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LAW/KR

P.L.2012, CHAPTER 73, *approved December 3, 2012*
Assembly, No. 1289 (*Second Reprint*)

1 AN ACT concerning certain local public contracts for projects
2 involving the removal of soil, and amending and supplementing
3 P.L.1999, c.39.

4

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

7

8 1. Section 1 of P.L.1999, c.39 (C.40A:11-23.1) is amended to
9 read as follows:

10 1. All plans, specifications and bid proposal documents for the
11 erection, alteration, or repair of a building, structure, facility or
12 other improvement to real property, the total price of which exceeds
13 the amount set forth in, or the amount calculated by the Governor
14 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), shall
15 include:

16 a. a document for the bidder to acknowledge the bidder's
17 receipt of any notice or revisions or addenda to the advertisement or
18 bid documents; and

19 b. a form listing those documentary and informational forms,
20 certifications, and other documents that the contracting agent
21 requires each bidder to submit with the bid. The form shall list each
22 of the items to be submitted with the bid proposal and a place for
23 the bidder to indicate, by initialing each entry, that the bidder has
24 included those required items with the completed bid proposal.
25 Each bidder shall complete this form and submit it with the bid
26 proposal in addition to those documentary and informational forms,
27 certifications, and other documents that are listed on the form; and

28 c. a statement indicating whether uniformed law enforcement
29 officers will be required for the project. The statement shall include
30 a line item allowance, which shall be a good faith effort on the part
31 of the contracting unit, to reasonably estimate the total cost of
32 traffic control personnel, vehicles, equipment, administrative, or
33 any other costs associated with additional traffic control
34 requirements required by the contracting unit, or any other public
35 entity affected by the project, above and beyond the bidder's traffic
36 control personnel, vehicles, equipment, and administrative costs.
37 The individuals responsible for the assignment of uniformed law
38 enforcement officers for any municipalities affected by a project
39 shall be required to determine where traffic safety control is needed

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:

¹Assembly floor amendments adopted May 24, 2012.

²Assembly floor amendments adopted June 21, 2012.

1 for a project, and calculate the number and placement of all
2 necessary personnel, equipment, and the costs associated with these,
3 including hourly rates, and submit this information to the
4 contracting unit.

5 The contracting unit shall not be responsible for additional traffic
6 control costs beyond the number of working days specified in the
7 construction contract in accordance with section 17 of P.L.1971,
8 c.198 (C.40A:11-17), when such a delay is caused by the contractor
9 and liquidated damages have been assessed.

10 The statement prescribed under this subsection shall not be
11 required if the contracting unit will provide for the direct payment
12 of uniformed law enforcement officers and any additional costs
13 directly associated with the provision of those officers; and

14 d. at the option of the contracting unit, specified alternate
15 proposals in addition to a base specification. When the contracting
16 unit specifies alternate proposals, the determination of which
17 bidder's response to a request for bids offers the lowest price shall
18 be made on the basis of the price of: (i) the base specification plus
19 the price of any selected specified alternate proposals; or (ii) a
20 choice of specified alternative proposals within the limit of funds
21 that may be made available for a project. If a contracting unit
22 provides for more than one specified alternate proposal, the
23 contracting unit shall specify in the bid specification the criteria or
24 ranked order by which specified alternate proposals shall be
25 selected and included in the award of the contract by the governing
26 body, provided that this requirement shall only apply to a project
27 with a total estimated cost, including specified alternate proposals,
28 of greater than \$500,000. The aggregate dollar value of accepted
29 specified alternative proposals shall not exceed 50 percent of the
30 base bid. If a contracting unit is found in a court of law to have
31 chosen specific alternative proposals in a manner intended to award
32 a contract to a specific vendor, the bids shall be voided, the
33 contracting unit shall rebid the project, and a plaintiff who prevails
34 in any proceeding shall be entitled to a reasonable attorney's fee.

