

P.L.2015, CHAPTER 201, *approved January 11, 2016*
Assembly, No. 2229 (*First Reprint*)

1 AN ACT concerning certain local public contracts and amending
2 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. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to
8 read as follows:

9 13. Specifications. Any specifications for the provision or
10 performance of goods or services under this act shall be drafted in a
11 manner to encourage free, open and competitive bidding. In
12 particular, no specifications under this act may:

13 (a) Require any standard, restriction, condition or limitation not
14 directly related to the purpose, function or activity for which the
15 contract is awarded; or

16 (b) Require that any bidder be a resident of, or that the bidder's
17 place of business be located in, the county or municipality in which
18 the contract will be awarded or performed, unless the physical
19 proximity of the bidder is requisite to the efficient and economical
20 performance of the contract; except that no specification for a
21 contract for the collection and disposal of municipal solid waste
22 shall require any bidder to be a resident of, or that the bidder's place
23 of business be located in, the county or municipality in which the
24 contract will be performed; or

25 (c) Discriminate on the basis of race, religion, sex, national
26 origin, creed, color, ancestry, age, marital status, affectional or
27 sexual orientation, familial status, liability for service in the Armed
28 Forces of the United States, or nationality; or

29 (d) Require, with regard to any contract, the furnishing of any
30 "brand name," but may in all cases require "brand name or
31 equivalent," except that if the goods or services to be provided or
32 performed are proprietary, such goods or services may be purchased
33 by stipulating the proprietary goods or services in the bid
34 specification in any case in which the resolution authorizing the
35 contract so indicates, and the special need for such proprietary
36 goods or services is directly related to the performance, completion
37 or undertaking of the purpose for which the contract is awarded; or

38 (e) Fail to include any option for renewal, extension, or release
39 which the contracting unit may intend to exercise or require; or any
40 terms and conditions necessary for the performance of any extra
41 work; or fail to disclose any matter necessary to the substantial
42 performance of the contract.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 16, 2014.

1 (f) As used in this subsection:

2 “asphalt price index” means the asphalt price index as
3 determined and published by the New Jersey Department of
4 Transportation;

5 “basic asphalt price index” means the asphalt price index for the
6 month preceding the month in which the bids are opened;

7 “department” means the New Jersey Department of
8 Transportation;

9 “fuel price index” means the fuel price index as determined and
10 published by the New Jersey Department of Transportation; and

11 “pay item” means a specifically described item of work for
12 which the bidder provides a per unit or lump sum price in a bid
13 specification determined and published by the New Jersey
14 Department of Transportation.

15 In addition to the requirements of paragraphs (a) through (e) of
16 this section, any bid specification for the provision or performance
17 of goods or services under P.L.1971, c.198 (C.40A:11-1 et seq.)
18 that includes the purchase or use of ¹~~100~~ 1,000¹ or more tons of
19 hot mix asphalt shall include a pay item for an asphalt price
20 adjustment reflecting changes in the cost of asphalt cement. The
21 pay item for asphalt price adjustment shall apply to each ton of hot
22 mix asphalt purchased or used by the contracting unit. Any bid
23 specification prepared pursuant to P.L.1971, c.198 (C.40A:11-1 et
24 seq.) that includes the purchase or use of less than ¹~~100~~ 1,000¹
25 tons of hot mix asphalt shall include a pay item for an asphalt price
26 adjustment applicable to any quantity of hot mix asphalt exceeding
27 ¹~~100~~ 1,000¹ tons that may be purchased or used in the work in the
28 event that performance of the work, including change orders,
29 requires more than ¹~~100~~ 1,000¹ tons of hot mix asphalt. As set
30 forth in section 7 of P.L.1971, c.198 (C.40A:11-7), no contract shall
31 be divided to disaggregate the quantity of hot mix asphalt or
32 equivalent asphalt cement-based paving product to be purchased or
33 used for the purpose of avoiding compliance with this paragraph.

34 The asphalt price adjustment shall be calculated in accordance
35 with the formula and relevant instructions published in the most
36 recent edition of the “New Jersey Department of Transportation
37 Standard Specifications for Road and Bridge Construction.” All
38 invoices for payment shall be accompanied by the calculation of
39 any asphalt price adjustment and a showing of the current month’s
40 asphalt price index and the basic asphalt price index.

