

40A: 11-2 et al.

2/25/85

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:11-2 et al

("Local Public Contracts Law-- amendment")

LAWS OF: 1975

CHAPTER: 353

Bill No: S3090

Sponsor(s): Feldman and Horn

Date Introduced: February 27, 1975

Committee: Assembly: Municipal Government

Senate: County and Municipal Government

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 5, 1976

Senate: May 19, 1975

Date of Approval: March 3, 1976

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. Senate.
M966 Committee on Municipal and County Government.
1975 Public hearing on S3090, held 3-24-75. Trenton, 1975.

(OVER)

For background see:

974.90 New Jersey. Division of Local Government Services.
M966 Draft: local public contract
1976a guidelines and regulations. Trenton, 1976.

974.90 New Jersey. Division of Local Government Services.
M966 Local public contract guidelines and local public contract
1977 regulations. Trenton, 1977.

SENATE, No. 3090

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1975

By Senators FELDMAN and HORN

Referred to Committee on Labor, Industry and Professions

AN ACT to amend and supplement the "Local Public Contracts Law," approved June 9, 1971 (P. L. 1971, c. 198).

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

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

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

5 (1) "Contracting unit" means

6 (a) Any county; or

7 (b) Any municipality; or

8 **[(c) Any board, commission, committee, officer, department,**
9 **branch, agency or school district of any county or municipality;**
10 **or**

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

24 (2) "Governing body" means:

25 (a) The board of chosen freeholders of the county, when the

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

26 purchase is to be made or the contract or agreement is to be
27 entered into by, or in behalf of, a county; or

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

31 (c) Any board, commission, committee, *authority* or agency
32 of the character described in subsection (1) **[(d)] (c)** of this
33 section.

34 (3) "Contracting agent" means the governing body of a con-
35 tracting unit, or any board, commission, ***[commtitee]*** **com-*
36 *mittee**, officer, department, branch**[,]** or agency **[or school**
37 **district]** which has *the* power to prepare the advertisements, to
38 advertise for and receive **[the]** bids and, *as permitted by this act,*
39 to make awards for the contracting unit in connection with **[the]**
40 purchases, contracts or agreements **[governed by the provisions**
40A **of this act]**.

41 (4) **["Purchase"** includes an acquisition by sale, lease, ex-
42 change, discount, negotiation, mortgage, pledge, lien, issue or re-
43 issue, or any other voluntary transaction for consideration creating
44 an interest in property not made by contract or agreement.]

45 *"Purchase" is a transaction, for a valuable consideration, creat-*
46 *ing or acquiring an interest in goods, services and property, except*
47 *real property or any interest therein.*

48 (5) "Materials" includes goods *and property* subject to article
49 2 of Title 12A of the New Jersey Statutes, apparatus, or any other
50 tangible thing, except real property *or any interest therein* **[and**
51 **capital improvements subject to chapters 32 and 60 of Title 40 of**
52 **the Revised Statutes relating to lands and buildings]**.

53 (6) **["Professional services"** means:

54 (a) Services rendered or performed by a person authorized
55 by law to practice a recognized profession and whose practice
56 is regulated by law; or

57 (b) Services which are of such a qualitative nature as will
58 not reasonably permit the drawing of specifications or the
59 receipt of competitive bids; provided that, with respect to the
60 definitions under both (a) and (b), the governing body shall
61 state supporting reasons for its action in the resolution award-
62 ing the contract, and shall cause a copy of the resolution to be
63 printed in a newspaper of general circulation within the
64 boundaries of the contracting unit no more than 10 days after
65 passage of the resolution.]

66 “Professional services” means services rendered or performed
 67 by a person authorized by law to practice a recognized profession
 68 ***[and]***,* whose practice is regulated by law, ***[which services**
 69 cannot reasonably be described by written specifications, provided
 70 that the governing body shall state supporting reasons for its action
 71 in the resolution awarding the contract, and shall forthwith cause
 72 a copy of the resolution to be printed once in a newspaper autho-
 73 rized by law to publish legal advertisements]** and the performance
 73A of which services requires knowledge of an advanced type in a field
 73B of learning acquired by a prolonged formal course of specialized
 73C instruction and study as distinguished from general academic in-
 73D struction or apprenticeship and training. Professional services may
 73E also mean services rendered in the performance of work that is
 73F original and creative in character in a recognized field of artistic
 73G endeavor*.

74 (7) “***[Nonprofessional technical]*** *Extraordinary unspecifi-
 75 able* services” means services ***[requiring expertise, which ser-**
 76 vices are of a qualitative nature which cannot reasonably be
 77 described by written specifications, provided that the governing
 78 body shall state supporting reasons for its action in the resolution
 79 awarding the contract, and shall forthwith cause a copy of the
 80 resolution to be printed once in a newspaper authorized by law to
 80A publish legal advertisements]** which are specialized and quali-
 80B tative in nature requiring expertise, extensive training and proven
 80C reputation in the field of endeavor*.

81 **[(7)]** (8) “Project” means any work, undertaking, program,
 82 activity, development, redevelopment, construction or reconstruc-
 83 tion of any area or areas.

84 ***[(8)]** (9) “Sale” means the **[conveyance of any interest in ma-**
 85 terials or supplies, by sale, lease or otherwise and shall include a
 86 security interest subject to chapter 9 of Title 12A of the New
 87 Jersey Statutes] transfer of title in or to any property or goods
 88 owned by the contracting unit except real property or any interest
 89 therein.]*

90 ***[(10)]*** (9)* “Work” includes services and any other activity
 91 of a tangible or intangible nature performed or assumed pursuant
 92 to a contract or agreement with a contracting unit.

