

SENATE, No. 3943

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 13, 2019

Sponsored by:

Senator JOSEPH A. LAGANA
District 38 (Bergen and Passaic)

Co-Sponsored by:

Senators Stack and Sacco

SYNOPSIS

Requires local contracting unit to award local public contract to most responsible bidder.

CURRENT VERSION OF TEXT

As introduced.



S3943 LAGANA

2

1 AN ACT establishing a most responsible bidder requirement for
2 local public contracts and amending various parts of the statutory
3 law.

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 read
9 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 an entity that has entered
41 into a contract for management and operation services with a local
42 hospital authority established pursuant to P.L.2006, c.46 (C.30:9-
43 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 on
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]** P.L.1971, c.198 (C.40A:11-1 et
15 seq.), to make awards for the contracting unit in connection with
16 purchases, contracts or 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 and most competitive price" means the least
34 possible amount that meets all requirements of the request of a
35 contracting agent, including standards determined to be essential by
36 the contracting unit relating to the efficiency and effectiveness of
37 the bid plan and the performance history of the bidder.

38 (27) **["Lowest"]** "Most responsible bidder or vendor" means the
39 bidder or vendor: (a) whose response to a request for bids offers
40 the lowest and most competitive price and is responsive; and (b)
41 who is responsible.

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

44 (29) "Purchase order" means a document issued by the
45 contracting agent authorizing a purchase transaction with a vendor
46 to provide or perform goods or services to the contracting unit,
47 which, when fulfilled in accordance with the terms and conditions
48 of a request of a contracting agent and other provisions and

1 procedures that may be established by the contracting unit, will
2 result in payment by the contracting unit.

3 (30) "Purchasing agent" means the individual duly assigned the
4 authority, responsibility, and accountability for the purchasing
5 activity of the contracting unit, and who has such duties as are
6 defined by an authority appropriate to the form and structure of the
7 contracting unit, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.)
8 and who possesses a qualified purchasing agent certificate.

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

14 (32) "Responsible" means able to complete the contract in
15 accordance with **[its] the estimated cost and plan of the bid, and all**
16 other requirements, including but not limited to requirements
17 pertaining to experience, moral integrity, operating capacity,
18 financial capacity, credit, and workforce, equipment, and facilities
19 availability.

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

23 (34) "Public works" means building, altering, repairing,
24 improving or demolishing any public structure or facility
25 constructed or acquired by a contracting unit to house local
26 government functions or provide water, waste disposal, power,
27 transportation, and other public infrastructures.

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

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

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

45 (38) "Index rate" means the rate of annual percentage increase,
46 rounded to the nearest half-percent, in the Implicit Price Deflator
47 for State and Local Government Purchases of Goods and Services,

1 computed and published quarterly by the United States Department
2 of Commerce, Bureau of Economic Analysis.

3 (39) "Proprietary" means goods or services of a specialized
4 nature, that may be made or marketed by a person or persons having
5 the exclusive right to make or sell them, when the need for such
6 goods or services has been certified in writing by the governing
7 body of the contracting unit to be necessary for the conduct of its
8 affairs.

9 (40) "Service or services" means the performance of work, or
10 the furnishing of labor, time, or effort, or any combination thereof,
11 not involving or connected to the delivery or ownership of a
12 specified end product or goods or a manufacturing process. Service
13 or services may also include an arrangement in which a vendor
14 compensates the contracting unit for the vendor's right to operate a
15 concession.

16 (41) "Qualified purchasing agent certificate" means a certificate
17 granted by the director pursuant to section 9 of P.L.1971, c.198
18 (C.40A:11-9).

19 (42) "Mistake" means, for a public works project, a clerical error
20 that is an unintentional and substantial computational error or an
21 unintentional omission of a substantial quantity of labor, material,
22 or both, from the final bid computation.

23 (cf: P.L.2016, c.55, s.8)

24

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

27 4. a. Every contract awarded by the contracting agent for the
28 provision or performance of any goods or services, the cost of
29 which in the aggregate exceeds the bid threshold, shall be awarded
30 only by resolution of the governing body of the contracting unit to
31 the **lowest** most responsible bidder after public advertising for
32 bids and bidding therefor, except as is provided otherwise in **this**
33 **act** P.L.1971, c.198 (C.40A:11-1 et seq.) or specifically by any
34 other law. The resolution shall explain why the vendor selected is
35 the most responsible bidder. The governing body of a contracting
36 unit may, by resolution approved by a majority of the governing
37 body and subject to subsections b. and c. of this section, disqualify
38 a bidder who would otherwise be determined to be the **lowest**
39 most responsible bidder, if the governing body finds that it has had
40 prior negative experience with the bidder.

41 b. As used in this section, "prior negative experience" means
42 any of the following:

43 (1) the bidder has been found, through either court adjudication,
44 arbitration, mediation, or other contractually stipulated alternate
45 dispute resolution mechanism, to have: failed to provide or perform
46 goods or services; or failed to complete the contract in a timely
47 manner; or otherwise performed unsatisfactorily under a prior
48 contract with the contracting unit;

1 (2) the bidder defaulted on a contract, thereby requiring the
2 local unit to utilize the services of another contractor to provide the
3 goods or perform the services or to correct or complete the contract;

4 (3) the bidder defaulted on a contract, thereby requiring the
5 local unit to look to the bidder's surety for completion of the
6 contract or tender of the costs of completion; or

7 (4) the bidder is debarred or suspended from contracting with
8 any of the agencies or departments of the executive branch of the
9 State of New Jersey at the time of the contract award, whether or
10 not the action was based on experience with the contracting unit.

11 c. The following conditions apply if the governing body of a
12 contracting unit is contemplating a disqualification based on prior
13 negative experience:

14 (1) The existence of any of the indicators of prior negative
15 experience set forth in this section shall not require that a bidder be
16 disqualified. In each instance, the decision to disqualify shall be
17 made within the discretion of the governing body and shall be
18 rendered in the best interests of the contracting unit.

