

ASSEMBLY, No. 296

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

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SYNOPSIS

Deletes public bidding exception for local public contracts for water supply and wastewater treatment services in cities of first class.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning local public contracts for water supply and
2 wastewater treatment services and amending P.L.1971, c.198.

3

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

6

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

9 5. Any contract the amount of which exceeds the bid threshold,
10 may be negotiated and awarded by the governing body without
11 public advertising for bids and bidding therefor and shall be
12 awarded by resolution of the governing body if:

13 (1) The subject matter thereof consists of:

14 (a) (i) Professional services. The governing body shall in each
15 instance state supporting reasons for its action in the resolution
16 awarding each contract and shall forthwith cause to be printed once,
17 in the official newspaper, a brief notice stating the nature, duration,
18 service and amount of the contract, and that the resolution and
19 contract are on file and available for public inspection in the office
20 of the clerk of the county or municipality, or, in the case of a
21 contracting unit created by more than one county or municipality, of
22 the counties or municipalities creating the contracting unit; or (ii)
23 Extraordinary unspecifiable services. The application of this
24 exception shall be construed narrowly in favor of open competitive
25 bidding, whenever possible, and the Division of Local Government
26 Services is authorized to adopt and promulgate rules and regulations
27 after consultation with the Commissioner of Education limiting the
28 use of this exception in accordance with the intention herein
29 expressed. The governing body shall in each instance state
30 supporting reasons for its action in the resolution awarding each
31 contract and shall forthwith cause to be printed, in the manner set
32 forth in subsection (1) (a) (i) of this section, a brief notice of the
33 award of the contract;

34 (b) The doing of any work by employees of the contracting unit;

35 (c) The printing of legal briefs, records, and appendices to be
36 used in any legal proceeding in which the contracting unit may be a
37 party;

38 (d) The furnishing of a tax map or maps for the contracting unit;

39 (e) The purchase of perishable foods as a subsistence supply;

40 (f) The supplying of any product or the rendering of any service
41 by a public utility, which is subject to the jurisdiction of the Board
42 of Public Utilities or the Federal Energy Regulatory Commission or
43 its successor, in accordance with tariffs and schedules of charges
44 made, charged or exacted, filed with the board or commission;

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 (g) The acquisition, subject to prior approval of the Attorney
2 General, of special equipment for confidential investigation;
- 3 (h) The printing of bonds and documents necessary to the
4 issuance and sale thereof by a contracting unit;
- 5 (i) Equipment repair service if in the nature of an extraordinary
6 unspecifiable service and necessary parts furnished in connection
7 with the service, which exception shall be in accordance with the
8 requirements for extraordinary unspecifiable services;
- 9 (j) The publishing of legal notices in newspapers as required by
10 law;
- 11 (k) The acquisition of artifacts or other items of unique intrinsic,
12 artistic or historical character;
- 13 (l) Those goods and services necessary or required to prepare
14 and conduct an election;
- 15 (m) Insurance, including the purchase of insurance coverage and
16 consultant services, which exception shall be in accordance with the
17 requirements for extraordinary unspecifiable services;
- 18 (n) The doing of any work by persons with disabilities
19 employed by a sheltered workshop;
- 20 (o) The provision of any goods or services including those of a
21 commercial nature, attendant upon the operation of a restaurant by
22 any nonprofit, duly incorporated, historical society at or on any
23 historical preservation site;
- 24 (p) (Deleted by amendment, P.L.1999, c.440.)
- 25 (q) Library and educational goods and services;
- 26 (r) (Deleted by amendment, P.L.2005, c.212).
- 27 (s) The marketing of recyclable materials recovered through a
28 recycling program, or the marketing of any product intentionally
29 produced or derived from solid waste received at a resource
30 recovery facility or recovered through a resource recovery program,
31 including, but not limited to, refuse-derived fuel, compost materials,
32 methane gas, and other similar products;
- 33 (t) (Deleted by amendment, P.L.1999, c.440.)
- 34 (u) Contracting unit towing and storage contracts, provided that
35 all of the contracts shall be pursuant to reasonable non-exclusionary
36 and non-discriminatory terms and conditions, which may include
37 the provision of the services on a rotating basis, at the rates and
38 charges set by the municipality pursuant to section 1 of P.L.1979,
39 c.101 (C.40:48-2.49). All contracting unit towing and storage
40 contracts for services to be provided at rates and charges other than
41 those established pursuant to the terms of this paragraph shall only
42 be awarded to the lowest responsible bidder in accordance with the
43 provisions of the "Local Public Contracts Law," P.L.1971, c.198
44 (C.40A:11-1 et seq.) and without regard for the value of the
45 contract therefor;
- 46 (v) The purchase of steam or electricity from, or the rendering
47 of services directly related to the purchase of steam or electricity

