

[Third Reprint]

**ASSEMBLY, No. 3698**

---

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

---

INTRODUCED FEBRUARY 5, 2009

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Assemblyman JOSEPH VAS**

**District 19 (Middlesex)**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

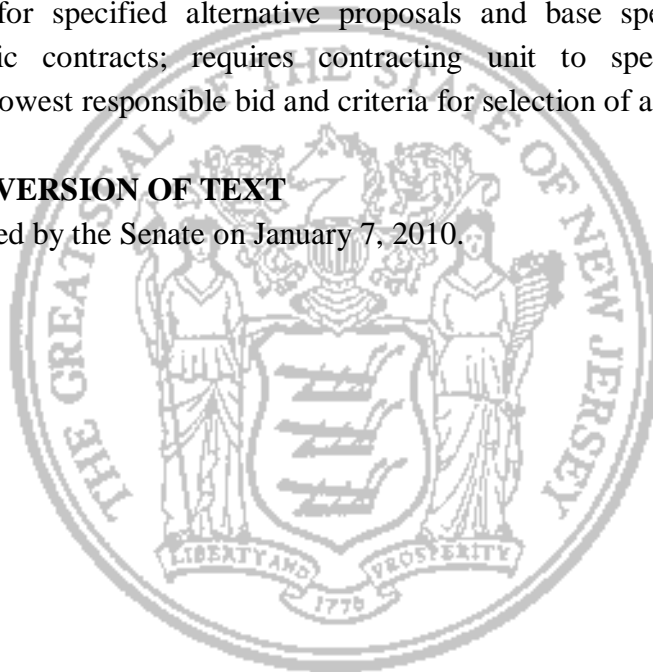
**Senator Van Drew**

**SYNOPSIS**

Provides for specified alternative proposals and base specifications for certain public contracts; requires contracting unit to specify basis for determining lowest responsible bid and criteria for selection of alternate bids.

**CURRENT VERSION OF TEXT**

As amended by the Senate on January 7, 2010.



**(Sponsorship Updated As Of: 1/12/2010)**

1 AN ACT concerning local public contracts and amending P.L.1999,  
2 c.39.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 1 of P.L.1999, c.39 (C.40A:11-23.1) is amended to  
8 read as follows:

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

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

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

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

43 The contracting unit shall not be responsible for additional traffic  
44 control costs beyond the number of working days specified in the

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AHO committee amendments adopted May 7, 2009.

<sup>2</sup>Senate SSG committee amendments adopted January 4, 2010.

<sup>3</sup>Senate floor amendments adopted January 7, 2010.

1 construction contract in accordance with section 17 of P.L.1971,  
2 c.198 (C.40A:11-17), when such a delay is caused by the contractor  
3 and liquidated damages have been assessed.

4 The statement prescribed under this subsection shall not be  
5 required if the contracting unit will provide for the direct payment  
6 of uniformed law enforcement officers and any additional costs  
7 directly associated with the provision of those officers<sup>1</sup> ['.]; and<sup>1</sup>

