

40A: 11-5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A: 11-5

(EMS--contracts with hospitals--exempt from public contracts law)

LAWS OF: 1989

CHAPTER: 159

Bill No: A2087

Sponsor(s): McEnroe

Date Introduced: Pre-filed

Committee: Assembly: Municipal Government

Senate: County & Municipal Government

Amended during passage: Yes Amendments during passage denoted by asterisk

Date of Passage: Assembly: March 7, 1988

Senate: June 22, 1989

Date of Approval: August 11, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

DEPOSITORY COPY
Do Not Remove From Library

[SECOND REPRINT]

ASSEMBLY, No. 2087

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman McENROE

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

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

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

8 5. Exceptions. Any purchase, contract or agreement of the
character described in section 4 of this act may be made,
10 negotiated or awarded by the governing body without public
advertising for bids and bidding therefor if

12 (1) The subject matter thereof consists of

(a)(i) Professional services. The governing body shall in each
14 instance state supporting reasons for its action in the resolution
awarding each contract and shall forthwith cause to be printed
16 once, in a newspaper authorized by law to publish its legal
advertisements, a brief notice stating the nature, duration,
18 service and amount of the contract, and that the resolution and
contract are on file and available for public inspection in the
20 office of the clerk of the county or municipality, or, in the case
of a contracting unit created by more than one county or
22 municipality, of the counties or municipalities creating such
contracting unit; or (ii) Extraordinary unspecifiable services. The
24 application of this exception shall be construed narrowly in favor
of open competitive bidding, where possible, and the Division of
26 Local Government Services is authorized to adopt and promulgate
rules and regulations limiting the use of this exception in
28 accordance with the intention herein expressed. The governing
body shall in each instance state supporting reasons for its action
30 in the resolution awarding each contract and shall forthwith
cause to be printed, in the manner set forth in subsection (1)(a)(i)
32 of this section, a brief notice of the award of such contract;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AMG committee amendments adopted February 29, 1988.

² Senate SCM committee amendments adopted June 15, 1989.

- 2 (b) The doing of any work by employees of the contracting unit;
- 4 (c) The printing of legal briefs, records and appendices to be used in any legal proceeding in which the contracting party may be a party;
- 6 (d) The furnishing of a tax map or maps for the contracting party;
- 8 (e) The purchase of perishable foods as a subsistence supply;
- 10 (f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with tariffs and schedules of charges made, charged or exacted, filed with said board;
- 12 (g) The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation;
- 14 (h) The printing of bonds and documents necessary to the issuance and sale thereof by a contracting unit;
- 16 (i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
- 18 (j) The publishing of legal notices in newspapers as required by law;
- 20 (k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;
- 22 (l) Election expenses;
- 24 (m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
- 26 (n) The doing of any work by handicapped persons employed by a sheltered workshop;
- 28 (o) The provision of any service or the furnishing of materials including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;
- 30 (p) Homemaker--home health services performed by voluntary, nonprofit agencies;
- 32 (q) The purchase of materials and services for a law library established pursuant to R.S.40:33-14, including books,
- 34
- 36
- 38

2 periodicals, newspapers, documents, pamphlets, photographs,
reproductions, microforms, pictorial or graphic works, copyright
4 and patent materials, maps, charts, globes, sound recordings,
slides, films, filmstrips, video and magnetic tapes, and other
6 audiovisual, printed, or published material of a similar nature;
necessary binding or rebinding of law library materials; and
specialized library services;

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

12 (s) The marketing of recyclable materials recovered through a
recycling program²[;]² or ²the marketing of any product
14 intentionally produced or derived from solid waste received at a
resource recovery facility or recovered through a resource
16 recovery program, including, but not limited to, refuse-derived
fuel, compost materials, methane gas, and other similar products;
18 or²

(t) Emergency medical services provided by a hospital to the
20 residents of ¹[the municipality wherein the hospital is located.] a
municipality or county^{1 2}, provided that: (a) such exception be
22 allowed only after the governing body determines that the
emergency services are available only from one provider; and (b)
24 if the contract is awarded without advertising for bids or bidding
the governing body shall in each instance state supporting reasons
26 for its action in a resolution awarding the contract and cause to
be printed once in a newspaper authorized by law to publish its
28 legal advertisements a brief notice stating the nature, duration,
service, and amount of the contract; and (c) the contract shall be
30 kept on file for public inspection in the office of the clerk of the
municipality².