1 2. Section 3 of P. L. 1971, c. 198 (C. 40A:11-3) is amended to
 2 read as follows:

3 3. Purchases, contracts or agreements not required to be adver-
 4 tised ***[for]***. Any purchase, contract or agreement for the perform-

5 ance of any work or the furnishing or hiring of materials or
 6 supplies, the cost or price of which, [inclusive of the cost or price
 7 of any purchase, contract or agreement for the performance of
 8 any work or the furnishing of, or of the use of, any materials or
 9 supplies, which: (1) forms a part of] *together with any other*
 10 *sums expended or to be expended for *the performance of any work*
 11 *or services in connection with** the same immediate program, under-
 12 taking, activity or project **or the furnishing of similar materials*
 13 *or supplies during the same fiscal year** [(2) is to be] paid with or
 14 out of public funds, [and (3)] does not exceed [in the aggregate]
 15 the total sum of [\$2,500.00] *[\$5,000.00]* *\$2,500.00* in the fiscal
 16 year[,] or, in the case of purchases that are not annually recurring,
 17 in a period of 1 year[. These], may be made, negotiated or
 18 awarded [for] by a contracting [unit] agent when so authorized
 19 by **resolution of the governing body of* the contracting unit* with-
 20 out public advertising for bids [and bidding therefor, notwithstand-
 21 ing that a lesser sum than \$2,500.00 is fixed as a maximum for said
 22 purpose in any other law].

1 3. Section 4 of P. L. 1971, c. 198 (C. 40A:11-4) is amended to
 2 read as follows:

3 4. Contracts and agreements required to be advertised for. Every
 4 contract or agreement, for the performance of any work or the
 5 furnishing or hiring of any materials or supplies, the cost or the
 6 contract price whereof is to be paid with or out of public funds, not
 7 included within the terms of section 3 of this act, shall be made or
 8 awarded only **by the governing body of the contracting unit** after
 9 public advertising for bids and bidding therefor, except as is pro-
 10 vided otherwise in this act or specifically by any other law. No
 11 work, materials or supplies shall be undertaken, acquired or
 12 furnished for a sum exceeding in the aggregate [\$2,500.00]
 13 *[\$5,000.00]* *\$2,500.00*, except by contract or agreement.

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

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

7 (1) The subject matter thereof consists of

8 (a) Professional services or **[nonprofessional technical ser-*
 9 *vices]* *extraordinary unspecifiable services which cannot*
 9A *reasonably be described by written specifications. The applica-*
 9B *tion of this exception to extraordinary unspecifiable services*

9C shall be construed narrowly in favor of open competitive
 9D bidding where possible and the Division of Local Government
 9E Services is authorized to establish rules and regulations
 9F limiting the use of this exception in accordance with the in-
 9G tention herein expressed. The governing body shall in each
 9H instance state supporting reasons for its action in the resolu-
 9I tion awarding each contract and shall cause such resolution to
 9J be printed once in a newspaper authorized by law to publish
 9K its legal advertisements*;

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

12 *[(e) Election expenses, including advertising expenses inci-
 13 dental thereto;]*

14 *[(d)]* *(c)* The printing of legal briefs, records and ap-
 15 pendices to be used in any legal proceeding in which the con-
 16 tracting party may be a party;

17 *[(e)]* *(d)* The furnishing of a tax map or maps for the
 18 contracting party;

19 *[(f)]* *(e)* The purchase of perishable foods as a sub-
 20 sistence supply;

21 [(g) The purchase of motor vehicles;

22 (h) *[(g)]* *(f)* The supplying of any product or the
 23 rendering of any service by a public utility, which is subject
 24 to the jurisdiction of the Board of Public Utility Commis-
 25 sioners, in accordance with tariffs and schedules of charges
 26 made, charged or exacted, filed with said board;

27 [(i) The hiring of supplementary labor, or equipment, for
 28 the removal of snow or ice from roads and bridges and other
 29 public places required to be maintained by the contracting
 30 party during an emergency caused by storm, when the need
 31 for the hiring of such labor or equipment is not reasonably
 32 foreseeable;]

33 *[(h)]* *(g)* The acquisition, subject to prior approval of
 34 the Attorney General, of special equipment for confidential in-
 35 vestigation;

36 *[(i) Medical supplies;]*

37 *[(j)]* *(h)* The printing of bonds and documents neces-
 38 sary to the issuance and sale thereof by a contracting unit;

39 *[(k) Equipment of a technical nature and the parts therefor
 40 if necessary to assure compatibility with existing equipment,
 41 standardization of equipment and interchangeability of parts;

42 (l) *Equipment repair service in the nature of a nonprofes-*
 43 *sional technical service if necessary to assure standardization*
 44 *and quality of equipment repair services;】**

44A **(i) Equipment repair service if in the nature of an extra-*
 44B *ordinary unspecifiable service and necessary parts furnished*
 44C *in connection with such service;**

45 ***[(m)]** *Specialized machinery or equipment such as will not*
 46 *reasonably permit the drawing of specifications and the pro-*
 47 *curement thereof is in the public interest;*

48 (n) *The plowing and removal of snow and ice from high-*
 49 *ways and public places;】**

50 ***[(o)]** **(j)* *The publishing of legal notices in newspapers*
 51 *as required by law;*

52 ***[(p)]** **(k)* *The acquisition of artifacts or other items of*
 53 *unique, intrinsic, artistic or historical character; or*

54 ***[(2)]** *Only one source of supply is available.】**

55 **[(2)]** ***[(3)]** **(2)* *It is to be made or entered into with the*
 56 *United States of America, the State of New Jersey, county or*
 57 *municipality or any board, body, officer, agency or authority***[(,)]****
 57A *thereof *and any other state or subdivision thereof*.*

