.
- 21 i. The contracting unit's electronic bidding system shall:  
22 allow interested bidders to submit, resubmit, and withdraw a bid  
23 prior to the bid deadline;  
24 keep all electronic information submitted by interested bidders  
25 protected from view by any other bidder or the contracting unit  
26 prior to the bid deadline;  
27 authenticate the identity of the sender; and  
28 document the time and date of receipt of each bid and offer  
29 received electronically.
- 30 j. After the bid deadline, the contracting unit shall publicly  
31 issue the bid tabulation by electronic means.
- 32 k. The contracting unit shall establish a process to verify when  
33 bid information, and other relevant data, are received, in order to  
34 address any bid protests due to technical issues encountered in  
35 submitting electronic bids. The contracting unit shall not be held  
36 liable if an interested bidder is unable to submit a complete bid  
37 prior to the published deadline due to technical issues or  
38 obstructions, and the inability or failure of an interested bidder to  
39 submit a complete bid shall not constitute sufficient grounds for a  
40 bid protest by a disappointed bidder seeking the award of the  
41 contract. The contracting unit may communicate to interested  
42 bidders to submit bids well in advance of the published deadline to  
43 ensure the bid is received on time.  
44
- 45 3. Section 5 of P.L.1999, c.440 (C.40A:11-4.5) is amended to  
46 read as follows:
- 47 5. Competitive contracting proposals shall be solicited in the  
48 following manner:



1 a. (1) A notice of the availability of request for proposal  
2 documentation shall be published in an official newspaper of the  
3 contracting unit at least 20 days prior to the date established for the  
4 submission of proposals. The contracting unit shall promptly reply  
5 to any request by an interested vendor by providing a copy of the  
6 request for proposals. The contracting unit may charge a fee for the  
7 proposal documentation that shall not exceed \$50.00 or the cost of  
8 reproducing the documentation, whichever is greater; or.

9 (2) a contracting unit shall publish the request for proposal  
10 documentation through an electronic bidding system pursuant to the  
11 provisions of section 2 of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill).

13 b. Each interested vendor shall submit a proposal which shall  
14 include all the information required by the request for proposals.  
15 Failure to meet the requirements of the request for proposals may  
16 result in the contracting unit disqualifying the vendor from further  
17 consideration. Under no circumstances shall the provisions of a  
18 proposal be subject to negotiation by the contracting unit.

19 c. If the contracting unit, at the time of solicitation, utilizes its  
20 own employees to provide the goods or perform the services, or  
21 both, considered for competitive contracting, the governing body  
22 shall, at any time prior to, but no later than the time of solicitation  
23 for competitive contracting proposals, notify affected employees of  
24 the governing body's intention to solicit competitive contracting  
25 proposals. Employees or their representatives shall be permitted to  
26 submit recommendations and proposals affecting wages, hours, and  
27 terms and conditions of employment in such a manner as to meet  
28 the goals of the competitive contract. If employees are represented  
29 by an organization that has negotiated a contract with the  
30 contracting unit, only the bargaining unit shall be authorized to  
31 submit such recommendations or proposals. When requested by  
32 such employees, the governing body shall provide such information  
33 regarding budgets and the costs of performing the services by such  
34 employees as may be available. Nothing shall prevent such  
35 employees from making recommendations that may include  
36 modifications to existing labor agreements in order to reduce such  
37 costs in lieu of award of a competitive contract, and agreements  
38 implementing such recommendations may be considered as cause  
39 for rejecting all other proposals.

40 d. The purchasing agent or counsel or administrator shall  
41 evaluate all proposals only in accordance with the methodology  
42 described in the request for proposals. After proposals have been  
43 evaluated, the purchasing agent or counsel or administrator shall  
44 prepare a report evaluating and recommending the award of a  
45 contract or contracts. The report shall list the names of all potential  
46 vendors who submitted a proposal and shall summarize the  
47 proposals of each vendor. The report shall rank vendors in order of  
48 evaluation, shall recommend the selection of a vendor or vendors,

1 as appropriate, for a contract, shall be clear in the reasons why the  
2 vendor or vendors have been selected among others considered, and  
3 shall detail the terms, conditions, scope of services, fees, and other  
4 matters to be incorporated into a contract. The report shall be made  
5 available to the public at least 48 hours prior to the awarding of the  
6 contract, or when made available to the governing body, whichever  
7 is sooner. The governing body shall have the right to reject all  
8 proposals for any of the reasons set forth in section 21 of P.L.1999,  
9 c.440 (C.40A:11-13.2).