41 Every bid specification prepared pursuant to P.L.1971, c.198
42 (C.40A:11-1 et seq.) shall be eligible for a fuel price adjustment.
43 Fuel that is eligible for a fuel price adjustment shall be the sum of
44 the quantities of the eligible pay items in the contract multiplied by
45 the fuel usage factors as determined by the department. The types
46 of fuel furnished shall be at the discretion of the contractor.

1 The fuel requirement for items not determined by the department
2 to be eligible, and for pay items in the bid specifications calling for
3 less than 500 gallons of fuel, shall not be eligible for a fuel price
4 adjustment. If more than one pay item has the same nomenclature
5 but with different thicknesses, depths, or types, each individual pay
6 item must require 500 gallons or more of fuel to be eligible for a
7 fuel price adjustment. If more than one pay item has the same
8 nomenclature, similar pay items shall be combined and the
9 combination must require 500 gallons or more of fuel to be eligible
10 for the fuel price adjustment.

11 Fuel price index adjustments shall not be made in those months
12 for which the monthly fuel price index has changed by less than
13 five percent from the basic fuel price index.

14 Any specification which knowingly excludes prospective bidders
15 by reason of the impossibility of performance, bidding or
16 qualification by any but one bidder, except as provided herein, shall
17 be null and void and of no effect and shall be readvertised for
18 receipt of new bids, and the original contract shall be set aside by
19 the governing body.

20 Any specification for a contract for the collection and disposal of
21 municipal solid waste shall conform to the uniform bid
22 specifications for municipal solid waste collection contracts
23 established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-
24 7.22).

25 Any specification may include an item for the cost, which shall
26 be paid by the contractor, of creating a file to maintain the notices
27 of the delivery of labor or materials required by N.J.S.2A:44-128.

28 Any prospective bidder who wishes to challenge a bid
29 specification shall file such challenges in writing with the
30 contracting agent no less than three business days prior to the
31 opening of the bids. Challenges filed after that time shall be
32 considered void and having no impact on the contracting unit or the
33 award of a contract.

34 (cf: P.L.1999, c.440, s.19)

35

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

38 16. a. (1) In the preparation of plans and specifications for the
39 construction, alteration or repair of any public building by any
40 contracting unit, when the entire cost of the work will exceed the
41 bid threshold, the architect, engineer or other person preparing the
42 plans and specifications may prepare separate plans and
43 specifications for branches of work in the following categories:

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

45 (2) Steam power plants, steam and hot water heating and
46 ventilating and refrigeration apparatus and all kindred work;

1 (3) Electrical work, including any electrical power plants, tele-
2 data, fire alarm, or security system;

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

4 (5) General construction, which shall include all other work
5 required for the completion of the project.

6 (2) With regard to the branch work categories in paragraph (1)
7 of this subsection, the contracting agent shall advertise for and
8 receive, in the manner provided by law, either (a) separate bids for
9 each of said categories, or (b) single bids by general contractors for
10 all the work, goods and services required to complete the public
11 building to be included in a single overall contract, or (c) both. In
12 the case of separate bids under (a) or (c) of this paragraph,
13 contractors for categories (1) through (4) shall not be required to
14 name subcontractors in their bid. In the case of a single bid under
15 (b) or (c), there shall be set forth in the bid the name or names of all
16 subcontractors to whom the general contractor will subcontract for
17 categories (1) through (4). Subcontractors who furnish general
18 construction work pursuant to category (5), or subcontractors who
19 furnish work to named subcontractors pursuant to categories (1)
20 through (4) shall not be named in the bid. Notwithstanding the
21 foregoing provisions of this paragraph, a contracting unit may
22 choose to require in its bid specification that a subcontractor shall
23 be named in a bid when, in the case of (a) of this paragraph,
24 separate bids for each category, the work of that subcontractor
25 exceeds 35 percent of the contracting unit's estimated amount of
26 value of the work, which shall be set forth in the bid specification.

