

ASSEMBLY, No. 2573

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)

SYNOPSIS

Eliminates exception to public advertising and bidding requirements for certain public contracts involving insurance coverage and consulting services.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning certain public contracts for insurance coverage
2 and consulting services and amending N.J.S.18A:18A-5 and
3 P.L.1971, c.198.

4

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

7

8 1. N.J.S.18A:18A-5 is amended to read as follows:

9 18A:18A-5. Exceptions to requirement for advertising. Any
10 contract, the amount of which exceeds the bid threshold, shall be
11 negotiated and awarded by the board of education by resolution at a
12 public meeting without public advertising for bids and bidding
13 therefor if

14 a. The subject matter thereof consists of:

15 (1) Professional services. The board of education shall in each
16 instance state supporting reasons for its action in the resolution
17 awarding each contract and shall forthwith cause to be printed once,
18 in an official newspaper, a brief notice stating the nature, duration,
19 service and amount of the contract, and that the resolution and
20 contract are on file and available for public inspection in the office
21 of the board of education. For purposes of this paragraph,
22 professional services shall not include broker, consultant, or related
23 services for insurance products commonly available in a
24 competitive market;

25 (2) Extraordinary unspecifiable services which cannot
26 reasonably be described by written specifications. The application
27 of this exception as to extraordinary unspecifiable services shall be
28 construed narrowly in favor of open competitive bidding where
29 possible and the Director of the Division of Local Government
30 Services in the Department of Community Affairs is authorized to
31 establish rules and regulations after consultation with the
32 Commissioner of Education limiting its use in accordance with the
33 intention herein expressed; and the board of education shall in each
34 instance state supporting reasons for its action in the resolution
35 awarding the contract for extraordinary unspecifiable services and
36 shall forthwith cause to be printed, in the manner set forth in
37 paragraph (1) of this subsection, a brief notice of the award of such
38 contract;

39 (3) The doing of any work by employees of the board of
40 education;

41 (4) The printing of all legal notices; and legal briefs, records and
42 appendices to be used in any legal proceeding in which the board of
43 education may be a party;

44 (5) Library and educational goods and services;

**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 (6) Food supplies, including food supplies for home economics
- 2 classes, when purchased pursuant to rules and regulations of the
- 3 State board and in accordance with the provisions of
- 4 N.J.S.18A:18A-6;
- 5 (7) The supplying of any product or the rendering of any service
- 6 by a public utility, which is subject to the jurisdiction of the Board
- 7 of Public Utilities, in accordance with the tariffs and schedules of
- 8 charges made, charged and exacted, filed with said board;
- 9 (8) The printing of bonds and documents necessary to the
- 10 issuance and sale thereof by a board of education;
- 11 (9) Equipment repair service if in the nature of an extraordinary
- 12 unspecifiable service and necessary parts furnished in connection
- 13 with such services, which exception shall be in accordance with the
- 14 requirements for extraordinary unspecifiable services;
- 15 (10) Insurance not commonly available in a competitive market,
- 16 including the purchase of insurance coverage and consultant
- 17 services, which exception shall be in accordance with the
- 18 requirements for extraordinary unspecifiable services;
- 19 (11) Publishing of legal notices in newspapers as required by
- 20 law;
- 21 (12) The acquisition of artifacts or other items of unique
- 22 intrinsic, artistic or historic character;
- 23 (13) Those goods and services necessary or required to prepare
- 24 and conduct an election;
- 25 (14) (Deleted by amendment, P.L.1999, c.440.)
- 26 (15) (Deleted by amendment, P.L.1999, c.270).
- 27 (16) (Deleted by amendment, P.L.1999, c.440.)
- 28 (17) The doing of any work by persons with disabilities
- 29 employed by a sheltered workshop;
- 30 (18) Expenses for travel and conferences;
- 31 (19) The provision or performance of goods or services for the
- 32 support or maintenance of proprietary computer hardware and
- 33 software, except that this provision shall not be utilized to acquire
- 34 or upgrade non-proprietary hardware or acquire or update non-
- 35 proprietary software;
- 36 (20) Purchases of goods and services at rates set by the
- 37 Universal Service Fund administered by the Federal
- 38 Communications Commission;
- 39 (21) Goods and services paid with funds that: are raised by or
- 40 collected from students to support the purchase of student-oriented
- 41 items or materials, such as yearbooks, class rings, and a class gift;
- 42 and are deposited in school or student activity accounts; and require
- 43 no budget appropriation from the board of education;
- 44 (22) Food services provided by food service management
- 45 companies pursuant to procedures established by the New Jersey
- 46 Department of Agriculture, Bureau of Child Nutrition Programs;
- 47 (23) Vending machines providing food or drink.

1 b. 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, authority or board of education or any
4 other state or subdivision thereof.

