

40A:11-5

LEGISLATIVE HISTORY CHECKLIST

NJSA 40A:11-5 (Public contracts-election expenses)

Laws of 1976 Chapter 20

Bill No. S1269

Sponsor(s) Hirkala & Feldman

Date Introduced March 22, 1976

Committee: Assembly -

Senate -

Amended during passage Yes No

Date of passage: Assembly March 29, 1976

Senate April 8, 1976

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Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

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STATE OF NEW JERSEY

INTRODUCED MARCH 22, 1976

By Senators HIRKALA and FELDMAN

(Without Reference)

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 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 extraordinary unspecifiable
9 services which cannot reasonably be described by written
10 specifications. The application of this exception to extraordi-
11 nary unspecifiable services shall be construed narrowly in favor
12 of open competitive bidding where possible and the Division
13 of Local Government Services is authorized to establish rules
14 and regulations limiting the use of this exception in accordance
15 with the intention herein expressed. The governing body shall
16 in each instance state supporting reasons for its action in the
17 resolution awarding each contract and shall cause such reso-
18 lution to be printed once in a newspaper authorized by law to
19 publish its legal advertisements;

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

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

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

27 (e) The purchase of perishable foods as a subsistence sup-
28 ply;

29 (f) The supplying of any product or the rendering of any
30 service by a public utility, which is subject to the jurisdiction
31 of the Board of Public Utility Commissioners, in accordance
32 with tariffs and schedules of charges made, charged or ex-
33 tracted, filed with said board;

34 (g) The acquisition, subject to prior approval of the At-
35 torney General, of special equipment for confidential investi-
36 gation;

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

39 (i) Equipment repair service if in the nature of an extra-
40 ordinary unspecifiable service and necessary parts furnished
41 in connection with such service;

42 (j) The publishing of legal notices in newspapers as re-
43 quired by law;

44 (k) The acquisition of artifacts or other items of unique,
45 intrinsic, artistic or historical character; or

46 (l) *Election expenses, including advertising expenses inci-*
47 *dental thereto.*

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

52 (3) The contracting unit has advertised for bids pursuant to
53 section 4 on two occasions and has received no bids in response
54 to its advertisement, and after reasonable inquiry it is determined
55 that no board, body, officer, agency or authority of the United
56 States, or of the State of New Jersey or of any neighboring county
57 or municipality is willing and able to perform any work or furnish
58 or hire any materials or supplies in conformity with the specifi-
59 cations of the contracting unit. Any such contract or agreement
60 entered into pursuant to this subsection (3) of section 5 may be
61 made, negotiated or awarded only upon adoption of a resolution
62 by the affirmative vote of two-thirds of the full membership of the
63 governing body of the contracting unit at a meeting thereof au-
64 thorizing such a contract or agreement.

65 Any amendment or modification of the terms, conditions, re-
66 strictions and specifications which were the subject of the com-
67 petitive bidding pursuant to section 4 of this act shall be stated in
68 the resolution awarding the contract.

69 (4) The contracting unit has advertised for bids pursuant to
70 section 4 on two occasions and the governing body thereof has
71 rejected such bids on each occasion because the contracting unit
72 has determined that they are not reasonable as to price on the
73 basis of cost estimates prepared for the contracting unit prior to
74 the advertising therefor or have not been independently arrived
75 at in open competition, but no such contract or agreement may be
76 entered into after such rejection of bids, unless:

77 (a) Notification of the intention to negotiate and a reason-
78 able opportunity to negotiate shall have been given by the
79 contracting unit to each responsible bidder;

80 (b) The negotiated price is lower than the lowest rejected
81 bid price of a responsible bidder who bid thereon and is the
82 lowest negotiated price offered by any responsible supplier
83 and is a reasonable price for such work materials, supplies or
84 services;

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

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

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

102 Any such contract or agreement entered into pursuant to this
103 subsection (4) of section 5 may be made, negotiated or awarded
104 only upon adoption of a resolution by the affirmative vote of two-
105 thirds of the full membership of the governing body of the con-
106 tracting unit at a meeting thereof authorizing such a contract or
107 agreement.

1 2. This act shall take effect immediately.

STATEMENT

This bill restores election expenses as a category exempt from the mandatory public advertisement for bids requirement of the Local Public Contracts Law. Election expenses, including advertisement expenses incidental thereto, were deleted from the Local Public Contracts Law by P. L. 1975, c. 353.