

LEGISLATIVE HISTORY CHECKLIST

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JSA: 40A:11-1 et seq (Local Public Contracts Law)

LAWS OF: 1971 CHAPTER: 198

BILL NO: S627

SPONSOR(S): Beadleston

DATE INTRODUCED: March 9, 1970

COMMITTEE: ASSEMBLY: County and Municipal Government  
 SENATE: County and Municipal Government

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: ASSEMBLY: May 11, 1970 Re-enacted 4-27-71  
 SENATE: March 19, 1970 Re-enacted 3-22-71

DATE OF APPROVAL: June 9, 1971

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No  
 SENATE: No

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See also:

- 974.905 Segreto, Jams V. "A New Local Public Contracts Law for New Jersey: A Local Attorney's Evaluation in 48 New Jersey Municipalities #8 (Nov.1971). copies enclosed.
- M96 JPER
- 974.90 N.J. Dept. of Community Affairs, Div. of Local Government Services. Bureau of Local Management Services. Local Public Contract Guidelines, 10/18/71.
- M966 1971f
- 974.90 N.J. Legislature. Public Hearing on Local Public Contracts Law before Senate County and Municipal Government Committees, April 4, 1972.
- M966
- 1972d

Background:

Revision of the Local Contract Law was first undertaken by the County and Municipal Law Revision Commission. It publishes the following drafts:

- NJ Memorandum re: revision of local contracts law.
- KA6.2
- 40A:6
- 1959

NJ Local Contracts Law (Second revision 1959)  
KA6.2  
40A  
1959g

NJ Title 40A Chapter 5. Local Contract Law. Third draft.  
KA6.2  
40A  
1959g

NJ Local Contracts Law. Preliminary. Draft 11/7/60.  
KA6.2  
40A:6  
1960

NJ Contracts 6-30-60.  
KS6.2  
40A:6  
1960a

NJ Title 40A: Chapter 6. Local Contract Law. March 1961.  
KA6.2  
40A:6  
1961

NJ N.J. County and Municipal Law Revision Commission.  
KA6.2 N.J. Revised Statutes Title 40A Municipalities and Counties.  
40A:6 Chapter 6 Local Contract Law. Third Legislative Report.  
1961a

Based on the last report, bills identical to the bill printed on the Report were introduced in:

1962 - A618  
1963 - A732

No action resulted on either bill.

The next bills to be introduced were:

1968 - S686 - Beadleston et al. Passed Senate, amended. Died in Assembly.

This bill was drafted by the Revision and Legislative Services Commission. Bill and Amendment may be examined at the State Library. ~~State Library~~

1969 - S284 - Beadleston et al.

Passed Senate Amended. Passed Assembly Amended.

Assembly Amendment Passed in Senate. Conditional Veto by Governor.

Amended in Senate. Died.

Bill, amendments and veto may be examined at the State Library. The amended bill S284, was reintroduced as S627 in 1970. It is the bill that became law.

974.905 League of NJ Municipalities.  
m95 Legislative Bulletin 4/28/70 approved the bill.

KBP:pp

Ret'd. with  
Gov. Recom'ds.

3/11/71

SENATE, No. 627

STATE OF NEW JERSEY

INTRODUCED MARCH 9, 1970

By Senators BEADLESTON and HAUSER

Referred to Committee on County and Municipal Government

AN ACT concerning local public contracts by municipalities and  
counties and revising parts of the statutory law.

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

A. GENERAL PROVISIONS

1 1. Short title; citation. This act shall be known and may be cited  
2 as the "Local Public Contracts Law."

3 Source: New.

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

3 (1) "Contracting unit" means

4 (a) Any county, or

5 (b) Any municipality, or

6 (c) Any board, commission, committee, officer, department,  
7 branch or agency of any county or municipality, or

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

18 (2) "Governing body" means

19 (a) The board of chosen freeholders of the county, when the  
20 purchase is to be made or the contract or agreement is to be  
21 entered into by, or in behalf of, a county, or

22 (b) The governing body of the municipality, when the pur-

23 chase is to be made or the contract or agreement is to be entered  
24 into by, or on behalf of, a municipality, or

25 (c) Any board, commission, committee or agency of the  
26 character described in subsection (1) (d) of this section.

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

33 (4) "Purchase" includes an acquisition by sale, lease, ex-  
34 change, discount, negotiation, mortgage, pledge, lien, issue or re-  
35 issue, or any other voluntary transaction for consideration creating  
36 an interest in property not made by contract or agreement.

37 (5) "Materials" includes goods subject to article 2 of Title 12A  
38 of the New Jersey Statutes, apparatus, or any other tangible thing,  
39 except real property and capital improvements subject to chapters  
40 32 and 60 of Title 40 of the Revised Statutes relating to lands and  
41 buildings.

42 (6) "Professional services" means services rendered or per-  
43 formed by a person authorized by law to practice a recognized pro-  
44 fession and whose practice is regulated by law.

45 (7) "Project" means any work, undertaking, development, re-  
46 development, construction or reconstruction of any area or areas.

47 (8) "Sale" means the conveyance of any interest in materials  
48 or supplies, by sale, lease or otherwise and shall include a security  
49 interest subject to chapter 9 of Title 12A of the New Jersey Stat-  
50 utes.

51 Source: New.

#### B. PURCHASES, CONTRACTS AND AGREEMENTS, WHEN TO BE LET BY BIDS

1 3. Purchases, contracts or agreements not required to be adver-  
2 tised for. Any purchase, contract or agreement for the perform-  
3 ance of any work or the furnishing or hiring of materials or  
4 supplies usually required, the cost or price of which, inclusive of  
5 the cost or price of any purchase, contract or agreement for the  
6 performance of any work or the furnishing of, or of the use of,  
7 any materials or supplies usually required, which forms a part of  
8 the same immediate program, undertaking, activity or proj-  
9 ect, is to be paid with or out of public funds and does not exceed  
10 in the aggregate the sum of \$2,500.00, may be made, negotiated or  
11 awarded for a contracting unit without public advertising for bids

12 and bidding therefor, notwithstanding that a lesser sum than  
13 \$2,500.00 is fixed as a maximum for said purpose in any other law.  
14 Source: New.

1 4. Contracts and agreements required to be advertised for. Every  
2 contract or agreement, for the performance of any work or the  
3 furnishing or hiring of any materials or supplies usually required,  
4 the cost or the contract price whereof is to be paid with or out of  
5 public funds, not included within the terms of section 3 of this  
6 act, shall be made or awarded only after public advertising for  
7 bids and bidding therefor, except as is provided otherwise in this  
8 act or specifically by any other law. No work, materials or supplies  
9 shall be undertaken, acquired or furnished for a sum exceeding in  
10 the aggregate \$2,500.00, except by contract or agreement.

11 Source: R. S. 40:25-2, amended 1938, c. 167; 1956, c. 80; 1957, c.  
12 208; 40:50-1, amended 1967, c. 30; 1957, c. 209; 1963, c. 67; 40:50-2.

1 5. Major exceptions. Any purchase, contract or agreement of  
2 the character described in section 4 of this act may be made,  
3 negotiated or awarded without public advertising for bids and  
4 bidding therefor if

5 (1) The subject matter thereof consists of

6 (a) Professional services,

7 (b) The doing of any work by employees of the contracting  
8 unit,

9 (c) Election expenses, including advertising expenses  
10 incidental thereto,

11 (d) The printing of legal briefs, records and appendices to  
12 be used in any legal proceeding in which the contracting party  
13 may be a party,

14 (e) The furnishing of a tax map or maps for the contracting  
15 party,

16 (f) The purchase of perishable foods as a subsistence  
17 supply,

18 (g) The purchase of motor vehicles,

19 (h) The supplying of any product or the rendering of any  
20 service by a public utility, which is subject to the jurisdiction  
21 of the Board of Public Utility Commissioners, in accordance  
22 with tariffs and schedules of charges made, charged or exacted,  
23 filed with said board,

23A (i) The hiring of supplementary labor, or equipment, for  
24 the removal of snow or ice from roads and bridges and other  
25 public places required to be maintained by the contracting  
26 party during an emergency caused by storm, when the need

27 for the hiring of such labor or equipment is not reasonably  
28 foreseeable,

29 (2) It is to be made or entered into with the United States of  
30 America, the State of New Jersey, county or municipality or any  
31 board, body, officer, agency or authority, thereof.

32 (3) The contracting unit has advertised for bids pursuant to  
33 section 4 on two occasions and has received no bids in response to its  
34 advertisement, and no board, body, officer, agency or authority  
35 of the United States, the State of New Jersey or any county or  
36 municipality is willing and able to perform any work or furnish  
37 or hire any materials or supplies usually required in conformity  
38 with the specifications of the municipality. Any such contract or  
39 agreement may be made, negotiated or awarded only upon adop-  
40 tion by the affirmative vote of  $\frac{2}{3}$  of the full membership of the  
41 governing body of the contracting unit of an ordinance, in the case  
42 of a municipality, or a resolution, in the case of a county, authoriz-  
43 ing such a contract or agreement. No such contract or agreement  
44 may extend for a period greater than the term of the governing  
45 body or 1 year, whichever is greater, nor shall the terms, condi-  
46 tions or specifications specified pursuant to section 4 be in any way  
47 amended or modified.

48 (4) The contracting unit has advertised for bids pursuant to  
49 section 4 and the governing body thereof has rejected such bids  
50 because the contracting unit has determined that they are not rea-  
51 sonable as to price on the basis of cost estimates prepared for the  
52 contracting unit prior to the advertising therefor or have not been  
53 independently arrived at in open competition, but no such contract  
54 or agreement may be entered into after such rejection of bids,  
55 unless:

56 (a) Notification of the intention to negotiate and a reason-  
57 able opportunity to negotiate shall have been given by the con-  
58 tracting unit to each responsible bidder, and

59-60 (b) The negotiated price is lower than the lowest rejected  
61 bid price of a responsible bidder who bid thereon and is the  
62 lowest negotiated price offered by any responsible supplier  
63-64 and is a reasonable price for such work materials, supplies or  
65 services;

66 (c) The contract or agreement is made subject to the same  
67 terms, conditions, restrictions and specifications as were the  
68 subject of competitive bidding pursuant to section 4 of this  
69 act, and

70 (d) The negotiated price is lower than the price of the same

71 or equivalent materials or supplies available from the State  
72 or the county in which the contracting unit is located.

73 Whenever a contracting unit shall determine that a bid was  
74 not arrived at independently in open competition pursuant to  
75 this subsection 4 of section 5, it shall thereupon notify the  
76 county prosecutor of the county in which the contracting unit  
77 is located and the Attorney General of the facts upon which  
78 its determination is based, and when appropriate, it may in-  
79 stitute appropriate proceedings in any State or Federal court  
80 of competent jurisdiction for a violation of any State or Fed-  
81 eral antitrust law or laws relating to the unlawful restraint  
82 of trade.

83 Any such contract or agreement may be made, negotiated or  
84 awarded only upon adoption by the affirmative vote of  $\frac{2}{3}$  of the  
85 full membership of the governing body of the contracting unit of  
86 an ordinance, in the case of a municipality, or a resolution, in the  
87-88 case of a county, authorizing such a contract or agreement.

89 Source: R. S. 40:25-4, amended 1962, c. 158, s. 1; 40:25-5; 40:50-1,  
90 amended 1957, c. 30; 1957, c. 209; 1963, c. 67; C. 40:50-5.1 (1943,  
91 c. 198, s. 1, amended 1956, c. 6, s. 1); C. 40:50-5.2 (1943, c. 198,  
92 s. 2); C. 40:50-5.3 (1943, c. 198, s. 3); C. 40:50-5.4 (1943, c. 198,  
93 s. 4, amended 1956, c. 6, s. 2).

1 6. Authorization of certain exceptions. Any such purchase,  
2 contract or agreement may be made, negotiated or awarded for a  
3 contracting party without public advertising for bids and bidding  
4 therefor notwithstanding that the cost or contract price will exceed  
5 \$2,500.00, when an emergency requires the immediate delivery  
6 of the articles or the performance of the service and when prior  
7 to the making of such purchase, contract or agreement or after  
8 the same, it is specifically authorized so to be made, negotiated or  
9 awarded by resolution, adoption by the affirmative vote of  $\frac{2}{3}$  of  
10 the full membership of the governing body of the contract unit,  
11 for or on behalf of which the same is made, negotiated or awarded  
12 if the full membership of such governing body consists of more  
13 than four members, or of  $\frac{3}{4}$  of all of the members thereof, if the  
14 full membership thereof shall be four members, or of  $\frac{2}{3}$  of all of the  
15 members thereof, if the full membership thereof be three members,  
16 provided such resolution describes specifically the circumstances,  
17-18 declares the emergency, and further prescribes the manner in  
19 which such purchase, contract or agreement shall be made, negoti-  
20 ated or awarded, which shall be of such character as to be effective  
21 to promote free and full competition, whenever competition is prac-  
22 tical under the circumstances.

23 Source: R. S. 40:25-3, 40:50-1, amended 1957, c. 30; 1957, c. 209;  
24 1963, c. 67.

1 7. Contracts not to be divided. No purchase, contract or  
 2 agreement, which is single in character or which necessarily or by  
 3 reason of the quantities required to effectuate the purpose of the  
 4 purchase, contract or agreement, includes the furnishing of addi-  
 5 tional services or buying or hiring of materials or supplies usually  
 6 required or the doing of additional work, shall be subdivided, so  
 7 as to bring it or any of the parts thereof under the maximum price  
 8 or cost limitation of \$2,500.00 thus dispensing with the requirement  
 9 of public advertising and bidding therefor, and in purchasing or  
 10 contracting for, or agreeing for the furnishing of, any services,  
 11 the doing of any work or the supplying of any materials or the  
 12 supplying or hiring of any materials or supplies usually required,  
 13 included in or incident to the performance or completion of any  
 14 project, program, activity or undertaking which is single  
 15 in character or inclusive of the furnishing of additional services  
 16 or buying or hiring of materials or supplies usually required or  
 17 the doing of additional work, or which requires the furnishing of  
 18 more than one article of equipment or buying or hiring of materials  
 19 or supplies usually required, all of the services, materials or  
 20 property requisite for the completion of such project shall be in-  
 21 cluded in one purchase, contract or agreement.

22 Source: R. S. 40:25-2, amended 1938, c. 167; 1956, c. 80; 1957, c. 208.

1 8. Periodic solicitation for proposals work or materials  
 2 and supplies required. Every contracting agent shall, at  
 3 intervals to be fixed by the governing body, solicit by public  
 4 advertisement the submission of bids for the furnishing of all  
 5 work, materials and supplies which are usually required and  
 6 which under section 4 of this act can be purchased or agreed or  
 7 contracted to be furnished only after public advertisement for bids  
 8 and bidding therefor and all purchases, or contracts or agreements  
 9 for the furnishing, of such work, materials and supplies  
 10 shall be made and awarded only in that manner.

11 Source: R. S. 40:25-6; 40:50-2.

#### C. PURCHASING AGENTS, DEPARTMENTS OR BOARDS

1 9. Purchasing agent, department or board; establishment;  
 2 powers. The governing body of any local unit may, by ordi-  
 3 nance, in the case of a municipality, and resolution, in the case  
 4 of a county, provide for the appointment of a purchasing agent,  
 5 or purchasing department or a purchasing board, with authority  
 6 to purchase, as its contracting agent, such materials and supplies



7 required to be purchased on behalf of the contracting unit, as said  
 8 governing body shall, by said ordinance, or resolution pre-  
 9 scribe and such purchasing agent, purchasing department or pur-  
 10 chasing board shall have authority to purchase such materials and  
 11 supplies on behalf of the contracting unit and prepare the public  
 12 advertising for bids, to receive the bids and to make the awards  
 13 in such cases, subject to the approval of the governing body to be  
 14 given when and in such manner as said governing body shall by  
 15 such ordinance or resolution prescribe.  
 16 Source: R. S. 40:25-7; 40:50-7.

#### D. JOINT PURCHASING AGREEMENTS

1 10. Joint agreements for purchase of work, materials, supplies;  
 2 authorization. The governing bodies of two or more contracting  
 3 units or school districts within the same county, or adjoining  
 4 counties, and may provide by joint agreement for the purchase of  
 5 work, materials and supplies for use by their respective juris-  
 6 dictions.

7 (a) Such agreement shall be entered into by similar ordinances  
 8 or resolutions adopted by each of the participating governing  
 9 bodies; which shall set forth the categories of work, materials and  
 10 supplies to be purchased, the manner of advertising for bids and  
 11 of awarding of contracts, the method of payment by each partici-  
 12 pating contracting unit or school district, and other matters deemed  
 13 necessary to carry out the purposes of the agreement.

14 (b) Each contracting unit's and school district's share of ex-  
 15 penditures for purchases under any such agreement shall be ap-  
 16 propriated and paid in the manner set forth in the agreement and  
 17 in the same manner as for other expenses of the contracting unit  
 18 or school district.

19 Source: C. 40:50-7.1 (1964, c. 245, s. 1 amended 1966, c. 202, s. 1;  
 20 1968, c. 422, s. 5); C. 40:50-7.2 (1964, c. 245, s. 2 amended 1968,  
 21 c. 422, s. 6); C. 40:50-7.3 (1964, c. 245, s. 3 amended 1968, C.  
 22 422, s. 7).

1 11. Additional matters regarding agreements for the purchases  
 2 of work, materials and supplies.

3 (1) The contracting units or school districts entering into a  
 4 joint agreement pursuant to section 10 of this act may designate  
 5 a joint purchasing agent, department or board pursuant to section  
 6 9 of this act. Any such agent, board or department already desig-  
 7 nated pursuant to section may serve as the joint agent, department  
 8 or board designated pursuant to this section.

9 (2) Purchases, contracts or agreements made pursuant to a  
10 joint purchasing agreement shall be subject to all of the terms and  
11 conditions of this act.

12 (3) Any county, municipality or school district serving as a pur-  
13 chasing agent, board or department pursuant to this section 11,  
14 may make an appropriation to enable it to perform any such con-  
15 tract and may anticipate as revenue payments to be made and  
16 received by it from any other party to the agreement. The agree-  
17 ment and any subsequent amendment or revisions thereto shall be  
18-28 filed with the Director of the Division of Local Finance in the  
29 Department of Community Affairs. The purchasing agent, pur-  
30 suant to such an agreement, shall also annually file with the director  
31 a report of any purchases, contracts or agreements and the amounts  
32 thereof annually. The director may, by regulation, specify the  
33 form and content of such reports.

34 Source: C. 40:23-6.34 (1967, c. 228, s. 1; 1968, c. 422, s. 1); C.  
35 40:23-6.35 (1967, c. 228, s. 2; 1968, c. 422, s. 2); C. 40:23-6.36 (1967,  
36 c. 228, s. 3; 1968, c. 422, s. 3); C. 40:23-6.37, (1967, c. 228, s. 4; 1968,  
37 c. 422, s. 4).

1 12. Purchases through State agency. Any contracting unit  
2 under this act may without advertising for bids, or having rejected  
3 all bids obtained pursuant to advertising therefor, purchase any  
4 materials, supplies or equipment under any contract or contracts  
5 for such materials, supplies or equipment entered into on behalf  
6 of the State by the Division of Purchase and Property in the De-  
7 partment of the Treasury.

8 Source: C. 40:25-4.5 (1969, c. 104).

#### E. SPECIFICATIONS

1 13. Specifications. Any specifications for an acquisition under  
2 this act, whether by purchase, contract or agreement, shall be  
3 drafted in a manner to encourage free, open and competitive bid-  
4 ding. In particular, no specifications under this act may:

5 (a) Require any standard, restriction, condition or limitation not  
6 directly related to the purpose, function or activity for which the  
7 purchase, contract or agreement is made; or

8 (b) Require that any bidder be a resident of, or that his place  
9 of business be located in, the county or municipality in which the  
10 purchase will be made or the contract or agreement performed,  
11 unless the physical proximity of the bidder is requisite to the effi-  
12 cient and economical purchase or performance of the contract or  
13 agreement; or

14 (c) Discriminate on the basis of race, religion, creed, national  
15 origin; or

16 (d) Require, with regard to any purchase, contract or agree-  
17 ment, the furnishing of any "brand name," but may in all cases  
18 require "brand name or equivalent," except that if the materials  
19 to be supplied or purchased are patented or copyrighted, such  
20 materials or supplies may be purchased by specification in any case  
21 in which the ordinance or resolution authorizing the purchase, con-  
22 tract, sale or agreement so indicates, and the special need for such  
23 patented or copyrighted materials or supplies is directly related  
24 to the performance, completion or undertaking of the purpose for  
25 which the purchase, contract or agreement is made; or

26 (e) Fail to include any option for renewal, extension, or release  
27 which the contracting unit may intend to exercise or require; or  
28 any terms and conditions necessary for the performance of any  
29 extra work; or fail to disclose any matter necessary to the substan-  
30 tial performance of the contract or agreement.

31 Any specification adopted by the governing body, which know-  
32 ingly excludes prospective bidders by reason of the impossibility  
33 of performance, bidding or qualification by any but one bidder,  
34 except as provided herein, shall be null and void and of no effect  
35 and subject purchase, contract or agreement shall be readvertised,  
36 and the original purchase, contract or agreement shall be set aside  
37 by the governing body. No contracting unit setting aside a pur-  
38 chase, contract or agreement pursuant to this section shall be liable  
39 for damages therefor.