10 e. Award of a contract shall be made by resolution of the  
11 governing body of the contracting unit within 60 days of the receipt  
12 of the proposals, except that the proposals of any vendors who  
13 consent thereto, may, at the request of the contracting unit, be held  
14 for consideration for such longer period as may be agreed.

15 f. The report prepared pursuant to subsection d. of this section  
16 shall become part of the public record and shall reflect the final  
17 action of the governing body. Contracts shall be executed pursuant  
18 to section 14 of P.L.1971, c.198 (C.40A:11-14).

19 g. The clerk or secretary of the contracting unit shall publish a  
20 notice in the official newspaper of the contracting unit or through  
21 an electronic bidding system pursuant to the provisions of section 2  
22 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
23 summarizing the award of a contract, which shall include but not be  
24 limited to, the nature, duration, and amount of the contract, the  
25 name of the vendor and a statement that the resolution and contract  
26 are on file and available for public inspection in the office of the  
27 clerk or secretary of the municipality, county, local public authority  
28 or special district of the governing body.

29 h. All contract awards shall be subject to rules concerning  
30 certification of availability of funds adopted pursuant to section 3 of  
31 P.L.1971, c.198 (C.40A:11-3) and section 15 of P.L.1971, c.198  
32 (C.40A:11-15).

33 i. The director, after consultation with the Commissioner of  
34 Education, may adopt additional rules and regulations, in  
35 accordance with the "Administrative Procedure Act," P.L.1968,  
36 c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the  
37 provisions of sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1  
38 through C.40A:11-4.5).

39 (cf: P.L.1999, c.440, s.5)

40

41 4. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to  
42 read as follows:

43 5. Any contract the amount of which exceeds the bid threshold,  
44 may be negotiated and awarded by the governing body without  
45 public advertising for bids and bidding therefor and shall be  
46 awarded by resolution of the governing body if:

47 (1) The subject matter thereof consists of:

- 1 (a) (i) Professional services. The governing body shall in each  
2 instance state supporting reasons for its action in the resolution  
3 awarding each contract and shall forthwith cause to be printed once,  
4 in the official newspaper, or posted to its designated electronic  
5 bidding system, a brief notice stating the nature, duration, service  
6 and amount of the contract, and that the resolution and contract are  
7 on file and available for public inspection in the office of the clerk  
8 of the county or municipality, or, in the case of a contracting unit  
9 created by more than one county or municipality, of the counties or  
10 municipalities creating such contracting unit; or (ii) Extraordinary  
11 unspecifiable services. The application of this exception shall be  
12 construed narrowly in favor of open competitive bidding, whenever  
13 possible, and the Division of Local Government Services is  
14 authorized to adopt and promulgate rules and regulations after  
15 consultation with the Commissioner of Education limiting the use  
16 of this exception in accordance with the intention herein expressed.  
17 The governing body shall in each instance state supporting reasons  
18 for its action in the resolution awarding each contract and shall  
19 forthwith cause to be printed, in the manner set forth in subsection  
20 (1) (a) (i) of this section, a brief notice of the award of such  
21 contract;
- 22 (b) The doing of any work by employees of the contracting unit;
- 23 (c) The printing of legal briefs, records and appendices to be  
24 used in any legal proceeding in which the contracting unit may be a  
25 party;
- 26 (d) The furnishing of a tax map or maps for the contracting unit;
- 27 (e) The purchase of perishable foods as a subsistence supply;
- 28 (f) The supplying of any product or the rendering of any service  
29 by a public utility, which is subject to the jurisdiction of the Board  
30 of Public Utilities or the Federal Energy Regulatory Commission or  
31 its successor, in accordance with tariffs and schedules of charges  
32 made, charged or exacted, filed with the board or commission;
- 33 (g) The acquisition, subject to prior approval of the Attorney  
34 General, of special equipment for confidential investigation;
- 35 (h) The printing of bonds and documents necessary to the  
36 issuance and sale thereof by a contracting unit;
- 37 (i) Equipment repair service if in the nature of an extraordinary  
38 unspecifiable service and necessary parts furnished in connection  
39 with such service, which exception shall be in accordance with the  
40 requirements for extraordinary unspecifiable services;
- 41 (j) The publishing of legal notices in newspapers as required by  
42 law;
- 43 (k) The acquisition of artifacts or other items of unique intrinsic,  
44 artistic or historical character;
- 45 (l) Those goods and services necessary or required to prepare  
46 and conduct an election;