1 from a qualifying small power production facility or a qualifying
2 cogeneration facility as defined pursuant to 16 U.S.C. s.796;

3 (w) The purchase of electricity or administrative or dispatching
4 services directly related to the transmission of purchased electricity
5 by a contracting unit engaged in the generation of electricity;

6 (x) The printing of municipal ordinances or other services
7 necessarily incurred in connection with the revision and
8 codification of municipal ordinances;

9 (y) An agreement for the purchase of an equitable interest in a
10 water supply facility or for the provision of water supply services
11 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
12 an agreement entered into pursuant to N.J.S.40A:31-1 et al., so long
13 as the agreement is entered into no later than six months after the
14 effective date of P.L.1993, c.381;

15 (z) A contract for the provision of water supply services entered
16 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

17 (aa) The cooperative marketing of recyclable materials recovered
18 through a recycling program;

19 (bb) A contract for the provision of wastewater treatment
20 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
21 al.);

22 (cc) Expenses for travel and conferences;

23 (dd) The provision or performance of goods or services for the
24 support or maintenance of proprietary computer hardware and
25 software, except that this provision shall not be utilized to acquire
26 or upgrade non-proprietary hardware or to acquire or update non-
27 proprietary software;

28 (ee) The management or operation of an airport owned by the
29 contracting unit pursuant to R.S.40:8-1 et seq.;

30 (ff) Purchases of goods and services at rates set by the Universal
31 Service Fund administered by the Federal Communications
32 Commission;

33 (gg) **【**A contract for the provision of water supply services or
34 wastewater treatment services entered into pursuant to section 2 of
35 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
36 construction, operation, or maintenance, or any combination
37 thereof, of a water supply facility as defined in subsection (16) of
38 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
39 treatment system as defined in subsection (19) of section 15 of
40 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
41 thereof, including a water filtration system as defined in subsection
42 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);**】** (Deleted by
43 amendment, P.L. , c.) (pending before the Legislature as this
44 bill) or

45 (hh) The purchase of electricity generated from a power
46 production facility that is fueled by methane gas extracted from a
47 landfill in the county of the contracting unit.

1 (2) It is to be made or entered into with the United States of
2 America, the State of New Jersey, county, or municipality, or any
3 board, body, officer, agency, or authority thereof, or any other state
4 or subdivision thereof.

5 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
6 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
7 received on both occasions in response to the advertisement, or (b)
8 the governing body has rejected the bids on two occasions because
9 it has determined that they are not reasonable as to price, on the
10 basis of cost estimates prepared for or by the contracting agent prior
11 to the advertising therefor, or have not been independently arrived
12 at in open competition, or (c) on one occasion no bids were received
13 pursuant to (a) and on one occasion all bids were rejected pursuant
14 to (b), in whatever sequence; a contract may then be negotiated and
15 may be awarded upon adoption of a resolution by a two-thirds
16 affirmative vote of the authorized membership of the governing
17 body authorizing the contract; provided, however, that:

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

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

28 (iii) Any minor amendment or modification of any of the terms,
29 conditions, restrictions, and specifications, which were the subject
30 of competitive bidding pursuant to section 4 of P.L.1971, c.198
31 (C.40A:11-4), shall be stated in the resolution awarding the
32 contract; provided further, however, that if on the second occasion
33 the bids received are rejected as unreasonable as to price, the
34 contracting agent shall notify each responsible bidder submitting
35 bids on the second occasion of its intention to negotiate, and afford
36 each bidder a reasonable opportunity to negotiate, but the governing
37 body shall not award the contract unless the negotiated price is
38 lower than the lowest rejected bid price submitted on the second
39 occasion by a responsible bidder, is the lowest negotiated price
40 offered by any responsible vendor, and is a reasonable price for
41 goods or services.

42 Whenever a contracting unit shall determine that a bid was not
43 arrived at independently in open competition pursuant to subsection
44 (3) of this section it shall thereupon notify the county prosecutor of
45 the county in which the contracting unit is located and the Attorney
46 General of the facts upon which its determination is based, and
47 when appropriate, it may institute appropriate proceedings in any
48 State or federal court of competent jurisdiction for a violation of

1 any State or federal antitrust law or laws relating to the unlawful
2 restraint of trade.