40 Source: New.

#### F. CONTRACTS, FORM AND CONTENTS

1 14. Form and execution of contracts and bonds. The  
2 governing body of any contracting unit may prescribe the form and  
3 manner in which all contracts for performing work or furnishing  
4 materials for the contracting unit shall be made and executed, and  
5 the form and manner of execution and approval of all guarantee,  
6 indemnity, fidelity and other bonds required to be given to the  
7 contracting unit pursuant to law.

8 Source: R. S. 40:25-1.

1 15. Contracts for fuel or oil and snow and ice removal;  
2 duration. Any contracting unit may enter into a contract for the

3 (1) Supplying of

4 (a) Fuel for heating purposes, for any term not exceeding  
4A in the aggregate, 2 years, or

5 (b) Fuel or oil for use of airplanes, for any term not exceed-  
6 ing in the aggregate, 3 years, or

7 (2) The plowing and removal of snow and ice from highways  
8 and public places, for any term not exceeding in the aggregate, 1  
9 year, or

10 (3) The collection and disposal of garbage and refuse, for any  
11 term not exceeding in the aggregate, 5 years,  
12 notwithstanding that such terms exceed the fiscal year.

13 Source: C. 40:25-1.1 (1953, c. 395); C. 40:50-5.5 (1945, c. 158);  
14 C. 40:50-5.6 (1945, c. 160); C. 40:50-5.7 (1962, c. 168).

1 16. Separate plans for various types of work; bids; contracts.  
2 In the preparation of plans and specifications for the erection,  
3 alteration or repair of any public building by any political sub-  
4 division of this State, when the entire cost of the work will exceed  
5 \$2,500.00 in amount, the architect, engineer or other person pre-  
6 paring the plans and specifications, may prepare separate plans  
7 and specifications for

8 (1) The plumbing and gas fitting and all kindred work,

9 (2) Steam power plants, steam and hot water heating and  
10 ventilating apparatus and all kindred work,

11 (3) Electrical work,

12 (4) Structural steel and ornamental iron work, and

13 (5) All other work required for the completion of the project.

14 The contracting agent authorized to award such contract for the  
15 erection, construction, alteration or repair of any public building  
16 shall advertise for and receive, in the manner provided by law,  
17 either (a) separate bids for each of said branches of work,  
18 or (b) bids for all the work and materials required  
19 to complete the building to be included in a single overall  
20 contract, or both, in which case there will be set forth in the  
21 bid the name or names of, and evidence of performance security  
22 from, all subcontractors to whom the bidder will subcontract the  
23 furnishing of plumbing and gas fitting, and all kindred work, and  
24 of the steam and hot water heating and ventilating apparatus,  
25 steam power plants and kindred work, and electrical work, struc-  
26 tural steel and ornamental iron work, each of which subcontractors  
27 shall be qualified in accordance with this Title.

28 Contracts shall be awarded to the lowest responsible bidder in the  
29 following manner: If the sum total of the amounts bid by the lowest  
30 responsible bidder for each branch is less than the amount bid  
31 by the lowest responsible bidder for all of the work and materials,  
32 the contracting agent shall award separate contracts for each of  
33 such branches to the lowest responsible bidder therefor, but if the  
34 sum total of the amount bid by the lowest responsible bidder for

35 each branch is not less than the amount bid by the lowest respon-  
 36 sible bidder for all the work and materials, the contracting agent  
 37 shall award a single overall contract to the lowest responsible bid-  
 38 der for all of such work and materials. (c) In every case in which  
 39 a contract is awarded under (b) above, all payments required to be  
 40 made under such contract for work and materials supplied by a  
 41 subcontractor shall, upon the certification of the contractor of the  
 42 amount due to the subcontractor, be paid directly to the sub-  
 43 contractor.

44 Source: R. S. 40:9-3, amended 1968, c. 121, s. 1.

1 17. Number of working days specified. All specifications for  
 2 the doing of any public work for a contracting unit shall fix the  
 3 date before which the work shall be completed, or the number of  
 4 working days to be allowed for its completion; and every such con-  
 5 tract shall contain a provision for a deduction, from the contract  
 6 price, or any wages paid by the contracting unit to any inspector  
 7 or inspectors necessarily employed by it on the work, for any num-  
 8 ber of days in excess of the number allowed in the specifications.

9 Source: R. S. 40:25-26; 40:50-3.

1 18. American goods and products to be used where possible.  
 2 Each local unit shall provide, in the specifications for all  
 3 contracts for county or municipal work or for work for which it will  
 4 pay any part of the cost, that only manufactured and farm products  
 5 of the United States, wherever available, be used in such work.

6 Source: R. S. 40:15 1.

1 19. Liquidated damages. Any contract or agreement made  
 2 pursuant to this act may include liquidated damages for the vio-  
 3 lation of any of the terms and conditions thereof or the failure to  
 4 perform said contract or agreement in accordance with its terms  
 5 and conditions, or the terms and conditions of this act.

6 Source: New.

#### G. BIDDING REQUIREMENTS

1 20. Certificate of bidder showing ability to perform contract.  
 2 There may be required from any bidder submitting a bid  
 3 on public work to any contracting unit, duly advertised for in  
 4 accordance with law, a certificate showing that he owns,  
 5 leases, or controls all the necessary equipment required by the  
 6 plans, specifications and advertisements under which bids are asked  
 7 for and if the bidder is not the actual owner or lessee of any  
 8 such equipment, his certificate shall state the source from which  
 9 the equipment will be obtained, and shall be accompanied by a  
 10 certificate from the owner or person in control of the equipment

11 definitely granting to the bidder the control of the equipment re-  
12 quired during such time as may be necessary for the completion  
13 of the contract.

14 Source: R. S. 40:25-11; 40:25-12.

1 21. Cash or certified check to accompany bid; amount.  
2 There may be required from any person bidding on any  
3 contract or agreement, for any contracting unit, advertised in  
4 accordance with law, that the bid be accompanied by cash or a  
5 certified check, payable to the contracting unit as a guarantee  
6 that if the contract or agreement is awarded to him he will enter  
7 into a contract therefor. The amount to be so deposited shall be  
8 at least 10% of the bid, but in no case in excess of \$20,000.00.

9 Source: R. S. 40:25-9.

1 22. Guarantee or surety company; certificate. When a surety  
2 company bond is required in the advertisement or specifica-  
3 tions for a contract or agreement, every contracting unit  
4 shall require from any bidder submitting a bid in ac-  
5 cordance with plans, specifications and advertisements, as  
6 provided for by law, a certificate from a surety company stating  
7 that it will provide the contractor with a bond in such sum as is  
8 required in the advertisement or in the specifications.

9 This certificate shall be obtained for a bond—

10 (1) For the faithful performance of all provisions of the speci-  
11 fications or for all matters which may be contained in the notice  
12 to bidders, relating to the performance of the contract or agree-  
12a ment, and

13 (2) If any be required, for a guarantee bond for the faithful  
14 performance of the contract provisions relating to the repair and  
15 maintenance of any work, project or facility and its appurtenances  
16 and keeping the same in good and servicable condition during  
17 the term of the bond as provided for in the notice to bidders or  
18 in the specifications, or

19 (3) In such other form as may be provided in the notice to  
20 bidders or in the specifications.

21 If a bidder desires to offer the bond of an individual instead of  
22 that of a surety company, he shall submit with his bid a certificate  
23 signed by such individual similar to that required of a surety  
24 company.

25 The contracting unit may reject any such bid if it is not satisfied  
26 with the sufficiency of the individual surety offered.

27 Source: R. S. 40:25-13, amended 1957, c. 54; 40:25-14.

1 23. Advertisements for bids; bids; general requirements.

2 All advertisements for bids shall be published at least once,  
 3 10 days prior to the date fixed for receiving the bids, in a  
 4 newspaper of general circulation published in this State and  
 5 circulating within the territory included within or served by the  
 6 contracting unit. The advertisement shall designate the manner  
 7 of submitting and the method of receiving the bids and the time  
 8 and place at which the bids will be received. At such time and  
 9 place the contracting agent of the contracting unit shall receive  
 10 the bids, and thereupon immediately proceed to unseal them and  
 11 publicly announce the contents, which announcement shall be made  
 12 in the presence of any parties bidding or their agents, who are  
 13 then and there present, and shall also make proper record of the  
 14 prices and terms, upon the minutes of the governing body, if the  
 15 award is to be made by the governing body of the contracting unit,  
 16 or in a book kept for that purpose, if the award is to be made by  
 17 other than the governing body, and in such latter case it shall be  
 18 reported to the governing body of the contracting unit for its action  
 19 thereon, when such action thereon is required. No bids shall be re-  
 20 ceived previous to or after the time designated in the advertisement.  
 21 Source: R. S. 40:25-8; 40:50-4.

#### H. AWARDS AND EXECUTION OF CONTRACTS

1 24. Time for making award; deposits returned. The con-  
 2 tracting agent shall award the contract or contracts, or reject all  
 3 bids therefor within 30 days after they are received, and all cash  
 4 and checks delivered with the bids, except those delivered by the  
 5 two lowest responsible bidders, shall be returned within 3 days  
 6 thereafter, Sundays and holidays excepted. If for any reason  
 7 the contracting agent is unable to make an award within such  
 8 30-day period, it shall be lawful for such agent and the lowest  
 9 responsible bidder and his proposed surety, if any, to agree  
 10 upon an extension, not exceeding an additional 30 days, for the  
 11 making of the award, in which event the contracting agent shall  
 12 make the award or reject such bid on or before the end of such  
 13 extended period.  
 14 Source: R. S. 40:25-10, amended 1955, c. 191.

#### I. QUALIFICATION OF BIDDERS

##### (1) IN GENERAL

1 25. General power to provide qualification for bidders. The  
 2 governing body of any contracting unit may establish reason-  
 3 able regulations appropriate for controlling the qualifications of  
 4 prospective bidders upon contracts to be awarded on behalf of the

5 contracting unit, by the class or category of work to be per-  
6 formed or materials and supplies to be furnished or hired which  
7 may fix the qualifications required according to the financial ability  
8 and experience of the bidders and the capital and equipment avail-  
9 able to them pertinent to and reasonably related to the class or  
10 category of work to be performed or materials and supplies to  
11 be furnished or hired in the performance of any such  
12 contract, and may require each bidder to furnish a statement  
13 thereof; and if such governing body is not satisfied with the  
14 qualifications of any bidder as founded upon such statement, it may  
15 refuse to furnish him with any plans or specifications for any public  
16 contract or consider any bid made by him for any contract.

17 Prior to the adoption of any such regulations, a contracting  
18 unit shall submit them to a public hearing. Notice of the hearing  
19 and a general description of the subject matter of the regulations  
20 to be adopted shall be published in not less than two newspapers  
21 circulating in the county or municipality in which the contracting  
22 unit is located. Publication shall precede by at least 20 days the  
23 date set in the notice for the hearing. The clerk or secretary of the  
24 governing body of the contracting unit shall keep a record of the  
25 proceedings and of the testimony of any citizen or prospective bid-  
26 der within 10 days after the completion of the hearings. The  
27 proposed regulations and a true copy of the record of the hearings  
28 shall be forwarded to the Director of the Division of Local Finance  
29 for his approval. If the director fails to approve or disapprove the  
30 regulations within 30 days of their receipt by him, they shall take  
31 effect without his approval. The director may disapprove such pro-  
32 posed regulations only if he finds that:

33 (a) They are written in a manner which will unnecessarily dis-  
34 courage full, free and open competition; or

35 (b) They unnecessarily restrict the participation of small busi-  
36 nesses in the public bidding process; or

37 (c) They create undue preferences; or

38 (d) They violate any other provision of this act, or any other law.

39 If the director disapproves such proposed regulations within  
40 the 30-day period prescribed, they shall be of no force and effect  
41 and may not be required as a condition to the acceptance of a bid on  
42 any public contract by the contracting unit.

43 No qualification rating of any bidder shall be influenced by his  
44 race, religion, national origin, nationality or his place of residence  
45 or business.

46 Nothing contained in this act shall limit the right of any court



47 to review a refusal to furnish any such plans or specifications or  
48 the consideration or any bid on any contract advertised.

49 Any such governing body may adopt a standard form of state-  
50 ment or questionnaire for bidders on public works and contracts,  
51 and in such case their action shall be governed as provided herein.  
52 Source: R. S. 40:25-16; 40:25-24; 40:50-5.

(2) STANDARD FORM OF QUESTIONNAIRE

1 26. Standard questionnaire; effect of unsatisfactory answers.  
2 The governing body of any contracting unit may adopt a  
3 standard form of statement or questionnaire for bidders on public  
4 works and contracts and may require from any person proposing to  
5 bid upon any such public work or contract a statement or answers  
6 showing his financial ability and experience in performing public  
7 work and describing the equipment available to such bidder in the  
8 performance of such work or contract, and if not satisfied with the  
9 sufficiency of this statement or answers may refuse to furnish plans  
10 and specifications to him.

11 Source: R. S. 40:25-16; 40:50-5.

1 27. Standard statements and questionnaires; prospective bid-  
2 ders; responses. Such statements and questionnaires shall  
3 be standardized for like classes of work to be submitted to prospec-  
4 tive bidders who may be required to respond to questions under  
5 oath. The statement or answer shall disclose fully the financial  
6 ability, adequacy of plant and equipment, organization and prior  
7 experience of the prospective bidder, and such other pertinent and  
8 material facts as may be required.

9 Source: R. S. 40:25-16.

1 28. Classification of prospective bidders; notice. Prospective  
2 bidders shall be classified as to the character and amount of  
3 public work or contracts as to which they shall be qualified to  
4 submit bids, and bids shall be accepted only from persons so  
5 qualified. The classification shall be made and an immediate notice  
6 thereof shall be sent to the prospective bidders by certified or  
7 registered mail within 8 days after the date of receipt of the respon-  
8 sive statement or answers.

9 Source: R. S. 40:25-17.

1 29. Reclassification of prospective bidders; request for;  
2 time limit. If any person, after being notified of his classification,  
3 shall be dissatisfied therewith or with the classification of other  
4 bidders, he may request in writing a hearing before such governing  
5 body, and may present such further evidence with respect to the  
6 financial responsibility, organization, plant and equipment, or ex-

7 perience of himself or other prospective bidders as might tend to  
8 justify a different classification.

9 Where a request is made for the change of classification of  
10 another prospective bidder, the applicant therefor shall notify such  
11 other bidder by certified or registered mail of the time and place  
12 of hearing, as fixed by the governing body, and at the hearing shall  
13 present satisfactory evidence that the notice was served as herein  
14 required, before any matters pertaining to a change of classification  
15 of such other bidder shall be taken up. After hearing such evidence  
16 the governing body may, in its discretion, by appropriate action,  
17 change or retain the classification of any bidder.

18 No change in classification to be effective for any public work or  
19 contract where bidding therefor has been duly advertised, shall  
20 be made unless the written request therefor shall have been received  
21 at least 20 days before the final day for submission of bids.

22 All requests for change in classification and notice of any action  
23 sent by certified or registered mail to the parties directly affected  
24 thereby, shall be acted upon by the governing body concerned at  
25 least 8 days prior to the date fixed for the next opening of bids  
26 on any contract or contracts for which such persons might be  
27 qualified to bid as a result of the reclassification.

28 Source: R. S. 40:25-18.

1 30. Board of review upon classification; membership,  
2 et cetera. There is hereby established a board of review upon  
3 classification and reclassification of prospective bidders. This board  
4 shall consist of one member of the governing body of the contracting  
5 unit concerned, to be designated by such body, and two citizens of  
6 the county or municipality to be designated by the Superior Court  
7 assignment judge of the county. In all counties having a county  
8 supervisor, he shall be a member of the board of review instead of  
9 one of the citizens. The clerk of the contracting unit shall be the  
10 secretary of the board of review and shall keep a complete record  
11 of its proceedings and decisions. The members of the board shall  
12 serve without compensation.

13 Source: R. S. 40:25-19, amended 1953, c. 37, s. 46.

1 31. Reconsideration by board of review; request for;  
2 time limit. Any prospective bidder who is dissatisfied with his  
3 original classification or reclassification may upon receipt of notice  
4 thereof, request in writing a hearing of the matter before the board  
5 of review. The request shall be filed with the contracting agent and  
6 the secretary of the board.

7 The board shall hold a hearing at which the prospective bidder

8 shall be entitled to be heard and to submit additional information.

9 The board shall review the responsibility of all prospective bid-  
10 ders who have filed statements or answers, considering both the  
11 statement, answers and any additional information given at the  
12 hearing, and shall certify to the contracting unit concerned, its  
13 decision as to the original classifications or reclassifications, if any.  
14 The decisions shall be made by a majority vote.

15 In order for any change in classification by the board to be  
16 effective for public work or contract previously advertised, the  
17 request shall be filed not less than 5 days prior to the final day for  
18 submission of bids, and the board shall hold a hearing and act upon  
19 the request not less than 2 days prior to the date fixed for the next  
20 opening of bids on any public work or contract for which such  
21 prospective bidders might be qualified to bid as a result of the  
22 reclassification.

23 Source: R. S. 40:25-20.

1 32. Rejection of bids after qualification of bidder; hear-  
2 ing. Nothing herein contained shall be construed as depriving any  
3 contracting agent of the right to reject a bid at any time prior to the  
4 actual award of a public work or contract, where the circumstances  
5 of the prospective bidder have changed subsequent to the qualifica-  
6 tion and classification of the said bidder, which in the opinion of  
7 the awarding contracting unit would adversely affect the responsi-  
8 bility of the bidder. Before taking final action on any such bid,  
9 the contracting agent concerned shall notify the said bidder and  
10 afford him an opportunity to present any additional information  
11 which might tend to sustain the existing classification.

12 No person shall be qualified to bid on any public work or contract  
13 unless he shall have submitted a statement or answers as herein  
14 required within a period of 6 months preceding the date of  
15 opening of bids for the public work or contract, if the bidders  
16 thereon are required to be classified hereunder.

17 Source: R. S. 40:25-21.

1 33. Forfeiture of deposit in certain cases, A deposit made  
2 by any person who makes or causes to be made a false, decep-  
3 tive or fraudulent statement or answers in response to a question-  
4 naire or in the course of a hearing hereunder may be caused to be  
5 forfeited, as liquidated damages by and to the contracting unit.

6 Source: R. S. 40:25-23.

### (3) PENALTIES

1 34. Penalties for false statements. Any person who makes or  
2 causes to be made, a false, deceptive or fraudulent statement

3 in the statement or answers in response to the questionnaire,  
 4 or in the course of any hearing hereunder, shall be guilty of a misde-  
 5 meanor, and upon conviction shall be punishable by a fine of not  
 6 less than \$100.00 nor more than \$1,000.00, and shall be permanently  
 7 disqualified from bidding on all public work or contracts of the  
 8 contracting unit which submitted the questionnaire; or, in the case  
 9 of an individual or an officer or employee charged with the duty  
 10 of responding to the questionnaire for a person, firm, copartner-  
 11 ship, association or corporation, by such fine or by imprisonment,  
 12 not exceeding 6 months, or both.

13 Source: R. S. 40:25-22.

#### (4) OFFICIALS SAVED HARMLESS

1 35. No liability of officials. No action for damages shall lie  
 2 against an official of any contracting unit because of any autho-  
 3 rized action taken hereunder.

4 The word "official" as used in this section shall mean and in-  
 5 clude the governing body and any officer, board, commission, com-  
 6 mittee or department of a contracting unit.

7 Source: R. S. 40:25-15; 40:25-25.

#### J. CONTRACTS OF SPECIAL CHARACTER

1 36. Indemnity agreements; Federal projects for benefit of mu-  
 2 nicipality. Any contracting unit may enter into an agreement in-  
 3 demnifying the United States of America, or any board, body,  
 4 officer or agency thereof, from loss or damage to the property of  
 5 others resulting from the furtherance of any project, undertaken  
 6 or to be undertaken by the Federal Government for the benefit of  
 7 such contracting unit where the cost or any part thereof is to be  
 8 paid out of Federal funds.

9 Source: C. 40:50-8 (1949, c. 67).

#### K. MANNER AND METHOD OF SALE

1 37. Sale or other disposition of personal property. Any con-  
 2 tracting unit by resolution of its governing body may authorize  
 3 the sale of its personal property not needed for public use.

4 (1) If the estimated fair value of the property to be sold exceeds  
 5 \$2,500.00 in any one sale and it is neither livestock nor perishable  
 6 goods, it shall be sold at public sale to the highest bidder.

7 (2) The contracting unit need not advertise for bids when it  
 8 makes any such sale to the United States, the State of New Jersey,  
 9 another contracting unit or to any body politic to which it con-  
 10 tributes tax raised funds.

11 (3) Notice of the date, time and place of the public sale together  
 12 with a description of the items to be sold and the conditions of

13 sale shall be published in a newspaper circulating in the con-  
 14 tracting unit. Such sale shall be held not less than 7 nor more  
 15 than 14 days after the latest publication of the notice thereof.

16 (4) If no bids are received the property may then be sold at  
 17 private sale without further publication or notice thereof, but in  
 18 no event at less than the estimated fair value; or the contracting  
 19 unit may if it so elect reoffer the property at public sale. As  
 20 used herein, "estimated fair value" means the market value of the  
 21 property between a willing seller and a willing buyer less the cost  
 22 to the municipality to continue storage or maintenance of any  
 23 personal property not needed for public use to be sold pursuant  
 24 to this section.