27 (3) The contracting unit shall require evidence of performance
28 security to be submitted simultaneously with the bid. Evidence of
29 performance security may be supplied by the bidder on behalf of
30 himself and any or all subcontractors, or by each respective
31 subcontractor, or by any combination thereof which results in
32 evidence of performance security equaling, but in no event
33 exceeding, the total amount bid.

34 b. Whenever a bid sets forth more than one subcontractor for
35 any of the categories (1) through (4) in paragraph (1) of subsection
36 a. of this section, the bidder shall submit to the contracting unit a
37 certificate signed by the bidder listing each subcontractor named in
38 the bid for that category. The certificate shall set forth the scope of
39 work, goods and services for which the subcontractor has submitted
40 a price quote and which the bidder has agreed to award to each
41 subcontractor should the bidder be awarded the contract. The
42 certificate shall be submitted to the contracting unit simultaneously
43 with the list of the subcontractors. The certificate may take the form
44 of a single certificate listing all subcontractors or, alternatively, a
45 separate certificate may be submitted for each subcontractor. If a
46 bidder does not submit a certificate or certificates to the contracting

1 unit, the contracting unit shall award the contract to the next lowest
2 responsible bidder.

3 c. Contracts shall be awarded to the lowest responsible bidder.
4 In the event that a contract is advertised for both separate bids for
5 each branch of work and for bids for all work, goods, and services,
6 said contract shall be awarded in the following manner: If the sum
7 total of the amounts bid by the lowest responsible bidder for each
8 branch is less than the amount bid by the lowest responsible bidder
9 for all the work, goods and services, the contracting unit shall
10 award separate contracts for each of such branches to the lowest
11 responsible bidder therefor, but if the sum total of the amounts bid
12 by the lowest responsible bidder for each branch is not less than the
13 amount bid by the lowest responsible bidder for all the work, goods
14 and services, the contracting unit shall award a single overall
15 contract to the lowest responsible bidder for all of such work, goods
16 and services. In every case in which a contract is awarded for a
17 single overall contract, all payments required to be made under such
18 contract for work, goods and services supplied by a subcontractor
19 shall, upon the certification of the contractor of the amount due to
20 the subcontractor, be paid directly to the subcontractor.

21 d. **【**Any bid specification prepared pursuant to this section that
22 includes the use of 1,000 or more tons of hot mix asphalt, shall
23 include a pay item for any asphalt price adjustment reflecting
24 changes in the cost of asphalt cement. Any bid specification
25 prepared pursuant to this section that includes the use of less than
26 1,000 tons of hot mix asphalt, shall include a pay item for an
27 asphalt price adjustment for any quantity of hot mix asphalt
28 exceeding 1,000 tons that may be used in the work in the event that
29 performance of the work, including change orders, requires more
30 than 1,000 tons of hot mix asphalt.

31 The asphalt price adjustment shall be calculated in accordance
32 with the formula and relevant instructions published in the most
33 recent edition of the New Jersey Department of Transportation
34 Standard Specifications for Road and Bridge Construction as
35 revised by the "Standard Inputs" periodically issued by the
36 department. All invoices for payment shall be accompanied by the
37 calculation of any asphalt price adjustment and a showing of the
38 current month's Asphalt Price Index, the Basic Asphalt Price
39 Index.】 (Deleted by amendment, P.L. , c. .) (pending before
40 the Legislature as this bill.)

41 e. **【**(1) Every bid specification prepared pursuant to this section
42 may be eligible for a fuel price adjustment. Fuel that is eligible for
43 a fuel price adjustment shall be the sum of the quantities of the
44 eligible pay items in the contract times the fuel usage factors as
45 determined by the Department of Transportation. The types of fuel
46 furnished shall be at the option of the contractor.

1 (2) The fuel requirement for items not determined by the
2 Department of Transportation to be eligible, and for pay items in
3 the bid specifications calling for less than 500 gallons of fuel, shall
4 not be eligible for a fuel price adjustment. If more than one pay
5 item has the same nomenclature but with different thicknesses,
6 depths, or types, each individual pay item must require 500 gallons
7 or more of fuel to be eligible for a fuel price adjustment. If more
8 than one pay item has the exact same nomenclature, similar pay
9 items shall be combined and this combination must require 500
10 gallons or more of fuel to be eligible for the fuel price adjustment.