58 **[(3)]** ***[(4)]** **(3)* *The contracting unit has advertised for bids*
 59 *pursuant to section 4 on two occasions and has received no bids in*
 60 *response to its advertisement, and after reasonable inquiry it is*
 61 *determined that no board, body, officer, agency or authority of the*
 62 *United States, or of the State of New Jersey or of any neighboring*
 63 *county or municipality is willing and able to perform any work or*
 64 *furnish or hire any materials or supplies in conformity with the*
 65 *specifications of the [municipality] contracting unit. Any such*
 66 *contract or agreement *entered into pursuant to this subsection (3)*
 67 *of section 5* may be made, negotiated or awarded only upon*
 68 *adoption of a resolution by the affirmative vote of two-thirds of the*
 69 *full membership of the governing body of the contracting unit at a*
 70 *meeting thereof authorizing such a contract or agreement. ***[(No***
 71 *such contract or agreement may extend for a period greater than*
 72 *1 fiscal year.】** Any amendment or modification of the terms, con-
 73 ditions, restrictions and specifications which were the subject of
 74 the competitive bidding pursuant to section 4 of this act shall be
 74A stated in the resolution awarding the contract.

75 **[(4)]** **(5)* **(4)* *The contracting unit has advertised for bids*
 76 *pursuant to section 4 on two occasions and the governing body*
 77 *thereof has rejected such bids on each occasion because the con-*
 78 *tracting unit has determined that they are not reasonable as to price*

79 on the basis of cost estimates prepared for the contracting unit
 80 prior to the advertising therefor or have not been independently
 81 arrived at in open competition, but no such contract or agreement
 82 may be entered into after such rejection of bids, unless:

83 (a) Notification of the intention to negotiate and a reason-
 84 able opportunity to negotiate shall have been given by the con-
 85 tracting unit to each responsible bidder;

86 (b) The negotiated price is lower than the lowest rejected
 87 bid price of a responsible bidder who bid thereon and is the
 88 lowest negotiated price offered by any responsible supplier
 89 and is a reasonable price for such work materials, supplies or
 90 services;

91 (c) Any amendment or modification of the terms, condi-
 92 tions, restrictions and specifications which were the subject of
 93 competitive bidding pursuant to section 4 of this act shall be
 94 stated in the resolution awarding the contract; and

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

98 Whenever a contracting unit shall determine that a bid was
 99 not arrived at independently in open competition pursuant to
 100 this subsection 5 of section 5, it shall thereupon notify the
 101 county prosecutor of the county in which the contracting unit
 102 is located and the Attorney General of the facts upon which
 103 its determination is based, and when appropriate, it may in-
 104 stitute appropriate proceedings in any State or Federal court
 105 of competent jurisdiction for a violation of any State or Fed-
 106 eral antitrust law or laws relating to the unlawful restraint
 107 of trade.

108 Any such contract or agreement **entered into pursuant to this*
 109 *subsection (4) of section 5** may be made, negotiated or awarded
 110 only upon adoption of a resolution by the affirmative vote of two-
 111 thirds of the full membership of the governing body of the con-
 112 tracting unit at a meeting thereof authorizing such a contract or
 113 agreement.

1 5. Section 6 of P. L. 1971, c. 198 (C. 40A:11-6) is amended to
 2 read as follows:

3 6. **[Authorization of certain exceptions.]** *Emergency purchases*
 4 *and contracts.* Any **[such]** purchase, contract or agreement may be
 5 made, negotiated or awarded for a contracting **[party]** *unit* with-
 6 out public advertising for bids and bidding therefor notwithstand-
 7 ing that the cost or contract price will exceed **[\$2,500.00]**

8 *~~[\$5,000.00]~~* *\$2,500.00*, when an emergency *affecting the public*
 9 *health, safety or welfare* requires the immediate delivery of the
 10 articles or the performance of the service, [and when prior to the
 11 making of such purchase, contract or agreement or after the same,
 12 it is specifically authorized to be so made, negotiated or awarded
 13 by resolution, adoption by the affirmative vote of two-thirds of the
 14 full membership of the governing body of the contract unit, for or
 15 on behalf of which the same is made, negotiated or awarded if the
 16 full membership of such governing body consists of more than four
 17 members, or of three-quarters of all of the members thereof, if the
 18 full membership thereof shall be four members, or of two-thirds of
 19 all the members thereof, if the full membership thereof be three
 20 members, provided such resolution describes specifically the cir-
 21 cumstances, declares the emergency, and further prescribes the
 22 manner in which such purchase, contract or agreement shall be
 23 made, negotiated or awarded, which shall be of such character as
 24 to be effective to promote free and full competition, whenever com-
 25 petition is practical under the circumstances.] *provided that the*
 26 *awarding or making of such purchases, contracts or agreements are*
 27 *made in the following manner:*

28 a. *A written requisition for the performance of such work or*
 29 *labor, or the furnishing of materials, supplies or services is filed*
 30 *with the contracting agent or his deputy in charge describing the*
 31 *nature of the emergency, the time of its occurrence and the need*
 32 *for invoking this section, certified by the officer or director in charge*
 33 *of the department wherein the emergency occurred, and the con-*
 34 *tracting agent or his deputy in charge, being satisfied that the*
 35 *emergency exists, is hereby authorized to award a contract for*
 36 *said work or labor, materials, supplies or services.*

37 b. *Upon the furnishing of such work or labor, materials, sup-*
 38 *plies or services, in accordance with the terms of the contract or*
 39 *agreement, the contractor furnishing such work or labor, materials,*
 40 *supplies or services, shall be entitled to be paid therefor and the*
 41 *contracting unit shall be obligated for said payment. The govern-*
 42 *ing body of the contracting unit shall take such action as shall be*
 43 *required to provide for the payment of the contract price.*

44 c. *The governing body of the contracting unit may prescribe*
 45 *additional rules and procedures to implement the requirements of*
 46 *this section.*

1 6. (New section) a. All contracts and agreements shall be
 2 awarded to the lowest responsible bidder *~~[~~whose bid, conforming
 3 to the invitation for bids and plans and specifications, will be most

4 advantageous to the contracting unit, price and other factors con-
5 sidered]*.