19 (2) All mitigating factors shall be considered in determining the
20 seriousness of the prior negative experience and in deciding
21 whether disqualification is warranted.

22 (3) The bidder shall be furnished by the governing body with a
23 written notice (a) stating that a disqualification is being considered;
24 (b) setting forth the reason for the disqualification; and (c)
25 indicating that the bidder shall be accorded an opportunity for a
26 hearing before the governing body if the bidder so requests within a
27 stated period of time. At the hearing, the bidder shall show good
28 cause why the bidder should not be disqualified by presenting
29 documents and testimony. If the governing body determines that
30 good cause has not been shown by the bidder, it may vote to find
31 the bidder lacking in responsibility and, thus, disqualified.

32 (4) Disqualification shall be for a reasonable, defined period of
33 time which shall not exceed five years.

34 (5) A disqualification, other than a disqualification pursuant to
35 which a governing body is prohibited by law from entering into a
36 contract with a bidder, may be voided or the period thereof may be
37 reduced, in the discretion of the governing body, upon the
38 submission of a good faith application under oath, supported by
39 documentary evidence, setting forth substantial and appropriate
40 grounds for the granting of relief, such as reversal of a judgment, or
41 actual change of ownership, management or control of the bidder.

42 (6) An opportunity for a hearing need not be offered to a bidder
43 whose disqualification is based on its suspension or debarment by
44 an agency or department of the executive branch of the State of
45 New Jersey. The term of such a disqualification shall be concurrent
46 with the term of the suspension or debarment by the State agency or
47 department.

48 (cf: P.L.1999, c.440, s.8)

1 3. Section 3 of P.L.2018, c.156 (C.40A:11-4.9) is amended to
2 read as follows:

3 3. As used in P.L.2018, c.156 (C.40A:11-4.7 et al.):

4 "Director" means the Director of the Division of Local
5 Government Services in the Department of Community Affairs;

6 "Electronic procurement" means the use of computer technology
7 and the Internet for the advertising and submission of public bids,
8 providing notice of revisions or addenda to advertisements or bid
9 documents, the receipt of proposals and quotations, competitive
10 contracting, the use of reverse auctions, and related practices to
11 assist in determining the **[lowest]** most responsible bidder or
12 proposer who is most advantageous, price and other factors
13 considered, as appropriate, for goods and services, the sale of
14 personal property, and other public procurement-related activities
15 and services as may be determined appropriate by the director;

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

21 "Local unit" means a school district as defined in the "Public
22 School Contracts Law," N.J.S.18A:18A-1 et seq., or a contracting
23 unit as defined in the "Local Public Contracts Law," P.L.1971,
24 c.198 (C.40A:11-1 et seq.);

25 "Public works construction" means any contract that is subject to
26 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
27 56.25 et seq.); and

28 "Real property" shall include, in addition to the usual
29 connotations thereof, development rights or easements, or any right,
30 interest, or estate in the area extending above any real property, or
31 capital improvement thereon, to such a height or altitude as any
32 title, interest, or estate in real property may extend, commonly
33 known as "air rights," and subject to, but not limited to, the "Local
34 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

35 (cf: P.L.2018, c.156, s.3)

36

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

39 5. Any contract the amount of which exceeds the bid threshold,
40 may be negotiated and awarded by the governing body without
41 public advertising for bids and bidding therefor and shall be
42 awarded by resolution of the governing body if:

43 (1) The subject matter thereof consists of:

44 (a) (i) Professional services. The governing body shall in each
45 instance state supporting reasons for its action in the resolution
46 awarding each contract and shall forthwith cause to be printed once,
47 in the official newspaper, a brief notice stating the nature, duration,
48 service and amount of the contract, and that the resolution and

1 contract are on file and available for public inspection in the office
2 of the clerk of the county or municipality, or, in the case of a
3 contracting unit created by more than one county or municipality, of
4 the counties or municipalities creating the contracting unit; or (ii)
5 Extraordinary unspecifiable services. The application of this
6 exception shall be construed narrowly in favor of open competitive
7 bidding, whenever possible, and the Division of Local Government
8 Services is authorized to adopt and promulgate rules and regulations
9 after consultation with the Commissioner of Education limiting the
10 use of this exception in accordance with the intention herein
11 expressed. The governing body shall in each instance state
12 supporting reasons for its action in the resolution awarding each
13 contract and shall forthwith cause to be printed, in the manner set
14 forth in subsection (1) (a) (i) of this section, a brief notice of the
15 award of the contract;

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

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

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

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

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

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

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

31 (i) Equipment repair service if in the nature of an extraordinary
32 unspecifiable service and necessary parts furnished in connection
33 with the service, which exception shall be in accordance with the
34 requirements for extraordinary unspecifiable services;

35 (j) The publishing of legal notices in newspapers as required by
36 law;

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

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

41 (m) Insurance, including the purchase of insurance coverage and
42 consultant services, which exception shall be in accordance with the
43 requirements for extraordinary unspecifiable services;

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

46 (o) The provision of any goods or services including those of a
47 commercial nature, attendant upon the operation of a restaurant by