35 For the purposes of this subsection:

36 "Specified alternate proposal" means a requirement of the bid
37 specification for bidders to submit prices for reduced, modified or
38 supplemental work in addition to the base proposal which may
39 include, but not be limited to, a change in project scope or the use
40 of alternative materials or methods of construction;

41 "Base specification" means the plans and specifications for the
42 erection, alteration or repair of the building, structure, facility or
43 other improvement to real property that are required to be met by all
44 bidders without exception ; and

45 e. in the case of a project that includes the removal of soil from
46 the site, '[a statement provided by a laboratory using testing
47 methods approved by the Department of Environmental Protection]

1 disclosure of any documentation relative to the known soil
2 conditions at the site including, but not limited to, any test results¹
3 specifying the level of contamination, if any, of the soil that has
4 been found at the site of the project, or ¹if a project is located on a
5 site with historical or suspected contamination,¹ a line item
6 allowance ¹or minimum unit price line item for soil testing and
7 contaminated soil disposal¹, which shall be a good faith effort on
8 the part of the contracting unit to reasonably estimate the total cost
9 of testing the soil ¹[, and if found to be contaminated, the cost of
10 disposal of the contaminated soil] and disposing of it¹ .

11 (cf: P.L.2009, c.292, s.1)

12

13 ¹[2.(New section) The Department of Environmental Protection
14 may adopt rules and regulations pursuant to the "Administrative
15 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing
16 the criteria under which soil testing shall be conducted, and the
17 testing parameters therefor, for projects subject to the provisions of
18 subsection e. of section 1 of P.L.1999, c.39 (C.40A:11-23.1), upon
19 a determination that such rules and regulations are necessary for the
20 protection of public health and safety.]¹

21

22 ¹2. (New section) In the case of a project for the erection,
23 alteration, or repair of a building, structure, facility or other
24 improvement to real property, the total price of which exceeds the
25 amount set forth in, or the amount calculated by the Governor
26 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), that does
27 not have historical or suspected soil contamination, or for which the
28 plans, specifications and bid proposal documents for the project do
29 not include a line item allowance or minimum unit price line item
30 for soil testing and contaminated soil disposal pursuant to
31 subsection e. of section 1 of P.L.1999, c.39 (C.40A:11-23.1), and
32 contaminated soil from the site cannot be disposed of pursuant to
33 the plans, specifications and bid proposal documents due to the
34 contaminated soil being found to be different from the type or
35 quality originally disclosed, the contracting unit shall approve ²,
36 consistent with and subject to the "Local Public Contracts Law,"
37 P.L.1971, c.198 (C.40A:11-1 et seq.), and any rules or regulations
38 adopted pursuant thereto,² a change order to reimburse the
39 contractor for the additional ²reasonable² costs ², as determined by
40 the contracting unit,² required to test and dispose of the
41 contaminated soil.¹

42

43 3. This act shall take effect immediately.

A1289 [2R]

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Requires plans, specifications, and bid proposal documents for certain local public contracts to address soil contamination, and requires contracting unit to approve change order under certain circumstances related thereto.

ASSEMBLY, No. 1289

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Co-Sponsored by:

Assemblywoman Wagner, Assemblymen Benson and Eustace

SYNOPSIS

Requires plans, specifications, and bid proposal documents for certain local public contracts to address soil contamination.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/3/2012)

1 AN ACT concerning certain local public contracts for projects
2 involving the removal of soil, and amending and supplementing
3 P.L.1999, c.39.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.1999, c.39 (C.40A:11-23.1) is amended to
9 read as follows:

10 1. All plans, specifications and bid proposal documents for the
11 erection, alteration, or repair of a building, structure, facility or
12 other improvement to real property, the total price of which exceeds
13 the amount set forth in, or the amount calculated by the Governor
14 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), shall
15 include:

16 a. a document for the bidder to acknowledge the bidder's
17 receipt of any notice or revisions or addenda to the advertisement or
18 bid documents; and

19 b. a form listing those documentary and informational forms,
20 certifications, and other documents that the contracting agent
21 requires each bidder to submit with the bid. The form shall list each
22 of the items to be submitted with the bid proposal and a place for
23 the bidder to indicate, by initialing each entry, that the bidder has
24 included those required items with the completed bid proposal.
25 Each bidder shall complete this form and submit it with the bid
26 proposal in addition to those documentary and informational forms,
27 certifications, and other documents that are listed on the form; and

28 c. a statement indicating whether uniformed law enforcement
29 officers will be required for the project. The statement shall include
30 a line item allowance, which shall be a good faith effort on the part
31 of the contracting unit, to reasonably estimate the total cost of
32 traffic control personnel, vehicles, equipment, administrative, or
33 any other costs associated with additional traffic control
34 requirements required by the contracting unit, or any other public
35 entity affected by the project, above and beyond the bidder's traffic
36 control personnel, vehicles, equipment, and administrative costs.
37 The individuals responsible for the assignment of uniformed law
38 enforcement officers for any municipalities affected by a project
39 shall be required to determine where traffic safety control is needed
40 for a project, and calculate the number and placement of all
41 necessary personnel, equipment, and the costs associated with these,
42 including hourly rates, and submit this information to the
43 contracting unit.