6 b. Except contracts which require the performance of profes-
7 sional ***[or nonprofessional technical]*** services, all contracts or
8 agreements which do not require public advertising for bids and the
9 estimated cost or price exceeds \$500.00, at least three quotations
10 as to the cost or price, whenever practicable, shall be solicited by
11 the contracting agent, and the contract or agreement shall be made
12 with and awarded to the lowest responsible bidder***[**, whose bid will
13 be most advantageous to the contracting unit, price and other
14 factors considered]*.

1 7. Section 7 of P. L. 1971, c. 198 (C. 40A:11-7) is amended to
2 read as follows:

3 7. Contracts not to be divided. No purchase, contract or
4 agreement, which is single in character or which necessarily or by
5 reason of the quantities required to effectuate the purpose of the
6 purchase, contract or ***[agreement]*** *agreement**, includes the
7 furnishing of additional services or buying or hiring of materials
8 or supplies or the doing of additional work, shall be subdivided, so
9 as to bring it or any of the parts thereof under the maximum price
10 or cost limitation of **[\$2,500.00]** ***[\$5,000.00]*** *\$2,500.00* thus
11 dispensing with the requirement of public advertising and bidding
12 therefor, and in purchasing or contracting for, or agreeing for the
13 furnishing of, any services, the doing of any work or the supplying
14 of any materials or the supplying or hiring of any materials or
15 supplies, included in or incident to the performance or completion
16 of any project, program, activity or undertaking which is single in
17 character or inclusive of the furnishing of additional services or
18 buying or hiring of materials or supplies or the doing of additional
19 work, or which requires the furnishing of more than one article of
20 equipment or buying or hiring of materials or supplies, all of the
21 services, materials or property requisite for the completion of such
22 project shall be included in one purchase, contract or agreement.

1 8. Section 9 of P. L. 1971, c. 198 (C. 40A:11-9) is amended to
2 read as follows:

3 9. Purchasing agent, department or board; establishment;
4 powers. The governing body of any local unit may, by ordi-
5 nance, in the case of a municipality, and resolution, in the case
6 of a county, provide for the appointment of a purchasing agent,
7 or purchasing department or a purchasing board, with authority
8 **[to purchase]**, as its contracting agent, *to prepare public adver-*
9 *tising for bids and to receive bids for the purchase of materials*

10 *and supplies on behalf of the contracting unit and, subject to the*
11 *provisions of this act, make awards of contracts in the name of the*
12 *contracting unit* [such materials and supplies required to be pur-
13 chased on behalf of the contracting unit, as said governing body
14 shall, by said ordinance, or resolution prescribe and such purchas-
15 ing agent, purchasing department or purchasing board shall have
16 authority to purchase such materials and supplies on behalf of the
17 contracting unit and prepare the public advertising for bids, to
18 receive the bids and to make the awards in such cases, subject to
19 the approval of the governing body to be given when and in such
20 manner as said governing body shall by such ordinance or reso-
21 lution prescribe].

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

3 11. Additional matters regarding agreements for the purchases
4 of work, materials and supplies.

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

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

14 (3) Any county[,] or municipality [or school district] serving
15 as a purchasing agent, board or department pursuant to this
16 section 11, may make an appropriation to enable it to perform any
17 such contract and may anticipate as revenue payments to be made
18 and received by it from any other party to the agreement. Any
19 items so included in a local budget shall be subject to the approval
20 of the Director, Division of Local [Finance] *Government Services*,
21 who shall consider the matter in conjunction with the requirements
22 of chapter 4 of Title 40A of the New Jersey Statutes. The agree-
23 ment and any subsequent amendment or revisions thereto shall be
24 filed with the Director of the Division of Local [Finance] *Govern-*
25 *ment Services* in the Department of Community Affairs. The pur-
26 chasing agent, pursuant to such an agreement, shall also annually
27 file with the director a report of any purchases, contracts or agree-
28 ments and the amounts thereof annually. The director may, by
29 regulation, specify the form and content of such reports.

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

1 ***[10.]** (New section) A contracting unit may enter into a contract
 2 for the leasing or servicing of automobiles, motor vehicles, elec-
 3 tronic communications equipment, machinery and equipment of
 4 every nature and kind.

1 11. (New section) A contracting unit may enter into installment
 2 contracts or agreements for the purchase of automobiles, motor
 3 vehicles, machinery and equipment of every nature and kind.]*

1 ***[12.]*** *10.* Section 14 of P. L. 1971, c. 198 (C. 40A:11-14) is
 2 amended to read as follows:

3 14. Form and execution of contracts and bonds. *All contracts*
 4 *for the performing of work or furnishing materials, supplies or*
 5 *services shall be in writing.* The governing body of any contracting
 6 unit may, *subject to the requirements of law*, prescribe the form
 7 and manner in which **[all]** contracts **[for performing work or**
 8 **furnishing materials for the contracting unit]** shall be made and
 9 executed, and the form and manner of execution and approval of all
 10 guarantee, indemnity, fidelity and other bonds **[required to be**
 11 **given to the contracting unit pursuant to law]**.

