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LAW/RWH

[Third Reprint]

**ASSEMBLY, No. 3698**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED FEBRUARY 5, 2009

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Assemblyman JOSEPH VAS**

**District 19 (Middlesex)**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

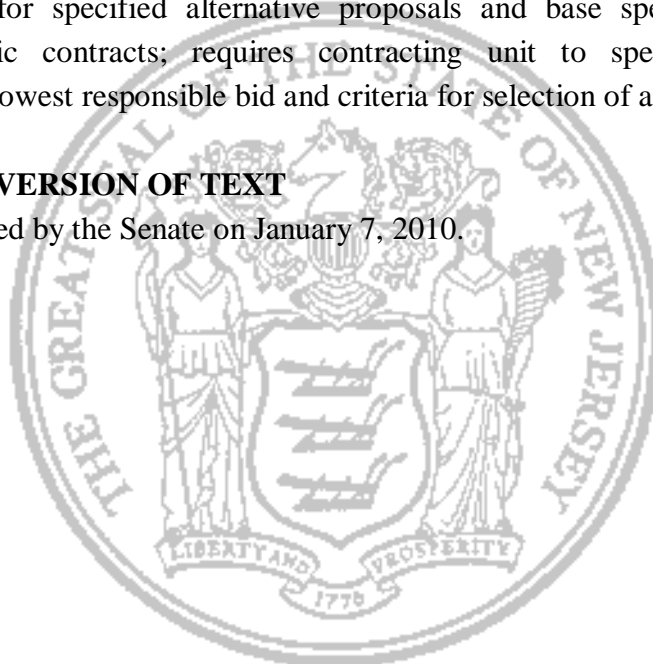
**Senator Van Drew**

**SYNOPSIS**

Provides for specified alternative proposals and base specifications for certain public contracts; requires contracting unit to specify basis for determining lowest responsible bid and criteria for selection of alternate bids.

**CURRENT VERSION OF TEXT**

As amended by the Senate on January 7, 2010.



**(Sponsorship Updated As Of: 1/12/2010)**

1 AN ACT concerning local public contracts and amending P.L.1999,  
2 c.39.

3

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

6

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

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

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

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

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

43 The contracting unit shall not be responsible for additional traffic  
44 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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly AHO committee amendments adopted May 7, 2009.

<sup>2</sup>Senate SSG committee amendments adopted January 4, 2010.

<sup>3</sup>Senate floor amendments adopted January 7, 2010.

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<sup>1</sup> ].; and<sup>1</sup>

8 d. <sup>1</sup>[A contracting unit shall specify in the bidding documents  
9 that the low bid will be determined on the basis of the value of the  
10 contract to be awarded. The contracting unit may utilize a base bid  
11 or propose alternate bids, or both, within the limit of available funds  
12 for a project. When the contracting unit utilizes alternate bids, the  
13 “lowest responsible bidder” determination shall be made on the  
14 basis of whether the contract is being valued according to the base  
15 bid only, the base bid plus any selected alternate bids, or alternate  
16 bids only. If a contracting unit provides for alternate bids, it shall  
17 specify in the bid documents the specific basis for selecting an  
18 alternate bid and, when there are multiple alternate bids, the criteria  
19 by which multiple alternate bids will be ranked. When the selection  
20 of alternate bids is made, in whole or in part, on the basis of  
21 available funds, the contracting unit shall, upon the written request  
22 of any bidder, promptly provide competent evidence of the actual  
23 amount of available funds] <sup>2</sup>[at the option of the contracting unit,  
24 specified alternate proposals in addition to a base specification.  
25 When the contracting unit specifies alternate proposals, the  
26 determination of which bidder's response to a request for bids offers  
27 the lowest price shall be made on the basis of the price of the base  
28 specification plus the price of any selected specified alternate  
29 proposals within the limit of available funds for a project. If a  
30 contracting unit provides for more than one specified alternate  
31 proposal, the contracting unit shall specify in the bid specification  
32 the ranked order by which each specified alternate proposal shall be  
33 selected and included in the award of the contract by the governing  
34 body<sup>1</sup> ] at the option of the contracting unit, specified alternate  
35 proposals in addition to a base specification. When the contracting  
36 unit specifies alternate proposals, the determination of which  
37 bidder's response to a request for bids offers the lowest price shall  
38 be made on the basis of the price of: (i) the base specification plus  
39 the price of any selected specified alternate proposals; or (ii) a  
40 choice of specified alternative proposals within the limit of funds  
41 that may be made available for a project. If a contracting unit  
42 provides for more than one specified alternate proposal, the  
43 contracting unit shall specify in the bid specification the criteria or  
44 ranked order by which specified alternate proposals shall be  
45 selected and included in the award of the contract by the governing  
46 body<sup>3</sup>, provided that this requirement shall only apply to a project  
47 with a total estimated cost, including specified alternate proposals,