44 The contracting unit shall not be responsible for additional traffic
45 control costs beyond the number of working days specified in the

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 construction contract in accordance with section 17 of P.L.1971,
2 c.198 (C.40A:11-17), when such a delay is caused by the contractor
3 and liquidated damages have been assessed.

4 The statement prescribed under this subsection shall not be
5 required if the contracting unit will provide for the direct payment
6 of uniformed law enforcement officers and any additional costs
7 directly associated with the provision of those officers; and

8 d. at the option of the contracting unit, specified alternate
9 proposals in addition to a base specification. When the contracting
10 unit specifies alternate proposals, the determination of which
11 bidder's response to a request for bids offers the lowest price shall
12 be made on the basis of the price of: (i) the base specification plus
13 the price of any selected specified alternate proposals; or (ii) a
14 choice of specified alternative proposals within the limit of funds
15 that may be made available for a project. If a contracting unit
16 provides for more than one specified alternate proposal, the
17 contracting unit shall specify in the bid specification the criteria or
18 ranked order by which specified alternate proposals shall be
19 selected and included in the award of the contract by the governing
20 body, provided that this requirement shall only apply to a project
21 with a total estimated cost, including specified alternate proposals,
22 of greater than \$500,000. The aggregate dollar value of accepted
23 specified alternative proposals shall not exceed 50 percent of the
24 base bid. If a contracting unit is found in a court of law to have
25 chosen specific alternative proposals in a manner intended to award
26 a contract to a specific vendor, the bids shall be voided, the
27 contracting unit shall rebid the project, and a plaintiff who prevails
28 in any proceeding shall be entitled to a reasonable attorney's fee.

29 For the purposes of this subsection:

30 "Specified alternate proposal" means a requirement of the bid
31 specification for bidders to submit prices for reduced, modified or
32 supplemental work in addition to the base proposal which may
33 include, but not be limited to, a change in project scope or the use
34 of alternative materials or methods of construction;

35 "Base specification" means the plans and specifications for the
36 erection, alteration or repair of the building, structure, facility or
37 other improvement to real property that are required to be met by all
38 bidders without exception ; and

39 e. in the case of a project that includes the removal of soil from
40 the site, a statement provided by a laboratory using testing methods
41 approved by the Department of Environmental Protection
42 specifying the level of contamination, if any, of the soil that has
43 been found at the site of the project, or a line item allowance, which
44 shall be a good faith effort on the part of the contracting unit to
45 reasonably estimate the total cost of testing the soil, and if found to
46 be contaminated, the cost of disposal of the contaminated soil .

47 (cf: P.L.2009, c.292, s.1)

1 2. (New section) The Department of Environmental Protection
2 may adopt rules and regulations pursuant to the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing
4 the criteria under which soil testing shall be conducted, and the
5 testing parameters therefor, for projects subject to the provisions of
6 subsection e. of section 1 of P.L.1999, c.39 (C.40A:11-23.1), upon
7 a determination that such rules and regulations are necessary for the
8 protection of public health and safety.

9

10 3. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill amends section 1 of P.L.1999, c.39 (C.40A:11-23.1),
16 the section of law concerning plans, specifications, and bid proposal
17 documents for the erection, alteration, or repair of a building,
18 structure, facility or any other improvement to real property, for
19 which the total price exceeds the amount set forth in, or the amount
20 calculated by the Governor pursuant to, section 3 of P.L.1971, c.198
21 (C.40A:11-3), i.e., the "Local Public Contracts Law."