1 ***[13.]*** *11.* Section 15 of P. L. 1971, c. 198 (C. 40A:11-15) is
 2 amended to read as follows:

3 15. **[Contracts for fuel or oil and snow and ice removal; dura-**
 4 **tion.]** *Duration of certain contracts.* Any contracting unit may
 5 enter into a contract **exceeding the fiscal year** for **[the]**

6 (1) Supplying of

7 (a) Fuel for heating purposes, for any term not exceeding
 8 in the aggregate, 2 years; **[or]**

9 (b) Fuel or oil for use of airplanes, *automobiles, motor*
 10 *vehicles or equipment* for any term not exceeding in the aggre-
 11 gate, **[3]** 2 years; **[or]**

12 (2) The plowing and removal of snow and ice from highways
 13 and public places, for any term not exceeding in the aggregate, 1
 14 year; **[or]**

15 (3) The collection and disposal of garbage and refuse, for any
 16 term not exceeding in the aggregate, 5 years***[,]*** *;*

17 **[notwithstanding that such terms exceed the fiscal year.]**

17A *(4) *The recycling of solid waste, for any term not exceeding 25*
 17B *years, when such contract is in conformance with a solid waste*
 17C *management plan approved pursuant to P. L. 1970, c. 39*
 17D *(C. 13:1E-1, et seq.), and with the approval of the Division of*

17E *Local Government Services and the Department of Environmental*
 17F *Protection;**

18 *[(4)]* *(5)* *Data processing service, for any term of not more*
 19 *than 3 years;*

20 *[(5)]* *(6)* *Insurance, for any term of not more than 3 years;*

21 *[(6)]* *The leasing or servicing of electronic communications*
 22 *equipment for a term of not more than 3 years;*

23 (7) *Installment payments for the purchase of automobiles, motor*
 24 *vehicles, equipment or machinery, for a term of not more than 3*
 25 *years;*

26 (8) *The leasing or servicing of automobiles, motor vehicles,*
 27 *electronic communications, equipment, machinery and equipment*
 28 *of every nature and kind, for a term of not more than 3 years;*
 29 *notwithstanding that such terms exceed the fiscal year period; pro-*
 30 *vided, however, such contracts may be entered into for longer terms*
 31 *if approved by the Director of the Division of Local Government*
 32 *Services.]**

32A *(7) *Leasing or servicing of automobiles, motor vehicles, elec-*
 32B *tronic communications equipment, machinery and equipment of*
 32C *every nature and kind, for a period of 1 year with options by the*
 32D *contracting unit to renew such lease for further periods of 1 year,*
 32E *but in the aggregate not to exceed 3 years; provided, however, such*
 32F *contracts shall be entered into only subject to and in accordance*
 32G *with the rules and regulations promulgated by the Director of the*
 32H *Division of Local Government Services of the Department of Com-*
 32I *munity Affairs;*

32J (8) *The supplying of any product or the rendering of any service*
 32K *by a telephone company which is subject to the jurisdiction of the*
 32L *Board of Public Utility Commissioners for a term not exceeding*
 32M *5 years.*

32N *All multi-year leases and contracts entered into pursuant to*
 32O *this section 15 except contracts for the leasing or servicing of equip-*
 32P *ment supplied by a telephone company which is subject to the juris-*
 32Q *isdiction of the Board of Public Utility Commissioners shall contain*
 32R *a clause making them subject to the availability and appropriation*
 32S *annually of sufficient funds as may be required to meet the extended*
 32T *obligation, or contain an annual cancellation clause.**

1 *[(14).]* *12.* *Section 16 of P. L. 1971, c. 198 (C. 40A:11-16) is*
 2 *amended to read as follows:*

3 16. *Separate plans for various types of work; bids; contracts.*
 4 *In the preparation of plans and specifications for the erection,*
 5 *alteration or repair of any public building by any [political sub-*

6 division of this State] *contracting unit*, when the entire cost of the
7 work will exceed [*\$2,500.00] *[\$5,000.00]* *\$2,500.00* in amount,
8 the architect, engineer or other person preparing the plans and
9 specifications, may prepare separate plans and specifications for

10 (1) The plumbing and gas fitting and all kindred work;

11 (2) Steam power plants, steam and hot water heating and
12 ventilating apparatus and all kindred work;

13 (3) Electrical work;

14 (4) Structural steel and ornamental iron work; and

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

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

30 Contracts shall be awarded to the lowest responsible bidder. In
31 the event that a contract is advertised in accordance with (c) above
32 said contract shall be awarded in the following manner: If the sum
33 total of the amounts bid by the lowest responsible bidder for each
34 branch is less than the amount bid by the lowest responsible bidder
35 for all the work and materials, the contracting [agent] *unit* shall
36 award separate contracts for each of such branches to the lowest
37 responsible bidder therefor, but if the sum total of the amount bid
38 by the lowest responsible bidder for each branch is not less than the
39 amount bid by the lowest responsible bidder for all the work and
40 materials, the contracting [agent] *unit* shall award a single overall
41 contract to the lowest responsible bidder for all of such work and
42 materials. In every case in which a contract is awarded under (b)
43 above, all payments required to be made under such contract for
44 work and materials supplied by a subcontractor shall, upon the
45 certification of the contractor of the amount due to the subcontrac-
46 tor, be paid directly to the subcontractor.

1 ***[15.]** Section 18 of P. L. 1971, c. 198 (C. 40A :11-18) is amended to
2 read as follows :

3 18. American *and New Jersey* goods and products to be used
4 where possible. Each local unit shall provide, in the specifications
5 for all contracts for county or municipal work or for work for
6 which it will pay any part of the cost, that only manufactured and
7 farm products of the United States, wherever available, be used in
8 such work *and where possible, shall purchase such products and*
9 *services from vendors who have a place of business in New*
10 *Jersey.*]*

1 ***[16.]*** *13.* Section 23 of P. L. 1971, c. 198 (C. 40A :11-23) is
2 amended to read as follows :

