

40A:11-15.3

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2003 **CHAPTER:** 150

NJSA: 40A:11-15.3 (Exceptions to local public contract law)

BILL NO: A2329

SPONSOR(S): Greenwald and McKeon

DATE INTRODUCED: May 9, 2002

COMMITTEE: **ASSEMBLY:** Environment and Solid Waste

SENATE: Community and Urban Affairs

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 12, 2002

SENATE: May 19, 2003

DATE OF APPROVAL: August 15, 2003

FOLLOWING ARE ATTACHED IF AVAILABLE:

A2329

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute enacted)

[SPONSORS STATEMENT:](#) (Begins on page 21 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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P.L. 2003, CHAPTER 150, *approved August 15, 2003*
Senate Committee Substitute for
Assembly Bill No. 2329

1 AN ACT concerning certain local public contracts, supplementing and
2 amending P.L.1971, c.198.

3

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

6

7 1. (New section) a. Notwithstanding the provisions of section 15
8 of P.L.1971, c.198 (C.40A:11-15) to the contrary, a county
9 government contracting unit may enter into or extend a contract for
10 the marketing of recyclable materials recovered through a recycling
11 program subject to the following conditions:

12 (1) The program includes one or more interlocal services
13 agreements with municipalities in that county for the delivery of
14 recyclable materials to a contractor; and,

15 (2) The contract for the marketing of recyclable material includes
16 fixed or formula based fees for the marketing services so provided and
17 the contractor owns the buildings and equipment necessary to perform
18 the contract.

19 b. Whenever an existing contract satisfies the conditions contained
20 in subsection a. of this section, the contract may be extended for a
21 period of up to 10 years; however, the length of the existing contract
22 together with any extension thereof shall not exceed a total of 12
23 years. A new contract for the marketing of recyclable materials shall
24 not exceed 10 years. Notwithstanding the provisions of section 5 of
25 P.L.1971, c.198 (C.40A:11-5) to the contrary, a new contract for the
26 marketing of recyclable materials for a term exceeding five years shall
27 be entered into pursuant to public bidding or competitive contracting.
28

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

31 40A:11-5 Exceptions

32 5. Any contract the amount of which exceeds the bid threshold,
33 may be negotiated and awarded by the governing body without public
34 advertising for bids and bidding therefor and shall be awarded by
35 resolution of the governing body if:

36 (1) The subject matter thereof consists of:

37 (a) (i) Professional services. The governing body shall in each
38 instance state supporting reasons for its action in the resolution
39 awarding each contract and shall forthwith cause to be printed once,
40 in the official newspaper, a brief notice stating the nature, duration,

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

43 (n) The doing of any work by handicapped persons employed by
44 a sheltered workshop;

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

1 nonprofit, duly incorporated, historical society at or on any historical
2 preservation site;

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

4 (q) Library and educational goods and services;

5 (r) On-site inspections undertaken by private agencies pursuant to
6 the "State Uniform Construction Code Act," P.L.1975, c.217
7 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;

8 (s) The marketing of recyclable materials recovered through a
9 recycling program, or the marketing of any product intentionally
10 produced or derived from solid waste received at a resource recovery
11 facility or recovered through a resource recovery program, including,
12 but not limited to, refuse-derived fuel, compost materials, methane
13 gas, and other similar products;

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

15 (u) Contracting unit towing and storage contracts, provided that
16 all such contracts shall be pursuant to reasonable non-exclusionary and
17 non-discriminatory terms and conditions, which may include the
18 provision of such services on a rotating basis, at the rates and charges
19 set by the municipality pursuant to section 1 of P.L.1979, c.101
20 (C.40:48-2.49). All contracting unit towing and storage contracts for
21 services to be provided at rates and charges other than those
22 established pursuant to the terms of this paragraph shall only be
23 awarded to the lowest responsible bidder in accordance with the
24 provisions of the "Local Public Contracts Law" and without regard for
25 the value of the contract therefor;

26 (v) The purchase of steam or electricity from, or the rendering of
27 services directly related to the purchase of such steam or electricity
28 from a qualifying small power production facility or a qualifying
29 cogeneration facility as defined pursuant to 16 U.S.C.s.796;

30 (w) The purchase of electricity or administrative or dispatching
31 services directly related to the transmission of such purchased
32 electricity by a contracting unit engaged in the generation of
33 electricity;

34 (x) The printing of municipal ordinances or other services
35 necessarily incurred in connection with the revision and codification
36 of municipal ordinances;

37 (y) An agreement for the purchase of an equitable interest in a
38 water supply facility or for the provision of water supply services
39 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
40 an agreement entered into pursuant to P.L.1989, c.109
41 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
42 later than six months after the effective date of P.L.1993, c.381;

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

45 (aa) The cooperative marketing of recyclable materials recovered
46 through a recycling program;

- 1 (bb) A contract for the provision of wastewater treatment services
2 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 3 (cc) Expenses for travel and conferences;
- 4 (dd) The provision or performance of goods or services for the
5 support or maintenance of proprietary computer hardware and
6 software, except that this provision shall not be utilized to acquire or
7 upgrade non-proprietary hardware or to acquire or update
8 non-proprietary software;
- 9 (ee) The management or operation of an airport owned by the
10 contracting unit pursuant to R.S.40:8-1 et seq.;
- 11 (ff) Purchases of goods and services at rates set by the Universal
12 Service Fund administered by the Federal Communications
13 Commission;
- 14 (gg) A contract for the provision of water supply services or
15 wastewater treatment services entered into pursuant to section 2 of
16 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,
17 construction, operation, or maintenance, or any combination thereof,
18 of a water supply facility as defined in subsection (16) of section 15 of
19 P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as
20 defined in subsection (19) of section 15 of P.L.1971, c.198
21 (C.40A:11-15), or any component part or parts thereof, including a
22 water filtration system as defined in subsection (16) of section 15 of
23 P.L.1971, c.198 (C.40A:11-15);
- 24 (hh) The purchase of electricity generated from a power
25 production facility that is fueled by methane gas extracted from a
26 landfill in the county of the contracting unit.
- 27 (2) It is to be made or entered into with the United States of
28 America, the State of New Jersey, county or municipality or any
29 board, body, officer, agency or authority thereof or any other state or
30 subdivision thereof.
- 31 (3) Bids have been advertised pursuant to section 4 of P.L.1971,
32 c.198 (C.40A:11-4) on two occasions and (a) no bids have been
33 received on both occasions in response to the advertisement, or (b)
34 the governing body has rejected such bids on two occasions because
35 it has determined that they are not reasonable as to price, on the basis
36 of cost estimates prepared for or by the contracting agent prior to the
37 advertising therefor, or have not been independently arrived at in open
38 competition, or (c) on one occasion no bids were received pursuant
39 to (a) and on one occasion all bids were rejected pursuant to (b), in
40 whatever sequence; any such contract may then be negotiated and may
41 be awarded upon adoption of a resolution by a two-thirds affirmative
42 vote of the authorized membership of the governing body authorizing
43 such contract; provided, however, that:
- 44 (i) A reasonable effort is first made by the contracting agent to
45 determine that the same or equivalent goods or services, at a cost
46 which is lower than the negotiated price, are not available from an