11 (3) Fuel price adjustments shall not be made in those months for
12 which the monthly fuel price index has changed by less than five
13 percent from the basic fuel price.】 (Deleted by amendment,
14 P.L. _____, c. _____) (pending before the Legislature as this bill.)

15 f. 【As used in subsections d. and e. of this section:

16 "Asphalt Price Index" means the Asphalt Price Index as
17 determined and published by the New Jersey Department of
18 Transportation.

19 "Basic Asphalt Price Index" means the Basic Asphalt Price Index
20 as published by the New Jersey Department of Transportation in its
21 "Standard Specifications for Road and Bridge Construction," as
22 revised by the "Standard Inputs" periodically issued by the New
23 Jersey Department of Transportation.

24 "Fuel Price Index" means the Fuel Price Index as determined and
25 published by the New Jersey Department of Transportation.

26 "Pay Item" means a specifically described item of work for
27 which the bidder provides a per unit or lump sum price in a bid
28 specification as determined and published by the New Jersey
29 Department of Transportation.】 (Deleted by amendment,
30 P.L. _____, c. _____) (pending before the Legislature as this bill.)

31 (cf: P.L.2012, c.59, s.5)

32

33 3. This act shall take effect immediately.

34

35

36

37

38 Concerns contracts for asphalt work under the "Local Public
39 Contracts Law."

ASSEMBLY, No. 2229

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JANUARY 27, 2014

Sponsored by:

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Concerns contracts for asphalt work under the “Local Public Contracts Law.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/17/2014)

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2 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. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to
8 read as follows:

9 13. Specifications. Any specifications for the provision or
10 performance of goods or services under this act shall be drafted in a
11 manner to encourage free, open and competitive bidding. In
12 particular, no specifications under this act may:

13 (a) Require any standard, restriction, condition or limitation not
14 directly related to the purpose, function or activity for which the
15 contract is awarded; or

16 (b) Require that any bidder be a resident of, or that the bidder's
17 place of business be located in, the county or municipality in which
18 the contract will be awarded or performed, unless the physical
19 proximity of the bidder is requisite to the efficient and economical
20 performance of the contract; except that no specification for a
21 contract for the collection and disposal of municipal solid waste
22 shall require any bidder to be a resident of, or that the bidder's place
23 of business be located in, the county or municipality in which the
24 contract will be performed; or

25 (c) Discriminate on the basis of race, religion, sex, national
26 origin, creed, color, ancestry, age, marital status, affectional or
27 sexual orientation, familial status, liability for service in the Armed
28 Forces of the United States, or nationality; or

29 (d) Require, with regard to any contract, the furnishing of any
30 "brand name," but may in all cases require "brand name or
31 equivalent," except that if the goods or services to be provided or
32 performed are proprietary, such goods or services may be purchased
33 by stipulating the proprietary goods or services in the bid
34 specification in any case in which the resolution authorizing the
35 contract so indicates, and the special need for such proprietary
36 goods or services is directly related to the performance, completion
37 or undertaking of the purpose for which the contract is awarded; or

38 (e) Fail to include any option for renewal, extension, or release
39 which the contracting unit may intend to exercise or require; or any
40 terms and conditions necessary for the performance of any extra
41 work; or fail to disclose any matter necessary to the substantial
42 performance of the contract.

43 (f) As used in this subsection:

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 “asphalt price index” means the asphalt price index as
2 determined and published by the New Jersey Department of
3 Transportation;

4 “basic asphalt price index” means the asphalt price index for the
5 month preceding the month in which the bids are opened;

6 “department” means the New Jersey Department of
7 Transportation;

8 “fuel price index” means the fuel price index as determined and
9 published by the New Jersey Department of Transportation; and

10 “pay item” means a specifically described item of work for
11 which the bidder provides a per unit or lump sum price in a bid
12 specification determined and published by the New Jersey
13 Department of Transportation.