3 23. Advertisements for bids; bids; general requirements. All
4 advertisements for bids shall be published **[at least once, 10 days**
5 **prior to the date fixed for receiving the bids, in a newspaper of**
6 **general circulation published in this State and circulating within**
7 **the territory included within or served by the contracting unit]**
8 *in a legal newspaper sufficiently in advance of the date fixed for*
9 *receiving the bids to promote competitive bidding, but in no event*
10 *less than 10 days prior to such date. The advertisement shall*
11 *designate the manner of submitting and the method of receiving the*
12 *bids and the time and place at which the bids will be received. If the*
13 *published specifications provide for receipt of bids by mail, those*
14 *bids which are mailed to the contracting unit shall be sealed and*
15 *shall only be opened for examination at such time and place as all*
16 *bids received are unsealed and announced. At such time and place*
17 *the contracting agent of the contracting unit shall publicly receive*
18 *the bids, and thereupon immediately proceed to unseal them and*
19 *publicly announce the contents, which announcement shall be made*
20 *in the presence of any parties bidding or their agents, who are*
21 *then and there present, and shall also make proper record of the*
22 *prices and terms, upon the minutes of the governing body, if the*
23 *award is to be made by the governing body of the contracting unit,*
24 *or in a book kept for that purpose, if the award is to be made by*
25 *other than the governing body, and in such latter case it shall be*
26 *reported to the governing body of the contracting unit for its action*
27 *thereon, when such action thereon is required. No bids shall be re-*
28 *ceived after the time designated in the advertisement.*

1 ***[17.]*** *14.* Section 24 of P. L. 1971, c. 198 (C. 40A :11-24) is
2 amended to read as follows :

3 ***[24.]** Time for making award; deposits returned. **[The contract-**
4 **ing agent shall award the contract or contracts, or reject all bids**

5 therefor within 30 days after they are received, and all checks or
 6 bonds delivered with the bids,] *Every contract shall be awarded or*
 7 *all bids therefor rejected within 60 days after the opening of bids*
 8 *except where the invitation to bid states that the execution of the*
 9 *contract shall be subject to prior approval or disapproval by a*
 10 *Federal or State agency or department, in which event the contract*
 11 *shall be awarded or all bids therefor rejected within 5 days after*
 12 *the approval or disapproval by such Federal or State agency or*
 13 *department. All security delivered with the bids, except the check*
 14 *or bond of the bidder to whom the contract is awarded, shall be*
 15 *returned within 3 days thereafter, Sundays and holidays excepted.*
 16 *The check or bond of the bidder to whom the contract is awarded*
 17 *shall be retained until a contract is executed and any required per-*
 18 *formance bond or other security is submitted. [If for any reason*
 19 *the contracting agent is unable to make an award within such 30-day*
 20 *period, it shall be lawful for such agent and each of the three lowest*
 21 *responsible bidders and his proposed surety, if any, to agree upon*
 22 *an extension, not exceeding an additional 30 days, for the making*
 23 *of the award, in which event the contracting agent shall make the*
 24 *award or reject such bids on or before the end of such extended*
 25 *period.]**

25A *24. *Time for making awards; deposits returned. The contract-*
 25B *ing unit shall award the contract or reject all bids within such time*
 25C *as may be specified in the invitation to bid, but in no case more than*
 25D *60 days, except that the bids of any bidders who consent thereto*
 25E *may, at the request of the contracting unit, be held for considera-*
 25F *tion for such longer period as may be agreed. All bid security*
 25G *except the security of the three apparent lowest responsible bidders*
 25H *shall, if requested, be returned after 10 days from the opening of*
 25I *the bids, Sundays and holidays excepted and the bids of such*
 25J *bidders shall be considered as withdrawn. Within 3 days after the*
 25K *awarding of the contract and the approval of the contractor's per-*
 25L *formance bond the bid security of the remaining unsuccessful*
 25M *bidders shall be returned to them forthwith, Sundays and holidays*
 25N *excepted.**

1 ***[18.]*** *15.* This act shall take effect immediately.

scribe additional rules and procedures to implement the requirements for the awarding of such contracts.

This bill supplements the existing law relating to the manner in which contracts shall be awarded. All contracts shall be awarded to the lowest responsible bidder, whose bid, conforming to the invitation for bids, will be most advantageous to the contracting unit, price and other factors considered. Except contracts requiring the performance of professional or nonprofessional technical services, contracts which do not require public advertising for bids and the estimated cost and price thereof exceeds \$500.00, whenever practical, at least three quotations as to the cost or price shall be solicited by the contracting agent, and the contract shall be awarded to the lowest responsible bidder whose bid will be most advantageous to the contracting unit, price and other factors considered.

The bill supplements the existing law to provide that contracting units may enter into contracts for the leasing or servicing of automobiles, motor vehicles, electronic communications equipment, machinery, equipment of every kind and nature, and also authorizes a contracting unit to enter into installment contracts for the purchase of automobiles, motor vehicles, machinery or equipment of every nature and kind.

The existing law is silent as to whether or not contracts for the performing of work or furnishing of materials and supplies shall be in writing. The absence of such a provision has resulted in confusion. Under this bill it is expressly provided that all such contracts for the performing of work or furnishing of materials and supplies shall be in writing.

The section of the present law relating to the duration of certain contracts which a contracting unit may enter into which exceed the fiscal year of the contracting unit is amended by adding thereto contracts for any term of not more than 3 years relating to data processing service, insurance, leasing or servicing of electronic communications equipment, installment contracts for the purchase of automobiles, etc., and the leasing or services of automobiles, etc. All contracts which may be entered into by a contracting unit under this section may be entered into for longer terms if approved by the Director of the Division of Local Government Services.

This bill also provides that where possible contracting units shall purchase products and services from vendors who have a place of business in New Jersey.

The section of the present law relating to advertisements for bids is changed to require that bids shall be advertised sufficiently in

advance of the date fixed for receiving bids to promote competitive bidding, but in no event less than 10 days prior to such date. This conforms to the law relating to the advertising for bids for contracts entered into by the State.

