

# ASSEMBLY, No. 3997

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 30, 2016

**Sponsored by:**

**Assemblywoman SHEILA Y. OLIVER**

**District 34 (Essex and Passaic)**

**Assemblyman RALPH R. CAPUTO**

**District 28 (Essex)**

**Co-Sponsored by:**

**Assemblyman Giblin**

**SYNOPSIS**

Modifies process for advertising, bidding, and awarding local public contracts.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning local public contracts, amending various parts  
2 of the statutory law, and repealing sections 1 through 9 of  
3 P.L.1985, c.482.

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

7  
8 1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read  
9 as follows:

10 2. As used herein the following words have the following  
11 definitions, unless the context otherwise indicates:

12 (1) "Contracting unit" means:

13 (a) Any county; or

14 (b) Any municipality; or

15 (c) Any board, commission, committee, authority or agency,  
16 which is not a State board, commission, committee, authority,  
17 except as provided pursuant to P.L.2013, c.4, or agency, and which  
18 has administrative jurisdiction over any district other than a school  
19 district, project, or facility, included or operating in whole or in  
20 part, within the territorial boundaries of any county or municipality  
21 which exercises functions which are appropriate for the exercise by  
22 one or more units of local government, including functions  
23 exercised in relation to the administration and oversight of a  
24 tourism district located in a municipality in which authorized casino  
25 gaming occurs, and which has statutory power to make purchases  
26 and enter into contracts awarded by a contracting agent for the  
27 provision or performance of goods or services.

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

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

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

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

44 (2) "Governing body" means:

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

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

**Matter underlined thus is new matter.**

1 behalf of, a county; or

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

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

7 (3) "Contracting agent" means the governing body of a  
8 contracting unit, or appointed membership of a State authority  
9 authorized to enter into a cooperative purchasing agreement  
10 pursuant to P.L.2013, c.4, or its authorized designee, which has the  
11 power to prepare the advertisements, to advertise for and receive  
12 bids and, as permitted by this act, to make awards for the  
13 contracting unit in connection with purchases, contracts or  
14 agreements.

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

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

19 (6) "Professional services" means services rendered or  
20 performed by a person authorized by law to practice a recognized  
21 profession, whose practice is regulated by law, and the performance  
22 of which services requires knowledge of an advanced type in a field  
23 of learning, such as architecture, engineering, finance, law, or  
24 medicine, acquired by a prolonged formal course of specialized  
25 instruction and study as distinguished from general academic  
26 instruction or apprenticeship and training. **【Professional services**  
27 **may also mean services rendered in the provision or performance of**  
28 **goods or services that are original and creative in character in a**  
29 **recognized field of artistic endeavor.】**

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

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

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

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

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

47 (12) "Recycling" means any process by which materials which  
48 would otherwise become solid waste are collected, separated or

1 processed and returned to the economic mainstream in the form of  
2 raw materials or products.

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

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

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

23 (16) "Transmission" (when used in relation to electricity) means  
24 the conveyance of electricity from its point of generation to a  
25 contracting unit that purchases it on a wholesale basis for resale.

26 (17) "Disposition" means the transportation, placement, reuse,  
27 sale, donation, transfer or temporary storage of recyclable materials  
28 for all possible uses except for disposal as municipal solid waste.

29 (18) "Cooperative marketing" means the joint marketing by two  
30 or more contracting units of the source separated recyclable  
31 materials designated in a district recycling plan required pursuant to  
32 section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written  
33 cooperative agreement entered into by the participating contracting  
34 units thereof.

35 (19) "Aggregate" means the sums expended or to be expended  
36 for the provision or performance of any goods or services in  
37 connection with the same immediate purpose or task, or the  
38 furnishing of similar goods or services, during the same contract  
39 year through a contract awarded by a contracting agent.

40 (20) "Bid threshold" means the dollar amount set in section 3 of  
41 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall  
42 advertise for and receive sealed bids in accordance with procedures  
43 set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

44 (21) "Contract" means any agreement, including but not limited  
45 to a purchase order or a formal agreement, which is a legally  
46 binding relationship enforceable by law, between a vendor who  
47 agrees to provide or perform goods or services and a contracting  
48 unit which agrees to compensate a vendor, as defined by and subject  
49 to the terms and conditions of the agreement. A contract also may

1 include an arrangement whereby a vendor compensates a  
2 contracting unit for the vendor's right to perform a service, such as,  
3 but not limited to, operating a concession.

4 (22) "Contract year" means the period of 12 consecutive months  
5 following the award of a contract.

6 (23) "Competitive contracting" means the method described in  
7 sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-  
8 4.5) of contracting for specialized goods and services in which  
9 formal proposals or quotations are solicited from vendors; formal  
10 proposals or quotations are evaluated by the purchasing agent or  
11 counsel or administrator; and the governing body awards a contract  
12 to a vendor or vendors from among the formal proposals or  
13 quotations received.

14 (24) "Goods and services" or "goods or services" means any  
15 work, labor, commodities, equipment, materials, or supplies of any  
16 tangible or intangible nature, except real property or any interest  
17 therein, provided or performed through a contract awarded by a  
18 contracting agent, including goods and property subject to  
19 N.J.S.12A:2-101 et seq.

20 (25) "Library and educational goods and services" means  
21 textbooks, copyrighted materials, student produced publications and  
22 services incidental thereto, including but not limited to books,  
23 periodicals, newspapers, documents, pamphlets, photographs,  
24 reproductions, microfilms, pictorial or graphic works, musical  
25 scores, maps, charts, globes, sound recordings, slides, films,  
26 filmstrips, video and magnetic tapes, other printed or published  
27 matter and audiovisual and other materials of a similar nature,  
28 necessary binding or rebinding of library materials, and specialized  
29 computer software used as a supplement or in lieu of textbooks or  
30 reference material.

31 (26) "Lowest price" means the least possible amount that meets  
32 all requirements of the request of a contracting agent.

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

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

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

45 (30) "Purchasing agent" means the individual duly assigned the  
46 authority, responsibility, and accountability for the purchasing  
47 activity of the contracting unit, and who has such duties as are  
48 defined by an authority appropriate to the form and structure of the

1 contracting unit, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.)  
2 and who possesses a qualified purchasing agent certificate.

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

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

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

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

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

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

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

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

43 (39) "Proprietary" means goods or services of a specialized  
44 nature, that may be made or marketed by a person or persons having  
45 the exclusive right to make or sell them, when the need for such  
46 goods or services has been certified in writing by the governing  
47 body of the contracting unit to be necessary for the conduct of its  
48 affairs.

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

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

11 (42) "Mistake" means, for a public works project, a clerical error  
12 that is an unintentional and substantial computational error or an  
13 unintentional omission of a substantial quantity of labor, material,  
14 or both, from the final bid computation.  
15 (cf: P.L.2013, c.4, s.2)

16  
17 2. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read  
18 as follows:

19 3. a. When the cost or price of any contract awarded by the  
20 contracting agent in the aggregate does not exceed in a contract year  
21 the total sum of \$17,500, the contract may be awarded by a  
22 purchasing agent or other employee so designated by the governing  
23 body when so authorized by ordinance or resolution, as appropriate  
24 to the contracting unit, without public advertising for bids, except  
25 that the governing body of any contracting unit may adopt an  
26 ordinance or resolution to set a lower threshold for the receipt of  
27 public bids or the solicitation of competitive quotations. If a  
28 purchasing agent has been appointed, the governing body of the  
29 contracting unit may establish that the bid threshold may be up to  
30 \$25,000 or the threshold amount adjusted by the Governor pursuant  
31 to subsection c. of this section. Such authorization may be granted  
32 for each contract or by a general delegation of the power to  
33 negotiate and award such contracts pursuant to this section.

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

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

1 each governing body of the adjustment. The adjustment shall  
2 become effective on July 1 of the year in which it is made.

3 (cf: P.L.2009, c.166, s.2)

4

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

7 4. a. Every contract awarded by the contracting agent for the  
8 provision or performance of any goods or services, the cost of  
9 which in the aggregate exceeds the bid threshold, shall be awarded  
10 only by resolution of the governing body of the contracting unit to  
11 the lowest responsible bidder after public advertising for bids and  
12 bidding therefor, except as is provided otherwise in this act or  
13 specifically by any other law. The governing body of a contracting  
14 unit may, by resolution approved by a majority of the governing  
15 body and subject to subsections b. and c. of this section, disqualify  
16 a bidder who would otherwise be determined to be the lowest  
17 responsible bidder, if the governing body finds that it or another  
18 contracting unit has had prior negative experience with the bidder.

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

21 (1) the bidder has been found, through either court adjudication,  
22 arbitration, mediation, or other contractually stipulated alternate  
23 dispute resolution mechanism, to have: failed to provide or perform  
24 goods or services; or failed to complete the contract in a timely  
25 manner; or otherwise performed unsatisfactorily under a prior  
26 contract with **【the】** a contracting unit;

27 (2) the bidder defaulted on a contract, thereby requiring **【the】** a  
28 local unit to utilize the services of another contractor to provide the  
29 goods or perform the services or to correct or complete the contract;

30 (3) the bidder defaulted on a contract, thereby requiring **【the】** a  
31 local unit to look to the bidder's surety for completion of the  
32 contract or tender of the costs of completion; or

33 (4) the bidder is debarred or suspended from contracting with  
34 any of the agencies or departments of the executive branch of the  
35 State of New Jersey at the time of the contract award, whether or  
36 not the action was based on experience with **【the】** a contracting  
37 unit.

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

41 (1) The existence of any of the indicators of prior negative  
42 experience set forth in this section shall not require that a bidder be  
43 disqualified. In each instance, the decision to disqualify shall be  
44 made within the discretion of the governing body and shall be  
45 rendered in the best interests of the contracting unit.

46 (2) All mitigating factors shall be considered in determining the  
47 seriousness of the prior negative experience and in deciding  
48 whether disqualification is warranted.



1 (3) The bidder shall be furnished by the governing body with a  
2 written notice (a) stating that a disqualification is being considered;  
3 (b) setting forth the reason for the disqualification; and (c)  
4 indicating that the bidder shall be accorded an opportunity for a  
5 hearing before the governing body if the bidder so requests within a  
6 stated period of time. At the hearing, the bidder shall show good  
7 cause why the bidder should not be disqualified by presenting  
8 documents and testimony. If the governing body determines that  
9 good cause has not been shown by the bidder, it may vote to find  
10 the bidder lacking in responsibility and, thus, disqualified.

11 (4) Disqualification shall be for a reasonable, defined period of  
12 time which shall not exceed five years.

13 (5) A disqualification, other than a disqualification pursuant to  
14 which a governing body is prohibited by law from entering into a  
15 contract with a bidder, may be voided or the period thereof may be  
16 reduced, in the discretion of the governing body, upon the  
17 submission of a good faith application under oath, supported by  
18 documentary evidence, setting forth substantial and appropriate  
19 grounds for the granting of relief, such as reversal of a judgment, or  
20 actual change of ownership, management or control of the bidder.

21 (6) An opportunity for a hearing need not be offered to a bidder  
22 whose disqualification is based on its suspension or debarment by  
23 an agency or department of the executive branch of the State of  
24 New Jersey. The term of such a disqualification shall be concurrent  
25 with the term of the suspension or debarment by the State agency or  
26 department.

27 d. (1) Before advertising for bids, the chief financial officer or  
28 certifying finance officer, as appropriate, charged with the  
29 responsibility of maintaining the financial records of the contracting  
30 unit shall certify, in writing, to the governing body the availability,  
31 or lack thereof, of adequate funds for every contract subject to the  
32 bidding requirements of the "Local Public Contracts Law,"  
33 P.L.1971, c.198 (C.40A:11-1 et seq.).

34 (2) A contracting unit shall not issue an advertisement for bids  
35 unless the chief financial officer or certifying finance officer, as  
36 appropriate, has provided a certificate showing the availability of  
37 funds.

38 (cf: P.L.1999, c.440, s.8)

39

40 4. Section 1 of P.L.1999, c.440 (C.40A:11-4.1) is amended to  
41 read as follows:

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

47 a. The purchase or licensing of proprietary computer software  
48 designed for contracting unit purposes, which may include  
49 hardware intended for use with the proprietary software. This

1 subsection shall not be utilized for the purpose of acquiring general  
2 purpose computer hardware or software;

3 b. The hiring of a for-profit entity or a not-for-profit entity  
4 incorporated under Title 15A of the New Jersey Statutes for the  
5 purpose of:

6 (1) the operation and management of a wastewater treatment  
7 system or a water supply or distribution facility of the type  
8 described in subsection (37) of section 15 of P.L.1971, c.198  
9 (C.40A:11-15), provided that competitive contracting shall not be  
10 used as a means of awarding contracts pursuant to P.L.1985, c.37  
11 (C.58:26-1 et al.) and P.L.1985, c.72 (C.58:27-1 et al.);

12 (2) the operation, management or administration of recreation or  
13 social service facilities or programs, which shall not include the  
14 administration of benefits under the Work First New Jersey  
15 program established pursuant to P.L.1997, c.38 (C.44:10-55 et  
16 seq.), or under General Assistance; or

17 (3) the operation, management or administration of data  
18 processing services;

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

20 d. Homemaker--home health services;

21 e. Laboratory testing services;

22 f. Emergency medical services;

23 g. Contracted food services;

24 h. Performance of patient care services by contracted medical  
25 staff at county hospitals, correctional facilities and long-term care  
26 facilities;

27 i. At the option of the governing body of the contracting unit,  
28 any **[good or service that is exempt from bidding pursuant to]**  
29 **subject matter listed under** section 5 of P.L.1971, c.198 (C.40A:11-  
30 5);

31 j. Concessions;

32 k. The operation, management or administration of other  
33 services, with the approval of the Director of the Division of Local  
34 Government Services;

35 l. Maintenance, custodial, and groundskeeping services;

36 m. Consulting services;

37 n. Emergency medical billing services;

38 o. Property appraisal services;

39 p. Reassessment or revaluation services;

40 q. Grant writing services;

41 r. Animal control services.

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

46 (cf: P.L.2015, c.95, s.25)

47

48 5. Section 4 of P.L.1999, c.440 (C.40A:11-4.4) is amended to  
49 read as follows:

- 1       4. **【The】** Except for contracts concerning any subject matter  
2 listed under section 5 of P.L.1971, c.198 (C.40A:11-5), which shall  
3 utilize request for quotations, the competitive contracting process  
4 shall utilize request for proposals documentation in accordance with  
5 the following provisions:
- 6       a. The purchasing agent or counsel or administrator shall  
7 prepare or have prepared a request for proposal documentation,  
8 which shall include: all requirements deemed appropriate and  
9 necessary to allow for full and free competition between vendors,  
10 but no financial statement shall be required of vendors if either a  
11 guarantee, by certified check, cashier's check or bid bond, or a  
12 surety company certificate is also required to be furnished by the  
13 bidder, unless any law or regulation of the United States imposes a  
14 condition upon the awarding of a monetary grant to be used for the  
15 purchase, contract or agreement, which condition requires that a  
16 financial statement be submitted; information necessary for  
17 potential vendors to submit a proposal; and a methodology by  
18 which the contracting unit will evaluate and rank proposals received  
19 from vendors.
- 20       b. The methodology for the awarding of competitive contracts  
21 shall be based on an evaluation and ranking, which shall include  
22 technical, management, and cost related criteria, and may include a  
23 weighting of criteria, all developed in a way that is intended to meet  
24 the specific needs of the contracting unit, and where such criteria  
25 shall not unfairly or illegally discriminate against or exclude  
26 otherwise capable vendors. When an evaluation methodology uses  
27 a weighting of criteria, at the option of the contracting unit the  
28 weighting to be accorded to each criterion may be disclosed to  
29 vendors prior to receipt of the proposals. The methodology for  
30 awarding competitive contracts shall comply with such rules and  
31 regulations as the director may adopt, after consultation with the  
32 Commissioner of Education, pursuant to the "Administrative  
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
- 34       c. At no time during the proposal solicitation process shall the  
35 purchasing agent or counsel or administrator convey information,  
36 including price, to any potential vendor which could confer an  
37 unfair advantage upon that vendor over any other potential vendor.  
38 If a purchasing agent or counsel or administrator desires to change  
39 proposal documentation, the purchasing agent or counsel or  
40 administrator shall notify only those potential vendors who received  
41 the proposal documentation of any and all changes in writing and  
42 all existing documentation shall be changed appropriately.
- 43       d. All proposals and contracts shall be subject to the provisions  
44 of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission  
45 of a statement of corporate ownership **【and】** ; provided, however,  
46 that failure to submit a statement of corporate ownership pursuant  
47 to section 1 of P.L.1977, c.33 (C.52:25-24.2) at the time specified  
48 by the contracting unit for the receipt of bids shall constitute a  
49 waivable defect, so long as the bidder submits a statement of

1 corporate ownership before the contracting unit awards the contract.  
2 All proposals and contracts shall be subject to the provisions of  
3 P.L.1975, c.127 (C.10:5-31 et seq.) concerning equal employment  
4 opportunity and affirmative action.  
5 (cf: P.L.2014, c.52, s.2)

6  
7 6. Section 5 of P.L.1999, c.440 (C.40A:11-4.5) is amended to  
8 read as follows:

9 5. **【Competitive】** Except for contracts concerning any subject  
10 matter listed under section 5 of P.L.1971, c.198 (C.40A:11-5),  
11 which shall utilize request for quotations, competitive contracting  
12 proposals shall be solicited in the following manner:

13 a. A notice of the availability of request for proposal  
14 documentation shall be published **【in an official newspaper】** on the  
15 Internet website of the contracting unit , or on the website of the  
16 Department of Community Affairs if the contracting unit does not  
17 maintain an Internet website, at least 20 business days prior to the  
18 date established for the submission of proposals. The contracting  
19 unit shall promptly reply to any request by an interested vendor by  
20 providing a copy of the request for proposals. The contracting unit  
21 may charge a fee for the proposal documentation that shall not  
22 exceed \$50.00 or the cost of reproducing the documentation,  
23 whichever is greater.

24 b. Each interested vendor shall submit a proposal which shall  
25 include all the information required by the request for proposals.  
26 Failure to meet the requirements of the request for proposals may  
27 result in the contracting unit disqualifying the vendor from further  
28 consideration. Under no circumstances shall the provisions of a  
29 proposal be subject to negotiation by the contracting unit.

30 c. If the contracting unit, at the time of solicitation, utilizes its  
31 own employees to provide the goods or perform the services, or  
32 both, considered for competitive contracting, the governing body  
33 shall, at any time prior to, but no later than the time of solicitation  
34 for competitive contracting proposals, notify affected employees of  
35 the governing body's intention to solicit competitive contracting  
36 proposals. Employees or their representatives shall be permitted to  
37 submit recommendations and proposals affecting wages, hours, and  
38 terms and conditions of employment in such a manner as to meet  
39 the goals of the competitive contract. If employees are represented  
40 by an organization that has negotiated a contract with the  
41 contracting unit, only the bargaining unit shall be authorized to  
42 submit such recommendations or proposals. When requested by  
43 such employees, the governing body shall provide such information  
44 regarding budgets and the costs of performing the services by such  
45 employees as may be available. Nothing shall prevent such  
46 employees from making recommendations that may include  
47 modifications to existing labor agreements in order to reduce such  
48 costs in lieu of award of a competitive contract, and agreements

1 implementing such recommendations may be considered as cause  
2 for rejecting all other proposals.

3 d. The purchasing agent or counsel or administrator shall  
4 evaluate all proposals only in accordance with the methodology  
5 described in the request for proposals. After proposals have been  
6 evaluated, the purchasing agent or counsel or administrator shall  
7 prepare a report evaluating and recommending the award of a  
8 contract or contracts. The report shall list the names of all potential  
9 vendors who submitted a proposal and shall summarize the  
10 proposals of each vendor. The report shall rank vendors in order of  
11 evaluation, shall recommend the selection of a vendor or vendors,  
12 as appropriate, for a contract, shall be clear in the reasons why the  
13 vendor or vendors have been selected among others considered, and  
14 shall detail the terms, conditions, scope of services, fees, and other  
15 matters to be incorporated into a contract. **【The report shall be**  
16 **made available to the public at least 48 hours prior to the awarding**  
17 **of the contract, or when made available to the governing body,**  
18 **whichever is sooner.】** The governing body shall have the right to  
19 reject all proposals for any of the reasons set forth in section 21 of  
20 P.L.1999, c.440 (C.40A:11-13.2).

21 e. Award of a contract shall be made by resolution of the  
22 governing body of the contracting unit within 60 business days of  
23 the receipt of the proposals, except that the proposals of any  
24 vendors who consent thereto, may, at the request of the contracting  
25 unit, be held for consideration for such longer period as may be  
26 agreed.

27 f. The report prepared pursuant to subsection d. of this section  
28 shall become part of the public record and shall reflect the final  
29 action of the governing body. Contracts shall be executed pursuant  
30 to section 14 of P.L.1971, c.198 (C.40A:11-14).

31 g. The clerk or secretary of the contracting unit shall publish a  
32 notice **【in the official newspaper】** on the Internet website of the  
33 contracting unit , or submit to be published on the website of the  
34 Department of Community Affairs if the contracting unit does not  
35 maintain an Internet website, summarizing the award of a contract,  
36 which shall include but not be limited to, the nature, duration, and  
37 amount of the contract, the name of the vendor and a statement that  
38 the resolution and contract are on file and available for public  
39 inspection in the office of the clerk or secretary of the municipality,  
40 county, local public authority or special district of the governing  
41 body.

42 h. All contract awards shall be subject to subsection d. of  
43 section 4 of P.L.1971, c.198 (C.40A:11-4) and any other rules  
44 concerning certification of availability of funds adopted pursuant to  
45 section 3 of P.L.1971, c.198 (C.40A:11-3) and section 15 of  
46 P.L.1971, c.198 (C.40A:11-15).

47 i. The director, after consultation with the Commissioner of  
48 Education, may adopt additional rules and regulations, in  
49 accordance with the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the  
2 provisions of sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1  
3 through C.40A:11-4.5).  
4 (cf: P.L.1999, c.440, s.5)

5  
6 7. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to read  
7 as follows:

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

22 (2) A contracting unit facility alteration required to properly  
23 implement other energy efficiency or energy conservation  
24 measures, or both, may be included as part of an energy savings  
25 services contract, in which case, notwithstanding any other  
26 provision of law, rule, regulation, or order to the contrary, the  
27 facility alteration may be undertaken or supervised by the energy  
28 services company performing the energy savings services contract  
29 if:

30 (a) the total cost of the improvement does not exceed 15 percent  
31 of the total cost of the work to be performed under the energy  
32 savings services contract; and

33 (b) (i) the improvement is necessary to conform to a law, rule,  
34 or regulation, or order, or (ii) an analysis within an approved  
35 proposal, or the contracting unit, at the time of the award of the  
36 proposal, demonstrates that there is an economic advantage to the  
37 contracting unit implementing the improvement as part of the  
38 energy savings services contract, and the savings rationale for the  
39 improvement is documented and supported by reasonable  
40 justification.

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

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

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

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

38 (b) All workers performing public works activities for  
39 subcontractors awarded contracts by an energy services company  
40 pursuant to this section shall be paid prevailing wages in  
41 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,  
42 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with  
43 the provisions of "The Public Works Contractor Registration Act,"  
44 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately  
45 classified as contractors by the Division of Property Management  
46 and Construction shall be eligible to be awarded a contract as a  
47 subcontractor of an energy services company under this section for  
48 performing public works activities pursuant to regulations adopted  
49 by the Division of Property Management and Construction.

1 (c) In order to expedite communications with an energy services  
2 company and facilitate the implementation of an energy savings  
3 improvement program, a contracting unit may designate or appoint  
4 an employee of the contracting unit with decision-making authority  
5 to coordinate with the energy services company and to address  
6 issues associated with the implementation of an energy savings  
7 improvement program as they arise, provided that any decision  
8 requiring a change order shall be made only upon the approval of  
9 the contracting unit.

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

14 (5) When the energy services company is the manufacturer of  
15 direct digital control systems and contracts with the contracting unit  
16 to provide a guaranteed energy savings option pursuant to  
17 subsection f. of this section, the specification of such direct digital  
18 control systems may be treated as proprietary goods and if so  
19 treated, the bid specification shall set forth an allowance price for  
20 its supply by the energy services company which shall be used by  
21 all bidders in the public bidding process. Direct digital controls  
22 shall be open protocol format and shall meet the interoperability  
23 guidelines established by the American Society of Heating,  
24 Refrigerating and Air-Conditioning Engineers. Each contract to be  
25 entered into pursuant to this section between a contracting unit and  
26 an energy services company that is the manufacturer of direct  
27 digital control systems where such direct digital control systems are  
28 treated as proprietary goods as part of the contract, shall first be  
29 reviewed and approved by the Board of Public Utilities for the  
30 purpose of affirming the reasonableness of such allowance price. If  
31 the board does not disapprove of the contract within 14 business  
32 days of receipt thereof, the contract shall be deemed approved.

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

36 (1) An energy savings improvement program may be financed  
37 through a lease-purchase agreement between a contracting unit and  
38 an energy services company or other public or private entity. Under  
39 a lease-purchase agreement, ownership of the energy savings  
40 equipment or improved facilities shall pass to the contracting unit  
41 when all lease payments have been made. Notwithstanding the  
42 provisions of any other law to the contrary, the duration of such a  
43 lease-purchase agreement shall not exceed 15 years, except that the  
44 duration of a lease purchase agreement for a combined heat and  
45 power or cogeneration project shall not exceed 20 years. For the  
46 purposes of this paragraph, the duration of the repayment term of a  
47 lease-purchase agreement shall commence on the date upon which  
48 construction and installation of the energy savings equipment,  
49 "combined heat and power facility" or "cogeneration facility," as



1 those terms are defined pursuant to section 3 of P.L.1999, c.23  
2 (C.48:3-51), or other energy conservation measures undertaken  
3 pursuant to the energy savings plan, have been completed.

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

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

23 (4) Lease-purchase agreements and energy savings obligations  
24 shall not be used to finance maintenance, guarantees, or verification  
25 of guarantees of energy conservation measures. Lease-purchase  
26 agreements and energy savings obligations may be used to finance  
27 the cost of an energy audit or the cost of verification of energy  
28 savings as part of adopting an energy savings plan.  
29 Notwithstanding any law to the contrary, lease-purchase agreements  
30 and energy savings certificates shall not be excepted from any  
31 budget or tax levy limitation otherwise provided by law. Maturity  
32 schedules of lease-purchase agreements or energy savings  
33 obligations shall not exceed the estimated average useful life of the  
34 energy conservation measures.

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

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

47 (a) contain the results of an energy audit;

48 (b) describe the energy conservation measures that will  
49 comprise the program;

- 1 (c) estimate greenhouse gas reductions resulting from those  
2 energy savings;
- 3 (d) identify all design and compliance issues that require the  
4 professional services of an architect or engineer and identify who  
5 will provide these services;
- 6 (e) include an assessment of risks involved in the successful  
7 implementation of the plan;
- 8 (f) identify the eligibility for, and costs and revenues associated  
9 with the PJM Independent System Operator for demand response  
10 and curtailable service activities;
- 11 (g) include schedules showing calculations of all costs of  
12 implementing the proposed energy conservation measures and the  
13 projected energy savings;
- 14 (h) identify maintenance requirements necessary to ensure  
15 continued energy savings, and describe how they will be fulfilled;  
16 and
- 17 (i) if developed by an energy services company, a description  
18 of, and cost estimates of an energy savings guarantee.
- 19 All professionals providing engineering services under the plan  
20 shall have errors and omissions insurance.
- 21 (3) Prior to the adoption of the plan, the contracting unit shall  
22 contract with a qualified third party to verify the projected energy  
23 savings to be realized from the proposed program have been  
24 calculated as required by subsection e. of this section.
- 25 (4) Upon adoption, the plan shall be submitted to the Board of  
26 Public Utilities, which shall post it on the Internet on a public  
27 webpage maintained for such purpose. If the contracting unit  
28 maintains its own website, it shall also post the plan on that site.  
29 The board may require periodic reporting concerning the  
30 implementation of the plan.
- 31 (5) Verification by a qualified third party shall be required when  
32 energy conservation measures are placed in service or  
33 commissioned, to ensure the savings projected in the energy savings  
34 plan shall be achieved.
- 35 (6) Energy-related capital improvements that do not reduce  
36 energy usage may be included in an energy savings improvement  
37 program but the cost of such improvements shall not be financed as  
38 a lease-purchase or through energy savings obligations authorized  
39 by subsection c. of this section. Nothing herein is intended to  
40 prevent financing of such capital improvements through otherwise  
41 authorized means.
- 42 (7) A qualified third party when required by this subsection may  
43 include an employee of the contracting unit who is properly trained  
44 and qualified to perform such work.
- 45 e. (1) (a) The calculation of energy savings for the purposes of  
46 determining that the energy savings resulting from the program will  
47 be sufficient to cover the cost of the program's energy conservation  
48 measures, as provided in subsection a. of this section, shall involve  
49 determination of the dollar amount saved through implementation

1 of an energy savings improvement program using the guidelines of  
2 the International Performance Measurement and Verification  
3 Protocol or other protocols approved by the Board of Public  
4 Utilities and standards adopted by the Board of Public Utilities  
5 pursuant to this section. The calculation shall include all applicable  
6 State and federal rebates and tax credits, but shall not include the  
7 cost of an energy audit and the cost of verifying energy savings.  
8 The calculation shall state which party has made application for  
9 rebates and credits and how these applications translate into energy  
10 savings.

11 (b) During the procurement phase of an energy savings  
12 improvement program, an energy services company's proposal  
13 submitted in response to a request for proposal shall not include a  
14 savings calculation that assumes, includes, or references capital cost  
15 avoidance savings, the current or projected value of a "solar  
16 renewable energy certificate," as defined pursuant to section 3 of  
17 P.L.1999, c.23 (C.48:3-51), or other environmental or similar  
18 attributes or benefits of whatever nature that derive from the  
19 generation of renewable energy, and any costs or discounts  
20 associated with maintenance services, an energy savings guarantee,  
21 or third party verification of energy conservation measures and  
22 energy savings. The calculation of energy savings shall utilize and  
23 specifically reference as a benchmark the actual demand and energy  
24 components of the public utility tariff rate applicable to the  
25 contracting unit then in effect, and not a blended rate that  
26 aggregates, combines, or restates in any manner the distinct demand  
27 and energy components of the public utility tariff rate into a single  
28 combined or restated tariff rate. If an energy services company  
29 submits a proposal to a contracting unit that does not calculate  
30 projected energy savings in the manner required by this subsection,  
31 such proposal shall be rejected by the contracting unit.

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

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

1 energy savings plan but shall be fully disclosed in an energy  
2 savings plan.

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

6 (3) When an energy services company is awarded an energy  
7 savings services contract to provide or perform goods or services  
8 for the purpose of enabling a contracting unit to conserve energy  
9 through energy efficiency equipment, including a "combined heat  
10 and power facility" as that term is defined pursuant to section 3 of  
11 P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract  
12 shall extend for a term of up to 15 years for energy efficiency  
13 projects, and for up to 20 years for a combined heat and power  
14 facility after construction completion. If a contracting unit shall  
15 elect to contract with an energy services company for an energy  
16 savings guarantee in connection with a contract awarded pursuant to  
17 this section, such guarantee may extend for a term of up to 15 years  
18 for energy efficiency projects, or up to 20 years for a combined heat  
19 and power facility after construction completion.

20 g. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

24 h. (1) The Director of the Division of Local Government  
25 Services in the Department of Community Affairs, the State  
26 Treasurer, and the Board of Public Utilities may take such action as  
27 is deemed necessary and consistent with the intent of this section to  
28 implement its provisions.

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

46 (cf: P.L.2012, c.55, s.3)

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

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

7       (1) The subject matter thereof consists of:

8       (a) (i) Professional services. The governing body shall in each  
9 instance state supporting reasons for its action in the resolution  
10 awarding each contract and shall **【forthwith cause to be printed**  
11 **once, in the official newspaper】** publish, on the Internet website of  
12 the contracting unit, or submit to be published on the website of the  
13 Department of Community Affairs if the contracting unit does not  
14 maintain an Internet website, a brief notice stating the nature,  
15 duration, service and amount of the contract, and that the resolution  
16 and contract are on file and available for public inspection in the  
17 office of the clerk of the county or municipality, or, in the case of a  
18 contracting unit created by more than one county or municipality, of  
19 the counties or municipalities creating the contracting unit; or (ii)  
20 Extraordinary unspecifiable services. The application of this  
21 exception shall be construed narrowly in favor of open competitive  
22 bidding, whenever possible, and the Division of Local Government  
23 Services is authorized to adopt and promulgate rules and regulations  
24 after consultation with the Commissioner of Education limiting the  
25 use of this exception in accordance with the intention herein  
26 expressed. The governing body shall in each instance state  
27 supporting reasons for its action in the resolution awarding each  
28 contract and shall forthwith cause to be printed, in the manner set  
29 forth in subsection (1) (a) (i) of this section, a brief notice of the  
30 award of the contract;

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

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

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

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

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

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

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

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

- 1 (j) The publishing of legal notices in newspapers as required by  
2 law;
- 3 (k) The acquisition of artifacts or other items of unique intrinsic,  
4 artistic or historical character;
- 5 (l) Those goods and services necessary or required to prepare  
6 and conduct an election;
- 7 (m) Insurance, including the purchase of insurance coverage and  
8 consultant services, which exception shall be in accordance with the  
9 requirements for extraordinary unspecifiable services;
- 10 (n) The doing of any work by handicapped persons employed by  
11 a sheltered workshop;
- 12 (o) The provision of any goods or services including those of a  
13 commercial nature, attendant upon the operation of a restaurant by  
14 any nonprofit, duly incorporated, historical society at or on any  
15 historical preservation site;
- 16 (p) (Deleted by amendment, P.L.1999, c.440.)
- 17 (q) Library and educational goods and services;
- 18 (r) (Deleted by amendment, P.L.2005, c.212).
- 19 (s) The marketing of recyclable materials recovered through a  
20 recycling program, or the marketing of any product intentionally  
21 produced or derived from solid waste received at a resource  
22 recovery facility or recovered through a resource recovery program,  
23 including, but not limited to, refuse-derived fuel, compost materials,  
24 methane gas, and other similar products;
- 25 (t) (Deleted by amendment, P.L.1999, c.440.)
- 26 (u) Contracting unit towing and storage contracts, provided that  
27 all of the contracts shall be pursuant to reasonable non-exclusionary  
28 and non-discriminatory terms and conditions, which may include  
29 the provision of the services on a rotating basis, at the rates and  
30 charges set by the municipality pursuant to section 1 of P.L.1979,  
31 c.101 (C.40:48-2.49). All contracting unit towing and storage  
32 contracts for services to be provided at rates and charges other than  
33 those established pursuant to the terms of this paragraph shall only  
34 be awarded to the lowest responsible bidder in accordance with the  
35 provisions of the "Local Public Contracts Law" and without regard  
36 for the value of the contract therefor;
- 37 (v) The purchase of steam or electricity from, or the rendering  
38 of services directly related to the purchase of steam or electricity  
39 from a qualifying small power production facility or a qualifying  
40 cogeneration facility as defined pursuant to 16 U.S.C. s.796;
- 41 (w) The purchase of electricity or administrative or dispatching  
42 services directly related to the transmission of purchased electricity  
43 by a contracting unit engaged in the generation of electricity;
- 44 (x) The printing of municipal ordinances or other services  
45 necessarily incurred in connection with the revision and  
46 codification of municipal ordinances;
- 47 (y) An agreement for the purchase of an equitable interest in a  
48 water supply facility or for the provision of water supply services  
49 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or

1 an agreement entered into pursuant to P.L.1989, c.109  
2 (N.J.S.40A:31-1 et al.), so long as the agreement is entered into no  
3 later than six months after the effective date of P.L.1993, c.381;  
4 (z) A contract for the provision of water supply services entered  
5 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);  
6 (aa) The cooperative marketing of recyclable materials recovered  
7 through a recycling program;  
8 (bb) A contract for the provision of wastewater treatment  
9 services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et  
10 al.);  
11 (cc) Expenses for travel and conferences;  
12 (dd) The provision or performance of goods or services for the  
13 support or maintenance of proprietary computer hardware and  
14 software, except that this provision shall not be utilized to acquire  
15 or upgrade non-proprietary hardware or to acquire or update non-  
16 proprietary software;  
17 (ee) The management or operation of an airport owned by the  
18 contracting unit pursuant to R.S.40:8-1 et seq.;  
19 (ff) Purchases of goods and services at rates set by the Universal  
20 Service Fund administered by the Federal Communications  
21 Commission;  
22 (gg) A contract for the provision of water supply services or  
23 wastewater treatment services entered into pursuant to section 2 of  
24 P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing,  
25 construction, operation, or maintenance, or any combination  
26 thereof, of a water supply facility as defined in subsection (16) of  
27 section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater  
28 treatment system as defined in subsection (19) of section 15 of  
29 P.L.1971, c.198 (C.40A:11-15), or any component part or parts  
30 thereof, including a water filtration system as defined in subsection  
31 (16) of section 15 of P.L.1971, c.198 (C.40A:11-15); or  
32 (hh) The purchase of electricity generated from a power  
33 production facility that is fueled by methane gas extracted from a  
34 landfill in the county of the contracting unit.  
35 (2) It is to be made or entered into with the United States of  
36 America, the State of New Jersey, county, or municipality, or any  
37 board, body, officer, agency, or authority thereof, or any other state  
38 or subdivision thereof.  
39 (3) Bids have been advertised pursuant to section 4 of P.L.1971,  
40 c.198 (C.40A:11-4) on two occasions and (a) no bids have been  
41 received on both occasions in response to the advertisement, or (b)  
42 the governing body has rejected the bids on two occasions because  
43 it has determined that they are not reasonable as to price, on the  
44 basis of cost estimates prepared for or by the contracting agent prior  
45 to the advertising therefor, or have not been independently arrived  
46 at in open competition, or (c) on one occasion no bids were received  
47 pursuant to (a) and on one occasion all bids were rejected pursuant  
48 to (b), in whatever sequence; a contract may then be negotiated and  
49 may be awarded upon adoption of a resolution by a two-thirds



1 affirmative vote of the authorized membership of the governing  
2 body authorizing the contract; provided, however, that:

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

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

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

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

36 (4) The contracting unit has solicited and received at least three  
37 quotations on materials, supplies, or equipment for which a State  
38 contract has been issued pursuant to section 12 of P.L.1971, c.198  
39 (C.40A:11-12), and the lowest responsible quotation is at least 10  
40 percent less than the price the contracting unit would be charged for  
41 the identical materials, supplies, or equipment, in the same  
42 quantities, under the State contract. A contract entered into  
43 pursuant to this subsection may be awarded only upon adoption of a  
44 resolution by the affirmative vote of two-thirds of the full  
45 membership of the governing body of the contracting unit at a  
46 meeting thereof authorizing the contract. A copy of the purchase  
47 order relating to the contract, the requisition for purchase order, if  
48 applicable, and documentation identifying the price of the materials,  
49 supplies or equipment under the State contract and the State

1 contract number shall be filed with the director within five  
2 **【working】** business days of the award of the contract by the  
3 contracting unit. The director shall notify the contracting unit of  
4 receipt of the material and shall make the material available to the  
5 State Treasurer. The contracting unit shall make available to the  
6 director upon request any other documents relating to the  
7 solicitation and award of the contract, including, but not limited to,  
8 quotations, requests for quotations, and resolutions. The director  
9 periodically shall review material submitted by contracting units to  
10 determine the impact of the contracts on local contracting and shall  
11 consult with the State Treasurer on the impact of the contracts on  
12 the State procurement process. The director may, after consultation  
13 with the State Treasurer, adopt rules in accordance with the  
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
15 seq.) to limit the use of this subsection, after considering the impact  
16 of contracts awarded under this subsection on State and local  
17 contracting, or after considering the extent to which the award of  
18 contracts pursuant to this subsection is consistent with and in  
19 furtherance of the purposes of the public contracting laws.

20 (5) Notwithstanding any provision of law, rule, or regulation to  
21 the contrary, the subject matter consists of the combined collection  
22 and marketing, or the cooperative combined collection and  
23 marketing of recycled material recovered through a recycling  
24 program, or any product intentionally produced or derived from  
25 solid waste received at a resource recovery facility or recovered  
26 through a resource recovery program including, but not limited to,  
27 refuse-derived fuel, compost materials, methane gas, and other  
28 similar products, provided that in lieu of engaging in public  
29 advertising for bids and the bidding therefor, the contracting unit  
30 shall, prior to commencing the procurement process, submit for  
31 approval to the Director of the Division of Local Government  
32 Services, a written detailed description of the process to be  
33 followed in securing the services. Within 30 business days after  
34 receipt of the written description the director shall, if the director  
35 finds that the process provides for fair competition and integrity in  
36 the negotiation process, approve, in writing, the description  
37 submitted by the contracting unit. If the director finds that the  
38 process does not provide for fair competition and integrity in the  
39 negotiation process, the director shall advise the contracting unit of  
40 the deficiencies that must be remedied. If the director fails to  
41 respond in writing to the contracting unit within 30 business days,  
42 the procurement process as described shall be deemed approved.  
43 As used in this section, "collection" means the physical removal of  
44 recyclable materials from curbside or any other location selected by  
45 the contracting unit.

46 (6) Notwithstanding any provision of law, rule, or regulation to  
47 the contrary, the contract is for the provision of electricity by a  
48 contracting unit engaged in the distribution of electricity for retail  
49 sale, for the provision of wholesale electricity by a municipal

1 shared services energy authority as defined pursuant to section 3 of  
2 P.L.2015, c.129 (C.40A:66-3), or for the provision of administrative  
3 or dispatching services related to the transmission of electricity,  
4 provided that in lieu of engaging in public advertising for bids and  
5 the bidding therefor, the contracting unit shall, prior to commencing  
6 the procurement process, submit for approval to the Director of the  
7 Division of Local Government Services, a written detailed  
8 description of the process to be followed in securing these services.  
9 The process shall be designed in a way that is appropriate to and  
10 commensurate with industry practices, and the integrity of the  
11 government contracting process. Within 30 business days after  
12 receipt of the written description, the director shall, if the director  
13 finds that the process provides for fair competition and integrity in  
14 the negotiation process, approve, in writing, the description  
15 submitted by the contracting unit. If the director finds that the  
16 process does not provide for fair competition and integrity in the  
17 negotiation process, the director shall advise the contracting unit of  
18 the deficiencies that must be remedied. If the director fails to  
19 respond in writing to the contracting unit within 30 business days,  
20 the procurement process, as submitted to the director pursuant to  
21 this section, shall be deemed approved.

22 (cf: P.L.2015, c.129, s.28)

23

24 9. Section 6 of P.L.1975, c.353 (C.40A:11-6.1) is amended to  
25 read as follows:

26 6. All contracts enumerated in this section shall be awarded as  
27 follows:

28 a. For all contracts that in the aggregate are less than the bid  
29 threshold but at least **[15]** 50 percent **[or more]** of **[that amount]**  
30 the bid threshold, and for those contracts that are for subject matter  
31 enumerated in **[subsection (1) of]** section 5 of P.L.1971, c.198  
32 (C.40A:11-5), **[except for paragraph (a) of that subsection**  
33 **concerning professional services and paragraph (b) of that**  
34 **subsection concerning work by employees of the contracting unit,]**  
35 the contracting agent shall award the contract after soliciting at least  
36 two competitive quotations, if practicable. The award shall be  
37 made to a vendor whose response is most advantageous, price and  
38 other factors considered. The contracting agent shall retain the  
39 record of the quotation solicitation and shall include a copy of the  
40 record with the voucher used to pay the vendor.

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

47 c. If authorized by the governing body by resolution or  
48 ordinance, all contracts that are in the aggregate less than **[15]** 50

1 percent of the bid threshold may be awarded by the contracting  
2 agent without soliciting competitive quotations.

3 d. Whenever two or more responses to a request of a  
4 contracting agent offer equal prices and are the lowest responsible  
5 bids or proposals, the contracting unit may award the contract to the  
6 vendor whose response, in the discretion of the contracting unit, is  
7 the most advantageous, price and other factors considered. In such  
8 a case, the award resolution or purchase order documentation shall  
9 explain why the vendor selected is the most advantageous.  
10 (cf: P.L.1999, c.440, s.11)

11

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

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

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

44 (1) is a citizen of the United States;

45 (2) is of good moral character;

46 (3) is a high school graduate or equivalent;

47 (4) has at least two years of higher education, and two years of  
48 full time governmental experience performing duties relative to  
49 those of public procurement provided, however, that additional

1 years of experience may be substituted for years of higher  
2 education, on a one to one basis;

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

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

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

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

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

46 d. (1) Renewal of the qualified purchasing agent certification  
47 shall be required every three years, subject to the applicant's  
48 fulfillment of continuing education requirements, the submission of

1 an application for renewal, and the payment of a renewal fee, all as  
2 determined by the director.

3 (2) In the event that an individual holding a qualified purchasing  
4 agent certificate allows the certificate to lapse by failing to renew  
5 the certificate, the individual shall be required to apply to take the  
6 qualifying examination required pursuant to subsection b. of this  
7 section and pay a fee as determined by the director, except that  
8 when an individual applies within six months of the expiration of  
9 the certificate, the application may be made in the same manner as  
10 renewal and except that such application may be made in the same  
11 manner as a renewal within 12 months of the expiration of the  
12 certificate if the director determines that either of the following  
13 circumstances prevents a certificate holder from earning the  
14 required continuing education units within six months of the  
15 expiration of the certificate:

16 (a) a flood, hurricane, superstorm, tornado, or other natural  
17 disaster, and a state of emergency has been declared as a result  
18 thereof by the Governor; or

19 (b) a medical event or condition.

20 e. (1) An individual who obtained a qualified purchasing agent  
21 certificate prior to enactment of P.L.2009, c.166 (C.40A:11-9a et  
22 al.) shall be exempt from taking the State qualifying examination,  
23 but shall adhere to all requirements for renewal pursuant to  
24 subsection d. of this section. If such a qualified purchasing agent  
25 certificate expires due to the failure of the holder to renew the  
26 certificate as prescribed in subsection d. of this section, that  
27 individual shall be required to pass the qualifying examination as  
28 provided pursuant to subsection b. of this section in order to be  
29 issued a new qualified purchasing agent certificate.

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

38 f. Those persons who have been performing the duties of a  
39 purchasing agent for a contracting unit pursuant to P.L.1971, c.198  
40 (C.40A:11-1 et seq.), or school board pursuant to N.J.S.18A:18A-1  
41 et seq. for at least three continuous years, prior to the first business  
42 day of the sixth month following the promulgation of rules and  
43 regulations to effectuate the purposes of P.L.2009, c.166  
44 (C.40A:11-9a et al.), and did not possess a qualified purchasing  
45 agent certificate at that time, may take the State qualifying  
46 examination, if not otherwise exempt under subsection e. of this  
47 section, without the courses required in subsection b. of this section.

48 g. Following the appointment of a purchasing agent for a  
49 contracting unit pursuant to subsection a. of this section, if the

1 person appointed no longer performs such duties, the governing  
2 body or chief executive officer, as appropriate to the form of  
3 government, may appoint, for a period not to exceed one year  
4 commencing from the date of the vacancy, a person who does not  
5 possess a qualified purchasing agent certificate to serve as a  
6 temporary purchasing agent. Any person so appointed may, with  
7 the approval of the director, be reappointed as a temporary  
8 purchasing agent for a maximum of one additional year following  
9 the end of the first temporary appointment. No contracting unit  
10 shall employ a temporary purchasing agent for more than two  
11 consecutive years.

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

28 i. The director may adopt and promulgate rules and regulations  
29 to effectuate the purposes of P.L.1971, c.198. Notwithstanding any  
30 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
31 any such regulations shall be effective immediately upon filing with  
32 the Office of Administrative Law and shall be effective for a period  
33 not to exceed 365 days and may thereafter be amended, adopted or  
34 readopted by the director in accordance with the requirements of  
35 P.L.1968, c.410. In order to better manage the workload of  
36 implementing the provisions of P.L.1971, c.198, the director may  
37 establish a transition process for administering an examination for  
38 individuals serving as purchasing agents on the effective date of  
39 P.L.1971, c.198, issuing and renewing qualified purchasing agent  
40 certificates to eligible individuals, prescribing a schedule by which  
41 such certificates will be issued and renewed, and such other matters  
42 as the director determines to be necessary to the implementation of  
43 P.L.1971, c.198.

44 (cf: P.L.2015, c.95, s.45)

45

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

48 11. Additional matters regarding contracts for the provision and  
49 performance of goods and services.

1 (1) The contracting units entering into a joint agreement  
2 pursuant to section 10 of P.L.1971, c.198 (C.40A:11-10) may  
3 designate a joint contracting agent.

4 (2) Contracts made pursuant to a joint purchasing agreement  
5 shall be subject to all of the terms and conditions of this act.

6 (3) Any contracting unit serving as a joint contracting agent  
7 pursuant to this section, may make an appropriation to enable it to  
8 perform any such contract and may anticipate as revenue payments  
9 to be made and received by it from any other party to the  
10 agreement. Any items so included in a local budget shall be subject  
11 to the approval of the Director, Division of Local Government  
12 Services, who shall consider the matter in conjunction with the  
13 requirements of chapter 4 of Title 40A of the New Jersey Statutes.  
14 The agreement and any subsequent amendment or revisions thereto  
15 shall be filed with the Director of the Division of Local Government  
16 Services in the Department of Community Affairs.

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

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

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

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

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

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



1 (a) Provision for maintaining adequate records and orderly  
2 procedures to facilitate audit and efficient administration, and

3 (b) Adequacy of public disclosure of such actions as are taken  
4 by the participants, and

5 (c) Adequacy of procedures to facilitate compliance with all  
6 provisions of the "Local Public Contracts Law" and corresponding  
7 regulations, and

8 (d) Clarity of provisions to assure that the responsibilities of the  
9 respective parties are understood.

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

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

25 (cf: P.L.1999, c.440, s.17)

26

27 12. Section 12 of P.L.1971, c.198 (C.40A:11-12) is amended to  
28 read as follows:

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

35 b. A contracting unit may also use, without advertising for  
36 bids, or having rejected all bids obtained pursuant to advertising,  
37 the Federal Supply Schedules of the General Services  
38 Administration or schedules from other federal procurement  
39 programs promulgated by the Director of the Division of Purchase  
40 and Property in the Department of the Treasury pursuant to section  
41 1 of P.L.1996, c.16 (C.52:34-6.1), subject to the following  
42 conditions:

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

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

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

48 (4) the price of the goods or services being procured is no  
49 greater than the price of the same or equivalent goods or services

1 under the State contract, unless the contracting unit determines that  
2 because of factors other than price, selection of a vendor from the  
3 Federal Supply Schedules or schedules from other federal  
4 procurement programs would be more advantageous to the  
5 contracting unit;

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

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

20 (cf: P.L.2006, c.10, s.4)

21

22 13. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to  
23 read as follows:

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

31 (1) Supplying of:

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

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

34 (c) Thermal energy produced by a cogeneration facility, for use  
35 for heating or air conditioning or both, for any term not exceeding  
36 40 years, when the contract is approved by the Board of Public  
37 Utilities. For the purposes of this paragraph, "cogeneration" means  
38 the simultaneous production in one facility of electric power and  
39 other forms of useful energy such as heating or process steam;

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

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

45 (4) The collection and recycling of methane gas from a sanitary  
46 landfill facility, for any term not exceeding 25 years, when the  
47 contract is in conformance with a district solid waste management  
48 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and  
49 with the approval of the Division of Local Government Services in

1 the Department of Community Affairs and the Department of  
2 Environmental Protection. The contracting unit shall award the  
3 contract to the highest responsible bidder, notwithstanding that the  
4 contract price may be in excess of the amount of any necessarily  
5 related administrative expenses; except that if the contract requires  
6 the contracting unit to expend funds only, the contracting unit shall  
7 award the contract to the lowest responsible bidder. The approval  
8 by the Division of Local Government Services of public bidding  
9 requirements shall not be required for those contracts exempted  
10 therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

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

13 (6) Insurance, including the purchase of insurance coverages,  
14 insurance consulting or administrative services, claims  
15 administration services and including participation in a joint self-  
16 insurance fund, risk management program or related services  
17 provided by a contracting unit insurance group, or participation in  
18 an insurance fund established by a local unit pursuant to  
19 N.J.S.40A:10-6, or a joint insurance fund established pursuant to  
20 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more  
21 than three years;

22 (7) Leasing or servicing of (a) automobiles, motor vehicles,  
23 machinery, and equipment of every nature and kind, for a period not  
24 to exceed five years, or (b) machinery and equipment used in the  
25 generation of electricity by a municipal shared services energy  
26 authority established pursuant to section 4 of P.L.2015, c.129  
27 (C.40A:66-4), or a contracting unit engaged in the generation of  
28 electricity, for a period not to exceed 20 years; provided, however, a  
29 contract shall be awarded only subject to and in accordance with the  
30 rules and regulations promulgated by the Director of the Division of  
31 Local Government Services in the Department of Community  
32 Affairs;

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

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

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

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

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

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

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

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

8 (16) The provision of water supply services or the designing,  
9 financing, construction, operation, or maintenance, or any  
10 combination thereof, of a water supply facility, or any component  
11 part or parts thereof, including a water filtration system, for a period  
12 not to exceed 40 years, when the contract for these services is  
13 approved by the Division of Local Government Services in the  
14 Department of Community Affairs, the Board of Public Utilities,  
15 and the Department of Environmental Protection pursuant to  
16 P.L.1985, c.37 (C.58:26-1 et al.), except that no approvals shall be  
17 required for those contracts otherwise exempted pursuant to  
18 subsection (30), (31), (34), (35) or (43) of this section. For the  
19 purposes of this subsection, "water supply services" means any  
20 service provided by a water supply facility; "water filtration  
21 system" means any equipment, plants, structures, machinery,  
22 apparatus, or land, or any combination thereof, acquired, used,  
23 constructed, rehabilitated, or operated for the collection,  
24 impoundment, storage, improvement, filtration, or other treatment  
25 of drinking water for the purposes of purifying and enhancing water  
26 quality and insuring its potability prior to the distribution of the  
27 drinking water to the general public for human consumption,  
28 including plants and works, and other personal property and  
29 appurtenances necessary for their use or operation; and "water  
30 supply facility" means and refers to the real property and the plants,  
31 structures, or interconnections between existing water supply  
32 facilities, machinery and equipment and other property, real,  
33 personal, and mixed, acquired, constructed, or operated, or to be  
34 acquired, constructed, or operated, in whole or in part by or on  
35 behalf of a political subdivision of the State or any agency thereof,  
36 for the purpose of augmenting the natural water resources of the  
37 State and making available an increased supply of water for all  
38 uses, or of conserving existing water resources, and any and all  
39 appurtenances necessary, useful, or convenient for the collecting,  
40 impounding, storing, improving, treating, filtering, conserving, or  
41 transmitting of water and for the preservation and protection of  
42 these resources and facilities and providing for the conservation and  
43 development of future water supply resources;

44 (17) The provision of resource recovery services by a qualified  
45 vendor, the disposal of the solid waste delivered for disposal which  
46 cannot be processed by a resource recovery facility or the residual  
47 ash generated at a resource recovery facility, including hazardous  
48 waste and recovered metals and other materials for reuse, or the  
49 design, financing, construction, operation, or maintenance of a

1 resource recovery facility for a period not to exceed 40 years when  
2 the contract is approved by the Division of Local Government  
3 Services in the Department of Community Affairs, and the  
4 Department of Environmental Protection pursuant to P.L.1985, c.38  
5 (C.13:1E-136 et al.); and when the resource recovery facility is in  
6 conformance with a district solid waste management plan approved  
7 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of  
8 this subsection, "resource recovery facility" means a solid waste  
9 facility constructed and operated for the incineration of solid waste  
10 for energy production and the recovery of metals and other  
11 materials for reuse; or a mechanized composting facility, or any  
12 other facility constructed or operated for the collection, separation,  
13 recycling, and recovery of metals, glass, paper, and other materials  
14 for reuse or for energy production; and "residual ash" means the  
15 bottom ash, fly ash, or any combination thereof, resulting from the  
16 combustion of solid waste at a resource recovery facility;

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

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

- 1 other personal property and appurtenances necessary for their  
2 operation;
- 3 (20) The supplying of goods or services for the purpose of  
4 lighting public streets, for a term not to exceed five years;
- 5 (21) The provision of emergency medical services for a term not  
6 to exceed five years;
- 7 (22) Towing and storage contracts, awarded pursuant to  
8 paragraph u. of subsection (1) of section 5 of P.L.1971, c.198  
9 (C.40A:11-5) for any term not exceeding three years;
- 10 (23) Fuel for the purpose of generating electricity for a term not  
11 to exceed eight years;
- 12 (24) The purchase of electricity or administrative or dispatching  
13 services related to the transmission of electricity, from a supplier of  
14 electricity subject to the jurisdiction of a federal regulatory agency,  
15 from a qualifying small power producing facility or qualifying  
16 cogeneration facility, as defined by 16 U.S.C. s.796, or from any  
17 supplier of electricity within any regional transmission organization  
18 or independent system operator or from an organization or operator  
19 or their successors, by a contracting unit engaged in the generation  
20 of electricity for retail sale, as of May 24, 1991, for a term not to  
21 exceed 40 years, or by a contracting unit engaged solely in the  
22 distribution of electricity for retail sale for a term not to exceed ten  
23 years, except that a contract with a contracting unit, engaged solely  
24 in the distribution of electricity for retail sale, in excess of ten  
25 years, shall require the written approval of the Director of the  
26 Division of Local Government Services. If the director fails to  
27 respond in writing to the contracting unit within 10 business days,  
28 the contract shall be deemed approved;
- 29 (25) Basic life support services, for a period not to exceed five  
30 years. For the purposes of this subsection, "basic life support"  
31 means a basic level of prehospital care, which includes but need not  
32 be limited to patient stabilization, airway clearance,  
33 cardiopulmonary resuscitation, hemorrhage control, initial wound  
34 care, and fracture stabilization;
- 35 (26) (Deleted by amendment, P.L.1999, c.440.)
- 36 (27) The provision of transportation services to an elderly  
37 person, an individual with a disability, or an indigent person for any  
38 term of not more than three years. For the purposes of this  
39 subsection, "elderly person " means a person who is 60 years of age  
40 or older. "Individual with a disability" means a person of any age  
41 who, by reason of illness, injury, age, congenital malfunction, or  
42 other permanent or temporary incapacity or disability, are unable,  
43 without special facilities or special planning or design to utilize  
44 mass transportation facilities and services as effectively as persons  
45 who are not so affected. "Indigent person " means a person of any  
46 age whose income does not exceed 100 percent of the poverty level,  
47 adjusted for family size, established and adjusted under section  
48 673(2) of subtitle B, the "Community Services Block Grant Act,"  
49 Pub.L.97-35 (42 U.S.C. s.9902 (2));

- 1 (28) The supplying of liquid oxygen or other chemicals, for a  
2 term not to exceed five years, when the contract includes the  
3 installation of tanks or other storage facilities by the supplier, on or  
4 near the premises of the contracting unit;
- 5 (29) The performance of patient care services by contracted  
6 medical staff at county hospitals, correction facilities, and long term  
7 care facilities, for any term of not more than three years;
- 8 (30) The acquisition of an equitable interest in a water supply  
9 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a  
10 contract entered into pursuant to the "County and Municipal Water  
11 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into  
12 no later than January 7, 1995, for any term of not more than forty  
13 years;
- 14 (31) The provision of water supply services or the financing,  
15 construction, operation, or maintenance or any combination thereof,  
16 of a water supply facility or any component part or parts thereof, by  
17 a partnership or copartnership established pursuant to a contract  
18 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a  
19 period not to exceed 40 years;
- 20 (32) Laundry service and the rental, supply, and cleaning of  
21 uniforms for any term of not more than three years;
- 22 (33) The supplying of any product or the rendering of any  
23 service, including consulting services, by a cemetery management  
24 company for the maintenance and preservation of a municipal  
25 cemetery operating pursuant to the "New Jersey Cemetery Act,"  
26 N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;
- 27 (34) A contract between a public entity and a private firm  
28 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of  
29 water supply services may be entered into for any term which, when  
30 all optional extension periods are added, may not exceed 40 years;
- 31 (35) A contract for the purchase of a supply of water from a  
32 public utility company subject to the jurisdiction of the Board of  
33 Public Utilities in accordance with tariffs and schedules of charges  
34 made, charged or exacted or contracts filed with the Board of Public  
35 Utilities, for any term of not more than 40 years;
- 36 (36) A contract between a public entity and a private firm or  
37 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for  
38 the provision of wastewater treatment services may be entered into  
39 for any term of not more than 40 years, including all optional  
40 extension periods;
- 41 (37) The operation and management of a facility under a license  
42 issued or permit approved by the Department of Environmental  
43 Protection, including a wastewater treatment system or a water  
44 supply or distribution facility, as the case may be, for any term of  
45 not more than ten years. For the purposes of this subsection,  
46 "wastewater treatment system" refers to facilities operated or  
47 maintained for the storage, collection, reduction, disposal, or other  
48 treatment of wastewater or sewage sludge, remediation of  
49 groundwater contamination, stormwater runoff, or the final disposal

- 1 of residues resulting from the treatment of wastewater; and "water  
2 supply or distribution facility" refers to facilities operated or  
3 maintained for augmenting the natural water resources of the State,  
4 increasing the supply of water, conserving existing water resources,  
5 or distributing water to users;
- 6 (38) Municipal solid waste collection from facilities owned by a  
7 contracting unit, for any term of not more than three years;
- 8 (39) Fuel for heating purposes, for any term of not more than  
9 three years;
- 10 (40) Fuel or oil for use in motor vehicles for any term of not  
11 more than three years;
- 12 (41) Plowing and removal of snow and ice for any term of not  
13 more than three years;
- 14 (42) Purchases made under a contract awarded by the Director of  
15 the Division of Purchase and Property in the Department of the  
16 Treasury for use by counties, municipalities, or other contracting  
17 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a  
18 term not to exceed the term of that contract;
- 19 (43) A contract between the governing body of a city of the first  
20 class and a duly incorporated nonprofit association for the provision  
21 of water supply services as defined in subsection (16) of this  
22 section, or wastewater treatment services as defined in subsection  
23 (19) of this section, may be entered into for a period not to exceed  
24 40 years;
- 25 (44) The purchase of electricity generated through class I  
26 renewable energy or from a power production facility that is fueled  
27 by methane gas extracted from a landfill in the county of the  
28 contacting unit for any term not exceeding 25 years;
- 29 (45) The provision or performance of goods or services for the  
30 purpose of producing class I renewable energy or class II renewable  
31 energy, as those terms are defined in section 3 of P.L.1999, c.23  
32 (C.48:3-51), at, or adjacent to, buildings owned by, or operations  
33 conducted by, the contracting unit, the entire price of which is to be  
34 established as a percentage of the resultant savings in energy costs,  
35 for a term not to exceed 15 years; provided, however, that a contract  
36 shall be entered into only subject to and in accordance with  
37 guidelines promulgated by the Board of Public Utilities establishing  
38 a methodology for computing energy cost savings and energy  
39 generation costs; and
- 40 (46) A power supply contract, as defined pursuant to section 3 of  
41 P.L.2015, c.129 (C.40A:66-3), between a member municipality as  
42 defined pursuant to section 3 of P.L.2015, c.129 (C.40A:66-3), and  
43 the municipal shared services energy authority established pursuant  
44 to the provisions of P.L.2015, c.129 (C.40A:66-1 et al.) to meet the  
45 electric power needs of its members, for the lease, operation, or  
46 management of electric generation within a member municipality's  
47 corporate limits and franchise area or the purchase of electricity, or  
48 the purchase of fuel for generating units for a term not to exceed 40  
49 years.



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

16 All multiyear leases and contracts entered into pursuant to this  
17 section, including any two-year or one-year extensions, except  
18 contracts involving the supplying of electricity for the purpose of  
19 lighting public streets and contracts for thermal energy authorized  
20 pursuant to subsection (1) above, construction contracts authorized  
21 pursuant to subsection (9) above, contracts for the provision or  
22 performance of goods or services or the supplying of equipment to  
23 promote energy conservation through the production of class I  
24 renewable energy or class II renewable energy authorized pursuant  
25 to subsection (45) above, contracts for water supply services or for  
26 a water supply facility, or any component part or parts thereof  
27 authorized pursuant to subsection (16), (30), (31), (34), (35), (37),  
28 or (43) above, contracts for resource recovery services or a resource  
29 recovery facility authorized pursuant to subsection (17) above,  
30 contracts for the sale of energy produced by a resource recovery  
31 facility authorized pursuant to subsection (18) above, contracts for  
32 wastewater treatment services or for a wastewater treatment system  
33 or any component part or parts thereof authorized pursuant to  
34 subsection (19), (36), (37), or (43) above, and contracts for the  
35 purchase of electricity or administrative or dispatching services  
36 related to the transmission of electricity authorized pursuant to  
37 subsection (24) above, contracts for the purchase of electricity  
38 generated from a power production facility that is fueled by  
39 methane gas authorized pursuant to subsection (44) above, and  
40 power supply contracts authorized pursuant to subsection (46)  
41 respectively, shall contain a clause making them subject to the  
42 availability and appropriation annually of sufficient funds as may  
43 be required to meet the extended obligation, or contain an annual  
44 cancellation clause.

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

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

9 (cf: P.L.2015, c.129, s.29)

10

11 14. Section 2 of P.L.1979, c.464 (C.40A:11-16.3) is amended to  
12 read as follows:

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

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

32 (cf: P.L.1999, c.440, s.26)

33

34 15. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to  
35 read as follows:

36 23. a. All advertisements for bids shall be published **【in an**  
37 **official newspaper】** on the Internet website of the contracting unit ,  
38 or on the website of the Department of Community Affairs if the  
39 contracting unit does not maintain an Internet website, sufficiently  
40 in advance of the date fixed for receiving the bids to promote  
41 competitive bidding, but in no event less than 10 business days  
42 prior to such date; except that all advertisements for bids on  
43 contracts for the collection and disposal of municipal solid waste  
44 shall be published **【in an official newspaper】** on the Internet  
45 website of the contracting unit , or on the website of the Department  
46 of Community Affairs if the contracting unit does not maintain an  
47 Internet website **【circulating in the county or municipality, and in at**  
48 **least one newspaper of general circulation published in the State】**,

1 sufficiently in advance of the date fixed for receiving the bids to  
2 promote competitive bidding, but not less than 60 business days  
3 prior to that date. For all contracts, the date fixed for receiving the  
4 bids shall not fall on a Monday, or any day directly following a  
5 State or federal holiday.

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

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

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

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

47 3) **【**For municipal solid waste collection and disposal contracts,  
48 notice shall be published in an official newspaper of the contracting

1 unit and in at least one newspaper of general circulation published  
2 in the State no later than seven days, Saturdays, Sundays, and  
3 holidays excepted, prior to the date for acceptance of bids.】  
4 (Deleted by amendment, P.L. , c. ) (pending before the  
5 Legislature as this bill)

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

15 (cf: P.L.2007, c.4, s.1)

16

17 16. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to  
18 read as follows:

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

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

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

30 c. **【A statement of corporate ownership pursuant to section 1 of**  
31 **P.L.1977, c.33 (C.52:25-24.2);】** (Deleted by amendment, P.L. , c.)  
32 (pending before the Legislature as this bill)

33 d. A listing of subcontractors pursuant to section 16 of  
34 P.L.1971, c.198 (C.40A:11-16);

35 e. A document provided by the contracting agent in the bid  
36 plans, specifications, or bid proposal documents for the bidder to  
37 acknowledge the bidder's receipt of any notice or revisions or  
38 addenda to the advertisement or bid documents.

39 f. (Deleted by amendment, P.L.2009, c.315.)

40 (cf: P.L.2009, c.315, s.1)

41

42 17. Section 24 of P.L.1971, c.198 (C.40A:11-24) is amended to  
43 read as follows:

44 24. **【Time for making awards; deposits returned.】** a. The  
45 contracting unit shall award the contract or reject all bids within  
46 such time as may be specified in the invitation to bid, but in no case  
47 more than business 60 days, except that the bids of any bidders who  
48 consent thereto may, at the request of the contracting unit, be held

1 for consideration for such longer period as may be agreed. All bid  
2 security, except the security of the three apparent lowest responsible  
3 bidders, shall be returned, unless otherwise requested by the bidder,  
4 within 10 business days after the opening of the bids **【**, Sundays and  
5 holidays excepted,**】** and the bids of such bidders shall be considered  
6 as withdrawn. Within three business days **【**, Sundays and holidays  
7 excepted,**】** after the awarding and signing of the contract and the  
8 approval of the contractor's performance bond, the bid security of  
9 the remaining unsuccessful bidders shall be returned to them.

10 b. The contract shall be signed by all parties within the time  
11 limit set forth in the specifications, which shall not exceed 21  
12 business days **【**, Sundays and holidays excepted,**】** after the making  
13 of the award; provided, however, that all parties to the contract may  
14 agree to extend the limit set forth in the specifications beyond the  
15 21 business day limit required in this subsection. The contractor,  
16 upon written request to the contracting unit, is entitled to receive,  
17 within seven business days of the request, an authorization to  
18 proceed pursuant to the terms of the contract on the date set forth in  
19 the contract for work to commence, or, if no date is set forth in the  
20 contract, upon receipt of authorization. If for any reason the  
21 contract is not awarded and the bidders have paid for or paid a  
22 deposit for the plans and specifications to the contracting unit, the  
23 payment or deposit shall immediately be returned to the bidders  
24 when the plans and specifications are returned in reasonable  
25 condition within 90 business days of notice that the contract has not  
26 been awarded.

27 (cf: P.L.1987, c.48, s.2)

28

29 18. Section 25 of P.L.1971, c.198 (C.40A:11-25) is amended to  
30 read as follows:

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

45 Prior to the adoption of any such regulations, a contracting unit  
46 shall submit them to a public hearing. Notice of the hearing and a  
47 general description of the subject matter of the regulations to be  
48 adopted shall be published **【**in not less than two newspapers

1 circulating in the county or municipality in which the contracting  
2 unit is located] on the Internet website of the contracting unit, or on  
3 the website of the Department of Community Affairs if the  
4 contracting unit does not maintain an Internet website. Publication  
5 shall precede by at least 20 business days the date set in the notice  
6 for the hearing. The clerk or secretary of the governing body of the  
7 contracting unit shall keep a record of the proceedings and of the  
8 testimony of any citizen or prospective bidder. Within 10 business  
9 days after the completion of the hearings, the proposed regulations  
10 and a true copy of the hearings shall be forwarded to the Director of  
11 the Division of Local Government Services for the director's  
12 approval. This approval shall be indicated by a letter from the  
13 director to the governing body of the contracting unit. If the  
14 director fails to approve or disapprove the regulations within 30  
15 business days of their receipt by the director, they shall take effect  
16 without the director's approval. The director may disapprove such  
17 proposed regulations only if the director finds that:

18 (a) They are written in a manner which will unnecessarily  
19 discourage full, free and open competition; or

20 (b) They unnecessarily restrict the participation of small  
21 businesses in the public bidding process; or

22 (c) They create undue preferences; or

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

25 If the director disapproves such proposed regulations within the  
26 30-business day period prescribed, they shall be of no force and  
27 effect and may not be required as a condition to the acceptance of a  
28 bid on any public contract by the contracting unit. Any appeal from  
29 a decision of the director to the Local Finance Board shall be  
30 subject to the provisions of the "Local Government Supervision  
31 Act (1947)", P.L.1947, c.151 (C.52:27BB-1 et seq.).

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

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

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

41 (cf: P.L.1999, c.440, s.32)

42

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

45 28. Prospective bidders shall be classified as to the character and  
46 amount of goods or services contracts as to which they shall be  
47 qualified to submit bids, and bids shall be accepted only from  
48 persons so qualified. The classification shall be made and an  
49 immediate notice thereof shall be sent to the prospective bidders by

1 certified or registered mail within eight business days after the date  
2 of receipt of the responsive statement or answers.

3 (cf: P.L.1999, c.440, s.35)

4

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

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

14 Where a request is made for the change of classification of  
15 another prospective bidder, the applicant therefor shall notify such  
16 other bidder by certified or registered mail of the time and place of  
17 hearing, as fixed by the governing body, and at the hearing shall  
18 present satisfactory evidence that the notice was served as herein  
19 required, before any matters pertaining to a change of classification  
20 of such other bidder shall be taken up. After hearing such evidence  
21 the governing body may, in its discretion, by appropriate action,  
22 change or retain the classification of any bidder.

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

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

33 (cf: P.L.1999, c.440, s.36)

34

35 21. Section 31 of P.L.1971, c.198 (C.40A:11-31) is amended to  
36 read as follows:

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

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

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

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

9 (cf: P.L.1999, c.440, s.37)

10  
11 22. Section 36 of P.L.1971, c.198 (C.40A:11-36) is amended to  
12 read as follows:

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

16 (1) If the estimated fair value of the property to be sold exceeds  
17 15 percent of the bid threshold in any one sale and it is neither  
18 livestock nor perishable goods, it shall be sold at public sale to the  
19 highest bidder.

20 (2) The contracting unit need not advertise for bids when it  
21 makes any such sale to the United States, the State of New Jersey,  
22 another contracting unit, any body politic to which it contributes tax  
23 raised funds, any foreign nation which has diplomatic relations with  
24 the United States, or any governmental unit in the United States.

25 (3) Notice of the date, time and place of the public sale together  
26 with a description of the items to be sold and the conditions of sale  
27 shall be published **【in an official newspaper】** on the Internet  
28 website of the contracting unit, or on the website of the Department  
29 of Community Affairs if the contracting unit does not maintain an  
30 Internet website. Such sale shall be held not less than seven nor  
31 more than 14 business days after the latest publication of the notice  
32 thereof.

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

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



1 at the preceding two public sales and provided further that in no  
2 event shall the terms or conditions of sale be changed or amended.

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

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

11 (cf: P.L.1999, c.440, s.39)

12

13 23. Section 1 of P.L.1979, c.222 (C.40A:11-40) is amended to  
14 read as follows:

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

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

46 (cf: P.L.1994, c.114, s.10)

47

48 24. Sections 1 through 9 of P.L.1985, c.482 (C.40A:11-41  
49 through C.40A:11-49) are repealed.

1       25. This act shall take effect immediately.

2

3

4

STATEMENT

5

6       This bill would revise the process for advertising, bidding and  
7       awarding contracts under the "Local Public Contracts Law,"  
8       P.L.1971, c.198 (C. 40A:11-1 et seq.).

9

10    Professional Service Contracts

11       The bill modifies the definition of "professional services" to  
12       exclude from the definition the provision of goods and performance  
13       of services that are original and creative in character and recognized  
14       as an artistic endeavor. Under the bill, "professional services" will  
15       be limited to services requiring knowledge in an advanced field of  
16       learning, such as architecture, engineering, finance, law, or  
17       medicine. The bill would also remove the 12-month limitation on  
18       the duration of contracts for "professional services." This change  
19       allows contracting units to award professional contracts for a period  
20       of 24 consecutive months.

21

22    Prior Negative Experience

23       The bill would allow contracting units to disqualify a bidder,  
24       who would otherwise be the lowest responsible bidder, if any  
25       contracting unit has had a prior negative experience with the bidder.  
26       Under current law, a contracting unit may disqualify a bidder, who  
27       would otherwise be the lowest responsible bidder, only if the  
28       governing body of the contracting unit itself had a prior negative  
29       experience with the bidder.

30

31    Certification of Availability of Adequate Funds

32       The bill would require the chief financial officer or certifying  
33       finance officer of the contracting unit to certify, in writing, to the  
34       governing body the availability of adequate funds for every contract  
35       subject to the bidding requirement of the "Local Public Contracts  
36       Law," before public advertising for bids begins. Under the bill, a  
37       contracting unit cannot issue an advertisement for bids unless the  
38       chief financial officer or certifying finance officer provides a  
39       certificate evidencing the availability of funds. Under current rules  
40       promulgated by the Department of Community Affairs, the chief  
41       financial officer or certifying finance officer of the contracting unit  
42       must certify the availability of adequate funds for contracts, which  
43       are pending approval by the governing body.

44

45    Use of Competitive Contracting/Request for Quotations

46       The bill permits contracting units to utilize competitive  
47       contracting for any subject matter listed under section 5 of the  
48       "Local Public Contracts Law," P.L.1971, c.198 (C. 40A:11-5). The  
49       subject matters enumerated in section 5 include, but are not limited

1 to, contracts for professional services, the furnishing of a tax map or  
2 maps for the contracting unit, the purchase of perishable foods, the  
3 printing of bonds and documents necessary to the issuance and sale  
4 of bonds, the publishing of legal notices in newspapers as required  
5 by law, the acquisition of artifacts or other items of unique intrinsic,  
6 artistic, or historical character, and the procurement of insurance.

7 Under the bill, a contracting unit would utilize request for  
8 quotations in competitive contracting for contracts involving a  
9 subject matter set forth in section 5 of the "Local Public Contracts  
10 Law." Under current law, contracting units must utilize request for  
11 proposals for all competitive contracting. The request for  
12 quotations process is a less formal approach to soliciting contracts  
13 than request for proposals, which is used when a contracting unit  
14 knows what goods or services it seeks, but needs information on  
15 how vendors would provide the goods or services and how much it  
16 will cost.

17

#### 18 Statement of Corporate Ownership

19 Under the bill, failure to submit a statement of corporate  
20 ownership at the time the contracting unit receives a vendor's bid  
21 would constitute a waivable defect, so long as the bidder submits  
22 the statement before the contracting unit awards the contract.  
23 Under current law, failure to submit a statement of corporate  
24 ownership at the time the contracting unit receives a vendor's bid is  
25 a fatal defect that renders the bid proposal unresponsive.

26

#### 27 Award of Contracts without Solicitation

28 The bill permits a contracting unit to award a contract or  
29 contracts without soliciting quotations if the value of the contract or  
30 contracts, in the aggregate, are less than the bid threshold but  
31 greater than 50 percent of the bid threshold. Under current law, a  
32 contracting unit may award a contract or contracts without  
33 soliciting quotations if the value of the contract or contracts, in the  
34 aggregate, are less than the bid threshold but greater than 15 percent  
35 of the bid threshold.

36

#### 37 Internet Advertising

38 The bill requires a contracting unit to advertise bids on the  
39 contracting unit's Internet website or submit to be published on the  
40 website of the Department of Community Affairs if the contracting  
41 unit does not maintain an Internet website. The bill eliminates the  
42 need to advertise for certain contracts in newspapers.

43

#### 44 Publication of Bid List

45 The bill eliminates the requirement that contracting units publish  
46 a report listing, summarizing, and ranking the bids of all potential  
47 vendors who submitted a proposal at least 48 hours before awarding  
48 a contract.

1 Deadlines

2 The bill changes deadlines related to advertising, bidding, and  
3 awarding local public contracts so that only business days are used  
4 in calculating deadlines.

5

6 Set-Aside Program

7 The bill repeals the qualified minority business, women's'  
8 business, small business, and veterans' business set-aside programs.