25 (5) A contracting unit may reject all bids if it determine such  
 26 rejection to be in the public interest. In any case in which the con-  
 27 tracting unit has rejected all bids, it may readvertise such personal  
 28 property for a subsequent public sale. If it elects to reject all bids  
 29 at a second public sale, pursuant to this section, it may then sell  
 30 such personal property without further publication or notice  
 31 thereof at private sale, provided that in no event shall the negotiated  
 32 price at private sale be less than the highest price of any bid re-  
 33 jected at the preceding two public sales and provided further that  
 34 in no event shall the terms or conditions of sale be changed or  
 35 amended.

36 Source: New.

#### L. STATUTES REPEALED

1 38. Statutes repealed. The following sections, chapter and  
 2 acts, together with all amendments and supplements thereto,  
 3 are hereby repealed:

4 Chapter 25 of Title 40 of the Revised Statutes;

5 Sections 40:9-3; 40:15-1; 40:50-1 to 40:50-5 inclusive and  
 6 40:50-7, of the Revised Statutes;

7 Laws of 1943, c. 198 (C. 40:50-5.1 to C. 40:50-5.4 inclusive);

8 Laws of 1945, c. 158 (C. 40:50-5.5);

9 Laws of 1945, c. 160 (C. 40:50-5.6);

10 Laws of 1949, c. 67 (C. 40:50-8);

11 Laws of 1962, c. 168 (C. 40:50-5.7);

12 Laws of 1953, c. 395 (C. 40:25-1.1);

13 Laws of 1964, c. 245 (C. 40:50-7.1 to C. 40:50-7.3 inclusive);

14 Laws of 1967, c. 228 (C. 40:23-6.34 to C. 40:23-6.37 inclusive);

15 Laws of 1969, c. 104 (C. 40:25-4.5).

## M. EFFECTIVE DATE

1 39. Effective date, this act shall take effect July 1, 1970,  
2 but any action, purchase, sale, contract or agreement taken,  
3 made or entered into prior to this date pursuant to any of the  
4 acts, amendments and supplements hereby repealed are hereby  
5 validated and confirmed, provided that in no event shall a lease  
6 entered into prior to the effective date of this act be renewed or  
7 extended, except in accordance with the terms and provisions of  
8 this act.

\_\_\_\_\_ S627 (1970)

## § STATEMENT

This bill in effect is a reintroduction of 1969 Senate Bill No. 284 to include certain provisions set forth in the Governor's conditional veto message.

SENATE AMENDMENTS TO  
SENATE, No. 627

STATE OF NEW JERSEY

ADOPTED MARCH 11, 1971

Amend page 1, section 2, line 7, after "branch", omit "or" and insert ",".

Amend page 1, section 2, line 7, after "agency", insert "or school district".

Amend page 2, section 2, line 29, after "branch", omit "or" and insert ",".

Amend page 2, section 2, line 29, after "agency", insert "or school district".

Amend page 2, section 2, lines 42 through 44, omit entire lines and substitute:

"(6) 'Professional services' means:

(a) services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law, or

(b) services which are of such a qualitative nature as will not reasonably permit the drawing of specifications or the receipt of competitive bids; provided that, with respect to the definitions under both (a) and (b), the governing body shall state supporting reasons for its action in the resolution awarding the contract, and shall cause a copy of the resolution to be printed in a newspaper of general circulation within the boundaries of the contracting unit no more than ten days after passage of the resolution."

Amend page 2, section 3, line 4, omit "usually required".

Amend page 2, section 3, line 7, omit "usually required".

Amend page 2, section 3, line 7, after "which", insert ": (1)".

Amend page 2, section 3, line 9, after "project," insert "(2)".

Amend page 2, section 3, line 9, after "funds", insert ",".

Amend page 2, section 3, line 9, after "and", insert "(3)".

Amend page 2, section 3, line 10, after "\$2,500.00", insert "in the fiscal year, or in the case of purchases that are not annually recurring in a period of one year."

Amend page 2, section 3, line 10, before "may", insert "These".

Amend page 3, section 4, line 3, omit "usually required".

Amend page 3, section 5, line 1, omit "Major exceptions" and insert "Exceptions".

Amend page 4, section 5, line 37, omit "usually required".

Amend page 4, section 5, line 40, after "adoption", insert "of a resolution".

Amend page 4, section 5, lines 41 and 42, omit "of an ordinance, in the case of a municipality, or a resolution, in the case of a county," and insert "at a meeting thereof".

Amend page 4, section 5, lines 44 and 45, omit "the term of the governing body or".

Amend page 4, section 5, lines 45 to 47, after "year" delete "," and insert "."; delete "whichever is greater, nor shall the terms, conditions or specifications specified pursuant to section 4 be in any way amended or modified.", and insert "Any amendment or modification of the terms, conditions, restrictions and specifications which were the subject of competitive bidding pursuant to section 4 of this act shall be stated in the resolution awarding the contract."

Amend page 4, section 5, line 49, after "4", insert "on two occasions".

Amend page 4, section 5, line 49, after "bids", insert "on each occasion".

Amend page 4, section 5, line 58, omit "and".

Amend page 4, section 5, line 65, omit ";" and insert ",".

Amend page 4, section 5, lines 66 to 69, omit entire lines and insert: "(c) Any amendment or modification of the terms, conditions, restrictions and specifications which were the subject of competitive bidding pursuant to section 4 of this act shall be stated in the resolution awarding the contract, and".

Amend page 5, section 5, line 84, after "adoption", insert "of a resolution".

Amend page 5, section 5, lines 85 to 88, omit "of an ordinance, in the case of a municipality, or a resolution, in the case of a county," and insert "at a meeting thereof".

Amend page 5, section 6, line 8, omit "so to be", and insert "to be so".

Amend page 5, section 6, line 16, omit "specifially", and insert "specifically".

Amend page 6, section 7, lines 5 and 6, omit "usually required".

Amend page 6, section 7, line 12, omit "usually required".

Amend page 6, section 7, line 16, omit "usually required".

Amend page 6, section 7, line 19, omit "usually required".

Amend page 6, section 8, line 5, omit "usually required".



Amend page 7, section 10, line 3, omit "or school districts".

Amend page 7, section 10, line 4; omit "and".

Amend page 7, section 10, line 7, after "ordinances" insert ", in the case of municipalities,".

Amend page 7, section 10, line 8; after "resolutions", insert ", in the case of other contracting units,".

Amend page 7, section 10, line 12, omit "or school district".

Amend page 7, section 10, line 14, omit "and school district's".

Amend page 7, section 10, line 18, omit "or school district".

Amend page 7, section 11, line 3, omit "or school districts".

Amend page 7, section 11, line 7, after "section" insert "9".

Amend page 8, section 11, line 16, after "agreement.", insert "Any items so included in a local budget shall be subject to the approval of the Director, Division of Local Finance, who shall consider the matter in conjunction with the requirements of chapter 4 of Title 40A of the New Jersey Statutes.".

Amend page 8, section 11, line 33, after "reports.", insert a new subsection as follows: "(4) Any agent, department or board so designated pursuant to a joint purchasing agreement shall have the sole responsibility to comply with the provisions of section 23 of this act.".

Amend page 9, section 13, line 14, omit "creed", and insert "sex".

Amend page 9, section 13, lines 37 to 39, omit "No contracting unit setting aside a purchase, contract or agreement pursuant to this section shall be liable for damages therefor.".

Amend page 10, section 16, line 20, after "or", insert ", (c)" and after "both" insert "."; delete ", in which case there", and insert "There".

Amend page 10, section 16, line 28, after "bidder", insert ". In the event that a contract is advertised in accordance with (c) above said contract shall be awarded".

Amend page 12, section 20, line 12, after "completion", insert "of that portion".

Amend page 12, section 20, line 13, after "contract", insert "for which it is necessary".

Amend page 12, section 21, line 1, omit entire line and insert "Certified check, cashier's check or bid bond to accompany bid; amount.".

Amend page 12, section 21, line 4, omit "cash or".

Amend page 12, section 21, line 5, after "check," insert "cashier's check or bid bond,".

Amend page 12, section 21, line 7, after "therefor", insert "and will furnish any performance bond or other security required as a guarantee or indemnification".

Amend page 12, section 21, line 8, omit "at least".

Amend page 13, section 23, line 8, after "received.", insert "If the published specifications provide for receipt of bids by mail, those bids which are mailed to the contracting unit shall be sealed and shall only be opened for examination at such time and place as all bids received are unsealed and announced.".

Amend page 13, section 23, line 9, after "shall", insert "publicly".

Amend page 13, section 23, line 20, omit "previous to or".

Amend page 13, section 24, lines 3 and 4, omit "cash and".

Amend page 13, section 24, line 4, after "checks", insert "or bonds".

Amend page 13, section 24, lines 4 and 5, omit "except those delivered by the two lowest responsible bidders", insert "except the check or bond of the bidder to whom the contract is awarded".

Amend page 13, section 24, line 6, after "excepted." insert "The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and any required performance bond or other security is submitted.".

Amend page 13, section 24, line 8, omit "the lowest", insert "each of the three lowest".

Amend page 13, section 24, line 9, omit "bidder", insert "bidders".

Amend page 13, section 24, line 12, omit "bid", insert "bids".

Amend page 14, section 25, line 26, after "bidder", insert ".".

Amend page 14, section 25, line 26, omit "within", insert "Within".

Amend page 14, section 25, line 26, after "hearings", omit ". The" insert ", the".

Amend page 14, section 25, line 29, after "approval.", insert "This approval shall be indicated by a letter from the director to the governing body of the contracting unit.".

Amend page 14, section 25, line 42, after "unit.", insert "Any appeal from a decision of the director to the Local Finance Board shall be subject to the provisions of the Local Government Supervision Act (P. L. 1947, c. 151, C. 52:27BB-1 et seq.).".

Amend page 14, section 25, line 44, after "religion,", insert "sex,".

Amend page 16, section 30, lines 4 through 7, after "concerned", omit ", to be designated by such body, and two citizens of the county or municipality to be designated by the Superior Court assignment judge of the county.", insert "and two citizens of the county or municipality to be designated by such governing body".

Amend page 17, section 32, line 16, after "hereunder.", insert "In any case where the contracting unit shall require classification of the bidders in compliance with these sections, each bidder on any public work or contract shall be required to submit a statement listing the changes in

the statement or answers herein required as part of his bid submission.”.

Amend page 18, section 35, lines 1 through 7, omit entire section.

Amend page 18, section 36, line 1, omit “36” insert “35”.

Amend page 18, section 37, line 1, omit “37” insert “36”.

Amend page 19, section 37, line 36, after line 36 insert a new section as follows :

“L. ASSISTANCE TO CONTRACTING UNITS

37. Division of Local Finance to assist contracting units. The Division of Local Finance is hereby authorized to assist contracting units in all matters affecting the administration of this law.

Source: New.”

Amend page 19, after line 36 omit “L”, insert “M”.

Amend page 20, after section 38 omit “M”, insert “N”.

Amend page 20, section 39, line 1, omit “1970”, insert “1971”.

CHAPTER 198 LAWS OF N. J. 1971  
APPROVED 6-9-71

[OFFICIAL COPY REPRINT]  
SENATE, No. 627

# STATE OF NEW JERSEY

INTRODUCED MARCH 9, 1970

By Senators BEADLESTON and HAUSER

Referred to Committee on County and Municipal Government

AN ACT concerning local public contracts by municipalities and counties and revising parts of the statutory law.

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

## A. GENERAL PROVISIONS

1 1. Short title; citation. This act shall be known and may be cited  
2 as the "Local Public Contracts Law."

3 Source: New.

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

3 (1) "Contracting unit" means

4 (a) Any county, or

5 (b) Any municipality, or

6 (c) Any board, commission, committee, officer, department,  
7 branch **\*[or]\***,\* agency *\*or school district\** of any county or  
7A municipality, or

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

18 (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.**

19 (a) The board of chosen freeholders of the county, when the  
20 purchase is to be made or the contract or agreement is to be  
21 entered into by, or in behalf of, a county, or

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

25 (c) Any board, commission, committee or agency of the  
26 character described in subsection (1) (d) of this section.

27 (3) "Contracting agent" means the governing body of a con-  
28 tracting unit, or any board, commission, committee, officer, depart-  
29 ment, branch \***[or]**\*,\* agency \*or school district\* which has  
30 power to prepare the advertisements, to advertise for and receive  
31 the bids and to make awards for the contracting unit in connection  
32 with the purchases, contracts or agreements governed by the pro-  
32A visions of this act.

33 (4) "Purchase" includes an acquisition by sale, lease, ex-  
34 change, discount, negotiation, mortgage, pledge, lien, issue or re-  
35 issue, or any other voluntary transaction for consideration creating  
36 an interest in property not made by contract or agreement.

37 (5) "Materials" includes goods subject to article 2 of Title 12A  
38 of the New Jersey Statutes, apparatus, or any other tangible thing,  
39 except real property and capital improvements subject to chapters  
40 32 and 60 of Title 40 of the Revised Statutes relating to lands and  
41 buildings.

42 \***[(6) "Professional services" means services rendered or per-**  
43 **formed by a person authorized by law to practice a recognized pro-**  
44 **fession and whose practice is regulated by law.]\***

44A \*(6) "*Professional services*" means:

44B (a) *services rendered or performed by a person authorized*  
44C *by law to practice a recognized profession and whose practice*  
44D *is regulated by law, or*

44E (b) *services which are of such a qualitative nature as will*  
44F *not reasonably permit the drawing of specifications or the*  
44G *receipt of competitive bids; provided that, with respect to the*  
44H *definitions under both (a) and (b), the governing body shall*  
44I *state supporting reasons for its action in the resolution award-*  
44J *ing the contract, and shall cause a copy of the resolution to be*  
44K *printed in a newspaper of general circulation within the*  
44L *boundaries of the contracting unit no more than 10 days after*  
44M *passage of the resolution.\**

45 (7) "Project" means any work, undertaking, development, re-  
46 development, construction or reconstruction of any area or areas.

47 (8) "Sale" means the conveyance of any interest in materials

48 or supplies, by sale, lease or otherwise and shall include a security  
49 interest subject to chapter 9 of Title 12A of the New Jersey Stat-  
50 utes.

51 Source: New.

B. PURCHASES, CONTRACTS AND AGREEMENTS,  
WHEN TO BE LET BY BIDS

1 3. Purchases, contracts or agreements not required to be adver-  
2 tised for. Any purchase, contract or agreement for the perform-  
3 ance of any work or the furnishing or hiring of materials or  
4 supplies \***[usually required]**\*, the cost or price of which, inclusive  
5 of the cost or price of any purchase, contract or agreement for the  
6 performance of any work or the furnishing of, or of the use of,  
7 any materials or supplies \***[usually required]**\*, which\*: (1)\* forms  
8 a part of the same immediate program, undertaking, activity or  
9 project, \*(2)\* is to be paid with or out of public funds\*, \* and \*(3)\*  
10 does not exceed in the aggregate the sum of \$2,500.00 *\*in the fiscal*  
11 *year, or in the case of purchases that are not annually recurring*  
12 *in a period of 1 year. These\** may be made, negotiated or awarded  
13 for a contracting unit without public advertising for bids and  
13A bidding therefor, notwithstanding that a lesser sum than \$2,500.00  
13B is fixed as a maximum for said purpose in any other law.

14 Source: New.

1 4. Contracts and agreements required to be advertised for. Every  
2 contract or agreement, for the performance of any work or the  
3 furnishing or hiring of any materials or supplies \***[usually re-**  
4 **quired]**\*, the cost or the contract price whereof is to be paid with or  
5 out of public funds, not included within the terms of section 3 of  
6 this act, shall be made or awarded only after public advertising for  
7 bids and bidding therefor, except as is provided otherwise in this  
8 act or specifically by any other law. No work, materials or supplies  
9 shall be undertaken, acquired or furnished for a sum exceeding in  
10 the aggregate \$2,500.00, except by contract or agreement.

11 Source: R. S. 40:25-2, amended 1938, c. 167; 1956, c. 80; 1957, c.  
12 208; 40:50-1, amended 1967, c. 30; 1957, c. 209; 1963, c. 67; 40:50-2.

1 5. \***[Major exceptions.]**\* *\*Exceptions.\** Any purchase, contract  
2 or agreement of the character described in section 4 of this act may  
3 be made, negotiated or awarded without public advertising for bids  
4 and bidding therefor if

5 (1) The subject matter thereof consists of

6 (a) Professional services,

7 (b) The doing of any work by employees of the contracting  
8 unit,

9 (c) Election expenses, including advertising expenses  
10 incidental thereto,

11 (d) The printing of legal briefs, records and appendices to  
12 be used in any legal proceeding in which the contracting party  
13 may be a party,

14 (e) The furnishing of a tax map or maps for the contracting  
15 party,

16 (f) The purchase of perishable foods as a subsistence  
17 supply,

18 (g) The purchase of motor vehicles,

19 (h) The supplying of any product or the rendering of any  
20 service by a public utility, which is subject to the jurisdiction  
21 of the Board of Public Utility Commissioners, in accordance  
22 with tariffs and schedules of charges made, charged or exacted,  
23 filed with said board,

23A (i) The hiring of supplementary labor, or equipment, for  
24 the removal of snow or ice from roads and bridges and other  
25 public places required to be maintained by the contracting  
26 party during an emergency caused by storm, when the need  
27 for the hiring of such labor or equipment is not reasonably  
28 foreseeable,

29 (2) It is to be made or entered into with the United States of  
30 America, the State of New Jersey, county or municipality or any  
31 board, body, officer, agency or authority, thereof.

32 (3) The contracting unit has advertised for bids pursuant to  
33 section 4 on two occasions and has received no bids in response to its  
34 advertisement, and no board, body, officer, agency or authority  
35 of the United States, the State of New Jersey or any county or  
36 municipality is willing and able to perform any work or furnish  
37 or hire any materials or supplies \***[usually required]**\* in conform-  
38 ity with the specifications of the municipality. Any such contract or  
39 agreement may be made, negotiated or awarded only upon adop-  
40 tion *\*of a resolution\** by the affirmative vote of  $\frac{2}{3}$  of the full mem-  
41 bership of the governing body of the contracting unit **\*[of an**  
42 ordinance, in the case of a municipality, or a resolution, in the case  
43 of a county, *\*at a meeting thereof\** authorizing such a contract or  
44 agreement. No such contract or agreement may extend for a period  
45 greater than **\*[the term of the governing body or]**\* 1 year**\*,**  
46 whichever is greater, nor shall the terms, conditions or specifica-  
47 tions specified pursuant to section 4 be in any way amended or  
47A modified**]\*.** *\*Any amendment or modification of the terms, condi-*  
47B *tions, restrictions and specifications which were the subject of com-*

47c *petitive bidding pursuant to section 4 of this act shall be stated in*  
 47D *the resolution awarding the contract.\**

48 (4) The contracting unit has advertised for bids pursuant to  
 49 section 4 *\*on two occasions\** and the governing body thereof has  
 50 rejected such bids *\*on each occasion\** because the contracting unit  
 51 has determined that they are not reasonable as to price on the  
 52 basis of cost estimates prepared for the contracting unit prior to  
 53 the advertising therefor or have not been independently arrived  
 54 at in open competition, but no such contract or agreement may be  
 55 entered into after such rejection of bids, unless:

56 (a) Notification of the intention to negotiate and a reason-  
 57 able opportunity to negotiate shall have been given by the con-  
 58 tracting unit to each responsible bidder, **\*[and]\***

59-60 (b) The negotiated price is lower than the lowest rejected  
 61 bid price of a responsible bidder who bid thereon and is the  
 62 lowest negotiated price offered by any responsible supplier  
 63-64 and is a reasonable price for such work materials, supplies or  
 65 services **\*[;]\* \*\*, \***

66 **\*[(c)** The contract or agreement is made subject to the same  
 67 terms, conditions, restrictions and specifications as were the  
 68 subject of competitive bidding pursuant to section 4 of this  
 69 act, and **]\***

69A *\*(c) Any amendment or modification of the terms, condi-*  
 69B *tions, restrictions and specifications which were the subject of*  
 69C *competitive bidding pursuant to section 4 of this act shall be*  
 69D *stated in the resolution awarding the contract, and\**

70 (d) The negotiated price is lower than the price of the same  
 71 or equivalent materials or supplies available from the State  
 72 or the county in which the contracting unit is located.

73 Whenever a contracting unit shall determine that a bid was  
 74 not arrived at independently in open competition pursuant to  
 75 this subsection 4 of section 5, it shall thereupon notify the  
 76 county prosecutor of the county in which the contracting unit  
 77 is located and the Attorney General of the facts upon which  
 78 its determination is based, and when appropriate, it may in-  
 79 stitute appropriate proceedings in any State or Federal court  
 80 of competent jurisdiction for a violation of any State or Fed-  
 81 eral antitrust law or laws relating to the unlawful restraint  
 82 of trade.

83 Any such contract or agreement may be made, negotiated or  
 84 awarded only upon adoption *\*of a resolution\** by the affirmative  
 85 vote of  $\frac{2}{3}$  of the full membership of the governing body of the con-



86 tracting unit \***[**of an ordinance, in the case of a municipality, or a  
87 resolution, in the case of a county,**]**\* *\*at a meeting thereof\** autho-  
88 rizing such a contract or agreement.

