

40A:11-16

LEGISLATIVE HISTORY CHECKLIST
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(Local Public Contracts)

NJSA: 40A:11-16

LAWS OF: 1997 CHAPTER: 408

BILL NO: A98

SPONSOR(S): Rooney and Bucco

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: State Government
SENATE: Transportation

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 12, 1998
SENATE: January 8, 1998

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement,
adopted 12-1-97

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: YES

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[Passed Both Houses]

[Second Reprint]

ASSEMBLY, No. 98

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen ROONEY and BUCCO

1 AN ACT concerning local public contracts and amending P.L.1971,
2 c.198.

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

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7 1. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to
8 read as follows:

9 16. Separate plans for various types of work; bids; contracts

10 In the preparation of plans and specifications for the erection,
11 alteration or repair of any public building by any contracting unit,
12 when the entire cost of the work will exceed the amount set forth in,
13 or the amount calculated by the Governor pursuant to, section 3 of
14 P.L.1971, c.198 (C.40A:11-3), the architect, engineer or other person
15 preparing the plans and specifications may prepare separate plans and
16 specifications for

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

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

20 (3) Electrical work;

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

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

23 The contracting unit or its contracting agent shall advertise for and
24 receive, in the manner provided by law, either (a) separate bids for
25 each of said branches of work, or (b) bids for all the work and
26 materials required to complete the building to be included in a single
27 overall contract, or (c) both. ²**[There]** In the case of a single bid
28 under (b) or (c), there² will be set forth in the bid the name or names

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASG committee amendments adopted March 11, 1996.

² Senate floor amendments adopted December 1, 1997.

1 of all subcontractors to whom the bidder will subcontract the
2 furnishing of plumbing and gas fitting, and all kindred work, and of the
3 steam and hot water heating and ventilating apparatus, steam power
4 plants and kindred work, and electrical work, structural steel and
5 ornamental iron work, each of which subcontractors shall be qualified
6 in accordance with this act. The contracting unit shall require
7 evidence of performance security to be submitted simultaneously with
8 the list of the subcontractors. Evidence of performance security may
9 be supplied by the bidder on behalf of himself and any or all
10 subcontractors, or by each respective subcontractor, or by any
11 combination thereof which results in evidence of performance security
12 equalling, but in no event exceeding, the total amount bid.

13 Whenever a bid sets forth more than one subcontractor for ²[a
14 particular] any of the ²specialty trade ²[category] categories (1)
15 through (4) specified hereinabove in this section, ²the bidder shall
16 submit to the contracting unit a certificate signed by the bidder listing
17 each subcontractor named in the bid for that category. The certificate
18 shall set forth the scope of work for which the subcontractor has
19 submitted a ¹price¹ quote and which the bidder has agreed to award
20 to each subcontractor should the bidder be awarded the contract. The
21 certificate shall be submitted to the contracting unit simultaneously
22 with the list of the subcontractors. ¹[A] The certificate may take the
23 form of a single certificate listing all subcontractors or, alternatively,
24 a ¹separate certificate may be submitted for each subcontractor. If a
25 bidder does not submit a certificate or certificates to the contracting
26 unit, the contracting unit shall award the contract to the next lowest
27 ¹responsible¹ bidder.

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

44 (cf: P.L.1987, c.48, s.1)

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46 2. This act shall take effect ¹[immediately] on the 90th day

1 following enactment¹.

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6 Requires certain public bidders to specify subcontractor's scope of
7 work.

1 subcontractors shall be qualified in accordance with this act. The
2 contracting unit shall require evidence of performance security to be
3 submitted simultaneously with the list of the subcontractors. Evidence
4 of performance security may be supplied by the bidder on behalf of
5 himself and any or all subcontractors, or by each respective
6 subcontractor, or by any combination thereof which results in evidence
7 of performance security equalling, but in no event exceeding, the total
8 amount bid.

9 Whenever a bid sets forth more than one subcontractor for a
10 particular specialty trade category the bidder shall submit to the
11 contracting unit a certificate signed by the bidder listing each
12 subcontractor named in the bid for that category. The certificate shall
13 set forth the scope of work for which the subcontractor has submitted
14 a quote and that the bidder has agreed to award to each subcontractor
15 should the bidder be awarded the contract. The certificate shall be
16 submitted to the contracting unit simultaneously with the list of the
17 subcontractors. A separate certificate may be submitted for each
18 subcontractor. If a bidder does not submit a certificate or certificates
19 to the contracting unit, the contracting unit shall award the contract to
20 the next lowest bidder.

