

40A:11-5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:11-5 (Local public contracts law--exempt on-site inspection)

LAWS OF: 1986

CHAPTER 61

BILL NO: S227

Sponsor(s): Connors

Date Introduced: Pre-filed

Committee: Assembly: Municipal Government

Senate: County and Municipal Government

Amended during passage: Yes Substituted for A1864 (not attached since identical to S227). Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 16, 1986

Senate: February 27, 1986

Date of Approval: July 29, 1986

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

[OFFICIAL COPY REPRINT]

**SENATE, No. 227**

**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator CONNORS

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

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

7 (1) The subject matter thereof consists of

8 (a) (i) Professional services. The governing body shall in each  
9 instance state supporting reasons for its action in the resolution  
10 awarding each contract and shall forthwith cause to be printed once,  
11 in a newspaper authorized by law to publish its legal advertise-  
12 ments, a brief notice stating the nature, duration, service and  
13 amount of the contract, and that the resolution and contract are  
14 on file and available for public inspection in the office of the clerk  
15 of the county or municipality, or, in the case of a contracting unit  
16 created by more than one county or municipality, of the counties  
17 or municipalities creating such contracting unit; or (ii) Extra-  
18 ordinary unspecifiable services. The application of this exception  
19 shall be construed narrowly in favor of open competitive bidding,  
20 where possible, and the Division of Local Government Services is  
21 authorized to adopt and promulgate rules and regulations limiting  
22 the use of this exception in accordance with the intention herein

**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.**

23 expressed. The governing body shall in each instance state sub-  
 24 porting reasons for its action in the resolution awarding each  
 25 contract and shall forthwith cause to be printed, in the manner  
 26 set forth in subsection (1) (a) (i) of this section, a brief notice of  
 27 the award of such contract;

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

29 (c) The printing of legal briefs, records and appendices to be  
 30 used in any legal proceeding in which the contracting party may be  
 31 a party:

32 (d) The furnishing of a tax map or maps for the contracting  
 33 party;

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

35 (f) The supplying of any product or the rendering of any service  
 36 by a public utility, which is subject to the jurisdiction of the Board  
 37 of Public Utilities, in accordance with tariffs and schedules of  
 38 charges made, charged or exacted, filed with said board;

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

41 (h) The printing of bonds and documents necessary to the issu-  
 42 ance and sale thereof by a contracting unit;

43 (i) Equipment repair service if in the nature of an extra-  
 44 ordinary unspecifiable service and necessary parts furnished in  
 45 connection with such service, which exception shall be in accor-  
 46 dance with the requirements for extraordinary unspecifiable  
 47 services;

48 (j) The publishing of legal notices in newspapers as required  
 49 by law;

50 (k) The acquisition of artifacts or other items of unique intrin-  
 51 sic, artistic or historical character;

52 (l) Election expenses;

53 (m) Insurance, including the purchase of insurance coverage and  
 54 consultant services, which exception shall be in accordance with the  
 55 requirements for extraordinary unspecifiable services:

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

58 (o) The provisions of any service or the furnishing of materials  
 59 including those of a commercial nature, attendant upon the opera-  
 60 tion of a restaurant by any nonprofit, duly incorporated, historical  
 61 society at or on any historical preservation site; \***[or]**\*

62 (p) Homemaker—home health services performed by voluntary,  
 63 nonprofit agencies \***[.]**\* \*;\* \*

64 \*(q) The purchase of materials and services for a law library  
 65 established pursuant to R. S. 40:33-14, including books, periodicals,

66 newspapers, documents, pamphlets, photographs, reproductions,  
 67 microforms, pictorial or graphic works, copyright and patent  
 67A materials, maps, charts, globes, sound recordings, slides, films,  
 67B filmscripts, video and magnetic tapes, and other audiovisual,  
 67C printed, or published material of a similar nature; necessary  
 67D binding or rebinding of law library materials; and specialized  
 67E library services; *or*\*