89 Source: R. S. 40:25-4, amended 1962, c. 158, s. 1; 40:25-5; 40:50-1,  
90 amended 1957, c. 30; 1957, c. 209; 1963, c. 67; C. 40:50-5.1 (1943,  
91 c. 198, s. 1, amended 1956, c. 6, s. 1); C. 40:50-5.2 (1943, c. 198,  
92 s. 2); C. 40:50-5.3 (1943, c. 198, s. 3); C. 40:50-5.4 (1943, c. 198,  
93 s. 4, amended 1956, c. 6, s. 2).

1 6. Authorization of certain exceptions. Any such purchase,  
2 contract or agreement may be made, negotiated or awarded for a  
3 contracting party without public advertising for bids and bidding  
4 therefor notwithstanding that the cost or contract price will exceed  
5 \$2,500.00, when an emergency requires the immediate delivery  
6 of the articles or the performance of the service and when prior  
7 to the making of such purchase, contract or agreement or after  
8 the same, it is specifically authorized \***[**so to be**]**\* *\*to be so\** made,  
9 negotiated or awarded by resolution, adoption by the affirmative  
10 vote of  $\frac{2}{3}$  of the full membership of the governing body of the con-  
11 tract unit, for or on behalf of which the same is made, negotiated or  
12 awarded if the full membership of such governing body consists of  
13 more than four members, or of  $\frac{3}{4}$  of all of the members thereof, if  
14 the full membership thereof shall be four members, or of  $\frac{2}{3}$  of all of  
15 the members thereof, if the full membership thereof be three mem-  
16 bers, provided such resolution describes \***[**specifically**]**\* *\*specif-*  
17 *ically\** the circumstances, declares the emergency, and further pre-  
18 scribes the manner in which such purchase, contract or agreement  
19 shall be made, negotiated or awarded, which shall be of such char-  
20 acter as to be effective to promote free and full competition, when-  
21 ever competition is practical under the circumstances.

22 Source: R. S. 40:25-3, 40:50-1, amended 1957, c. 30; 1957, c. 209;  
23 1963, c. 67.

1 7. Contracts not to be divided. No purchase, contract or  
2 agreement, which is single in character or which necessarily or by  
3 reason of the quantities required to effectuate the purpose of the  
4 purchase, contract or agreement, includes the furnishing of addi-  
5 tional services or buying or hiring of materials or supplies \***[**usually  
6 required**]**\* or the doing of additional work, shall be subdivided, so  
7 as to bring it or any of the parts thereof under the maximum price  
8 or cost limitation of \$2,500.00 thus dispensing with the requirement  
9 of public advertising and bidding therefor, and in purchasing or  
10 contracting for, or agreeing for the furnishing of, any services,  
11 the doing of any work or the supplying of any materials or the

12 supplying or hiring of any materials or supplies \***[usually re-**  
 13 **quired]**\*, included in or incident to the performance or completion  
 14 of any project, program, activity or undertaking which is single  
 15 in character or inclusive of the furnishing of additional services  
 16 or buying or hiring of materials or supplies \***[usually required]**\* or  
 17 the doing of additional work, or which requires the furnishing of  
 18 more than one article of equipment or buying or hiring of materials  
 19 or supplies \***[usually required]**\*, all of the services, materials or  
 20 property requisite for the completion of such project shall be in-  
 21 cluded in one purchase, contract or agreement.

22 Source: R. S. 40:25-2, amended 1938, c. 167; 1956, c. 80; 1957, c. 208.

1 8. Periodic solicitation for proposals work or materials  
 2 and supplies required. Every contracting agent shall, at  
 3 intervals to be fixed by the governing body, solicit by public  
 4 advertisement the submission of bids for the furnishing of all  
 5 work, materials and supplies which are \***[usually required]**\* and  
 6 which under section 4 of this act can be purchased or agreed or  
 7 contracted to be furnished only after public advertisement for bids  
 8 and bidding therefor and all purchases, or contracts or agreements  
 9 for the furnishing, of such work, materials and supplies  
 10 shall be made and awarded only in that manner.

11 Source: R. S. 40:25-6; 40:50-2.

#### C. PURCHASING AGENTS, DEPARTMENTS OR BOARDS

1 9. Purchasing agent, department or board; establishment;  
 2 powers. The governing body of any local unit may, by ordi-  
 3 nance, in the case of a municipality, and resolution, in the case  
 4 of a county, provide for the appointment of a purchasing agent,  
 5 or purchasing department or a purchasing board, with authority  
 6 to purchase, as its contracting agent, such materials and supplies  
 7 required to be purchased on behalf of the contracting unit, as said  
 8 governing body shall, by said ordinance, or resolution pre-  
 9 scribe and such purchasing agent, purchasing department or pur-  
 10 chasing board shall have authority to purchase such materials and  
 11 supplies on behalf of the contracting unit and prepare the public  
 12 advertising for bids, to receive the bids and to make the awards  
 13 in such cases, subject to the approval of the governing body to be  
 14 given when and in such manner as said governing body shall by  
 15 such ordinance or resolution prescribe.

16 Source: R. S. 40:25-7; 40:50-7.

#### D. JOINT PURCHASING AGREEMENTS

1 10. Joint agreements for purchase of work, materials, supplies;  
 2 authorization. The governing bodies of two or more contracting

3 units **\*[or school districts]\*** within the same county, or adjoining  
 4 counties, **\*[and]\*** may provide by joint agreement for the purchase  
 5 of work, materials and supplies for use by their respective juris-  
 6 dictions.

7 (a) Such agreement shall be entered into by similar ordinances\*,  
 8 *in the case of municipalities,\** or resolutions\*, *in the case of other*  
 8A *contracting units,\** adopted by each of the participating governing  
 9 bodies; which shall set forth the categories of work, materials and  
 10 supplies to be purchased, the manner of advertising for bids and  
 11 of awarding of contracts, the method of payment by each partici-  
 12 pating contracting unit **\*[or school district]\***, and other matters  
 13 deemed necessary to carry out the purposes of the agreement.

14 (b) Each contracting unit's **\*[and school district's]\*** share of ex-  
 15 penditures for purchases under any such agreement shall be ap-  
 16 propriated and paid in the manner set forth in the agreement and  
 17 in the same manner as for other expenses of the contracting unit  
 18 **\*[or school district]\***.

19 Source: C. 40:50-7.1 (1964, c. 245, s. 1 amended 1966, c. 202, s. 1;  
 20 1968, c. 422, s. 5); C. 40:50-7.2 (1964, c. 245, s. 2 amended 1968,  
 21 c. 422, s. 6); C. 40:50-7.3 (1964, c. 245, s. 3 amended 1968, C.  
 22 422, s. 7).

1 11. Additional matters regarding agreements for the purchases  
 2 of work, materials and supplies.

3 (1) The contracting units **\*[or school districts]\*** entering into a  
 4 joint agreement pursuant to section 10 of this act may designate  
 5 a joint purchasing agent, department or board pursuant to section  
 6 9 of this act. Any such agent, board or department already desig-  
 7 nated pursuant to section \*9\* may serve as the joint agent, depart-  
 8 ment or board designated pursuant to this section.

9 (2) Purchases, contracts or agreements made pursuant to a  
 10 joint purchasing agreement shall be subject to all of the terms and  
 11 conditions of this act.

12 (3) Any county, municipality or school district serving as a pur-  
 13 chasing agent, board or department pursuant to this section 11,  
 14 may make an appropriation to enable it to perform any such con-  
 15 tract and may anticipate as revenue payments to be made and  
 16 received by it from any other party to the agreement. *\*Any items*  
 17 *so included in a local budget shall be subject to the approval of the*  
 18 *Director, Division of Local Finance, who shall consider the matter*  
 19 *in conjunction with the requirements of chapter 4 of Title 40A of*  
 20 *the New Jersey Statutes.\** The agreement and any subsequent  
 21 amendment or revisions thereto shall be filed with the Director of

22 the Division of Local Finance in the Department of Community  
 23 Affairs. The purchasing agent, pursuant to such an agreement,  
 24 shall also annually file with the director a report of any purchases,  
 25 contracts or agreements and the amounts thereof annually. The  
 26 director may, by regulation, specify the form and content of such  
 27 reports.

28 \* (4) Any agent, department or board so designated pursuant to  
 29 a joint purchasing agreement shall have the sole responsibility to  
 30-33 comply with the provisions of section 23 of this act.\*

34 Source: C. 40:23-6.34 (1967, c. 228, s. 1; 1968, c. 422, s. 1); C.  
 35 40:23-6.35 (1967, c. 228, s. 2; 1968, c. 422, s. 2); C. 40:23-6.36 (1967,  
 36 c. 228, s. 3; 1968, c. 422, s. 3); C. 40:23-6.37, (1967, c. 228, s. 4; 1968,  
 37 c. 422, s. 4).

1 12. Purchases through State agency. Any contracting unit  
 2 under this act may without advertising for bids, or having rejected  
 3 all bids obtained pursuant to advertising therefor, purchase any  
 4 materials, supplies or equipment under any contract or contracts  
 5 for such materials, supplies or equipment entered into on behalf  
 6 of the State by the Division of Purchase and Property in the De-  
 7 partment of the Treasury.

8 Source: C. 40:25-4.5 (1969, c. 104).

#### E. SPECIFICATIONS

1 13. Specifications. Any specifications for an acquisition under  
 2 this act, whether by purchase, contract or agreement, shall be  
 3 drafted in a manner to encourage free, open and competitive bid-  
 4 ding. In particular, no specifications under this act may:

5 (a) Require any standard, restriction, condition or limitation not  
 6 directly related to the purpose, function or activity for which the  
 7 purchase, contract or agreement is made; or

8 (b) Require that any bidder be a resident of, or that his place  
 9 of business be located in, the county or municipality in which the  
 10 purchase will be made or the contract or agreement performed,  
 11 unless the physical proximity of the bidder is requisite to the effi-  
 12 cient and economical purchase or performance of the contract or  
 13 agreement; or

14 (c) Discriminate on the basis of race, religion, \***[creed]**\* \*sex\*,  
 15 national origin; or

16 (d) Require, with regard to any purchase, contract or agree-  
 17 ment, the furnishing of any "brand name," but may in all cases  
 18 require "brand name or equivalent," except that if the materials  
 19 to be supplied or purchased are patented or copyrighted, such  
 20 materials or supplies may be purchased by specification in any case

21 in which the ordinance or resolution authorizing the purchase, con-  
 22 tract, sale or agreement so indicates, and the special need for such  
 23 patented or copyrighted materials or supplies is directly related  
 24 to the performance, completion or undertaking of the purpose for  
 25 which the purchase, contract or agreement is made; or

26 (e) Fail to include any option for renewal, extension, or release  
 27 which the contracting unit may intend to exercise or require; or  
 28 any terms and conditions necessary for the performance of any  
 29 extra work; or fail to disclose any matter necessary to the substan-  
 30 tial performance of the contract or agreement.

31 Any specification adopted by the governing body, which know-  
 32 ingly excludes prospective bidders by reason of the impossibility  
 33 of performance, bidding or qualification by any but one bidder,  
 34 except as provided herein, shall be null and void and of no effect  
 35 and subject purchase, contract or agreement shall be readvertised,  
 36 and the original purchase, contract or agreement shall be set aside  
 37 by the governing body. \***[No contracting unit setting aside a pur-  
 38 chase, contract or agreement pursuant to this section shall be liable  
 39 for damages therefor.]**\*

40 Source: New.

#### F. CONTRACTS, FORM AND CONTENTS

1 14. Form and execution of contracts and bonds. The  
 2 governing body of any contracting unit may prescribe the form and  
 3 manner in which all contracts for performing work or furnishing  
 4 materials for the contracting unit shall be made and executed, and  
 5 the form and manner of execution and approval of all guarantee,  
 6 indemnity, fidelity and other bonds required to be given to the  
 7 contracting unit pursuant to law.

8 Source: R. S. 40:25-1.

1 15. Contracts for fuel or oil and snow and ice removal;  
 2 duration. Any contracting unit may enter into a contract for the

3 (1) Supplying of

4 (a) Fuel for heating purposes, for any term not exceeding  
 4A in the aggregate, 2 years, or

5 (b) Fuel or oil for use of airplanes, for any term not exceed-  
 6 ing in the aggregate, 3 years, or

7 (2) The plowing and removal of snow and ice from highways  
 8 and public places, for any term not exceeding in the aggregate, 1  
 9 year, or

10 (3) The collection and disposal of garbage and refuse, for any  
 11 term not exceeding in the aggregate, 5 years,  
 12 notwithstanding that such terms exceed the fiscal year.

13 Source: C. 40:25-1.1 (1953, c. 395); C. 40:50-5.5 (1945, c. 158);  
14 C. 40:50-5.6 (1945, c. 160); C. 40:50-5.7 (1962, c. 168).

1 16. Separate plans for various types of work; bids; contracts.  
2 In the preparation of plans and specifications for the erection,  
3 alteration or repair of any public building by any political sub-  
4 division of this State, when the entire cost of the work will exceed  
5 \$2,500.00 in amount, the architect, engineer or other person pre-  
6 paring the plans and specifications, may prepare separate plans  
7 and specifications for

8 (1) The plumbing and gas fitting and all kindred work,

9 (2) Steam power plants, steam and hot water heating and  
10 ventilating apparatus and all kindred work,

11 (3) Electrical work,

12 (4) Structural steel and ornamental iron work, and

13 (5) All other work required for the completion of the project.

14 The contracting agent authorized to award such contract for the  
15 erection, construction, alteration or repair of any public building  
16 shall advertise for and receive, in the manner provided by law,  
17 either (a) separate bids for each of said branches of work, or  
18 (b) bids for all the work and materials required to complete the  
19 building to be included in a single overall contract, or \*, (c)\* both  
20 \*[, in which case there]\* \*. *There\** will be set forth in the bid the  
21 name or names of, and evidence of performance security from, all  
22 subcontractors to whom the bidder will subcontract the furnishing  
23 of plumbing and gas fitting, and all kindred work, and of the  
24 steam and hot water heating and ventilating apparatus, steam  
25 power plants and kindred work, and electrical work, structural  
26 steel and ornamental iron work, each of which subcontractors shall  
27 be qualified in accordance with this Title.

28 Contracts shall be awarded to the lowest responsible bidder\*. *In*  
29 *the event that a contract is advertised in accordance with (c) above*  
30 *said contract shall be awarded\** in the following manner: If the sum  
31 total of the amounts bid by the lowest responsible bidder for each  
32 branch is less than the amount bid by the lowest responsible bidder  
33 for all the work and materials, the contracting agent shall award  
34 separate contracts for each of such branches to the lowest responsi-  
35 ble bidder therefor, but if the sum total of the amount bid by the  
36 lowest responsible bidder for each branch is not less than the  
37 amount bid by the lowest responsible bidder for all the work and  
38 materials, the contracting agent shall award a single overall con-  
39 tract to the lowest responsible bidder for all of such work and  
40 materials. (c) In every case in which a contract is awarded under

41 (b) above, all payments required to be made under such contract for  
 42 work and materials supplied by a subcontractor shall, upon the  
 43 certification of the contractor of the amount due to the subcontrac-  
 44 tor, be paid directly to the subcontractor.

45 Source: R. S. 40:9-3, amended 1968, c. 121, s. 1.

1 17. Number of working days specified. All specifications for  
 2 the doing of any public work for a contracting unit shall fix the  
 3 date before which the work shall be completed, or the number of  
 4 working days to be allowed for its completion; and every such con-  
 5 tract shall contain a provision for a deduction, from the contract  
 6 price, or any wages paid by the contracting unit to any inspector  
 7 or inspectors necessarily employed by it on the work, for any num-  
 8 ber of days in excess of the number allowed in the specifications.

9 Source: R. S. 40:25-26; 40:50-3.

1 18. American goods and products to be used where possible.  
 2 Each local unit shall provide, in the specifications for all  
 3 contracts for county or municipal work or for work for which it will  
 4 pay any part of the cost, that only manufactured and farm products  
 5 of the United States, wherever available, be used in such work.

6 Source: R. S. 40:15 1.

1 19. Liquidated damages. Any contract or agreement made  
 2 pursuant to this act may include liquidated damages for the vio-  
 3 lation of any of the terms and conditions thereof or the failure to  
 4 perform said contract or agreement in accordance with its terms  
 5 and conditions, or the terms and conditions of this act.

6 Source: New.

#### G. BIDDING REQUIREMENTS

1 20. Certificate of bidder showing ability to perform contract.  
 2 There may be required from any bidder submitting a bid  
 3 on public work to any contracting unit, duly advertised for in  
 4 accordance with law, a certificate showing that he owns,  
 5 leases, or controls all the necessary equipment required by the  
 6 plans, specifications and advertisements under which bids are asked  
 7 for and if the bidder is not the actual owner or lessee of any  
 8 such equipment, his certificate shall state the source from which  
 9 the equipment will be obtained, and shall be accompanied by a  
 10 certificate from the owner or person in control of the equipment  
 11 definitely granting to the bidder the control of the equipment re-  
 12 quired during such time as may be necessary for the completion  
 13 *\*of that portion\* of the contract *\*for which it is necessary\**.*

14 Source: R. S. 40:25-11; 40:25-12.

1 21. **\*[Cash or certified check to accompany bid; amount]\*** *\*Certi-  
 1A fied check, cashier's check or bid bond to accompany bid; amount.\**

2 There may be required from any person bidding on any  
 3 contract or agreement, for any contracting unit, advertised in  
 4 accordance with law, that the bid be accompanied by \***[cash or]**\* a  
 5 certified check, \*cashier's check or bid bond,\* payable to the con-  
 6 tracting unit as a guarantee that if the contract or agreement is  
 7 awarded to him he will enter into a contract therefor \*and will fur-  
 8 nish any performance bond or other security required as a guaran-  
 9 tee or indemnification\*. The amount to be so deposited shall be  
 10 **\*\*[at least]**\* 10% of the bid, but in no case in excess of \$20,000.00.  
 11 Source: R. S. 40:25-9.

1 22. Guarantee or surety company; certificate. When a surety  
 2 company bond is required in the advertisement or specifica-  
 3 tions for a contract or agreement, every contracting unit  
 4 shall require from any bidder submitting a bid in ac-  
 5 cordance with plans, specifications and advertisements, as  
 6 provided for by law, a certificate from a surety company stating  
 7 that it will provide the contractor with a bond in such sum as is  
 8 required in the advertisement or in the specifications.

9 This certificate shall be obtained for a bond—

10 (1) For the faithful performance of all provisions of the speci-  
 11 fications or for all matters which may be contained in the notice  
 12 to bidders, relating to the performance of the contract or agree-  
 12a ment, and

13 (2) If any be required, for a guarantee bond for the faithful  
 14 performance of the contract provisions relating to the repair and  
 15 maintenance of any work, project or facility and its appurtenances  
 16 and keeping the same in good and servicable condition during  
 17 the term of the bond as provided for in the notice to bidders or  
 18 in the specifications, or

19 (3) In such other form as may be provided in the notice to  
 20 bidders or in the specifications.

21 If a bidder desires to offer the bond of an individual instead of  
 22 that of a surety company, he shall submit with his bid a certificate  
 23 signed by such individual similar to that required of a surety  
 24 company.

25 The contracting unit may reject any such bid if it is not satisfied  
 26 with the sufficiency of the individual surety offered.

27 Source: R. S. 40:25-13, amended 1957, c. 54; 40:25-14.

1 23. Advertisements for bids; bids; general requirements.  
 2 All advertisements for bids shall be published at least once,  
 3 10 days prior to the date fixed for receiving the bids, in a  
 4 newspaper of general circulation published in this State and



5 circulating within the territory included within or served by the  
 6 contracting unit. The advertisement shall designate the manner  
 7 of submitting and the method of receiving the bids and the time  
 8 and place at which the bids will be received. *\*If the published*  
 9 *specifications provide for receipt of bids by mail, those bids which*  
 10 *are mailed to the contracting unit shall be sealed and shall only be*  
 11 *opened for examination at such time and place as all bids received*  
 11A *are unsealed and announced.\** At such time and place the con-  
 11B tracting agent of the contracting unit shall *\*publicly\** receive the  
 11C bids, and thereupon immediately proceed to unseal them and pub-  
 11D licly announce the contents, which announcement shall be made  
 12 in the presence of any parties bidding or their agents, who are  
 13 then and there present, and shall also make proper record of the  
 14 prices and terms, upon the minutes of the governing body, if the  
 15 award is to be made by the governing body of the contracting unit,  
 16 or in a book kept for that purpose, if the award is to be made by  
 17 other than the governing body, and in such latter case it shall be  
 18 reported to the governing body of the contracting unit for its action  
 19 thereon, when such action thereon is required. No bids shall be re-  
 20 ceived *\*[previous to or]\** after the time designated in the adver-  
 20A tisement.

21 Source: R. S. 40:25-8; 40:50-4.

#### H. AWARDS AND EXECUTION OF CONTRACTS

1 24. Time for making award; deposits returned. The con-  
 2 tracting agent shall award the contract or contracts, or reject all  
 3 bids therefor within 30 days after they are received, and all *\*[cash*  
 4 *and]\** checks *\*or bonds\** delivered with the bids, *\*[except those*  
 5 *delivered by the two lowest responsible bidders]\** *\*except the check*  
 6 *or bond of the bidder to whom the contract is awarded\**, shall be  
 7 returned within 3 days thereafter, Sundays and holidays excepted.  
 8 *\*The check or bond of the bidder to whom the contract is awarded*  
 9 *shall be retained until a contract is executed and any required per-*  
 10 *formance bond or other security is submitted.\** If for any reason  
 11 the contracting agent is unable to make an award within such  
 12 30-day period, it shall be lawful for such agent and *\*[the lowest]\**  
 13 *\*each of the three lowest\** responsible *\*[bidder]\** *\*bidders\** and  
 14 his proposed surety, if any, to agree upon an extension, not exceed-  
 15 ing an additional 30 days, for the making of the award, in which  
 16 event the contracting agent shall make the award or reject such  
 17 *\*[bid]\** *\*bids\** on or before the end of such extended period.

