

40A:11-2

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:11-2

(Local public contracts - exempt
homemaker - home health services
from public bidding)

LAWS OF: 1983

CHAPTER: 331

Bill No: A3446

Sponsor(s): Girgenti and Kern

Date Introduced: April 25, 1983

Committee:

Assembly: Municipal Government

Senate: County and Municipal Government

Amended during passage:

YES

Substituted for S3408 (not attached
since identical to A3446)

Date of Passage:

Assembly: June 16, 1983

Senate: July 11, 1983

Date of Approval: September 2, 1983

Following statements are attached if available:

Sponsor statement:

YES

(Below) Also attached:
Assembly amendments,
adopted 6/13/83 (with
statement)

Committee statement:

Assembly

YES

Senate

YES

Fiscal Note:

NO

Veto Message:

NO

Message on Signing:

NO

Following were printed:

Reports:

NO

Hearings:

NO

Sponsor's Statement:

The purpose of this bill is to permit local governing bodies to award contracts
(OVER)

Vertical stamp: RECEIVED... JUN 16 1983... LEGISLATIVE...

for the performance of homemaker -- home health services by voluntary, nonprofit agencies without public bidding.

331 9-2-83 83
[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 3446

STATE OF NEW JERSEY

INTRODUCED APRIL 25, 1983

By Assemblymen GIRGENTI and KERN

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

3 2. Definitions. As used herein the following words have the
4 following definitions, unless the context otherwise indicates:

5 (1) "Contracting unit" means:

6 (a) Any county; or

7 (b) Any municipality; or

8 (c) Any board, commission, committee, authority or agency,
9 which is not a State board, commission, committee, authority
10 or agency, and which has administrative jurisdiction over any
11 district other than a school district, project, or facility, in-
12 cluded or operating in whole or in part, within the territorial
13 boundaries of any county or municipality which exercises
14 functions which are appropriate for the exercise by one or
15 more units of local government, and which has statutory power
16 to make purchases and enter into contracts or agreements for
17 the performance of any work or the furnishing or hiring of any
18 materials or supplies usually required, the cost or contract
19 price of which is to be paid with or out of public funds.

20 (2) "Governing body" means:

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:

*—Assembly amendments adopted June 13, 1983.

**—Senate committee amendments adopted June 30, 1983.

21 (a) The ****[board of chosen freeholders]**** ***governing*
 22 *body*** of the county, when the purchase is to be made or the
 23 contract or agreement is to be entered into by, or in behalf of, a
 23A county; or

24 (b) The governing body of the municipality, when the pur-
 25 chase is to be made or the contract or agreement is to be entered
 26 into by, or on behalf of, a municipality; or

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

29 (3) "Contracting Agent" means the governing body of a con-
 30 tracting unit, or any board, commission, committee, officer, depart-
 31 ment, branch or agency which has the power to prepare the
 32 advertisements, to advertise for and receive bids and, as permitted
 33 by this act, to make awards for the contracting unit in connection
 34 with purchases, contracts or agreements.

35 (4) "Purchase" is a transaction, for a valuable consideration,
 36 creating or acquiring an interest in goods, services and property,
 37 except real property or any interest therein.

38 (5) "Materials" includes goods and property subject to
 39 ****[article]**** ***chapter*** 2 of Title 12A of the New Jersey
 40 Statutes, apparatus, or any other tangible thing, except real prop-
 40A erty or any interest therein.

41 (6) "Professional services" means services rendered or per-
 42 formed by a person authorized by law to practice a recognized
 43 profession, whose practice is regulated by law, and the performance
 44 of which services requires knowledge of an advanced type in a field
 45 of learning acquired by a prolonged formal course of specialized
 46 instruction and study as distinguished from general academic in-
 47 struction or apprenticeship and training. Professional services may
 48 also mean services rendered in the performance of work that is
 49 original and creative in character in a recognized field of artistic
 50 endeavor.

51 (7) "Extraordinary unspecifiable services" means services
 52 which are specialized and qualitative in nature requiring expertise,
 53 extensive training and proven reputation in the field of endeavor.

54 (8) "Project" means any work, undertaking, program, activity,
 55 development, redevelopment, construction or reconstruction of any
 56 area or areas.

57 (9) "Work" includes services and any other activity of a tangi-
 58 ble or intangible nature performed or assumed pursuant to a con-
 59 tract or agreement with a contracting unit.

