

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS of 1999

CHAPTER: 39

NJSA: 40A:11-23.1 et al
(Local contracts - bidding - checklists of required documents)

BILL NO: S946(Substituted for A2807)

SPONSOR(S): Bennett and Singer

DATE INTRODUCED: March 23, 1998

COMMITTEE:

ASSEMBLY: ---

SENATE: Community and Urban Affairs

AMENDED DURING PASSAGE: No

DATES OF PASSAGE:

ASSEMBLY: January 28, 1999

SENATE: September 28, 1998

DATE OF APPROVAL: March 12, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *YES* Senate committee substitute
(Amendments during passage denoted by superscript numbers)

S946

SPONSORS STATEMENT: *Yes* (Begins on page 4 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

SPONSORS STATEMENT: *Yes (Begins on page 4 of original bill)*

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

*To check for circulating copies contact New Jersey State Government Publications at the State Library
(609) 278-2640 ext. 102 or refdesk@njstatelib.org*

REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

§§1,2
C.40A:11-23.1
&
40A:11-23.2
§5
Note to §§1-4

P.L. 1999, CHAPTER 39, *approved March 12, 1999*
Senate Committee Substitute for
Senate, No. 946

1 **AN ACT** concerning bids submitted for local public contracts, and
2 supplementing and amending P.L.1971, c.198.

3

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

6

7 1. (New Section) All plans, specifications and bid proposal
8 documents for the erection, alteration, or repair of a building,
9 structure, facility or other improvement to real property, the total
10 price of which exceeds the amount set forth in, or the amount
11 calculated by the Governor pursuant to, section 3 of P.L.1971, c.198
12 (C.40A:11-3), shall include:

13 a. a document for the bidder to acknowledge the bidder's receipt
14 of any notice or revisions or addenda to the advertisement or bid
15 documents; and

16 b. a form listing those documentary and informational forms,
17 certifications, and other documents that the contracting agent requires
18 each bidder to submit with the bid. The form shall list each of the
19 items to be submitted with the bid proposal and a place for the bidder
20 to indicate, by initialing each entry, that the bidder has included those
21 required items with the completed bid proposal. Each bidder shall
22 complete this form and submit it with the bid proposal in addition to
23 those documentary and informational forms, certifications, and other
24 documents that are listed on the form.

25

26 2. (New Section) When required by the bid plans and
27 specifications, the following requirements shall be considered
28 mandatory items to be submitted at the time specified by the
29 contracting unit for the receipt of the bids; the failure to submit any
30 one of the mandatory items shall be deemed a fatal defect that shall
31 render the bid proposal unresponsive and that cannot be cured by the
32 governing body:

33 a. A guarantee to accompany the bid pursuant to Section 21 of
34 P.L.1971, c.198 (C.40A:11-21);

35 b. A certificate from a surety company pursuant to Section 22 of
36 P.L.1971, c.198 (C.40A:11-22);

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.

1 c. A statement of corporate ownership pursuant to Section 1 of
2 P.L.1977, c.33 (C.52:25-24.2);

3 d. A listing of subcontractors pursuant to Section 16 of P.L.1971,
4 c.198 (C.40A:11-16); and

5 e. A document provided by the contracting agent in the bid plans,
6 specifications, or bid proposal documents for the bidder to
7 acknowledge the bidder's receipt of any notice or revisions or addenda
8 to the advertisement or bid documents.

9
10 3. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to
11 read as follows:

12 21.~~There may be required from any~~ A person bidding on a
13 contract or agreement for the erection, alteration or repair of a public
14 building, structure, facility or other improvement to real property, the
15 total price of which exceeds \$100,000, shall furnish a guarantee as
16 provided for herein. A contracting unit may provide that a person
17 bidding on any other contract or agreement, advertised in accordance
18 with law, [that the bid be accompanied by a] shall furnish a guarantee
19 as provided for herein. The guarantee shall be payable to the
20 contracting unit so that if the contract or agreement is awarded to
21 [him he] the bidder, the bidder will enter into a contract therefor and
22 will furnish any performance bond or other security required as a
23 guarantee or indemnification. The guarantee shall be in the amount
24 of 10% of the bid, but not in excess of \$20,000.00, except as
25 otherwise provided herein, and may be given, at the option of the
26 bidder, by certified check, cashier's check or bid bond. In the event
27 that any law or regulation of the United States imposes any condition
28 upon the awarding of a monetary grant to any contracting unit, which
29 condition requires the depositing of a guarantee in an amount other
30 than 10% of the bid or in excess of \$20,000.00 the provisions of this
31 section shall not apply and the requirements of the law or regulation
32 of the United States shall govern.