- 1 any nonprofit, duly incorporated, historical society at or on any
2 historical preservation site;
- 3 (p) (Deleted by amendment, P.L.1999, c.440.)
- 4 (q) Library and educational goods and services;
- 5 (r) (Deleted by amendment, P.L.2005, c.212).
- 6 (s) The marketing of recyclable materials recovered through a
7 recycling program, or the marketing of any product intentionally
8 produced or derived from solid waste received at a resource
9 recovery facility or recovered through a resource recovery program,
10 including, but not limited to, refuse-derived fuel, compost materials,
11 methane gas, and other similar products;
- 12 (t) (Deleted by amendment, P.L.1999, c.440.)
- 13 (u) Contracting unit towing and storage contracts, provided that
14 all of the contracts shall be pursuant to reasonable non-exclusionary
15 and non-discriminatory terms and conditions, which may include
16 the provision of the services on a rotating basis, at the rates and
17 charges set by the municipality pursuant to section 1 of P.L.1979,
18 c.101 (C.40:48-2.49). All contracting unit towing and storage
19 contracts for services to be provided at rates and charges other than
20 those established pursuant to the terms of this paragraph shall only
21 be awarded to the **【lowest】** most responsible bidder in accordance
22 with the provisions of the "Local Public Contracts Law," P.L.1971,
23 c.198 (C.40A:11-1 et seq.) and without regard for the value of the
24 contract therefor;
- 25 (v) The purchase of steam or electricity from, or the rendering
26 of services directly related to the purchase of steam or electricity
27 from a qualifying small power production facility or a qualifying
28 cogeneration facility as defined pursuant to 16 U.S.C. s.796;
- 29 (w) The purchase of electricity or administrative or dispatching
30 services directly related to the transmission of purchased electricity
31 by a contracting unit engaged in the generation of electricity;
- 32 (x) The printing of municipal ordinances or other services
33 necessarily incurred in connection with the revision and
34 codification of municipal ordinances;
- 35 (y) An agreement for the purchase of an equitable interest in a
36 water supply facility or for the provision of water supply services
37 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
38 an agreement entered into pursuant to N.J.S.40A:31-1 et al., so long
39 as the agreement is entered into no later than six months after the
40 effective date of P.L.1993, c.381;
- 41 (z) A contract for the provision of water supply services entered
42 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 43 (aa) The cooperative marketing of recyclable materials recovered
44 through a recycling program;
- 45 (bb) A contract for the provision of wastewater treatment
46 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et
47 al.);
- 48 (cc) Expenses for travel and conferences;

1 (dd) The provision or performance of goods or services for the
2 support or maintenance of proprietary computer hardware and
3 software, except that this provision shall not be utilized to acquire
4 or upgrade non-proprietary hardware or to acquire or update non-
5 proprietary software;

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

8 (ff) Purchases of goods and services at rates set by the Universal
9 Service Fund administered by the Federal Communications
10 Commission;

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

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

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

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

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

47 (ii) The terms, conditions, restrictions, and specifications set
48 forth in the negotiated contract are not substantially different from

1 those which were the subject of competitive bidding pursuant to
2 section 4 of P.L.1971, c.198 (C.40A:11-4); and

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

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

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

1 the contracts on local contracting and shall consult with the State
2 Treasurer on the impact of the contracts on the State procurement
3 process. The director may, after consultation with the State
4 Treasurer, adopt rules in accordance with the "Administrative
5 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the
6 use of this subsection, after considering the impact of contracts
7 awarded under this subsection on State and local contracting, or
8 after considering the extent to which the award of contracts
9 pursuant to this subsection is consistent with and in furtherance of
10 the purposes of the public contracting laws.

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

37 (6) Notwithstanding any provision of law, rule, or regulation to
38 the contrary, the contract is for the provision of electricity by a
39 contracting unit engaged in the distribution of electricity for retail
40 sale, for the provision of wholesale electricity by a municipal
41 shared services energy authority as defined pursuant to section 3 of
42 P.L.2015, c.129 (C.40A:66-3), or for the provision of administrative
43 or dispatching services related to the transmission of electricity,
44 provided that in lieu of engaging in public advertising for bids and
45 the bidding therefor, the contracting unit shall, prior to commencing
46 the procurement process, submit for approval to the Director of the
47 Division of Local Government Services, a written detailed
48 description of the process to be followed in securing these services.

1 The process shall be designed in a way that is appropriate to and
2 commensurate with industry practices, and the integrity of the
3 government contracting process. Within 30 days after receipt of the
4 written description, the director shall, if the director finds that the
5 process provides for fair competition and integrity in the
6 negotiation process, approve, in writing, the description submitted
7 by the contracting unit. If the director finds that the process does
8 not provide for fair competition and integrity in the negotiation
9 process, the director shall advise the contracting unit of the
10 deficiencies that must be remedied. If the director fails to respond
11 in writing to the contracting unit within 30 days, the procurement
12 process, as submitted to the director pursuant to this section, shall
13 be deemed approved.

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

15

16 5. Section 6 of P.L.1975, c.353 (C.40A:11-6.1) is amended to
17 read as follows:

18 6. All contracts enumerated in this section shall be awarded as
19 follows:

20 a. For all contracts that in the aggregate are less than the bid
21 threshold but 15 percent or more of that amount, and for those
22 contracts that are for subject matter enumerated in subsection (1) of
23 section 5 of P.L.1971, c.198 (C.40A:11-5), except for paragraph (a)
24 of that subsection concerning professional services and paragraph
25 (b) of that subsection concerning work by employees of the
26 contracting unit, the contracting agent shall award the contract after
27 soliciting at least two competitive quotations, if practicable. The
28 award shall be made to a vendor whose response is most
29 advantageous, price and other factors considered. The contracting
30 agent shall retain the record of the quotation solicitation and shall
31 include a copy of the record with the voucher used to pay the
32 vendor.

33 b. When in excess of the bid threshold, and after documented
34 effort by the contracting agent to secure competitive quotations, a
35 contract for extraordinary unspecifiable services may be awarded
36 upon a determination in writing by the contracting agent that the
37 solicitation of competitive quotations is impracticable. Any such
38 contract shall be awarded by resolution of the governing body.

39 c. If authorized by the governing body by resolution or
40 ordinance, all contracts that are in the aggregate less than 15
41 percent of the bid threshold may be awarded by the contracting
42 agent without soliciting competitive quotations.

