

New Jersey

Local Public Contracts Law

N.J.S.A. 40A:11-1 et seq.

Current as of March 29, 2010

Including P.L. 2009, c.166,

Qualified Purchasing Agent Amendments, effective January 1, 2011

New Jersey Division of Local Government Services

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Local Public Contracts Law

N.J.S.A. 40A:11-1 et seq.

40A:11-1. Short title; citation

This act shall be known and may be cited as the "Local Public Contracts Law."

L.1971, c. 198, s. 1, eff. July 1, 1971.

40A:11-2. Definitions

As used herein the following words have the following definitions, unless the context otherwise indicates:

(1) "Contracting unit" means:

(a) Any county; or

(b) Any municipality; or

(c) Any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services.

The term shall not include a private firm that has entered into a contract with a public entity for the provision of water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

"Contracting unit" shall not include a private firm or public authority that has entered into a contract with a public entity for the provision of wastewater treatment services pursuant to P.L.1995, c.216 (C.58:27-19 et al.).

"Contracting unit" shall not include a duly incorporated nonprofit association that has entered into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1).

"Contracting unit" shall not include a duly incorporated nonprofit entity that has entered into a contract for management and operation services with a municipal hospital authority established pursuant to P.L.2006, c.46 (C.30:9-23.15 et al.).

(2) "Governing body" means:

(a) The governing body of the county, when the purchase is to be made or the contract or agreement is to be entered into by, or in behalf of, a county; or

(b) The governing body of the municipality, when the purchase is to be made or the contract or agreement is to be entered into by, or on behalf of, a municipality; or

(c) Any board, commission, committee, authority or agency of the character described in subsection (1) (c) of this section.

(3) "Contracting agent" means the governing body of a contracting unit, or its authorized designee, which has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by this act, to make awards for the contracting unit in connection with purchases, contracts or agreements.

(4) "Purchase" means a transaction, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.

(5) (Deleted by amendment, P.L.1999, c.440.)

(6) "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

(7) "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

(8) (Deleted by amendment, P.L.1999, c.440.)

(9) "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a contracting unit.

(10) "Homemaker--home health services" means at-home personal care and home management provided to an individual or members of the individual's family who reside with the individual, or both, necessitated by the individual's illness or incapacity. "Homemaker--home health services" includes, but is not limited to, the services of a trained homemaker.

(11) "Recyclable material" means those materials which would otherwise become municipal solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(12) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(13) "Marketing" means the sale, disposition, assignment, or placement of designated recyclable materials with, or the granting of a concession to, a reseller, processor, materials recovery facility, or end-user of recyclable material, in accordance with a district solid waste management plan adopted pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection of such recyclable material when collected through a system of routes by local government unit employees or under a contract administered by a local government unit.

(14) "Municipal solid waste" means, as appropriate to the circumstances, all residential, commercial and institutional solid waste generated within the boundaries of a municipality; or the formal collection of such solid wastes or recyclable material in any combination thereof when collected through a system of routes by local government unit employees or under a contract administered by a local government unit.

(15) "Distribution" (when used in relation to electricity) means the process of conveying electricity from a contracting unit that is a generator of electricity or a wholesale purchaser of electricity to retail customers or other end users of electricity.

- (16) "Transmission" (when used in relation to electricity) means the conveyance of electricity from its point of generation to a contracting unit that purchases it on a wholesale basis for resale.
- (17) "Disposition" means the transportation, placement, reuse, sale, donation, transfer or temporary storage of recyclable materials for all possible uses except for disposal as municipal solid waste.
- (18) "Cooperative marketing" means the joint marketing by two or more contracting units of the source separated recyclable materials designated in a district recycling plan required pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative agreement entered into by the participating contracting units thereof.
- (19) "Aggregate" means the sums expended or to be expended for the provision or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the same contract year through a contract awarded by a contracting agent.
- (20) "Bid threshold" means the dollar amount set in section 3 of P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall advertise for and receive sealed bids in accordance with procedures set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).
- (21) "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.
- (22) "Contract year" means the period of 12 consecutive months following the award of a contract.
- (23) "Competitive contracting" means the method described in sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-4.5) of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or administrator; and the governing body awards a contract to a vendor or vendors from among the formal proposals received.
- (24) "Goods and services" or "goods or services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to N.J.S.12A:2-101 et seq.
- (25) "Library and educational goods and services" means textbooks, copyrighted materials, student produced publications and services incidental thereto, including but not limited to books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials, and specialized computer software used as a supplement or in lieu of textbooks or reference material.
- (26) "Lowest price" means the least possible amount that meets all requirements of the request of a contracting agent.

(27) "Lowest responsible bidder or vendor" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.

(28) "Official newspaper" means any newspaper designated by the contracting unit pursuant to R.S.35:1-1 et seq.

(29) "Purchase order" means a document issued by the contracting agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the contracting unit, which, when fulfilled in accordance with the terms and conditions of a request of a contracting agent and other provisions and procedures that may be established by the contracting unit, will result in payment by the contracting unit.

(30) "Purchasing agent" means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity of the contracting unit, and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit, and P.L.1971, c.198 (C.40A:11-1 et seq.).

(31) "Quotation" means the response to a formal or informal request made by a contracting agent by a vendor for provision or performance of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the contracting agent.

(32) "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

(33) "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.

(34) "Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a contracting unit to house local government functions or provide water, waste disposal, power, transportation, and other public infrastructures.

(35) "Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

(36) "Administrator" means a municipal administrator appointed pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business administrator, a municipal manager or a municipal administrator appointed pursuant to the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed pursuant to "the municipal manager form of government law," R.S.40:79-1 et seq.; or the person holding responsibility for the overall operations of an authority that falls under the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

(37) "Concession" means the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit.

(38) "Index rate" means the rate of annual percentage increase, rounded to the nearest half-percent, in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed and published quarterly by the United States Department of Commerce, Bureau of Economic Analysis.

(39) "Proprietary" means goods or services of a specialized nature, that may be made or marketed by a person or persons having the exclusive right to make or sell them, when the need

for such goods or services has been certified in writing by the governing body of the contracting unit to be necessary for the conduct of its affairs.

(40) "Service or services" means the performance of work, or the furnishing of labor, time, or effort, or any combination thereof, not involving or connected to the delivery or ownership of a specified end product or goods or a manufacturing process. Service or services may also include an arrangement in which a vendor compensates the contracting unit for the vendor's right to operate a concession.

L.1971, c. 198, s. 2; amended 1975, c. 353, s. 1; 1983, c. 331, s. 1; 1987, c. 102, s. 30; 1991, c. 143, s. 7; 1992, c. 98, s. 1; 1995, c. 101, s. 11; 1995, c. 103, s. 3; 1995, c. 216, s. 10; 1999, c. 440, s. 6; 2002, c. 47, s. 7; 2006, c. 46, s. 11.

40A:11-3. Bid threshold; period of contracts¹

a. When the cost or price of any contract awarded by the contracting agent in the aggregate does not exceed in a contract year the total sum of \$17,500, the contract may be awarded by a purchasing agent when so authorized by ordinance or resolution, as appropriate to the contracting unit, of the governing body of the contracting unit without public advertising for bids, except that the governing body of any contracting unit may adopt an ordinance or resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. If the purchasing agent is qualified pursuant to subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9), the governing body of the contracting unit may establish that the bid threshold may be up to \$25,000. Such authorization may be granted for each contract or by a general delegation of the power to negotiate and award such contracts pursuant to this section.

b. Any contract made pursuant to this section may be awarded for a period of 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a period not exceeding 12 consecutive months. The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the contracting unit's fiscal year.

c. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of every fifth year beginning in the fifth year after the year in which P.L.1999, c.440 takes effect, adjust the threshold amount and the higher threshold amount which the governing body is permitted to establish, as set forth in subsection a. of this section, or the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the index rate as that term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to the nearest \$1,000. The Governor shall, no later than June 1 of every fifth year, notify each governing body of the adjustment. The adjustment shall become effective on July 1 of the year in which it is made.

L.1971, c. 198, s. 3; amended 1975, c. 353, s. 2; 1977, c. 53, s. 1; 1979, c. 350, s. 1; 1985, c. 60, s. 1; 1985, c. 469, s. 6; 1991, c. 143, s. 1; 1996, c. 113, s. 18; 1999, c. 440, s. 7.

40A:11-4. Contracts required to be advertised, disqualification of bidder

a. Every contract awarded by the contracting agent for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by resolution of the governing body of the contracting unit to the lowest responsible bidder after public advertising for bids and bidding therefor, except as is provided otherwise in this act or specifically by any other law. The governing body of a contracting unit may, by resolution approved by a majority of the governing body and subject to subsections b. and c. of this section, disqualify a

¹ A table of current and prior bid thresholds is at the end of this document.

bidder who would otherwise be determined to be the lowest responsible bidder, if the governing body finds that it has had prior negative experience with the bidder.

b. As used in this section, "prior negative experience" means any of the following:

- (1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with the contracting unit;
- (2) the bidder defaulted on a contract, thereby requiring the local unit to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract;
- (3) the bidder defaulted on a contract, thereby requiring the local unit to look to the bidder's surety for completion of the contract or tender of the costs of completion; or
- (4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with the contracting unit.

c. The following conditions apply if the governing body of a contracting unit is contemplating a disqualification based on prior negative experience:

- (1) The existence of any of the indicators of prior negative experience set forth in this section shall not require that a bidder be disqualified. In each instance, the decision to disqualify shall be made within the discretion of the governing body and shall be rendered in the best interests of the contracting unit.
- (2) All mitigating factors shall be considered in determining the seriousness of the prior negative experience and in deciding whether disqualification is warranted.
- (3) The bidder shall be furnished by the governing body with a written notice (a) stating that a disqualification is being considered; (b) setting forth the reason for the disqualification; and (c) indicating that the bidder shall be accorded an opportunity for a hearing before the governing body if the bidder so requests within a stated period of time. At the hearing, the bidder shall show good cause why the bidder should not be disqualified by presenting documents and testimony. If the governing body determines that good cause has not been shown by the bidder, it may vote to find the bidder lacking in responsibility and, thus, disqualified.
- (4) Disqualification shall be for a reasonable, defined period of time which shall not exceed five years.
- (5) A disqualification, other than a disqualification pursuant to which a governing body is prohibited by law from entering into a contract with a bidder, may be voided or the period thereof may be reduced, in the discretion of the governing body, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as reversal of a judgment, or actual change of ownership, management or control of the bidder.
- (6) An opportunity for a hearing need not be offered to a bidder whose disqualification is based on its suspension or debarment by an agency or department of the executive branch of the State of New Jersey. The term of such a disqualification shall be concurrent with the term of the suspension or debarment by the State agency or department.

L.1971, c. 198, s. 4; amended 1975, c. 353, s. 3; 1979, c. 350, s. 2; 1985, c. 60, s. 2; 1985, c. 469, s. 7; 1999, c. 440, s. 8.

40A:11-4.1. Purposes for which competitive contracting may be used by local units

Notwithstanding the provisions of any law, rule or regulation to the contrary, competitive contracting may be used by local contracting units in lieu of public bidding for procurement of specialized goods and services the price of which exceeds the bid threshold, for the following purposes:

- a. The purchase or licensing of proprietary computer software designed for contracting unit purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;
- b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:
 - (1) the operation and management of a wastewater treatment system or a water supply or distribution facility of the type described in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15), provided that competitive contracting shall not be used as a means of awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et al.) and P.L.1985, c.72 (C.58:27-1 et al.);
 - (2) the operation, management or administration of recreation or social service facilities or programs, which shall not include the administration of benefits under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.), or under General Assistance; or
 - (3) the operation, management or administration of data processing services;
- c. (Deleted by amendment, P.L.2009, c.4).
- d. Homemaker--home health services;
- e. Laboratory testing services;
- f. Emergency medical services;
- g. Contracted food services;
- h. Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities;
- i. At the option of the governing body of the contracting unit, any good or service that is exempt from bidding pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);
- j. Concessions;
- k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services.

Any purpose included herein shall not be considered by a contracting unit as an extraordinary unspecifiable service pursuant to paragraph (a)(ii) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5).

L.1999, c. 440, s. 1; amended 2009, c. 4, s. 7.

40A:11-4.2. Term of contract; exceptions

Unless an exception is provided for under section 15 of P.L.1971, c.198 (C.40A:11-15) permitting a longer contract duration, contracts awarded pursuant to section 5 of P.L.1999, c.440 (C.40A:11-4.5) may be for a term not to exceed five years.

L.1999, c. 440, s. 2.

40A:11-4.3. Competitive contracting process; resolution, administration

a. In order to initiate competitive contracting, the governing body shall pass a resolution authorizing the use of competitive contracting each time specialized goods or services enumerated in section 1 of P.L.1999, c.440 (C.40A:11-4.1) are desired to be contracted. If the desired goods or services have previously been contracted for using the competitive contracting process then the original resolution of the governing body shall suffice.

b. The competitive contracting process shall be administered by a purchasing agent qualified pursuant to subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9), or, by legal counsel of the contracting unit, or by an administrator of the contracting unit. Any contracts awarded under this process shall be made by resolution of the governing body of the contracting unit, subject to the provisions of subsection e. of section 5 of P.L.1999, c.440 (C.40A:11-4.5).

L.1999, c. 440, s. 3.