33 (cf: P.L.1974, c.189, s.1)

34
35 4. Section 22 of P.L.1971, c. 198, (C.40A:11-22) is amended to
36 read as follows:

37 22. a. A person bidding on a contract or agreement for the
38 erection, alteration or repair of a building, structure, facility or other
39 improvement to real property, the total price of which exceeds
40 \$100,000, shall furnish a certificate from a surety company, as
41 provided for herein. A contracting unit may provide that a person
42 bidding on any other contract or agreement shall furnish a certificate
43 from a surety company, as provided for herein.

44 b. When a surety company bond is required in the advertisement
45 or specifications for a contract or agreement, every contracting unit
46 shall require from any bidder submitting a bid in accordance with

1 plans, specifications and advertisements, as provided for by law, a
2 certificate from a surety company stating that it will provide the
3 contractor with a bond in such sum as is required in the advertisement
4 or in the specifications.

5 This certificate shall be obtained for a bond--

6 (1) For the faithful performance of all provisions of the
7 specifications or for all matters which may be contained in the notice
8 to bidders, relating to the performance of the contract or agreement,
9 and

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

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

18 If a bidder desires to offer the bond of an individual instead of that
19 of a surety company, **[he]** the bidder shall submit with **[his]** the bid
20 a certificate signed by such individual similar to that required of a
21 surety company.

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

24 (cf: P. L.1971, c.198, s.22)

25

26 5. This act shall take effect on the first day of the fourth month
27 after enactment.

28

29

30

31

32 _____
Requires submission of certain items with bid on local public contract.

SENATE, No. 946

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 23, 1998

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

SYNOPSIS

Requires submission of certain items with bid on local public contract.

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) a. Notwithstanding any law, rule or regulation
8 to the contrary, a bidder submitting a bid on a contract for the
9 construction, reconstruction, alteration, or repair of any building,
10 structure, facility or other improvement to real property, the total
11 price of which exceeds the amount set forth in, or the amount
12 calculated by the Governor pursuant to, section 3 of P.L.1971, c.198
13 (C.40A:11-3), shall submit with the bid the following mandatory items:

14 (1) A document known as a bid guarantee, payable to the
15 contracting unit, guaranteeing that if the contract is awarded to the
16 bidder, the bidder will enter into the contract and will furnish any
17 performance bond or other security required as a guarantee or
18 indemnification. The guarantee shall be in an amount equal to 10
19 percent of the bid, but not more than \$20,000, except as otherwise
20 provided by law, and may be given at the option of the bidder by
21 certified check, cashier's check, or bid bond. If any law or regulation
22 of the United States imposes any condition upon the awarding of a
23 monetary grant to any contracting unit, which condition requires the
24 depositing of a guarantee in an amount other than 10 percent of the
25 bid or more than \$20,000, the provisions of this section shall not
26 apply, and the requirements of the law or regulation of the United
27 States shall govern.

28 (2) A certificate known as a consent of surety, from a surety
29 company or an individual, stating that the surety company or the
30 individual will provide the contractor with a bond in such sum as is
31 required in the advertisement or in the specifications.

32 (3) An instrument known as a power of attorney, authorizing
33 another person to act as the bidder's agent or attorney;

34 (4) A certificate known as an ownership statement, setting forth
35 the names and addresses of all stockholders in the corporation or
36 partnership who own 10% or more of its stock, of any class or of all
37 individual partners in the partnership who own a 10% or greater
38 interest therein, as the case may be. If one or more such stockholder
39 or partner is itself a corporation or partnership, the stockholders
40 holding 10% or more of that corporation's stock, or the individual
41 partners owning 10% or greater interest in that partnership, as the case
42 may be, shall also be listed. The disclosure shall be continued until
43 names and addresses of every noncorporate stockholder, and

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 individual partner, exceeding the 10% ownership criteria established
2 in this act, have been listed.