43 d. Whenever two or more responses to a request of a
44 contracting agent offer equal prices and are the **[lowest]** most
45 responsible bids or proposals, the contracting unit may award the
46 contract to the vendor whose response, in the discretion of the
47 contracting unit, is the most advantageous, price and other factors
48 considered. In such a case, the award resolution or purchase order

1 documentation shall explain why the vendor selected is the most
2 advantageous.

3 (cf: 1999, c.440, s.11)

4

5 6. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
6 read as follows:

7 15. All contracts for the provision or performance of goods or
8 services shall be awarded for a period not to exceed 24 consecutive
9 months, except that contracts for professional services pursuant to
10 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
11 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to
12 exceed 12 consecutive months. Contracts may be awarded for
13 longer periods of time as follows:

14 (1) Supplying of:

15 (a) (Deleted by amendment, P.L.1996, c.113.)

16 (b) (Deleted by amendment, P.L.1996, c.113.)

17 (c) Thermal energy produced by a cogeneration facility, for use
18 for heating or air conditioning or both, for any term not exceeding
19 40 years, when the contract is approved by the Board of Public
20 Utilities. For the purposes of this paragraph, "cogeneration" means
21 the simultaneous production in one facility of electric power and
22 other forms of useful energy such as heating or process steam;

23 (2) (Deleted by amendment, P.L.1977, c.53.)

24 (3) The collection and disposal of municipal solid waste, the
25 collection and disposition of recyclable material, or the disposal of
26 sewage sludge, for any term not exceeding in the aggregate, five
27 years;

28 (4) The collection and recycling of methane gas from a sanitary
29 landfill facility, for any term not exceeding 25 years, when the
30 contract is in conformance with a district solid waste management
31 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and
32 with the approval of the Division of Local Government Services in
33 the Department of Community Affairs and the Department of
34 Environmental Protection. The contracting unit shall award the
35 contract to the highest responsible bidder, notwithstanding that the
36 contract price may be in excess of the amount of any necessarily
37 related administrative expenses; except that if the contract requires
38 the contracting unit to expend funds only, the contracting unit shall
39 award the contract to the **lowest** most responsible bidder. The
40 approval by the Division of Local Government Services of public
41 bidding requirements shall not be required for those contracts
42 exempted therefrom pursuant to section 5 of P.L.1971, c.198
43 (C.40A:11-5);

44 (5) Data processing service, for any term of not more than seven
45 years;

46 (6) Insurance, including the purchase of insurance coverages,
47 insurance consulting or administrative services, claims
48 administration services and including participation in a joint self-

1 insurance fund, risk management program or related services
2 provided by a contracting unit insurance group, or participation in
3 an insurance fund established by a local unit pursuant to
4 N.J.S.40A:10-6, or a joint insurance fund established pursuant to
5 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more
6 than three years;

7 (7) Leasing or servicing of (a) automobiles, motor vehicles,
8 machinery, and equipment of every nature and kind, for a period not
9 to exceed five years, or (b) machinery and equipment used in the
10 generation of electricity by a municipal shared services energy
11 authority established pursuant to section 4 of P.L.2015, c.129
12 (C.40A:66-4), or a contracting unit engaged in the generation of
13 electricity, for a period not to exceed 20 years; provided, however, a
14 contract shall be awarded only subject to and in accordance with the
15 rules and regulations promulgated by the Director of the Division of
16 Local Government Services in the Department of Community
17 Affairs;

18 (8) The supplying of any product or the rendering of any service
19 by a company providing voice, data, transmission, or switching
20 services for a term not exceeding five years;

21 (9) Any single project for the construction, reconstruction, or
22 rehabilitation of any public building, structure, or facility, or any
23 public works project, including the retention of the services of any
24 architect or engineer in connection therewith, for the length of time
25 authorized and necessary for the completion of the actual
26 construction;

27 (10) The providing of food services for any term not exceeding
28 three years;

29 (11) On-site inspections and plan review services undertaken by
30 private agencies pursuant to the "State Uniform Construction Code
31 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
32 more than three years;

33 (12) (Deleted by amendment, P.L.2009, c.4).

34 (13) (Deleted by amendment, P.L.1999, c.440.)

35 (14) (Deleted by amendment, P.L.1999, c.440.)

36 (15) Leasing of motor vehicles, machinery, and other equipment
37 primarily used to fight fires, for a term not to exceed ten years,
38 when the contract includes an option to purchase, subject to and in
39 accordance with rules and regulations promulgated by the Director
40 of the Division of Local Government Services in the Department of
41 Community Affairs;

42 (16) The provision of water supply services or the designing,
43 financing, construction, operation, or maintenance, or any
44 combination thereof, of a water supply facility, or any component
45 part or parts thereof, including a water filtration system, for a period
46 not to exceed 40 years, when the contract for these services is
47 approved by the Division of Local Government Services in the
48 Department of Community Affairs, the Board of Public Utilities,

1 and the Department of Environmental Protection pursuant to
2 P.L.1985, c.37 (C.58:26-1 et al.), except that no approvals shall be
3 required for those contracts otherwise exempted pursuant to
4 subsection (30), (31), (34), (35) or (43) of this section. For the
5 purposes of this subsection, "water supply services" means any
6 service provided by a water supply facility; "water filtration
7 system" means any equipment, plants, structures, machinery,
8 apparatus, or land, or any combination thereof, acquired, used,
9 constructed, rehabilitated, or operated for the collection,
10 impoundment, storage, improvement, filtration, or other treatment
11 of drinking water for the purposes of purifying and enhancing water
12 quality and insuring its potability prior to the distribution of the
13 drinking water to the general public for human consumption,
14 including plants and works, and other personal property and
15 appurtenances necessary for their use or operation; and "water
16 supply facility" means and refers to the real property and the plants,
17 structures, or interconnections between existing water supply
18 facilities, machinery and equipment and other property, real,
19 personal, and mixed, acquired, constructed, or operated, or to be
20 acquired, constructed, or operated, in whole or in part by or on
21 behalf of a political subdivision of the State or any agency thereof,
22 for the purpose of augmenting the natural water resources of the
23 State and making available an increased supply of water for all
24 uses, or of conserving existing water resources, and any and all
25 appurtenances necessary, useful, or convenient for the collecting,
26 impounding, storing, improving, treating, filtering, conserving, or
27 transmitting of water and for the preservation and protection of
28 these resources and facilities and providing for the conservation and
29 development of future water supply resources;