18 Source: R. S. 40:25-10, amended 1955, c. 191.

## I. QUALIFICATION OF BIDDERS

## (1) IN GENERAL

1 25. General power to provide qualification for bidders. The  
2 governing body of any contracting unit may establish reason-  
3 able regulations appropriate for controlling the qualifications of  
4 prospective bidders upon contracts to be awarded on behalf of the  
5 contracting unit, by the class or category of work to be per-  
6 formed or materials and supplies to be furnished or hired which  
7 may fix the qualifications required according to the financial ability  
8 and experience of the bidders and the capital and equipment avail-  
9 able to them pertinent to and reasonably related to the class or  
10 category of work to be performed or materials and supplies to  
11 be furnished or hired in the performance of any such  
12 contract, and may require each bidder to furnish a statement  
13 thereof; and if such governing body is not satisfied with the  
14 qualifications of any bidder as founded upon such statement, it may  
15 refuse to furnish him with any plans or specifications for any public  
16 contract or consider any bid made by him for any contract.

17 Prior to the adoption of any such regulations, a contracting  
18 unit shall submit them to a public hearing. Notice of the hearing  
19 and a general description of the subject matter of the regulations  
20 to be adopted shall be published in not less than two newspapers  
21 circulating in the county or municipality in which the contracting  
22 unit is located. Publication shall precede by at least 20 days the  
23 date set in the notice for the hearing. The clerk or secretary of the  
24 governing body of the contracting unit shall keep a record of the  
25 proceedings and of the testimony of any citizen or prospective bid-  
26 der \***[within]**\* \*. *Within*\* 10 days after the completion of the  
27 hearings\***[. The]**\* \*, *the*\* proposed regulations and a true copy  
28 of the hearings shall be forwarded to the Director of the Division  
29 of Local Finance for his approval. *\*This approval shall be in-*  
30 *dicated by a letter from the director to the governing body of the*  
31 *contracting unit.\** If the director fails to approve or disapprove  
32 the regulations within 30 days of their receipt by him, they shall  
32A take effect without his approval. The director may disapprove  
32B such proposed regulations only if he finds that:

- 33 (a) They are written in a manner which will unnecessarily dis-  
34 courage full, free and open competition; or  
35 (b) They unnecessarily restrict the participation of small busi-  
36 nesses in the public bidding process; or  
37 (c) They create undue preferences; or

38 (d) They violate any other provision of this act, or any other law.  
 39 If the director disapproves such proposed regulations within  
 40 the 30-day period prescribed, they shall be of no force and effect  
 41 and may not be required as a condition to the acceptance of a bid on  
 42 any public contract by the contracting unit. *\*Any appeal from a*  
 42A *decision of the director to the Local Finance Board shall be subject*  
 42B *to the provisions of the Local Government Supervision Act (P. L.*  
 42C *1947, c. 151, C. 52:27BB-1 et seq.).\**

43 No qualification rating of any bidder shall be influenced by his  
 44 race, religion, *\*sex,\** national origin, nationality or his place of resi-  
 45 dence or business.

46 Nothing contained in this act shall limit the right of any court  
 47 to review a refusal to furnish any such plans or specifications or  
 48 the consideration or any bid on any contract advertised.

49 Any such governing body may adopt a standard form of state-  
 50 ment or questionnaire for bidders on public works and contracts,  
 51 and in such case their action shall be governed as provided herein.  
 52 Source: R. S. 40:25-16; 40:25-24; 40:50-5.

#### (2) STANDARD FORM OF QUESTIONNAIRE

1 26. Standard questionnaire; effect of unsatisfactory answers.  
 2 The governing body of any contracting unit may adopt a  
 3 standard form of statement or questionnaire for bidders on public  
 4 works and contracts and may require from any person proposing to  
 5 bid upon any such public work or contract a statement or answers  
 6 showing his financial ability and experience in performing public  
 7 work and describing the equipment available to such bidder in the  
 8 performance of such work or contract, and if not satisfied with the  
 9 sufficiency of this statement or answers may refuse to furnish plans  
 10 and specifications to him.

11 Source: R. S. 40:25-16; 40:50-5.

1 27. Standard statements and questionnaires; prospective bid-  
 2 ders; responses. Such statements and questionnaires shall  
 3 be standardized for like classes of work to be submitted to prospec-  
 4 tive bidders who may be required to respond to questions under  
 5 oath. The statement or answer shall disclose fully the financial  
 6 ability, adequacy of plant and equipment, organization and prior  
 7 experience of the prospective bidder, and such other pertinent and  
 8 material facts as may be required.

9 Source: R. S. 40:25-16.

1 28. Classification of prospective bidders; notice. Prospective  
 2 bidders shall be classified as to the character and amount of  
 3 public work or contracts as to which they shall be qualified to

4 submit bids, and bids shall be accepted only from persons so  
5 qualified. The classification shall be made and an immediate notice  
6 thereof shall be sent to the prospective bidders by certified or  
7 registered mail within 8 days after the date of receipt of the respon-  
8 sive statement or answers.

9 Source: R. S. 40:25-17.

1 29. Reclassification of prospective bidders; request for;  
2 time limit. If any person, after being notified of his classification,  
3 shall be dissatisfied therewith or with the classification of other  
4 bidders, he may request in writing a hearing before such governing  
5 body, and may present such further evidence with respect to the  
6 financial responsibility, organization, plant and equipment, or ex-  
7 perience of himself or other prospective bidders as might tend to  
8 justify a different classification.

9 Where a request is made for the change of classification of  
10 another prospective bidder, the applicant therefor shall notify such  
11 other bidder by certified or registered mail of the time and place  
12 of hearing, as fixed by the governing body, and at the hearing shall  
13 present satisfactory evidence that the notice was served as herein  
14 required, before any matters pertaining to a change of classification  
15 of such other bidder shall be taken up. After hearing such evidence  
16 the governing body may, in its discretion, by appropriate action,  
17 change or retain the classification of any bidder.

18 No change in classification to be effective for any public work or  
19 contract where bidding therefor has been duly advertised, shall  
20 be made unless the written request therefor shall have been received  
21 at least 20 days before the final day for submission of bids.

22 All requests for change in classification and notice of any action  
23 sent by certified or registered mail to the parties directly affected  
24 thereby, shall be acted upon by the governing body concerned at  
25 least 8 days prior to the date fixed for the next opening of bids  
26 on any contract or contracts for which such persons might be  
27 qualified to bid as a result of the reclassification.

28 Source: R. S. 40:25-18.

1 30. Board of review upon classification; membership,  
2 et cetera. There is hereby established a board of review upon  
3 classification and reclassification of prospective bidders. This board  
4 shall consist of one member of the governing body of the contracting  
5 unit concerned\*[, to be designated by such body, and two citizens of  
6 the county or municipality to be designated by the Superior Court  
7 assignment judge of the county]\* *\*and two citizens of the county*  
8 *or municipality to be designated by such governing body\**. In all  
9 counties having a county supervisor, he shall be a member of the

10 board of review instead of one of the citizens. The clerk of the  
11 contracting unit shall be the secretary of the board of review and  
12 shall keep a complete record of its proceedings and decisions. The  
13 members of the board shall serve without compensation.

14 Source: R. S. 40:25-19, amended 1953, c. 37, s. 46.

1 31. Reconsideration by board of review; request for;  
2 time limit. Any prospective bidder who is dissatisfied with his  
3 original classification or reclassification may upon receipt of notice  
4 thereof, request in writing a hearing of the matter before the board  
5 of review. The request shall be filed with the contracting agent and  
6 the secretary of the board.

7 The board shall hold a hearing at which the prospective bidder  
8 shall be entitled to be heard and to submit additional information.

9 The board shall review the responsibility of all prospective bid-  
10 ders who have filed statements or answers, considering both the  
11 statement, answers and any additional information given at the  
12 hearing, and shall certify to the contracting unit concerned, its  
13 decision as to the original classifications or reclassifications, if any.  
14 The decisions shall be made by a majority vote.

15 In order for any change in classification by the board to be  
16 effective for public work or contract previously advertised, the  
17 request shall be filed not less than 5 days prior to the final day for  
18 submission of bids, and the board shall hold a hearing and act upon  
19 the request not less than 2 days prior to the date fixed for the next  
20 opening of bids on any public work or contract for which such  
21 prospective bidders might be qualified to bid as a result of the  
22 reclassification.

23 Source: R. S. 40:25-20.

1 32. Rejection of bids after qualification of bidder; hear-  
2 ing. Nothing herein contained shall be construed as depriving any  
3 contracting agent of the right to reject a bid at any time prior to the  
4 actual award of a public work or contract, where the circumstances  
5 of the prospective bidder have changed subsequent to the qualifica-  
6 tion and classification of the said bidder, which in the opinion of  
7 the awarding contracting unit would adversely affect the responsi-  
8 bility of the bidder. Before taking final action on any such bid,  
9 the contracting agent concerned shall notify the said bidder and  
10 afford him an opportunity to present any additional information  
11 which might tend to sustain the existing classification.

12 No person shall be qualified to bid on any public work or contract  
13 unless he shall have submitted a statement or answers as herein  
14 required within a period of 6 months preceding the date of  
15 opening of bids for the public work or contract, if the bidders

16 thereon are required to be classified hereunder. *\*In any case where*  
 17 *the contracting unit shall require classification of the bidders in*  
 18 *compliance with these sections, each bidder on any public work or*  
 19 *contract shall be required to submit a statement listing the changes*  
 20 *in the statement or answers herein required as part of his bid sub-*  
 21 *mission.\**

22 Source: R. S. 40:25-21.

1 33. Forfeiture of deposit in certain cases, A deposit made  
 2 by any person who makes or causes to be made a false, decep-  
 3 tive or fraudulent statement or answers in response to a question-  
 4 naire or in the course of a hearing hereunder may be caused to be  
 5 forfeited, as liquidated damages by and to the contracting unit.

6 Source: R. S. 40:25-23.

### (3) PENALTIES

1 34. Penalties for false statements. Any person who makes or  
 2 causes to be made, a false, deceptive or fraudulent statement  
 3 in the statement or answers in response to the questionnaire,  
 4 or in the course of any hearing hereunder, shall be guilty of a misde-  
 5 meanor, and upon conviction shall be punishable by a fine of not  
 6 less than \$100.00 nor more than \$1,000.00, and shall be permanently  
 7 disqualified from bidding on all public work or contracts of the  
 8 contracting unit which submitted the questionnaire; or, in the case  
 9 of an individual or an officer or employee charged with the duty  
 10 of responding to the questionnaire for a person, firm, copartner-  
 11 ship, association or corporation, by such fine or by imprisonment,  
 12 not exceeding 6 months, or both.

13 Source: R. S. 40:25-22.

### \*[(4) OFFICIALS SAVED HARMLESS]\*

1 \*35. No liability of officials. No action for damages shall lie  
 2 against an official of any contracting unit because of any autho-  
 3 rized action taken hereunder.

4 The word "official" as used in this section shall mean and in-  
 5 clude the governing body and any officer, board, commission, com-  
 6 mittee or department of a contracting unit.

7 Source: R. S. 40:25-15; 40:25-25.]\*

### J. CONTRACTS OF SPECIAL CHARACTER

1 \*36.\* \*35.\* Indemnity agreements; Federal projects for benefit  
 2 of municipality. Any contracting unit may enter into an agreement  
 3 indemnifying the United States of America, or any board, body,  
 4 officer or agency thereof, from loss or damage to the property of  
 5 others resulting from the furtherance of any project, undertaken  
 6 or to be undertaken by the Federal Government for the benefit of

7 such contracting unit where the cost or any part thereof is to be  
8 paid out of Federal funds.  
9 Source: C. 40:50-8 (1949, c. 67).

#### K. MANNER AND METHOD OF SALE

1 \***[37.]** \*36.\* Sale or other disposition of personal property. Any  
2 contracting unit by resolution of its governing body may authorize  
3 the sale of its personal property not needed for public use.

4 (1) If the estimated fair value of the property to be sold exceeds  
5 \$2,500.00 in any one sale and it is neither livestock nor perishable  
6 goods, it shall be sold at public sale to the highest bidder.

7 (2) The contracting unit need not advertise for bids when it  
8 makes any such sale to the United States, the State of New Jersey,  
9 another contracting unit or to any body politic to which it con-  
10 tributes tax raised funds.

11 (3) Notice of the date, time and place of the public sale together  
12 with a description of the items to be sold and the conditions of  
13 sale shall be published in a newspaper circulating in the con-  
14 tracting unit. Such sale shall be held not less than 7 nor more  
15 than 14 days after the latest publication of the notice thereof.

16 (4) If no bids are received the property may then be sold at  
17 private sale without further publication or notice thereof, but in  
18 no event at less than the estimated fair value; or the contracting  
19 unit may if it so elect reoffer the property at public sale. As  
20 used herein, "estimated fair value" means the market value of the  
21 property between a willing seller and a willing buyer less the cost  
22 to the municipality to continue storage or maintenance of any  
23 personal property not needed for public use to be sold pursuant  
24 to this section.

25 (5) A contracting unit may reject all bids if it determine such  
26 rejection to be in the public interest. In any case in which the con-  
27 tracting unit has rejected all bids, it may readvertise such personal  
28 property for a subsequent public sale. If it elects to reject all bids  
29 at a second public sale, pursuant to this section, it may then sell  
30 such personal property without further publication or notice  
31 thereof at private sale, provided that in no event shall the negotiated  
32 price at private sale be less than the highest price of any bid re-  
33 jected at the preceding two public sales and provided further that  
34 in no event shall the terms or conditions of sale be changed or  
35 amended.

36 Source: New.

## \*L. ASSISTANCE TO CONTRACTING UNITS

- 1 37. *Division of Local Finance to assist contracting units. The*  
 2 *Division of Local Finance is hereby authorized to assist contracting*  
 3 *units in all matters affecting the administration of this law.*  
 4 *Source: New.\**

\***[L.]**\* \*M.\* STATUTES REPEALED

- 1 38. Statutes repealed. The following sections, chapter and  
 2 acts, together with all amendments and supplements thereto,  
 3 are hereby repealed:  
 4 Chapter 25 of Title 40 of the Revised Statutes;  
 5 Sections 40:9-3; 40:15-1; 40:50-1 to 40:50-5 inclusive and  
 6 40:50-7, of the Revised Statutes;  
 7 Laws of 1943, c. 198 (C. 40:50-5.1 to C. 40:50-5.4 inclusive);  
 8 Laws of 1945, c. 158 (C. 40:50-5.5);  
 9 Laws of 1945, c. 160 (C. 40:50-5.6);  
 10 Laws of 1949, c. 67 (C. 40:50-8);  
 11 Laws of 1962, c. 168 (C. 40:50-5.7);  
 12 Laws of 1953, c. 395 (C. 40:25-1.1);  
 13 Laws of 1964, c. 245 (C. 40:50-7.1 to C. 40:50-7.3 inclusive);  
 14 Laws of 1967, c. 228 (C. 40:23-6.34 to C. 40:23-6.37 inclusive);  
 15 Laws of 1969, c. 104 (C. 40:25-4.5).

\***[M.]**\* \*N.\* EFFECTIVE DATE

- 1 39. Effective date, this act shall take effect July 1, \***[1970,]**\*  
 2 \*1971\* but any action, purchase, sale, contract or agreement taken,  
 3 made or entered into prior to this date pursuant to any of the  
 4 acts, amendments and supplements hereby repealed are hereby  
 5 validated and confirmed, provided that in no event shall a lease  
 6 entered into prior to the effective date of this act be renewed or  
 7 extended, except in accordance with the terms and provisions of  
 8 this act.



[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 284

# STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1969 SESSION

By Senators BEADLESTON and HAUSER

Referred to Committee on County and Municipal Government

AN ACT concerning local public contracts by municipalities and counties and revising parts of the statutory law.

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

## A. GENERAL PROVISIONS

1 1. Short title; citation. This act shall be known and may be cited  
2 as the "Local Public Contracts Law."

3 Source: New.

1 2. Definitions. As used in this act the following words have the  
2 following definitions, unless the context otherwise indicates:

3 (1) "Contracting unit" means

4 (a) Any county, or

5 (b) Any municipality, or

6 (c) Any board, commission, committee, officer, department,  
7 branch or agency of any county or municipality, or

8 (d) Any board, commission or agency, which has administra-  
9 tive jurisdiction over any district or facility, included or  
10 operating in whole or in part, within the territorial boundaries  
11 of any county or municipality which exercises functions which  
12 are appropriate for the exercise by one or more units of local  
13 government, and which has power to make purchases and enter  
14 into contracts or agreements for the performance of any work  
15 or the furnishing or hiring of any materials or supplies usually  
16 required, the cost or contract price of which is to be paid with  
17 or out of public funds.

18 (2) "Governing body" means

19 (a) The board of chosen freeholders of the county, when the  
20 purchase is to be made or the contract or agreement is to be  
21 entered into by, or in behalf of, a county, or

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.**

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

25 (c) Any board, commission, committee or agency of the  
 26 character described in subsection (1) (d) of this section.

27 (3) "Contracting agent" means the governing body of a con-  
 28 tracting unit, or any board, commission, committee, officer, depart-  
 29 ment, branch or agency which has power to prepare the advertise-  
 30 ments, to advertise for and receive the bids and to make awards  
 31 for the contracting unit in connection with the purchases, contracts  
 32 or agreements governed by the provisions of this law.

33 Source: New.

#### B. PURCHASES, CONTRACTS AND AGREEMENTS,

##### WHEN TO BE LET BY BIDS

1 3. Purchases, contracts or agreements not required to be adver-  
 2 tised for. Any purchase, contract or agreement for the perform-  
 3 ance of any work or the furnishing or hiring of materials or  
 4 supplies usually required, the cost or price of which, inclusive of  
 5 the cost or price of any purchase, contract or agreement for the  
 6 performance of any work or the furnishing of, or of the use of,  
 7 any materials or supplies usually required, which forms a part of  
 8 the same immediate project, is to be paid with or out of public  
 9 funds and does not exceed in the aggregate the sum of \$2,500.00,  
 10 may be made, negotiated or awarded for a contracting unit without  
 11 public advertising for bids and bidding therefor, notwithstanding  
 12 that a lesser sum than \$2,500.00 is fixed as a maximum for said  
 13 purpose in any other law.

14 Source: New.

1 4. Purchases, contracts and agreements required to be advertised  
 2 for. Every purchase, contract or agreement, for the performance  
 3 of any work or the furnishing or hiring of any materials or supplies  
 4 usually required, the cost or the contract price whereof is to be paid  
 5 with or out of public funds, not included within the terms of section  
 6 3 of this law, shall be made or awarded only after public adver-  
 7 tising for bids or bidding therefor, except as is provided otherwise  
 8 in this law or specifically by any other law.

9 Source: R. S. 40:25-2, amended 1938, c. 167; 1956, c. 80; 1957, c.  
 10 208; 40:50-1, amended 1957, c. 30; 1957, c. 209; 1963, c. 67; 40:50-2.

1 5. Major exceptions. Any purchase, contract or agreement of  
 2 the character described in section 4 of this law may be made,  
 3 negotiated or awarded without public advertising for bids and  
 4 bidding therefor if

- 5 (1) The subject matter thereof consists of  
 6 (a) Personal or professional services,  
 7 (b) The doing of any work by employees of the contracting  
 8 unit,  
 9 (c) Election expenses, including advertising expenses  
 10 incidental thereto,  
 11 (d) The printing of legal briefs, records and appendices to  
 12 be used in any legal proceeding in which the contracting party  
 13 may be a party,  
 14 (e) The furnishing of a tax map or maps for the contracting  
 15 party,  
 16 (f) The purchase of perishable foods as a subsistence  
 17 supply,  
 18 (g) The hiring or purchase of motor vehicles or the purchase  
 19 of livestock,  
 20 (h) The supplying of any product or the rendering of any  
 21 service by a public utility, which is subject to the jurisdiction  
 22 of the Board of Public Utility Commissioners, in accordance  
 23 with tariffs and schedules of the charges made, charged or  
 24 exacted, filed with said board,  
 25 (i) The hiring of labor, or equipment, for the removal of  
 26 snow or ice from roads and bridges and other public places  
 27 required to be maintained by the contracting party during an  
 28 emergency caused by storm,

29 (2) It is to be made or entered into with the United States of  
 30 America or the State of New Jersey, or any board, body, officer,  
 31 agency or authority, of either.

32 Source: R. S. 40:25-4, amended 1962, c. 158, s. 1; 40:25-5; 40:50-1,  
 33 amended 1957, c. 30; 1957, c. 209; 1963, c. 67; C. 40:50-5.1 (1943,  
 34 c. 198, s. 1, amended 1956, c. 6, s. 1); C. 40:50-5.2 (1943, c. 198,  
 35 s. 2); C. 40:50-5.3 (1943, c. 198, s. 3); C. 40:50-5.4 (1943, c. 198,  
 36 s. 4, amended 1956, c. 6, s. 2).