3 (5) A document known as a non-collusion affidavit, warranting that
4 no person or selling agency has been employed or retained to solicit or
5 secure the contract upon an agreement or understanding for a
6 commission, percentage, brokerage or contingent fee, except bona fide
7 employees or bona fide established commercial or selling agencies
8 maintained by the bidder for the purpose of securing business. For the
9 breach or violation of the warranty, the contracting agent shall have
10 the right to annul the contract without liability or in its discretion to
11 deduct from the contract price or consideration the full amount of such
12 commission, percentage, brokerage or contingent fee.

13 (6) A document acknowledging the bidder's receipt of any notice
14 of revisions or addenda to advertisements or bid documents; and

15 (7) A listing of subcontractors as required by section 16 of
16 P.L.1971, c.198 (C.40A:11-16).

17 The list of mandatory items required by this subsection shall be
18 included by the contracting unit in the advertisement or specifications
19 for the contract.

20 b. Based on the requirements or needs of a specific project, a
21 contracting unit may require additional mandatory items to be included
22 with the bid submission by listing the mandatory items as part of the
23 advertisement or specifications for the contract.

24 c. If the items required to be submitted with a bid by subsection a.
25 of this section or required by the contracting unit by subsection b. of
26 this section are not included with the original bid submission or are not
27 properly executed, signed or sealed as required by the advertisement
28 or the specifications, the bid shall be deemed nonresponsive, and the
29 contracting unit shall reject the bid and award to the next lowest,
30 responsible bidder.

31

32 2. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to
33 read as follows.

34 21. **[There]** Except as provided in section 1 of P.L. , c. (C.)
35 (now pending before the Legislature as this bill), there may be required
36 from any person bidding on any contract or agreement, advertised in
37 accordance with law, that the bid be accompanied by a guarantee
38 payable to the contracting unit that if the contract or agreement is
39 awarded to him he will enter into a contract therefor and will furnish
40 any performance bond or other security required as a guarantee or
41 indemnification. The guarantee shall be in the amount of 10% of the
42 bid, but not in excess of \$20,000.00, except as otherwise provided
43 herein, and may be given, at the option of the bidder, by certified
44 check, cashier's check or bid bond. In the event that any law or
45 regulation of the United States imposes any condition upon the
46 awarding of a monetary grant to any contracting unit, which condition

1 requires the depositing of a guarantee in an amount other than 10% of
2 the bid or in excess of \$20,000.00 the provisions of this section shall
3 not apply and the requirements of the law or regulation of the United
4 States shall govern.

5 (cf: P.L.1974, c.189, s.1)

6

7 3. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill would require a bidder submitting a bid on a local public
13 contract for the construction, reconstruction, alteration, or repair of
14 any building, structure, facility or other improvement to real property,
15 the total price of which exceeds the amount set forth in, or the amount
16 calculated by the Governor pursuant to, section 3 of P.L.1971, c.198
17 (C.40A:11-3), to submit certain mandatory items with the bid. That
18 amount is currently \$12,300. The items required to be submitted
19 under this bill are: a bid guarantee, a consent of surety, a power of
20 attorney, an ownership statement, a non-collusion affidavit, an
21 acknowledgment of addenda, and a listing of subcontractors.

22 By making it clear that submission of those items is mandatory, the
23 bill is intended to reduce the number of legal challenges to the
24 awarding of contracts. It is estimated that the lack of clarity in the
25 current law on local public contracting is responsible for up to 75
26 percent of all bid disputes.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 946**

STATE OF NEW JERSEY

DATED: MAY 14, 1998

The Senate Community and Urban Affairs Committee reports favorably Senate Committee Substitute for Senate Bill No. 946.

As reported by the committee, the substitute would require plans, specifications and bid proposal documents for the erection, alteration, or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), to include a form listing all the forms, certifications, and other documents that the contracting agent requires each bidder to submit with the bid. The form would list each of the items to be submitted with the bid proposal and a place for the bidder to indicate, by initialing each entry, that the bidder has included those required items with the completed bid proposal. Bidders would be required to complete the form and submit it with the bid proposal together with the forms, certifications, and other documents that are listed on the form.