The bill also changes the time within which contracts shall be awarded or bids rejected. All contracts shall be awarded or all bids rejected within 60 days after they are received except where the invitation to bid states that the execution of the contract is subject to approval or disapproval by the Federal or State Governments, in which event the contract shall be awarded or bids rejected within 5 days after such approval or disapproval.

This is a companion to a bill amending N. J. S. 40A:4-5 of the Local Budget Law.

Spensor's STATEMENT

This bill is a replacement of Senate Bill No. 1322. It has been drafted by the Division of Law Revision in cooperation with the Senate Committee on County and Municipal Government to reflect further changes, suggestions and recommendations made to the Senate Committee and to the Division of Law Revision by the Legislative Committee of the New Jersey Institute of Municipal Attorneys and the New Jersey Purchasing Agents' Association, both of which are subgroups of the New Jersey League of Municipalities.

This bill seeks to rectify some of the more recurrent and serious problems that exist under the present law which have been raised by local public officials.

A constitutional problem has existed under the present law by reason of the inclusion of school districts in statutes relating to municipalities and counties. This bill corrects the problem.

Legislation has been prepared and introduced in the Assembly as Assembly Bill No. 3060, revising chapter 18 of Title 18A—the education statutes, to incorporate therein many of the provisions of the Local Public Contracts Law to accomplish uniformity in public contract law.

The provisions of this bill will extensively revise the existing law.

One of the changes made by this bill is a change in the definition section redefining contracting unit, contracting agent, purchase, materials, professional services, project and sale and defining non-professional technical services and work.

Under the existing law, all contracts, the cost or price of which, except those otherwise specifically excepted, exceeds \$2,500.00, may be awarded only after public advertising for bids and bidding therefor. This bill will provide a new legislative scheme for the entering into of contracts calling for the expenditure of public money by contracting units. It provides for uniform and simplified procedure, permits contracting units to take advantage of modern leasing and installment contract procedures and to get the benefits of lower pricing therefrom and allows responsible officers and employees to commit the contracting unit to the cost of making repairs in emergency situations. The scheme generally is that every contract over \$500.00 will require a solicitation of quotations whenever practicable. If the contract price exceeds \$5,000.00 there must be a public advertising for bids. The present statute requires public advertising where the price of a contract exceeds \$2,500.00. It has

been suggested that this figure be raised to \$5,000.00 to conform with inflationary trends.

The present law includes certain items which may be purchased without public advertising even though the price exceeds the limit set. This bill would add to the list of exempt contracts those which would cover nonprofessional technical services, the acquisition of special equipment for confidential investigation subject to approval by the Attorney General, medical supplies, printing of bonds and documents necessary to the issuance and sale thereof, technical equipment, equipment repair services, the plowing and removal of snow from public places, publishing of legal notices, acquisition of artifacts and historical items, and other situations in which only one source of supply is available. However, all of these types of contract will require a solicitation for quotes if the price is above \$500.00. Motor vehicles will no longer be exempt.

The present law has an awkward provision providing for the awarding of the contract on which no bids have been received after public advertising. It requires that the contracting unit first ascertain whether any county or municipality or the State or Federal Governments are in a position to supply the articles or services. The acquiring of such information is an impossibility. This bill keeps the scheme of making it necessary that reasonable inquiries be made but removes the requirement of contacting all other local contracting units.

This bill changes the existing law relating to the awarding of contracts when an emergency exists requiring immediate delivery of materials and supplies or the performance of work. As provided in the bill, such contracts may be made or awarded without public advertising for bids although the cost or price thereof will exceed \$5,000.00 when an emergency affecting the public health, safety or welfare requires the immediate delivery of the articles or performance of the services provided such contracts are made or awarded in the following manner: a written requisition for the performance of such work or the furnishing of materials is filed with the contracting agent or his deputy in charge describing the emergency; the time of its occurrence and the need for invoking this section, certified by the officer or director in charge of the department wherein the emergency occurred; and the contracting agent, being satisfied that an emergency exists, may award such a contract. Upon the performance of such work or furnishing of materials, the contracting unit shall be obligated for the payment thereof, and the governing body of the contracting unit is authorized to pre-

scribe additional rules and procedures to implement the requirements for the awarding of such contracts.

This bill supplements the existing law relating to the manner in which contracts shall be awarded. All contracts shall be awarded to the lowest responsible bidder, whose bid, conforming to the invitation for bids, will be most advantageous to the contracting unit, price and other factors considered. Except contracts requiring the performance of professional or nonprofessional technical services, contracts which do not require public advertising for bids and the estimated cost and price thereof exceeds \$500.00, whenever practical, at least three quotations as to the cost or price shall be solicited by the contracting agent, and the contract shall be awarded to the lowest responsible bidder whose bid will be most advantageous to the contracting unit, price and other factors considered.

The bill supplements the existing law to provide that contracting units may enter into contracts for the leasing or servicing of automobiles, motor vehicles, electronic communications equipment, machinery, equipment of every kind and nature, and also authorizes a contracting unit to enter into installment contracts for the purchase of automobiles, motor vehicles, machinery or equipment of every nature and kind.

The existing law is silent as to whether or not contracts for the performing of work or furnishing of materials and supplies shall be in writing. The absence of such a provision has resulted in confusion. Under this bill it is expressly provided that all such contracts for the performing of work or furnishing of materials and supplies shall be in writing.

The section of the present law relating to the duration of certain contracts which a contracting unit may enter into which exceed the fiscal year of the contracting unit is amended by adding thereto contracts for any term of not more than 3 years relating to data processing service, insurance, leasing or servicing of electronic communications equipment, installment contracts for the purchase of automobiles, etc., and the leasing or services of automobiles, etc. All contracts which may be entered into by a contracting unit under this section may be entered into for longer terms if approved by the Director of the Division of Local Government Services.

