

P.L. 2009, CHAPTER 292, *approved January 17, 2010*
Assembly, No. 3698 (*Third Reprint*)

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

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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

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:

¹Assembly AHO committee amendments adopted May 7, 2009.

²Senate SSG committee amendments adopted January 4, 2010.

³Senate floor amendments adopted January 7, 2010.

1 necessary personnel, equipment, and the costs associated with these,
2 including hourly rates, and submit this information to the
3 contracting unit.

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

9 The statement prescribed under this subsection shall not be
10 required if the contracting unit will provide for the direct payment
11 of uniformed law enforcement officers and any additional costs
12 directly associated with the provision of those officers¹ [.]; and¹

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

1 ranked order by which specified alternate proposals shall be
2 selected and included in the award of the contract by the governing
3 body³, provided that this requirement shall only apply to a project
4 with a total estimated cost, including specified alternate proposals,
5 of greater than \$500,000³. The aggregate dollar value of accepted
6 specified alternative proposals shall not exceed 50 percent of the
7 base bid. If a contracting unit is found in a court of law to have
8 chosen specific alternative proposals in a manner intended to award
9 a contract to a specific vendor, the bids shall be voided, the
10 contracting unit shall rebid the project, and a plaintiff who prevails
11 in any proceeding shall be entitled to a reasonable attorney's fee³].
12 These requirements shall only apply to a project with a total
13 estimated cost, including specified alternate proposals, of greater
14 than \$500,000²]³.

15 For the purposes of this subsection:

16 ¹["Alternate bid" means the amount stated in the bidding
17 document to be added to or deducted from the amount of the base
18 bid if the corresponding change in project scope or alternate
19 materials or methods of construction is accepted, provided,
20 however, that no alternate bid or bids shall exceed 50 percent of the
21 base bid].²["Specified alternate proposal" means a requirement of
22 the bid specification for additional work above the base
23 specification which may include, but not be limited to, a change in
24 project scope and the use of alternate materials or methods of
25 construction. The aggregate dollar value of accepted specified
26 alternate proposals shall not exceed 50 percent of the base bid¹]
27 "Specified alternate proposal" means a requirement of the bid
28 specification for bidders to submit prices for reduced, modified or
29 supplemental work in addition to the base proposal which may
30 include, but not be limited to, a change in project scope or the use
31 of alternative materials or methods of construction² ;

32 ¹["Base bid" means the amount of money stated in the bidding
33 document as the sum for which the bidder offers to perform the
34 described work.]

35 ²["Base specification" means the basic description of goods and
36 services that are required to be provided by all bidders without
37 exception.¹] "Base specification" means the plans and
38 specifications for the erection, alteration or repair of the building,
39 structure, facility or other improvement to real property that are
40 required to be met by all bidders without exception.²

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

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43 2. This act shall take effect ¹["immediately"] on the first day of
44 the fourth month next following the date of enactment¹.

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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.