5 c. Bids have been advertised pursuant to N.J.S.18A:18A-4 on
6 two occasions and (1) no bids have been received on both occasions
7 in response to the advertisement, or (2) the board of education has
8 rejected such bids on two occasions because it has determined that
9 they are not reasonable as to price, on the basis of cost estimates
10 prepared for or by the board of education prior to the advertising
11 therefor, or have not been independently arrived at in open
12 competition, or (3) on one occasion no bids were received pursuant
13 to (1) and on one occasion all bids were rejected pursuant to (2), in
14 whatever sequence; any such 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 board of
17 education authorizing such a contract; provided, however, that:

18 (a) A reasonable effort is first made by the board of education 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 board of education is located, or any
23 municipality in close proximity to the board of education;

24 (b) 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 N.J.S.18A:18A-4; and

28 (c) Any minor amendment or modification of any of the terms,
29 conditions, restrictions and specifications which were the subject of
30 competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated in
31 the resolution awarding the contract; provided further, however,
32 that if on the second occasion the bids received are rejected as
33 unreasonable as to price, the board of education shall notify each
34 responsible bidder submitting bids on the second occasion of its
35 intention to negotiate, and afford each bidder a reasonable
36 opportunity to negotiate, but the board of education shall not award
37 such contract unless the negotiated price is lower than the lowest
38 rejected bid price submitted on the second occasion by a
39 responsible bidder, is the lowest negotiated price offered by any
40 responsible vendor, and is a reasonable price for such goods or
41 services.

42 d. Whenever a board of education shall determine that a bid
43 was not arrived at independently in open competition pursuant to
44 paragraph (2) of subsection c. **[(2)]** of **[N.J.S.18A:18A-5]** this
45 section, it shall thereupon notify the county prosecutor of the
46 county in which the board of education is located and the Attorney
47 General of the facts upon which its determination is based, and
48 when appropriate, it may institute appropriate proceedings in any

1 State or federal court of competent jurisdiction for a violation of
2 any State or federal antitrust law or laws relating to the unlawful
3 restraint of trade.

4 e. The board of education has solicited and received at least
5 three quotations on materials, supplies or equipment for which a
6 State contract has been issued pursuant to N.J.S.18A:18A-10, and
7 the lowest responsible quotation is at least **【10%】** 10 percent less
8 than the price the board would be charged for the identical
9 materials, supplies or equipment, in the same quantities, under the
10 State contract. Any such contract or agreement entered into
11 pursuant to subsection c. or subsection e. may be made, negotiated
12 or awarded only upon adoption of a resolution by the affirmative
13 vote of two-thirds of the full membership of the board of education
14 at a meeting thereof authorizing such a contract or agreement. The
15 purchase order relating to any such contract shall include a notation
16 that the material, supplies, or equipment was purchased at least
17 **【10%】** 10 percent below the State contract price. The board of
18 education shall make available to the Director of the Division of
19 Local Government Services in the Department of Community
20 Affairs, upon request, any documents relating to the solicitation and
21 award of the contract, including, but not limited to, quotations,
22 requests for quotations, and resolutions.
23 (cf: P.L.2007, c.42, s.2)

24

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

27 5. Any contract the amount of which exceeds the bid threshold,
28 may be negotiated and awarded by the governing body without
29 public advertising for bids and bidding therefor and shall be
30 awarded by resolution of the governing body if:

31 (1) The subject matter thereof consists of:

32 (a) (i) Professional services. The governing body shall in each
33 instance state supporting reasons for its action in the resolution
34 awarding each contract and shall forthwith cause to be printed once,
35 in the official newspaper, a brief notice stating the nature, duration,
36 service and amount of the contract, and that the resolution and
37 contract are on file and available for public inspection in the office
38 of the clerk of the county or municipality, or, in the case of a
39 contracting unit created by more than one county or municipality, of
40 the counties or municipalities creating the contracting unit. For
41 purposes of this subparagraph, professional services shall not
42 include broker, consultant, or related services for insurance
43 products commonly available in a competitive market; or (ii)
44 Extraordinary unspecifiable services. The application of this
45 exception shall be construed narrowly in favor of open competitive
46 bidding, whenever possible, and the Division of Local Government
47 Services is authorized to adopt and promulgate rules and regulations
48 after consultation with the Commissioner of Education limiting the

1 use of this exception in accordance with the intention herein
2 expressed. The governing body shall in each instance state
3 supporting reasons for its action in the resolution awarding each
4 contract and shall forthwith cause to be printed, in the manner set
5 forth in **【subsection (1) (a) (i)】** subparagraph (i) of this **【section】**
6 paragraph, a brief notice of the award of the contract;