21 Contracts shall be awarded to the lowest responsible bidder. In the
22 event that a contract is advertised in accordance with (c) above said
23 contract shall be awarded in the following manner: If the sum total of
24 the amounts bid by the lowest responsible bidder for each branch is
25 less than the amount bid by the lowest responsible bidder for all the
26 work and materials, the contracting unit shall award separate contracts
27 for each of such branches to the lowest responsible bidder therefor,
28 but if the sum total of the amounts bid by the lowest responsible bidder
29 for each branch is not less than the amount bid by the lowest
30 responsible bidder for all the work and materials, the contracting unit
31 shall award a single overall contract to the lowest responsible bidder
32 for all of such work and materials. In every case in which a contract
33 is awarded under (b) above, all payments required to be made under
34 such contract for work and materials supplied by a subcontractor shall,
35 upon the certification of the contractor of the amount due to the
36 subcontractor, be paid directly to the subcontractor.

37 (cf: P.L.1987, c.48, s.1)

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39 2. This act shall take effect immediately.

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STATEMENT

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44 This bill would clarify the provision (C.40A:11-16) of the "Local
45 Public Contracts Law" governing the responsibility of a general
46 contractor who submits a bid for construction work to a county,

1 municipality, or other local government contracting unit to identify in
2 that bid the persons to whom that general contractor will subcontract
3 certain specialty work if the bid is accepted.

4 Current law provides that such a bid by a general contractor shall
5 "set forth . . . the name or names of all subcontractors to whom the
6 bidder will subcontract the furnishing of plumbing and gas fitting, and
7 all kindred work, and of the steam and hot water heating and
8 ventilating apparatus, steam power plants and kindred work, and
9 electrical work, structural steel and ornamental iron work, each of
10 which subcontractors shall be qualified in accordance with this act."

11 Under the bill, whenever a bid sets forth more than one
12 subcontractor for a particular specialty trade category, the bidder must
13 submit to the contracting unit certificates signed by the bidder listing
14 each subcontractor named in the bid for that category. The certificate
15 is to set forth the scope of work for which the subcontractor has
16 submitted a quote and that the bidder has agreed to award to that
17 subcontractor if the contracting unit awards the bidder the underlying
18 contract. The certificate is to be submitted to the contracting unit
19 simultaneously with the bid. Separate certificates may be submitted
20 for each subcontractor. In the event the bidder fails to submit
21 certificates to the contracting unit, the contracting unit shall award the
22 contract to the next lowest bidder.

23 Implementation of these procedures would curtail the practice of
24 post-award bid shopping among subcontractors in which some general
25 contractors are said to engage. Such bid shopping is thought to be
26 detrimental both to subcontractors, who may be pitted against one
27 another in order to be awarded a larger subcontract, and to contracting
28 units, who derive no benefit from the practice. Under the bill,
29 negotiations between contractor and subcontractor would be
30 completed prior to submission of the underlying general contractor
31 bids, so that those bids will represent the bidders' lowest possible
32 price.

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37 Requires certain public bidders to specify subcontractor's scope of
38 work.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 98

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 1996

The Assembly State Government Committee reports favorably and with committee amendments Assembly Bill No. 98.

This bill would clarify the provision (C.40A:11-16) of the "Local Public Contracts Law" governing the responsibility of a general contractor who submits a bid for construction work to a county, municipality, or other local government contracting unit to identify in that bid the persons to whom that general contractor will subcontract certain specialty work if the bid is accepted.

Current law provides that such a bid by a general contractor shall "set forth . . . the name or names of all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with this act."

Under the bill, whenever a general contractor's bid sets forth more than one subcontractor for a particular specialty trade category, the bidder must submit to the contracting unit certificates signed by the bidder listing each subcontractor named in the bid for that category. The certificate is to set forth the scope of work for which the subcontractor has submitted a price quote and that the bidder on the general contract has agreed to award to that subcontractor if the contracting unit awards the bidder the underlying contract. The certificate is to be submitted to the contracting unit simultaneously with the bid. The certificate could take the form of a single certificate listing all subcontractors; alternatively, separate certificates could be submitted for each subcontractor. If the bidder fails to submit certificates to the contracting unit, the contracting unit is to award the contract to the next lowest responsible bidder.

This bill was prefiled for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee adopted amendments to this bill specifying that (1) a reference to the subcontractor's "quote" for specialty work is to a price quote, (2) the submission by a bidder of separate certificates for each subcontractor is to be an alternative to the submission of a single certificate for all subcontractors, (3) to be eligible to receive a contract when an otherwise victorious bidder has failed to submit the certificate required under the legislation, the next-lowest bidder must be a responsible bidder, and (4) the legislation is to take effect on the 90th day after enactment rather than immediately.

