

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:11-16;40A:11-24

(Local Public contracts law-- various amendments)

CHAPTER 48

Laws Of: 1987

Bill No: S1029

Sponsor(s): McManimon

Date Introduced: Pre-filed

Committee: Assembly: Municipal Government

Senate: County and Municipal Government

Amended during passage: Yes according to Governor's recommendations

Amendments denoted by asterisks

Date of Passage:

Assembly:

September 11, 1986 Re-enacted 2-23-87

Senate:

January 27, 1987 Re-enacted 1-22-87

Date of Approval: February 25, 1987

Following statements are attached if available:

Sponsor statement:

Yes

Committee statement:

Assembly

Yes

Senate

Yes

No

Fiscal Note:

No

Veto Message:

Yes

Message on Signing:

No

Following were printed:

Reports:

No

Hearings:

No

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SENATE, No. 1029

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator McMANIMON

AN ACT to amend the "Local Public Contracts Law," approved
June 9, 1971 (P. L. 1971, c. 198).

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

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

- 3 16. Separate plans for various types of work; bids; contracts.
4 In the preparation of plans and specifications for the erection,
5 alteration or repair of any public building by any contracting unit,
6 when the entire cost of the work will exceed \$7,500.00 in amount,
7 the architect, engineer or other person preparing the plans and
8 specifications, may prepare separate plans and specifications for
9 (1) The plumbing and gas fitting and all kindred work;
10 (2) Steam power plants, steam and hot water heating and
11 ventilating apparatus and all kindred work;
12 (3) Electrical work;
13 (4) Structural steel and ornamental iron work; and
14 (5) All other work required for the completion of the project.

15 **[As used in this section, "public building" means any building*
16 *or facility owned or maintained by a contracting unit which is*
17 *customarily open to the public for its use or for the conduct of the*
18 *contracting unit's business, but shall not include any public utility*
19 *station, substation, plant, structure or other facility not customarily*
20 *opened to the public for its use.]**

21 The contracting unit or its contracting agent shall advertise for
22 and receive, in the manner provided by law, either (a) separate

**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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted January 23, 1986.**

****—Senate amendments adopted in accordance with Governor's recommen-
dations December 18, 1986.**

23 bids for each of said branches of work, or (b) bids for all the work
 24 and materials required to complete the building to be included in a
 25 single overall contract, or (c) both. ***There will be set forth in the**
 26 **bid the name or names of, and evidence of performance security**
 27 **from, all subcontractors to whom the bidder will subcontract the**
 28 **furnishing of plumbing and gas fitting, and all kindred work, and**
 29 **of the steam and hot water heating and ventilating apparatus,**
 30 **steam power plants and kindred work, and electrical work, struc-**
 31 **tural steel and ornamental iron work, each of which subcontractors**
 32 **shall be qualified in accordance with this act.]*** ****The bidder***
 33 ***shall submit the names of all subcontractors who shall work under***
 34 ***the contract to the contracting unit or its contracting agent for***
 35 ***approval prior to the award of the contract.]**** *****The contract-***
 36 ***ing unit may require that the bid set forth the name or names of all***
 37 ***subcontractors to whom the bidder will subcontract the furnish-***
 38 ***ing of plumbing and gas fitting, and all kindred work, and of the***
 39 ***steam and hot water heating and ventilating apparatus, steam***
 40 ***power plants and kindred work, and electrical work, structural***
 41 ***steel and ornamental iron work, each of which subcontractors shall***
 42 ***be qualified in accordance with this act. In the alternative, the***
 43 ***contracting unit may require that the name or names of such sub-***
 44 ***contractors be submitted by any or all bidders after the opening***
 45 ***of bids but prior to the award of the contract.]**** *****There will be***
 46 ***set forth in the bid the name or names of all subcontractors to whom***
 47 ***the bidder will subcontract the furnishing of plumbing and gas***
 48 ***fitting, and all kindred work, and of the steam and hot water heat-***
 49 ***ing and ventilating apparatus, steam power plants and kindred***
 50 ***work, and electrical work, structural steel and ornamental iron***
 51 ***work, each of which subcontractors shall be qualified in accordance***
 52 ***with this act.** The contracting unit shall require evidence of per-***
 52A ***formance security to be submitted simultaneously with the list of the***
 52B ***subcontractors. Evidence of performance security may be supplied***
 52C ***by the bidder on behalf of himself and any or all subcontractors, or***
 52D ***by each respective subcontractor, or by any combination thereof***
 52E ***which results in evidence of performance security equalling, but***
 52F ***in no event exceeding, the total amount bid.****

53 Contracts shall be awarded to the lowest responsible bidder.
 54 In the event that a contract is advertised in accordance with (c)
 55 above said contract shall be awarded in the following manner: If
 56 the sum total of the amounts bid by the lowest responsible bidder
 57 for each branch is less than the amount bid by the lowest respon-
 58 sible bidder for all the work and materials, the contracting unit

59 shall award separate contracts for each of such branches to the
 60 lowest responsible bidder therefor, but if the sum total of the
 61 amount bid by the lowest responsible bidder for each branch is
 62 not less than the amount bid by the lowest responsible bidder for
 63 all the work and materials, the contracting unit shall award a
 64 single overall contract to the lowest responsible bidder for all of
 65 such work and materials. In every case in which a contract is
 66 awarded under (b) above, all payments required to be made under
 67 such contract for work and materials supplied by a subcontractor
 68 shall, upon the certification of the contractor of the amount due
 69 to the subcontractor, be paid directly to the subcontractor.