1 6. Authorization of certain exceptions. Any such purchase,  
 2 contract or agreement may be made, negotiated or awarded for a  
 3 contracting party without public advertising for bids and bidding  
 4 therefor notwithstanding that the cost or contract price will exceed  
 5 \$2,500.00, when \***the subject matter of the purchase, contract or**  
 6 **agreement is such as is described in section 7 of this law, or when**  
 7 **the purchase, contract or agreement is made or awarded under the**  
 8 **circumstances described in section 8 of this law]** \* *an emergency*  
 9 *requires the immediate delivery of the articles or the performance*  
 10 *of the service*\* and when prior to the making of such purchase,  
 11 contract or agreement or after \***the making of]**\* the same \***in**  
 12 **case of an emergency,]**\* it is specifically authorized so to be made,

13 negotiated or awarded by resolution, adopted by the affirmative  
 14 vote of  $\frac{2}{3}$  of the full membership of the governing body of the  
 15 contract unit, for or on behalf of which the same is made, negotiated  
 16 or awarded if the full membership of such governing body consists  
 17 of more than 4 members, or of  $\frac{3}{4}$  of all of the members thereof, if  
 18 the full membership thereof shall be 4 members, or of  $\frac{2}{3}$  of all of  
 19 the members thereof, if the full membership thereof be 3 members,  
 20 provided such resolution describes specifically the circumstances,  
 21 \*~~and in the case of an emergency, describes and~~\* declares the  
 22 emergency, and further prescribes the manner in which such pur-  
 23 chase, contract or agreement shall be made, negotiated or awarded,  
 24 which shall be of such character as to be effective to promote free  
 25 and full competition, whenever competition is practical under the  
 26 circumstances.

27 Source: R. S. 40:25-3, 40:50-1, amended 1957, c. 30; 1957, c. 209;  
 28 1963, c. 67.

1 \*~~7. Other exceptions. Any purchase, contract or agreement may~~  
 2 be made, negotiated or awarded pursuant to section 6 of this law  
 3 when the subject matter consists of

4 (1) Materials, services to be performed by the contractor per-  
 5 sonally under the supervision of the contracting unit and to be paid  
 6 for on a time basis, or

7 (2) Supplies or services, as to which the bids received, after  
 8 advertising therefor, have been rejected because the contracting  
 9 unit has determined that they are not reasonable as to price or  
 10 have not been independently arrived at in open competition, but  
 11 no such purchase, contract or agreement may be entered into after  
 12 such rejection of bids unless

13 (a) Notification of the intention to negotiate and reasonable  
 14 opportunity to negotiate shall have been given by the con-  
 15 tracting unit to each responsible bidder, and

16 (b) The negotiated price is lower than the lowest rejected  
 17 bid price of a responsible bidder who bid thereon and is the  
 18 lowest negotiated price offered by any responsible supplier  
 19 and is a reasonable price for such supplies or services.

20 Source: New.

1 8. Additional exceptions. Any such purchase, contract or agree-  
 2 ment may be made, negotiated or awarded, pursuant to section 6  
 3 of this law, when

4 (1) An emergency requires the immediate delivery of the articles  
 5 or the performance of the service, or

6 (2) One source of supply only is available, or more favorable  
 7 terms can be obtained from a primary source of supply than can  
 8 be obtained under bidding, or

9 (3) Articles of wearing apparel are to be acquired which are  
10 styled or seasonal in character, or

11 (4) Commodities, traded on a national commodity exchange, are  
12 to be acquired and fluctuation of the market requires immediate  
13 action, or

14 (5) Equipment, which is of a technical nature and the procure-  
15 ment thereof, without advertising, is necessary in order to assure  
16 standardization of equipment and interchangeability of parts and  
17 which is to be purchased at a price which does not exceed the price  
18 of similar equipment by more than a reasonable variation of prices.

19 Source: New.】\*

1 \*【9.】\* \*7.\* Contracts not to be divided. No purchase, contract or  
2 agreement, which is single in character or which necessarily or by  
3 reason of the quantities required to effectuate the purpose of the  
4 purchase, contract or agreement, includes the furnishing of addi-  
5 tional services or buying or hiring of materials or supplies usually  
6 required or the doing of additional work, shall be subdivided, so  
7 as to bring it or any of the parts thereof under the maximum price  
8 or cost limitation of \$2,500.00 thus dispensing with the requirement  
9 of public advertising and bidding therefor, and in purchasing or  
10 contracting for, or agreeing for the furnishing of, any services,  
11 the doing of any work or the supplying of any materials or the  
12 supplying or hiring of any materials or supplies usually required,  
13 included in or incident to the performance or completion of any  
14 project which is single in character or inclusive of the furnishing  
15 of additional services or buying or hiring of materials or supplies  
16 usually required or the doing of additional work, or which requires  
17 the furnishing of more than one article of equipment or buying  
18 or hiring of materials or supplies usually required, all of the serv-  
19 ices, materials or property requisite for the completion of such  
20 project shall be included in one purchase, contract or agreement.  
21 Source: R. S. 40:25-2, amended 1938, c. 167; 1956, c. 80; 1957, c. 208.

1 \*【10.】\* \*8.\* Periodic solicitation for proposals or materials and  
2 supplies required. Every contracting agent shall, at intervals to be  
3 fixed by the governing body, solicit by public advertisement the sub-  
4 mission of bids for the furnishing of all materials and supplies  
5 which are usually required and which under section 4 of this law can  
6 be purchased or agreed or contracted to be furnished only after  
7 public advertisement for bids and bidding therefor and all pur-  
8 chases, or contracts or agreements for the furnishing, of such ma-  
9 terials and supplies shall be made and awarded only in that manner.

10 Source: R. S. 40:25-6; 40:50-2.

## C. PURCHASING AGENTS, DEPARTMENTS OR BOARDS

1    \***[11.]**\* \*9.\* Purchasing agent, department or board; establish-  
 2    ment; powers. The governing body of any local unit may, by ordi-  
 3    nance, provide for the appointment of a purchasing agent, or  
 4    purchasing department or a purchasing board, with authority to  
 5    purchase, as its contracting agent, such materials and supplies re-  
 6    quired to be purchased on behalf of the contracting unit, as said  
 7    governing body shall, by said ordinance, prescribe and such pur-  
 8    chasing agent, purchasing department or purchasing board shall  
 9    have authority to purchase such materials and supplies on behalf  
 10   of the contracting unit and prepare the public advertising for bids,  
 11   to receive the bids and to make the awards in such cases, subject to  
 12   the approval of the governing body to be given when and in such  
 13   manner as said governing body shall by such ordinance prescribe.  
 14   Source: R. S. 40:25-7; 40:50-7.

## D. JOINT PURCHASING AGREEMENTS

1    \***[11.1.]**\* \*10.\* Joint municipal agreements for purchase of ma-  
 2    terial, supplies; authorization. The governing bodies of 2 or more  
 3    municipalities within the same county \*\*, or *adjoining counties*,\*\*  
 4    may provide by joint agreement for the purchase of materials  
 5    and supplies for use by their respective municipalities.

6    Source: C. 40:50-7.1 (1964, c. 245, s. 1, amended 1966, c. 202, s. 1).

1    \***[11.2.]**\* \*11.\* Adoption; terms. Such agreement shall be entered  
 2    into by similar ordinances adopted by each of the participating gov-  
 3    erning bodies; which shall set forth the categories of materials and  
 4    supplies to be purchased, the manner of advertising for bids and of  
 5    awarding of contracts, the method of payment by each participating  
 6    municipality, and other matters deemed necessary to carry out the  
 7    purposes of the agreement.

8    Source: C. 40:50-7.2 (1964, c. 245).

1    \***[11.3.]**\* \*12.\* Expenditures; how shared. Each municipality's  
 2    share of expenditures for purchases under any such agreement shall  
 3    be appropriated and paid in the manner set forth in the agreement  
 4    and in the same manner as for other expenses of the municipality.

5    Source: C. 40:50-7.3 (1964, c. 245).

1    \***[11.4.]**\* \*13.\* County and municipal agreements for the pur-  
 2    chases of materials and supplies.

3    (1) When authorized by resolution of the board of chosen free-  
 4    holders a county may contract with any municipality or municipi-  
 5    palities located in the county for the purchase by the county of  
 6    materials and supplies for acquisition either in whole or in part  
 7    by the municipality or municipalities.

8 (2) Any such contract shall specify with particularity the  
9 materials and supplies to be so purchased and the amount and the  
10 manner of payments therefor to be made by the municipality or  
11 municipalities.

12 (3) The provisions of law relative to advertising for bids and the  
13 making of awards by counties shall be applicable to said contracts.

14 (4) The county may make an appropriation to enable it to  
15 perform any such contract and may anticipate as a revenue municip-  
16 al payments to be made by the municipality or municipalities.

17 Source: New.

#### E. CONTRACTS, FORM AND CONTENTS

1 \***[12.]**\* \*14.\* Form and execution of contracts and bonds. The  
2 governing body of any contracting unit may prescribe the form and  
3 manner in which all contracts for performing work or furnishing  
4 materials for the contracting unit shall be made and executed, and  
5 the form and manner of execution and approval of all guarantee,  
6 indemnity, fidelity and other bonds required to be given to the  
7 contracting unit pursuant to law.

8 Source: R. S. 40:25-1.

1 \***[13.]**\* \*15.\* Contracts for fuel or oil and snow and ice removal;  
2 duration. Any contracting unit may enter into a contract for the

3 (1) Supplying of

4 (a) Fuel for heating purposes, for any term not exceeding  
5 in the aggregate, 2 years, or

6 (b) Fuel or oil for use of airplanes, for any term not exceed-  
7 ing in the aggregate, 3 years, or

8 (2) The plowing and removal of snow and ice from highways  
9 and public places, for any term not exceeding in the aggregate,  
10 1 year, or

11 (3) The collection and disposal of garbage and refuse, for any  
12 term not exceeding in the aggregate, 5 years,  
13 notwithstanding that such terms exceed the fiscal year.

14 Source: C. 40:25-1.1 (1953, c. 395); C. 40:50-5.5 (1945, c. 158);  
15 C. 40:50-5.6 (1945, c. 160); C. 40:50-5.7 (1962, c. 168).

1 \***[14.]**\* \*16.\* Separate plans for various types of work; bids; con-  
2 tracts. In the preparation of plans and specifications for the erec-  
3 tion, construction, alteration or repair of any public building by any  
4 contracting unit, when the entire cost of the work will exceed  
5 \$2,500.00 in amount, the architect, engineer or other person prepar-  
6 ing the plans and specifications, shall prepare separate plans and  
7 specifications for

8 (1) The plumbing and gas fitting and all kindred work,

9 (2) Steam power plants, steam and hot water heating and

10 ventilating apparatus and all kindred work,

11 (3) Electrical work,

12 (4) Structural steel and ornamental iron work, and

13 (5) All other work required for the completion of the project.

14 The contracting agent authorized to award such contract for the  
15 erection, construction, alteration or repair of any public building  
16 shall advertise for and receive, in the manner provided by law,  
17 (a) separate bids for each of said branches of work, and also  
18 (b) bids for all the work and materials required to complete the  
19 building to be included in a single overall contract, in which case  
20 there will be set forth in the bid the name or names of, and evidence  
21 of performance security from, all subcontractors to whom the  
22 bidder will subcontract the furnishing of plumbing and gas fitting,  
23 and all kindred work, and of the steam and hot water heating and  
24 ventilating apparatus, steam power plants and kindred work, and  
25 electrical work, structural steel and ornamental iron work, each of  
26 which subcontractors shall be qualified in accordance with this  
27 Title.

28 Contracts shall be awarded to the lowest responsible bidder in the  
29 following manner: If the sum total of the amounts bid by the lowest  
30 responsible bidder for each branch is less than the amount bid  
31 by the lowest responsible bidder for all of the work and materials,  
32 the board shall award separate contracts for each of such  
33 branches to the lowest responsible bidder therefor, but if the sum  
34 total of the amount bid by the lowest responsible bidder for each  
35 branch is not less than the amount bid by the lowest responsible  
36 bidder for all the work and materials, the board shall award a single  
37 overall contract to the lowest responsible bidder for all of such  
38 work and materials. (c) In every case in which a contract is  
39 awarded under (b) above, all payments required to be made under  
40 such contract for work and materials supplied by a subcontractor  
41 shall, upon the certification of the contractor of the amount due to  
42 the subcontractor, be paid directly to the subcontractor.

43 Source: R. S. 40:9-3.

1 \***[15.]**\* \*17.\* Number of working days specified. All specifications  
2 for the doing of any public work for a contracting unit shall fix the  
3 date before which the work shall be completed, or the number of  
4 working days to be allowed for its completion; and every such con-  
5 tract shall contain a provision for a deduction, from the contract  
6 price, or any wages paid by the contracting unit to any inspector  
7 or inspectors necessarily employed by it on the work, for any num-  
8 ber of days in excess of the number allowed in the specifications.

9 Source: R. S. 40:25-26; 40:50-3.



1     \***[16.]**\* \*18.\* American goods and products to be used where possible. Each local unit shall provide, in the specifications for all  
 2     sible. Each local unit shall provide, in the specifications for all  
 3     contracts for county or municipal work or for work for which it will  
 4     pay any part of the cost, that only manufactured and farm products  
 5     of the United States, wherever available, be used in such work.  
 6     Source: R. S. 40:15-1.

#### F. BIDDING REQUIREMENTS

1     \***[17.]**\* \*19.\* Certificate of bidder showing ability to perform  
 2     contract. There may be required from any bidder submitting a bid  
 3     on public work to any contracting unit, duly advertised for in  
 4     accordance with law, a certificate showing that he owns or controls  
 5     all the necessary equipment required by the plans, specifications  
 6     and advertisements under which bids are asked for and if the bidder  
 7     is not the actual owner of any such equipment, his certificate shall  
 8     state the source from which the equipment will be obtained, and  
 9     shall be accompanied by a certificate from the owner or person in  
 10    control of the equipment definitely granting to the bidder the control  
 11    of the equipment required during such time as may be necessary  
 12    for the completion of the contract.  
 13    Source: R. S. 40:25-11; 40:25-12.

1     \***[18.]**\* \*20.\* Cash or certified check to accompany bid; amount.  
 2     There may be required from any person bidding on any public contract  
 3     work, for any contracting unit, advertised in accordance with  
 4     law, that the bid be accompanied by cash or a certified check, payable  
 5     to the contracting unit as a guarantee that if the work is  
 6     awarded to him he will enter into a contract therefor. The amount  
 7     to be so deposited shall be at least 10% of the bid, but in no case in  
 8     excess of \$20,000.00.  
 9     Source: R. S. 40:25-9.

1     \***[19.]**\* \*21.\* Guarantee or surety company; certificate. When a  
 2     surety company bond is required in the advertisement or specifications  
 3     for public works, every contracting unit shall require from any  
 4     bidder submitting a bid in accordance with plans, specifications and  
 5     advertisement, as provided for by law, a certificate from a surety  
 6     company stating that it will provide the contractor with a bond  
 7     in such sum as is required in the advertisement or in the  
 8     specifications.

9     This certificate shall be obtained for a bond—

10    (1) For the faithful performance of all provisions of the specifications  
 11    or for all matters which may be contained in the notice  
 12    to bidders, relating to the construction of the work, and

13 (2) If any be required, for a guarantee bond for the faithful  
 14 performance of the contract provisions relating to the repair and  
 15 maintenance of the work and its appurtenances and keeping the  
 16 same in good and serviceable condition during the term of the  
 17 bond as provided for in the notice to bidders or in the specifica-  
 18 tions, or

19 (3) In such other form as may be provided in the notice to  
 20 bidders or in the specifications.

21 If a bidder desires to offer the bond of an individual instead of  
 22 that of a surety company, he shall submit with his bid a certificate  
 23 signed by such individual similar to that required of a surety  
 24 company.

25 The contracting unit may reject any such bid if it is not satisfied  
 26 with the sufficiency of the individual surety offered.

27 Source: R. S. 40:25-13, amended 1957, c. 54; 40:25-14.

1 \*~~[20.]~~\* \*22.\* Advertisements for bids; bids; general require-  
 2 ments. All advertisements for bids shall be published at least once,  
 3 10 days prior to the date fixed for receiving the bids, in a newspaper  
 4 of general circulation published in this State and circulating within  
 5 the territory included within or served by the contracting unit. The  
 6 advertisement shall designate the manner of submitting and the  
 7 method of receiving the bids and the time and place at which the  
 8 bids will be received. At such time and place the contracting agent  
 9 of the contracting unit shall receive the bids, and thereupon immedi-  
 10 ately proceed to unseal them and publicly announce the contents,  
 11 which announcement shall be made in the presence of any parties  
 12 bidding or their agents, who are then and there present, and shall  
 13 also make proper record of the prices and terms, upon the minutes  
 14 of the governing body, if the award is to be made by the governing  
 15 body of the contracting unit, or in a book kept for that purpose,  
 16 if the award is to be made by other than the governing body, and  
 17 in such latter case it shall be reported to the governing body of  
 18 the contracting unit for its action thereon, when such action thereon  
 19 is required. No bids shall be received previous to or after the time  
 20 designated in the advertisement.

21 Source: R. S. 40:25-8; 40:50-4.

#### G. AWARDS AND EXECUTION OF CONTRACTS

1 \*~~[21.]~~\* \*23.\* Time for making award; deposits returned. The con-  
 2 tracting agent shall award the contract or contracts, or reject all  
 3 bids therefor within 30 days after they are received, and all cash  
 4 and checks delivered with the bids, except those delivered by the  
 5 \*\*~~[two]~~\*\* \*\**three*\*\* lowest responsible bidders, shall be returned

6 within 3 days thereafter, Sundays and holidays excepted. If for  
 7 any reason the contracting agent is unable to make an award within  
 8 such 30-day period, it shall be lawful for such agent and the lowest  
 9 responsible bidder and his proposed surety, if any, to agree upon an  
 10 extension, not exceeding an additional 30 days, for the making of the  
 11 award, in which event the contracting agent shall make the award  
 12 or reject such bid on or before the end of such extended period.  
 13 Source: R. S. 40:25-10, amended 1955, c. 191.

#### H. QUALIFICATION OF BIDDERS

##### (1) IN GENERAL

1 \***[22.]**\* \*24.\* General power to provide qualification for bidders.  
 2 The governing body of any contracting unit may establish reason-  
 3 able regulations appropriate for controlling the qualifications of  
 4 prospective bidders upon contracts to be awarded on behalf of the  
 5 contracting unit, which may fix the qualifications required according  
 6 to the financial ability and experience of the bidders and the capital  
 7 and equipment available to them in the performance of any such  
 8 contract, and may require each bidder to furnish a statement  
 9 thereof; and if such governing body is not satisfied with the  
 10 qualifications of any bidder as founded upon such statement, it may  
 11 refuse to furnish him with any plans or specifications for any public  
 12 work or consider any bid made by him for any contract.

13 No such regulations for controlling the qualifications of bidders  
 14 shall become effective until at least 30 days after they have been  
 15 formally adopted and published in not less than 2 newspapers  
 16 circulating in the county or municipality in which the contracting  
 17 unit is located.

18 No qualification rating of any bidder shall be influenced by his  
 19 nationality or his place of residence.

20 Nothing contained in this law shall limit the right of any court  
 21 to review a refusal to furnish any such plans or specifications or  
 22 the consideration of any bid on any contract advertised.

23 Any such governing body may adopt a standard form of state-  
 24 ment or questionnaire for bidders on public works and contracts,  
 25 and in such case their action shall be governed as provided herein.

26 Source: R. S. 40:25-16; 40:25-24; 40:50-5.

##### (2) STANDARD FORM OF QUESTIONNAIRE

1 \***[23.]**\* \*25.\* Standard questionnaire; effect of unsatisfactory  
 2 answers. The governing body of any contracting unit may adopt a  
 3 standard form of statement or questionnaire for bidders on public  
 4 works and contracts and may require from any person proposing to  
 5 bid upon any such public work or contract a statement or answers

6 showing his financial ability and experience in performing public  
7 work and describing the equipment available to such bidder in the  
8 performance of such work or contract, and if not satisfied with the  
9 sufficiency of this statement or answers may refuse to furnish plans  
10 and specifications to him.

11 Source: R. S. 40:25-16; 40:50-5.

1 \***[24.]** \*26.\* Standard statements and questionnaires; prospec-  
2 tive bidders; responses. Such statements and questionnaires shall  
3 be standardized for like classes of work to be submitted to prospec-  
4 tive bidders who may be required to respond to questions under  
5 oath. The statement or answer shall disclose fully the financial  
6 ability, adequacy of plant and equipment, organization and prior  
7 experience of the prospective bidder, and such other pertinent and  
8 material facts as may be required.

9 Source: R. S. 40:25-16.

1 \***[25.]** \*27.\* Classification of prospective bidders; notice. Pro-  
2 spective bidders shall be classified as to the character and amount of  
3 public work as to which they shall be qualified to submit bids, and  
4 bids shall be accepted only from persons so qualified. The classifica-  
5 tion shall be made and an immediate notice thereof shall be sent to  
6 the prospective bidders by certified or registered mail within 8 days  
7 after the date of receipt of the responsive statement or answers.