This bill also provides that where possible contracting units shall purchase products and services from vendors who have a place of business in New Jersey.

The section of the present law relating to advertisements for bids is changed to require that bids shall be advertised sufficiently in

advance of the date fixed for receiving bids to promote competitive bidding, but in no event less than 10 days prior to such date. This conforms to the law relating to the advertising for bids for contracts entered into by the State.

The bill also changes the time within which contracts shall be awarded or bids rejected. All contracts shall be awarded or all bids rejected within 60 days after they are received except where the invitation to bid states that the execution of the contract is subject to approval or disapproval by the Federal or State Governments, in which event the contract shall be awarded or bids rejected within 5 days after such approval or disapproval.

This is a companion to a bill amending N. J. S. 40A:4-5 of the Local Budget Law.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 3090

with Senate committee amendments

STATE OF NEW JERSEY

DATED: APRIL 28, 1975

Senate Bill No. 3090 is a substitute for Senate Bill No. 1322. It has been drafted by the Division of Law Revision in cooperation with the Senate Committee on County and Municipal Government to reflect further changes, suggestions and recommendations made to the Senate Committee and to the Division of Law Revision by the Legislative Committee of the New Jersey Institute of Municipal Attorneys and the New Jersey Purchasing Agents' Association, both of which are subgroups of the New Jersey League of Municipalities. The committee amendments are the result of testimony rendered at the public hearing on the bill and extensive consultations with the Department of Community Affairs.

The primary purpose of the bill is to rectify some of the more recurrent and serious problems that exist under the present law which have been raised by local public officials and the Department of Community Affairs.

For purposes of brevity, the following section-by-section description of Senate Bill No. 3090 will refer to the provisions of the bill as amended by the committee.

Sections 1 and 9 of the bill eliminate school districts from the provisions of the Local Public Contracts Law. The deletion is intended to dispose of the constitutional problem posed by the inclusion of school districts in Title 40 of the New Jersey Statutes. Senate Bill No. 3090 effectuates the transfer of many of the pertinent provisions of the Local Public Contracts Law into the education statutes.

Section 1 also

(1) Extends the provisions of the Local Public Contracts Law to public authorities created by a county or municipality;

(2) Provides definitions for the terms "purchase" and "work" and deletes the definition of "sale";

(3) Requires public advertisement for bids on any professional services for which specification can be drawn; and

(4) Redefines professional services and creates a new category of "extraordinary unspecifiable services" which roughly encompasses the provisions of subsection (6) (b) of C. 40A:11-2.

Section 2 contains primarily technical amendments to C. 40A:11-3 and additional clarifying language.

Section 3 requires that any contracts on which public advertising for bids is required (over \$2,500.00) shall be awarded by the contracting unit.

Section 4 omits the following goods or services from the existing exemptions from public advertising (for bids) requirements:

- (1) Election expenses;
- (2) Purchase of motor vehicles;
- (3) Supplementary labor or equipment for emergency snow or ice removal (see section 5).

The following new goods or services are added to the exempt category:

- (1) Extraordinary unspecifiable services, subject to rules and regulations of the Division of Local Government Services, and upon adoption of appropriate resolution (previously were part of professional services);
- (2) Special equipment for confidential investigations;
- (3) Printing of bonds and related documents;
- (4) Equipment repair services, if in nature of extraordinary unspecifiable services, and parts furnished in connection thereto;
- (5) Publishing of legal notices; and
- (6) Acquisition of artifacts and other items of unique, intrinsic, artistic or historic worth.

Section 4 also exempts from public advertising requirements joint contracts entered into with other states or their subdivisions, and clarifies certain internal references.

Section 5 authorizes a contracting agent or his deputy to make appropriate contracts or purchases when necessitated by a certified emergency, and requires the governing body of the contracting unit to appropriate moneys therefor. Emergency purchases are, however, limited to situations constituting a danger to public health, safety and welfare. The governing body may prescribe such additional rules and regulations on emergency purchases.

Section 6 requires (1) awarding of all contracts and agreements to

lowest responsible bidder, and (2) that quotation of three prices be solicited for all contracts, except those involving professional services, involving more than \$500.00.

Section 8 allows the governing body to make, subject to the provisions of the Local Public Contracts Law (see especially sections 2 and 3 of the bill), a general delegation of authority to the contracting agent to perform all necessary purchasing functions. At present, the governing body must approve each contract.

Sections 10, 11, and 15 have been deleted from the bill, and ensuing sections have been renumbered accordingly.

Section 10 requires all contracts to be in writing.

Section 11 allows multiyear contracts on:

(1) Fuel or oil for autos, motor vehicles or equipment; (recycling of solid wastes (see Senate Bill No. 624));

(2) Data processing services;

(3) Insurance;

(4) Leasing or servicing of autos, motor vehicles, electronic communications equipment and machinery and equipment of every nature and kind, subject to rules and regulations of Division of Local Government Services; and

(5) Section 11 requires that every multi-year contract, except for leasing or purchase of telephone equipment, contain (a) a clause making implementation subject to the availability of funds or (b) a cancellation clause.

Section 12 grants a contracting unit (governing body) the sole authority to determine whether certain construction work on a public building, when such work is in excess of \$2,500.00, shall be let as a single contract or as multiple contracts.

Section 14 allows for a greater flexibility as to the publication date for a public advertisement for bids.

Section 15 requires that contracts or agreements be awarded, unless otherwise specified in the advertisement for bids, within 60 days, or unless concerned parties agree to an extension. The section also requires that the security of all but the three lowest responsible bidders shall, upon request, be returned within 10 days from the opening of bids. Security of all but the successful bidder shall be returned within 3 days after the awarding of contracts and approval of the successful contractor's performance bond.