- 1 (m) Insurance, including the purchase of insurance coverage and  
2 consultant services, which exception shall be in accordance with the  
3 requirements for extraordinary unspecifiable services;
- 4 (n) The doing of any work by handicapped persons employed by  
5 a sheltered workshop;
- 6 (o) The provision of any goods or services including those of a  
7 commercial nature, attendant upon the operation of a restaurant by  
8 any nonprofit, duly incorporated, historical society at or on any  
9 historical preservation site;
- 10 (p) (Deleted by amendment, P.L.1999, c.440.)
- 11 (q) Library and educational goods and services;
- 12 (r) (Deleted by amendment, P.L.2005, c.212).
- 13 (s) The marketing of recyclable materials recovered through a  
14 recycling program, or the marketing of any product intentionally  
15 produced or derived from solid waste received at a resource  
16 recovery facility or recovered through a resource recovery program,  
17 including, but not limited to, refuse-derived fuel, compost materials,  
18 methane gas, and other similar products;
- 19 (t) (Deleted by amendment, P.L.1999, c.440.)
- 20 (u) Contracting unit towing and storage contracts, provided that  
21 all such contracts shall be pursuant to reasonable non-exclusionary  
22 and non-discriminatory terms and conditions, which may include  
23 the provision of such services on a rotating basis, at the rates and  
24 charges set by the municipality pursuant to section 1 of P.L.1979,  
25 c.101 (C.40:48-2.49). All contracting unit towing and storage  
26 contracts for services to be provided at rates and charges other than  
27 those established pursuant to the terms of this paragraph shall only  
28 be awarded to the lowest responsible bidder in accordance with the  
29 provisions of the "Local Public Contracts Law" and without regard  
30 for the value of the contract therefor;
- 31 (v) The purchase of steam or electricity from, or the rendering  
32 of services directly related to the purchase of such steam or  
33 electricity from a qualifying small power production facility or a  
34 qualifying cogeneration facility as defined pursuant to 16  
35 U.S.C.s.796;
- 36 (w) The purchase of electricity or administrative or dispatching  
37 services directly related to the transmission of such purchased  
38 electricity by a contracting unit engaged in the generation of  
39 electricity;
- 40 (x) The printing of municipal ordinances or other services  
41 necessarily incurred in connection with the revision and  
42 codification of municipal ordinances;
- 43 (y) An agreement for the purchase of an equitable interest in a  
44 water supply facility or for the provision of water supply services  
45 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
46 an agreement entered into pursuant to P.L.1989, c.109  
47 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no  
48 later than six months after the effective date of P.L.1993, c.381;

- 1 (z) A contract for the provision of water supply services entered  
2 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 3 (aa) The cooperative marketing of recyclable materials recovered  
4 through a recycling program;
- 5 (bb) A contract for the provision of wastewater treatment  
6 services entered into pursuant to P.L.1995, c.216 (C.58:27-  
7 19 et al.);
- 8 (cc) Expenses for travel and conferences;
- 9 (dd) The provision or performance of goods or services for the  
10 support or maintenance of proprietary computer hardware and  
11 software, except that this provision shall not be utilized to acquire  
12 or upgrade non-proprietary hardware or to acquire or update non-  
13 proprietary software;
- 14 (ee) The management or operation of an airport owned by the  
15 contracting unit pursuant to R.S.40:8-1 et seq.;
- 16 (ff) Purchases of goods and services at rates set by the Universal  
17 Service Fund administered by the Federal Communications  
18 Commission;
- 19 (gg) A contract for the provision of water supply services or  
20 wastewater treatment services entered into pursuant to section 2 of  
21 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,  
22 construction, operation, or maintenance, or any combination  
23 thereof, of a water supply facility as defined in subsection (16) of  
24 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater  
25 treatment system as defined in subsection (19) of section 15 of  
26 P.L.1971, c.198 (C.40A:11-15), or any component part or parts  
27 thereof, including a water filtration system as defined in subsection  
28 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);
- 29 (hh) The purchase of electricity generated from a power  
30 production facility that is fueled by methane gas extracted from a  
31 landfill in the county of the contracting unit.
- 32 (2) It is to be made or entered into with the United States of  
33 America, the State of New Jersey, county or municipality or any  
34 board, body, officer, agency or authority thereof or any other state  
35 or subdivision thereof.
- 36 (3) Bids have been advertised pursuant to section 4 of P.L.1971,  
37 c.198 (C.40A:11-4) on two occasions and (a) no bids have been  
38 received on both occasions in response to the advertisement, or (b)  
39 the governing body has rejected such bids on two occasions because  
40 it has determined that they are not reasonable as to price, on the  
41 basis of cost estimates prepared for or by the contracting agent prior  
42 to the advertising therefor, or have not been independently arrived  
43 at in open competition, or (c) on one occasion no bids were received  
44 pursuant to (a) and on one occasion all bids were rejected pursuant  
45 to (b), in whatever sequence; any such contract may then be  
46 negotiated and may be awarded upon adoption of a resolution by a  
47 two-thirds affirmative vote of the authorized membership of the  
48 governing body authorizing such contract; provided, however, that:

1 (i) A reasonable effort is first made by the contracting agent to  
2 determine that the same or equivalent goods or services, at a cost  
3 which is lower than the negotiated price, are not available from an  
4 agency or authority of the United States, the State of New Jersey or  
5 of the county in which the contracting unit is located, or any  
6 municipality in close proximity to the contracting unit;

7 (ii) The terms, conditions, restrictions and specifications set forth  
8 in the negotiated contract are not substantially different from those  
9 which were the subject of competitive bidding pursuant to section 4  
10 of P.L.1971, c.198 (C.40A:11-4); and

11 (iii) Any minor amendment or modification of any of the terms,  
12 conditions, restrictions and specifications, which were the subject of  
13 competitive bidding pursuant to section 4 of P.L.1971, c.198  
14 (C.40A:11-4), shall be stated in the resolution awarding such  
15 contract; provided further, however, that if on the second occasion  
16 the bids received are rejected as unreasonable as to price, the  
17 contracting agent shall notify each responsible bidder submitting  
18 bids on the second occasion of its intention to negotiate, and afford  
19 each bidder a reasonable opportunity to negotiate, but the governing  
20 body shall not award such contract unless the negotiated price is  
21 lower than the lowest rejected bid price submitted on the second  
22 occasion by a responsible bidder, is the lowest negotiated price  
23 offered by any responsible vendor, and is a reasonable price for  
24 such goods or services.

25 Whenever a contracting unit shall determine that a bid was not  
26 arrived at independently in open competition pursuant to subsection  
27 (3) of this section it shall thereupon notify the county prosecutor of  
28 the county in which the contracting unit is located and the Attorney  
29 General of the facts upon which its determination is based, and  
30 when appropriate, it may institute appropriate proceedings in any  
31 State or federal court of competent jurisdiction for a violation of  
32 any State or federal antitrust law or laws relating to the unlawful  
33 restraint of trade.

34 (4) The contracting unit has solicited and received at least three  
35 quotations on materials, supplies or equipment for which a State  
36 contract has been issued pursuant to section 12 of P.L.1971, c.198  
37 (C.40A:11-12), and the lowest responsible quotation is at least 10%  
38 less than the price the contracting unit would be charged for the  
39 identical materials, supplies or equipment, in the same quantities,  
40 under the State contract. Any such contract entered into pursuant to  
41 this subsection may be awarded only upon adoption of a resolution  
42 by the affirmative vote of two-thirds of the full membership of the  
43 governing body of the contracting unit at a meeting thereof  
44 authorizing such a contract. A copy of the purchase order relating  
45 to any such contract, the requisition for purchase order, if  
46 applicable, and documentation identifying the price of the materials,  
47 supplies or equipment under the State contract and the State  
48 contract number shall be filed with the director within five working

1 days of the award of any such contract by the contracting unit. The  
2 director shall notify the contracting unit of receipt of the material  
3 and shall make the material available to the State Treasurer. The  
4 contracting unit shall make available to the director upon request  
5 any other documents relating to the solicitation and award of the  
6 contract, including, but not limited to, quotations, requests for  
7 quotations, and resolutions. The director periodically shall review  
8 material submitted by contracting units to determine the impact of  
9 such contracts on local contracting and shall consult with the State  
10 Treasurer on the impact of such contracts on the State procurement  
11 process. The director may, after consultation with the State  
12 Treasurer, adopt rules in accordance with the "Administrative  
13 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the  
14 use of this subsection, after considering the impact of contracts  
15 awarded under this subsection on State and local contracting, or  
16 after considering the extent to which the award of contracts  
17 pursuant to this subsection is consistent with and in furtherance of  
18 the purposes of the public contracting laws.