14 In addition to the requirements of paragraphs (a) through (e) of
15 this section, any bid specification for the provision or performance
16 of goods or services under P.L.1971, c.198 (C.40A:11-1 et seq.)
17 that includes the purchase or use of 100 or more tons of hot mix
18 asphalt shall include a pay item for an asphalt price adjustment
19 reflecting changes in the cost of asphalt cement. The pay item for
20 asphalt price adjustment shall apply to each ton of hot mix asphalt
21 purchased or used by the contracting unit. Any bid specification
22 prepared pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) that
23 includes the purchase or use of less than 100 tons of hot mix asphalt
24 shall include a pay item for an asphalt price adjustment applicable
25 to any quantity of hot mix asphalt exceeding 100 tons that may be
26 purchased or used in the work in the event that performance of the
27 work, including change orders, requires more than 100 tons of hot
28 mix asphalt. As set forth in section 7 of P.L.1971, c.198
29 (C.40A:11-7), no contract shall be divided to disaggregate the
30 quantity of hot mix asphalt or equivalent asphalt cement-based
31 paving product to be purchased or used for the purpose of avoiding
32 compliance with this paragraph.

33 The asphalt price adjustment shall be calculated in accordance
34 with the formula and relevant instructions published in the most
35 recent edition of the “New Jersey Department of Transportation
36 Standard Specifications for Road and Bridge Construction.” All
37 invoices for payment shall be accompanied by the calculation of
38 any asphalt price adjustment and a showing of the current month’s
39 asphalt price index and the basic asphalt price index.

40 Every bid specification prepared pursuant to P.L.1971, c.198
41 (C.40A:11-1 et seq.) shall be eligible for a fuel price adjustment.
42 Fuel that is eligible for a fuel price adjustment shall be the sum of
43 the quantities of the eligible pay items in the contract multiplied by
44 the fuel usage factors as determined by the department. The types
45 of fuel furnished shall be at the discretion of the contractor.

46 The fuel requirement for items not determined by the department
47 to be eligible, and for pay items in the bid specifications calling for
48 less than 500 gallons of fuel, shall not be eligible for a fuel price

1 adjustment. If more than one pay item has the same nomenclature
2 but with different thicknesses, depths, or types, each individual pay
3 item must require 500 gallons or more of fuel to be eligible for a
4 fuel price adjustment. If more than one pay item has the same
5 nomenclature, similar pay items shall be combined and the
6 combination must require 500 gallons or more of fuel to be eligible
7 for the fuel price adjustment.

8 Fuel price index adjustments shall not be made in those months
9 for which the monthly fuel price index has changed by less than
10 five percent from the basic fuel price index.

11 Any specification which knowingly excludes prospective bidders
12 by reason of the impossibility of performance, bidding or
13 qualification by any but one bidder, except as provided herein, shall
14 be null and void and of no effect and shall be readvertised for
15 receipt of new bids, and the original contract shall be set aside by
16 the governing body.

17 Any specification for a contract for the collection and disposal of
18 municipal solid waste shall conform to the uniform bid
19 specifications for municipal solid waste collection contracts
20 established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-
21 7.22).

22 Any specification may include an item for the cost, which shall
23 be paid by the contractor, of creating a file to maintain the notices
24 of the delivery of labor or materials required by N.J.S.2A:44-128.

25 Any prospective bidder who wishes to challenge a bid
26 specification shall file such challenges in writing with the
27 contracting agent no less than three business days prior to the
28 opening of the bids. Challenges filed after that time shall be
29 considered void and having no impact on the contracting unit or the
30 award of a contract.

31 (cf: P.L.1999, c.440, s.19)

32

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

35 16. a. (1) In the preparation of plans and specifications for the
36 construction, alteration or repair of any public building by any
37 contracting unit, when the entire cost of the work will exceed the
38 bid threshold, the architect, engineer or other person preparing the
39 plans and specifications may prepare separate plans and
40 specifications for branches of work in the following categories:

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

42 (2) Steam power plants, steam and hot water heating and
43 ventilating and refrigeration apparatus and all kindred work;

44 (3) Electrical work, including any electrical power plants, tele-
45 data, fire alarm, or security system;

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

47 (5) General construction, which shall include all other work
48 required for the completion of the project.