1 agency or authority of the United States, the State of New Jersey or
2 of the county in which the contracting unit is located, or any
3 municipality in close proximity to the contracting unit;

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

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

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

30 (4) The contracting unit has solicited and received at least three
31 quotations on materials, supplies or equipment for which a State
32 contract has been issued pursuant to section 12 of P.L.1971, c.198
33 (C.40A:11-12), and the lowest responsible quotation is at least 10%
34 less than the price the contracting unit would be charged for the
35 identical materials, supplies or equipment, in the same quantities,
36 under the State contract. Any such contract entered into pursuant to
37 this subsection may be awarded only upon adoption of a resolution by
38 the affirmative vote of two-thirds of the full membership of the
39 governing body of the contracting unit at a meeting thereof
40 authorizing such a contract. A copy of the purchase order relating to
41 any such contract, the requisition for purchase order, if applicable, and
42 documentation identifying the price of the materials, supplies or
43 equipment under the State contract and the State contract number
44 shall be filed with the director within five working days of the award
45 of any such contract by the contracting unit. The director shall notify
46 the contracting unit of receipt of the material and shall make the

1 material available to the State Treasurer. The contracting unit shall
2 make available to the director upon request any other documents
3 relating to the solicitation and award of the contract, including, but not
4 limited to, quotations, requests for quotations, and resolutions. The
5 director periodically shall review material submitted by contracting
6 units to determine the impact of such contracts on local contracting
7 and shall consult with the State Treasurer on the impact of such
8 contracts on the State procurement process. The director may, after
9 consultation with the State Treasurer, adopt rules in accordance with
10 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
11 seq.) to limit the use of this subsection, after considering the impact of
12 contracts awarded under this subsection on State and local
13 contracting, or after considering the extent to which the award of
14 contracts pursuant to this subsection is consistent with and in
15 furtherance of the purposes of the public contracting laws.

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

40 (cf: P.L.2002, c.47, s.8)

41

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

44 15. All contracts for the provision or performance of goods or
45 services shall be awarded for a period not to exceed 24 consecutive
46 months, except that contracts for professional services pursuant to

1 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
2 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to
3 exceed 12 consecutive months. Contracts may be awarded for longer
4 periods of time as follows:

5 (1) Supplying of:

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

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

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

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

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

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

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

35 (6) Insurance, including the purchase of insurance coverages,
36 insurance consulting or administrative services, claims administration
37 services and including participation in a joint self-insurance fund, risk
38 management program or related services provided by a contracting
39 unit insurance group, or participation in an insurance fund established
40 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund
41 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any
42 term of not more than three years;

43 (7) Leasing or servicing of automobiles, motor vehicles, machinery
44 and equipment of every nature and kind, for a period not to exceed
45 five years; provided, however, such contracts shall be awarded only
46 subject to and in accordance with the rules and regulations

- 1 promulgated by the Director of the Division of Local Government
2 Services of the Department of Community Affairs;
- 3 (8) The supplying of any product or the rendering of any service
4 by a company providing voice, data, transmission or switching services
5 for a term not exceeding five years;
- 6 (9) Any single project for the construction, reconstruction or
7 rehabilitation of any public building, structure or facility, or any public
8 works project, including the retention of the services of any architect
9 or engineer in connection therewith, for the length of time authorized
10 and necessary for the completion of the actual construction;
- 11 (10) The providing of food services for any term not exceeding
12 three years;
- 13 (11) On-site inspections and plan review services undertaken by
14 private agencies pursuant to the "State Uniform Construction Code
15 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
16 more than three years;
- 17 (12) The provision or performance of goods or services for the
18 purpose of conserving energy in buildings owned by, or operations
19 conducted by, the contracting unit, the entire price of which to be
20 established as a percentage of the resultant savings in energy costs, for
21 a term not to exceed 15 years; provided, however, that such contracts
22 shall be entered into only subject to and in accordance with guidelines
23 promulgated by the Board of Public Utilities establishing a
24 methodology for computing energy cost savings;
- 25 (13) (Deleted by amendment, P.L.1999, c.440.)
- 26 (14) (Deleted by amendment, P.L.1999, c.440.)
- 27 (15) Leasing of motor vehicles, machinery and other equipment
28 primarily used to fight fires, for a term not to exceed ten years, when
29 the contract includes an option to purchase, subject to and in
30 accordance with rules and regulations promulgated by the Director of
31 the Division of Local Government Services of the Department of
32 Community Affairs;
- 33 (16) The provision of water supply services or the designing,
34 financing, construction, operation, or maintenance, or any combination
35 thereof, of a water supply facility, or any component part or parts
36 thereof, including a water filtration system, for a period not to exceed
37 40 years, when the contract for these services is approved by the
38 Division of Local Government Services in the Department of
39 Community Affairs, the Board of Public Utilities, and the Department
40 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
41 al.), except that no such approvals shall be required for those contracts
42 otherwise exempted pursuant to subsection (30), (31), (34), (35) or
43 (43) of this section. For the purposes of this subsection, "water supply
44 services" means any service provided by a water supply facility; "water
45 filtration system" means any equipment, plants, structures, machinery,
46 apparatus, or land, or any combination thereof, acquired, used,

1 constructed, rehabilitated, or operated for the collection,
2 impoundment, storage, improvement, filtration, or other treatment of
3 drinking water for the purposes of purifying and enhancing water
4 quality and insuring its potability prior to the distribution of the
5 drinking water to the general public for human consumption, including
6 plants and works, and other personal property and appurtenances
7 necessary for their use or operation; and "water supply facility" means
8 and refers to the real property and the plants, structures,
9 interconnections between existing water supply facilities, machinery
10 and equipment and other property, real, personal and mixed, acquired,
11 constructed or operated, or to be acquired, constructed or operated,
12 in whole or in part by or on behalf of a political subdivision of the
13 State or any agency thereof, for the purpose of augmenting the natural
14 water resources of the State and making available an increased supply
15 of water for all uses, or of conserving existing water resources, and
16 any and all appurtenances necessary, useful or convenient for the
17 collecting, impounding, storing, improving, treating, filtering,
18 conserving or transmitting of water and for the preservation and
19 protection of these resources and facilities and providing for the
20 conservation and development of future water supply resources;