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

36 (3) The contracting agent has advertised for bids pursuant to
section 4 on two occasions and (a) has received no bids on both
38 occasions in response to its advertisement, or (b) the governing
body has rejected such bids on two occasions because the

2 contracting agent has determined that they are not reasonable as
to price, on the basis of cost estimates prepared for or by the
contracting agent prior to the advertising therefor, or have not
4 been independently arrived at in open competition, or (c) on one
occasion no bids were received pursuant to (a) and on one
6 occasion all bids were rejected pursuant to (b), in whatever
sequence; any such contract or agreement may then be
8 negotiated and may be awarded upon adoption of a resolution by a
two-thirds affirmative vote of the authorized membership of the
10 governing body authorizing such contract or agreement; provided,
however, that:

12 (i) A reasonable effort is first made by the contracting agent
to determine that the same or equivalent materials or supplies,
14 at a cost which is lower than the negotiated price, are not
available from an agency or authority of the United States, the
16 State of New Jersey or of the county in which the contracting
unit is located, or any municipality in close proximity to the
18 contracting unit;

(ii) The terms, conditions, restrictions and specifications set
20 forth in the negotiated contract or agreement are not
substantially different from those which were the subject of
22 competitive bidding pursuant to section 4 of this act; and

(iii) Any minor amendment or modification of any of the
24 terms, conditions, restrictions and specifications, which were the
subject of competitive bidding pursuant to section 4 of this act,
26 shall be stated in the resolution awarding such contract or
agreement; provided further, however, that if on the second
28 occasion the bids received are rejected as unreasonable as to
price, the contracting agent shall notify each responsible bidder
30 submitting bids on the second occasion of its intention to
negotiate, and afford each such bidder a reasonable opportunity
32 to negotiate, but the governing body shall not award such
contract or agreement unless the negotiated price is lower than
34 the lowest rejected bid price submitted on the second occasion by
a responsible bidder, is the lowest negotiated price offered by any
36 responsible supplier, and is a reasonable price for such work,
materials, supplies or services.

38 Whenever a contracting unit shall determine that a bid was not
arrived at independently in open competition pursuant

to subsection (3) of this section it shall thereupon notify the
2 county prosecutor of the county in which the contracting unit is
located and the Attorney General of the facts upon which its
4 determination is based, and when appropriate, it may institute
appropriate proceedings in any State or federal court of
6 competent jurisdiction for a violation of any State or federal
antitrust law or laws relating to the unlawful restraint of trade.

8 (cf: P.L.1989, c.92, s.1)

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

15. Duration of certain contracts. All purchases, contracts or
12 agreements for the performing of work or the furnishing of
materials, supplies or services shall be made for a period not to
14 exceed 12 consecutive months, except that contracts or
agreements may be entered into for longer periods of time as
16 follows:

(1) Supplying of:

18 (a) Fuel for heating purposes, for any term not exceeding in
the aggregate, two years;

20 (b) Fuel or oil for use of airplanes, automobiles, motor vehicles
or equipment for any term not exceeding in the aggregate, two
22 years;

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

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

(3) The collection and disposal of garbage and refuse, and the
32 barging and disposal of sewage sludge, for any term not exceeding
in the aggregate, five years;