The substitute also sets forth a list of items that must be submitted to the contracting unit by the bidder at the time specified for the receipt of bids, failure to submit any one of which would be deemed a fatal defect rendering the bid proposal unresponsive. With regard to contracts for the erection, alteration, or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds \$100,000, it would be mandatory for a bidder to submit: a guarantee, as provided for in Section 21 of P.L.1971, c.198 (C.40A:11-21), and a certificate from a surety company, as provided for in Section 22 of P.L.1971, c.198 (C.40A:11-22). With regard to all other contracts, it would remain within the discretion of the contracting unit to determine whether to require a guarantee or a certificate from a surety company.

The substitute also would require bidders for contracts for the erection, alteration, or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds the amount set forth in, or the amount calculated by the Governor pursuant to Section 3 of P.L.1971, c.198 (C.40A:11-3) to submit a document provided by the contracting agent in the bid plans,

specifications, or bid proposal documents for the bidder to acknowledge the bidder's receipt of any notice or revisions or addenda to the advertisement or bid documents. Failure to submit this document would be a fatal defect.

Current law requires bidders to submit a statement of corporate ownership, section 24.2 of P.L.1977, c.33 (C.52:25-24.2) and a listing of subcontractors, section 16 of P.L.1971, c.198 (C.40A:11-16). The substitute would render failure to submit either of these items at the time specified for the submission of bids to be a fatal, incurable defect.

Finally, the substitute would delay the effective date of the bill until the first day of the fourth month after enactment.

ASSEMBLY, No. 2807

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JANUARY 21, 1999

Sponsored by:

Assemblyman GERALD J. LUONGO

District 4 (Camden and Gloucester)

Assemblyman JOHN V. KELLY

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

Assemblyman Geist

SYNOPSIS

Requires submission of certain items with bid on local public contract.

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New Section) All plans, specifications and bid proposal
8 documents for the erection, alteration, or repair of a building,
9 structure, facility or other improvement to real property, the total
10 price of which exceeds the amount set forth in, or the amount
11 calculated by the Governor pursuant to, section 3 of P.L.1971, c.198
12 (C.40A:11-3), shall include:

13 a. a document for the bidder to acknowledge the bidder's receipt
14 of any notice or revisions or addenda to the advertisement or bid
15 documents; and

16 b. a form listing those documentary and informational forms,
17 certifications, and other documents that the contracting agent requires
18 each bidder to submit with the bid. The form shall list each of the
19 items to be submitted with the bid proposal and a place for the bidder
20 to indicate, by initialing each entry, that the bidder has included those
21 required items with the completed bid proposal. Each bidder shall
22 complete this form and submit it with the bid proposal in addition to
23 those documentary and informational forms, certifications, and other
24 documents that are listed on the form.

25
26 2. (New Section) When required by the bid plans and
27 specifications, the following requirements shall be considered
28 mandatory items to be submitted at the time specified by the
29 contracting unit for the receipt of the bids; the failure to submit any
30 one of the mandatory items shall be deemed a fatal defect that shall
31 render the bid proposal unresponsive and that cannot be cured by the
32 governing body:

33 a. A guarantee to accompany the bid pursuant to Section 21 of
34 P.L.1971, c.198 (C.40A:11-21);

35 b. A certificate from a surety company pursuant to Section 22 of
36 P.L.1971, c.198 (C.40A:11-22);

37 c. A statement of corporate ownership pursuant to Section 1 of
38 P.L.1977, c.33 (C.52:25-24.2);

39 d. A listing of subcontractors pursuant to Section 16 of P.L.1971,
40 c.198 (C.40A:11-16); and

41 e. A document provided by the contracting agent in the bid plans,
42 specifications, or bid proposal documents for the bidder to
43 acknowledge the bidder's receipt of any notice or revisions or addenda

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.

1 to the advertisement or bid documents.