67F \*[(q)]\* \*(r)\* *On-site inspections undertaken by private agencies*  
 67G *pursuant to the "State Uniform Construction Code Act" (P. L.*  
 67H *1975, c. 217; C. 52:27D-119 et seq.) and the regulations adopted*  
 67I *pursuant thereto.*

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

72 (3) The contracting agent has advertised for bids pursuant to  
 73 section 4 on two occasions and (a) has received no bids on both  
 74 occasions in response to its advertisement, or (b) the governing  
 75 body has rejected such bids on two occasions because the contract-  
 76 ing agent has determined that they are not reasonable as to price,  
 77 on the basis of cost estimates prepared for or by the contracting  
 78 agent prior to the advertising therefor, or have not been inde-  
 79 pendently arrived at in open competition, or (c) on one occasion  
 80 no bids were received pursuant to (a) and on one occasion all  
 81 bids were rejected pursuant to (b), in whatever sequence; any such  
 82 contract or agreement may then be negotiated and may be awarded  
 83 upon adoption of a resolution by a two-thirds affirmative vote of  
 84 the authorized membership of the governing body authorizing such  
 85 contract or agreement; provided, however, that:

86 (i) A reasonable effort is first made by the contracting agent  
 87 to determine that the same or equivalent materials or supplies,  
 88 at a cost which is lower than the negotiated price, are not  
 89 available from an agency or authority of the United States,  
 90 the State of New Jersey or of the county in which the contract-  
 91 ing unit is located, or any municipality in close proximity to  
 92 the contracting unit;

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

97 (iii) Any minor amendment or modification of any of the  
 98 terms, conditions, restrictions and specifications, which were  
 99 the subject of competitive bidding pursuant to section 4 of this

100 act, shall be stated in the resolution awarding such contract  
101 or agreement;

102 provided, further, however, that if on the second occasion the bids  
103 received are rejected as unreasonable as to price, the contracting  
104 agent shall notify each responsible bidder, submitting bids on the  
105 second occasion of its intention to negotiate, and afford each such  
106 bidder a reasonable opportunity to negotiate, but the governing  
107 body shall not award such contract or agreement unless the negoti-  
108 ated price is lower than the lowest rejected bid price submitted  
109 on the second occasion by a responsible bidder, is the lowest  
110 negotiated price offered by any responsible supplier, and is a  
111 reasonable price for such work, materials, supplies or services.

112 Whenever a contracting unit shall determine that a bid was not  
113 arrived at independently in open competition pursuant to sub-  
114 section (3) of this section it shall thereupon notify the county  
115 prosecutor of the county in which the contracting unit is located  
116 and the Attorney General of the facts upon which its determination  
117 is based, and when appropriate, it may institute appropriate pro-  
118 ceedings in any State or federal court of competent jurisdiction for  
119 a violation of any State or federal antitrust law or laws relating to  
120 the unlawful restraint of trade.

1 2. This act shall take effect immediately but shall remain in-  
2 operative until the \*[adoption]\* *operative date* of regulations  
3 *promulgated* pursuant to section 6 of P. L. 1975, c. 217 (C.  
4 52:27D-124) setting inspection fees.

---

#### LOCAL PUBLIC CONTRACTS

Ex. cert. inspection serv.—pub. bid

Exempts certain on-site inspection services undertaken by private agencies from the public bidding requirements of the "Local Public Contracts Law."

---

107 body shall not award such contract or agreement unless the negoti-  
 108 ated price is lower than the lowest rejected bid price submitted  
 109 on the second occasion by a responsible bidder, is the lowest  
 110 negotiated price offered by any responsible supplier, and is a  
 111 reasonable price for such work, materials, supplies or services.