22 Under this bill, any plans, specifications, and bid proposal
23 documents for such projects that involve the removal of soil from
24 the site would be required to include a statement provided by a
25 laboratory using sampling methods approved by the Department of
26 Environmental Protection specifying the level of contamination of
27 the soil that has been found at the site of the project. In the
28 alternative, a line item allowance would be authorized, which must
29 be a good faith effort on the part of the contracting unit to
30 reasonably estimate the total cost of testing the soil and, if found to
31 be contaminated, the cost of disposal of the contaminated soil.

32 The bill also adds a provision authorizing the Department of
33 Environmental Protection to adopt rules and regulations that
34 establish criteria under which soil testing shall be conducted, and
35 the testing parameters therefor, for projects subject to the provisions
36 of the bill, upon a determination that rules and regulations are
37 necessary for the protection of public health and safety.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1289

STATE OF NEW JERSEY

DATED: FEBRUARY 2, 2012

The Assembly Environment and Solid Waste Committee reports favorably Assembly Bill No. 1289.

This bill amends section 1 of P.L.1999, c.39 (C.40A:11-23.1), the section of law concerning plans, specifications, and bid proposal documents for the erection, alteration, or repair of a building, structure, facility or any other improvement to real property, for which the total price exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), i.e., the "Local Public Contracts Law."

Under this bill, any plans, specifications, and bid proposal documents for such projects that involve the removal of soil from the site would be required to include a statement provided by a laboratory using sampling methods approved by the Department of Environmental Protection (DEP) specifying the level of contamination of the soil that has been found at the site of the project. In the alternative, a line item allowance would be authorized, which must be a good faith effort on the part of the contracting unit to reasonably estimate the total cost of testing the soil and, if found to be contaminated, the cost of disposal of the contaminated soil.

The bill authorizes the DEP to adopt rules and regulations that establish criteria under which soil testing must be conducted, and the testing parameters therefor, for projects subject to the provisions of the bill, upon a determination that rules and regulations are necessary for the protection of public health and safety.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
ASSEMBLY, No. 1289

with Assembly Floor Amendments
(Proposed by Assemblywoman JASEY)

ADOPTED: MAY 24, 2012

These floor amendments would require any plans, specifications, and bid proposal documents for projects that involve the removal of soil from the site, for which the total price exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), i.e., the “Local Public Contracts Law,” to disclose any information relative to the soil conditions at the project site, or in the case of historical or suspected contamination at the project site, include a line item allowance or minimum unit price line item for the testing and disposal of the contaminated soil to be removed.

These floor amendments also add a new section that would require a contracting unit to approve a change order to reimburse the contractor for additional costs relative to testing and disposal of the contaminated soil in instances when the soil cannot be disposed of pursuant to the plans, specifications and bid proposal documents for project sites that do not have historical or suspected soil contamination or a line item allowance or minimum unit price line item for testing and disposal of the soil.

Lastly, these floor amendments delete the provisions of the bill that would have: (1) required any plans, specifications, and bid proposal documents for such projects to include a statement provided by a laboratory using sampling methods approved by the Department of Environmental Protection (DEP) specifying the level of contamination of the soil that has been found at the site of the project; and (2) authorized the DEP to adopt rules and regulations that establish criteria under which soil testing would be conducted, and the testing parameters therefor, for projects subject to the provisions of the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1289

with Assembly Floor Amendments
(Proposed by Assemblywoman JASEY)

ADOPTED: JUNE 21, 2012

These floor amendments amend section 2 of the bill to require the contracting unit to approve, consistent with and subject to the “Local Public Contracts Law,” and any rules or regulations adopted pursuant thereto, a change order to reimburse the contractor for the additional reasonable costs, as determined by the contracting unit, required to test and dispose of the contaminated soil.

SENATE, No. 1355

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 6, 2012

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

SYNOPSIS

Requires plans, specifications, and bid proposal documents for certain local public contracts to address soil contamination.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain local public contracts for projects
2 involving the removal of soil, and amending and supplementing
3 P.L.1999, c.39.

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25 Each bidder shall complete this form and submit it with the bid
26 proposal in addition to those documentary and informational forms,
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28 c. a statement indicating whether uniformed law enforcement
29 officers will be required for the project. The statement shall include
30 a line item allowance, which shall be a good faith effort on the part
31 of the contracting unit, to reasonably estimate the total cost of
32 traffic control personnel, vehicles, equipment, administrative, or
33 any other costs associated with additional traffic control
34 requirements required by the contracting unit, or any other public
35 entity affected by the project, above and beyond the bidder's traffic
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37 The individuals responsible for the assignment of uniformed law
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40 for a project, and calculate the number and placement of all
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42 including hourly rates, and submit this information to the
43 contracting unit.