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

43 (18) The sale of electricity or thermal energy, or both, produced
44 by a resource recovery facility for a period not to exceed 40 years
45 when the contract is approved by the Board of Public Utilities, and
46 when the resource recovery facility is in conformance with a district

1 solid waste management plan approved pursuant to P.L.1970, c.39
2 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource
3 recovery facility" means a solid waste facility constructed and operated
4 for the incineration of solid waste for energy production and the
5 recovery of metals and other materials for reuse; or a mechanized
6 composting facility, or any other facility constructed or operated for
7 the collection, separation, recycling, and recovery of metals, glass,
8 paper, and other materials for reuse or for energy production;

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

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

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

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

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

39 (24) The purchase of electricity or administrative or dispatching
40 services related to the transmission of such electricity, from a public
41 utility company subject to the jurisdiction of the Board of Public
42 Utilities, a similar regulatory body of another state, or a federal
43 regulatory agency, or from a qualifying small power producing facility
44 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by
45 a contracting unit engaged in the generation of electricity for retail
46 sale, as of May 24,1991, for a term not to exceed 40 years;

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

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

8 (27) The provision of transportation services to elderly, disabled
9 or indigent persons for any term of not more than three years. For the
10 purposes of this subsection, "elderly persons" means persons who are
11 60 years of age or older. "Disabled persons" means persons of any age
12 who, by reason of illness, injury, age, congenital malfunction, or other
13 permanent or temporary incapacity or disability, are unable, without
14 special facilities or special planning or design to utilize mass
15 transportation facilities and services as effectively as persons who are
16 not so affected. "Indigent persons" means persons of any age whose
17 income does not exceed 100 percent of the poverty level, adjusted for
18 family size, established and adjusted under section 673(2) of subtitle
19 B, the "Community Services Block Grant Act," Pub.L.97-35 (42
20 U.S.C.s.9902 (2));

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

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

28 (30) The acquisition of an equitable interest in a water supply
29 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
30 contract entered into pursuant to the "County and Municipal Water
31 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no
32 later than January 7, 1995, for any term of not more than forty years;

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

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

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

46 (34) A contract between a public entity and a private firm

1 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
2 water supply services may be entered into for any term which, when
3 all optional extension periods are added, may not exceed 40 years;

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

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

14 (37) The operation and management of a facility under a license
15 issued or permit approved by the Department of Environmental
16 Protection, including a wastewater treatment system or a water supply
17 or distribution facility, as the case may be, for any term of not more
18 than ten years. For the purposes of this subsection, "wastewater
19 treatment system" refers to facilities operated or maintained for the
20 storage, collection, reduction, disposal, or other treatment of
21 wastewater or sewage sludge, remediation of groundwater
22 contamination, stormwater runoff, or the final disposal of residues
23 resulting from the treatment of wastewater; and "water supply or
24 distribution facility" refers to facilities operated or maintained for
25 augmenting the natural water resources of the State, increasing the
26 supply of water, conserving existing water resources, or distributing
27 water to users;

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

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

32 (40) Fuel or oil for use in motor vehicles for any term of not more
33 than three years;

34 (41) Plowing and removal of snow and ice for any term of not
35 more than three years;

36 (42) Purchases made under a contract awarded by the Director of
37 the Division of Purchase and Property in the Department of the
38 Treasury for use by counties, municipalities or other contracting units
39 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term
40 not to exceed the term of that contract;

41 (43) A contract between the governing body of a city of the first
42 class and a duly incorporated nonprofit association for the provision
43 of water supply services as defined in subsection (16) of this section,
44 or wastewater treatment services as defined in subsection (19) of this
45 section, may be entered into for a period not to exceed 40 years;

46 (44) The purchase of electricity generated from a power

1 production facility that is fueled by methane gas extracted from a
2 landfill in the county of the contacting unit for any term not exceeding
3 25 years.

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

18 All multiyear leases and contracts entered into pursuant to this
19 section, including any two-year or one-year extensions, except
20 contracts involving the supplying of electricity for the purpose of
21 lighting public streets and contracts for thermal energy authorized
22 pursuant to subsection (1) above, construction contracts authorized
23 pursuant to subsection (9) above, contracts for the provision or
24 performance of goods or services or the supplying of equipment to
25 promote energy conservation authorized pursuant to subsection (12)
26 above, contracts for water supply services or for a water supply
27 facility, or any component part or parts thereof authorized pursuant to
28 subsection (16), (30), (31), (34), (35), (37) or (43) above, contracts
29 for resource recovery services or a resource recovery facility
30 authorized pursuant to subsection (17) above, contracts for the sale of
31 energy produced by a resource recovery facility authorized pursuant
32 to subsection (18) above, contracts for wastewater treatment services
33 or for a wastewater treatment system or any component part or parts
34 thereof authorized pursuant to subsection (19), (36), (37) or (43)
35 above, and contracts for the purchase of electricity or administrative
36 or dispatching services related to the transmission of such electricity
37 authorized pursuant to subsection (24) above and contracts for the
38 purchase of electricity generated from a power production facility that
39 is fueled by methane gas authorized pursuant to subsection (44) above,
40 shall contain a clause making them subject to the availability and
41 appropriation annually of sufficient funds as may be required to meet
42 the extended obligation, or contain an annual cancellation clause.

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

1 All contracts shall cease to have effect at the end of the contracted
2 period and shall not be extended by any mechanism or provision,
3 unless in conformance with the "Local Public Contracts Law,"
4 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be
5 extended by mutual agreement of the parties to the contract when a
6 contracting unit has commenced rebidding prior to the time the
7 contract expires or when the awarding of a contract is pending at the
8 time the contract expires.
9 (cf: P.L.2002, c.47, s.9)

10

11 4. This act shall take effect immediately.

12

13

14

15

16 _____
Authorizes certain exceptions to local public contracts law.

ASSEMBLY, No. 2329

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MAY 9, 2002

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

SYNOPSIS

Authorizes long-term contracts for marketing of recyclable materials.

CURRENT VERSION OF TEXT

As introduced.