30 (17) The provision of resource recovery services by a qualified
31 vendor, the disposal of the solid waste delivered for disposal which
32 cannot be processed by a resource recovery facility or the residual
33 ash generated at a resource recovery facility, including hazardous
34 waste and recovered metals and other materials for reuse, or the
35 design, financing, construction, operation, or maintenance of a
36 resource recovery facility for a period not to exceed 40 years when
37 the contract is approved by the Division of Local Government
38 Services in the Department of Community Affairs, and the
39 Department of Environmental Protection pursuant to P.L.1985, c.38
40 (C.13:1E-136 et al.); and when the resource recovery facility is in
41 conformance with a district solid waste management plan approved
42 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of
43 this subsection, "resource recovery facility" means a solid waste
44 facility constructed and operated for the incineration of solid waste
45 for energy production and the recovery of metals and other
46 materials for reuse; or a mechanized composting facility, or any
47 other facility constructed or operated for the collection, separation,
48 recycling, and recovery of metals, glass, paper, and other materials

1 for reuse or for energy production; and "residual ash" means the
2 bottom ash, fly ash, or any combination thereof, resulting from the
3 combustion of solid waste at a resource recovery facility;

4 (18) The sale of electricity or thermal energy, or both, produced
5 by a resource recovery facility for a period not to exceed 40 years
6 when the contract is approved by the Board of Public Utilities, and
7 when the resource recovery facility is in conformance with a district
8 solid waste management plan approved pursuant to P.L.1970, c.39
9 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource
10 recovery facility" means a solid waste facility constructed and
11 operated for the incineration of solid waste for energy production
12 and the recovery of metals and other materials for reuse; or a
13 mechanized composting facility, or any other facility constructed or
14 operated for the collection, separation, recycling, and recovery of
15 metals, glass, paper, and other materials for reuse or for energy
16 production;

17 (19) The provision of wastewater treatment services or the
18 designing, financing, construction, operation, or maintenance, or
19 any combination thereof, of a wastewater treatment system, or any
20 component part or parts thereof, for a period not to exceed 40 years,
21 when the contract for these services is approved by the Division of
22 Local Government Services in the Department of Community
23 Affairs and the Department of Environmental Protection pursuant to
24 P.L.1985, c.72 (C.58:27-1 et al.), except that no approvals shall be
25 required for those contracts otherwise exempted pursuant to
26 subsection (36) or (43) of this section. For the purposes of this
27 subsection, "wastewater treatment services" means any services
28 provided by a wastewater treatment system, and "wastewater
29 treatment system" means equipment, plants, structures, machinery,
30 apparatus, or land, or any combination thereof, acquired, used,
31 constructed, or operated for the storage, collection, reduction,
32 recycling, reclamation, disposal, separation, or other treatment of
33 wastewater or sewage sludge, or for the final disposal of residues
34 resulting from the treatment of wastewater, including, but not
35 limited to, pumping and ventilating stations, facilities, plants and
36 works, connections, outfall sewers, interceptors, trunk lines, and
37 other personal property and appurtenances necessary for their
38 operation;

39 (20) The supplying of goods or services for the purpose of
40 lighting public streets, for a term not to exceed five years;

41 (21) The provision of emergency medical services for a term not
42 to exceed five years;

43 (22) Towing and storage contracts, awarded pursuant to
44 paragraph u. of subsection (1) of section 5 of P.L.1971, c.198
45 (C.40A:11-5) for any term not exceeding three years;

46 (23) Fuel for the purpose of generating electricity for a term not
47 to exceed eight years;

1 (24) The purchase of electricity or administrative or dispatching
2 services related to the transmission of electricity, from a supplier of
3 electricity subject to the jurisdiction of a federal regulatory agency,
4 from a qualifying small power producing facility or qualifying
5 cogeneration facility, as defined by 16 U.S.C. s.796, or from any
6 supplier of electricity within any regional transmission organization
7 or independent system operator or from an organization or operator
8 or their successors, by a contracting unit engaged in the generation
9 of electricity for retail sale, as of May 24, 1991, for a term not to
10 exceed 40 years, or by a contracting unit engaged solely in the
11 distribution of electricity for retail sale for a term not to exceed ten
12 years, except that a contract with a contracting unit, engaged solely
13 in the distribution of electricity for retail sale, in excess of ten
14 years, shall require the written approval of the Director of the
15 Division of Local Government Services. If the director fails to
16 respond in writing to the contracting unit within 10 business days,
17 the contract shall be deemed approved;

18 (25) Basic life support services, for a period not to exceed five
19 years. For the purposes of this subsection, "basic life support"
20 means a basic level of prehospital care, which includes but need not
21 be limited to patient stabilization, airway clearance,
22 cardiopulmonary resuscitation, hemorrhage control, initial wound
23 care, and fracture stabilization;

24 (26) (Deleted by amendment, P.L.1999, c.440.)