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

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

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

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

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

18 (g) The acquisition, subject to prior approval of the Attorney
19 General, of special equipment for confidential investigation;

20 (h) The printing of bonds and documents necessary to the
21 issuance and sale thereof by a contracting unit;

22 (i) Equipment repair service if in the nature of an extraordinary
23 unspecifiable service and necessary parts furnished in connection
24 with the service, which exception shall be in accordance with the
25 requirements for extraordinary unspecifiable services;

26 (j) The publishing of legal notices in newspapers as required by
27 law;

28 (k) The acquisition of artifacts or other items of unique intrinsic,
29 artistic or historical character;

30 (l) Those goods and services necessary or required to prepare
31 and conduct an election;

32 (m) Insurance not commonly available in a competitive market,
33 including the purchase of insurance coverage and consultant
34 services, which exception shall be in accordance with the
35 requirements for extraordinary unspecifiable services;

36 (n) The doing of any work by persons with disabilities
37 employed by a sheltered workshop;

38 (o) The provision of any goods or services including those of a
39 commercial nature, attendant upon the operation of a restaurant by
40 any nonprofit, duly incorporated, historical society at or on any
41 historical preservation site;

42 (p) (Deleted by amendment, P.L.1999, c.440.)

43 (q) Library and educational goods and services;

44 (r) (Deleted by amendment, P.L.2005, c.212).

45 (s) The marketing of recyclable materials recovered through a
46 recycling program, or the marketing of any product intentionally
47 produced or derived from solid waste received at a resource
48 recovery facility or recovered through a resource recovery program,

- 1 including, but not limited to, refuse-derived fuel, compost materials,
2 methane gas, and other similar products;
- 3 (t) (Deleted by amendment, P.L.1999, c.440.)
- 4 (u) Contracting unit towing and storage contracts, provided that
5 all of the contracts shall be pursuant to reasonable non-exclusionary
6 and non-discriminatory terms and conditions, which may include
7 the provision of the services on a rotating basis, at the rates and
8 charges set by the municipality pursuant to section 1 of P.L.1979,
9 c.101 (C.40:48-2.49). All contracting unit towing and storage
10 contracts for services to be provided at rates and charges other than
11 those established pursuant to the terms of this paragraph shall only
12 be awarded to the lowest responsible bidder in accordance with the
13 provisions of the "Local Public Contracts Law," P.L.1971, c.198
14 (C.40A:11-1 et seq.) and without regard for the value of the
15 contract therefor;
- 16 (v) The purchase of steam or electricity from, or the rendering
17 of services directly related to the purchase of steam or electricity
18 from a qualifying small power production facility or a qualifying
19 cogeneration facility as defined pursuant to 16 U.S.C. s.796;
- 20 (w) The purchase of electricity or administrative or dispatching
21 services directly related to the transmission of purchased electricity
22 by a contracting unit engaged in the generation of electricity;
- 23 (x) The printing of municipal ordinances or other services
24 necessarily incurred in connection with the revision and
25 codification of municipal ordinances;
- 26 (y) An agreement for the purchase of an equitable interest in a
27 water supply facility or for the provision of water supply services
28 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
29 an agreement entered into pursuant to N.J.S.40A:31-1 et al., so long
30 as the agreement is entered into no later than six months after the
31 effective date of P.L.1993, c.381;
- 32 (z) A contract for the provision of water supply services entered
33 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 34 (aa) The cooperative marketing of recyclable materials recovered
35 through a recycling program;
- 36 (bb) A contract for the provision of wastewater treatment
37 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
38 al.);
- 39 (cc) Expenses for travel and conferences;
- 40 (dd) The provision or performance of goods or services for the
41 support or maintenance of proprietary computer hardware and
42 software, except that this provision shall not be utilized to acquire
43 or upgrade non-proprietary hardware or to acquire or update non-
44 proprietary software;
- 45 (ee) The management or operation of an airport owned by the
46 contracting unit pursuant to R.S.40:8-1 et seq.;

1 (ff) Purchases of goods and services at rates set by the Universal
2 Service Fund administered by the Federal Communications
3 Commission;

4 (gg) A contract for the provision of water supply services or
5 wastewater treatment services entered into pursuant to section 2 of
6 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
7 construction, operation, or maintenance, or any combination
8 thereof, of a water supply facility as defined in subsection (16) of
9 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater
10 treatment system as defined in subsection (19) of section 15 of
11 P.L.1971, c.198 (C.40A:11-15), or any component part or parts
12 thereof, including a water filtration system as defined in subsection
13 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15); or