A2329 GREENWALD

2

1 AN ACT concerning the marketing of recyclables, and amending
2 P.L.1971, c.198.

3

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

6

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

9 2. As used herein the following words have the following
10 definitions, unless the context otherwise indicates:

11 (1) "Contracting unit" means:

12 (a) Any county; or

13 (b) Any municipality; or

14 (c) Any board, commission, committee, authority or agency, which
15 is not a State board, commission, committee, authority or agency, and
16 which has administrative jurisdiction over any district other than a
17 school district, project, or facility, included or operating in whole or
18 in part, within the territorial boundaries of any county or municipality
19 which exercises functions which are appropriate for the exercise by
20 one or more units of local government, and which has statutory power
21 to make purchases and enter into contracts awarded by a contracting
22 agent for the provision or performance of goods or services.

23 The term shall not include a private firm that has entered into a
24 contract with a public entity for the provision of water supply services
25 pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

26 "Contracting unit" shall not include a private firm or public
27 authority that has entered into a contract with a public entity for the
28 provision of wastewater treatment services pursuant to P.L.1995,
29 c.216 (C.58:27-19 et al.).

30 (2) "Governing body" means:

31 (a) The governing body of the county, when the purchase is to be
32 made or the contract or agreement is to be entered into by, or in behalf
33 of, a county; or

34 (b) The governing body of the municipality, when the purchase is
35 to be made or the contract or agreement is to be entered into by, or on
36 behalf of, a municipality; or

37 (c) Any board, commission, committee, authority or agency of the
38 character described in subsection (1) (c) of this section.

39 (3) "Contracting agent" means the governing body of a contracting
40 unit, or its authorized designee, which has the power to prepare the
41 advertisements, to advertise for and receive bids and, as permitted by
42 this act, to make awards for the contracting unit in connection with
43 purchases, contracts or agreements.

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 (4) "Purchase" means a transaction, for a valuable consideration,
2 creating or acquiring an interest in goods, services and property,
3 except real property or any interest therein.
- 4 (5) (Deleted by amendment, P.L.1999, c.440.)
- 5 (6) "Professional services" means services rendered or performed
6 by a person authorized by law to practice a recognized profession,
7 whose practice is regulated by law, and the performance of which
8 services requires knowledge of an advanced type in a field of learning
9 acquired by a prolonged formal course of specialized instruction and
10 study as distinguished from general academic instruction or
11 apprenticeship and training. Professional services may also mean
12 services rendered in the provision or performance of goods or services
13 that are original and creative in character in a recognized field of
14 artistic endeavor.
- 15 (7) "Extraordinary unspecifiable services" means services which are
16 specialized and qualitative in nature requiring expertise, extensive
17 training and proven reputation in the field of endeavor.
- 18 (8) (Deleted by amendment, P.L.1999, c.440.)
- 19 (9) "Work" includes services and any other activity of a tangible or
20 intangible nature performed or assumed pursuant to a contract or
21 agreement with a contracting unit.
- 22 (10) "Homemaker--home health services" means at home personal
23 care and home management provided to an individual or members of
24 the individual's family who reside with the individual, or both,
25 necessitated by the individual's illness or incapacity.
26 "Homemaker--home health services" includes, but is not limited to, the
27 services of a trained homemaker.
- 28 (11) "Recyclable material" means those materials which would
29 otherwise become municipal solid waste, and which may be collected,
30 separated or processed and returned to the economic mainstream in
31 the form of raw materials or products.
- 32 (12) "Recycling" means any process by which materials which
33 would otherwise become solid waste are collected, separated or
34 processed and returned to the economic mainstream in the form of raw
35 materials or products.
- 36 (13) "Marketing" means the sale, disposition, assignment, or
37 placement of designated recyclable materials with, or the granting of
38 a concession to, a reseller, processor, materials recovery facility, or
39 end-user of recyclable material, in accordance with a district [solid
40 waste management] recycling plan adopted pursuant to [P.L.1970,
41 c.39 (C.13:1E-1 et seq.)] section 3 of P.L.1987, c.102 (C.13:1E-
42 99.13) and shall not include the collection of [such] recyclable
43 material when collected through a system of routes by local
44 government unit employees or under a contract administered by a local
45 government unit.
- 46 (14) "Municipal solid waste" means[, as appropriate to the

1 circumstances,] all [residential, commercial and institutional]
2 nonhazardous solid waste or any portion thereof generated within the
3 boundaries of a municipality[; or the formal collection of such solid
4 wastes or recyclable material in any combination thereof when
5 collected through a system of routes by local government unit
6 employees or under a contract administered by a local government
7 unit].

8 (15) "Distribution" (when used in relation to electricity) means the
9 process of conveying electricity from a contracting unit that is a
10 generator of electricity or a wholesale purchaser of electricity to retail
11 customers or other end users of electricity.

12 (16) "Transmission" (when used in relation to electricity) means
13 the conveyance of electricity from its point of generation to a
14 contracting unit that purchases it on a wholesale basis for resale.

15 (17) "Disposition" means the transportation, placement, reuse, sale,
16 donation, transfer or temporary storage of recyclable materials for all
17 possible uses except for disposal as municipal solid waste.

18 (18) "Cooperative marketing" means the joint marketing by two or
19 more contracting units of the source separated recyclable materials
20 designated in a district recycling plan required pursuant to section 3 of
21 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative
22 agreement entered into by the participating contracting units thereof.

23 (19) "Aggregate" means the sums expended or to be expended for
24 the provision or performance of any goods or services in connection
25 with the same immediate purpose or task, or the furnishing of similar
26 goods or services, during the same contract year through a contract
27 awarded by a contracting agent.

28 (20) "Bid threshold" means the dollar amount set in section 3 of
29 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall
30 advertise for and receive sealed bids in accordance with procedures set
31 forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

32 (21) "Contract" means any agreement, including but not limited to
33 a purchase order or a formal agreement, which is a legally binding
34 relationship enforceable by law, between a vendor who agrees to
35 provide or perform goods or services and a contracting unit which
36 agrees to compensate a vendor, as defined by and subject to the terms
37 and conditions of the agreement. A contract also may include an
38 arrangement whereby a vendor compensates a contracting unit for the
39 vendor's right to perform a service, such as, but not limited to,
40 operating a concession.

41 (22) "Contract year" means the period of 12 consecutive months
42 following the award of a contract.

43 (23) "Competitive contracting" means the method described in
44 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-
45 4.5) of contracting for specialized goods and services in which formal
46 proposals are solicited from vendors; formal proposals are evaluated

1 by the purchasing agent or counsel or administrator; and the governing
2 body awards a contract to a vendor or vendors from among the formal
3 proposals received.