8 d. <sup>1</sup>[A contracting unit shall specify in the bidding documents  
9 that the low bid will be determined on the basis of the value of the  
10 contract to be awarded. The contracting unit may utilize a base bid  
11 or propose alternate bids, or both, within the limit of available funds  
12 for a project. When the contracting unit utilizes alternate bids, the  
13 “lowest responsible bidder” determination shall be made on the  
14 basis of whether the contract is being valued according to the base  
15 bid only, the base bid plus any selected alternate bids, or alternate  
16 bids only. If a contracting unit provides for alternate bids, it shall  
17 specify in the bid documents the specific basis for selecting an  
18 alternate bid and, when there are multiple alternate bids, the criteria  
19 by which multiple alternate bids will be ranked. When the selection  
20 of alternate bids is made, in whole or in part, on the basis of  
21 available funds, the contracting unit shall, upon the written request  
22 of any bidder, promptly provide competent evidence of the actual  
23 amount of available funds] <sup>2</sup>[at the option of the contracting unit,  
24 specified alternate proposals in addition to a base specification.  
25 When the contracting unit specifies alternate proposals, the  
26 determination of which bidder's response to a request for bids offers  
27 the lowest price shall be made on the basis of the price of the base  
28 specification plus the price of any selected specified alternate  
29 proposals within the limit of available funds for a project. If a  
30 contracting unit provides for more than one specified alternate  
31 proposal, the contracting unit shall specify in the bid specification  
32 the ranked order by which each specified alternate proposal shall be  
33 selected and included in the award of the contract by the governing  
34 body<sup>1</sup> ] at the option of the contracting unit, specified alternate  
35 proposals in addition to a base specification. When the contracting  
36 unit specifies alternate proposals, the determination of which  
37 bidder's response to a request for bids offers the lowest price shall  
38 be made on the basis of the price of: (i) the base specification plus  
39 the price of any selected specified alternate proposals; or (ii) a  
40 choice of specified alternative proposals within the limit of funds  
41 that may be made available for a project. If a contracting unit  
42 provides for more than one specified alternate proposal, the  
43 contracting unit shall specify in the bid specification the criteria or  
44 ranked order by which specified alternate proposals shall be  
45 selected and included in the award of the contract by the governing  
46 body<sup>3</sup>, provided that this requirement shall only apply to a project  
47 with a total estimated cost, including specified alternate proposals,

1 of greater than \$500,000<sup>3</sup> . The aggregate dollar value of accepted  
2 specified alternative proposals shall not exceed 50 percent of the  
3 base bid. If a contracting unit is found in a court of law to have  
4 chosen specific alternative proposals in a manner intended to award  
5 a contract to a specific vendor, the bids shall be voided, the  
6 contracting unit shall rebid the project, and a plaintiff who prevails  
7 in any proceeding shall be entitled to a reasonable attorney's fee <sup>3</sup>].  
8 These requirements shall only apply to a project with a total  
9 estimated cost, including specified alternate proposals, of greater  
10 than \$500,000<sup>2</sup> ]<sup>3</sup>.

11 For the purposes of this subsection:

12 <sup>1</sup>["Alternate bid" means the amount stated in the bidding  
13 document to be added to or deducted from the amount of the base  
14 bid if the corresponding change in project scope or alternate  
15 materials or methods of construction is accepted, provided,  
16 however, that no alternate bid or bids shall exceed 50 percent of the  
17 base bid] <sup>2</sup>["Specified alternate proposal" means a requirement of  
18 the bid specification for additional work above the base  
19 specification which may include, but not be limited to, a change in  
20 project scope and the use of alternate materials or methods of  
21 construction. The aggregate dollar value of accepted specified  
22 alternate proposals shall not exceed 50 percent of the base bid<sup>1</sup>]  
23 "Specified alternate proposal" means a requirement of the bid  
24 specification for bidders to submit prices for reduced, modified or  
25 supplemental work in addition to the base proposal which may  
26 include, but not be limited to, a change in project scope or the use  
27 of alternative materials or methods of construction<sup>2</sup> ;

28 <sup>1</sup>["Base bid" means the amount of money stated in the bidding  
29 document as the sum for which the bidder offers to perform the  
30 described work.]

31 <sup>2</sup>["Base specification" means the basic description of goods and  
32 services that are required to be provided by all bidders without  
33 exception.<sup>1</sup>] "Base specification" means the plans and  
34 specifications for the erection, alteration or repair of the building,  
35 structure, facility or other improvement to real property that are  
36 required to be met by all bidders without exception.<sup>2</sup>

37 (cf: P.L.2006, c.9, s.1)

38  
39 2. This act shall take effect <sup>1</sup>["immediately] on the first day of  
40 the fourth month next following the date of enactment<sup>1</sup>.