1 (2) With regard to the branch work categories in paragraph (1) of
2 this subsection, the contracting agent shall advertise for and receive,
3 in the manner provided by law, either (a) separate bids for each of
4 said categories, or (b) single bids by general contractors for all the
5 work, goods and services required to complete the public building
6 to be included in a single overall contract, or (c) both. In the case
7 of separate bids under (a) or (c) of this paragraph, contractors for
8 categories (1) through (4) shall not be required to name
9 subcontractors in their bid. In the case of a single bid under (b) or
10 (c), there shall be set forth in the bid the name or names of all
11 subcontractors to whom the general contractor will subcontract for
12 categories (1) through (4). Subcontractors who furnish general
13 construction work pursuant to category (5), or subcontractors who
14 furnish work to named subcontractors pursuant to categories (1)
15 through (4) shall not be named in the bid. Notwithstanding the
16 foregoing provisions of this paragraph, a contracting unit may
17 choose to require in its bid specification that a subcontractor shall
18 be named in a bid when, in the case of (a) of this paragraph,
19 separate bids for each category, the work of that subcontractor
20 exceeds 35 percent of the contracting unit's estimated amount of
21 value of the work, which shall be set forth in the bid specification.

22 (3) The contracting unit shall require evidence of performance
23 security to be submitted simultaneously with the bid. Evidence of
24 performance security may be supplied by the bidder on behalf of
25 himself and any or all subcontractors, or by each respective
26 subcontractor, or by any combination thereof which results in
27 evidence of performance security equaling, but in no event
28 exceeding, the total amount bid.

29 b. Whenever a bid sets forth more than one subcontractor for
30 any of the categories (1) through (4) in paragraph (1) of subsection
31 a. of this section, the bidder shall submit to the contracting unit a
32 certificate signed by the bidder listing each subcontractor named in
33 the bid for that category. The certificate shall set forth the scope of
34 work, goods and services for which the subcontractor has submitted
35 a price quote and which the bidder has agreed to award to each
36 subcontractor should the bidder be awarded the contract. The
37 certificate shall be submitted to the contracting unit simultaneously
38 with the list of the subcontractors. The certificate may take the form
39 of a single certificate listing all subcontractors or, alternatively, a
40 separate certificate may be submitted for each subcontractor. If a
41 bidder does not submit a certificate or certificates to the contracting
42 unit, the contracting unit shall award the contract to the next lowest
43 responsible bidder.

44 c. Contracts shall be awarded to the lowest responsible bidder.
45 In the event that a contract is advertised for both separate bids for
46 each branch of work and for bids for all work, goods, and services,
47 said contract shall be awarded in the following manner: If the sum
48 total of the amounts bid by the lowest responsible bidder for each

1 branch is less than the amount bid by the lowest responsible bidder
2 for all the work, goods and services, the contracting unit shall
3 award separate contracts for each of such branches to the lowest
4 responsible bidder therefor, but if the sum total of the amounts bid
5 by the lowest responsible bidder for each branch is not less than the
6 amount bid by the lowest responsible bidder for all the work, goods
7 and services, the contracting unit shall award a single overall
8 contract to the lowest responsible bidder for all of such work, goods
9 and services. In every case in which a contract is awarded for a
10 single overall contract, all payments required to be made under such
11 contract for work, goods and services supplied by a subcontractor
12 shall, upon the certification of the contractor of the amount due to
13 the subcontractor, be paid directly to the subcontractor.

14 d. **【**Any bid specification prepared pursuant to this section that
15 includes the use of 1,000 or more tons of hot mix asphalt, shall
16 include a pay item for any asphalt price adjustment reflecting
17 changes in the cost of asphalt cement. Any bid specification
18 prepared pursuant to this section that includes the use of less than
19 1,000 tons of hot mix asphalt, shall include a pay item for an
20 asphalt price adjustment for any quantity of hot mix asphalt
21 exceeding 1,000 tons that may be used in the work in the event that
22 performance of the work, including change orders, requires more
23 than 1,000 tons of hot mix asphalt.

24 The asphalt price adjustment shall be calculated in accordance
25 with the formula and relevant instructions published in the most
26 recent edition of the New Jersey Department of Transportation
27 Standard Specifications for Road and Bridge Construction as
28 revised by the "Standard Inputs" periodically issued by the
29 department. All invoices for payment shall be accompanied by the
30 calculation of any asphalt price adjustment and a showing of the
31 current month's Asphalt Price Index, the Basic Asphalt Price
32 Index.】 (Deleted by amendment, P.L. _____, c. ____.) (pending before
33 the Legislature as this bill.)