19 (5) Notwithstanding any provision of law, rule or regulation to  
20 the contrary, the subject matter consists of the combined collection  
21 and marketing, or the cooperative combined collection and  
22 marketing of recycled material recovered through a recycling  
23 program, or any product intentionally produced or derived from  
24 solid waste received at a resource recovery facility or recovered  
25 through a resource recovery program including, but not limited to,  
26 refuse-derived fuel, compost materials, methane gas, and other  
27 similar products, provided that in lieu of engaging in such public  
28 advertising for bids and the bidding therefor, the contracting unit  
29 shall, prior to commencing the procurement process, submit for  
30 approval to the Director of the Division of Local Government  
31 Services, a written detailed description of the process to be  
32 followed in securing said services. Within 30 days after receipt of  
33 the written description the director shall, if the director finds that  
34 the process provides for fair competition and integrity in the  
35 negotiation process, approve, in writing, the description submitted  
36 by the contracting unit. If the director finds that the process does  
37 not provide for fair competition and integrity in the negotiation  
38 process, the director shall advise the contracting unit of the  
39 deficiencies that must be remedied. If the director fails to respond  
40 in writing to the contracting unit within 30 days, the procurement  
41 process as described shall be deemed approved. As used in this  
42 section, "collection" means the physical removal of recyclable  
43 materials from curbside or any other location selected by the  
44 contracting unit.

45 (6) Notwithstanding any provision of law, rule or regulation to  
46 the contrary, the contract is for the provision of electricity by a  
47 contracting unit engaged in the distribution of electricity for retail  
48 sale, or for the provision of administrative or dispatching services

1 related to the transmission of such electricity, provided that in lieu  
2 of engaging in public advertising for bids and the bidding therefor,  
3 the contracting unit shall, prior to commencing the procurement  
4 process, submit for approval to the Director of the Division of Local  
5 Government Services, a written detailed description of the process  
6 to be followed in securing such services. Such process shall be  
7 designed in a way that is appropriate to and commensurate with  
8 industry practices, and the integrity of the government contracting  
9 process. Within 30 days after receipt of the written description, the  
10 director shall, if the director finds that the process provides for fair  
11 competition and integrity in the negotiation process, approve, in  
12 writing, the description submitted by the contracting unit. If the  
13 director finds that the process does not provide for fair competition  
14 and integrity in the negotiation process, the director shall advise the  
15 contracting unit of the deficiencies that must be remedied. If the  
16 director fails to respond in writing to the contracting unit within 30  
17 days, the procurement process, as submitted to the director pursuant  
18 to this section, shall be deemed approved.

19 (cf: P.L.2005. c.296, s.1)

20

21 5. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to  
22 read as follows:

23 23. a. All advertisements for bids shall be published in an  
24 official newspaper of the contracting unit or through an electronic  
25 bidding system pursuant to section 2 of P.L. , c. (C. )  
26 (pending before the Legislature as this bill) sufficiently in advance  
27 of the date fixed for receiving the bids to promote competitive  
28 bidding, but in no event less than 10 days prior to such date; except  
29 that all advertisements for bids on contracts for the collection and  
30 disposal of municipal solid waste shall be published in an official  
31 newspaper of the contracting unit circulating in the county or  
32 municipality or through an electronic bidding system pursuant to  
33 section 2 of P.L. , c. (C. ) (pending before the Legislature as  
34 this bill), and in at least one newspaper of general circulation  
35 published in the State, sufficiently in advance of the date fixed for  
36 receiving the bids to promote competitive bidding, but not less than  
37 60 days prior to that date. For all contracts, the date fixed for  
38 receiving the bids shall not fall on a Monday, or any day directly  
39 following a State or federal holiday.

40 b. The advertisement shall designate the manner of submitting  
41 and the method of receiving the bids and the time and place at  
42 which the bids will be received. If the bidding is conducted  
43 electronically, the provisions of section 2 of P.L. , c. (C. )  
44 (pending before the Legislature as this bill) shall apply. If the  
45 published specifications provide for receipt of bids by mail, those  
46 bids which are mailed to the contracting unit shall be sealed and  
47 shall only be opened for examination at such time and place as all  
48 bids received are unsealed and announced. At such time and place



1 the contracting agent of the contracting unit shall publicly receive  
2 the bids, and thereupon immediately proceed to unseal them and  
3 publicly announce the contents, which announcement shall be made  
4 in the presence of any parties bidding or their agents, who are then  
5 and there present, and shall also make proper record of the prices  
6 and terms, upon the minutes of the governing body, if the award is  
7 to be made by the governing body of the contracting unit, or in a  
8 book kept for that purpose, if the award is to be made by other than  
9 the governing body, and in such latter case it shall be reported to  
10 the governing body of the contracting unit for its action thereon,  
11 when such action thereon is required. No bids shall be received  
12 after the time designated in the advertisement.