112 Whenever a contracting unit shall determine that a bid was not  
 113 arrived at independently in open competition pursuant to sub-  
 114 section (3) of this section it shall thereupon notify the county  
 115 prosecutor of the county in which the contracting unit is located  
 116 and the Attorney General of the facts upon which its determination  
 117 is based, and when appropriate, it may institute appropriate pro-  
 118 ceedings in any State or federal court of competent jurisdiction for  
 119 a violation of any State or federal antitrust law or laws relating to  
 120 the unlawful restraint of trade.

1 2. This act shall take effect immediately but shall remain in-  
 2 operative until the adoption of regulations pursuant to section 6  
 3 of P. L. 1975, c. 217 (C. 52:27D-124) setting inspection fees.

---

#### STATEMENT

Section 6 of P. L. 1975, c. 217 (C. 52:27D-124), as amended by P. L. 1983, c. 338 and the regulations to be promulgated pursuant thereto, establish the fees which a private agency may charge for providing inspection services for a municipality. The Department of Community Affairs is also authorized to promulgate standards to be observed by a municipality when evaluating a proposal from a private agency to provide inspection services. Thus, there is no longer any need to protect the public interest by requiring formal competitive bidding for on-site inspection services.

5227 (1986)

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO SENATE BILL NO-227(OCR)

DATED: MAY 8,, 1986

The Assembly Municipal Government Committee favorably reports Senate 227 (OCR).

This bill amends the "Local Public Contracts Law" P.L. 1971, c. 198 (C. 40A:11-5) so as to allow contracts between local governing bodies and private agencies for on-site inspection undertaken pursuant to the "State Uniform Construction Code Act" P.L. 1975, c. 217 (C. 52:27D-119 et seq.), to be made, negotiated or awarded without public advertising for bids and bidding thereon.

Presently contracts with private agencies for on-site inspection require public bidding; however, an amendment to the "State Uniform Construction Code Act" made by P.L. 1983, c. 338 empowers the Commissioner of the department of Community Affairs to adopt regulations setting the amount of fees to be charged by a private agency for on-site inspection and plan review service. The 1983 amendment also authorizes the commissioner to formulate standards to be observed by a municipality in the evaluation of a proposal for on-site inspection service by a private agency. The promulgation of regulations by the commissioner establishing inspection fees and formulating standards to be observed in the evaluation of a proposal for on-site inspection services would make adhering to the public bidding requirement of the contracts law unnecessary since the fees and standards have already been determined by the commisssioner.

The bill will not become operative until the appropriate regulations are adopted by the commissioner.

SENATE COUNTY AND MUNICIPAL GOVERNMENT  
COMMITTEE

STATEMENT TO

**SENATE, No. 227**

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. 227.

Senate Bill No. 227 Sea excepts contracts for certain on-site construction code inspection services from the public bidding requirements of the "Local Public Contracts Law," P. L. 1971, c. 198 (C. 40A:11-1 et seq.).

Currently, the "Local Public Contracts Law" requires that most purchases by, and contracts or agreements for work performed for, local units must be awarded after public bidding unless the amount of money involved is less than \$7,500. Section 5 of the law (C. 40A:11-5) excepts certain contracts from the public bidding requirements, because of the special nature of the services or materials involved, or because of other statutory regulations involving the provider of the services or materials. As present, the list of exceptions does not include contracts for third party on-site construction code inspections (i. e., those performed by a private firm, rather than a municipal enforcing agency).

However, section 6 of the "Uniform Construction Code Act," P. L. 1975, c. 217 (C. 52:27D-124) was recently amended to require the Department of Community Affairs to adopt regulations setting third-party on-site inspection fees (P. L. 1983, c. 338). The department is also authorized to promulgate standards to be observed by a municipality when reviewing a proposal from a private agency. Thus, the sponsor feels that there is no longer any need to protect the public interest by requiring public bidding for these services.

This bill amends section 5 of the "Local Public Contracts Law," (C. 40A:11-5) to except third-party, on-site construction code inspection services from public bidding requirements. The bill shall not become operative until the appropriate administrative regulations becomes operative.

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.