

40A:11-5

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 40A:11-5 (Public contracts—exemptions)

LAWS OF: 1991 **CHAPTER:** 368

Bill No: A4852

Sponsor(s): Zangari

Date Introduced: May 9, 1991

Committee: Assembly: Municipal Government

Senate: County & Municipal Government

Amended during passage: No

Date of Passage: Assembly: June 17, 1991

Senate: December 19, 1991

Date of Approval: January 9, 1992

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/dgw

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

3

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

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

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

12 (1) The subject matter thereof consists of

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

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

35 (c) The printing of legal briefs, records and appendices to be
36 used in any legal proceeding in which the contracting party may
37 be a party;

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

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

Matter underlined thus is new matter.

- 1 (e) The purchase of perishable foods as a subsistence supply;
- 2 (f) The supplying of any product or the rendering of any
3 service by a public utility, which is subject to the jurisdiction of
4 the Board of Public Utilities, in accordance with tariffs and
5 schedules of charges made, charged or exacted, filed with said
6 board;
- 7 (g) The acquisition, subject to prior approval of the Attorney
8 General, of special equipment for confidential investigation;
- 9 (h) The printing of bonds and documents necessary to the
10 issuance and sale thereof by a contracting unit;
- 11 (i) Equipment repair service if in the nature of an
12 extraordinary unspecifiable service and necessary parts furnished
13 in connection with such service, which exception shall be in
14 accordance with the requirements for extraordinary unspecifiable
15 services;
- 16 (j) The publishing of legal notices in newspapers as required by
17 law;
- 18 (k) The acquisition of artifacts or other items of unique
19 intrinsic, artistic or historical character;
- 20 (l) Election expenses;
- 21 (m) Insurance, including the purchase of insurance coverage
22 and consultant services, which exception shall be in accordance
23 with the requirements for extraordinary unspecifiable services;
- 24 (n) The doing of any work by handicapped persons employed by
25 a sheltered workshop;
- 26 (o) The provision of any service or the furnishing of materials
27 including those of a commercial nature, attendant upon the
28 operation of a restaurant by any nonprofit, duly incorporated,
29 historical society at or on any historical preservation site;
- 30 (p) Homemaker--home health services performed by
31 voluntary, nonprofit agencies;
- 32 (q) The purchase of materials and services for a law library
33 established pursuant to R.S.40:33-14, including books, periodicals,
34 newspapers, documents, pamphlets, photographs, reproductions,
35 microforms, pictorial or graphic works, copyright and patent
36 materials, maps, charts, globes, sound recordings, slides, films,
37 filmstrips, video and magnetic tapes, and other audiovisual,
38 printed, or published material of a similar nature; necessary
39 binding or rebinding of law library materials; and specialized
40 library services;
- 41 (r) On-site inspections undertaken by private agencies
42 pursuant to the "State Uniform Construction Code Act"
43 (P.L.1975, c.217; C.52:27D-119 et seq.) and the regulations
44 adopted pursuant thereto;
- 45 (s) The marketing of recyclable materials recovered through a
46 recycling program, or the marketing of any product intentionally
47 produced or derived from solid waste received at a resource
48 recovery facility or recovered through a resource recovery
49 program, including, but not limited to, refuse-derived fuel,
50 compost materials, methane gas, and other similar products; [or]

1 (t) Emergency medical services provided by a hospital to the
2 residents of a municipality or county, provided that: (a) such
3 exception be allowed only after the governing body determines
4 that the emergency services are available only from one provider;
5 and (b) if the contract is awarded without advertising for bids or
6 bidding the governing body shall in each instance state supporting
7 reasons for its action in a resolution awarding the contract and
8 cause to be printed once in a newspaper authorized by law to
9 publish its legal advertisements a brief notice stating the nature,
10 duration, service, and amount of the contract; and (c) the
11 contract shall be kept on file for public inspection in the office of
12 the clerk of the municipality; or

13 (u) The printing of municipal ordinances or other services
14 necessarily incurred in connection with the revision and
15 codification of municipal ordinances.