8 Source: R. S. 40:25-17.

1 \***[26.]** \*28.\* Reclassification of prospective bidders; request for;  
2 time limit. If any person, after being notified of his classification,  
3 shall be dissatisfied therewith or with the classification of other  
4 bidders, he may request in writing a hearing before such governing  
5 body, and may present such further evidence with respect to the  
6 financial responsibility, organization, plant and equipment, or ex-  
7 perience of himself or other prospective bidders as might tend to  
8 justify a different classification.

9 Where a request is made for the change of classification of  
10 another prospective bidder, the applicant therefor shall notify such  
11 other bidder by certified or registered mail of the time and place  
12 of hearing, as fixed by the governing body, and at the hearing shall  
13 present satisfactory evidence that the notice was served as herein  
14 required, before any matters pertaining to a change of classification  
15 of such other bidder shall be taken up. After hearing such evidence  
16 the governing body may, in its discretion, by appropriate action,  
17 change or retain the classification of any bidder.

18 No change in classification to be effective for any public work or  
19 contract where bidding therefor has been duly advertised, shall

20 be made unless the written request therefor shall have been received  
21 at least 20 days before the final day for submission of bids.

22 All requests for change in classification and notice of any action  
23 sent by certified or registered mail to the parties directly affected  
24 thereby, shall be acted upon by the governing body concerned at  
25 least 8 days prior to the date fixed for the next opening of bids  
26 on any contract or contracts for which such persons might be  
27 qualified to bid as a result of the reclassification.

28 Source: R. S. 40:25-18.

1 \***[27.]**\* \*29.\* Board of review upon classification; membership,  
2 et cetera. There is hereby established a board of review upon  
3 classification and reclassification of prospective bidders. This board  
4 shall consist of one member of the governing body of the contracting  
5 unit concerned, to be designated by such body, and 2 citizens of the  
6 county or municipality to be designated by the Superior Court  
7 assignment judge of the county. In all counties having a county  
8 supervisor, he shall be a member of the board of review instead of  
9 one of the citizens. The clerk of the contracting unit shall be the  
10 secretary of the board of review and shall keep a complete record  
11 of its proceedings and decisions. The members of the board shall  
12 serve without compensation.

13 Source: R. S. 40:25-19, amended 1953, c. 37, s. 46.

1 \***[28.]**\* \*30.\* Reconsideration by board of review; request for;  
2 time limit. Any prospective bidder who is dissatisfied with his  
3 original classification or reclassification may upon receipt of notice  
4 thereof, request in writing a hearing of the matter before the board  
5 of review. The request shall be filed with the contracting agent and  
6 the secretary of the board.

7 The board shall hold a hearing at which the prospective bidder  
8 shall be entitled to be heard and to submit additional information.

9 The board shall review the responsibility of all prospective bid-  
10 ders who have filed statements or answers, considering both the  
11 statement, answers and any additional information given at the  
12 hearing, and shall certify to the contracting unit concerned, its  
13 decision as to the original classifications or reclassifications, if any.  
14 The decisions shall be made by a majority vote.

15 In order for any change in classification by the board to be  
16 effective for public work or contract previously advertised, the  
17 request shall be filed not less than 5 days prior to the final day for  
18 submission of bids, and the board shall hold a hearing and act upon  
19 the request not less than 2 days prior to the date fixed for the next  
20 opening of bids on any public work or contract for which such

21 prospective bidders might be qualified to bid as a result of the  
22 reclassification.

23 Source: R. S. 40:25-20.

1 \***[29.]**\* \*31.\* Rejection of bids after qualification of bidder; hear-  
2 ing. Nothing herein contained shall be construed as depriving any  
3 contracting agent of the right to reject a bid at any time prior to the  
4 actual award of a public work or contract, where the circumstances  
5 of the prospective bidder have changed subsequent to the qualifica-  
6 tion and classification of the said bidder, which in the opinion of  
7 the awarding contracting unit would adversely affect the responsi-  
8 bility of the bidder. Before taking final action on any such bid,  
9 the contracting agent concerned shall notify the said bidder and  
10 afford him an opportunity to present any additional information  
11 which might tend to sustain the existing classification.

12 No person shall be qualified to bid on any public work or contract  
13 unless he shall have submitted a statement or answers as herein  
14 required within a period of 6 months preceding the date of opening  
15 of bids for the public work or contract, if the bidders thereon are  
16 required to be classified hereunder.

17 Source: R. S. 40:25-21.

1 \***[30.]**\* \*32.\* Forfeiture of deposit in certain cases. A deposit  
2 made by any person who makes or causes to be made a false, decep-  
3 tive or fraudulent statement or answers in response to a question-  
4 naire or in the course of a hearing hereunder may be caused to be  
5 forfeited, as liquidated damages by and to the contracting unit.

6 Source: R. S. 40:25-23.

### (3) PENALTIES

1 \***[31.]**\* \*33.\* Penalties for false statements. Any person who  
2 makes or causes to be made, a false, deceptive or fraudulent state-  
3 ment in the statement or answers in response to the questionnaire,  
4 or in the course of any hearing hereunder, shall be guilty of a misde-  
5 meanor, and upon conviction shall be punishable by a fine of not  
6 less than \$100.00 nor more than \$1,000.00, and shall be permanently  
7 disqualified from bidding on all public work or contracts of the  
8 contracting unit which submitted the questionnaire; or, in the case  
9 of an individual or an officer or employee charged with the duty  
10 of responding to the questionnaire for a person, firm, co-partner-  
11 ship, association or corporation, by such fine or by imprisonment,  
12 not exceeding 6 months, or both.

13 Source: R. S. 40:25-22.

## (4) OFFICIALS SAVED HARMLESS

1    \***[32.]**\* \*34.\* No liability of officials. No action for damages shall  
2 lie against an official of any contracting unit because of any author-  
3 ized action taken hereunder.

4    The word "official" as used in this section shall mean and in-  
5 clude the governing body and any officer, board, commission, com-  
6 mittee or department of a contracting unit.

7 Source: R. S. 40:25-15; 40:25-25.

## I. CONTRACTS OF SPECIAL CHARACTER

1    \***[33.]**\* \*35.\* Indemnity agreements; Federal projects for bene-  
2 fit of municipality. Any municipality may enter into an agreement  
3 indemnifying the United States of America, or any board, body,  
4 officer or agency thereof, from loss or damage to the property of  
5 others resulting from the furtherance of \*\***[navigation, flood**  
6 **control or beach erosion]**\*\* \*\*any\*\* \*\***[projects]**\*\* \*\*project\*\*,  
7 undertaken or to be undertaken by the Federal Government for  
8 the benefit of such municipality where the cost or any part thereof  
9 is to be paid out of Federal funds.

10 Source: C. 40:50-8 (1949, c. 67).

## J. MANNER AND METHOD OF SALE

1    \***[34.]**\* \*36.\* Sale or other disposition of personal property. Any  
2 contracting unit by resolution of its governing body may authorize  
3 the sale of its personal property not needed for public use.

4    (1) If the estimated fair value of the property to be sold exceeds  
5 \$2,500.00 in any one sale and it is neither livestock nor perishable  
6 goods, it shall be sold at public sale to the highest bidder.

7    (2) The contracting unit need not advertise for bids when it  
8 makes any such sale to the United States, the State of New Jersey,  
9 another contracting unit or to any body politic to which it con-  
10 tributes tax raised funds.

11   (3) Notice of the date, time and place of the public sale together  
12 with a description of the items to be sold shall be published in a  
13 newspaper circulating in the contracting unit. Such sale shall be  
14 held not less than seven nor more than 14 days after the latest  
15 publication of the notice thereof.

16   (4) If no bids are received the property may then be sold at  
17 private sale without further publication or notice thereof; or the  
18 contracting unit may if it so elect reoffer the property at public  
19 sale.

20   (5) A contracting unit may reject all bids if it determines such  
21 rejection to be in the public interest.

22 Source: New.

## K. STATUTES REPEALED

- 1    \***[35.]**\* \*37.\* Statutes repealed. The following sections, chapter  
2 and acts, together with all amendments and supplements thereto,  
3 are hereby repealed:
- 4    Chapter 25 of Title 40 of the Revised Statutes;  
5    Sections 40:9-3; 40:15-1; 40:50-1 to 40:50-5 inclusive and  
6 40:50-7, of the Revised Statutes;  
7    Laws of 1943, c. 198;  
8    Laws of 1945, c. 158;  
9    Laws of 1945, c. 160;  
10   Laws of 1953, c. 395;  
11   Laws of 1962, c. 168\***[**;  
12   Laws of 1964, c. 245**]**.\*

## L. EFFECTIVE DATE

- 1    \***[36.]**\* \*38.\* Effective date. This act shall take effect January 1,  
2 1970.



STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

March 8, 1971

SENATE BILL NO. 627

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 627, with my objections, for reconsideration.

Senate Bill No. 627, a general revision of the law governing local public contracts, and is a modified reintroduction of Senate Bill No. 284 (2nd OCR) (1969) which was conditionally vetoed by my predecessor in office. It represents a truly comprehensive effort to tighten and improve the local public bidding law.

This is an area of law that is of great importance to the welfare of our citizens. A carefully defined bidding system for local governmental purchases will encourage administrative responsibility at the local level and will aid the public in securing the most value for their tax dollar.

The technical nature of this bill required intensive attention to detail and as a result of careful scrutiny I am recommending certain changes which will improve, in my opinion, the bidding law and eliminate possible ambiguities in the bill, including the manner in which contracts are to be advertised for bids. Among these recommendations are the following:

I have added to the definition of "professional services" an additional section including those services which are of such a qualitative nature as to preclude reasonable bidding. Many professionals are not licensed and therefore would be discriminated against by the present language even though the development of specifications for the services which they perform would be impractical because of the dependency upon specialized knowledge, discretion and other intangible factors.

The requirement that the Superior Court designate citizens who would sit on the Board of Review upon classification constitutes an intrusion upon the doctrine of separation of powers between the respective branches of government and therefore I have suggested that the appointments be made by the governing body of the governmental unit.

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Revisions of this type go a long way toward improving the administration of government.

I am returning Senate Bill No. 627 with the following recommendations for your consideration:

Page 1, Section 2, Line 7: After "branch" omit "or" and insert ","

Page 1, Section 2, Line 7: After "agency" insert "or school district"

Page 2, Section 2, Line 29: After "branch" omit "or" and insert ","

Page 2, Section 2, Line 29: After "agency" insert "or school district"

Page 2, Section 2, Lines 42 thru 44: Omit entire lines and substitute:

"(6) 'Professional services' means:

(a) services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law, or

(b) services which are of such a qualitative nature as will not reasonably permit the drawing of specifications or the receipt of competitive bids; provided that, with respect to the definitions under both (a) and (b), the governing body shall state supporting reasons for its action in the resolution awarding the contract, and shall cause a copy of the resolution to be printed in a newspaper of general circulation within the boundaries of the contracting unit no more than ten days after passage of the resolution."

Page 2, Section 3, Line 4: Omit "usually required"

Page 2, Section 3, Line 7: Omit "usually required"

Page 2, Section 3, Line 7: After "which" insert ": (1)"

Page 2, Section 3, Line 9: After "project," insert "(2)"

Page 2, Section 3, Line 9: After "funds" insert ","

Page 2, Section 3, Line 9: After "and" insert "(3)"

Page 2, Section 3, Line 10: After "\$2,500.00" insert "in the fiscal year, or in the case of purchases that are not annually recurring in a period of one year."

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Page 2, Section 3, Line 10: Before "may" insert "These"

Page 3, Section 4, Line 3: Omit "usually required"

Page 3, Section 5, Line 1: Omit "Major exceptions" and insert "Exceptions"

Page 4, Section 5, Line 37: Omit "usually required"

Page 4, Section 5, Line 40: After "adoption" insert "of a resolution"

Page 4, Section 5, Lines 41 and 42: Omit "of an ordinance, in the case of a municipality, or a resolution, in the case of a county," and insert "at a meeting thereof"

Page 4, Section 5, Lines 44 and 45: Omit "the term of the governing body or"

Page 4, Section 5, Lines 45 - 47: After "year" delete "," and insert "."; delete "whichever is greater, nor shall the terms, conditions or specifications specified pursuant to section 4 be in any way amended or modified." and insert "Any amendment or modification of the terms, conditions, restrictions and specifications which were the subject of competitive bidding pursuant to section 4 of this act shall be stated in the resolution awarding the contract."

Page 4, Section 5, Line 49: After "4" insert "on two occasions"

Page 4, Section 5, Line 49: After "bids" insert "on each occasion"

Page 4, Section 5, Line 58: Omit "and"

Page 4, Section 5, Line 65: Omit ";" and insert ","

Page 4, Section 5, Lines 66 - 69: Omit entire lines and insert

"(c) Any amendment or modification of the terms, conditions, restrictions and specifications which were the subject of competitive bidding pursuant to section 4 of this act shall be stated in the resolution awarding the contract, and"

Page 5, Section 5, Line 84: After "adoption" insert "of a resolution"

Page 5, Section 5, Lines 85 - 88: Omit "of an ordinance, in the case of a municipality, or a resolution, in the case of a county," and insert "at a meeting thereof"

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Page 5, Section 6, Line 8: Omit "so to be" and insert "to be so"

Page 5, Section 6, Line 16: Omit "specifially" and insert "specifically"

Page 6, Section 7, Lines 5 and 6: Omit "usually required"

Page 6, Section 7, Line 12: Omit "usually required"

Page 6, Section 7, Line 16: Omit "usually required"

Page 6, Section 7, Line 19: Omit "usually required"

Page 6, Section 8, Line 5: Omit "usually required"

Page 7, Section 10, Line 3: Omit "or school districts"

Page 7, Section 10, Line 4: Omit "and"

Page 7, Section 10, Line 7: After "ordinances" insert ", in the case of municipalities,"

Page 7, Section 10, Line 8: After "resolutions" insert ", in the case of other contracting units,"

Page 7, Section 10, Line 12: Omit "or school district"

Page 7, Section 10, Line 14: Omit "and school district's"

Page 7, Section 10, Line 18: Omit "or school district"

Page 7, Section 11, Line 3: Omit "or school districts"

Page 7, Section 11, Line 7: After "section" insert "9"

Page 8, Section 11, Line 16: After "agreement." insert "Any items so included in a local budget shall be subject to the approval of the Director, Division of Local Finance, who shall consider the matter in conjunction with the requirements of Chapter 4 of Title 40A of the New Jersey Statutes."

Page 8, Section 11, Line 33: After "reports." insert a new subsection as follows: "(4) Any agent, department or board so designated pursuant to a joint purchasing agreement shall have the sole responsibility to comply with the provisions of section 23 of this act."

Page 9, Section 13, Line 14: Omit "creed" and insert "sex"

Page 9, Section 13, Lines 37 - 39: Omit "No contracting unit setting aside a purchase, contract or agreement pursuant to this section shall be liable for damages therefor."

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Page 10, Section 16, Line 20: After "or" insert ", (c)" and after "both" insert "."; delete "in which case there" and insert "There"

Page 10, Section 16, Line 28: After "bidder" insert ". In the event that a contract is advertised in accordance with (c) above said contract shall be awarded"

Page 12, Section 20, Line 12: After "completion" insert "of that portion"

Page 12, Section 20, Line 13: After "contract" insert "for which it is necessary"

Page 12, Section 21, Line 1: Omit entire line and insert "Certified check, cashier's check or bid bond to accompany bid; amount."

Page 12, Section 21, Line 4: Omit "cash or"

Page 12, Section 21, Line 5: After "check," insert "cashier's check or bid bond,"

Page 12, Section 21, Line 7: After "therefor" insert "and will furnish any performance bond or other security required as a guarantee or indemnification"

Page 12, Section 21, Line 8: Omit "at least"

Page 13, Section 23, Line 8: After "received." insert "If the published specifications provide for receipt of bids by mail, those bids which are mailed to the contracting unit shall be sealed and shall only be opened for examination at such time and place as all bids received are unsealed and announced."

Page 13, Section 23, Line 9: After "shall" insert "publicly"

Page 13, Section 23, Line 20: Omit "previous to or"

Page 13, Section 24, Lines 3 and 4: Omit "cash and"

Page 13, Section 24, Line 4: After "checks" insert "or bonds"

Page 13, Section 24, Lines 4 and 5: Omit "except those delivered by the two lowest responsible bidders" insert "except the check or bond of the bidder to whom the contract is awarded"

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Page 13, Section 24, Line 6: After "excepted." insert "The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and any required performance bond or other security is submitted."

Page 13, Section 24, Line 8: Omit "the lowest" insert "each of the three lowest"

Page 13, Section 24, Line 9: Omit "bidder" insert "bidders"

Page 13, Section 24, Line 12: Omit "bid" insert "bids"

Page 14, Section 25, Line 26: After "bidder" insert "."

Page 14, Section 25, Line 26: Omit "within" insert "Within"

Page 14, Section 25, Line 26: After "hearings" omit ". The" insert ", the"

Page 14, Section 25, Line 29: After "approval." insert "This approval shall be indicated by a letter from the director to the governing body of the contracting unit."

Page 14, Section 25, Line 42: After "unit." insert "Any appeal from a decision of the director to the Local Finance Board shall be subject to the provisions of the Local Government Supervision Act (P. L. 1947, c. 151, C. 52:27BB-1 et seq.)."

Page 14, Section 25, Line 44: After "religion," insert "sex,"

Page 16, Section 30, Lines 5 thru 7: After "concerned" omit ", to be designaged by such body, and two citizens of the county or municipality to be designated by the Superior Court assignment judge of the county." insert "an two citizens of the county or municipality to be designated by such governing body."

Page 17, Section 32, Line 16: After "hereunder." insert "In any case where the contracting unit shall require classification of the bidders in compliance with these sections, each bidder on any public work or contract shall be required to submit a statement listing the changes in the statement or answers herein required as part of his bid submission."

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Page 18, Section 35, Lines 1 thru 7: Omit entire section

Page 18, Section 36, Line 1: Omit "36" insert "35"

Page 18, Section 37, Line 1: Omit "37" insert "36"

Page 19, Section 37, Line 36: After line 36 insert a new section as follows:

"L. ASSISTANCE TO CONTRACTING UNITS

"37. Division of Local Finance to assist contracting units. The Division of Local Finance is hereby authorized to assist contracting units in all matters affecting the administration of this law.

Source: New."

Page 19: After line 36 Omit "L" insert "M"

Page 20: After Section 38 omit "M" insert "N"

Respectfully,

/s/ William T. Cahill

GOVERNOR

Attest:

/s/ Jean E. Mulford

Acting Secretary to the Governor

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

November 17, 1969

SENATE BILL NO. 284 (2nd OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 (b) of the Constitution, I herewith return Senate Bill No. 284, with my objections, for reconsideration.

Senate Bill No. 284 is a revision of the laws relating to the purchase of work, materials and supplies by units of local government. Generally speaking, it represents a considerable step forward in clarifying the law which regulates the law under which such purchases are made. Among other things, it adds a new provision relating to the sale of public property, which previously had only been required by judicial construction, and thereby clarifies the standards for such sales.

The bill strives, as I have in reviewing it, to strike a careful balance between two conflicting interests. On the one hand, our units of local government should be given as much flexibility as possible in meeting their operating and purchasing needs. The conditions of purchase and sale should be realistically adapted to the practicalities of day-to-day transactions. On the other hand, there is the interest of the public, and the taxpayer in particular, in securing the lowest possible prices for local government purchases. In addition, such prices should be the result of open and competitive bidding wherever possible in order to remove even the appearance of favoritism or unwonted preferences in public purchasing.

*and to unwonted*  
As I commented in my conditional veto of Senate Bill No. 283, the subject matter of these bills is dry and uninspiring. Only their failure to secure the efficient and economic operation of government arouses the public's ire. That is all the more reason, as in the case of Senate Bill No. 283, for careful review.

I am hereby recommending a number of changes which are totally consistent with the spirit of the draftsmen of the bill, but which would appear to make it more capable of obtaining its objectives. In summary they are:



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-- In the last few years the Legislature has enacted two bills which allow a county or the State to make purchases on behalf of units of local government. Their purpose was to pass on to counties and municipalities the savings that result from bulk buying and quantity discounts. I believe we should take advantage of the success that this legislation has had in passing on considerable savings to local taxpayers. Two changes, in particular, in Senate Bill No. 284 seem reasonable. First, in those cases in which public bidding has failed to produce any bids or bids have been rejected because they are unreasonably high, the contracting unit should be required to determine whether he can purchase his needs from the State or the county through their contracts prior to entering into private negotiations. If the contracting unit's needs can be met in this way, there would appear to be no reason to allow it to negotiate privately a higher price at greater costs to the taxpayer. The same is true for the series of small purchases under \$2,500, for which no public bidding is required. They are usually the very type of purchases where combined buying power of the State and our counties and municipalities can result in substantial savings. This requirement should not only result in lower operating costs to local government, but also limit the potential for favoritism inherent in any private negotiations.

-- At the other end of the spectrum is the inflexibility of the present bidding laws, which fail to make clear the procedure to be followed when no bids are received, or when the lowest bid received is unreasonably high, or has been arrived at through collusive bidding tactics. The latter case was recently highlighted by the Report of the State Committee on Investigations regarding the bidding for garbage collection and disposal services. I have suggested language which should allow local government the flexibility of rejecting such bids while protecting the public from unscrupulous dealings. A private purchase in such circumstances will be made only on the approval of two-thirds of the governing body and after notice of the alleged collusive practices to the county prosecutor and Attorney General.