1 of greater than \$500,000<sup>3</sup> . The aggregate dollar value of accepted  
2 specified alternative proposals shall not exceed 50 percent of the  
3 base bid. If a contracting unit is found in a court of law to have  
4 chosen specific alternative proposals in a manner intended to award  
5 a contract to a specific vendor, the bids shall be voided, the  
6 contracting unit shall rebid the project, and a plaintiff who prevails  
7 in any proceeding shall be entitled to a reasonable attorney's fee <sup>3</sup>].  
8 These requirements shall only apply to a project with a total  
9 estimated cost, including specified alternate proposals, of greater  
10 than \$500,000<sup>2</sup> ]<sup>3</sup>.

11 For the purposes of this subsection:

12 <sup>1</sup>["Alternate bid" means the amount stated in the bidding  
13 document to be added to or deducted from the amount of the base  
14 bid if the corresponding change in project scope or alternate  
15 materials or methods of construction is accepted, provided,  
16 however, that no alternate bid or bids shall exceed 50 percent of the  
17 base bid] <sup>2</sup>["Specified alternate proposal" means a requirement of  
18 the bid specification for additional work above the base  
19 specification which may include, but not be limited to, a change in  
20 project scope and the use of alternate materials or methods of  
21 construction. The aggregate dollar value of accepted specified  
22 alternate proposals shall not exceed 50 percent of the base bid<sup>1</sup>]  
23 "Specified alternate proposal" means a requirement of the bid  
24 specification for bidders to submit prices for reduced, modified or  
25 supplemental work in addition to the base proposal which may  
26 include, but not be limited to, a change in project scope or the use  
27 of alternative materials or methods of construction<sup>2</sup> ;

28 <sup>1</sup>["Base bid" means the amount of money stated in the bidding  
29 document as the sum for which the bidder offers to perform the  
30 described work.]

31 <sup>2</sup>["Base specification" means the basic description of goods and  
32 services that are required to be provided by all bidders without  
33 exception.<sup>1</sup>] "Base specification" means the plans and  
34 specifications for the erection, alteration or repair of the building,  
35 structure, facility or other improvement to real property that are  
36 required to be met by all bidders without exception.<sup>2</sup>

37 (cf: P.L.2006, c.9, s.1)

38

39 2. This act shall take effect <sup>1</sup>["immediately] on the first day of  
40 the fourth month next following the date of enactment<sup>1</sup>.

# ASSEMBLY, No. 3698

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 5, 2009

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Assemblyman JOSEPH VAS**

**District 19 (Middlesex)**

**SYNOPSIS**

Provides for base and alternate bids for certain public contracts; requires contracting unit to specify basis for determining lowest responsible bid and criteria for selection of alternate bids.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/27/2009)**

1 AN ACT concerning local public contracts and amending P.L.1999,  
2 c.39.

3

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

6

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

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

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

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

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

43 The contracting unit shall not be responsible for additional traffic  
44 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.

8 d. A contracting unit shall specify in the bidding documents that  
9 the low bid will be determined on the basis of the value of the  
10 contract to be awarded. The contracting unit may utilize a base bid  
11 or propose alternate bids, or both, within the limit of available funds  
12 for a project. When the contracting unit utilizes alternate bids, the  
13 “lowest responsible bidder” determination shall be made on the  
14 basis of whether the contract is being valued according to the base  
15 bid only, the base bid plus any selected alternate bids, or alternate  
16 bids only. If a contracting unit provides for alternate bids, it shall  
17 specify in the bid documents the specific basis for selecting an  
18 alternate bid and, when there are multiple alternate bids, the criteria  
19 by which multiple alternate bids will be ranked. When the selection  
20 of alternate bids is made, in whole or in part, on the basis of  
21 available funds, the contracting unit shall, upon the written request  
22 of any bidder, promptly provide competent evidence of the actual  
23 amount of available funds.