34 e. **【**(1) Every bid specification prepared pursuant to this section
35 may be eligible for a fuel price adjustment. Fuel that is eligible for
36 a fuel price adjustment shall be the sum of the quantities of the
37 eligible pay items in the contract times the fuel usage factors as
38 determined by the Department of Transportation. The types of fuel
39 furnished shall be at the option of the contractor.

40 (2) The fuel requirement for items not determined by the
41 Department of Transportation to be eligible, and for pay items in
42 the bid specifications calling for less than 500 gallons of fuel, shall
43 not be eligible for a fuel price adjustment. If more than one pay
44 item has the same nomenclature but with different thicknesses,
45 depths, or types, each individual pay item must require 500 gallons
46 or more of fuel to be eligible for a fuel price adjustment. If more
47 than one pay item has the exact same nomenclature, similar pay

1 items shall be combined and this combination must require 500
2 gallons or more of fuel to be eligible for the fuel price adjustment.

3 (3) Fuel price adjustments shall not be made in those months for
4 which the monthly fuel price index has changed by less than five
5 percent from the basic fuel price.】 (Deleted by amendment,
6 P.L. _____, c. _____.) (pending before the Legislature as this bill.)

7 f. 【As used in subsections d. and e. of this section:

8 "Asphalt Price Index" means the Asphalt Price Index as
9 determined and published by the New Jersey Department of
10 Transportation.

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12 as published by the New Jersey Department of Transportation in its
13 "Standard Specifications for Road and Bridge Construction," as
14 revised by the "Standard Inputs" periodically issued by the New
15 Jersey Department of Transportation.

16 "Fuel Price Index" means the Fuel Price Index as determined and
17 published by the New Jersey Department of Transportation.

18 "Pay Item" means a specifically described item of work for
19 which the bidder provides a per unit or lump sum price in a bid
20 specification as determined and published by the New Jersey
21 Department of Transportation.】 (Deleted by amendment, P.L. _____,
22 c. _____.) (pending before the Legislature as this bill.)

23 (cf: P.L.2012, c.59, s.5)

24

25 3. This act shall take effect immediately.

26

27

28

STATEMENT

29

30 This bill would provide that any bid specification issued by a
31 local contracting unit for the provision of goods or the performance
32 of services under the "Local Public Contracts Law," P.L.1971,
33 c.198 (C.40A:11-1 et seq.) that includes the purchase or use of 100
34 or more tons of hot mix asphalt must include a pay item for an
35 asphalt price adjustment reflecting changes in the cost of asphalt
36 cement. The asphalt price adjustment would be calculated based on
37 the basic asphalt price index as published by the New Jersey
38 Department of Transportation in its "Standard Specifications for
39 Road and Bridge Construction," as those standards may be revised
40 by the department.

41 The bill is intended to clarify the scope and applicability of
42 similar legislation enacted in 2010. On January 12, 2010, Governor
43 Corzine signed into law, as P.L.2009, c.187, Assembly Bill No.
44 436. The law was, and remains, necessary to protect local
45 governments and contractors from fluctuations in the price of
46 asphalt cement, which is a key material in the production of hot mix
47 asphalt. The sponsors intended for the provisions of P.L.2009,
48 c.187 to apply to all bid specifications issued by local contracting

1 units for the purchase or use of hot mix asphalt as set forth in this
2 bill. Several jurisdictions have taken the position that P.L.2009,
3 c.187 applies only to a narrow subset of bid specifications, those for
4 the construction, alteration, or repair of a building. This bill is
5 intended to clarify the intended scope of P.L.2009, c.187.

6 The bill also would reduce the applicability threshold from 1000
7 tons to 100 tons of hot mix asphalt that is purchased or used; clarify
8 that for contracts issued for more than 100 tons of hot mix asphalt,
9 the price adjustment pay item applies to each ton purchased or used
10 and is not limited to tonnage exceeding the threshold; clarify that
11 references to the term hot mix asphalt include equivalent asphalt
12 cement based products, such as warm mix asphalt; and specifically
13 prohibit the disaggregation of quantities for the purpose of avoiding
14 compliance with the provisions of the bill.