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-- Often, however, local government has been guilty of unnecessarily restricting the number of persons which could bid on public contracts through overly strict specifications or standards for the pre-qualification of bidders. I am therefore recommending a change in Senate Bill No. 284, which will require that such standards or specifications promote free, open and competitive bidding, rather than discourage it. In particular, standards for qualification of bidders should be rejected if they make it impossible for small businesses to compete or ensure that only one bidder will be qualified. They should also be adopted after adequate public hearings.

I have also recommended numerous other changes of lesser scope. For instance, I see no reason why there cannot be competitive bidding for the purchasing of automobiles. In addition, purchases by local government units in amounts of more than \$2,500 should be made only through a contract or agreement, and not through more informal purchasing procedures.

On the other hand, I have not suggested changes in areas that also merit consideration. I am not recommending, for instance, a conflicts of interest provision with this bill because I expect to present shortly to the Legislature a general local conflicts of interest bill. Nor have I tried to expand the coverage of this bill to include local agencies which are not encompassed by its terms. It would also appear prudent for the State of New Jersey to determine the flexibility of providing for independent laboratory and field testing of those products used by both State and local government, so that we may be sure that we are getting our money's worth. It hardly seems appropriate that the billions of dollars spent by both State and local government should go into purchasing materials which we are not sure meet rigid standards of performance and reliability. It is my sincere hope that the draftsmen of this bill will carry their work further into this area.

All in all, Senate Bill No. 284, with the changes I have recommended, represents a constructive attempt to provide a realistic framework for local purchasing policies. I therefore respectfully recommend the following changes in Senate Bill No. 284:

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1. Page 1, Section 2, Line 8: Insert after the word "agency," and before the word "which" the phrase "which is not a state board, commission or agency, and".

2. Page 1, Section 2, Line 9: After the word "district" and before the word "or" insert the word "project,".

3. Page 2, Section 2, Line 33: Delete the phrase "Source: New." and insert in lieu thereof the following subsections:

- (4) "Purchase" includes an acquisition by sale, lease, exchange, discount, negotiation, mortgage, pledge, lien, issue or reissue, or any other voluntary transaction for consideration creating an interest in property not made by contract or agreement.
- (5) "Materials" includes goods subject to Article 2 of Title 12A of the New Jersey Statutes, apparatus, or any other tangible thing, except real property and capital improvements subject to Chapters 32 and 60 of Title 40 of the Revised Statutes relating to lands and buildings.
- (6) "Professional services" means services rendered by a profession or occupation subject to licensing, control or regulation by the State of New Jersey or any board, commission, agency, department or branch thereof.
- (7) "Project" means any work, undertaking, development, re-development, construction or reconstruction of any area or areas.
- (8) "Sale" means the conveyance of any interest in materials or supplies, by sale, lease or otherwise and shall include a security interest subject to Chapter 9 of Title 12A of the New Jersey Statutes.

Source: New.

4. Page 2, Section 3, Line 8: Insert after the word "immediate" and before the word "project" the phrase "program, undertaking, activity or".

5. Page 2, Section 3, Line 13: Insert after the word "law." the following sentences:

Whenever any such purchase or acquisition may be made at a lower cost to the contracting unit through an open-end contract of the state or county, the contracting unit shall, except as provided herein, make its purchases or acquisitions pursuant to Sections 11 or 12 of this act.

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In any case in which a purchase is not made in the manner prescribed, the contracting agent shall state, in the resolution authorizing the purchase, the reasons why no purchase or acquisition can be made pursuant to Sections 11 or 12 of this act, and why acquisition in the said manner would not meet the requirements and specifications of the contracting unit.

6. Page 2, Section 4, Line 1: Delete the words "Purchases, contracts" and insert in lieu thereof the word "Contracts".

7. Page 2, Section 4, Line 2: After the word "Every" and before the word "contract" delete the word "purchase,".

8. Page 2, Section 4, Line 7: After the word "bids" and before the word "bidding" delete the word "or" and insert in lieu thereof the word "and".

9. Page 2, Section 4, Line 8: After the word "law." insert the following sentence:

No work, materials or supplies shall be undertaken, acquired or furnished for a sum exceeding in the aggregate \$2,500.00, except by contract or agreement.

10. Page 3, Section 5, Line 6: Delete the phrase "Personal or professional services" and insert in lieu thereof the phrase "Professional services".

11. Page 3, Section 5, Lines 18 and 19: Delete "(g) The hiring or purchase of motor vehicles or the purchase of livestock,".

12. Page 3, Section 5, Line 20: Delete the letter "(h)" and insert in lieu thereof the letter "(g)".

13. Page 3, Section 5, Line 25: Delete the letter "(i)" and insert in lieu thereof the letter "(h)"; and after the word "of" and before the word "labor" insert the word "supplementary".

14. Page 3, Section 5, Line 28: Insert after the word "storm," the phrase "when the need for the hiring of such labor or equipment is not reasonably foreseeable,".

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15. Page 3, Section 5, Line 30: After the word "America" and before the word "the" delete the word "or" and insert in lieu thereof a ","; and after the words "New Jersey" and before the word "or" insert the phrase "county or municipality".

16. Page 3, Section 5, Line 31: After the word "authority" delete the phrase ", or either." and insert in lieu thereof the word "thereof".

17. Page 3, Section 5, Between Lines 31 and 32, insert new subsections (3) and (4) as follows:

- (3) The contracting unit has advertised for bids pursuant to Section 4 on two occasions and has received no bids in response to its advertisement, and no board, body, officer, agency or authority of the United States, the State of New Jersey or any county or municipality is willing and able to perform any work or furnish or hire any materials or supplies usually required in conformity with the specifications of the municipality. Any such contract or agreement may be made, negotiated or awarded only upon adoption by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit of an ordinance, in the case of a municipality, or a resolution, in the case of a county, authorizing such a contract or agreement. No such contract or agreement may extend for a period greater than the term of the governing body or one year, whichever is greater, nor shall the terms, conditions or specifications specified pursuant to Section 4 be in any way amended or modified.
- (4) The contracting unit has advertised for bids pursuant to Section 4 and the governing body thereof has rejected such bids because the contracting unit has determined that they are not reasonable as to price on the basis of cost estimates prepared for the contracting unit prior to the advertising therefor or have not been independently arrived at in open competition, but no such contract or agreement may be entered into after such rejection of bids, unless:
  - (a) Notification of the intention to negotiate and a reasonable opportunity to negotiate shall have been given by the contracting unit to each responsible bidder, and
  - (b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder who bid thereon and is the lowest negotiated price offered by any responsible supplier and is a reasonable price for such work materials, supplies or services; and

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- (c) The contract or agreement is made subject to the same terms, conditions, restrictions and specifications as were the subject of competitive bidding pursuant to Section 4 of this act; and
- (d) The negotiated price is lower than the price of the same or equivalent materials or supplies available from the State or the county in which the contracting unit is located.

Whenever a contracting unit shall determine that a bid was not arrived at independently in open competition pursuant to this subsection 4 of Section 5, it shall thereupon notify the county prosecutor of the county in which the contracting unit is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any state or federal court of competent jurisdiction for a violation of any state or federal anti-trust law or laws relating to the unlawful restraint of trade.

Any such contract or agreement may be made, negotiated or awarded only upon adoption by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit of an ordinance, in the case of a municipality, or a resolution, in the case of a county, authorizing such a contract or agreement.

- 18. Page 5, Section 7, Line 14: After the word "project" and before the word "which" insert the phrase ", program, activity or undertaking".
- 19. Page 5, Section 8, Line 1: After the word "proposals" and before the word "or" insert the word ", work".
- 20. Page 5, Section 8, Line 4: After the word "all" and before the word "materials" insert the word "work,".
- 21. Page 5, Section 8, Line 8: After the word "such" and before the word "materials" insert the word "work,".
- 22. Page 6, Section 9, Lines 2 and 3: After the word "ordinance," insert the phrase "in the case of a municipality, and resolution, in the case of a county,".
- 23. Page 6, Section 9, Line 7: After the word "ordinance," and before the word "prescribe" insert the phrase "or resolution".
- 24. Page 6, Section 9, Line 13: After the word "ordinance" and before the word "prescribe" insert the phrase "or resolution".

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25. Page 6, Section 10, Line 1: After the word "Joint" and before the word "agreements" delete the word "municipal"; after the word "of" and before the word "material" insert the word "work,".

26. Page 6, Section 10, Line 3: Delete the word "municipalities" and insert in lieu thereof the phrase "contracting unit or school district".

27. Page 6, Section 10, Line 4: After the word "of" and before the word "materials" insert the word "work,".

28. Page 6, Section 10, Line 5: Delete the word "municipalities" and insert in lieu thereof the word "jurisdictions".

29. Page 6, Section 10, Line 6: Delete Line 6 in its entirety.

30. Page 6, Section 11, Line 1: Delete the phrase "11. Adoption; terms." and insert in lieu thereof "(a)".

31. Page 6, Section 11, Line 2: After the word "ordinances" and before the word "adopted" insert the phrase "or resolutions".

32. Page 6, Section 11, Line 3: After the word "of" and before the word "materials" insert the word "work,".

33. Page 6, Section 11, Line 6: Delete the word "municipality" and insert in lieu thereof the phrase "contracting unit or school district".

34. Page 6, Section 11, Line 8: Delete Line 8 in its entirety.

35. Page 6, Section 12, Line 1: Delete Line 1 in its entirety and insert in lieu thereof "(b) Each contracting unit's and school district's".

36. Page 6, Section 12, Line 4: Delete the word "municipality" and insert in lieu thereof the phrase "contracting unit or school district".

37. Page 6, Section 12, Line 5: Delete Line 5 in its entirety and insert in lieu thereof "Source: C. 40:50-7.1 to 40:50-7.3 (1964, c. 245).".

38. Page 6, Section 13, Line 1: Delete the phrase "13. County and municipal" and insert in lieu thereof the phrase "11. Additional matters regarding".

39. Page 6, Section 13, Line 2: After the word "of" and before the word "materials" insert the word "work,".

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40. Pages 6 and 7, Section 13, Lines 3 to 16: Delete the present language and insert in lieu thereof the following:

- (1) The contracting units or school districts entering into a joint agreement pursuant to Section 10 of this act may designate a joint purchasing agent, department or board pursuant to Section 9 of this act. Any such agent, board or department already designated pursuant to Section 9 may serve as the joint agent, department or board designated pursuant to this section.
- (2) Purchases, contracts or agreements made pursuant to a joint purchasing agreement shall be subject to all of the terms and conditions of this act.
- (3) Any county, municipality or school district serving as a purchasing agent, board or department pursuant to this Section 11, may make an appropriation to enable it to perform any such contract and may anticipate as revenue payments to be made and received by it from any other party to the agreement. The agreement and any subsequent amendment or revisions thereto shall be filed with the Director of the Division of Local Finance in the Department of Community Affairs. The purchasing agent, pursuant to such an agreement, shall also annually file with the Director a report of any purchases, contracts or agreements and the amounts thereof annually. The director may, by regulation, specify the form and content of such reports.

41. Page 7, Section 13, Line 17: After the word "Source:" delete the word "New." and insert in lieu thereof "C. 40:23-6.34 to 40:23-6.37 (1967, c. 288) amended 1968, c. 422."

42. Page 7, Section 13, Line 17: Insert after Line 17 of Section 13 and before the heading "E. CONTRACTS, FORM AND CONTENTS" a new Section 12 as follows:

12. Purchases through state agency. Any contracting unit under this act may without advertising for bids, or having rejected all bids obtained pursuant to advertising therefor, purchase any materials, supplies or equipment under any contract or contracts for such materials, supplies or equipment entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury.

43. Page 7, Section 13, Line 17: Following the new Section 12 inserted above, and before Section 14, Line 1: Delete the heading "E. CONTRACTS, FORM AND CONTENTS" and insert in lieu thereof the following:



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E. SPECIFICATIONS

13. Specifications. Any specifications for an acquisition under this act, whether by purchase, contract or agreement, shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:
- (a) Require any standard, restriction condition or limitation not directly related to the purpose, function or activity for which the purchase, contract or agreement is made; or
  - (b) Require that any bidder be a resident of, or that his place of business be located in, the county or municipality in which the purchase will be made or the contract or agreement performed, unless the physical proximity of the bidder is requisite to the efficient and economical purchase or performance of the contract or agreement; or
  - (c) Discriminate on the basis of race, religion, creed, national origin; or
  - (d) Require, with regard to any purchase, contract or agreement, the furnishing of any "brand name", but may in all cases require "brand name or equivalent", except that if the materials to be supplied or purchased are patented or copyrighted, such materials or supplies may be purchased by specification in any case in which the ordinance or resolution authorizing the purchase, contract, sale or agreement so indicates, and the special need for such patented or copyrighted materials or supplies is directly related to the performance, completion or undertaking of the purpose for which the purchase, contract or agreement is made; or
  - (e) Fail to include any option for renewal, extension, or release which the contracting unit may intend to exercise or require; or any terms and conditions necessary for the performance of any extra work; or fail to disclose any matter necessary to the substantial performance of the contract or agreement.

Any specification adopted by the governing body, which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect and subject purchase, contract or agreement shall be readvertised, and the original purchase, contract or agreement shall be set aside by the governing body. No contracting unit setting aside a purchase, contract or agreement pursuant to this section shall be liable for damages therefor.

Source: New.

F. CONTRACTS, FORM AND CONTENTS

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44. Page 7, Section 16, Line 3: Delete the word "construction,".
45. Page 7, Section 16, Line 4: Delete the words "contracting unit" and insert in lieu thereof the words "political subdivision of this State".
46. Page 7, Section 16, Line 6: After the word "specifications" and before the word "prepare" delete the word "shall" and insert in lieu thereof the word "may".
47. Page 8, Section 16, Line 16: After the word "law," insert the word "either".
48. Page 8, Section 16, Line 17: Delete the words "and also" and insert in lieu thereof the word "or".
49. Page 8, Section 16, Line 19: After the word "contract," and before the word "in" insert the phrase "or both,".
50. Page 8, Section 16, Line 32: After the word "the" and before the word "shall" delete the word "board" and insert in lieu thereof the words "contracting agent".
51. Page 8, Section 16, Line 36: After the word "the" and before the word "shall" delete the word "board" and insert in lieu thereof the words "contracting agent".
52. Page 9, Section 18, Lines 1 to 6: Delete the present language and insert in lieu thereof the following:
18. Liquidated damages. Any contract or agreement made pursuant to this act may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract or agreement in accordance with its terms and conditions, or the terms and conditions of this act.
- Source: New.
53. Page 9, Section 18, Line 6: Amend the heading "F. BIDDING REQUIREMENTS" so that it shall read "G. BIDDING REQUIREMENTS".
54. Page 9, Section 19, Line 4: After the word "owns" and before the word "or" insert the word ", leases,".
55. Page 9, Section 19, Line 7: After the word "owner" and before the word "of" insert the words "or lessee".

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56. Page 9, Section 19, Line 12: After the word "contract." insert the following sentence:

Any lease required pursuant to this section shall be for a period ending not earlier than 6 months next following the completion date prescribed pursuant to Section 17 of this act.

57. Page 9, Section 20, Lines 2 and 3: After the word "any" and before the word "for" delete the phrase "public contract work" and insert in lieu thereof the phrase "contract or agreement".

58. Page 9, Section 20, Line 5: After the word "the" and before the word "is" delete the word "work" and insert in lieu thereof the words "contract or agreement".

59. Page 9, Section 21, Line 3: After the word "for" and before the word "every" delete the phrase "public works" and insert in lieu thereof the phrase "a contract or agreement".

60. Page 9, Section 21, Line 12: After the word "the" and before the word "and" delete the phrase "construction of the work" and insert in lieu thereof the phrase "performance of the contract or agreement".

61. Page 10, Section 21, Line 15: After the word "of" and before the word "and" delete the phrase "the work" and insert in lieu thereof the phrase "any work, project or facility".

62. Page 10, Section 22, Line 2: Between the word "for" and the word "bids" insert the word "sealed".

63. Page 10, Section 22, Line 21: Amend the heading "G. AWARDS AND EXECUTION OF CONTRACTS" so that it shall read "H. AWARDS AND EXECUTION OF CONTRACTS".

64. Page 10, Section 23, Line 5: Correct the spelling of the word "responsibile" to read "responsible".

65. Page 11, Section 23, Line 8: After the word "and" and before the word "lowest" delete the word "the" and insert in lieu thereof the phrase "each of the 3".

66. Page 11, Section 23, Line 9: Substitute the word "bidders" for the word "bidder".

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67. Page 11, Section 23, Line 12: Substitute the word "bids" for the word "bid".

68. Page 11, Section 23, Line 13: Amend the heading "H. QUALIFICATION OF BIDDERS" so that it shall read "I. QUALIFICATION OF BIDDERS".

69. Page 11, Section 24, Line 5: After the word "unit," and before the word "which" insert the phrase "by the class or category of work to be performed or materials and supplies to be furnished or hired".

70. Page 11, Section 24, Line 7: After the word "them" and before the word "in" insert the phrase "pertinent to and reasonably related to the class or category of work to be performed or materials and supplies to be furnished or hired".

71. Page 11, Section 24, Line 12: Delete the word "work" and insert in lieu thereof the word "contract".

72. Page 11, Section 24, Lines 13 to 17: Delete the present language and insert in lieu thereof the following new paragraph:

Prior to the adoption of any such regulations, a contracting unit shall submit them to a public hearing. Notice of the hearing and a general description of the subject matter of the regulations to be adopted shall be published in not less than 2 newspapers circulating in the county or municipality in which the contracting unit is located. Publication shall precede by at least 20 days the date set in the notice for the hearing. The clerk or secretary of the governing body of the contracting unit shall keep a record of the proceedings and of the testimony of any citizen or prospective bidder within 10 days after the completion of the hearings. The proposed regulations and a true copy of the record of the hearings shall be forwarded to the Director of the Division of Local Finance for his approval. If the Director fails to approve or disapprove the regulations within 30 days of their receipt by him, they shall take effect without his approval. The Director may disapprove such proposed regulations only if he finds that:

- (a) They are written in a manner which will unnecessarily discourage full, free and open competition; or
- (b) They unnecessarily restrict the participation of small businesses in the public bidding process; or
- (c) They create undue preferences; or
- (d) They violate any other provision of this act, or any other law.

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If the Director disapproves such proposed regulations within the 30-day period prescribed, they shall be of no force and effect and may not be required as a condition to the acceptance of a bid on any public contract by the contracting unit.

73. Page 11, Section 24, Line 18: After the word "his" insert the phrase "race, religion, national origin,".
74. Page 11, Section 24, Line 19: After the word "residence" insert the phrase "or business".
75. Page 12, Section 27, Line 3: After the word "work" and before the word "as" insert the phrase "or contracts".
76. Page 13, Section 28, Line 25: After the word "next" and before the word "of" delete the word "opening" and insert in lieu thereof the word "submission".
77. Page 14, Section 31, Line 14: Delete the number "6" and insert in lieu thereof the number "3".
78. Page 15, Section 34, Line 7: Amend the heading "I. CONTRACTS OF SPECIAL CHARACTER" so that it shall read "J. CONTRACTS OF SPECIAL CHARACTER".
79. Page 15, Section 35, Line 2: After the word "Any" and before the word "may" delete the word "municipality" and insert in lieu thereof the phrase "contracting unit".
80. Page 15, Section 35, Line 8: After the word "such" and before the word "where" delete the word "municipality" and insert in lieu thereof the phrase "contracting unit".
81. Page 15, Section 35, Line 10: Amend the heading "J. MANNER AND METHOD OF SALE" so that it shall read "K. MANNER AND METHOD OF SALE".
82. Page 15, Line 36, Line 12: After the word "sold" and before the word "shall" insert the phrase "and the conditions of sale".
83. Page 15, Section 36, Line 17: After the word "thereof" delete the ";" and before the word "or" insert the phrase ", but in no event at less than the estimated fair value;".

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84. Page 15, Section 36, Line 19: After the word "sale." insert the following sentence:

As used herein, "estimated fair value" means the market value of the property between a willing seller and a willing buyer less the cost to the municipality to continued storage or maintenance of any personal property not needed for public use to be sold pursuant to this section.

85. Page 15, Section 36, Line 21: After the word "interest." insert the following sentences:

In any case in which the contracting unit has rejected all bids, it may re-advertise such personal property for a subsequent public sale. If it elects to reject all bids at a second public sale, pursuant to this section, it may then sell such personal property without further publication or notice thereof at private sale, provided that in no event shall the negotiated price at private sale be less than the highest price of any bid rejected at the preceding 2 public sales and provided further that in no even shall the terms or conditions of sale be changed or amended.

86. Page 16, Section 37, Line 1: Amend the heading "K. STATUTES REPEALED" so that it shall read "L. STATUTES REPEALED".

87. Page 16, Section 38, Line 1: Amend the heading "L. EFFECTIVE DATE" so that it shall read "M. EFFECTIVE DATE".

88. Page 16, Section 38, Line 2: After the numerals "1970" insert the phrase ", but any action, purchase, sale, contract or agreement taken, made or entered into prior to this date pursuant to any of the acts, amendments and supplements hereby repealed are hereby validated and confirmed, provided that in no event shall a lease entered into prior to the effective date of this act be renewed or extended, except in accordance with the terms and provisions of this act.

Respectfully,

/s/ Richard J. Hughes

GOVERNOR

Attest:

/s/ Alan J. Karcher