25 (27) The provision of transportation services to an elderly
26 person, an individual with a disability, or an indigent person for any
27 term of not more than three years. For the purposes of this
28 subsection, "elderly person " means a person who is 60 years of age
29 or older. "Individual with a disability" means a person of any age
30 who, by reason of illness, injury, age, congenital malfunction, or
31 other permanent or temporary incapacity or disability, are unable,
32 without special facilities or special planning or design to utilize
33 mass transportation facilities and services as effectively as persons
34 who are not so affected. "Indigent person " means a person of any
35 age whose income does not exceed 100 percent of the poverty level,
36 adjusted for family size, established and adjusted under section
37 673(2) of subtitle B, the "Community Services Block Grant Act,"
38 Pub.L.97-35 (42 U.S.C. s.9902 (2));

39 (28) The supplying of liquid oxygen or other chemicals, for a
40 term not to exceed five years, when the contract includes the
41 installation of tanks or other storage facilities by the supplier, on or
42 near the premises of the contracting unit;

43 (29) The performance of patient care services by contracted
44 medical staff at county hospitals, correction facilities, and long term
45 care facilities, for any term of not more than three years;

46 (30) The acquisition of an equitable interest in a water supply
47 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
48 contract entered into pursuant to the "County and Municipal Water

1 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into
2 no later than January 7, 1995, for any term of not more than forty
3 years;

4 (31) The provision of water supply services or the financing,
5 construction, operation, or maintenance or any combination thereof,
6 of a water supply facility or any component part or parts thereof, by
7 a partnership or copartnership established pursuant to a contract
8 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
9 period not to exceed 40 years;

10 (32) Laundry service and the rental, supply, and cleaning of
11 uniforms for any term of not more than three years;

12 (33) The supplying of any product or the rendering of any
13 service, including consulting services, by a cemetery management
14 company for the maintenance and preservation of a municipal
15 cemetery operating pursuant to the "New Jersey Cemetery Act,"
16 N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

17 (34) A contract between a public entity and a private firm
18 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
19 water supply services may be entered into for any term which, when
20 all optional extension periods are added, may not exceed 40 years;

21 (35) A contract for the purchase of a supply of water from a
22 public utility company subject to the jurisdiction of the Board of
23 Public Utilities in accordance with tariffs and schedules of charges
24 made, charged or exacted or contracts filed with the Board of Public
25 Utilities, for any term of not more than 40 years;

26 (36) A contract between a public entity and a private firm or
27 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
28 the provision of wastewater treatment services may be entered into
29 for any term of not more than 40 years, including all optional
30 extension periods;

31 (37) The operation and management of a facility under a license
32 issued or permit approved by the Department of Environmental
33 Protection, including a wastewater treatment system or a water
34 supply or distribution facility, as the case may be, for any term of
35 not more than ten years. For the purposes of this subsection,
36 "wastewater treatment system" refers to facilities operated or
37 maintained for the storage, collection, reduction, disposal, or other
38 treatment of wastewater or sewage sludge, remediation of
39 groundwater contamination, stormwater runoff, or the final disposal
40 of residues resulting from the treatment of wastewater; and "water
41 supply or distribution facility" refers to facilities operated or
42 maintained for augmenting the natural water resources of the State,
43 increasing the supply of water, conserving existing water resources,
44 or distributing water to users;

45 (38) Municipal solid waste collection from facilities owned by a
46 contracting unit, for any term of not more than three years;

47 (39) Fuel for heating purposes, for any term of not more than
48 three years;

- 1 (40) Fuel or oil for use in motor vehicles for any term of not
2 more than three years;
- 3 (41) Plowing and removal of snow and ice for any term of not
4 more than three years;
- 5 (42) Purchases made under a contract awarded by the Director
6 of the Division of Purchase and Property in the Department of the
7 Treasury for use by counties, municipalities, or other contracting
8 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
9 term not to exceed the term of that contract;
- 10 (43) A contract between the governing body of a city of the first
11 class and a duly incorporated nonprofit association for the provision
12 of water supply services as defined in subsection (16) of this
13 section, or wastewater treatment services as defined in subsection
14 (19) of this section, may be entered into for a period not to exceed
15 40 years;
- 16 (44) The purchase of electricity generated through class I
17 renewable energy or from a power production facility that is fueled
18 by methane gas extracted from a landfill in the county of the
19 contacting unit for any term not exceeding 25 years;
- 20 (45) The provision or performance of goods or services for the
21 purpose of producing class I renewable energy or class II renewable
22 energy, as those terms are defined in section 3 of P.L.1999, c.23
23 (C.48:3-51), at, or adjacent to, buildings owned by, or operations
24 conducted by, the contracting unit, the entire price of which is to be
25 established as a percentage of the resultant savings in energy costs,
26 for a term not to exceed 15 years; provided, however, that a contract
27 shall be entered into only subject to and in accordance with
28 guidelines promulgated by the Board of Public Utilities establishing
29 a methodology for computing energy cost savings and energy
30 generation costs;
- 31 (46) A power supply contract, as defined pursuant to section 3
32 of P.L.2015, c.129 (C.40A:66-3), between a member municipality
33 as defined pursuant to section 3 of P.L.2015, c.129 (C.40A:66-3),
34 and the municipal shared services energy authority established
35 pursuant to the provisions of P.L.2015, c.129 (C.40A:66-1 et al.) to
36 meet the electric power needs of its members, for the lease,
37 operation, or management of electric generation within a member
38 municipality's corporate limits and franchise area or the purchase of
39 electricity, or the purchase of fuel for generating units for a term not
40 to exceed 40 years; and
- 41 (47) A contract entered into pursuant to paragraph (2) of
42 subsection a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) between
43 a county hospital authority and a manager for the management,
44 operation, and maintenance of a hospital owned by the authority or
45 the county for a term not to exceed 20 years, provided, however,
46 that a contract entered into pursuant to paragraph (2) of subsection
47 a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) may be renewed for
48 two additional periods, not to exceed five years each.