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

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

21 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
22 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
23 received on both occasions in response to the advertisement, or (b)
24 the governing body has rejected the bids on two occasions because
25 it has determined that they are not reasonable as to price, on the
26 basis of cost estimates prepared for or by the contracting agent prior
27 to the advertising therefor, or have not been independently arrived
28 at in open competition, or (c) on one occasion no bids were received
29 pursuant to (a) and on one occasion all bids were rejected pursuant
30 to (b), in whatever sequence; a contract may then be negotiated and
31 may be awarded upon adoption of a resolution by a two-thirds
32 affirmative vote of the authorized membership of the governing
33 body authorizing the contract; provided, however, that:

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

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

44 (iii) Any minor amendment or modification of any of the terms,
45 conditions, restrictions, and specifications, which were the subject
46 of competitive bidding pursuant to section 4 of P.L.1971, c.198
47 (C.40A:11-4), shall be stated in the resolution awarding the
48 contract; provided further, however, that if on the second occasion

1 the bids received are rejected as unreasonable as to price, the
2 contracting agent shall notify each responsible bidder submitting
3 bids on the second occasion of its intention to negotiate, and afford
4 each bidder a reasonable opportunity to negotiate, but the governing
5 body shall not award the contract unless the negotiated price is
6 lower than the lowest rejected bid price submitted on the second
7 occasion by a responsible bidder, is the lowest negotiated price
8 offered by any responsible vendor, and is a reasonable price for
9 goods or services.

10 Whenever a contracting unit shall determine that a bid was not
11 arrived at independently in open competition pursuant to subsection
12 (3) of this section it shall thereupon notify the county prosecutor of
13 the county in which the contracting unit is located and the Attorney
14 General of the facts upon which its determination is based, and
15 when appropriate, it may institute appropriate proceedings in any
16 State or federal court of competent jurisdiction for a violation of
17 any State or federal antitrust law or laws relating to the unlawful
18 restraint of trade.

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

1 after considering the extent to which the award of contracts
2 pursuant to this subsection is consistent with and in furtherance of
3 the purposes of the public contracting laws.

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

30 (6) Notwithstanding any provision of law, rule, or regulation to
31 the contrary, the contract is for the provision of electricity by a
32 contracting unit engaged in the distribution of electricity for retail
33 sale, for the provision of wholesale electricity by a municipal
34 shared services energy authority as defined pursuant to section 3 of
35 P.L.2015, c.129 (C.40A:66-3), or for the provision of administrative
36 or dispatching services related to the transmission of electricity,
37 provided that in lieu of engaging in public advertising for bids and
38 the bidding therefor, the contracting unit shall, prior to commencing
39 the procurement process, submit for approval to the Director of the
40 Division of Local Government Services, a written detailed
41 description of the process to be followed in securing these services.
42 The process shall be designed in a way that is appropriate to and
43 commensurate with industry practices, and the integrity of the
44 government contracting process. Within 30 days after receipt of the
45 written description, the director shall, if the director finds that the
46 process provides for fair competition and integrity in the
47 negotiation process, approve, in writing, the description submitted
48 by the contracting unit. If the director finds that the process does

1 not provide for fair competition and integrity in the negotiation
2 process, the director shall advise the contracting unit of the
3 deficiencies that must be remedied. If the director fails to respond
4 in writing to the contracting unit within 30 days, the procurement
5 process, as submitted to the director pursuant to this section, shall
6 be deemed approved.
7 (cf: P.L.2017, c.131, s.174)

8
9 3. This act shall take effect immediately and apply to contracts
10 involving insurance commonly available in a competitive market to
11 be awarded on or after the first day of the fourth month next
12 following the date of enactment.

13
14
15 STATEMENT

16
17 This bill would eliminate the exception for contracts involving
18 routine insurance from the public advertising and bidding
19 requirements of the “Local Public Contracts Law,” P.L.1971, c.198
20 (C.40A:11-1 et seq.), and the “Public Schools Contracts Law,”
21 N.J.S.18A:18A-1 et seq., for such contracts that exceed the bid
22 threshold. Recent reports have indicated that the current system of
23 awarding routine insurance contracts, in which no-bid contracts are
24 permitted, is susceptible to waste and abuse, and facilitates corrupt
25 behavior. Extending the public advertising and bidding
26 requirements to these insurance contracts would help protect against
27 mismanagement and misconduct, and ultimately save local unit and
28 school district taxpayer money by providing an open, transparent,
29 and competitive process for the award of these contracts.

30 Under current law, contracts involving all types of insurance are
31 exempt from the public advertising and bidding requirements for
32 local public contracts and public schools contracts. This bill would
33 limit that exemption to those contracts involving insurance that is
34 not commonly available in a competitive market and would require
35 contracts involving common insurance, such as health, life, and
36 accident, to be publicly advertised and bid. This bill would also
37 revise the exemption for contracts involving professional services to
38 exclude contracts involving broker, consultant, or related services
39 for common insurance products, to clarify that such contracts would
40 not be exempt under that provision.