40A:11-4.4. Request for proposals; documentation; provisions

The competitive contracting process shall utilize request for proposals documentation in accordance with the following provisions:

a. The purchasing agent or counsel or administrator shall prepare or have prepared a request for proposal documentation, which shall include: all requirements deemed appropriate and necessary to allow for full and free competition between vendors; information necessary for potential vendors to submit a proposal; and a methodology by which the contracting unit will evaluate and rank proposals received from vendors.

b. The methodology for the awarding of competitive contracts shall be based on an evaluation and ranking, which shall include technical, management, and cost related criteria, and may include a weighting of criteria, all developed in a way that is intended to meet the specific needs of the contracting unit, and where such criteria shall not unfairly or illegally discriminate against or exclude otherwise capable vendors. When an evaluation methodology uses a weighting of criteria, at the option of the contracting unit the weighting to be accorded to each criterion may be disclosed to vendors prior to receipt of the proposals. The methodology for awarding competitive contracts shall comply with such rules and regulations as the director may adopt, after consultation with the Commissioner of Education, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. At no time during the proposal solicitation process shall the purchasing agent or counsel or administrator convey information, including price, to any potential vendor which could confer an unfair advantage upon that vendor over any other potential vendor. If a purchasing agent or counsel or administrator desires to change proposal documentation, the purchasing agent or counsel or administrator shall notify only those potential vendors who received the proposal documentation of any and all changes in writing and all existing documentation shall be changed appropriately.

d. All proposals and contracts shall be subject to the provisions of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a statement of corporate ownership and the provisions of P.L.1975, c.127 (C.10:5-31 et seq.) concerning equal employment opportunity and affirmative action.

L.1999, c. 440, s. 4.

40A:11-4.5. Competitive contracting proposal solicitation

Competitive contracting proposals shall be solicited in the following manner:

- a. A notice of the availability of request for proposal documentation shall be published in an official newspaper of the contracting unit at least 20 days prior to the date established for the submission of proposals. The contracting unit shall promptly reply to any request by an interested vendor by providing a copy of the request for proposals. The contracting unit may charge a fee for the proposal documentation that shall not exceed \$50.00 or the cost of reproducing the documentation, whichever is greater.
- b. Each interested vendor shall submit a proposal which shall include all the information required by the request for proposals. Failure to meet the requirements of the request for proposals may result in the contracting unit disqualifying the vendor from further consideration. Under no circumstances shall the provisions of a proposal be subject to negotiation by the contracting unit.
- c. If the contracting unit, at the time of solicitation, utilizes its own employees to provide the goods or perform the services, or both, considered for competitive contracting, the governing body shall, at any time prior to, but no later than the time of solicitation for competitive contracting proposals, notify affected employees of the governing body's intention to solicit competitive contracting proposals. Employees or their representatives shall be permitted to submit recommendations and proposals affecting wages, hours, and terms and conditions of employment in such a manner as to meet the goals of the competitive contract. If employees are represented by an organization that has negotiated a contract with the contracting unit, only the bargaining unit shall be authorized to submit such recommendations or proposals. When requested by such employees, the governing body shall provide such information regarding budgets and the costs of performing the services by such employees as may be available. Nothing shall prevent such employees from making recommendations that may include modifications to existing labor agreements in order to reduce such costs in lieu of award of a competitive contract, and agreements implementing such recommendations may be considered as cause for rejecting all other proposals.
- d. The purchasing agent or counsel or administrator shall evaluate all proposals only in accordance with the methodology described in the request for proposals. After proposals have been evaluated, the purchasing agent or counsel or administrator shall prepare a report evaluating and recommending the award of a contract or contracts. The report shall list the names of all potential vendors who submitted a proposal and shall summarize the proposals of each vendor. The report shall rank vendors in order of evaluation, shall recommend the selection of a vendor or vendors, as appropriate, for a contract, shall be clear in the reasons why the vendor or vendors have been selected among others considered, and shall detail the terms, conditions, scope of services, fees, and other matters to be incorporated into a contract. The report shall be made available to the public at least 48 hours prior to the awarding of the contract, or when made available to the governing body, whichever is sooner. The governing body shall have the right to reject all proposals for any of the reasons set forth in section 21 of P.L.1999, c.440 (C.40A:11-13.2).
- e. Award of a contract shall be made by resolution of the governing body of the contracting unit within 60 days of the receipt of the proposals, except that the proposals of any vendors who consent thereto, may, at the request of the contracting unit, be held for consideration for such longer period as may be agreed.
- f. The report prepared pursuant to subsection d. of this section shall become part of the public record and shall reflect the final action of the governing body. Contracts shall be executed pursuant to section 14 of P.L.1971, c.198 (C.40A:11-14).

g. The clerk or secretary of the contracting unit shall publish a notice in the official newspaper of the contracting unit summarizing the award of a contract, which shall include but not be limited to, the nature, duration, and amount of the contract, the name of the vendor and a statement that the resolution and contract are on file and available for public inspection in the office of the clerk or secretary of the municipality, county, local public authority or special district of the governing body.

h. All contract awards shall be subject to rules concerning certification of availability of funds adopted pursuant to section 3 of P.L.1971, c.198 (C.40A:11-3) and section 15 of P.L.1971, c.198 (C.40A:11-15).

i. The director, after consultation with the Commissioner of Education, may adopt additional rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the provisions of sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 through C.40A:11-4.5).

L.1999, c. 440, s. 5.

40A:11-4.6. Implementation of energy savings improvement program by contracting unit; definitions

a. A contracting unit, as defined in P.L.1971, c.198 (C.40A:11-1 et seq.), may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a contracting unit may enter into an energy savings services contract with an energy services company to implement the program or the contracting unit may authorize separate contracts to implement the program. The provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A contracting unit may determine to enter into an energy savings services contract either through public advertising for bids and the receipt of bids therefor or through competitive contracting in lieu of public bidding in the manner provided by sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 et seq.).

(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(3) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed pursuant to the public bidding requirements of the contracting unit. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan; the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(4) Except as provided in paragraph (5) of this subsection, a subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

(5) When the energy services company is the manufacturer of direct digital control systems and contracts with the contracting unit to provide a guaranteed energy savings option pursuant to subsection f. of this section, the specification of such direct digital control systems may be treated as proprietary goods and if so treated, the bid specification shall set forth an allowance price for its supply by the energy services company which shall be used by all bidders in the public bidding process. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

c. An energy savings improvement program may be financed through a lease-purchase agreement or through the issuance of energy savings obligations pursuant to this subsection.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a contracting unit and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the contracting unit when all lease payments have been made. Notwithstanding the provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years.

(2) Any lease-purchase agreement entered into pursuant to this subsection, may contain: a clause making it subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation; and a non-substitution clause maintaining that if the agreement is terminated for non-appropriation, the contracting unit may not replace the leased equipment or facilities with equipment or facilities that perform the same or similar functions.

(3) A contracting unit may arrange for incurring energy savings obligations to finance an energy savings improvement program. Energy savings obligations may be funded through appropriations for utility services in the annual budget of the contracting unit and may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et seq., including the issuance of bond anticipation notes as may be necessary, provided that all such bonds and notes mature within the periods authorized for such energy savings obligations. Energy savings obligations may be issued either through the contracting unit or another public agency authorized to undertake financing on behalf of the unit.

(4) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures.

Lease-purchase agreements and energy savings obligations may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Notwithstanding any law to the contrary, lease-purchase agreements and energy savings certificates shall not be excepted from any budget or tax levy limitation otherwise provided by law. Maturity schedules of lease-purchase agreements or energy savings obligations must exceed the estimated useful life of the individual energy conservation measures.

- d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the contracting unit or by a qualified independent third party retained by the governing body for that purpose. It shall not be conducted by an energy services company subsequently hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement an energy savings improvement program, a contracting unit shall develop a plan that consists of one or more energy conservation measures. The plan shall:

- (a) contain the results of an energy audit;
- (b) describe the energy conservation measures that will comprise the program;
- (c) estimate greenhouse gas reductions resulting from those energy savings;
- (d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;
- (e) include an assessment of risks involved in the successful implementation of the plan;
- (f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;
- (g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;
- (h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and
- (i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee.

All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan, the contracting unit shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the contracting unit maintains its own website, it shall also post the plan on that site. The board may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall not be financed as a lease-purchase or through energy savings obligations authorized by subsection c. of this section. Nothing herein is intended to prevent financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the contracting unit who is properly trained and qualified to perform such work.

- e. (1) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state which party has made application for rebates and credits and how these applications translate into energy savings.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

- f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the contracting unit the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by a separate vote of the governing body of the contracting unit, shall insure that the energy savings resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the contracting unit for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

- g. As used in this section:

"direct digital control systems" means the devices and computerized control equipment that contain software and computer interfaces that perform the logic that control a building's heating, ventilating, and air conditioning system. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy saving obligation" means a bond, note or other agreement evidencing the obligation to repay borrowed funds incurred in order to finance energy saving improvements;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a contracting unit to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public works activities" means any work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

- h. (1) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.
- (2) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under this section, except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

L.2009, c. 4, s. 6.

40A:11-5. Exceptions

Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body if:

(1) The subject matter thereof consists of:

(a) (i) Professional services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in the official newspaper, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating such contracting unit; or (ii) Extraordinary unspecifiable services. The application of this exception shall be construed narrowly in favor of open competitive bidding, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed, in the manner set forth in subsection (1) (a) (i) of this section, a brief notice of the award of such contract;

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

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

(d) The furnishing of a tax map or maps for the contracting unit;

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

(f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;

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

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

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

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

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

(l) Those goods and services necessary or required to prepare and conduct an election;

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

- (n) The doing of any work by handicapped persons employed by a sheltered workshop;
- (o) The provision of any goods or services including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;
- (p) (Deleted by amendment, P.L.1999, c.440.)
- (q) Library and educational goods and services;
- (r) (Deleted by amendment, P.L.2005, c.212).
- (s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products;
- (t) (Deleted by amendment, P.L.1999, c.440.)
- (u) Contracting unit towing and storage contracts, provided that all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor;
- (v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of such steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C.s.796;
- (w) The purchase of electricity or administrative or dispatching services directly related to the transmission of such purchased electricity by a contracting unit engaged in the generation of electricity;
- (x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances;
- (y) An agreement for the purchase of an equitable interest in a water supply facility or for the provision of water supply services entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement entered into pursuant to P.L.1989, c.109 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no later than six months after the effective date of P.L.1993, c.381;
- (z) A contract for the provision of water supply services entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- (aa) The cooperative marketing of recyclable materials recovered through a recycling program;
- (bb) A contract for the provision of wastewater treatment services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- (cc) Expenses for travel and conferences;
- (dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be

utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;

(ee) The management or operation of an airport owned by the contracting unit pursuant to R.S.40:8-1 et seq.;

(ff) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(gg) A contract for the provision of water supply services or wastewater treatment services entered into pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);

(hh) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit.

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

(3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract; provided, however, that:

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

(ii) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

(iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services.

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

(4) The contracting unit has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12), and the lowest responsible quotation is at least 10% less than the price the contracting unit would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit at a meeting thereof authorizing such a contract. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of such contracts on local contracting and shall consult with the State Treasurer on the impact of such contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.

(5) Notwithstanding any provision of law, rule or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products, provided that in lieu of engaging in such public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing said services. Within 30 days after receipt of the written description the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section,

"collection" means the physical removal of recyclable materials from curbside or any other location selected by the contracting unit.

(6) Notwithstanding any provision of law, rule or regulation to the contrary, the contract is for the provision of electricity by a contracting unit engaged in the distribution of electricity for retail sale, or for the provision of administrative or dispatching services related to the transmission of such electricity, provided that in lieu of engaging in public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing such services. Such process shall be designed in a way that is appropriate to and commensurate with industry practices, and the integrity of the government contracting process. Within 30 days after receipt of the written description, the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process, as submitted to the director pursuant to this section, shall be deemed approved.

L.1971, c. 198, s. 5; amended 1975, c. 353, s. 4; 1976, c. 20; 1977, c. 53, s. 2; 1982, c. 208; 1983, c. 209; 1983, c. 331, s. 2; 1985, c. 436; 1986, c. 61; 1987, c. 102, s. 32; 1989, c. 92; 1989, c. 159, s. 1; 1991, c. 142, s. 1; 1991, c. 143, s. 2; 1991, c. 368; 1993, c. 381, s. 4; 1995, c. 101, s. 12; 1995, c. 103, s. 4; 1995, c. 216, s. 11; 1997, c. 387, s. 2; 1999, c. 440, s. 9; 2002, c. 47, s. 8; 2003, c. 150, s. 2; 2005, c. 212, s. 2; 2005, c. 296, s. 1.

40A:11-5.1. Authority of city of first class to contract for water supply, wastewater treatment services

The Legislature finds and declares it to be in the public interest and to be the public policy of the State to foster and promote by all reasonable means the collection, storage and distribution of an adequate supply of water for the inhabitants and businesses of the counties and municipalities of this State and to foster and promote the public health by providing for the collection and treatment of sewerage through adequate sewerage facilities.

To further promote these interests, and notwithstanding the provisions of any other law, rule or regulation to the contrary, the governing body of a city of the first class may enter into a contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or both, as the case may be.

The governing body of a city of the first class that has entered into a contract with a duly incorporated nonprofit association pursuant to this section shall obtain the written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the parties given the terms of the contract and the federal laws or regulations concerning this matter.

