

CHAPTER 208 LAWS OF N. J. 1982
APPROVED 12-23-82

SENATE, No. 906

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Senators HURLEY, CONNORS and SAXTON

Referred to Committee on Institutions, Health and Welfare

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

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

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

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

7 (1) The subject matter thereof consists of

8 (a) (i) Professional services. The governing body shall in each
9 instance state supporting reasons for its action in the resolution
10 awarding each contract and shall forthwith cause to be printed once,
11 in a newspaper authorized by law to publish its legal advertise-
12 ments, a brief notice stating the nature, duration, service and
13 amount of the contract, and that the resolution and contract are
14 on file and available for public inspection in the office of the clerk
15 of the county or municipality, or, in the case of a contracting unit
16 created by more than one county or municipality, of the counties
17 or municipalities creating such contracting unit; or, (ii) Extra-
18 ordinary, unspecifiable services. The application of this exception
19 shall be construed narrowly in favor of open competitive bidding,
20 where possible, and the Division of Local Government Services is
21 authorized to adopt and promulgate rules and regulations limiting
22 the use of this exception in accordance with the intention herein
23 expressed. The governing body shall in each instance state sup-
24 porting reasons for its action in the resolution awarding each
25 contract and shall forthwith cause to be printed, in the manner
26 set forth in subsection (1)(a)(i) of this section, a brief notice of
27 the award of such contract.

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

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

29 (e) The printing of legal briefs, records and appendices to be
30 used in any legal proceeding in which the contracting party may be
31 a party;

32 (d) The furnishing of a tax map or maps for the contracting
33 party;

34 (e) The purchase of perishable foods as a subsistence supply;

35 (f) The supplying of any product or the rendering of any service
36 by a public utility, which is subject to the jurisdiction of the Board
37 of Public **[Utility Commissioners]** *Utilities*, in accordance with
38 tariffs and schedules of charges made, charged or exacted, filed with
39 said board;

40 (g) The acquisition, subject to prior approval of the Attorney
41 General, of special equipment for confidential investigation;

42 (h) The printing of bonds and documents necessary to the
43 issuance and sale thereof by a contracting unit;

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

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

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

52 (l) Election expenses; **[or]**

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

56 *(n) The doing of any work by handicapped persons employed
57 by a sheltered workshop.*

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

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

74 the authorized membership of the governing body authorizing such
75 contract or agreement; provided, however, that:

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

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

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

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

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

1 2. This act shall take effect immediately.

STATEMENT

This bill exempts services of handicapped persons employed by a sheltered workshop from the competitive advertisement and bidding section of the "Local Public Contracts Law."

ASSEMBLY CORRECTIONS, HEALTH AND
HUMAN SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 906

STATE OF NEW JERSEY

DATED: NOVEMBER 29, 1982

The purpose of this bill is to exempt the services of handicapped persons employed in a sheltered workshop from the competitive advertisement and bidding section of the "Local Public Contracts Law."

The bill would allow counties and municipalities to purchase commodities or services produced by handicapped workers in sheltered workshops without requiring competitive bidding.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
SENATE, No. 906

STATE OF NEW JERSEY

DATED: JUNE 3, 1982

This bill exempts the work of handicapped persons employed by sheltered workshops from the competitive advertisement and bidding requirements of the "Local Public Contracts Law."