2

3 3. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to
4 read as follows:

5 21. ~~【There may be required from any】~~ A person bidding on a
6 contract or agreement for the erection, alteration or repair of a public
7 building, structure, facility or other improvement to real property, the
8 total price of which exceeds \$100,000, shall furnish a guarantee as
9 provided for herein. A contracting unit may provide that a person
10 bidding on any other contract or agreement, advertised in accordance
11 with law, 【that the bid be accompanied by a】 shall furnish a guarantee
12 as provided for herein. The guarantee shall be payable to the
13 contracting unit so that if the contract or agreement is awarded to
14 【him he】 the bidder, the bidder will enter into a contract therefor and
15 will furnish any performance bond or other security required as a
16 guarantee or indemnification. The guarantee shall be in the amount
17 of 10% of the bid, but not in excess of \$20,000.00, except as
18 otherwise provided herein, and may be given, at the option of the
19 bidder, by certified check, cashier's check or bid bond. In the event
20 that any law or regulation of the United States imposes any condition
21 upon the awarding of a monetary grant to any contracting unit, which
22 condition requires the depositing of a guarantee in an amount other
23 than 10% of the bid or in excess of \$20,000.00 the provisions of this
24 section shall not apply and the requirements of the law or regulation
25 of the United States shall govern.

26 (cf: P.L.1974, c.189, s.1)

27

28 4. Section 22 of P.L.1971, c.198, (C.40A:11-22) is amended to
29 read as follows:

30 22. a. A person bidding on a contract or agreement for the
31 erection, alteration or repair of a building, structure, facility or other
32 improvement to real property, the total price of which exceeds
33 \$100,000, shall furnish a certificate from a surety company, as
34 provided for herein. A contracting unit may provide that a person
35 bidding on any other contract or agreement shall furnish a certificate
36 from a surety company, as provided for herein.

37 b. When a surety company bond is required in the advertisement or
38 specifications for a contract or agreement, every contracting unit shall
39 require from any bidder submitting a bid in accordance with plans,
40 specifications and advertisements, as provided for by law, a certificate
41 from a surety company stating that it will provide the contractor with
42 a bond in such sum as is required in the advertisement or in the
43 specifications.

44 This certificate shall be obtained for a bond--

45 (1) For the faithful performance of all provisions of the
46 specifications or for all matters which may be contained in the notice

1 to bidders, relating to the performance of the contract or agreement,
2 and

3 (2) If any be required, for a guarantee bond for the faithful
4 performance of the contract provisions relating to the repair and
5 maintenance of any work, project or facility and its appurtenances and
6 keeping the same in good and serviceable condition during the term
7 of the bond as provided for in the notice to bidders or in the
8 specifications, or

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

11 If a bidder desires to offer the bond of an individual instead of that
12 of a surety company, **[he]** the bidder shall submit with **[his]** the bid
13 a certificate signed by such individual similar to that required of a
14 surety company.

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

17 (cf: P.L.1971, c.198, s.22)

18

19 5. This act shall take effect on the first day of the fourth month
20 after enactment.

21

22

23

STATEMENT

24

25 This bill, supplements and amends the "Local Public Contracts
26 Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and would require plans,
27 specifications and bid proposal documents for the erection, alteration,
28 or repair of a building, structure, facility or other improvement to real
29 property required to be advertised for bid, to include a form listing all
30 the forms, certifications, and other documents that the contracting
31 agent requires each bidder to submit with the bid. The form would list
32 each of the items to be submitted with the bid proposal and a place for
33 the bidder to indicate, by initialing each entry, that the bidder has
34 included those required items with the completed bid proposal.
35 Bidders would be required to complete the form and submit it with the
36 bid proposal together with the forms, certifications, and other
37 documents that are listed on the form.

38 The bill, also sets forth a list of items that must be submitted to the
39 contracting unit by the bidder at the time specified for the receipt of
40 bids, failure to submit any one of which would be deemed a fatal
41 defect rendering the bid proposal unresponsive. With regard to
42 contracts for the erection, alteration, or repair of a building, structure,
43 facility or other improvement to real property, the total price of which
44 exceeds \$100,000, it would be mandatory for a bidder to submit: a
45 guarantee, as provided for in section 21 of P.L.1971, c.198
46 (C.40A:11-21), and a certificate from a surety company, as provided

1 for in Section 22 of P.L.1971, c.198 (C.40A:11-22). With regard to
2 all other contracts, it would remain within the discretion of the
3 contracting unit to determine whether to require a guarantee or a
4 certificate from a surety company. The bill also would require bidders
5 for contracts for the erection, alteration, or repair of a building,
6 structure, facility or other improvement to real property required to be
7 advertised for bid to submit a document provided by the contracting
8 agent in the bid plans, specifications, or bid proposal documents for
9 the bidder to acknowledge the bidder's receipt of any notice or
10 revisions or addenda to the advertisement or bid documents. Failure
11 to submit this document would be defect which could not be waived
12 by a local government in order to cure the bid.