24 For the purposes of this subsection:

25 “Alternate bid” means the amount stated in the bidding document  
26 to be added to or deducted from the amount of the base bid if the  
27 corresponding change in project scope or alternate materials or  
28 methods of construction is accepted, provided, however, that no  
29 alternate bid or bids shall exceed 50 percent of the base bid;

30 “Base bid” means the amount of money stated in the bidding  
31 document as the sum for which the bidder offers to perform the  
32 described work.

33 (cf: P.L.2006, c.9, s.1)

34

35 2. This act shall take effect immediately.

36

37

38

#### STATEMENT

39

40 This bill amends the section of law concerning plans,  
41 specifications, and bid proposal documents for the erection,  
42 alteration, or repair of a building, structure, facility or other  
43 improvement to real property, for which the total price exceeds the  
44 amount set forth in, or the amount calculated by, the Governor  
45 pursuant to section 3 of P.L.1971, c.198 (C.40A:11-3). The bill  
46 provides that a contracting unit shall specify in the bidding  
47 documents that the low bid will be determined on the basis of the  
48 value of the contract to be awarded. The contracting unit may

1 utilize a base bid or propose alternate bids, or both, within the limit  
2 of available funds for a project. When the contracting unit utilizes  
3 alternate bids, the “lowest responsible bidder” determination shall  
4 be made on the basis of whether the contract is being valued  
5 according to the base bid only, the base bid plus any selected  
6 alternate bids, or alternate bids only. If a contracting unit provides  
7 for alternate bids, it shall specify in the bid documents the specific  
8 basis for selecting an alternate bid and, when there are multiple  
9 alternate bids, the criteria by which multiple alternate bids will be  
10 ranked. When the selection of alternate bids is made, in whole or in  
11 part, on the basis of available funds, the contracting unit shall, upon  
12 the written request of any bidder, promptly provide competent  
13 evidence of the actual amount of available funds.

14 For the purposes of this bill, “alternate bid” means the amount  
15 stated in the bidding document to be added to or deducted from the  
16 amount of the base bid if the corresponding change in project scope  
17 or alternate materials or methods of construction is accepted,  
18 provided, however, that no alternate bid or bids shall exceed 50  
19 percent of the base bid, and “base bid” means the amount of money  
20 stated in the bidding document as the sum for which the bidder  
21 offers to perform the described work.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 3698**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 7, 2009

The Assembly Housing and Local Government Committee reports favorably and with committee amendments Assembly Bill No. 3698.

As amended, this bill amends the section of law concerning plans, specifications, and bid proposal documents for the erection, alteration, or repair of a building, structure, facility, or 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). As amended by the committee, the bill provides that a contracting unit shall determine which bidder offers the lowest price on the basis of the amounts of the base specification and any specified alternate proposals. The contracting unit may provide a base specification or specified alternate proposals within the limit of available funds for a project. When the bid specification is provided, the contracting unit shall specify the ranked order by which each specified alternate proposal shall be selected and included in a contract.

For the purposes of this bill, as amended, "specified alternate proposal" means a requirement of the bid specification in addition to the base specification, costs of which are limited to an aggregate dollar value 50 percent above the base bid. "Base specification" means the amount of money stated in the bidding document that is required to be performed by all owners bidding for a contract.

It is the committee's understanding that, as amended, this legislation would permit any bidder to request, in writing, the Certificate of Available Funds or other information concerning the availability of funds pursuant to P.L.1963, c.73, as amended by P.L.2001, c.404.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- 1) Make technical corrections, including changing language to more closely correspond to the form of existing statutes.
- 2) Refine the definitions of alternatives, now called "specified

alternate proposals" to a basic proposal for the provision of construction services, now termed a "base specification."

3) Remove language requiring a contracting unit to provide criteria on which it ranks specified alternate proposals.

4) Remove certain disclosure requirements.

5) Change language to clarify the method a contracting unit may use to determine which bidder offers the lowest price.

6) Provide for a delayed effective date.

# SENATE STATE GOVERNMENT COMMITTEE

## STATEMENT TO

[First Reprint]

### **ASSEMBLY, No. 3698**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 4, 2010

The Senate State Government Committee reports favorably and with committee amendments Assembly Bill No. 3698.

This bill amends 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).

As amended, this bill is identical to Senate Bill No. 2782.