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

20 (3) The contracting agent has advertised for bids pursuant to
21 section 4 on two occasions and (a) has received no bids on both
22 occasions in response to its advertisement, or (b) the governing
23 body has rejected such bids on two occasions because the
24 contracting agent has determined that they are not reasonable as
25 to price, on the basis of cost estimates prepared for or by the
26 contracting agent prior to the advertising therefor, or have not
27 been independently arrived at in open competition, or (c) on one
28 occasion no bids were received pursuant to (a) and on one
29 occasion all bids were rejected pursuant to (b), in whatever
30 sequence; any such contract or agreement may then be
31 negotiated and may be awarded upon adoption of a resolution by a
32 two-thirds affirmative vote of the authorized membership of the
33 governing body authorizing such contract or agreement; provided,
34 however, that:

35 (i) A reasonable effort is first made by the contracting agent
36 to determine that the same or equivalent materials or supplies, at
37 a cost which is lower than the negotiated price, are not available
38 from an agency or authority of the United States, the State of
39 New Jersey or of the county in which the contracting unit is
40 located, or any municipality in close proximity to the contracting
41 unit;

42 (ii) The terms, conditions, restrictions and specifications set
43 forth in the negotiated contract or agreement are not
44 substantially different from those which were the subject of
45 competitive bidding pursuant to section 4 of this act; and

46 (iii) Any minor amendment or modification of any of the
47 terms, conditions, restrictions and specifications, which were the
48 subject of competitive bidding pursuant to section 4 of this act,
49 shall be stated in the resolution awarding such contract or
50 agreement; provided further, however, that if on the second

1 occasion the bids received are rejected as unreasonable as to
2 price, the contracting agent shall notify each responsible bidder
3 submitting bids on the second occasion of its intention to
4 negotiate, and afford each such bidder a reasonable opportunity
5 to negotiate, but the governing body shall not award such
6 contract or agreement unless the negotiated price is lower than
7 the lowest rejected bid price submitted on the second occasion by
8 a responsible bidder, is the lowest negotiated price offered by any
9 responsible supplier, and is a reasonable price for such work,
10 materials, supplies or services.

11 Whenever a contracting unit shall determine that a bid was not
12 arrived at independently in open competition pursuant to
13 subsection (3) of this section it shall thereupon notify the county
14 prosecutor of the county in which the contracting unit is located
15 and the Attorney General of the facts upon which its
16 determination is based, and when appropriate, it may institute
17 appropriate proceedings in any State or federal court of
18 competent jurisdiction for a violation of any State or federal
19 antitrust law or laws relating to the unlawful restraint of trade.
20 (cf: P.L.1989, c.159, s.1)

21 2. This act shall take effect immediately.

22

23

24 STATEMENT

25

26 This bill excepts from the bidding requirements of the "Local
27 Public Contracts Law any purchases, contracts or agreements
28 dealing with the printing of municipal ordinances or other
29 services necessarily incurred in connection with the codification
30 or revision of municipal ordinances."

31

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33 LOCAL GOVERNMENT

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35 Excepts services related to codification of municipal ordinances
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ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4852

STATE OF NEW JERSEY

DATED: JUNE 10, 1991

The Assembly Municipal Government Committee favorably reports Assembly Bill No. 4852.

This bill excepts from the bidding requirements of the "Local Public Contracts Law" any purchases, contracts or agreements dealing with the printing of municipal ordinances or other services necessarily incurred in connection with the codification or revision of municipal ordinances.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4852

STATE OF NEW JERSEY

DATED: DECEMBER 5, 1991

The Senate County and Municipal Government Committee reports favorably Assembly Bill No. 4852.

Assembly Bill No. 4852 excepts from the bidding requirements of the "Local Public Contracts Law," any purchases, contracts or agreements dealing with the printing of municipal ordinances or other services necessarily incurred in connection with the codification or revision of municipal ordinances.

It is the committee's understanding that since this bill was introduced, section 5 of P.L.1971, c.198 (C.40A:11-5) has been amended by section 1 of P.L.1991, c.142 and section 2 of P.L.1991, c.143. It is further the committee's understanding that should this bill become law, the section being amended will be reconciled with the two subsequent enactments pursuant to R.S.1:3-1.

This bill is identical to Senate Bill No. 3584, which was also reported by the committee today.