SENATE TRANSPORTATION COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 98

STATE OF NEW JERSEY

DATED: MAY 15, 1997

The Senate Transportation Committee reports favorably Assembly Bill No. 98 (1R).

This bill would clarify the provision (C.40A:11-16) of the "Local Public Contracts Law" governing the responsibility of a general contractor who submits a bid for construction work to a county, municipality, or other local government contracting unit to identify in that bid the persons to whom that general contractor will subcontract certain specialty work if the bid is accepted.

Current law provides that such a bid by a general contractor shall "set forth . . . the name or names of all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with this act."

Under the bill, whenever a general contractor's bid sets forth more than one subcontractor for a particular specialty trade category, the bidder must submit to the contracting unit certificates signed by the bidder listing each subcontractor named in the bid for that category. The certificate is to set forth the scope of work for which the subcontractor has submitted a price quote and that the bidder on the general contract has agreed to award to that subcontractor if the contracting unit awards the bidder the underlying contract. The certificate is to be submitted to the contracting unit simultaneously with the bid. The certificate could take the form of a single certificate listing all subcontractors; alternatively, separate certificates could be submitted for each subcontractor. If the bidder fails to submit certificates to the contracting unit, the contracting unit is to award the contract to the next lowest responsible bidder.

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 98

with Senate Floor Amendments
(Proposed By Senator CIESLA)

ADOPTED: DECEMBER 1, 1997

These amendments clarify that the requirement being placed in the Local Public Contracts Law by this bill, that a bidder submit a certificate concerning subcontractors, applies only when more than one subcontractor is set forth in connection with the following specialty trade categories: plumbing and gas fitting and all kindred work; steam power plants, steam and hot water heating and ventilating apparatus and all kindred work; electrical work; and structural steel and ornamental iron work.

Office of the GovernorPO BOX 004
TRENTON, NJ 08625**NEWS RELEASE**CONTACT: Jayne O'Connor
Julie Plocinik
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RELEASE: June 30, 1998

Gov. Christie Whitman today signed the following legislation:

S-2001, sponsored by Senator Robert Littell (R- Sussex/Hunterdon/Morris) and Assembly Members Richard Bagger (R- Middlesex/Morris/Somerset/Union) and Joseph Charles (D-Hudson), makes various FY 1998 supplemental appropriations totaling \$105,403,932 in state funds and \$579,254 in federal funds and appropriates \$15 million in bond funds. Projects funded through this bill include: \$400,000 for the purchase of protective vests for law enforcement, \$750,000 to support a toll free telephone system for dealing with the Division of Motor Vehicles services, \$285,000 for computer equipment to run criminal history background checks on school employees, and \$15 million in property tax relief aid to the City of Camden and the creation of a financial oversight board for the city, and \$15 million for sewer overflow abatement projects for the Passaic River/Newark Bay Restoration Program.

A-2141, sponsored by Assembly Member Francis Blee (R-Atlantic) and Senators Louis Bassano (R-Essex/Union) and Leonard Connors (R- Atlantic/Burlington/Ocean), establishes an annual assessment of 5.8 percent of gross revenue on all intermediate care facilities for the mentally retarded. The revenue generated by the assessment will be used to reduce the Developmental Disabilities waiting list for placement in community residences.

A-673, sponsored by Assembly Members Jack Gibson and Nicholas Asselta and Senator James Cafiero (all R-Cape May/Atlantic/Cumberland), authorizes municipalities to regulate skateboards and roller skates upon roadways and public properties under their jurisdiction. This law supplements legislation signed January 19, requiring helmets for skaters under 14 years of, by ensuring that municipalities have the ability to regulate skating activities to protect skaters, motorists and other pedestrians in their communities.

A-553, sponsored by Assembly Members David Russo (R-Bergen/Passaic) and Gerald Zecker (R-Essex/Passaic) and Senators Jack Sinagra (R-Middlesex) and John Adler (D-Camden), prohibits smoking in child care centers when children are present.

A-1902, sponsored by Assembly Member Richard Bagger (R-Middlesex/Morris/Somerset/Union) and Louis Romano (D-Hudson) and Senator Robert Littell (R-Sussex/Hunterdon/Morris), authorizes the State Treasurer to determine the salary of the Director and Deputy Director of the Division of Investment and authorizes the Treasurer to designate an additional deputy director.