60 (10) "*Homemaker—home health services*" means *at home per-*
 61 *sonal care and home management provided to an individual or*

62 *members of his family who reside with him, or both, necessitated*
 63 *by the individual's illness or incapacity. "Homemaker—home*
 64 *health services" includes, but is not limited to, the services of a*
 65 *trained homemaker.*

1 2. 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
 23 expressed. The governing body shall in each instance state sup-
 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
42 issuance and sale thereof by a contracting unit;

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

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

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

51 (l) Election expenses;

52 (m) Insurance, including the purchase of insurance coverage and
53 consultant services, which exception shall be in accordance with the
54 requirements for extraordinary, unspecifiable services; **[or]**

55 (n) The doing of any work by handicapped persons employed
56 by a sheltered workshop; ***[or]***

56A **(o) The provisions of any service or the furnishing of materials*
56B *including those of a commercial nature, attendant upon the opera-*
56C *tion of a restaurant by any nonprofit, duly incorporated, historical*
56D *society at or on any historical preservation site; or**

57 ***[o.]*** **p.* Homemaker—home health services performed by*
58 *voluntary, nonprofit agencies.*

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

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

77 (i) A reasonable effort is first made by the contracting agent
78 to determine that the same or equivalent materials or supplies,
79 at a cost which is lower than the negotiated price, are not
80 available from an agency or authority of the United States,
81 the State of New Jersey or of the county in which the contract-
82 ing unit is located, or any municipality in close proximity to
83 the contracting unit;

84 (ii) The terms, conditions, restrictions and specifications
85 set forth in the negotiated contract or agreement are not
86 substantially different from those which were the subject of
87 competitive bidding pursuant to section 4 ****[(C. 40A :11-4)]****
88 of this act; and,

89 (iii) Any minor amendment or modification of any of the
90 terms, conditions, restrictions and specifications, which were
91 the subject of competitive bidding pursuant to section 4 of this
92 act, shall be stated in the resolution awarding such contract
93 or agreement;

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

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

1 3. This act shall take effect immediately.

87 competitive bidding pursuant to section 4 (C. 40A:11-4) of
88 this act; and,

89 (iii) Any minor amendment or modification of any of the
90 terms, conditions, restrictions and specifications, which were
91 the subject of competitive bidding pursuant to section 4 of this
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109 is based, and when appropriate, it may institute appropriate pro-
110 ceedings in any State or federal court of competent jurisdiction for
111 a violation of any State or federal antitrust law or laws relating to
112 the unlawful restraint of trade.

1 3. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to permit local governing bodies to award contracts for the performance of homemaker—home health services by voluntary, nonprofit agencies without public bidding.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE
STATEMENT TO
ASSEMBLY, No. 3446
STATE OF NEW JERSEY

DATED: MAY 5, 1983

Assembly Bill 3446 amends sections 2 and 5 of the "Local Public Contracts Law," P. L. 1971, c. 198 (C. 40A:11-2 and 5) to permit local governing bodies to award contracts for the performance of homemaker-home health services without public bidding. "Homemaker-home health services" are defined in the bill as "at home personal care and home management provided to an individual or members of his family who reside with him, or both, necessitated by the individual's illness or incapacity." Included in that definition are the services of a trained homemaker.

Under the provisions of the "Local Public Contracts Law," local governing bodies are permitted to make, negotiate and award contracts for "professional" and "extraordinary unspecifiable" services without public bidding. The statutory definitions of those two services appears to exclude homemaker-home health services. "Professional services" are defined as "services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training." The exemption under "extraordinary unspecifiable services" is limited to "services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor."

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3446

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 30, 1983

Assembly Bill No. 3446 amends sections 2 and 5 of the "Local Public Contracts Law," P. L. 1971, c. 198 (C. 40A:11-2 and 5) to permit local governing bodies to award contracts for the performance of homemaker-home health services without public bidding. "Homemaker-home health services" are defined in the bill as "at home personal care and home management provided to an individual or members of his family who reside with him, or both, necessitated by the individual's illness or incapacity." Included in that definition are the services of a trained homemaker.

Under the provisions of the "Local Public Contracts Law," local governing bodies are permitted to make, negotiate and award contracts for "professional" and "extraordinary unspecifiable" services without public bidding. The statutory definitions of those two services appears to exclude homemaker-home health services. "Professional services" are defined as "services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training." The exemption under "extraordinary unspecifiable services" is limited to "services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor."

The Senate committee amendments are technical in nature, and make the bill identical to Senate Bill No. 3408 with Sca.

to

ADOPTED
JUN 18 1983

Assembly Bill No. 3446

(Proposed by Assemblyman Girgenti, 6/13/83)

Amend:

Page	Sec.	Line	
4	2	56	Omit "or"
4	2	After 56	Insert: <p>"(o) The provisions 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."</p>
4	2	57	Omit "o." insert "(p)"

STATEMENT

These amendments conform section 2 in the bill to the recent amendments made to that section by P.L. 1983, c. 209.