3 (4) The contracting unit has solicited and received at least three
4 quotations on materials, supplies, or equipment for which a State
5 contract has been issued pursuant to section 12 of P.L.1971, c.198
6 (C.40A:11-12), and the lowest responsible quotation is at least 10
7 percent less than the price the contracting unit would be charged for
8 the identical materials, supplies, or equipment, in the same
9 quantities, under the State contract. A contract entered into
10 pursuant to this subsection may be awarded only upon adoption of a
11 resolution by the affirmative vote of two-thirds of the full
12 membership of the governing body of the contracting unit at a
13 meeting thereof authorizing the contract. A copy of the purchase
14 order relating to the contract, the requisition for purchase order, if
15 applicable, and documentation identifying the price of the materials,
16 supplies or equipment under the State contract and the State
17 contract number shall be filed with the director within five working
18 days of the award of the contract by the contracting unit. The
19 director shall notify the contracting unit of receipt of the material
20 and shall make the material available to the State Treasurer. The
21 contracting unit shall make available to the director upon request
22 any other documents relating to the solicitation and award of the
23 contract, including, but not limited to, quotations, requests for
24 quotations, and resolutions. The director periodically shall review
25 material submitted by contracting units to determine the impact of
26 the contracts on local contracting and shall consult with the State
27 Treasurer on the impact of the contracts on the State procurement
28 process. The director may, after consultation with the State
29 Treasurer, adopt rules in accordance with the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the
31 use of this subsection, after considering the impact of contracts
32 awarded under this subsection on State and local contracting, or
33 after considering the extent to which the award of contracts
34 pursuant to this subsection is consistent with and in furtherance of
35 the purposes of the public contracting laws.

36 (5) Notwithstanding any provision of law, rule, or regulation to
37 the contrary, the subject matter consists of the combined collection
38 and marketing, or the cooperative combined collection and
39 marketing of recycled material recovered through a recycling
40 program, or any product intentionally produced or derived from
41 solid waste received at a resource recovery facility or recovered
42 through a resource recovery program including, but not limited to,
43 refuse-derived fuel, compost materials, methane gas, and other
44 similar products, provided that in lieu of engaging in public
45 advertising for bids and the bidding therefor, the contracting unit
46 shall, prior to commencing the procurement process, submit for
47 approval to the Director of the Division of Local Government
48 Services, a written detailed description of the process to be

1 followed in securing the services. Within 30 days after receipt of
2 the written description the director shall, if the director finds that
3 the process provides for fair competition and integrity in the
4 negotiation process, approve, in writing, the description submitted
5 by the contracting unit. If the director finds that the process does
6 not provide for fair competition and integrity in the negotiation
7 process, the director shall advise the contracting unit of the
8 deficiencies that must be remedied. If the director fails to respond
9 in writing to the contracting unit within 30 days, the procurement
10 process as described shall be deemed approved. As used in this
11 section, "collection" means the physical removal of recyclable
12 materials from curbside or any other location selected by the
13 contracting unit.

14 (6) Notwithstanding any provision of law, rule, or regulation to
15 the contrary, the contract is for the provision of electricity by a
16 contracting unit engaged in the distribution of electricity for retail
17 sale, for the provision of wholesale electricity by a municipal
18 shared services energy authority as defined pursuant to section 3 of
19 P.L.2015, c.129 (C.40A:66-3), or for the provision of administrative
20 or dispatching services related to the transmission of electricity,
21 provided that in lieu of engaging in public advertising for bids and
22 the bidding therefor, the contracting unit shall, prior to commencing
23 the procurement process, submit for approval to the Director of the
24 Division of Local Government Services, a written detailed
25 description of the process to be followed in securing these services.
26 The process shall be designed in a way that is appropriate to and
27 commensurate with industry practices, and the integrity of the
28 government contracting process. Within 30 days after receipt of the
29 written description, the director shall, if the director finds that the
30 process provides for fair competition and integrity in the
31 negotiation process, approve, in writing, the description submitted
32 by the contracting unit. If the director finds that the process does
33 not provide for fair competition and integrity in the negotiation
34 process, the director shall advise the contracting unit of the
35 deficiencies that must be remedied. If the director fails to respond
36 in writing to the contracting unit within 30 days, the procurement
37 process, as submitted to the director pursuant to this section, shall
38 be deemed approved.

39 (cf: P.L.2017, c.131, s.174)

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41 2. This act shall take effect immediately.

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STATEMENT

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46 This bill would eliminate the public bidding exception for local
47 public contracts for water supply and wastewater treatment services
48 in cities of the first class. Currently, those contracts are exempt

- 1 from the public bidding requirements of the "Local Public Contracts
- 2 Law." Under the bill, future contracts of this nature could not be
- 3 awarded simply by resolution of the governing body.