13 Current law requires bidders to submit a statement of corporate
14 ownership, section 24.2 of P.L.1977, c.33 (C.52:25-24.2) and a listing
15 of subcontractors, section 16 of P.L.1971, c.198 (C.40A:11-16). The
16 bill would render failure to submit either of these items at the time
17 specified for the submission of bids to be a defect which cannot be
18 waived and thus fatal to the bid.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: March 12, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

A-161, sponsored by Assembly Members Christopher "Kip" Bateman (R-Morris/Somerset) and Neil M. Cohen (D-Union) and Senators Peter A. Inverso (R-Mercer/Middlesex) and Wayne R. Bryant (D-Camden/Gloucester), provides an alternative method of canceling residential mortgages of record after they have been paid off. If a mortgage has been paid in full and the lender has not submitted the mortgage to the county clerk to be canceled of record, an attorney licensed in New Jersey or a licensed title insurance producer may record a discharge of mortgage or a "satisfaction piece." The discharge or satisfaction piece must be accompanied by an affidavit setting forth circumstances of payment. The bill sets forth a sample affidavit. If the attorney or title producer has not received a notice of mortgage cancellation within 30 days after the payment was made, the attorney may send a notice to the lender. If another 15 days elapse without a response from the lender, the affidavit may be filed with the county clerk. This bill does not apply to real property with more than four dwelling units if the debtor or the debtor's family member occupies one of these units. The bill applies to all residential mortgages, whether executed or not, that use real property in New Jersey as security.

A-928, sponsored by Assembly Members Richard H. Bagger (R-Middlesex/Morris/Somerset/Union) and Alan M. Augustine (R-Middlesex/Morris/Somerset/Union) and Senators John O. Bennett (R-Monmouth) and Anthony R. Bucco (R-Morris), amends the criminal code to prohibit the operation of sexually-oriented businesses within 1,000 feet of a hospital or child care center. The Criminal Code defines a sexually-oriented business as a commercial establishment that, as one of its principal business purposes: (1) offers for sale, rental or display printed materials, photographs, movies or other visual representations that depict or describe a "specified sexual activity" or "specified anatomical area;" or (2) offers for sale, rental or display instruments, devices or paraphernalia that are designed for use in connection with specific sexual activity; or (3) is a commercial establishment that regularly features live performances characterized by the exposure of a "specified anatomical area" or by a "specified sexual activity," or that regularly shows movies or other similar photographic representations. Violation of the prohibitions is punishable as a crime of the fourth degree.

A-1631, sponsored by Assembly Members Neil M. Cohen (D-Union) and Christopher "Kip" Bateman (R-Morris/Somerset), makes it a disorderly persons offense for Division of Taxation employees to examine tax returns and records outside of the performance of their official duties or to permit another to do so. State law provides that the records of and files of the Division of Taxation are confidential and privileged. A disorderly person offense is punishable by a term of imprisonment of not more than six months.

A-1692, sponsored by Assembly Member Wilfredo Caraballo (D-Essex) and John S. Wisniewski (D-Middlesex), requires a cable television company to notify all subscribers in service areas when either the Board of Public Utilities or the Federal Communications Commission orders the company to provide a

rate reduction or refund. Such notice must occur within the next billing cycle following the approval of the order. The purpose of the bill is to allow customers of the same cable company in different towns to petition for the same rate decrease.