34 (4) The recycling of solid waste, including the collection of
methane gas from a sanitary landfill facility, for any term not
36 exceeding 25 years, when such contract is in conformance with a
solid waste management plan approved pursuant to P.L.1970, c.39
38 (C.13:1E-1 et seq.), and with the approval of the Division of
Local Government Services and the Department of Environmental

2 Protection. The contracting unit shall award the contract to the
highest responsible bidder, notwithstanding that the contract
4 price may be in excess of the amount of any necessarily related
administrative expenses; except that if the contract requires the
6 contracting unit to expend funds only, the contracting unit shall
award the contract to the lowest responsible bidder. The
8 approval by the Division of Local Government Services of public
bidding requirements shall not be required for those contracts
10 exempted therefrom pursuant to section 5 of P.L.1971, c.198
(C.40A:11-5);

12 (5) Data processing service, for any term of not more than
three years;

(6) Insurance, for any term of not more than three years;

14 (7) Leasing or servicing of automobiles, motor vehicles,
machinery and equipment of every nature and kind, for a period
16 not to exceed three years; provided, however, such contracts
shall be entered into only subject to and in accordance with the
18 rules and regulations promulgated by the Director of the Division
of Local Government Services of the Department of Community
20 Affairs;

(8) The supplying of any product or the rendering of any
22 service by a telephone company which is subject to the
jurisdiction of the Board of Public Utilities for a term not
24 exceeding five years;

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

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

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

(12) The performance of work or services or the furnishing of
38 materials or supplies for the purpose of conserving energy in
buildings owned by, or operations conducted by, the contracting

unit, the entire price of which to be established as a percentage
2 of the resultant savings in energy costs, for a term not to exceed
10 years; provided, however, that such contracts shall be entered
4 into only subject to and in accordance with rules and regulations
promulgated by the Department of Energy establishing a
6 methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of
8 materials or supplies for the purpose of elevator maintenance for
any term not exceeding three years;

(14) Leasing or servicing of electronic communications
10 equipment for a period not to exceed five years; provided,
12 however, such contract shall be entered into only subject to and
in accordance with the rules and regulations promulgated by the
14 Director of the Division of Local Government Services of the
Department of Community Affairs;

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

(16) The provision of water supply services or the designing,
22 financing, construction, operation, or maintenance, or any
24 combination thereof, of a water supply facility, or any component
part or parts thereof, including a water filtration system, for a
26 period not to exceed 40 years, when the contract for these
services is approved by the Division of Local Government
28 Services in the Department of Community Affairs, the Board of
Public Utilities, and the Department of Environmental Protection
30 pursuant to P.L.1985, c.37 (C.58:26-1 et seq.). For the purposes
of this subsection, "water supply services" means any service
32 provided by a water supply facility; "water filtration system"
means any equipment, plants, structures, machinery, apparatus,
34 or land, or any combination thereof, acquired, used, constructed,
rehabilitated, or operated for the collection, impoundment,
36 storage, improvement, filtration, or other treatment of drinking
water for the purposes of purifying and enhancing water quality
38 and insuring its potability prior to the distribution of the drinking
water to the general public for human consumption, including

plants and works, and other personal property and appurtenances
2 necessary for their use or operation; and "water supply facility"
means and refers to the real property and the plants, structures,
4 interconnections between existing water supply facilities,
machinery and equipment and other property, real, personal and
6 mixed, acquired, constructed or operated, or to be acquired,
constructed or operated, in whole or in part by or on behalf of a
8 political subdivision of the State or any agency thereof, for the
purpose of augmenting the natural water resources of the State
10 and making available an increased supply of water for all uses, or
of conserving existing water resources, and any and all
12 appurtenances necessary, useful or convenient for the collecting,
impounding, storing, improving, treating, filtering, conserving or
14 transmitting of water and for the preservation and protection of
these resources and facilities and providing for the conservation
16 and development of future water supply resources;