4 (24) "Goods and services" or "goods or services" means any work,
5 labor, commodities, equipment, materials, or supplies of any tangible
6 or intangible nature, except real property or any interest therein,
7 provided or performed through a contract awarded by a contracting
8 agent, including goods and property subject to N.J.S.12A:2-101 et
9 seq.

10 (25) "Library and educational goods and services" means
11 textbooks, copyrighted materials, student produced publications and
12 services incidental thereto, including but not limited to books,
13 periodicals, newspapers, documents, pamphlets, photographs,
14 reproductions, microfilms, pictorial or graphic works, musical scores,
15 maps, charts, globes, sound recordings, slides, films, filmstrips, video
16 and magnetic tapes, other printed or published matter and audiovisual
17 and other materials of a similar nature, necessary binding or rebinding
18 of library materials, and specialized computer software used as a
19 supplement or in lieu of textbooks or reference material.

20 (26) "Lowest price" means the least possible amount that meets all
21 requirements of the request of a contracting agent.

22 (27) "Lowest responsible bidder or vendor" means the bidder or
23 vendor: (a) whose response to a request for bids offers the lowest
24 price and is responsive; and (b) who is responsible.

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

27 (29) "Purchase order" means a document issued by the contracting
28 agent authorizing a purchase transaction with a vendor to provide or
29 perform goods or services to the contracting unit, which, when
30 fulfilled in accordance with the terms and conditions of a request of a
31 contracting agent and other provisions and procedures that may be
32 established by the contracting unit, will result in payment by the
33 contracting unit.

34 (30) "Purchasing agent" means the individual duly assigned the
35 authority, responsibility, and accountability for the purchasing activity
36 of the contracting unit, and who has such duties as are defined by an
37 authority appropriate to the form and structure of the contracting unit,
38 and P.L.1971, c.198 (C.40A:11-1 et seq.).

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

44 (32) "Responsible" means able to complete the contract in
45 accordance with its requirements, including but not limited to
46 requirements pertaining to experience, moral integrity, operating

1 capacity, financial capacity, credit, and workforce, equipment, and
2 facilities availability.

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

6 (34) "Public works" means building, altering, repairing, improving
7 or demolishing any public structure or facility constructed or acquired
8 by a contracting unit to house local government functions or provide
9 water, solid waste collection or disposal, power, transportation, and
10 other public infrastructures.

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

13 (36) "Administrator" means a municipal administrator appointed
14 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business
15 administrator, a municipal manager or a municipal administrator
16 appointed pursuant to the "Optional Municipal Charter Law,"
17 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed
18 pursuant to "the municipal manager form of government law,"
19 R.S.40:79-1 et seq.; or the person holding responsibility for the overall
20 operations of an authority that falls under the "Local Authorities Fiscal
21 Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

22 (37) "Concession" means the granting of a license or right to act
23 for or on behalf of the contracting unit, or to provide a service
24 requiring the approval or endorsement of the contracting unit, and
25 which may or may not involve a payment or exchange, or provision of
26 services by or to the contracting unit.

27 (38) "Index rate" means the rate of annual percentage increase,
28 rounded to the nearest half-percent, in the Implicit Price Deflator for
29 State and Local Government Purchases of Goods and Services,
30 computed and published quarterly by the United States Department of
31 Commerce, Bureau of Economic Analysis.

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

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

43 (41) "Public authority" means a municipal or county utilities
44 authority created pursuant to the "municipal and county utilities
45 authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); a county
46 improvement authority created pursuant to the "county improvement

1 authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.); a pollution
2 control financing authority created pursuant to the "New Jersey
3 Pollution Control Financing Law," P.L.1973, c.376 (C.40:37C-1 et
4 seq.); or any other public body corporate and politic created for solid
5 waste management purposes in any county, pursuant to the provisions
6 of any law.

7 (42) "Solid waste" means garbage, refuse, and other discarded
8 materials resulting from industrial, commercial and agricultural
9 operations, and from domestic and community activities, and shall
10 include all other waste materials including liquids, except for source
11 separated recyclable materials or source separated food waste
12 collected by livestock producers approved by the State Department of
13 Agriculture to collect, prepare and feed such wastes to livestock on
14 their own farms.

15 (43) "Solid waste facilities" means, and includes, the plants,
16 structures and other real and personal property acquired, constructed
17 or operated or to be acquired, constructed or operated by, or on behalf
18 of, any person, public authority or county pursuant to the provisions
19 of the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et
20 seq.) or any other act, including transfer stations, incinerators,
21 resource recovery facilities, sanitary landfill facilities or other plants
22 for the disposal of solid waste, and all vehicles, equipment and other
23 real and personal property and rights therein and appurtenances
24 necessary or useful and convenient for the collection or disposal of
25 solid waste in a sanitary manner.

26 (cf: P.L.1999, c.440, s.6)

27

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

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

34 (1) The subject matter thereof consists of:

35 (a) (i) Professional services. The governing body shall in each
36 instance state supporting reasons for its action in the resolution
37 awarding each contract and shall forthwith cause to be printed once,
38 in the official newspaper, a brief notice stating the nature, duration,
39 service and amount of the contract, and that the resolution and
40 contract are on file and available for public inspection in the office of
41 the clerk of the county or municipality, or, in the case of a contracting
42 unit created by more than one county or municipality, of the counties
43 or municipalities creating such contracting unit; or (ii) Extraordinary
44 unspecifiable services. The application of this exception shall be
45 construed narrowly in favor of open competitive bidding, [where]
46 whenever possible, and the Division of Local Government Services is