#### COMMITTEE AMENDMENTS

As amended this bill:

1) revises the definition of “alternate bid” to read "specified alternate proposal" means a requirement of the bid specification for bidders to submit prices for reduced, modified or supplemental work in addition to the base proposal which may include, but not be limited to, a change in project scope or the use of alternative materials or methods of construction;

2) revises the definition of “base bid” to read "base specification" means the plans and specifications for the erection, alteration or repair of the building, structure, facility or other improvement to real property that are required to be met by all bidders without exception;

3) clarifies that the method a contracting unit may use to determine which bidder offers the lowest price is to be based on the price of the base specification plus the price of any selected specified alternative proposal within the limit of available funds for a project;

4) requires that if a contracting unit provides for more than one specified alternative proposal, the contracting unit is to specify in the bid specification the criteria or ranked order by which specified alternate proposal shall be selected and included in the award of the contract by the governing body;

5) specifies that the aggregate dollar value of accepted specified alternative proposals must not exceed 50 percent of the base bid and if

a contracting unit is found in a court of law to have chose specific alternative proposals in a manner intended to award a contract to a specific vendor, the contracting unit must rebid the project, and a plaintiff who prevails in any proceeding would be entitled to a reasonable attorney's fee; and

6) provides that these requirements apply only to projects with a total estimated cost of greater than \$500,000.

STATEMENT TO

[Second Reprint]

**ASSEMBLY, No. 3698**

with Senate Floor Amendments  
(Proposed by Senator VAN DREW)

ADOPTED: JANUARY 7, 2010

Under the bill, if a contracting unit provides for more than one specified alternate proposal, the contracting unit must specify in the bid specification the criteria or ranked order by which specified alternate proposals are to be selected and included in the award of the contract by the governing body. These Senate amendments provide that this requirements only applies to a project with a total estimated cost, including specified alternate proposals, of greater than \$500,000.

**SENATE, No. 2782**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED MAY 7, 2009

**Sponsored by:**

**Senator JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**SYNOPSIS**

Provides for base and alternate bids for certain public contracts; requires contracting unit to specify basis for determining lowest responsible bid and criteria for selection of alternate bids.

**CURRENT VERSION OF TEXT**

As introduced.





1 AN ACT concerning local public contracts and amending P.L.1999,  
2 c.39.

3

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

6

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

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

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

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

43 The contracting unit shall not be responsible for additional traffic  
44 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.

8 d. A contracting unit shall specify in the bidding documents  
9 that the low bid will be determined on the basis of the value of the  
10 contract to be awarded. The contracting unit may utilize a base bid  
11 or propose alternate bids, or both, within the limit of available funds  
12 for a project. When the contracting unit utilizes alternate bids, the  
13 “lowest responsible bidder” determination shall be made on the  
14 basis of whether the contract is being valued according to the base  
15 bid only, the base bid plus any selected alternate bids, or alternate  
16 bids only. If a contracting unit provides for alternate bids, it shall  
17 specify in the bid documents the specific basis for selecting an  
18 alternate bid and, when there are multiple alternate bids, the criteria  
19 by which multiple alternate bids will be ranked. When the selection  
20 of alternate bids is made, in whole or in part, on the basis of  
21 available funds, the contracting unit shall, upon the written request  
22 of any bidder, promptly provide competent evidence of the actual  
23 amount of available funds.

24 For the purposes of this subsection:

25 “Alternate bid” means the amount stated in the bidding document  
26 to be added to or deducted from the amount of the base bid if the  
27 corresponding change in project scope or alternate materials or  
28 methods of construction is accepted, provided, however, that no  
29 alternate bid or bids shall exceed 50 percent of the base bid;

30 “Base bid” means the amount of money stated in the bidding  
31 document as the sum for which the bidder offers to perform the  
32 described work.

33 (cf: P.L.2006, c.9, s.1)

34

35 2. This act shall take effect immediately.

36

37

38

### STATEMENT

39

40 This bill amends the section of law concerning plans,  
41 specifications, and bid proposal documents for the erection,  
42 alteration, or repair of a building, structure, facility or other  
43 improvement to real property, for which the total price exceeds the  
44 amount set forth in, or the amount calculated by, the Governor  
45 pursuant to section 3 of P.L.1971, c.198 (C.40A:11-3). The bill  
46 provides that a contracting unit shall specify in the bidding  
47 documents that the low bid will be determined on the basis of the  
48 value of the contract to be awarded. The contracting unit may

**S2782 VAN DREW**

1 utilize a base bid or propose alternate bids, or both, within the limit  
2 of available funds for a project. When the contracting unit utilizes  
3 alternate bids, the “lowest responsible bidder” determination shall  
4 be made on the basis of whether the contract is being valued  
5 according to the base bid only, the base bid plus any selected  
6 alternate bids, or alternate bids only. If a contracting unit provides  
7 for alternate bids, it shall specify in the bid documents the specific  
8 basis for selecting an alternate bid and, when there are multiple  
9 alternate bids, the criteria by which multiple alternate bids will be  
10 ranked. When the selection of alternate bids is made, in whole or in  
11 part, on the basis of available funds, the contracting unit shall, upon  
12 the written request of any bidder, promptly provide competent  
13 evidence of the actual amount of available funds.