A-1931, sponsored by Assembly Members Joel M. Weingarten (R- Essex/Union) and Senator Peter A. Inverso (R-Mercer/Middlesex), regulates the purchase of collateral protection insurance by lenders. Collateral protection insurance is insurance purchased by a creditor to protect its interest in secured property when a debtor fails to maintain insurance on the secured property. The creditor is named as the loss payee or beneficiary on the policy. The legislation seeks to regulate the amount the creditor may bill the debtor for such insurance as well as other aspects of the transaction. If the term of the credit agreement requires the debtor to purchase collateral protection insurance and the debtor does not obtain the insurance, the creditor may purchase it on behalf of the debtor. Once the creditor purchases such insurance, it is allowed to bill the debtor for the insurance premiums and add these costs to the loan balance. If the debtor demonstrates that it already had collateral protection insurance coverage in place, the creditor must cancel its policy and refund the billed premiums to the debtor. The bill also permits the lender to obtain collateral protection insurance if the borrower does not comply with the borrower's obligations regarding the purchase of insurance. The bill requires the lender to inform the borrower that even if the lender purchases collateral protection insurance, it may not cover the value of the property, possibly resulting in the borrower being underinsured. The bill further provides that if the purchase of collateral protection insurance is due to the error of the lender, the borrower will not be liable to the lender for the cost of collateral protection insurance.

S-946, sponsored by Senators John O. Bennett (R-Monmouth) and Robert W. Singer (R-Burlington/Monmouth/Ocean), requires local contracting units to provide two additional documents with all plans, specifications and bid proposal documents for construction contracts which exceed the bid threshold amount which is currently \$12,300. The documents are: (1) a document for the bidder to acknowledge receipt of any notice or revisions to the advertisement or bid documents; and (2) a form listing those documents that the contracting agent requires each bidder to submit with the bid. Bidders are also subject to additional statutory requirements under the bill. The legislation requires bidders of construction contracts for more than \$100,000 to submit to the local contracting unit a bid guarantee and a certificate of surety. With regard to any other contracts, including construction contracts for \$100,000 or less and all non- construction contracts, it will remain within the discretion of the local contracting unit to determine whether to require a bid guarantee or a certificate of surety. The bill also clarifies which defects will render a bid unresponsive and incapable of being cured. The bill makes this clarification by listing five documents which are considered mandatory. These documents include a bid guarantee, a certificate of surety, a statement of corporate ownership, a listing of subcontractors and a document acknowledging the bidders receipt of any notice or revisions to the advertisement or bid documents. These documents will be considered mandatory only if the bid plans and specifications require their submission.

A-2217, sponsored by Assembly Members David W. Wolfe (R-Monmouth/Ocean) and Joseph V. Doria, Jr. (D-Hudson) and Senators Peter A. Inverso (R-Mercer/Middlesex) and John O. Bennett (R-Monmouth), consolidates higher education student assistance entities into one new authority. The bill consolidates the various student assistance functions of the Office of Student Assistance, the Student Assistance Board and the Higher Education Assistance Authority into one, new authority to be known

as the Higher Education Student Assistance Authority. The authority will be located in but not of the Department of State, consistent with the location of the Commission on Higher Education. The chief executive and administrative officer of the authority, which will administer, coordinate and implement student aid assistance in the state, will be the executive director who will be appointed by the Governor. The authority will have a board consisting of 18 members: the State Treasurer; chair of the Commission on Higher Education; the chair of the Board of Directors of the Educational Opportunity Fund; five representatives from state higher education institutions; two students from different collegiate institutional sectors; seven public members and the executive director of the authority. The seven public members will be appointed by the Governor with the advice and consent of the Senate. The institutional representatives shall be nominated by the institutions or sector associations and appointed by the Governor with the advice and consent of the Senate. The bill enlarges the membership on the Commission on Higher Education from nine to eleven members, adding a faculty member from an institution of higher education to be appointed by the Governor with the advice and consent of the Senate, and the chairperson of the Board of the Higher Education Student Assistance Authority, ex officio, or a designee from the public members on the authority. Regarding state colleges and universities, the bill changes the name of the New Jersey State College Governing Boards Association to the New Jersey Association of State Colleges and Universities to reflect the change in status of some of the state colleges.

In connection with county colleges, the bill clarifies that the board of trustees of a county college may not employ officers, agents and employees unless the president of the respective county college nominates such individuals. Under the bill, the University of Medicine and Dentistry of New Jersey may use income from the operation of faculty practice plans and income from overhead grant fund recovery as permitted by federal law. With respect to the New Jersey Educational Facilities Authority, the bill provides that the authority need not obtain same-day approval of bond authorizations or sales from the Governor. The authority will still be subject to the requirement of obtaining approval upon the Governor's receipt of the board minutes.