- 1 authorized to adopt and promulgate rules and regulations after
2 consultation with the Commissioner of Education limiting the use of
3 this exception in accordance with the intention herein expressed. The
4 governing body shall in each instance state supporting reasons for its
5 action in the resolution awarding each contract and shall forthwith
6 cause to be printed, in the manner set forth in subsection (1) (a) (i) of
7 this section, a brief notice of the award of such contract;
- 8 (b) The doing of any work by employees of the contracting unit;
- 9 (c) The printing of legal briefs, records and appendices to be used
10 in any legal proceeding in which the contracting unit may be a party;
- 11 (d) The furnishing of a tax map or maps for the contracting unit;
- 12 (e) The purchase of perishable foods as a subsistence supply;
- 13 (f) The supplying of any product or the rendering of any service by
14 a public utility, which is subject to the jurisdiction of the Board of
15 Public Utilities or the Federal Energy Regulatory Commission or its
16 successor, in accordance with tariffs and schedules of charges made,
17 charged or exacted, filed with the board or commission;
- 18 (g) The acquisition, subject to prior approval of the Attorney
19 General, of special equipment for confidential investigation;
- 20 (h) The printing of bonds and documents necessary to the issuance
21 and sale thereof by a contracting unit;
- 22 (i) Equipment repair service if in the nature of an extraordinary
23 unspecifiable service and necessary parts furnished in connection with
24 such service, which exception shall be in accordance with the
25 requirements for extraordinary unspecifiable services;
- 26 (j) The publishing of legal notices in newspapers as required by
27 law;
- 28 (k) The acquisition of artifacts or other items of unique intrinsic,
29 artistic or historical character;
- 30 (l) Those goods and services necessary or required to prepare and
31 conduct an election;
- 32 (m) Insurance, including the purchase of insurance coverage and
33 consultant services, which exception shall be in accordance with the
34 requirements for extraordinary unspecifiable services;
- 35 (n) The doing of any work by handicapped persons employed by a
36 sheltered workshop;
- 37 (o) The provision of any goods or services including those of a
38 commercial nature, attendant upon the operation of a restaurant by any
39 nonprofit, duly incorporated, historical society at or on any historical
40 preservation site;
- 41 (p) (Deleted by amendment, P.L.1999, c.440.)
- 42 (q) Library and educational goods and services;
- 43 (r) On-site inspections undertaken by private agencies pursuant to
44 the "State Uniform Construction Code Act," P.L.1975, c.217
45 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- 46 (s) The marketing of recyclable materials recovered through a

1 recycling program, or the marketing of any product intentionally
2 produced or derived from solid waste received at a resource recovery
3 facility or recovered through a resource recovery program, including,
4 but not limited to, refuse-derived fuel, compost materials, methane
5 gas, and other similar products. The application of this exception shall
6 not be construed to include a solid waste facility for the disposal of
7 solid waste by incineration;

8 (t) (Deleted by amendment, P.L.1999, c.440.)

9 (u) Contracting unit towing and storage contracts, provided that
10 all such contracts shall be pursuant to reasonable non-exclusionary and
11 non-discriminatory terms and conditions, which may include the
12 provision of such services on a rotating basis, at the rates and charges
13 set by the municipality pursuant to section 1 of P.L.1979, c.101
14 (C.40:48-2.49). All contracting unit towing and storage contracts for
15 services to be provided at rates and charges other than those
16 established pursuant to the terms of this paragraph shall only be
17 awarded to the lowest responsible bidder in accordance with the
18 provisions of the "Local Public Contracts Law" and without regard for
19 the value of the contract therefor;

20 (v) The purchase of steam or electricity from, or the rendering of
21 services directly related to the purchase of such steam or electricity
22 from a qualifying small power production facility or a qualifying
23 cogeneration facility as defined pursuant to 16 U.S.C.796;

24 (w) The purchase of electricity or administrative or dispatching
25 services directly related to the transmission of such purchased
26 electricity by a contracting unit engaged in the generation of
27 electricity;

28 (x) The printing of municipal ordinances or other services
29 necessarily incurred in connection with the revision and codification
30 of municipal ordinances;

31 (y) An agreement for the purchase of an equitable interest in a
32 water supply facility or for the provision of water supply services
33 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
34 an agreement entered into pursuant to P.L.1989, c.109
35 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
36 later than six months after the effective date of P.L.1993, c.381;

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

39 (aa) The cooperative marketing of recyclable materials recovered
40 through a recycling program;

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

43 (cc) Expenses for travel and conferences;

44 (dd) The provision or performance of goods or services for the
45 support or maintenance of proprietary computer hardware and
46 software, except that this provision shall not be utilized to acquire or

1 upgrade non-proprietary hardware or to acquire or update non-
2 proprietary software;

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

5 (ff) Purchases of goods and services at rates set by the Universal
6 Service Fund administered by the Federal Communications
7 Commission.

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

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

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

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

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

1 responsible vendor, and is a reasonable price for such goods or
2 services.

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

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

43 (5) Notwithstanding any provision of law, rule or regulation to the
44 contrary, the subject matter consists of the combined collection and
45 marketing, or the cooperative combined collection and marketing of
46 **[recycled material]** recyclable materials recovered through a recycling

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

22 (cf: P.L.1999, c.440, s.9)

23

24 3. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to
25 read as follows:

26 13. Any specifications for the provision or performance of goods
27 or services under this act shall be drafted in a manner to encourage
28 free, open and competitive bidding. In particular, no specifications
29 under this act may:

30 (a) Require any standard, restriction, condition or limitation not
31 directly related to the purpose, function or activity for which the
32 contract is awarded; or

33 (b) Require that any bidder be a resident of, or that the bidder's
34 place of business be located in, the county or municipality in which the
35 contract will be awarded or performed, unless the physical proximity
36 of the bidder is requisite to the efficient and economical performance
37 of the contract; except that no specification for a contract for the
38 collection **[and]** or disposal of municipal solid waste shall require any
39 bidder to be a resident of, or that the bidder's place of business be
40 located in, the county or municipality in which the contract will be
41 performed; or

42 (c) Discriminate on the basis of race, religion, sex, national origin,
43 creed, color, ancestry, age, marital status, affectional or sexual
44 orientation, familial status, liability for service in the Armed Forces of
45 the United States, or nationality; or

46 (d) Require, with regard to any contract, the furnishing of any

1 "brand name," but may in all cases require "brand name or equivalent,"
2 except that if the goods or services to be provided or performed are
3 proprietary, such goods or services may be purchased by stipulating
4 the proprietary goods or services in the bid specification in any case
5 in which the resolution authorizing the contract so indicates, and the
6 special need for such **[proprietary]** proprietary goods or services is
7 directly related to the performance, completion or undertaking of the
8 purpose for which the contract is awarded; or

9 (e) Fail to include any option for renewal, extension, or release
10 which the contracting unit may intend to exercise or require; or any
11 terms and conditions necessary for the performance of any extra work;
12 or fail to disclose any matter necessary to the substantial performance
13 of the contract.

14 Any specification which knowingly excludes prospective bidders by
15 reason of the impossibility of performance, bidding or qualification by
16 any but one bidder, except as provided herein, shall be null and void
17 and of no effect and shall be readvertised for receipt of new bids, and
18 the original contract shall be set aside by the governing body.

19 Any specification for a contract for the collection **[and]** or
20 disposal of municipal solid waste shall conform to the uniform bid
21 specifications for municipal solid waste collection contracts established
22 pursuant to section 22 of P.L.1991, c.381 (C.48:13A-7.22).

23 Any specification may include an item for the cost, which shall be
24 paid by the contractor, of creating a file to maintain the notices of the
25 delivery of labor or materials required by N.J.S.2A:44-128.