(17) The provision of solid waste disposal services by a
18 resource recovery facility, the furnishing of products of a
resource recovery facility, the disposal of the solid waste
20 delivered for disposal which cannot be processed by a resource
recovery facility or the waste products resulting from the
22 operation of a resource recovery facility, including hazardous
waste and recovered metals and other materials for reuse, or the
24 design, financing, construction, operation or maintenance of a
resource recovery facility for a period not to exceed 40 years
26 when the contract is approved by the Division of Local
Government Services in the Department of Community Affairs,
28 the Board of Public Utilities, and the Department of
Environmental Protection; and when the facility is in
30 conformance with a solid waste management plan approved
pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes
32 of this subsection, "resource recovery facility" means a solid
waste facility constructed and operated for the incineration of
34 solid waste for energy production and the recovery of metals and
other materials for reuse; or a mechanized composting facility,
36 or any other solid waste facility constructed or operated for the
collection, separation, recycling, and recovery of metals, glass,
38 paper, and other materials for reuse or for energy production;

(18) The sale of electricity or thermal energy, or both,

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

14 (19) The provision of wastewater treatment services or the
15 designing, financing, construction, operation, or maintenance, or
16 any combination thereof, of a wastewater treatment system, or
17 any component part or parts thereof, for a period not to exceed
18 40 years, when the contract for these services is approved by the
19 Division of Local Government Services in the Department of
20 Community Affairs and the Department of Environmental
21 Protection pursuant to P.L.1985, c.72 (C.58:27-1 et seq.). For
22 the purposes of this subsection, "wastewater treatment services"
23 means any service provided by a wastewater treatment system,
24 and "wastewater treatment system" means equipment, plants,
25 structures, machinery, apparatus, or land, or any combination
26 thereof, acquired, used, constructed, or operated for the storage,
27 collection, reduction, recycling, reclamation, disposal,
28 separation, or other treatment of wastewater or sewage sludge,
29 or for the final disposal of residues resulting from the treatment
30 of wastewater, including, but not limited to, pumping and
31 ventilating stations, facilities, plants and works, connections,
32 outfall sewers, interceptors, trunk lines, and other personal
33 property and appurtenances necessary for their operation;

34 (20) The supplying of materials or services for the purpose of
35 lighting public streets, for a term not to exceed five years,
36 provided that the rates, fares, tariffs or charges for the supplying
37 of electricity for that purpose are approved by the Board of
38 Public Utilities;

39 (21) ¹[The] In the case of a contracting unit which is a county
or municipality, the¹ provision of emergency medical services by

2 a hospital to residents of ¹[the municipality wherein the hospital
3 is located,] a municipality or county as appropriate¹ for a term
4 not to exceed five years ²[¹, provided that: (a) such exemption be
5 allowed only after the governing body determines that the
6 emergency services are available only from one provider; and (b)
7 if the contract is awarded without advertising for bids or bidding
8 the governing body shall in each instance state supporting reasons
9 for its action in a resolution awarding the contract and cause to
10 be printed once in a newspaper authorized by law to publish its
11 legal advertisements a brief notice stating the nature, duration,
12 service, and amount of the contract; and (c) the contract shall be
13 kept on file for public inspection in the office of the clerk of the
14 municipality¹².

15 All multi-year leases and contracts entered into pursuant to
16 this section, except contracts for the leasing or servicing of
17 equipment supplied by a telephone company which is subject to
18 the jurisdiction of the Board of Public Utilities, contracts
19 involving the supplying of electricity for the purpose of lighting
20 public streets and contracts for thermal energy authorized
21 pursuant to subsection (1) above, construction contracts
22 authorized pursuant to subsection (9) above, contracts and
23 agreements for the provision of work or the supplying of
24 equipment to promote energy conservation authorized pursuant to
25 subsection (12) above, contracts for water supply services or for a
26 water supply facility, or any component part or parts thereof
27 authorized pursuant to subsection (16) above, contracts for
28 resource recovery services or a resource recovery facility
29 authorized pursuant to subsection (17) above, contracts for the
30 sale of energy produced by a resource recovery facility
31 authorized pursuant to subsection (18) above, contracts for
32 wastewater treatment services or for a wastewater treatment
33 system or any component part or parts thereof authorized
34 pursuant to subsection (19) above, shall contain a clause making
35 them subject to the availability and appropriation annually of
36 sufficient funds as may be required to meet the extended
obligation, or contain an annual cancellation clause.