Any concession fee or monetary benefit paid by a duly incorporated nonprofit association to the governing body of a city of the first class shall be used for the purposes of reducing or off-setting property taxes, reducing water supply services or wastewater treatment services charges, rates or fees, one-time nonrecurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems.

Upon executing such contract, the duly incorporated nonprofit association shall be deemed to be providing essential governmental functions on behalf of the city of the first class and, to the extent

permitted in the contract, shall exercise all powers and responsibilities of the city of the first class related to the provision of water supply services and wastewater treatment services now or hereinafter provided under law.

The authorization provided in this section shall be subject to the provisions of sections 3 through 6 of P.L.2002, c.47 (C.58:28-4 through 58:28-7).

L.2002, c. 47, s. 2.

40A:11-5.2. Applicability of C.40A:11-1 et seq. to certain contracts by city of first degree

Notwithstanding the provisions of P.L.2002, c.47 (C.40A:12-17.1 et al.) to the contrary, any expenditure of funds by a duly incorporated nonprofit association that has entered into a contract with the governing body of a city of the first class pursuant to sections 1 and 2 of P.L.2002, c.47 (C.40A:12-17.1 and 40A:11-5.1) for any capital improvements to, or construction of, water supply facilities or wastewater treatment systems shall be subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11 -1 et seq.) whenever the funds have been derived from the proceeds of obligations or other available public moneys of any public entity including, but not limited to, debt issued by the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, or a city of the first class.

L.2002, c. 47, s. 12.

40A:11-6. Emergency contracts

Any contract may be negotiated or awarded for a contracting unit without public advertising for bids and bidding therefor, notwithstanding that the contract price will exceed the bid threshold, when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services; provided that the awarding of such contracts is made in the following manner:

- a. The official in charge of the agency wherein the emergency occurred, or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the governing body, as may be appropriate to the form of government, of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.
- b. Upon the furnishing of such goods or services, in accordance with the terms of the contract, the contractor furnishing such goods or services shall be entitled to be paid therefor and the contracting unit shall be obligated for said payment. The governing body of the contracting unit shall take such action as shall be required to provide for the payment of the contract price.
- c. The Director of the Division of Local Government Services in the Department of Community Affairs shall prescribe rules and procedures to implement the requirements of this section.
- d. The governing body of the contracting unit may prescribe additional rules and procedures to implement the requirements of this section.

L.1971, c. 198, s. 6; amended 1975, c. 353, s. 5; 1977, c. 53, s. 3; 1979, c. 350, s. 3; 1985, c. 60, s. 3; 1985, c. 469, s. 8; 1999, c. 440, s. 10.

40A:11-6.1. Award of contracts

All contracts enumerated in this section shall be awarded as follows:

a. For all contracts that in the aggregate are less than the bid threshold but 15 percent or more of that amount, and for those contracts that are for subject matter enumerated in subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5), except for paragraph (a) of that subsection concerning professional services and paragraph (b) of that subsection concerning work by employees of the contracting unit, the contracting agent shall award the contract after soliciting at least two competitive quotations, if practicable. The award shall be made to a vendor whose response is most advantageous, price and other factors considered. The contracting agent shall retain the record of the quotation solicitation and shall include a copy of the record with the voucher used to pay the vendor.

b. When in excess of the bid threshold, and after documented effort by the contracting agent to secure competitive quotations, a contract for extraordinary unspecifiable services may be awarded upon a determination in writing by the contracting agent that the solicitation of competitive quotations is impracticable. Any such contract shall be awarded by resolution of the governing body.

c. If authorized by the governing body by resolution or ordinance, all contracts that are in the aggregate less than 15 percent of the bid threshold may be awarded by the contracting agent without soliciting competitive quotations.

d. Whenever two or more responses to a request of a contracting agent offer equal prices and are the lowest responsible bids or proposals, the contracting unit may award the contract to the vendor whose response, in the discretion of the contracting unit, is the most advantageous, price and other factors considered. In such a case, the award resolution or purchase order documentation shall explain why the vendor selected is the most advantageous.

L.1975, c. 353, s. 6; amended 1977, c. 53, s. 4; 1983, c. 418; 1999, c. 440, s. 11.

40A:11-7. Contracts not to be divided

a. No contract in the aggregate which is single in character or which necessarily or by reason of the quantities required to effectuate the purpose of the contract includes the provision or performance of additional goods or services, shall be divided, so as to bring it or any of the parts thereof under the bid threshold, for the purpose of dispensing with the requirement of public advertising and bidding therefor.

b. In contracting for the provision or performance of any goods or services included in or incidental to the provision or performance of any work which is single in character or inclusive of the provision or performance of additional goods or services, all of the goods or services requisite for the completion of such contract shall be included in one contract.

L.1971, c. 198, s. 7; amended 1975, c. 353, s. 7; 1979, c. 350, s. 4; 1985, c. 60, s. 4; 1985, c. 469, s. 9; 1999, c. 440, s. 12.

40A:11-7.1. Rules concerning determinations of aggregation

For the purpose of ensuring consistency between the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., the Director of the Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules concerning determinations of aggregation for the purposes of whether a contract is subject to public bidding as set forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and N.J.S.18A:18A-8.

L.1999, c. 440, s. 13.

40A:11-8. Bids for provision or performance of goods or services

Every contracting agent shall, at intervals to be fixed by the governing body, solicit by public advertisement the submission of bids for the provision or performance of goods or services which are and which under section 4 of P.L.1971, c.198 (C.40A:11-4) can be contracted to be provided or performed only after public advertisement for bids and bidding therefor and all contracts for the provision or performance of such goods or services shall be awarded only in that manner.

L.1971, c. 198, s. 8; amended 1999, c. 440, s. 14.

40A:11-9. Purchasing agent, department or board; establishment; powers; criteria for authorization; "green product" defined

a. The governing body of any contracting unit may by ordinance, in the case of a municipality, by ordinance or resolution, as the case may be, in the case of a county, or by resolution in all other cases, establish the office of purchasing agent, or a purchasing department or a purchasing board, with the authority, responsibility, and accountability as its contracting agent, for the purchasing activity for the contracting unit, to prepare public advertising for bids and to receive bids for the provision or performance of goods or services on behalf of the contracting unit and to award contracts permitted pursuant to subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) in the name of the contracting unit, and conduct any activities as may be necessary or appropriate to the purchasing function of the contracting unit.

b. The Director of the Division of Local Government Services, after consultation with the Commissioner of Education, shall establish criteria to qualify individuals who have completed appropriate training and possess such purchasing experience as deemed necessary to exercise such supplemental authority as may be set forth in subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3). These criteria also shall authorize county purchasing agents certified pursuant to P.L.1981, c.380 (C.40A:9-30.1 et seq.) to exercise such supplemental authority.

c. The criteria established by the director to authorize purchasing agents, pursuant to subsection b. of this section, shall include, but are not limited to, completion of a course in green product purchasing, as established by the director pursuant to regulation. Any person qualified pursuant to subsection b. of this section prior to the establishment of the course in green product purchasing, shall in order to continue to be qualified, take and successfully complete the course within four years from the date the course is established. For the purposes of P.L.2007, c.332 (C.40A:11-9.1 et al.), "green product" means any commodity or service that has a lesser or reduced negative effect on human health and the environment when compared with competing commodities or services. Items considered in this comparison may include, but are not limited to: raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, recycled content resource use, transportation, and durability.

L.1971, c. 198, s. 9; amended 1975, c. 353, s. 8; 1977, c. 53, s. 5; 1999, c. 440, s. 15; 2007, c. 332, s. 1.

40A:11-9.1. List of sources for green product purchasing

The State Treasurer, through the Division of Purchase and Property, in consultation with the Department of Environmental Protection and any other appropriate State agencies, shall develop a list of sources for green product purchasing by contracting units, and provide regular revisions of the list, on the Internet web page of the Department of the Treasury and shall have the authority to specify appropriate and reasonable standards for the identification of a list of sources for green products.

L.2007, c. 332, s. 2.

40A:11-10. Joint agreements for provision and performance of goods and services; cooperative marketing; authorization

- (a) (1) The governing bodies of two or more contracting units may provide by joint agreement for the provision and performance of goods and services for use by their respective jurisdictions.
- (2) The governing bodies of two or more contracting units providing sewerage services pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint agreement for the purchase of goods and services related to sewage sludge disposal.
- (3) The governing body of two or more contracting units providing electrical distribution services pursuant to and in accordance with R.S.40:62-12 through R.S.40:62-25, may provide by joint agreement for the provision or performance of goods or services related to the distribution of electricity.
- (4) The governing bodies of two or more contracting units may provide for the cooperative marketing of recyclable materials recovered through a recycling program.
- (5) The governing bodies of two or more contracting units may provide by joint agreement for the purchase of the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent for the provision of cable television service pursuant to R.S.40:48-1 et seq. and the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented.
- (b) The governing body of any contracting unit may provide by joint agreement with the board of education of any school district for the provision and performance of goods and services for use by their respective jurisdictions.
- (c) Such agreement shall be entered into by resolution adopted by each of the participating bodies and boards, which shall set forth the categories of goods or services to be provided or performed, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating body and board, and other matters deemed necessary to carry out the purposes of the agreement.
- (d) Each participating body's and board's share of expenditures for purchases under any such agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the participating body and board.

L.1971, c. 198, s. 10; amended 1977, c. 182; 1985, c. 452, s. 1; 1991, c. 143, s. 3; 1995, c. 103, s. 5; 1995, c. 356, s. 7; 1999, c. 440, s. 16; 2003, c. 38, s. 2.

40A:11-11. Additional matters regarding contracts for the provision and performance of goods and services

- (1) The contracting units entering into a joint agreement pursuant to section 10 of P.L.1971, c.198 (C.40A:11-10) may designate a joint contracting agent.
- (2) Contracts made pursuant to a joint purchasing agreement shall be subject to all of the terms and conditions of this act.
- (3) Any contracting unit serving as a joint contracting agent pursuant to this section, may make an appropriation to enable it to perform any such contract and may anticipate as revenue payments to be made and received by it from any other party to the agreement. Any items so included in a local budget shall be subject to the approval of the Director, Division of Local Government Services, who shall consider the matter in conjunction with the requirements of chapter 4 of Title 40A of the New Jersey

Statutes. The agreement and any subsequent amendment or revisions thereto shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs.

(4) Any joint contracting agent so designated pursuant to a joint purchasing agreement shall have the sole responsibility to comply with the provisions of section 23 of P.L.1971, c.198 (C.40A:11-23).

(5) The governing bodies of two or more contracting units or boards of education or for purposes related to the distribution of electricity, the governing bodies of two or more contracting units providing electrical distribution services pursuant to R.S.40:62-12 through R.S.40:62-25, may by resolution establish a cooperative pricing system as hereinafter provided. Any such resolution shall establish procedures whereby one participating contracting unit in the cooperative pricing system shall be empowered to advertise and receive bids to provide prices for all other participating contracting units in such system for the provision or performance of goods or services; provided, however, that no contract shall be awarded by any participating contracting unit for a price which exceeds any other price available to the participating contracting unit, or for a purchase of goods or services in deviation from the specifications, price or quality set forth by the participating contracting unit.

(6) The governing body of a county government may establish a cooperative pricing system for the voluntary use of contracting units within the county.

No vendor shall be required or permitted to extend bid prices to participating contracting units in a cooperative pricing system unless so specified in the bids.

No cooperative pricing system and agreements entered into pursuant to such system, or joint purchase agreements established pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) or any other provision of law, shall become effective without prior approval of the Director of the Division of Local Government Services and said approval shall be valid for a period not to exceed five years.

The director's approval shall be based on the following:

- (a) Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration, and
- (b) Adequacy of public disclosure of such actions as are taken by the participants, and
- (c) Adequacy of procedures to facilitate compliance with all provisions of the "Local Public Contracts Law" and corresponding regulations, and
- (d) Clarity of provisions to assure that the responsibilities of the respective parties are understood.

Failure of the Director of the Division of Local Government Services to approve or disapprove a properly executed and completed application to establish a cooperative pricing system and agreements entered into pursuant to such system or other joint purchase agreement within 45 days from the date of receipt of said application by the director shall constitute approval of said application, which shall be valid for a period of five years, commencing from the date of receipt of said application by the director.

The Director of the Division of Local Government Services is hereby authorized to promulgate rules and regulations specifying procedures pertaining to cooperative pricing systems and joint purchase agreements entered into pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) and any other provision of law.

L.1971, c. 198, s. 11; amended 1975, c. 353, s. 9; 1977, c. 53, s. 6; 1979, c. 420; 1991, c. 143, s. 4; 1995, c. 356, s. 8; 1999, c. 440, s. 17.

40A:11-12. Contracting unit purchases through State agency; procedure

a. Any contracting unit under this act may without advertising for bids, or having rejected all bids obtained pursuant to advertising therefor, purchase any goods or services under any contract or contracts for such goods or services entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury.

b. A contracting unit may also use, without advertising for bids, or having rejected all bids obtained pursuant to advertising, the Federal Supply Schedules of the General Services Administration or schedules from other federal procurement programs promulgated by the Director of the Division of Purchase and Property in the Department of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1), subject to the following conditions:

(1) the price of the goods or services being procured is no greater than the price offered to federal agencies;

(2) (Deleted by amendment, P.L.2006, c.10);

(3) the contracting unit receives the benefit of federally mandated price reductions during the term of the contract;

(4) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under the State contract, unless the contracting unit determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules or schedules from other federal procurement programs would be more advantageous to the contracting unit;

(5) a copy of the purchase order relating to any such contract, the requisition or request for purchase order, if applicable, and documentation identifying the price of the goods or services under the Federal Supply Schedules or schedules from other federal procurement programs shall be filed with the Director of the Division of Purchase and Property in the Department of the Treasury within five working days of the award of any such contract by the contracting unit.

c. Whenever a purchase is made, the contracting unit shall place its order with the vendor offering the lowest price, including delivery charges, that best meets the requirements of the contracting unit. Prior to placing such an order, the contracting unit shall document with specificity that the goods or services selected best meet the requirements of the contracting unit.

L.1971, c. 198, s. 12; amended 1996, c. 16, s. 3; 1999, c. 440, s. 18; 2006, c. 10, s. 4.

40A:11-13. Specifications

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

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

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

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

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

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

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

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

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

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

L.1971, c. 198, s. 13; amended 1991, c. 381, s. 48; 1996, c. 81, s. 7; 1999, c. 440, s. 19.

40A:11-13.1. Payment from bequest, legacy or gift; conditions

Goods or services, the payment for which utilizes only funds received by a contracting unit from a bequest, legacy or gift, shall be subject to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.), except that if such bequest, legacy or gift contains written instructions as to the specifications, manufacturer or vendor, or source of supply of the goods or services to be provided or performed, such instructions shall be honored, provided that the bequest, legacy or gift is used in a manner consistent with N.J.S.40A:5-29.

L.1999, c. 440, s. 20.

40A:11-13.2. Rejection of bids; reasons

A contracting unit may reject all bids for any of the following reasons:

- a. The lowest bid substantially exceeds the cost estimates for the goods or services;
- b. The lowest bid substantially exceeds the contracting unit's appropriation for the goods or services;
- c. The governing body of the contracting unit decides to abandon the project for provision or performance of the goods or services;

- d. The contracting unit wants to substantially revise the specifications for the goods or services;
- e. The purposes or provisions or both of P.L.1971, c.198 (C.40A:11-1 et seq.) are being violated;
- f. The governing body of the contracting unit decides to use the State authorized contract pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12).

L.1999, c. 440, s. 21.

40A:11-14. Form of contracts

All contracts for the provision or performance of goods or services shall be in writing. The governing body of any contracting unit may, subject to the requirements of law, prescribe the form and manner in which contracts shall be made and executed, and the form and manner of execution and approval of all guarantee, indemnity, fidelity and other bonds.

L.1971, c. 198, s. 14; amended 1975, c. 353, s. 10; 1999, c. 440, s. 22.

40A:11-15. Duration of certain contracts

All contracts for the provision or performance of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to exceed 12 consecutive months. Contracts may be awarded for longer periods of time as follows:

(1) Supplying of:

(a) (Deleted by amendment, P.L.1996, c.113.)

(b) (Deleted by amendment, P.L.1996, c.113.)

(c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;

(2) (Deleted by amendment, P.L.1977, c.53.)

(3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;

(4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

(5) Data processing service, for any term of not more than seven years;

(6) Insurance, including the purchase of insurance coverages, insurance consulting or administrative services, claims administration services and including participation in a joint

self-insurance fund, risk management program or related services provided by a contracting unit insurance group, or participation in an insurance fund established by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than three years;

(7) Leasing or servicing of automobiles, motor vehicles, machinery and equipment of every nature and kind, for a period not to exceed five years; provided, however, such contracts shall be awarded only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a company providing voice, data, transmission or switching services for a term not exceeding five years;

(9) Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

(10) The providing of food services for any term not exceeding three years;

(11) On-site inspections and plan review services undertaken by private agencies pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not more than three years;

(12) (Deleted by amendment, P.L.2009, c.4).

(13) (Deleted by amendment, P.L.1999, c.440.)

(14) (Deleted by amendment, P.L.1999, c.440.)

(15) Leasing of motor vehicles, machinery and other equipment primarily used to fight fires, for a term not to exceed ten years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (30), (31), (34), (35) or (43) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its portability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State

and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

(17) The provision of resource recovery services by a qualified vendor, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the residual ash generated at a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, or the design, financing, construction, operation or maintenance of a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, and the Department of Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et al.); and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production; and "residual ash" means the bottom ash, fly ash, or any combination thereof, resulting from the combustion of solid waste at a resource recovery facility;

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (36) or (43) of this section. For the purposes of this subsection, "wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of goods or services for the purpose of lighting public streets, for a term not to exceed five years;

(21) The provision of emergency medical services for a term not to exceed five years;

- (22) Towing and storage contracts, awarded pursuant to paragraph u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for any term not exceeding three years;
- (23) Fuel for the purpose of generating electricity for a term not to exceed eight years;
- (24) The purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from a supplier of electricity subject to the jurisdiction of a federal regulatory agency, from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or from any supplier of electricity within any regional transmission organization or independent system operator or from such organization or operator or their successors, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24, 1991, for a term not to exceed 40 years, or by a contracting unit engaged solely in the distribution of electricity for retail sale for a term not to exceed ten years, except that a contract with a contracting unit, engaged solely in the distribution of electricity for retail sale, in excess of ten years, shall require the written approval of the Director of the Division of Local Government Services. If the director fails to respond in writing to the contracting unit within 10 business days, the contract shall be deemed approved;
- (25) Basic life support services, for a period not to exceed five years. For the purposes of this subsection, "basic life support" means a basic level of prehospital care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization;
- (26) (Deleted by amendment, P.L.1999, c.440.)
- (27) The provision of transportation services to elderly, disabled or indigent persons for any term of not more than three years. For the purposes of this subsection, "elderly persons" means persons who are 60 years of age or older. "Disabled persons" means persons of any age who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. "Indigent persons" means persons of any age whose income does not exceed 100 percent of the poverty level, adjusted for family size, established and adjusted under section 673(2) of subtitle B, the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));
- (28) The supplying of liquid oxygen or other chemicals, for a term not to exceed five years, when the contract includes the installation of tanks or other storage facilities by the supplier, on or near the premises of the contracting unit;
- (29) The performance of patient care services by contracted medical staff at county hospitals, correction facilities and long term care facilities, for any term of not more than three years;
- (30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a contract entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no later than January 7, 1995, for any term of not more than forty years;
- (31) The provision of water supply services or the financing, construction, operation or maintenance or any combination thereof, of a water supply facility or any component part or parts thereof, by a partnership or copartnership established pursuant to a contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a period not to exceed 40 years;
- (32) Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three years;

(33) The supplying of any product or the rendering of any service, including consulting services, by a cemetery management company for the maintenance and preservation of a municipal cemetery operating pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

(34) A contract between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water supply services may be entered into for any term which, when all optional extension periods are added, may not exceed 40 years;

(35) A contract for the purchase of a supply of water from a public utility company subject to the jurisdiction of the Board of Public Utilities in accordance with tariffs and schedules of charges made, charged or exacted or contracts filed with the Board of Public Utilities, for any term of not more than 40 years;

(36) A contract between a public entity and a private firm or public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the provision of wastewater treatment services may be entered into for any term of not more than 40 years, including all optional extension periods;

(37) The operation and management of a facility under a license issued or permit approved by the Department of Environmental Protection, including a wastewater treatment system or a water supply or distribution facility, as the case may be, for any term of not more than ten years. For the purposes of this subsection, "wastewater treatment system" refers to facilities operated or maintained for the storage, collection, reduction, disposal, or other treatment of wastewater or sewage sludge, remediation of groundwater contamination, stormwater runoff, or the final disposal of residues resulting from the treatment of wastewater; and "water supply or distribution facility" refers to facilities operated or maintained for augmenting the natural water resources of the State, increasing the supply of water, conserving existing water resources, or distributing water to users;

(38) Municipal solid waste collection from facilities owned by a contracting unit, for any term of not more than three years;

(39) Fuel for heating purposes, for any term of not more than three years;

(40) Fuel or oil for use in motor vehicles for any term of not more than three years;

(41) Plowing and removal of snow and ice for any term of not more than three years;

(42) Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the Department of the Treasury for use by counties, municipalities or other contracting units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to exceed the term of that contract;

(43) A contract between the governing body of a city of the first class and a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of this section, or wastewater treatment services as defined in subsection (19) of this section, may be entered into for a period not to exceed 40 years;

(44) The purchase of electricity generated through class I renewable energy or from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contacting unit for any term not exceeding 25 years;

(45) The provision or performance of goods or services for the purpose of producing class I renewable energy or class II renewable energy, as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 15 years; provided, however, that

such contracts shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings and energy generation costs.

Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. The contract shall be awarded by resolution of the governing body upon a finding by the governing body that the services are being performed in an effective and efficient manner; b. No such contract shall be extended so that it runs for more than a total of five consecutive years; c. Any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. The terms and conditions of the contract remain substantially the same.

All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts for the provision or performance of goods or services or the supplying of equipment to promote energy conservation through the production of class I renewable energy or class II renewable energy authorized pursuant to subsection (45) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or (43) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36), (37) or (43) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (24) above and contracts for the purchase of electricity generated from a power production facility that is fueled by methane gas authorized pursuant to subsection (44) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services in the Department of Community Affairs shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be extended by mutual agreement of the parties to the contract when a contracting unit has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

L.1971, c. 198, s. 15; amended 1975, c. 326, s. 33; 1975, c. 353, s. 11; 1977, c. 53, s. 7; 1978, c. 154; 1981, c. 2, s. 1; 1981, c. 551, s. 1; 1982, c. 67, s.1; 1983, c. 176; 1983, c. 195; 1983, c. 398; 1983, c. 426; 1985, c. 37, s. 19; 1985, c. 38, s. 37; 1985, c. 72, s. 19; 1985, c. 452, s. 2; 1986, c. 47; 1986, c. 177; 1987, c. 102, s. 31; 1989, c. 159, s. 2; 1991, c. 142, s. 2; 1991, c. 143, s. 5; 1991, c. 312; 1991, c. 356; 1991, c. 381, s. 49; 1991, c. 407; 1991, c. 451; 1992, c. 63; 1992, c. 98, s. 2; 1993, c. 381, s. 5; 1994, c. 71; 1995, c. 3; 1995, c. 41, s. 2; 1995, c.1 01, s. 13; 1995, c. 216, s. 12; 1995, c. 371; 1996, c. 113, s. 19; 1997, c. 288; 1999, c. 23, s. 64; 1999, c. 440, s. 23; 2002, c. 47, s. 9; 2003, c. 150, s. 3; 2005, c. 296, s. 2; 2008, c. 83, s. 3; 2009, c. 4, s. 8.

40A:11-15.1. Insurance contract to fund actuarial liability

Notwithstanding the provisions of subsection (6) of section 15 of P.L.1971, c.198 (C.40A:11-15) to the contrary, a county or a municipality in which a pension fund has been established pursuant to P.L.1943, c.160 (C. 43:10-18.1 et seq.), R.S.43:10-1 through R.S.43:10-18, P.L.1948, c.310 (C.43:10-18.50 et seq.), or P.L.1954, c.218 (C.43:13-22.3 et seq.), may enter into an insurance contract to fund the actuarial liability of its pension system, for a term which may not exceed the term of the actuarial liability covered by the contract.

L.1985, c. 68, s. 1; amended 1994, c. 185, s. 2.

40A:11-15.2. Contracts for purchase of electricity for new county correction facility

In the case of construction of a new county correction facility, in addition to the purchase of thermal energy, contracts for the purchase of electricity shall be permitted pursuant to subsection (1)(c) of section 15 of P.L.1971, c.198 (C.40A:11-15).

L.1999, c. 23, s. 63.

40A:11-15.3. Contract for marketing of recyclable materials

a. Notwithstanding the provisions of section 15 of P.L.1971, c.198 (C.40A:11-15) to the contrary, a county government contracting unit may enter into or extend a contract for the marketing of recyclable materials recovered through a recycling program subject to the following conditions:

- (1) The program includes one or more interlocal services agreements with municipalities in that county for the delivery of recyclable materials to a contractor; and
- (2) The contract for the marketing of recyclable material includes fixed or formula based fees for the marketing services so provided and the contractor owns the buildings and equipment necessary to perform the contract.

b. Whenever an existing contract satisfies the conditions contained in subsection a. of this section, the contract may be extended for a period of up to 10 years; however, the length of the existing contract together with any extension thereof shall not exceed a total of 12 years. A new contract for the marketing of recyclable materials shall not exceed 10 years. Notwithstanding the provisions of section 5 of P.L.1971, c.198 (C.40A:11-5) to the contrary, a new contract for the marketing of recyclable materials for a term exceeding five years shall be entered into pursuant to public bidding or competitive contracting.

L.2003, c. 150, s. 1.

40A:11-16. Separate plans for various types of work; bids; contracts

a. In the preparation of plans and specifications for the construction, alteration or repair of any public building by any contracting unit, when the entire cost of the work will exceed the bid threshold, the architect, engineer or other person preparing the plans and specifications may prepare separate plans and specifications for

- (1) The plumbing and gas fitting and all kindred work;
- (2) Steam power plants, steam and hot water heating and ventilating apparatus and all kindred work;
- (3) Electrical work;
- (4) Structural steel and ornamental iron work; and
- (5) All other work required for the completion of the project.

The contracting agent shall advertise for and receive, in the manner provided by law, either (a) separate bids for each of said branches of work, or (b) bids for all the work, goods and services required to complete the building to be included in a single overall contract, or (c) both. In the case of a single bid under (b) or (c), there shall be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with P.L.1971, c.198 (C.40A:11-1 et seq.). The contracting unit shall require evidence of performance security to be submitted simultaneously with the list of the subcontractors. Evidence of performance security may be supplied by the bidder on behalf of himself and any or all subcontractors, or by each respective subcontractor, or by any combination thereof which results in evidence of performance security equaling, but in no event exceeding, the total amount bid.

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

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

d. Any bid specification prepared pursuant to this section that includes the use of 1,000 or more tons of hot mix asphalt, shall include a pay item for any asphalt price adjustment reflecting changes in the cost of asphalt cement. Any bid specification prepared pursuant to this section that includes the use of less than 1,000 tons of hot mix asphalt, shall include a pay item for an asphalt price adjustment for any quantity of hot mix asphalt exceeding 1,000 tons that maybe used in the work in the event that performance of the work, including change orders, requires more than 1,000 tons of hot mix asphalt.

The asphalt price adjustment shall be calculated in accordance with the formula and relevant instructions published in the most recent edition of the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction as revised by the "Standard Inputs" periodically issued by the department. All invoices for payment shall be

accompanied by the calculation of any asphalt price adjustment and a showing of the current month's Asphalt Price Index, the Basic Asphalt Price Index.

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

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

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

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

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

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

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

"Pay Item" means a specifically described item of work for which the bidder provides a per unit or lump sum price in a bid specification as determined and published by the New Jersey Department of Transportation.

L.1979, c. 464, s. 2; amended 1991, c. 434, s. 2; 1999, c. 440, s. 26.

40A:11-16.1. \$100,000 contracts for improvements to real property; retainage, security

Whenever any contract, the total price of which exceeds \$100,000.00, entered into by a contracting unit, for the construction, reconstruction, alteration or repair of any building, structure, facility or other improvement to real property, requires the withholding of payment of a percentage of the amount of the contract, the contractor may agree to the withholding of payments in the manner prescribed in the contract, or may deposit with the contracting unit registered book bonds, entry municipal bonds, State bonds or other appropriate bonds of the State of New Jersey, or negotiable bearer bonds or notes of any political subdivision of the State, the value of which is equal to the amount necessary to satisfy the amount that otherwise would be withheld pursuant to the terms of the contract. The nature and amount of the bonds or notes to be deposited shall be subject to approval by the contracting unit. For purposes of this section, "value" shall mean par value or current market value, whichever is lower.

If the contractor agrees to the withholding of payments, the amount withheld shall be deposited, with a banking institution or savings and loan association insured by an agency of the Federal government, in an account bearing interest at the rate currently paid by such institutions or

associations on time or savings deposits. The amount withheld, or the bonds or notes deposited, and any interest accruing on such bonds or notes, shall be returned to the contractor upon fulfillment of the terms of the contract relating to such withholding. Any interest accruing on cash payments withheld shall be credited to the contracting unit.

L.1979, c. 152, s. 1; amended 1991, c. 434, s. 1.

40A:11-16.2. Partial payments; deposit bonds

Any contract, the total price of which exceeds \$100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the contracting unit pursuant to P.L.1979, c.152 (C.40A:11-16.1).

L.1979, c. 464, s. 1; amended 1999, c. 440, s. 25.

40A:11-16.3. Withholding of payments

a. With respect to any contract entered into by a contracting unit pursuant to section 1 of P.L.1979, c.464 (C.40A:11-16.2) for which the contractor shall agree to the withholding of payments pursuant to P.L.1979, c.152 (C.40A:11-16.1), 2% of the amount due on each partial payment shall be withheld by the contracting unit pending completion of the contract.

b. Upon acceptance of the work performed pursuant to the contract for which the contractor has agreed to the withholding of payments pursuant to subsection a. of this section, all amounts being withheld by the contracting unit shall be released and paid in full to the contractor within 45 days of the final acceptance date agreed upon by the contractor and the contracting unit, without further withholding of any amounts for any purpose whatsoever, provided that the contract has been completed as indicated. If the contracting unit requires maintenance security after acceptance of the work performed pursuant to the contract, such security shall be obtained in the form of a maintenance bond. The maintenance bond shall be no longer than two years and shall be no more than 100% of the project costs.

L.1979, c. 464, s. 2; amended 1991, c. 434, s. 2; 1999, c. 440, s. 26.

40A:11-16.4. Partial payments for materials

Any contract entered into by a contracting unit pursuant to section 1 of P.L.1979, c.464 (C.40A:11-16.2) may also provide for partial payments at least once in each month with respect to all materials placed along or upon the site, or stored at secured locations, which are suitable for use in the execution of the contract, if the person providing the materials furnishes releases of liens for the materials at the time each estimate of work is submitted for payment. The total of all the partial payments shall not exceed the cost of the materials.

L.1979, c. 464, s. 3; amended 1999, c. 440, s. 27.

40A:11-16.5. Renegotiation of contract to reflect increase in solid waste disposal costs

Any person entering into a contract with a contracting unit pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.), which contract requires the contractor to provide for the disposal of solid waste, shall have the right to renegotiate the contract to reflect any increase in solid waste disposal costs whenever:

- a. the increase occurred as a result of compliance with an order issued by the Department of Environmental Protection, in conjunction with the Board of Public Utilities, directing the solid waste be disposed at a solid waste facility other than the facility previously utilized by the person to whom the contract has been awarded; or

b. the increase in solid waste disposal costs occurred as a result of lawful increases in the rates, fees or charges imposed on the disposal of solid waste at the solid waste facility utilized by the person to whom the contract has been awarded.

L.1989, c. 236, s. 1.

40A:11-16.6. Definitions relative to value engineering change orders; requirement for certain contracts

a. For the purpose of this act:

"Construction" means the construction, reconstruction, demolition, erection, alteration, or repair of a structure or other improvement to real property, other than the construction, reconstruction, demolition, or renovation of a public building.

"Value engineering construction change order" means a change order that results in cost reductions to a project or any portion of the work from the original bid specifications after a construction contract is awarded.

"Value engineering construction proposal" means a cost reduction proposal based on analysis by a contractor of the functions, systems, equipment, facilities, services, supplies, means and methods of construction, and any other item needed for the completion of the contract consistent with the required performance, quality, reliability, and safety.

b. All construction contracts issued by a contracting unit when the total price of the originally awarded contract equals or exceeds \$5,000,000, shall allow for value engineering construction change orders to be approved after the award of the contract.

c. Value engineering construction change orders shall be subject to the following provisions:

(1) Value engineering construction change orders shall not be used to impair any of the essential functions, or characteristics of the project, or any portion of the work involved.

(2) The contractor shall submit a value engineering construction proposal that completely describes the changes to the original specifications or proposal, impact on other project components, advantages and disadvantages of the proposed change, cost estimates and calculations on which they are based, any impact on the contract time schedule, and any other relevant information that the contracting unit may require in order to review the value engineering construction proposal. The contractor's cost for developing the value engineering construction proposal shall not be eligible for reimbursement by the contracting unit.

(3) The contractor shall be liable for all reasonable costs incurred by the contracting unit for the technical evaluation and engineering review of a value engineering construction proposal presented by the contractor.

(4) The contracting unit's engineer shall prepare a written report for the governing body that shall evaluate the value engineering construction proposal, make a recommendation on whether or not it should be accepted, rejected, or modified, and state to the contracting unit and contractor the amount of any projected cost savings.

(5) The proposal shall not be approved unless the engineer reports to the governing body that the proposal appears consistent with the required performance, quality, reliability, and safety of the project and does not impair any of the essential functions, or characteristics of the project, or any portion of the work involved.

(6) The contracting unit shall have the sole discretion to approve or disapprove a value engineering construction proposal.

(7) The contractor and the contracting unit shall equally share in the cost savings generated on the contract as a result of an approved value engineering construction change order. Once the project is completed, the contracting unit's engineer shall verify the cost savings to reflect the actual cost of the work, and such verified cost saving shall be the basis for the savings shared equally with the contractor.

(8) The contractor shall have no claim against the contracting unit as a result of the contracting unit's disapproval of a value engineering construction proposal.

(9) A contracting unit shall include in its bid specifications and contract documents procedures to regulate the value engineering construction change order process. Such procedures shall be based on procedures established by the New Jersey Department of Transportation, or any other appropriate State agency, or rules adopted by the director of the Division of Local Government Services.

d. This section shall not invalidate or impair rules regarding change orders adopted by the director of the Division of Local Government Services prior to the effective date of this act. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the director may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the director deems necessary to implement the provisions of P.L.2005, c.67 (C.40A:11-16.6) which shall be effective for a period not to exceed 12 months. The regulations shall thereafter be amended, adopted or readopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

L.2005, c. 67, s. 1.

40A:11-17. Number of working days specified

All specifications for the doing of any public work for a contracting unit shall fix the date before which the work shall be completed, or the number of working days to be allowed for its completion; and every such contract shall contain a provision for a deduction, from the contract price, or any wages paid by the contracting unit to any inspector or inspectors necessarily employed by it on the work, for any number of days in excess of the number allowed in the specifications.

L.1971, c. 198, s. 17, eff. July 1, 1971.

40A:11-18. American goods and products to be used where possible

Each local unit shall provide, in the specifications for all contracts for county or municipal work or for work for which it will pay any part of the cost, or work which by contract or ordinance it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available, be used in such work.

L.1971, c. 198, s. 18, eff. July 1, 1971. Amended by L.1982, c. 107, s. 1.

40A:11-19. Liquidated damages; void provisions as to contractor's remedies

Any contract made pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract in accordance with its terms and conditions, or the terms and conditions of P.L.1971, c.198 (C.40A:11-1 et seq.). Notwithstanding any other provision of law to the contrary, it shall be void, unenforceable and against public policy for a provision in a contract entered into under P.L.1971, c.198 (C.40A:11-1 et seq.) to limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct, or other reasons unanticipated by the parties that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. For the purposes of this section, "contractor" means a person, his assignees or legal representatives with whom a contract with a contracting unit is made.

L.1971, c. 198, s. 19; amended 1999, c. 440, s. 28; 2001, c. 206, s. 1.

40A:11-20. Certificate of bidder showing ability to perform contract

There may be required from any bidder submitting a bid on public work to any contracting unit, duly advertised for in accordance with law, a certificate showing that he owns, leases, or controls all the necessary equipment required by the plans, specifications and advertisements under which bids are asked for and if the bidder is not the actual owner or lessee of any such equipment, his certificate shall state the source from which the equipment will be obtained, and shall be accompanied by a certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.

L.1971, c. 198, s. 20, eff. July 1, 1971.

40A:11-21. Guarantee to be furnished with bid

A person bidding on a contract for the erection, alteration or repair of a public building, structure, facility or other improvement to real property, the total price of which exceeds \$100,000, shall furnish a guarantee as provided for herein. A contracting unit may provide that a person bidding on any other contract, advertised in accordance with law, shall furnish a guarantee as provided for herein. The guarantee shall be payable to the contracting unit so that if the contract is awarded to the bidder, the bidder will enter into a contract therefor and will furnish any performance bond or other security required as a guarantee or indemnification. The guarantee shall be in the amount of 10% of the bid, but not in excess of \$20,000.00, except as otherwise provided herein, and may be given, at the option of the bidder, by certified check, cashier's check or bid bond. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any contracting unit, which condition requires the depositing of a guarantee in an amount other than 10% of the bid or in excess of \$20,000.00 the provisions of this section shall not apply and the requirements of the law or regulation of the United States shall govern.

L.1971, c. 198, s. 21; amended 1974, c. 189; 1999, c. 39, s. 3; 1999, c. 440, s. 29.

40A:11-22. Surety company certificate

a. A person bidding on a contract 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, shall furnish a certificate from a surety company, as provided for herein. A contracting unit may provide that a person bidding on any other contract shall furnish a certificate from a surety company, as provided for herein.

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

This certificate shall be obtained for a bond—

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

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

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

If a bidder desires to offer the bond of an individual instead of that of a surety company, the bidder shall submit with the bid a certificate signed by such individual similar to that required of a surety company.

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

L.1971, c. 198, s. 22; amended 1999, c. 39, s. 4; 1999, c. 440, s. 30.

40A:11-23. Advertisements for bids; bids; general requirements

a. All advertisements for bids shall be published in an official newspaper of the contracting unit sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than 10 days prior to such date; except that all advertisements for bids on contracts for the collection and disposal of municipal solid waste shall be published in an official newspaper of the contracting unit circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but not less than 60 days prior to that date. For all contracts, the date fixed for receiving the bids shall not fall on a Monday, or any day directly following a State or federal holiday.

b. The advertisement shall designate the manner of submitting and the method of receiving the bids and the time and place at which the bids will be received. If the published specifications provide for receipt of bids by mail, those bids which are mailed to the contracting unit shall be sealed and shall only be opened for examination at such time and place as all bids received are unsealed and announced. At such time and place the contracting agent of the contracting unit shall publicly receive the bids, and thereupon immediately proceed to unseal them and publicly announce the contents, which announcement shall be made in the presence of any parties bidding or their agents, who are then and there present, and shall also make proper record of the prices and terms, upon the minutes of the governing body, if the award is to be made by the governing body of the contracting unit, or in a book kept for that purpose, if the award is to be made by other than the governing body, and in such latter case it shall be reported to the governing body of the contracting unit for its action thereon, when such action thereon is required. No bids shall be received after the time designated in the advertisement.

c. Notice of revisions or addenda to advertisements or bid documents shall be provided as follows:

1) For all contracts except those for construction work and municipal solid waste collection and disposal service, notice shall be published no later than seven days, Saturdays, Sundays, and holidays excepted, prior to the date for acceptance of bids, in an official newspaper of the contracting unit and be provided to any person who has submitted a bid or who has received a bid package, in one of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

2) For all contracts for construction work, notice shall be provided no later than seven days, Saturdays, Sundays, or holidays excepted, prior to the date for acceptance of bids, to any person who has submitted a bid or who has received a bid package in any of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

3) For municipal solid waste collection and disposal contracts, notice shall be published in an official newspaper of the contracting unit and in at least one newspaper of general circulation published in the State no later than seven days, Saturdays, Sundays, and holidays excepted, prior to the date for acceptance of bids.

d. Failure of the contracting unit to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the contracting unit from accepting the bids and require the readvertisement for bids pursuant to subsection a. of this section. Failure to obtain a receipt when good faith notice is sent or delivered to the address or telephone facsimile number on file with the contracting unit shall not be considered failure by the contracting unit to provide notice.

L.1971, c. 198, s. 23; amended 1975, c. 353, s. 13; 1983, c. 174; 1985, c. 429; 1991, c. 381, s. 50; 1997, c. 243. 1999, c. 440, s. 31; 2005, c. 191, s. 5; 2007, c. 4, s. 1.

40A:11-23.1. Plans, specifications, bid proposal documents; required contents

All 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), shall include:

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

b. a form listing those documentary and informational forms, certifications, and other documents that the contracting agent requires each bidder to submit with the bid. The form shall 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. Each bidder shall complete this form and submit it with the bid proposal in addition to those documentary and informational forms, certifications, and other documents that are listed on the form; and

c. a statement indicating whether uniformed law enforcement officers will be required for the project. The statement shall include a line item allowance, which shall be a good faith effort on the part of the contracting unit, to reasonably estimate the total cost of traffic control personnel, vehicles, equipment, administrative, or any other costs associated with additional traffic control requirements required by the contracting unit, or any other public entity affected by the project, above and beyond the bidder's traffic control personnel, vehicles, equipment, and administrative costs. The individuals responsible for the assignment of uniformed law enforcement officers for any municipalities affected by a project shall be required to determine where traffic safety control is needed for a project, and calculate the number and placement of all necessary personnel, equipment, and the costs associated with these, including hourly rates, and submit this information to the contracting unit.

The contracting unit shall not be responsible for additional traffic control costs beyond the number of working days specified in the construction contract in accordance with section 17 of P.L.1971, c.198 (C.40A:11-17), when such a delay is caused by the contractor and liquidated damages have been assessed.

The statement prescribed under this subsection shall not be required if the contracting unit will provide for the direct payment of uniformed law enforcement officers and any additional costs directly associated with the provision of those officers; and

d. at the option of the contracting unit, specified alternate proposals in addition to a base specification. When the contracting unit specifies alternate proposals, the determination of which bidder's response to a request for bids offers the lowest price shall be made on the basis of the price of: (i) the base specification plus the price of any selected specified alternate proposals; or (ii) a choice of specified alternative proposals within the limit of funds that may be made available for a project. If a contracting unit provides for more than one specified alternate proposal, the contracting unit shall specify in the bid specification the criteria or ranked order by which specified alternate proposals shall be selected and included in the award of the contract by the governing body, provided that this requirement shall only apply to a project with a total estimated cost, including specified alternate proposals, of greater than \$500,000. The aggregate dollar value of accepted specified alternative proposals shall not exceed 50 percent of the base bid. If a contracting unit is found in a court of law to have chosen specific alternative proposals in a manner intended to award a contract to a specific vendor, the bids shall be voided, the contracting unit shall rebid the project, and a plaintiff who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

For the purposes of this subsection:

"Specified alternate proposal" means a requirement of the bid specification for bidders to submit prices for reduced, modified or supplemental work in addition to the base proposal which may include, but not be limited to, a change in project scope or the use of alternative materials or methods of construction;

"Base specification" means the plans and specifications for the erection, alteration or repair of the building, structure, facility or other improvement to real property that are required to be met by all bidders without exception.

L.1999, c. 39, s. 1; amended 2006, c. 9.

40A:11-23.2. Required mandatory items for bid plans, specification

When required by the bid plans and specifications, the following requirements shall be considered mandatory items to be submitted at the time specified by the contracting unit for the receipt of the bids; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the bid proposal unresponsive and that cannot be cured by the governing body:

- a. A guarantee to accompany the bid pursuant to section 21 of P.L.1971, c.198 (C.40A:11-21);
- b. A certificate from a surety company pursuant to section 22 of P.L.1971, c.198 (C.40A:11-22);
- c. A statement of corporate ownership pursuant to section 1 of P.L.1977, c.33 (C.52:25-24.2);
- d. A listing of subcontractors pursuant to section 16 of P.L.1971, c.198 (C.40A:11-16);
- e. 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; and
- f. (Deleted by amendment, P.L.2009, c. .)

L.1999, c. 39, s. 2; amended 2004, c. 57, s. 1.

40A:11-24. Time for making awards; deposits returned

a. The contracting unit shall award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than 60 days, except that the bids of any bidders who consent thereto may, at the request of the contracting unit, be held for consideration

for such longer period as may be agreed. All bid security, except the security of the three apparent lowest responsible bidders, shall be returned, unless otherwise requested by the bidder, within 10 days after the opening of the bids, Sundays and holidays excepted, and the bids of such bidders shall be considered as withdrawn. Within three days, Sundays and holidays excepted, after the awarding and signing of the contract and the approval of the contractor's performance bond, the bid security of the remaining unsuccessful bidders shall be returned to them.

b. The contract shall be signed by all parties within the time limit set forth in the specifications, which shall not exceed 21 days, Sundays and holidays excepted, after the making of the award; provided, however, that all parties to the contract may agree to extend the limit set forth in the specifications beyond the 21 day limit required in this subsection. The contractor, upon written request to the contracting unit, is entitled to receive, within seven days of the request, an authorization to proceed pursuant to the terms of the contract on the date set forth in the contract for work to commence, or, if no date is set forth in the contract, upon receipt of authorization. If for any reason the contract is not awarded and the bidders have paid for or paid a deposit for the plans and specifications to the contracting unit, the payment or deposit shall immediately be returned to the bidders when the plans and specifications are returned in reasonable condition within 90 days of notice that the contract has not been awarded.

L.1971, c. 198, s. 24; amended by L. 1975, c. 353, s. 14; 1977, c. 53, s. 8; 1983, c. 175; 1987, c. 48, s. 2.

40A:11-25. General power to provide qualification for bidders

The governing body of any contracting unit may establish reasonable regulations appropriate for controlling the qualifications of prospective bidders upon contracts to be awarded on behalf of the contracting unit, by the class or category of goods or services to be provided or performed, which may fix the qualifications required according to the financial ability and experience of the bidders and the capital and equipment available to them pertinent to and reasonably related to the class or category of goods or services to be provided or performed in the performance of any such contract, and may require each bidder to furnish a statement thereof; and if such governing body is not satisfied with the qualifications of any bidder as founded upon such statement, it may refuse to furnish the bidder with any plans or specifications for any public contract or consider any bid made by the bidder for any contract.

Prior to the adoption of any such regulations, a contracting unit shall submit them to a public hearing. Notice of the hearing and a general description of the subject matter of the regulations to be adopted shall be published in not less than two newspapers circulating in the county or municipality in which the contracting unit is located. Publication shall precede by at least 20 days the date set in the notice for the hearing. The clerk or secretary of the governing body of the contracting unit shall keep a record of the proceedings and of the testimony of any citizen or prospective bidder. Within 10 days after the completion of the hearings, the proposed regulations and a true copy of the hearings shall be forwarded to the Director of the Division of Local Government Services for the director's approval. This approval shall be indicated by a letter from the director to the governing body of the contracting unit. If the director fails to approve or disapprove the regulations within 30 days of their receipt by the director, they shall take effect without the director's approval. The director may disapprove such proposed regulations only if the director finds that:

- (a) They are written in a manner which will unnecessarily discourage full, free and open competition; or
- (b) They unnecessarily restrict the participation of small businesses in the public bidding process; or
- (c) They create undue preferences; or

(d) They violate any other provision of this act, or any other law.

If the director disapproves such proposed regulations within the 30-day period prescribed, they shall be of no force and effect and may not be required as a condition to the acceptance of a bid on any public contract by the contracting unit. Any appeal from a decision of the director to the Local Finance Board shall be subject to the provisions of the "Local Government Supervision Act (1947)", P.L.1947, c.151 (C.52:27BB-1 et seq.).

No qualification rating of any bidder shall be influenced by the bidder's race, religion, sex, national origin, nationality or place of residence or business.

Nothing contained in this act shall limit the right of any court to review a refusal to furnish any such plans or specifications or to consider any bid on any contract advertised.

Any such governing body may adopt a standard form of statement or questionnaire for bidders on public works contracts, and in such case their action shall be governed as provided herein.

L.1971, c. 198, s. 25; amended 1999, c. 440, s. 32.

40A:11-26. Standard questionnaire; effect of unsatisfactory answers

The governing body of any contracting unit may adopt a standard form of statement or questionnaire for bidders and may require from any person proposing to bid upon any such contract a statement or answers showing the bidder's financial ability and experience in performing public sector work and describing the equipment available to such bidder in the performance of such contract, and if not satisfied with the sufficiency of this statement or answers may refuse to furnish plans and specifications to the bidder.

L.1971, c. 198, s. 26; amended 1999, c. 440, s. 33.

40A:11-27. Standard statements and questionnaires; prospective bidders; responses

Such statements and questionnaires shall be standardized for like classes of goods or services to be submitted to prospective bidders who may be required to respond to questions under oath. The statement or answer shall disclose fully the financial ability, adequacy of plant and equipment, organization and prior experience of the prospective bidder, and such other pertinent and material facts as may be required.

L.1971, c. 198, s. 27; amended 1999, c. 440, s. 34.

40A:11-28. Classification of prospective bidders; notice

Prospective bidders shall be classified as to the character and amount of goods or services contracts as to which they shall be qualified to submit bids, and bids shall be accepted only from persons so qualified. The classification shall be made and an immediate notice thereof shall be sent to the prospective bidders by certified or registered mail within eight days after the date of receipt of the responsive statement or answers.

L.1971, c. 198, s. 28; amended 1999, c. 440, s. 35.

40A:11-29. Reclassification of prospective bidders; request for; time limit

If any person, after being notified of a classification, shall be dissatisfied therewith or with the classification of other bidders, that person may request in writing a hearing before such governing body, and may present such further evidence with respect to the financial responsibility, organization, plant and equipment, or experience of that person or other prospective bidders as might tend to justify a different classification.

Where a request is made for the change of classification of another prospective bidder, the applicant therefor shall notify such other bidder by certified or registered mail of the time and place

of hearing, as fixed by the governing body, and at the hearing shall present satisfactory evidence that the notice was served as herein required, before any matters pertaining to a change of classification of such other bidder shall be taken up. After hearing such evidence the governing body may, in its discretion, by appropriate action, change or retain the classification of any bidder.

No change in classification to be effective for any contract where bidding therefor has been duly advertised, shall be made unless the written request therefor shall have been received at least 20 days before the final day for submission of bids.

All requests for change in classification and notice of any action sent by certified or registered mail to the parties directly affected thereby, shall be acted upon by the governing body concerned at least eight days prior to the date fixed for the next opening of bids on any contract or contracts for which such persons might be qualified to bid as a result of the reclassification.

L.1971, c. 198, s. 29; amended 1999, c. 440, s. 36.

40A:11-30. Board of review upon classification; membership, et cetera

There is hereby established a board of review upon classification and reclassification of prospective bidders. This board shall consist of one member of the governing body of the contracting unit concerned and two citizens of the county or municipality to be designated by such governing body. In all counties having a county supervisor, he shall be a member of the board of review instead of one of the citizens. The clerk of the contracting unit shall be the secretary of the board of review and shall keep a complete record of its proceedings and decisions. The members of the board shall serve without compensation.

L.1971, c. 198, s. 30, eff. July 1, 1971.

40A:11-31. Reconsideration by board of review; request for; time limit

Any prospective bidder who is dissatisfied with an original classification or reclassification may upon receipt of notice thereof, request in writing a hearing of the matter before the board of review. The request shall be filed with the contracting agent and the secretary of the board.

The board shall hold a hearing at which the prospective bidder shall be entitled to be heard and to submit additional information.

The board shall review the responsibility of all prospective bidders who have filed statements or answers, considering both the statement, answers and any additional information given at the hearing, and shall certify to the contracting unit concerned, its decision as to the original classifications or reclassifications, if any. The decisions shall be made by a majority vote.

In order for any change in classification by the board to be effective for a contract previously advertised, the request shall be filed not less than five days prior to the final day for submission of bids, and the board shall hold a hearing and act upon the request not less than two days prior to the date fixed for the next opening of bids on any public works contract for which such prospective bidders might be qualified to bid as a result of the reclassification.

L.1971, c. 198, s. 31; amended 1999, c. 440, s. 37.

40A:11-32. Rejection of bids after qualification of bidder; hearing

Nothing herein contained shall be construed as depriving any governing body of the right to reject a bid at any time prior to the actual award of a contract, where the circumstances of the prospective bidder have changed subsequent to the qualification and classification of the bidder, which in the opinion of the awarding contracting unit would adversely affect the responsibility of the bidder. Before taking final action on any such bid, the contracting agent concerned shall notify the bidder and afford the bidder an opportunity to present any additional information which might tend to sustain the existing classification.

No person shall be qualified to bid on any contract unless that person shall have submitted a statement or answers as herein required within a period of six months preceding the date of opening of bids for the contract, if the bidders thereon are required to be classified hereunder. In any case where the contracting unit shall require classification of the bidders in compliance with these sections, each bidder on any contract shall be required to submit a statement listing the changes in the statement or answers herein required as part of the bidder's bid submission.

L.1971, c. 198, s. 32; amended 1999, c. 440, s. 38.

40A:11-33. Forfeiture of deposit in certain cases

A deposit made by any person who makes or causes to be made a false, deceptive or fraudulent statement or answers in response to a questionnaire or in the course of a hearing hereunder may be caused to be forfeited, as liquidated damages by and to the contracting unit.

L.1971, c. 198, s. 33, eff. July 1, 1971.

40A:11-34. Penalties for false statements

Any person who makes or causes to be made, a false, deceptive or fraudulent statement in the statement or answers in response to the questionnaire, or in the course of any hearing hereunder, shall be guilty of a misdemeanor, and upon conviction shall be punishable by a fine of not less than \$100.00 nor more than \$1,000.00, and shall be permanently disqualified from bidding on all public work or contracts of the contracting unit which submitted the questionnaire; or, in the case of an individual or an officer or employee charged with the duty of responding to the questionnaire for a person, firm, copartnership, association or corporation, by such fine or by imprisonment, not exceeding 6 months, or both.

L.1971, c. 198, s. 34, eff. July 1, 1971.

40A:11-35. Indemnity agreements; Federal projects for benefit of municipality

Any contracting unit may enter into an agreement indemnifying the United States of America, or any board, body, officer or agency thereof, from loss or damage to the property of others resulting from the furtherance of any project, undertaken or to be undertaken by the Federal Government for the benefit of such contracting unit where the cost or any part thereof is to be paid out of Federal funds.

L.1971, c. 198, s. 35, eff. July 1, 1971.

40A:11-36. Sale or other disposition of personal property

Any contracting unit by resolution of its governing body may authorize by sealed bid or public auction the sale of its personal property not needed for public use.

- (1) If the estimated fair value of the property to be sold exceeds 15 percent of the bid threshold in any one sale and it is neither livestock nor perishable goods, it shall be sold at public sale to the highest bidder.
- (2) The contracting unit need not advertise for bids when it makes any such sale to the United States, the State of New Jersey, another contracting unit, any body politic to which it contributes tax raised funds, any foreign nation which has diplomatic relations with the United States, or any governmental unit in the United States.
- (3) Notice of the date, time and place of the public sale together with a description of the items to be sold and the conditions of sale shall be published in an official newspaper. Such sale shall be held not less than seven nor more than 14 days after the latest publication of the notice thereof.

(4) If no bids are received the property may then be sold at private sale without further publication or notice thereof, but in no event at less than the estimated fair value; or the contracting unit may if it so elects reoffer the property at public sale. As used herein, "estimated fair value" means the market value of the property between a willing seller and a willing buyer less the cost to the contracting unit to continue storage or maintenance of any personal property not needed for public use to be sold pursuant to this section.

(5) A contracting unit may reject all bids if it determines such rejection to be in the public interest. In any case in which the contracting unit has rejected all bids, it may readvertise such personal property for a subsequent public sale. If it elects to reject all bids at a second public sale, pursuant to this section, it may then sell such personal property without further publication or notice thereof at private sale, provided that in no event shall the negotiated price at private sale be less than the highest price of any bid rejected at the preceding two public sales and provided further that in no event shall the terms or conditions of sale be changed or amended.

(6) If the estimated fair value of the property to be sold does not exceed the applicable bid threshold in any one sale or is either livestock or perishable goods, it may be sold at private sale without advertising for bids.

(7) Notwithstanding the provisions of this section, by resolution of the governing body, a contracting agent may include the sale of personal property no longer needed for public use as part of specifications to offset the price of a new purchase.

L.1971, c. 198, s. 36; amended 1999, c. 440, s. 39.

40A:11-37. Division of Local Government Services to assist contracting units

The Division of Local Government Services in the Department of Community Affairs is hereby authorized to assist contracting units in all matters affecting the administration of this law.

L.1971, c. 198, s. 37; amended 1999, c. 440, s. 40.

40A:11-37.1. Rules

Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the Division of Local Government Services after consultation with the Commissioner of Education may adopt rules implementing the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.

L.1999, c. 440, s. 44.

40A:11-38. Statutes repealed

The following sections, chapter and acts, together with all amendments and supplements thereto, are hereby repealed:

Chapter 25 of Title 40 of the Revised Statutes;

Sections 40:9-3; 40:15-1; 40:50-1 to 40:50-5 inclusive and 40:50-7, of the Revised Statutes;

Laws of 1943, c. 198 (C. 40:50-5.1 to C. 40:50-5.4 inclusive);

Laws of 1945, c. 158 (C. 40:50-5.5);

Laws of 1945, c. 160 (C. 40:50-5.6);

Laws of 1949, c. 67 (C. 40:50-8);

Laws of 1962, c. 168 (C. 40:50-5.7);

Laws of 1953, c. 395 (C. 40:25-1.1);

Laws of 1964, c. 245 (C. 40:50-7.1 to C. 40:50-7.3 inclusive);

Laws of 1967, c. 228 (C. 40:23-6.34 to C. 40:23-6.37 inclusive);

L.1969, c. 104, s. 1 (C. 40:25-4.5).

L.1971, c. 198, s. 38, eff. July 1, 1971.

40A:11-39. Effective date

This act shall take effect July 1, 1971 but any action, purchase, sale, contract or agreement taken, made or entered into prior to this date pursuant to any of the acts, amendments and supplements hereby repealed are hereby validated and confirmed, provided that in no event shall a lease entered into prior to the effective date of this act be renewed or extended, except in accordance with the terms and provisions of this act.

L.1971, c. 198, s. 39, eff. July 1, 1971.

40A:11-40. Authorization to purchase specific materials at auction; procedure

Notwithstanding any provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to the contrary, the governing body may by resolution authorize the purchasing agent of the contracting unit to purchase specific materials at auction for a price not to exceed 85% of the price of equivalent materials as determined pursuant to this section. Such resolution shall be adopted at least 10 days prior to the auction and shall be filed with the Director of the Division of Local Government Services within 3 days of its adoption. Any such auction shall be open to any person to attend and bid on such materials, shall be conducted pursuant to N.J.S.12A:2-328, and shall be conducted by a licensed auctioneer. Prior to adoption of the resolution, the purchasing agent shall solicit at least three written quotations of prices for which new materials equivalent to those to be purchased at auction were actually sold within the previous year. The lowest of the three prices so quoted shall be the determining price quotation for the authorization to purchase at auction for a price not to exceed 85% thereof. The authorizing resolution adopted by the governing body shall set forth the three price quotations so quoted and the sources thereof, and shall state that the expenditure of money for the purchase is not made in violation of N.J.S.40A:4-57, and has been properly certified by the chief finance officer of the local unit.

Any purchasing agent who shall purchase materials at auction pursuant to this section shall, within 14 days of the occurrence of such auction, file a report with the clerk of the governing body and the director, setting forth: the nature, quantity and price of the materials so purchased; the three price quotations solicited prior to such auction, and the sources thereof; and, the name and license number of the auctioneer who conducted such auction.

L.1979, c. 222, s. 1; amended 1994, c. 114, s. 10.

40A:11-41. Definitions

As used in this act:

- a. "County or municipal contracting agency" shall mean the governing body of a county or municipality or any department, board, commission, committee, authority or agency of a county or municipality but shall not include school districts;
- b. "Minority group members" shall mean persons who are black, Hispanic, Portuguese, Asian-American, American Indian or Alaskan natives;

c. "Qualified women's business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by women and is qualified pursuant to section 25 of P.L. 1971, c. 198 (C. 40A:11-25);

d. "Qualified minority business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by minority group members and is qualified pursuant to section 25 of P.L. 1971, c. 198 (C. 40A:11-25);

e. "Qualified small business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated and meets all other qualifications as may be established in accordance with P.L. 1981, c. 283 (C. 52:27H-21.1 et seq.);

f. "Set-aside contracts" shall mean (1) a contract for goods, equipment, construction, or services which is designated as a contract for which bids are invited and accepted only from qualified small business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, (2) a portion of a contract when that portion has been so designated, or (3) any other purchase or procurement so designated; and

g. "Total procurements" shall mean all purchases, contracts or acquisitions of a county or municipal contracting agency, whether by competitive bidding, single source contracting, or other method of procurement, as prescribed or permitted by law.

L. 1985, c. 482, s. 1, eff. Jan. 17, 1986.

40A:11-42. Set-aside programs authorized

a. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified minority business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified minority business enterprises.

b. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified women's business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified women's business enterprises.

c. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified small business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified small business enterprises.

L. 1985, c. 482, s. 2, eff. Jan. 17, 1986.

40A:11-43. Attainment of goals

a. Any goal established pursuant to section 2 of this act may be attained by requiring that a portion of a contract be subcontracted to a qualified small business enterprise, qualified minority business enterprise or qualified women's business enterprise, in addition to designating entire contracts to these enterprises.

b. Each contracting agency shall make a good faith effort to attain any goal established by its governing body. The governing body shall evaluate each contracting agency's efforts by comparing the percentage of the dollar value of a contracting agency's total procurements awarded to qualified

small business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, to the percentage of the dollar value of the county's or municipality's total procurements awarded to qualified small business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate.

L. 1985, c. 482, s. 3, eff. Jan. 17, 1986.

40A:11-44. "Local Public Contracts Law" applicable

All provisions of the "Local Public Contracts Law," P.L. 1971, c. 198 (C. 40A:11-1 et seq.) and any supplements thereto, shall apply to purchases, contracts and agreements made pursuant to this act unless otherwise superseded by the provisions of this act.

L. 1985, c. 482, s. 4, eff. Jan. 17, 1986.

40A:11-45. Designation as set-aside

Notwithstanding the provisions of any law to the contrary, a contracting agency of a county or municipality which has established a qualified small business enterprise set-aside program, a qualified minority business enterprise set-aside program or a qualified women's business enterprise set-aside program shall designate that a contract, subcontract or other means of procurement of goods, services, equipment, or construction be awarded to a qualified small business enterprise, a qualified minority business enterprise or a qualified women's business enterprise, if a contracting agency is likely to receive bids from at least two qualified small business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, at a fair and reasonable price.

Such designations shall be made prior to any advertisement for bids, if required. Once designated, the advertisement for bids, if necessary, shall indicate that the contract to be awarded is a qualified small business enterprise set-aside contract, a qualified minority business enterprise set-aside contract or a qualified women's business enterprise set-aside contract, as appropriate. All advertisements for bids shall be published in at least one newspaper which will best provide notice thereof to qualified small business enterprises, qualified minority business enterprises or to qualified women's business enterprises, as appropriate, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but shall not be published less than 10 days prior to that date.

L. 1985, c. 482, s. 5, eff. Jan. 17, 1986.

40A:11-46. Set-aside cancellation

a. If the contracting agency determines that two bids from qualified small, qualified minority or qualified women's businesses cannot be obtained, the contracting agency may withdraw the designation of the set-aside contract and resolicit bids on an unrestricted basis pursuant to the provisions of P.L. 1971, c. 198 (C. 40A:11-1 et seq.). The cancelled designation shall not be considered in determining the percentage of contracts awarded pursuant to subsection b. of section 3 of this act.

b. If the contracting agency determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the contracting agency shall reject all bids and withdraw the designation of the set-aside contract. Qualified small business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, shall be notified in writing of the set-aside cancellation, the reasons for the rejection and the agency's intent to resolicit bids on an unrestricted basis pursuant to the provisions of P.L. 1971, c. 198 (C. 40A:11-1 et seq.). The cancelled bid solicitation shall not be considered in determining the percentage of contracts awarded pursuant to subsection b. of section 3 of this act.

L. 1985, c. 482, s. 6, eff. Jan. 17, 1986.

40A:11-47. False information; penalties

Where the governing body of a county or municipality determines that a business has been classified as a qualified small business enterprise, qualified minority business enterprise or qualified women's business enterprise on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this act, the governing body shall have the authority to:

- a. Assess against the business any difference between the contract and what the governing body's cost would have been if the contract had not been awarded in accordance with the provisions of this act;
- b. In addition to the amount due under subsection a., assess against the business a penalty in an amount of not more than 10% of the amount of the contract involved; and
- c. Order the business ineligible to transact any business with the governing body or contracting agency of the governing body for a period to be determined by the governing body.

Prior to any final determination, assessment or order under this section, the governing body shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalties set forth in subsection a., b. or c. of this section.

L. 1985, c. 482, s. 7, eff. Jan. 17, 1986.

40A:11-48. Annual agency report

Each contracting agency of a county or municipality which has established a qualified small business enterprise set-aside program, a qualified minority business enterprise set-aside program or a qualified women's business enterprise set-aside program shall submit a report to its governing body by January 31 of each year describing the agency's efforts in attaining the set-aside goals and the percentage of the dollar value of total procurements awarded pursuant to subsection b. of section 3 of this act. The governing body shall publish a list of each agency's attainments in the immediately preceding local fiscal year, to include the county or municipal average, in at least one newspaper circulating in the county or municipality, as appropriate, by March 1 of each year.

L. 1985, c. 482, s. 8, eff. Jan. 17, 1986.

40A:11-49. Rules, regulations

The Director of the Division of Local Government Services in the Department of Community Affairs may adopt rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) as he may deem necessary to effectuate the purposes of this act.

L. 1985, c. 482, s. 9, eff. Jan. 17, 1986.

40A:11-50. Process of resolution for construction contract disputes

All construction contract documents entered into in accordance with the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) after the effective date of P.L.1997, c.371 (C.40A:11-50) shall provide that disputes arising under the contract shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication. Nothing in this section shall prevent the contracting unit from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction

relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator or person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the arbitrator or person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

For the purposes of this section, the term "construction contract" means a contract involving construction, or a contract related thereto concerning architecture, engineering or construction management.

L.1997, c. 371.

40A:11-51. Limitations on awarding public contracts to entities that made political contributions; authority of local units, nonpreemption by State law

a. A county, municipality, independent authority, board of education, or fire district is hereby authorized to establish by ordinance, resolution or regulation, as may be appropriate, measures limiting the awarding of public contracts therefrom to business entities that have made a contribution pursuant to P.L.1973, c.83 (C.19:44A-1 et seq.) and limiting the contributions that the holders of a contract can make during the term of a contract, notwithstanding the provisions and parameters of sections 1 through 12 of P.L.2004, c.19 (C.19:44A-20.2 et al.) and section 22 of P.L.1973, c.83 (C.19:44A-22).

b. The provisions of P.L.2004, c.19 shall not be construed to supersede or preempt any ordinance, resolution or regulation of a unit of local government that limits political contributions by business entities performing or seeking to perform government contracts. Any ordinance, resolution or regulation in effect on the effective date of P.L.2004, c.19 shall remain in effect and those adopted after that effective date shall be valid and enforceable.

c. An ordinance, resolution or regulation adopted or promulgated as provided in this section shall be filed with the Secretary of State.

L.2005, c. 271, s. 1.

Local Public Contract Law
Qualified Purchasing Agent Amendments - P.L.2009, c.166
Effective January 1, 2011

The underlined text in the following sections amends the current law and takes effect January 1, 2011.

40A:11-2. Definitions

As used herein the following words have the following definitions, unless the context otherwise indicates:

(No Changes; 1-29)

(30) "Purchasing agent" means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity of the contracting unit, and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) and who possesses a qualified purchasing agent certificate.

(No Changes; 31-40)

(41) "Qualified purchasing agent certificate" means a certificate granted by the director pursuant to section 9 of P.L.1971, c.198 (C.40A:11-9).

40A:11-3. Bid threshold; period of contracts

a. When the cost or price of any contract awarded by the contracting agent in the aggregate does not exceed in a contract year the total sum of \$17,500 the contract may be awarded by a purchasing agent or other employee so designated by the governing body when so authorized by ordinance or resolution, as appropriate to the contracting unit, without public advertising for bids, except that the governing body of any contracting unit may adopt an ordinance or resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. If a purchasing agent has been appointed, the governing body of the contracting unit may establish that the bid threshold may be up to \$25,000 or the threshold amount adjusted by the Governor pursuant to subsection c. of this section. Such authorization may be granted for each contract or by a general delegation of the power to negotiate and award such contracts pursuant to this section.

b. Any contract made pursuant to this section may be awarded for a period of 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a period not exceeding 12 consecutive months. The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the contracting unit's fiscal year.

c. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of every fifth year beginning in the fifth year after the year in which P.L.1999, c.440 takes effect, adjust the threshold amount, in direct proportion to the rise or fall of the index rate as that term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to the nearest \$1,000. The Governor shall, no later than June 1 of every fifth year, notify each governing body of the adjustment. The adjustment shall become effective on July 1 of the year in which it is made.

40A:11-9. Purchasing agent, department or board; establishment; powers; criteria for authorization; "green product" defined

a. The governing body of any contracting unit may by ordinance, in the case of a municipality, by ordinance or resolution, as the case may be, in the case of a county, or by resolution in all other cases, designate an individual to serve as the contracting unit's purchasing agent. The individual designated as the purchasing agent pursuant to this subsection shall be assigned the authority, responsibility, and accountability for the purchasing activity for the contracting unit, to prepare public advertising for bids and to receive bids for the provision or performance of goods or services on behalf of the contracting unit and to award contracts permitted pursuant to subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) in the name of the contracting unit, and conduct any activities as may be necessary or appropriate to the purchasing function of the contracting unit as its contracting agent. The individual designated to serve as the purchasing agent of a contracting unit pursuant to this subsection shall possess a qualified purchasing agent certificate pursuant to this section. The individual designated as the purchasing agent pursuant to this subsection may be a part-time or full-time employee of the contracting unit, an independent contractor, or an individual employed by another contracting unit through a shared services agreement.

b. The Director of the Division of Local Government Services, after consultation with the Commissioner of Education, shall establish criteria to qualify individuals who have completed appropriate training and possess such purchasing experience as deemed necessary to serve as a purchasing agent, and, when determined to be necessary by the director, have passed an examination administered by the director pursuant to this section. The criteria established by the director shall include, but are not limited to, the following:

(1) is a citizen of the United States;

(2) is of good moral character;

(3) is a high school graduate or equivalent;

(4) has at least two years of higher education, and two years of full time governmental experience performing duties relative to those of public procurement provided, however, that additional years of experience may be substituted for years of higher education, on a one to one basis;

(5) has successfully received certificates indicating satisfactory completion of a series of training courses in public procurement as determined by the director and provided by either the Division of Local Government Services, or, with the approval of the director, by a county college or Rutgers, The State University of New Jersey, all under the supervision of instructors who meet criteria established by the director;

(6) has submitted completed application forms, including proof of education and experience, as set forth in this subsection, accompanied by a fee in the amount of \$150 payable to the State Treasurer, to the Director of the Division of Local Government Services at least 30 days prior to the administration of a State examination;

(7) has successfully passed a State examination for a qualified purchasing agent certificate. The director shall hold examinations semi-annually or at such times as the director may deem appropriate. An individual shall be eligible to take the State examination for a qualified purchasing agent without having taken the courses required pursuant to paragraph (5) of this subsection if the individual has been certified by the division as a certified municipal finance officer, a certified county finance officer, or a certified county purchasing officer.

The director shall issue a qualified purchasing agent certificate to an individual who passes the examination upon payment to the director of a fee of \$25 which shall be payable to the State Treasurer.

c. The criteria established by the director to authorize purchasing agents, pursuant to subsection b. of this section, shall include, but are not limited to, completion of a course in green product purchasing, as established by the director pursuant to regulation. Any person qualified pursuant to subsection b. of this section prior to the establishment of the course in green product purchasing, shall in order to continue to be qualified, take and successfully complete the course within four years from the date the course is established. For the purposes of this subsection and section 2 of P.L.2007, c.332 (C.40A:11-9.1), "green product" means any commodity or service that has a lesser or reduced negative effect on human health and the environment when compared with competing commodities or services. Items considered in this comparison may include, but are not limited to: raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, recycled content resource use, transportation, and durability.

d. (1) Renewal of the qualified purchasing agent certification shall be required every three years, subject to the applicant's fulfillment of continuing education requirements, the submission of an application for renewal, and the payment of a renewal fee, all as determined by the director.

(2) In the event that an individual holding a qualified purchasing agent certificate allows the certificate to lapse by failing to renew the certificate, the individual shall be required to apply to take the qualifying examination required pursuant to subsection b. of this section and pay a fee as determined by the director, except that when an individual applies within six months of the expiration of the certificate, the application may be made in the same manner as renewal.

e. (1) An individual who obtained a qualified purchasing agent certificate prior to enactment of P.L.2009, c.166 (C.40A:11-1 et seq.) shall be exempt from taking the State qualifying examination, but shall adhere to all requirements for renewal pursuant to subsection d. of this section. If such a qualified purchasing agent certificate expires due to the failure of the holder to renew the certificate as prescribed in subsection d. of this section, that individual shall be required to pass the qualifying examination as provided pursuant to subsection b. of this section in order to be issued a new qualified purchasing agent certificate.

(2) An individual who has been certified by the Department of Education as a school business administrator and has performed duties relative to public procurement for at least three years shall be exempt from taking the courses required pursuant to paragraph (5) of subsection b. of this section and the state qualifying examination, and upon application to the director and the payment of the fee imposed pursuant to subsection b. of this section, shall be issued a qualified purchasing agent certificate.

f. Those persons who have been performing the duties of a purchasing agent for a contracting unit pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.), or school board pursuant to P.L.1977, c.114 (C.18A:18A-1 et seq.) for at least three continuous years, prior to the first day of the sixth month following the promulgation of rules and regulations to effectuate the purposes of P.L.2009, c.166 (C.40A:11-1 et seq.), and did not possess a qualified purchasing agent certificate at that time, may take the State qualifying examination, if not otherwise exempt under subsection e. of this section, without the courses required in subsection b. of this section.

g. Following the appointment of a purchasing agent for a contracting unit pursuant to subsection a. of this section, if the person appointed no longer performs such duties, the governing body or chief executive officer, as appropriate to the form of government, may appoint, for a period not to exceed one year commencing from the date of the vacancy, a person who does not possess a qualified purchasing agent certificate to serve as a temporary purchasing agent. Any person so appointed may, with the approval of the director, be reappointed as a temporary purchasing agent for a maximum of one additional year following the end of the first temporary appointment. No contracting unit shall employ a temporary purchasing agent for more than two consecutive years.

h. The director may revoke or suspend a qualified purchasing agent certificate for dishonest practices or willful or intentional failure, neglect, or refusal to comply with the laws relating to procurement, or for other good cause. The governing body, together with the chief executive officer of any contracting unit, or a board of education, may request the director to review the behavior or practices of a person holding a qualified purchasing agent certificate. Prior to taking any adverse action against a person, the director or the director's designee shall convene a hearing, upon due notice, affording the person an opportunity to be heard. If the qualified purchasing agent certificate held by a person serving as a purchasing agent is revoked, the director shall order that person to no longer perform the duties of purchasing agent, and the person shall not be eligible to serve as a purchasing agent or to make application for recertification for a period of five years from the date of revocation.

i. The director may adopt and promulgate rules and regulations to effectuate the purposes of this act. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, any such regulations shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 365 days and may thereafter be amended, adopted or readopted by the director in accordance with the requirements of P.L.1968, c.410. In order to better manage the workload of implementing the provisions of this act, the director may establish a transition process for administering an examination for individuals serving as purchasing agents on the effective date of this act, issuing and renewing qualified purchasing agent certificates to eligible individuals, prescribing a schedule by which such certificates will be issued and renewed, and such other matters as the director determines to be necessary to the implementation of this act."

40A:11-9(a). Current purchasing agent, lower bid threshold

An individual who is the duly authorized purchasing agent of a contracting unit and does not possess a qualified purchasing agent certificate on the date of enactment of P.L.2009, c.166 may continue to be referred to as the purchasing agent, but the bid threshold for that contracting unit shall be set at \$17,500 until such time as that individual obtains a qualified purchasing agent certificate. A contracting unit exercising this authority shall file a letter to this effect with the director.

40A:9-140.1. Definitions

As used in this act:

- a. "Director" means the Director of the Division of Local Government Services.
- b. "Municipal finance officer" means a municipal director of finance, assistant director of finance, fiscal officer, municipal comptroller, assistant comptroller, municipal treasurer, assistant municipal treasurer or deputy treasurer who is not a member of the governing body of a municipality.
- c. "Local unit" means a municipality or a utility owned by a single municipality or owned jointly by one or more municipalities, which together do not comprise a county.
- d. "Chief financial officer" means the official appointed pursuant to section 5 of P.L.1988, c.110 (C.40A:9-140.10) to be responsible for the proper financial administration of the municipality under the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.); the "Local Bond Law," (N.J.S.40A:2-1 et seq.); the "Local Budget Law," (N.J.S.40A:4-1 et seq.); the "Local Fiscal Affairs Law," (N.J.S.40A:5-1 et seq.); and the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) in those municipalities that have not appointed a purchasing agent pursuant to that law; and such other statutes, and such rules and regulations promulgated by the Director of the Division of Local Government Services, the Local Finance Board, or any other State agency, as may pertain to the financial administration of the municipality.

Appendix A**Table of Local Public Contract Law Bid Thresholds****N.J.S.A. 40A:11-3(a) and (c)**

Bid Threshold	As of April 17, 2000	As of July 1, 2005
"Lower" Bid Threshold	\$17,500	\$21,000
15% of Lower Bid Threshold (Quotation limit)	\$2,625	\$3,150
"Higher" Bid Threshold	\$25,000	\$29,000
15% of Higher Bid Threshold (Quotation limit)	\$3,750	\$4,350