26 Any prospective bidder who wishes to challenge a bid specification
27 shall file such challenges in writing with the contracting agent no less
28 than three business days prior to the opening of the bids. Challenges
29 filed after that time shall be considered void and having no impact on
30 the contracting unit or the award of a contract.

31 (cf: P.L.1999, c.440, s.19)

32

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

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

42 (1) Supplying of:

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

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

45 (c) Thermal energy produced by a cogeneration facility, for use for
46 heating or air conditioning or both, for any term not exceeding 40

- 1 years, when the contract is approved by the Board of Public Utilities.
2 For the purposes of this paragraph, "cogeneration" means the
3 simultaneous production in one facility of electric power and other
4 forms of useful energy such as heating or process steam;
- 5 (2) (Deleted by amendment, P.L.1977, c.53.)
- 6 (3) (a) The collection [and disposal] of municipal solid waste,
7 [the] for any term not exceeding in the aggregate, five years;
8 (b) The disposal of municipal solid waste, for any term not
9 exceeding in the aggregate, five years;
- 10 (c) The collection and disposition of recyclable material, [or the]
11 for any term not exceeding in the aggregate, five years;
- 12 (d) The marketing of recyclable materials recovered through a
13 recycling program, for any term not exceeding in the aggregate, ten
14 years;
- 15 (e) The disposal of sewage sludge, for any term not exceeding in
16 the aggregate, five years;
- 17 (4) The collection [and] or recycling of methane gas from a
18 sanitary landfill facility, for any term not exceeding 25 years, when
19 such contract is in conformance with a district solid waste
20 management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et
21 seq.), and with the approval of the Division of Local Government
22 Services in the Department of Community Affairs and the Department
23 of Environmental Protection. The contracting unit shall award the
24 contract to the highest responsible bidder, notwithstanding that the
25 contract price may be in excess of the amount of any necessarily
26 related administrative expenses; except that if the contract requires the
27 contracting unit to expend funds only, the contracting unit shall award
28 the contract to the lowest responsible bidder. The approval by the
29 Division of Local Government Services of public bidding requirements
30 shall not be required for those contracts exempted therefrom pursuant
31 to section 5 of P.L.1971, c.198 (C.40A:11-5);
- 32 (5) Data processing service, for any term of not more than seven
33 years;
- 34 (6) Insurance, including the purchase of insurance coverages,
35 insurance consulting or administrative services, claims administration
36 services and including participation in a joint self-insurance fund, risk
37 management program or related services provided by a contracting
38 unit insurance group, or participation in an insurance fund established
39 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund
40 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any
41 term of not more than three years;
- 42 (7) Leasing or servicing of automobiles, motor vehicles, machinery
43 and equipment of every nature and kind, for a period not to exceed
44 five years; provided, however, such contracts shall be awarded only
45 subject to and in accordance with the rules and regulations
46 promulgated by the Director of the Division of Local Government

- 1 Services of the Department of Community Affairs;
- 2 (8) The supplying of any product or the rendering of any service
3 by a company providing voice, data, transmission or switching services
4 for a term not exceeding five years;
- 5 (9) Any single project for the construction, reconstruction or
6 rehabilitation of any public building, structure or facility, or any public
7 works project, including the retention of the services of any architect
8 or engineer in connection therewith, for the length of time authorized
9 and necessary for the completion of the actual construction;
- 10 (10) The providing of food services for any term not exceeding
11 three years;
- 12 (11) On-site inspections and plan review services undertaken by
13 private agencies pursuant to the "State Uniform Construction Code
14 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
15 more than three years;
- 16 (12) The provision or performance of goods or services for the
17 purpose of conserving energy in buildings owned by, or operations
18 conducted by, the contracting unit, the entire price of which to be
19 established as a percentage of the resultant savings in energy costs, for
20 a term not to exceed 15 years; provided, however, that such contracts
21 shall be entered into only subject to and in accordance with guidelines
22 promulgated by the Board of Public Utilities establishing a
23 methodology for computing energy cost savings;
- 24 (13) (Deleted by amendment, P.L.1999, c.440.)
- 25 (14) (Deleted by amendment, P.L.1999, c.440.)
- 26 (15) Leasing of motor vehicles, machinery and other equipment
27 primarily used to fight fires, for a term not to exceed ten years, when
28 the contract includes an option to purchase, subject to and in
29 accordance with rules and regulations promulgated by the Director of
30 the Division of Local Government Services of the Department of
31 Community Affairs;
- 32 (16) The provision of water supply services or the designing,
33 financing, construction, operation, or maintenance, or any combination
34 thereof, of a water supply facility, or any component part or parts
35 thereof, including a water filtration system, for a period not to exceed
36 40 years, when the contract for these services is approved by the
37 Division of Local Government Services in the Department of
38 Community Affairs, the Board of Public Utilities, and the Department
39 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
40 al.), except for those contracts otherwise exempted pursuant to
41 subsection (30), (31), (34) or (35) of this section. For the purposes
42 of this subsection, "water supply services" means any service provided
43 by a water supply facility; "water filtration system" means any
44 equipment, plants, structures, machinery, apparatus, or land, or any
45 combination thereof, acquired, used, constructed, rehabilitated, or
46 operated for the collection, impoundment, storage, improvement,

1 filtration, or other treatment of drinking water for the purposes of
2 purifying and enhancing water quality and insuring its potability prior
3 to the distribution of the drinking water to the general public for
4 human consumption, including plants and works, and other personal
5 property and appurtenances necessary for their use or operation; and
6 "water supply facility" means and refers to the real property and the
7 plants, structures, interconnections between existing water supply
8 facilities, machinery and equipment and other property, real, personal
9 and mixed, acquired, constructed or operated, or to be acquired,
10 constructed or operated, in whole or in part by or on behalf of a
11 political subdivision of the State or any agency thereof, for the
12 purpose of augmenting the natural water resources of the State and
13 making available an increased supply of water for all uses, or of
14 conserving existing water resources, and any and all appurtenances
15 necessary, useful or convenient for the collecting, impounding, storing,
16 improving, treating, filtering, conserving or transmitting of water and
17 for the preservation and protection of these resources and facilities and
18 providing for the conservation and development of future water supply
19 resources;