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2229

STATE OF NEW JERSEY

DATED: MAY 12, 2014

The Assembly State and Local Government Committee reports favorably Assembly Bill No. 2229.

This bill would provide that any bid specification issued by a local contracting unit for the provision of goods or the performance of services under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) that includes the purchase or use of 100 or more tons of hot mix asphalt must include a pay item for an asphalt price adjustment reflecting changes in the cost of asphalt cement. The asphalt price adjustment would be calculated based on the basic asphalt price index as published by the New Jersey Department of Transportation in its "Standard Specifications for Road and Bridge Construction," as those standards may be revised by the department.

The bill is intended to clarify the scope and applicability of similar legislation enacted in 2010. On January 12, 2010, Governor Corzine signed into law, as P.L.2009, c.187, Assembly Bill No. 436. The law was, and remains, necessary to protect local governments and contractors from fluctuations in the price of asphalt cement, which is a key material in the production of hot mix asphalt. The sponsors intended for the provisions of P.L.2009, c.187 to apply to all bid specifications issued by local contracting units for the purchase or use of hot mix asphalt as set forth in this bill. Several jurisdictions have taken the position that P.L.2009, c.187 applies only to a narrow subset of bid specifications, those for the construction, alteration, or repair of a building. This bill is intended to clarify the intended scope of P.L.2009, c.187.

The bill also would reduce the applicability threshold from 1000 tons to 100 tons of hot mix asphalt that is purchased or used; clarify that for contracts issued for more than 100 tons of hot mix asphalt, the price adjustment pay item applies to each ton purchased or used and is not limited to tonnage exceeding the threshold; clarify that references to the term hot mix asphalt include equivalent asphalt cement based products, such as warm mix asphalt; and specifically prohibit the disaggregation of quantities for the purpose of avoiding compliance with the provisions of the bill.

STATEMENT TO
ASSEMBLY, No. 2229

with Assembly Floor Amendments
(Proposed by Assemblyman WISNIEWSKI)

ADOPTED: JUNE 16, 2014

These Assembly amendments would require that any bid specification issued by a local contracting unit for the provision of goods or the performance of services under the “Local Public Contracts Law” that includes the purchase or use of 1,000 or more tons of hot mix asphalt must include a pay item for an asphalt price adjustment reflecting changes in the cost of asphalt cement. Currently, the bill requires such a pay item in bid specifications for 100 or more tons of hot mix asphalt.

The amendments also require that when a bid specification includes the purchase or use of less than 1,000 tons of hot mix asphalt, it must include a pay item for an asphalt price adjustment applicable to any quantity of hot mix asphalt over 1,000 tons that may be used in the work in the event that the performance of the work, including change orders, requires more than 1,000 tons of hot mix asphalt. Currently, the bill makes such a provision for 100 tons of hot mix asphalt.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2229

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2015

The Senate Community and Urban Affairs Committee reports favorably Assembly Bill No. 2229.

This bill would require that any bid specification issued by a local contracting unit for the provision of goods or the performance of services under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) that includes the purchase or use of 1,000 or more tons of hot mix asphalt must include a pay item for an asphalt price adjustment reflecting changes in the cost of asphalt cement. The asphalt price adjustment would be calculated based on the basic asphalt price index as published by the New Jersey Department of Transportation in its "Standard Specifications for Road and Bridge Construction," as those standards may be revised by the department.

The bill also would clarify that for contracts issued for more than 1,000 tons of hot mix asphalt, the price adjustment pay item applies to each ton purchased or used and is not limited to tonnage exceeding the threshold; require that when a bid specification includes the purchase or use of less than 1,000 tons of hot mix asphalt, it must include a pay item for an asphalt price adjustment applicable to any quantity of hot mix asphalt over 1,000 tons that may be used in the work in the event that the performance of the work, including change orders, requires more than 1,000 tons of hot mix asphalt; clarify that references to the term hot mix asphalt include equivalent asphalt cement-based products, such as warm mix asphalt; and specifically prohibit the disaggregation of quantities for the purpose of avoiding compliance with the provisions of the bill.