1 Any contract for services other than professional services, the
2 statutory length of which contract is for three years or less, may
3 include provisions for no more than one two-year, or two one-year,
4 extensions, subject to the following limitations: a. The contract
5 shall be awarded by resolution of the governing body upon a
6 finding by the governing body that the services are being performed
7 in an effective and efficient manner; b. No contract shall be
8 extended so that it runs for more than a total of five consecutive
9 years; c. Any price change included as part of an extension shall be
10 based upon the price of the original contract as cumulatively
11 adjusted pursuant to any previous adjustment or extension and shall
12 not exceed the change in the index rate for the 12 months preceding
13 the most recent quarterly calculation available at the time the
14 contract is renewed; and d. The terms and conditions of the contract
15 remain substantially the same.

16 All multiyear leases and contracts entered into pursuant to this
17 section, including any two-year or one-year extensions, except
18 contracts involving the supplying of electricity for the purpose of
19 lighting public streets and contracts for thermal energy authorized
20 pursuant to subsection (1) above, construction contracts authorized
21 pursuant to subsection (9) above, contracts for the provision or
22 performance of goods or services or the supplying of equipment to
23 promote energy conservation through the production of class I
24 renewable energy or class II renewable energy authorized pursuant
25 to subsection (45) above, contracts for water supply services or for
26 a water supply facility, or any component part or parts thereof
27 authorized pursuant to subsection (16), (30), (31), (34), (35), (37),
28 or (43) above, contracts for resource recovery services or a resource
29 recovery facility authorized pursuant to subsection (17) above,
30 contracts for the sale of energy produced by a resource recovery
31 facility authorized pursuant to subsection (18) above, contracts for
32 wastewater treatment services or for a wastewater treatment system
33 or any component part or parts thereof authorized pursuant to
34 subsection (19), (36), (37), or (43) above, and contracts for the
35 purchase of electricity or administrative or dispatching services
36 related to the transmission of electricity authorized pursuant to
37 subsection (24) above, contracts for the purchase of electricity
38 generated from a power production facility that is fueled by
39 methane gas authorized pursuant to subsection (44) above, and
40 power supply contracts authorized pursuant to subsection (46)
41 respectively, shall contain a clause making them subject to the
42 availability and appropriation annually of sufficient funds as may
43 be required to meet the extended obligation, or contain an annual
44 cancellation clause.

45 The Division of Local Government Services in the Department
46 of Community Affairs shall adopt and promulgate rules and
47 regulations concerning the methods of accounting for all contracts
48 that do not coincide with the fiscal year.

1 All contracts shall cease to have effect at the end of the
2 contracted period and shall not be extended by any mechanism or
3 provision, unless in conformance with the "Local Public Contracts
4 Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract
5 may be extended by mutual agreement of the parties to the contract
6 when a contracting unit has commenced rebidding prior to the time
7 the contract expires or when the awarding of a contract is pending
8 at the time the contract expires.

9 (cf: P.L.2016, c.55, s.10)

10

11 7. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to
12 read as follows:

13 16. a. (1) In the preparation of plans and specifications for the
14 construction, alteration or repair of any public building by any
15 contracting unit, when the entire cost of the work will exceed the
16 bid threshold, the architect, engineer or other person preparing the
17 plans and specifications may prepare separate plans and
18 specifications for branches of work in the following categories:

19 (1) The plumbing and gas fitting and all kindred work;

20 (2) Steam power plants, steam and hot water heating and
21 ventilating and refrigeration apparatus and all kindred work;

22 (3) Electrical work, including any electrical power plants, tele-
23 data, fire alarm, or security system;

24 (4) Structural steel and ornamental iron work; and

25 (5) General construction, which shall include all other work
26 required for the completion of the project.

27 (2) With regard to the branch work categories in paragraph (1)
28 of this subsection, the contracting agent shall advertise for and
29 receive, in the manner provided by law, either (a) separate bids for
30 each of said categories, or (b) single bids by general contractors for
31 all the work, goods and services required to complete the public
32 building to be included in a single overall contract, or (c) both. In
33 the case of separate bids under (a) or (c) of this paragraph,
34 contractors for categories (1) through (4) shall not be required to
35 name subcontractors in their bid. In the case of a single bid under
36 (b) or (c), there shall be set forth in the bid the name or names of all
37 subcontractors to whom the general contractor will subcontract for
38 categories (1) through (4). Subcontractors who furnish general
39 construction work pursuant to category (5), or subcontractors who
40 furnish work to named subcontractors pursuant to categories (1)
41 through (4) shall not be named in the bid. Notwithstanding the
42 foregoing provisions of this paragraph, a contracting unit may
43 choose to require in its bid specification that a subcontractor shall
44 be named in a bid when, in the case of (a) of this paragraph,
45 separate bids for each category, the work of that subcontractor
46 exceeds 35 percent of the contracting unit's estimated amount of
47 value of the work, which shall be set forth in the bid specification.

1 (3) The contracting unit shall require evidence of performance
2 security to be submitted simultaneously with the bid. Evidence of
3 performance security may be supplied by the bidder on behalf of
4 himself and any or all subcontractors, or by each respective
5 subcontractor, or by any combination thereof which results in
6 evidence of performance security equaling, but in no event
7 exceeding, the total amount bid.

8 b. Whenever a bid sets forth more than one subcontractor for
9 any of the categories (1) through (4) in paragraph (1) of subsection
10 a. of this section, the bidder shall submit to the contracting unit a
11 certificate signed by the bidder listing each subcontractor named in
12 the bid for that category. The certificate shall set forth the scope of
13 work, goods and services for which the subcontractor has submitted
14 a price quote and which the bidder has agreed to award to each
15 subcontractor should the bidder be awarded the contract. The
16 certificate shall be submitted to the contracting unit simultaneously
17 with the list of the subcontractors. The certificate may take the form
18 of a single certificate listing all subcontractors or, alternatively, a
19 separate certificate may be submitted for each subcontractor. If a
20 bidder does not submit a certificate or certificates to the contracting
21 unit, the contracting unit shall award the contract to the next
22 **【lowest】 most** responsible bidder.