13 c. Notice of revisions or addenda to advertisements or bid  
14 documents shall be provided as follows:

15 1) For all contracts except those for construction work and  
16 municipal solid waste collection and disposal service, notice shall  
17 be published no later than seven days, Saturdays, Sundays, and  
18 holidays excepted, prior to the date for acceptance of bids, in an  
19 official newspaper of the contracting unit and be provided to any  
20 person who has submitted a bid or who has received a bid package,  
21 in one of the following ways: i) in writing by certified mail or ii)  
22 by certified facsimile transmission, meaning that the sender's  
23 facsimile machine produces a receipt showing date and time of  
24 transmission and that the transmission was successful or iii) by a  
25 delivery service that provides certification of delivery to the sender  
26 or iv) through the contracting unit's designated electronic bidding  
27 system.

28 2) For all contracts for construction work, notice shall be  
29 provided no later than seven days, Saturdays, Sundays, or holidays  
30 excepted, prior to the date for acceptance of bids, to any person who  
31 has submitted a bid or who has received a bid package in any of the  
32 following ways: i) in writing by certified mail or ii) by certified  
33 facsimile transmission, meaning that the sender's facsimile machine  
34 produces a receipt showing date and time of transmission and that  
35 the transmission was successful or iii) by a delivery service that  
36 provides certification of delivery to the sender or iv) through the  
37 contracting unit's designated electronic bidding system.

38 3) For municipal solid waste collection and disposal contracts,  
39 notice shall be published in an official newspaper of the contracting  
40 unit and in at least one newspaper of general circulation published  
41 in the State or through the contracting unit's designated electronic  
42 bidding system no later than seven days, Saturdays, Sundays, and  
43 holidays excepted, prior to the date for acceptance of bids.

44 d. Failure of the contracting unit to advertise for the receipt of  
45 bids or to provide proper notification of revisions or addenda to  
46 advertisements or bid documents related to bids as prescribed by  
47 this section shall prevent the contracting unit from accepting the  
48 bids and require the readvertisement for bids pursuant to subsection

1 a. of this section. Failure to obtain a receipt when good faith notice  
2 is sent or delivered to the address or telephone facsimile number on  
3 file with the contracting unit shall not be considered failure by the  
4 contracting unit to provide notice.

5 (cf: P.L.2007, c.4, s.1)

6

7 6. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill permits contracting units, under the “Local Public  
13 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) to conduct  
14 the procurement of goods and services, including the solicitation,  
15 bidding, award, execution, and administration of a contract, via  
16 electronic bidding through an electronic bidding system established  
17 by the contracting unit pursuant to the provisions of the bill.

18 Under the provisions of the bill, a contracting unit may require  
19 all of its bids to be submitted exclusively through an electronic  
20 bidding system of its choice. A contracting unit may provide  
21 assistance or training to interested bidders on the proper use of the  
22 electronic bidding system, and must include a notice of the  
23 availability of electronic bidding in any legal notice or  
24 advertisement soliciting bids.

25 A contracting unit’s electronic bidding system shall allow  
26 interested bidders to submit, resubmit, and withdraw a bid prior to  
27 the bid deadline; keep all electronic information submitted by  
28 interested bidders protected from view by any other bidder or the  
29 contracting unit prior to the bid deadline; authenticate the identity  
30 of the sender; and document the time and date of receipt of each bid  
31 and offer received electronically.

32 After the bid deadline, a contracting unit must publicly issue the  
33 bid tabulation by electronic means.

34 The bill requires that a contracting unit must establish a process  
35 to verify when bid information, and other relevant data, are  
36 received, in order to address any bid protests due to technical issues  
37 encountered in submitting electronic bids. Under the bill, a  
38 contracting unit cannot be held liable if an interested bidder is  
39 unable to submit a complete bid prior to the published deadline due  
40 to technical issues or obstructions, and the inability or failure of an  
41 interested bidder to submit a complete bid shall not constitute  
42 sufficient grounds for a bid protest by a disappointed bidder seeking  
43 the award of a contract.