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

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

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

17 (19) The provision of wastewater treatment services or the
18 designing, financing, construction, operation, or maintenance, or any
19 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 Affairs
23 and the Department of Environmental Protection pursuant to
24 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise
25 exempted pursuant to subsection (36) of this section. For the
26 purposes of this subsection, "wastewater treatment services" means
27 any services provided by a wastewater treatment system, and
28 "wastewater treatment system" means equipment, plants, structures,
29 machinery, apparatus, or land, or any combination thereof, acquired,
30 used, constructed, or operated for the storage, collection, reduction,
31 recycling, reclamation, disposal, separation, or other treatment of
32 wastewater or sewage sludge, or for the final disposal of residues
33 resulting from the treatment of wastewater, including, but not limited
34 to, pumping and ventilating stations, facilities, plants and works,
35 connections, outfall sewers, interceptors, trunk lines, and other
36 personal property and appurtenances necessary for their operation;

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

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

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

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

46 (24) The purchase of electricity or administrative or dispatching

1 services related to the transmission of such electricity, from a public
2 utility company subject to the jurisdiction of the Board of Public
3 Utilities, a similar regulatory body of another state, or a federal
4 regulatory agency, or from a qualifying small power producing facility
5 or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, by
6 a contracting unit engaged in the generation of electricity for retail
7 sale, as of May 24,1991, for a term not to exceed 40 years;

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

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

15 (27) The provision of transportation services to elderly, disabled
16 or indigent persons for any term of not more than three years. For the
17 purposes of this subsection, "elderly persons" means persons who are
18 60 years of age or older. "Disabled persons" means persons of any age
19 who, by reason of illness, injury, age, congenital malfunction, or other
20 permanent or temporary incapacity or disability, are unable, without
21 special facilities or special planning or design to utilize mass
22 transportation facilities and services as effectively as persons who are
23 not so affected. "Indigent persons" means persons of any age whose
24 income does not exceed 100 percent of the poverty level, adjusted for
25 family size, established and adjusted under section 673(2) of subtitle
26 B, the "Community Services Block Grant Act," Pub.L.97-35 (42
27 U.S.C.s.9902 (2));

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

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

35 (30) The acquisition of an equitable interest in a water supply
36 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
37 contract entered into pursuant to the "County and Municipal Water
38 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no
39 later than January 7, 1995, for any term of not more than forty years;

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

46 (32) Laundry service and the rental, supply and cleaning of

1 uniforms for any term of not more than three years;

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

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

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

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

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

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

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

39 (40) Fuel or oil for use in motor vehicles for any term of not more
40 than three years;

41 (41) Plowing and removal of snow and ice for any term of not
42 more than three years;

43 (42) Purchases made under a contract awarded by the Director of
44 the Division of Purchase and Property in the Department of the
45 Treasury for use by counties, municipalities or other contracting units
46 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term

1 not to exceed the term of that contract.

2 Any contract for services other than professional services, the
3 statutory length of which contract is for three years or less, may
4 include provisions for no more than one two-year, or two one-year,
5 extensions, subject to the following limitations: a. The contract shall
6 be awarded by resolution of the governing body upon a finding by the
7 governing body that the services are being performed in an effective
8 and efficient manner; b. No such contract shall be extended so that it
9 runs for more than a total of five consecutive years; c. Any price
10 change included as part of an extension shall be based upon the price
11 of the original contract as cumulatively adjusted pursuant to any
12 previous adjustment or extension and shall not exceed the change in
13 the index rate for the 12 months preceding the most recent quarterly
14 calculation available at the time the contract is renewed; and d. The
15 terms and conditions of the contract 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 authorized pursuant to subsection (12)
24 above, contracts for water supply services or for a water supply
25 facility, or any component part or parts thereof authorized pursuant to
26 subsection (16), (30), (31), (34), (35) or (37) above, contracts for
27 resource recovery services or a resource recovery facility authorized
28 pursuant to subsection (17) above, contracts for the sale of energy
29 produced by a resource recovery facility authorized pursuant to
30 subsection (18) above, contracts for wastewater treatment services or
31 for a wastewater treatment system or any component part or parts
32 thereof authorized pursuant to subsection (19), (36) or (37) above,
33 and contracts for the purchase of electricity or administrative or
34 dispatching services related to the transmission of such electricity
35 authorized pursuant to subsection (24) above, shall contain a clause
36 making them subject to the availability and appropriation annually of
37 sufficient funds as may be required to meet the extended obligation, or
38 contain an annual cancellation clause.

39 The Division of Local Government Services in the Department of
40 Community Affairs shall adopt and promulgate rules and regulations
41 concerning the methods of accounting for all contracts that do not
42 coincide with the fiscal year.

43 All contracts shall cease to have effect at the end of the contracted
44 period and shall not be extended by any mechanism or provision,
45 unless in conformance with the "Local Public Contracts Law,"
46 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be

1 extended by mutual agreement of the parties to the contract when a
2 contracting unit has commenced rebidding prior to the time the
3 contract expires or when the awarding of a contract is pending at the
4 time the contract expires.

5 (cf: P.L.1999, c.440, s.23)

6

7 5. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill authorizes local governments to enter into long-term
13 contracts (up to 10 years) for the marketing of recyclable materials
14 recovered through a recycling program.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2329

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 25, 2002

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 2329.

This bill authorizes local governments to enter into long-term contracts (up to 10 years) for the marketing of recyclable materials recovered through a recycling program.

The committee adopted technical amendments to the bill to update statutory text to reflect the enactment of P.L.2002, c.47.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2329

STATE OF NEW JERSEY

DATED: MARCH 10, 2003

The Senate Community and Urban Affairs Committee reports favorably a Senate Committee Substitute for Assembly Bill No. 2329

This committee substitute would authorize a county to enter into or extend a contract for the marketing of recyclable materials recovered through a recycling program as long as:

- C the program includes one or more interlocal services agreements with municipalities in the county for the delivery of recyclable materials to a contractor; and,
- C the contract for the marketing of recyclable material includes fixed or formula based fees for the marketing services so provided and the contractor owns the buildings and equipment necessary to perform the contract.

The substitute would authorize the extension of an existing contract that satisfies these conditions for a period of up to 10 years; however, the length of the existing contract together with any extension thereof could not exceed a total of 12 years. A new contract for the marketing of recyclable materials could not exceed 10 years. The substitute also provides that any new contract for the marketing of recyclable materials for a term exceeding five years must be entered into pursuant to public bidding or competitive contracting.

Additionally, the committee substitute would except the purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit from public bidding requirements and authorize such contracts for a term of up to 25 years. Enabling negotiated long-term purchase agreements will provide access to the public sector market for electricity and thereby assist in securing investments in power production facilities which use landfill methane gas to generate electricity. This amendment furthers the goal of utilizing renewable energy sources, encouraging the recycling of landfill methane gas and reduce greenhouse gases.