23 c. Contracts shall be awarded to the **【lowest】 most** responsible
24 bidder. In the event that a contract is advertised for both separate
25 bids for each branch of work and for bids for all work, goods, and
26 services, said contract shall be awarded in the following manner: If
27 the sum total of the amounts bid by the **【lowest】 most** responsible
28 bidder for each branch is less than the amount bid by the **【lowest】**
29 **most** responsible bidder for all the work, goods and services, the
30 contracting unit shall award separate contracts for each of such
31 branches to the **【lowest】 most** responsible bidder therefor, but if the
32 sum total of the amounts bid by the **【lowest】 most** responsible
33 bidder for each branch is not less than the amount bid by the
34 **【lowest】 most** responsible bidder for all the work, goods and
35 services, the contracting unit shall award a single overall contract to
36 the **【lowest】 most** responsible bidder for all of such work, goods
37 and services. In every case in which a contract is awarded for a
38 single overall contract, all payments required to be made under such
39 contract for work, goods and services supplied by a subcontractor
40 shall, upon the certification of the contractor of the amount due to
41 the subcontractor, be paid directly to the subcontractor.

42 d. (Deleted by amendment, P.L.2015, c.201).

43 e. (Deleted by amendment, P.L.2015, c.201).

44 f. (Deleted by amendment, P.L.2015, c. 201).

45 (cf: P.L.2015, c.201, s.2)

1 8. Section 24 of P.L.1971, c.198 (C.40A:11-24) is amended to
2 read as follows:

3 24. Time for making awards; deposits returned. a. The
4 contracting unit shall award the contract or reject all bids within
5 such time as may be specified in the invitation to bid, but in no case
6 more than 60 days, except that the bids of any bidders who consent
7 thereto may, at the request of the contracting unit, be held for
8 consideration for such longer period as may be agreed. All bid
9 security, except the security of the three apparent **【lowest】** most
10 responsible bidders, shall be returned, unless otherwise requested
11 by the bidder, within 10 days after the opening of the bids, Sundays
12 and holidays excepted, and the bids of such bidders shall be
13 considered as withdrawn. Within three days, Sundays and holidays
14 excepted, after the awarding and signing of the contract and the
15 approval of the contractor's performance bond, the bid security of
16 the remaining unsuccessful bidders shall be returned to them.

17 b. The contract shall be signed by all parties within the time
18 limit set forth in the specifications, which shall not exceed 21 days,
19 Sundays and holidays excepted, after the making of the award;
20 provided, however, that all parties to the contract may agree to
21 extend the limit set forth in the specifications beyond the 21 day
22 limit required in this subsection. The contractor, upon written
23 request to the contracting unit, is entitled to receive, within seven
24 days of the request, an authorization to proceed pursuant to the
25 terms of the contract on the date set forth in the contract for work to
26 commence, or, if no date is set forth in the contract, upon receipt of
27 authorization. If for any reason the contract is not awarded and the
28 bidders have paid for or paid a deposit for the plans and
29 specifications to the contracting unit, the payment or deposit shall
30 immediately be returned to the bidders when the plans and
31 specifications are returned in reasonable condition within 90 days
32 of notice that the contract has not been awarded.

33 (cf: P.L.1987, c.48, s.2)

34

35 9. Section 6 of P.L.1985, c.482 (C.40A:11-46) is amended to
36 read as follows:

37 6. a. If the contracting agency determines that two bids from
38 qualified small, qualified veteran, qualified minority or qualified
39 women's businesses cannot be obtained, the contracting agency may
40 withdraw the designation of the set-aside contract and resolicit bids
41 on an unrestricted basis pursuant to the provisions of P.L. 1971, c.
42 198 (C. 40A:11-1 et seq.). The cancelled designation shall not be
43 considered in determining the percentage of contracts awarded
44 pursuant to subsection b. of section 3 of **【this act】** P.L.1985, c.482
45 (C.40A:11-41 et seq.).

46 b. If the contracting agency determines that the acceptance of
47 the **【lowest】** most responsible bid will result in the payment of an
48 unreasonable price, the contracting agency shall reject all bids and

1 withdraw the designation of the set-aside contract. Qualified small
2 business enterprises, qualified veteran business enterprises,
3 qualified minority business enterprises or qualified women's
4 business enterprises, as appropriate, shall be notified in writing of
5 the set-aside cancellation, the reasons for the rejection and the
6 agency's intent to resolicit bids on an unrestricted basis pursuant to
7 the provisions of P.L. 1971, c. 198 (C. 40A:11-1 et seq.). The
8 cancelled bid solicitation shall not be considered in determining the
9 percentage of contracts awarded pursuant to subsection b. of section
10 3 of **[this act]** P.L.1985, c.482 (C.40A:11-41 et seq.).
11 (cf: P.L.2013, c.5, s.5)

12
13 10. This act shall take effect immediately and shall apply to
14 local public contracts for which bid requests are made on and after
15 the effective date.

16
17
18 STATEMENT

19
20 This bill would require local contracting units to award a local
21 public contract to the most responsible bidder. Under current law,
22 local contracting units generally have to award these contracts to
23 the lowest responsible bidder. The "lowest responsible bidder" is
24 defined as the bidder who: a) offers a responsive bid at the lowest
25 price; and b) is responsible. The bill would require the award of a
26 local public contract to a bidder based on factors in addition to cost
27 and responsibility, including the efficiency and effectiveness of the
28 bid plan and the performance history of the bidder. Price would
29 remain an integral consideration in selecting winning bidders, but a
30 more holistic evaluation would be required. This bill would give
31 local contracting units the ability to reject impractical low-priced
32 bids, and instead award a local public contract to a low-cost bidder
33 that is best suited to perform the contract.