14 For the purposes of this bill, “alternate bid” means the amount  
15 stated in the bidding document to be added to or deducted from the  
16 amount of the base bid if the corresponding change in project scope  
17 or alternate materials or methods of construction is accepted,  
18 provided, however, that no alternate bid or bids shall exceed 50  
19 percent of the base bid, and “base bid” means the amount of money  
20 stated in the bidding document as the sum for which the bidder  
21 offers to perform the described work.

# SENATE STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### **SENATE, No. 2782**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 4, 2010

The Senate State Government Committee reports favorably and with committee amendments Senate Bill No. 2782.

This bill amends 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). The bill provides that a contracting unit is to determine which bidder offers the lowest price on the basis of the amounts of the base specification and any specified alternate proposals. The contracting unit may provide a base specification plus the price of any selected specified alternative proposals or a choice of specified alternate proposals within the limit of funds available for a project. When the bid specification is provided, the contracting unit is to specify the criteria or ranked order by which specified alternate proposals are to be selected and included in a contract. As amended by the committee, the aggregate dollar value of accepted specified alternative proposals is not to exceed 50 percent of the base bid. If a contracting unit is found in a court of law to have chosen specific alternative proposals in a manner intended to award a contract to a specific vendor, the bids would be voided, the contracting unit must rebid the project, and a plaintiff who prevails in any proceeding must be entitled to a reasonable attorney's fee. These requirements shall only apply to a project with a total estimated cost, including specified alternate proposals, of greater than \$500,000.

For the purposes of this bill as amended, "specified alternate proposal" means a requirement of the bid specification for bidders to submit prices for reduced, modified or supplemental work in addition to the base proposal which may include, but not be limited to, a change in project scope or the use of alternative materials or methods of construction; and "base specification" means the plans and specifications for the erection, alteration or repair of the building, structure, facility or other improvement to real property that are required to be met by all bidders without exception.

As amended, this bill is identical to Assembly Bill No. 3698 (2R).

COMMITTEE AMENDMENTS

The committee amended the bill to: 1) revise the definition of "alternate bid" to read "specified alternate proposal" meaning a requirement of the bid specification for bidders to submit prices for reduced, modified or supplemental work in addition to the base proposal which may include, but not be limited to, a change in project scope or the use of alternative materials or methods of construction;

2) revise the definition of "base bid" to read "base specification" meaning the plans and specifications for the erection, alteration or repair of the building, structure, facility or other improvement to real property that are required to be met by all bidders without exception;

3) clarify that the method a contracting unit may use to determine which bidder offers the lowest price is to be based on the price of the base specification plus the price of any selected specified alternative proposal within the limit of available funds for a project;

4) require that if a contracting unit provides for more than one specified alternative proposal, the contracting unit is to specify in the bid specification the criteria or ranked order by which specified alternate proposal are to be selected and included in the award of the contract by the governing body;

5) specify that the aggregate dollar value of accepted specified alternative proposals must not exceed 50 percent of the base bid and if a contracting unit is found in a court of law to have chose specific alternative proposals in a manner intended to award a contract to a specific vendor, the contracting unit must rebid the project, and a plaintiff who prevails in any proceeding would be entitled to a reasonable attorney's fee;

6) provide that these requirements apply only to projects with a total estimated cost of greater than \$500,000; and

7) provide that the bill is to take effect on the first day of the fourth month next following the date of enactment.

STATEMENT TO  
[First Reprint]  
**SENATE, No. 2782**

with Senate Floor Amendments  
(Proposed by Senator VAN DREW)

ADOPTED: JANUARY 7, 2010

Under the bill, if a contracting unit provides for more than one specified alternate proposal, the contracting unit must specify in the bid specification the criteria or ranked order by which specified alternate proposals are to be selected and included in the award of the contract by the governing body. These Senate amendments provide that this requirements only applies to a project with a total estimated cost, including specified alternate proposals, of greater than \$500,000.