44 The contracting unit shall not be responsible for additional traffic
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Matter underlined thus is new matter.

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2 c.198 (C.40A:11-17), when such a delay is caused by the contractor
3 and liquidated damages have been assessed.

4 The statement prescribed under this subsection shall not be
5 required if the contracting unit will provide for the direct payment
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9 proposals in addition to a base specification. When the contracting
10 unit specifies alternate proposals, the determination of which
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37 other improvement to real property that are required to be met by all
38 bidders without exception ; and

39 e. in the case of a project that includes the removal of soil from
40 the site, a statement provided by a laboratory using testing methods
41 approved by the Department of Environmental Protection
42 specifying the level of contamination, if any, of the soil that has
43 been found at the site of the project, or a line item allowance, which
44 shall be a good faith effort on the part of the contracting unit to
45 reasonably estimate the total cost of testing the soil, and if found to
46 be contaminated, the cost of disposal of the contaminated soil .

47 (cf: P.L.2009, c.292, s.1)

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 1355

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 2012

The Senate Environment and Energy Committee favorably reports Senate Bill No. 1355.

This bill amends section 1 of P.L.1999, c.39 (C.40A:11-23.1), the section of law concerning plans, specifications, and bid proposal documents for the erection, alteration, or repair of a building, structure, facility or any other improvement to real property, for which the total price exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), i.e., the “Local Public Contracts Law.”

Under this bill, any plans, specifications, and bid proposal documents for such projects that involve the removal of soil from the site would be required to include a statement provided by a laboratory using sampling methods approved by the Department of Environmental Protection (DEP) specifying the level of contamination of the soil that has been found at the site of the project. In the alternative, a line item allowance would be authorized, which must be a good faith effort on the part of the contracting unit to reasonably estimate the total cost of testing the soil and, if found to be contaminated, the cost of disposal of the contaminated soil.

The bill authorizes the DEP to adopt rules and regulations that establish criteria under which soil testing must be conducted, and the testing parameters therefor, for projects subject to the provisions of the bill, upon a determination that rules and regulations are necessary for the protection of public health and safety.

STATEMENT TO
SENATE, No. 1355

with Senate Floor Amendments
(Proposed by Senator BATEMAN)

ADOPTED: MAY 31, 2012

These floor amendments would require any plans, specifications, and bid proposal documents for projects that involve the removal of soil from the site, for which the total price exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), i.e., the “Local Public Contracts Law,” to disclose any information relative to the soil conditions at the project site, or in the case of historical or suspected contamination at the project site, include a line item allowance or minimum unit price line item for the testing and disposal of the contaminated soil to be removed.

These floor amendments also add a new section that would require a contracting unit to approve a change order to reimburse the contractor for additional costs relative to testing and disposal of the contaminated soil in instances when the soil cannot be disposed of pursuant to the plans, specifications and bid proposal documents for project sites that do not have historical or suspected soil contamination or a line item allowance or minimum unit price line item for testing and disposal of the soil.

Lastly, these floor amendments delete the provisions of the bill that would have: (1) required any plans, specifications, and bid proposal documents for such projects to include a statement provided by a laboratory using sampling methods approved by the Department of Environmental Protection (DEP) specifying the level of contamination of the soil that has been found at the site of the project; and (2) authorized the DEP to adopt rules and regulations that establish criteria under which soil testing would be conducted, and the testing parameters therefor, for projects subject to the provisions of the bill.

STATEMENT TO
[First Reprint]
SENATE, No. 1355

with Senate Floor Amendments
(Proposed by Senator BATEMAN)

ADOPTED: JUNE 21, 2012

These floor amendments amend section 2 of the bill to require the contracting unit to approve, consistent with and subject to the “Local Public Contracts Law,” and any rules or regulations adopted pursuant thereto, a change order to reimburse the contractor for the additional reasonable costs, as determined by the contracting unit, required to test and dispose of the contaminated soil.