37 The Division of Local Government Services shall adopt and
38 promulgate rules and regulations concerning the methods of
accounting for all contracts that do not coincide with the fiscal

year.

2 (cf: P.L.1987, c.102, s.31)

3. This act shall take effect immediately.

4

6 MUNICIPALITIES
Public Contracts

8

10 Exempts contracts with a hospital for emergency medical
services from the "Local Public Contracts Law."

STATEMENT

This bill amends the "Local Public Contracts Law" to exempt from the bidding requirements contracts with a hospital for the provision of emergency medical services by the hospital to residents of the municipality wherein the hospital is located. The bill also allows a contracting unit to enter into such agreements with a hospital for a multi-year term, not to exceed five years.

MUNICIPALITIES

Public Contracts

Exempts contracts with a hospital for emergency medical services from the "Local Public Contracts Law."

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2087

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 29, 1988

The Assembly Municipal Government Committee favorably reports Assembly Bill No. 2087 with committee amendments.

This bill amends the "Local Public Contracts Law" to exempt from the bidding requirements county or municipal contracts with a hospital for the provision of emergency medical services by the hospital to residents of the county or municipality. The bill also allows a municipal contracting unit to enter into such agreements with a hospital for a multi-year terms, not to exceed five years.

The Assembly Committee amendments further provide that: (1) such exemptions be allowed only after the governing body determines that the emergency services are available only from one provider, (2) if the contract is awarded without advertising for bids or bidding, the governing body shall in each instance state supporting reasons for its action in a resolution awarding the contract; (3) the governing body shall cause to be printed once in a newspaper authorized by law to publish legal advertisements a brief notice stating the nature, duration, service, and amount of the contract; and (4) the contract shall be kept on file for public inspection in the office of the clerk of the municipality.

This bill was pre-filed for introduction in the 1988 session pending technical review. Technical review has been completed and all technical corrections have been made.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

[FIRST RERINT]

ASSEMBLY, No. 2087

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1989

The Senate County and Municipal Government Committee reports favorably and with committee amendments Assembly Bill No. 2087[1R] .

Assembly Bill 2087 [1R] amends the "Local Public Contracts Law" to exempt from the bidding requirements, under certain circumstances, county or municipal contracts with a hospital for the provision of emergency medical services by the hospital to residents of the county or municipality. The bill also allows a municipal contracting unit to enter into such agreements with a hospital for a multi-year terms, not to exceed five years, subject to certain conditions.

Specifically, the bill provides that a contract for the provision of emergency medical services, as described above, may only be awarded without public bidding if the governing body determines that the emergency services are available only from one provider. Additionally, if such a contract is awarded without public bidding, the governing body shall: in each instance state supporting reasons for its action in a resolution awarding the contract; cause to be printed once in a newspaper authorized by law to publish legal advertisements a brief notice stating the nature, duration, service, and amount of the contract; and keep a copy of the contract on file for public inspection in the office of the clerk of the municipality.

The committee amended the bill to move the language outlining the conditions under which a contract for emergency services may be contracted for without public bidding to section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5), which contains exceptions from public advertising requirements. As referred to the committee, these conditions were inappropriately included in section 15 of the "Local Public Contracts Law," which concerns the duration of contracts. Additionally, the committee updated the language of section 5 of P.L.1971, c.198 (C.40A:11-5) to bring it into conformity with recent amendments, enacted by P.L.1989, c.92.