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

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

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

32 *specifications are returned in reasonable condition *within 90 days*
33 *of ***[the receipt of the]*** notice that the contract has not been*
34 *awarded* ***[to the contracting unit or contracting agent]***.*

1 3. This act shall take effect immediately.

LOCAL PUBLIC CONTRACTS

Name Subcom. and Return cert. Dep.

Provides for conditions when certain subcontractors names must
be submitted and requires the return of certain deposits.

14 the awarding and signing of the contract and the approval of the
 15 contractor's performance bond, the bid security of the remaining
 16 unsuccessful bidders shall be returned to them.

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

1 3. This act shall take effect immediately.

STATEMENT

This bill amends the "Local Public Contracts Law" by providing that bidders proposing to use subcontractors must submit the names of those subcontractors to the contracting unit for approval prior to the awarding of the contract. This bill also provides that whenever a contract has not been awarded, a bidder who has paid the contracting unit for plans and specifications, or has paid a deposit for those plans and specifications, is to have his payment or deposit returned immediately upon his return of those plans and specifications so long as they are returned in reasonable condition and within 90 days of the notice that the contract has not been awarded.

51029 (1987)

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 1029

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 23, 1986

The Senate County and Municipal Government Committee reports favorably and with committee amendments Senate Bill No. 1029.

Senate Bill No. 1029 Sea amends the "Local Public Contracts Law," P. L. 1971, c. 198 (C. 40A:11-1 et seq.) to provide that the contracting unit may require the submission of the names of certain subcontractors who would work on the contract project with the bid or, under certain circumstances, after the opening of the bids but prior to the awarding of the contract. In addition, the bill requires the contracting unit to return certain deposits made for bid plans.

Currently, P. L. 1971, c. 198 provides that the names of subcontractors performing certain work (e. g., plumbing, electrical work and structural steel work) and evidence of performance security must be submitted with a bid. No provisions of law regulate the handling of deposits made on bid plans and specifications.

Senate Bill No. 1029 Sea would provide that the governing body may determine to have all bidders submit the names of the subcontractors with the bid or to have any or all bidders submit the names after the opening of the bids but prior to the awarding of the contract. Evidence of performance security must be submitted with the names of the subcontractors.

In addition, the contracting unit would have to return a deposit made for bid plans or specifications whenever the contract is not awarded and the plans or specifications are returned in reasonable condition within 90 days of notice of the contract not being awarded.

This bill was pre-filed for introduction in the 1986 session pending technical review. As reported and amended, the bill includes the changes required by technical review which has been performed.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1029

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STATE OF NEW JERSEY

DATED: MAY 15, 1986

The Assembly Municipal Government Committee favorably reports Senate Bill No. 1029 OCR.

This bill amends the "Local Public Contracts Law," P. L. 1971, c. 198 (C. 40A:11-1 et seq.) to provide that a contracting unit when advertising for bids for the erection, alteration or repair of any public building, where the entire cost of the work will exceed \$7,500.00, may require that the bid set forth the names of all subcontractors engaged to do certain specified work, or in the alternative the contracting unit may require the names of the subcontractors to be submitted after the opening of bids but prior to the award of the contract. The contracting unit shall require evidence of performance security to be submitted with the list of the subcontractors. The bill also requires the return of the deposits made to obtain plans and specifications, but only if a contract is not awarded to any of the bidders.

Currently P. L. 1971, c. 198 provides that the names of subcontractors performing certain work and evidence of performance security must be submitted with the bid. There are no provisions in the present law concerning the return of deposits made to obtain bid plans and specifications.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

October 23, 1986

SENATE BILL NO. 1029 (OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1029 (OCR) with my objections and recommendations for amendment.

As it has reached my desk, this bill would amend the Local Public Contracts Law to permit a local unit of government to require that any or all general contractors submitting bids for the erection, alteration or repair of any public building name their subcontractors at the time of the bidding or, alternatively, submit their subcontractors' names after the opening of bids but prior to the award of the contract.

The bill goes on to stipulate that evidence of performance security may be supplied by the bidder on behalf of himself or any or all subcontractors, or by each respective subcontractor, or by any combination thereof which results in evidence of performance security equalling, but in no event exceeding, the total amount bid. The bill also sets up a system whereby unsuccessful bidders are returned money they have paid or deposited for plans or specifications they have received from the contracting unit in those situations when no contract has been awarded to any bidder.

Current law requires that general contractors bidding on local public construction contracts set forth the name or names of all subcontractors at the time of bid submission. The statute contemplates subcontracts for the furnishing of plumbing and gas fitting, steam power plants, steam and hot water heating and ventilating apparatus, electrical work, and structural steel and ornamental iron work.

I am not convinced that changing this system of bidding to permit subcontractors to be named at a later time would be in the public interest. If a general contractor could wait to name subcontractors until after he has submitted his bid to the local unit of government, then the local unit of government would be unlikely to benefit from any bid shopping undertaken by the general contractor in securing the performance of subcontractors. The purpose of public bidding is to secure performance of high quality for the lowest possible price, and I

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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believe that this objective is furthered by retention of the current statutory scheme whereby subcontractors must be named by general contractors at the time their bids are submitted. This statutory scheme is consistent with statutes regulating public school construction contracts and State construction contracts.

Therefore, I herewith return Senate Bill No. 1029 (OCR) and recommend that it be amended as follows:

Page 2, Section 1, Line 25:

After "both.", insert "There will be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with this act."

Page 2, Section 1, Line 35:

Delete "The contracting"

Page 2, Section 1, Line 36-44:

Delete in their entirety

Page 2, Section 1, Line 45:

Delete "of bids but prior to the award of the contract."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel