SYNOPSIS

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

CURRENT VERSION OF TEXT

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

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

1. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read as follows:
   2. As used herein the following words have the following definitions, unless the context otherwise indicates:
      (1) "Contracting unit" means:
         (a) Any county; or
         (b) Any municipality; or
         (c) Any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority, except as provided pursuant to P.L.2013, c.4, or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, including functions exercised in relation to the administration and oversight of a tourism district located in a municipality in which authorized casino gaming occurs, and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services.
         The term shall not include a private firm that has entered into a contract with a public entity for the provision of water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).
         "Contracting unit" shall not include a private firm or public authority that has entered into a contract with a public entity for the provision of wastewater treatment services pursuant to P.L.1995, c.216 (C.58:27-19 et al.).
         "Contracting unit" shall not include a duly incorporated nonprofit association that has entered into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1).
         "Contracting unit" shall not include a duly incorporated nonprofit entity that has entered into a contract for management and operation services with a municipal hospital authority established pursuant to P.L.2006, c.46 (C.30:9-23.15 et al.).
      (2) "Governing body" means:
         (a) The governing body of the county, when the purchase is to be made or the contract or agreement is to be entered into by, or in

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.
behalf of, a county; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may
include an arrangement whereby a vendor compensates a
contracting unit for the vendor's right to perform a service, such as,
but not limited to, operating a concession.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(39) "Proprietary" means goods or services of a specialized
nature, that may be made or marketed by a person or persons having
the exclusive right to make or sell them, when the need for such
goods or services has been certified in writing by the governing
body of the contracting unit to be necessary for the conduct of its
affairs.
"Service or services" means the performance of work, or the furnishing of labor, time, or effort, or any combination thereof, not involving or connected to the delivery or ownership of a specified end product or goods or a manufacturing process. Service or services may also include an arrangement in which a vendor compensates the contracting unit for the vendor's right to operate a concession.

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

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

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

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

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

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

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

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

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

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

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

(2) the bidder defaulted on a contract, thereby requiring [the] a local unit to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract;

(3) the bidder defaulted on a contract, thereby requiring [the] a local unit to look to the bidder's surety for completion of the contract or tender of the costs of completion; or

(4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with [the] a contracting unit.

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

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

(2) All mitigating factors shall be considered in determining the seriousness of the prior negative experience and in deciding whether disqualification is warranted.
(3) The bidder shall be furnished by the governing body with a written notice (a) stating that a disqualification is being considered; (b) setting forth the reason for the disqualification; and (c) indicating that the bidder shall be accorded an opportunity for a hearing before the governing body if the bidder so requests within a stated period of time. At the hearing, the bidder shall show good cause why the bidder should not be disqualified by presenting documents and testimony. If the governing body determines that good cause has not been shown by the bidder, it may vote to find the bidder lacking in responsibility and, thus, disqualified.

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

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

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

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

(2) A contracting unit shall not issue an advertisement for bids unless the chief financial officer or certifying finance officer, as appropriate, has provided a certificate showing the availability of funds.
(cf: P.L.1999, c.440, s.8)

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

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

a. The purchase or licensing of proprietary computer software designed for contracting unit purposes, which may include hardware intended for use with the proprietary software. This
subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

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

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

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

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

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

d. Homemaker--home health services;

e. Laboratory testing services;

f. Emergency medical services;

g. Contracted food services;

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

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

j. Concessions;

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

l. Maintenance, custodial, and groundskeeping services;

m. Consulting services;

n. Emergency medical billing services;

o. Property appraisal services;

p. Reassessment or revaluation services;

q. Grant writing services;

r. Animal control services.

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

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

5. Section 4 of P.L.1999, c.440 (C.40A:11-4.4) is amended to read as follows:
4. **[The]** Except for contracts concerning any subject matter listed under section 5 of P.L.1971, c.198 (C.40A:11-5), which shall utilize request for quotations, the competitive contracting process shall utilize request for proposals documentation in accordance with the following provisions:

a. The purchasing agent or counsel or administrator shall prepare or have prepared a request for proposal documentation, which shall include: all requirements deemed appropriate and necessary to allow for full and free competition between vendors, but no financial statement shall be required of vendors if either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate is also required to be furnished by the bidder, unless any law or regulation of the United States imposes a condition upon the awarding of a monetary grant to be used for the purchase, contract or agreement, which condition requires that a financial statement be submitted; information necessary for potential vendors to submit a proposal; and a methodology by which the contracting unit will evaluate and rank proposals received from vendors.

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

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

d. All proposals and contracts shall be subject to the provisions of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a statement of corporate ownership [*and*]; provided, however, that failure to submit a statement of corporate ownership pursuant to section 1 of P.L.1977, c.33 (C.52:25-24.2) at the time specified by the contracting unit for the receipt of bids shall constitute a waivable defect, so long as the bidder submits a statement of
corporate ownership before the contracting unit awards the contract.

All proposals and contracts shall be subject to the provisions of P.L.1975, c.127 (C.10:5-31 et seq.) concerning equal employment opportunity and affirmative action.

(cf: P.L.2014, c.52, s.2)

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.1999, c.440, s.5)

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

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

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

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

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

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A contracting unit may determine to enter into an energy savings services contract either through public advertising for bids and the receipt of bids therefor or through competitive contracting in lieu of public bidding in the manner provided by sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 et seq.).
(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program.

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

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

(b) All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.
(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a contracting unit may designate or appoint an employee of the contracting unit with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the contracting unit.

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

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

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

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a contracting unit and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the contracting unit when all lease payments have been made. Notwithstanding the provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as
those terms are defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. As used in this section:
"direct digital control systems" means the devices and
interfaces that perform the logic that control a building’s heating,
ventilating, and air conditioning system. Direct digital controls
shall be open protocol format and shall meet the interoperability
guidelines established by the American Society of Heating,
Refrigerating and Air-Conditioning Engineers;
"energy conservation measure" means an improvement that
results in reduced energy use, including, but not limited to,
installation of energy efficient equipment; demand response
equipment; combined heat and power systems; facilities for the
production of renewable energy; water conservation measures,
fixtures or facilities; building envelope improvements that are part
of an energy savings improvement program; and related control
systems for each of the foregoing;
"energy related capital improvement" means a capital
improvement that uses energy but does not result in a reduction of
energy use;
"energy saving obligation" means a bond, note or other
agreement evidencing the obligation to repay borrowed funds
incurred in order to finance energy saving improvements;
"energy savings" means a measured reduction in fuel, energy,
operating or maintenance costs resulting from the implementation
of one or more energy conservation measures services when
compared with an established baseline of previous fuel, energy,
operating or maintenance costs, including, but not limited to, future
capital replacement expenditures avoided as a result of equipment
installed or services performed as part of an energy savings plan;
"energy savings improvement program" means an initiative of a contracting unit to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

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

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

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

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

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

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

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

(cf: P.L.2012, c.55, s.3)
8. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read as follows:

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

(1) The subject matter thereof consists of:

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

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

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

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

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

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

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

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

(i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with the service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
(j) The publishing of legal notices in newspapers as required by law;
(k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;
(l) Those goods and services necessary or required to prepare and conduct an election;
(m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
(n) The doing of any work by handicapped persons employed by a sheltered workshop;
(o) The provision of any goods or services including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;
(p) (Deleted by amendment, P.L.1999, c.440.)
(q) Library and educational goods and services;
(r) (Deleted by amendment, P.L.2005, c.212).
(s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products;
(t) (Deleted by amendment, P.L.1999, c.440.)
(u) Contracting unit towing and storage contracts, provided that all of the contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of the services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor;
(v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C. s.796;
(w) The purchase of electricity or administrative or dispatching services directly related to the transmission of purchased electricity by a contracting unit engaged in the generation of electricity;
(x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances;
(y) An agreement for the purchase of an equitable interest in a water supply facility or for the provision of water supply services entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
an agreement entered into pursuant to P.L.1989, c.109 (N.J.S.40A:31-1 et al.), so long as the agreement is entered into no later than six months after the effective date of P.L.1993, c.381;

(z) A contract for the provision of water supply services entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

(aa) The cooperative marketing of recyclable materials recovered through a recycling program;

(bb) A contract for the provision of wastewater treatment services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

(cc) Expenses for travel and conferences;

(dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;

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

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

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

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

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

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

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

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

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

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

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

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

(6) Notwithstanding any provision of law, rule, or regulation to the contrary, the contract is for the provision of electricity by a contracting unit engaged in the distribution of electricity for retail sale, for the provision of wholesale electricity by a municipal
shared services energy authority as defined pursuant to section 3 of P.L.2015, c.129 (C.40A:66-3), or for the provision of administrative or dispatching services related to the transmission of electricity, provided that in lieu of engaging in public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing these services. The process shall be designed in a way that is appropriate to and commensurate with industry practices, and the integrity of the government contracting process. Within 30 business days after receipt of the written description, the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 business days, the procurement process, as submitted to the director pursuant to this section, shall be deemed approved.

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

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

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

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

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

c. If authorized by the governing body by resolution or ordinance, all contracts that are in the aggregate less than 50
percent of the bid threshold may be awarded by the contracting
agent without soliciting competitive quotations.

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

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

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

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

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

(1) is a citizen of the United States;
(2) is of good moral character;
(3) is a high school graduate or equivalent;
(4) has at least two years of higher education, and two years of
full time governmental experience performing duties relative to
those of public procurement provided, however, that additional
years of experience may be substituted for years of higher education, on a one to one basis;

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

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

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

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

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

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

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

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

(b) a medical event or condition.

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

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

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

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

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

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

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

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

11. Additional matters regarding contracts for the provision and
performance of goods and services.
The contracting units entering into a joint agreement pursuant to section 10 of P.L.1971, c.198 (C.40A:11-10) may designate a joint contracting agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the price of the goods or services being procured is no greater than the price offered to federal agencies;
(2) (Deleted by amendment, P.L.2006, c.10);
(3) the contracting unit receives the benefit of federally mandated price reductions during the term of the contract;
(4) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services
under the State contract, unless the contracting unit determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules or schedules from other federal procurement programs would be more advantageous to the contracting unit;

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

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

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

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

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

(1) Supplying of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) The provision of wastewater treatment services or the
designing, financing, construction, operation, or maintenance, or
any combination thereof, of a wastewater treatment system, or any
component part or parts thereof, for a period not to exceed 40 years,
when the contract for these services is approved by the Division of
Local Government Services in the Department of Community
Affairs and the Department of Environmental Protection pursuant to
P.L.1985, c.72 (C.58:27-1 et al.), except that no approvals shall be
required for those contracts otherwise exempted pursuant to
subsection (36) or (43) of this section. For the purposes of this
subsection, "wastewater treatment services" means any services
provided by a wastewater treatment system, and "wastewater
treatment system" means equipment, plants, structures, machinery,
apparatus, or land, or any combination thereof, acquired, used,
constructed, or operated for the storage, collection, reduction,
recycling, reclamation, disposal, separation, or other treatment of
wastewater or sewage sludge, or for the final disposal of residues
resulting from the treatment of wastewater, including, but not
limited to, pumping and ventilating stations, facilities, plants and
works, connections, outfall sewers, interceptors, trunk lines, and
other personal property and appurtenances necessary for their operation;
(20) The supplying of goods or services for the purpose of lighting public streets, for a term not to exceed five years;
(21) The provision of emergency medical services for a term not to exceed five years;
(22) Towing and storage contracts, awarded pursuant to paragraph u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for any term not exceeding three years;
(23) Fuel for the purpose of generating electricity for a term not to exceed eight years;
(24) The purchase of electricity or administrative or dispatching services related to the transmission of electricity, from a supplier of electricity subject to the jurisdiction of a federal regulatory agency, from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, or from any supplier of electricity within any regional transmission organization or independent system operator or from an organization or operator or their successors, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24, 1991, for a term not to exceed 40 years, or by a contracting unit engaged solely in the distribution of electricity for retail sale for a term not to exceed ten years, except that a contract with a contracting unit, engaged solely in the distribution of electricity for retail sale, in excess of ten years, shall require the written approval of the Director of the Division of Local Government Services. If the director fails to respond in writing to the contracting unit within 10 business days, the contract shall be deemed approved;
(25) Basic life support services, for a period not to exceed five years. For the purposes of this subsection, "basic life support" means a basic level of prehospital care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care, and fracture stabilization;
(26) (Deleted by amendment, P.L.1999, c.440.)
(27) The provision of transportation services to an elderly person, an individual with a disability, or an indigent person for any term of not more than three years. For the purposes of this subsection, "elderly person" means a person who is 60 years of age or older. "Individual with a disability" means a person of any age who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. "Indigent person" means a person of any age whose income does not exceed 100 percent of the poverty level, adjusted for family size, established and adjusted under section 673(2) of subtitle B, the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C. s.9902 (2));
(28) The supplying of liquid oxygen or other chemicals, for a
term not to exceed five years, when the contract includes the
installation of tanks or other storage facilities by the supplier, on or
near the premises of the contracting unit;
   (29) The performance of patient care services by contracted
medical staff at county hospitals, correction facilities, and long term
care facilities, for any term of not more than three years;
   (30) The acquisition of an equitable interest in a water supply
facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
contract entered into pursuant to the "County and Municipal Water
Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into
no later than January 7, 1995, for any term of not more than forty
years;
   (31) The provision of water supply services or the financing,
construction, operation, or maintenance or any combination thereof,
of a water supply facility or any component part or parts thereof, by
a partnership or copartnership established pursuant to a contract
authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
period not to exceed 40 years;
   (32) Laundry service and the rental, supply, and cleaning of
uniforms for any term of not more than three years;
   (33) The supplying of any product or the rendering of any
service, including consulting services, by a cemetery management
company for the maintenance and preservation of a municipal
cemetery operating pursuant to the "New Jersey Cemetery Act,"
N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;
   (34) A contract between a public entity and a private firm
pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
water supply services may be entered into for any term which, when
all optional extension periods are added, may not exceed 40 years;
   (35) A contract for the purchase of a supply of water from a
public utility company subject to the jurisdiction of the Board of
Public Utilities in accordance with tariffs and schedules of charges
made, charged or exacted or contracts filed with the Board of Public
Utilities, for any term of not more than 40 years;
   (36) A contract between a public entity and a private firm or
public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
the provision of wastewater treatment services may be entered into
for any term of not more than 40 years, including all optional
extension periods;
   (37) The operation and management of a facility under a license
issued or permit approved by the Department of Environmental
Protection, including a wastewater treatment system or a water
supply or distribution facility, as the case may be, for any term of
not more than ten years. For the purposes of this subsection,
"wastewater treatment system" refers to facilities operated or
maintained for the storage, collection, reduction, disposal, or other
treatment of wastewater or sewage sludge, remediation of
groundwater contamination, stormwater runoff, or the final disposal
of residues resulting from the treatment of wastewater; and "water
supply or distribution facility" refers to facilities operated or
maintained for augmenting the natural water resources of the State,
increasing the supply of water, conserving existing water resources,
or distributing water to users;

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

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

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

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

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

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

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

(45) The provision or performance of goods or services for the
purpose of producing class I renewable energy or class II renewable
energy, as those terms are defined in section 3 of P.L.1999, c.23
(C.48:3-51), at, or adjacent to, buildings owned by, or operations
conducted by, the contracting unit, the entire price of which is to be
established as a percentage of the resultant savings in energy costs,
for a term not to exceed 15 years; provided, however, that a contract
shall be entered into only subject to and in accordance with
guidelines promulgated by the Board of Public Utilities establishing
a methodology for computing energy cost savings and energy
generation costs; and

(46) A power supply contract, as defined pursuant to section 3 of
P.L.2015, c.129 (C.40A:66-3), between a member municipality as
defined pursuant to section 3 of P.L.2015, c.129 (C.40A:66-3), and
the municipal shared services energy authority established pursuant
to the provisions of P.L.2015, c.129 (C.40A:66-1 et al.) to meet the
electric power needs of its members, for the lease, operation, or
management of electric generation within a member municipality's
corporate limits and franchise area or the purchase of electricity, or
the purchase of fuel for generating units for a term not to exceed 40
years.
Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. The contract shall be awarded by resolution of the governing body upon a finding by the governing body that the services are being performed in an effective and efficient manner; b. No contract shall be extended so that it runs for more than a total of five consecutive years; c. Any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. The terms and conditions of the contract remain substantially the same.

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

The Division of Local Government Services in the Department of Community Affairs shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.
All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be extended by mutual agreement of the parties to the contract when a contracting unit has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires. (cf: P.L.2015, c.129, s.29)

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

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

b. Upon acceptance of the work performed pursuant to the contract for which the contractor has agreed to the withholding of payments pursuant to subsection a. of this section, all amounts being withheld by the contracting unit shall be released and paid in full to the contractor within 45 business days of the final acceptance date agreed upon by the contractor and the contracting unit, without further withholding of any amounts for any purpose whatsoever, provided that the contract has been completed as indicated. If the contracting unit requires maintenance security after acceptance of the work performed pursuant to the contract, such security shall be obtained in the form of a maintenance bond. The maintenance bond shall be no longer than two years and shall be no more than 100% of the project costs. (cf: P.L.1999, c.440, s.26)

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

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

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

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

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

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

3) [For municipal solid waste collection and disposal contracts, notice shall be published in an official newspaper of the contracting unit, and be] provided to any person who has submitted a bid or who has received a bid package in any of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.
unit and in at least one newspaper of general circulation published
in the State no later than seven days, Saturdays, Sundays, and
holidays excepted, prior to the date for acceptance of bids.]  
(Deleted by amendment, P.L. , c. ) (pending before the
Legislature as this bill)
  d. Failure of the contracting unit to advertise for the receipt of
bids or to provide proper notification of revisions or addenda to
advertisements or bid documents related to bids as prescribed by
this section shall prevent the contracting unit from accepting the
bids and require the readvertisement for bids pursuant to subsection
a. of this section. Failure to obtain a receipt when good faith notice
is sent or delivered to the address or telephone facsimile number on
file with the contracting unit shall not be considered failure by the
contracting unit to provide notice.
(cf: P.L.2007, c.4, s.1)

16. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to
read as follows:
  2. When required by the bid plans and specifications, the
following requirements shall be considered mandatory items to be
submitted at the time specified by the contracting unit for the
receipt of the bids; the failure to submit any one of the mandatory
items shall be deemed a fatal defect that shall render the bid
proposal unresponsive and that cannot be cured by the governing
body:
    a. A guarantee to accompany the bid pursuant to section 21 of
P.L.1971, c.198 (C.40A:11-21);
    b. A certificate from a surety company pursuant to section 22
of P.L.1971, c.198 (C.40A:11-22);
    c. [A statement of corporate ownership pursuant to section 1 of
P.L.1977, c.33 (C.52:25-24.2);] (Deleted by amendment, P.L. , c.)
(pending before the Legislature as this bill)
    d. A listing of subcontractors pursuant to section 16 of
P.L.1971, c.198 (C.40A:11-16);
    e. A document provided by the contracting agent in the bid
plans, specifications, or bid proposal documents for the bidder to
acknowledge the bidder's receipt of any notice or revisions or
addenda to the advertisement or bid documents.
    f. (Deleted by amendment, P.L.2009, c.315.)
(cf: P.L.2009, c.315, s.1)

17. Section 24 of P.L.1971, c.198 (C.40A:11-24) is amended to
read as follows:
  24. [Time for making awards; deposits returned.] a. The
contracting unit shall award the contract or reject all bids within
such time as may be specified in the invitation to bid, but in no case
more than business 60 days, except that the bids of any bidders who
consent thereto may, at the request of the contracting unit, be held
for consideration for such longer period as may be agreed. All bid
security, except the security of the three apparent lowest responsible
bidders, shall be returned, unless otherwise requested by the bidder,
within 10 business days after the opening of the bids [Sundays and
holidays excepted] and the bids of such bidders shall be considered
as withdrawn. Within three business days [Sundays and holidays
excepted] after the awarding and signing of the contract and the
approval of the contractor's performance bond, the bid security of
the remaining unsuccessful bidders shall be returned to them.

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

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

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

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

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

(a) They are written in a manner which will unnecessarily discourage full, free and open competition; or
(b) They unnecessarily restrict the participation of small businesses in the public bidding process; or
(c) They create undue preferences; or
(d) They violate any other provision of this act, or any other law.

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

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

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

Any such governing body may adopt a standard form of statement or questionnaire for bidders on public works contracts, and in such case their action shall be governed as provided herein. (cf: P.L.1999, c.440, s.32)

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

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

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

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

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

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

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

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

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

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

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

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

The board shall review the responsibility of all prospective bidders who have filed statements or answers, considering both the statement, answers and any additional information given at the hearing, and shall certify to the contracting unit concerned, its decision as to the original classifications or reclassifications, if any. The decisions shall be made by a majority vote.
In order for any change in classification by the board to be effective for a contract previously advertised, the request shall be filed not less than five business days prior to the final day for submission of bids, and the board shall hold a hearing and act upon the request not less than two business days prior to the date fixed for the next opening of bids on any public works contract for which such prospective bidders might be qualified to bid as a result of the reclassification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. This act shall take effect immediately.

STATEMENT

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

Professional Service Contracts

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

Prior Negative Experience

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

Certification of Availability of Adequate Funds

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

Use of Competitive Contracting/Request for Quotations

The bill permits contracting units to utilize competitive contracting for any subject matter listed under section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C. 40A:11-5). The subject matters enumerated in section 5 include, but are not limited
to, contracts for professional services, the furnishing of a tax map or
maps for the contracting unit, the purchase of perishable foods, the
printing of bonds and documents necessary to the issuance and sale
of bonds, the publishing of legal notices in newspapers as required
by law, the acquisition of artifacts or other items of unique intrinsic,
artistic, or historical character, and the procurement of insurance.
Under the bill, a contracting unit would utilize request for
quotations in competitive contracting for contracts involving a
subject matter set forth in section 5 of the "Local Public Contracts
Law." Under current law, contracting units must utilize request for
proposals for all competitive contracting. The request for
quotations process is a less formal approach to soliciting contracts
than request for proposals, which is used when a contracting unit
knows what goods or services it seeks, but needs information on
how vendors would provide the goods or services and how much it
will cost.

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

Award of Contracts without Solicitation
The bill permits a contracting unit to award a contract or
contracts without soliciting quotations if the value of the contract or
contracts, in the aggregate, are less than the bid threshold but
greater than 50 percent of the bid threshold. Under current law, a
contracting unit may award a contract or contracts without
soliciting quotations if the value of the contract or contracts, in the
aggregate, are less than the bid threshold but greater than 15 percent
of the bid threshold.

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

Publication of Bid List
The bill eliminates the requirement that contracting units publish
a report listing, summarizing, and ranking the bids of all potential
vendors who submitted a proposal at least 48 hours before awarding
a contract.
Deadlines
The bill changes deadlines related to advertising, bidding, and awarding local public contracts so that only business days are used in calculating deadlines.

Set-Aside Program
The bill repeals the qualified minority business, women’s' business, small business, and veterans’ business set-aside programs.