

CHANGES TO LOCAL PUBLIC CONTRACTS LAW AND REGULATION REFERENCE MANUAL

(Changes Identified by Chapter Section and Underlined)

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

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

- l. Maintenance, custodial, and grounds keeping 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)(ii)] (a) of subsection (1) of section 5 of P.L. 1971, c. 198 (C. 40A:11-5).

(cf: P.L. 2009, c.4, s.7)

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

- 4. 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.

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C.40A:11-13: Specifications

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

- (f) Require that any bidder submit a financial statement 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.

A law authorized the creation of a municipal shared services energy authority to provide for shared facilities, powers and services, amending and supplementing the Local Public Contracts Law as follows:

C.40A:11-5.: Exceptions

(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. c. (C.) (pending before the Legislature as this bill), 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 days after receipt of the written description, the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process, as submitted to the director pursuant to this section, shall be deemed approved.

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

C. 40A:11-15. : Duration of certain contracts

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

- (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. , c. (C.) (pending before the Legislature as this bill), or a contracting unit engaged in the generation of

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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;

(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));

(46) A power supply contract, as defined pursuant to section 3 of P.L. .c. (C.) (pending before the Legislature as this bill), between a member municipality as defined pursuant to section 3 of P.L. .c (C.) (pending before the Legislature as this bill), and the municipal shared services energy authority established pursuant to the provisions of P.L. .c. (C.) (pending before the Legislature as this bill) 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.

All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts for the provision or performance of goods or services or the supplying of equipment to promote energy conservation through the production of class I renewable energy or class II renewable energy authorized pursuant to subsection (45) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35), (37), or (43) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36), (37), or (43) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of 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.

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

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C.40A:11-13.: Specifications

(f) As used in this subsection:

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

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

“department” means the New Jersey Department of Transportation;

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

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

In addition to the requirements of paragraphs (a) through (e) of this section, any bid specification for the provision or performance of goods or services under P.L. 1971, c.198 (C.40A:11-1 et seq.) that includes the purchase or use of 1,000 or more tons of hot mix asphalt shall include a pay item for an asphalt price adjustment reflecting changes in the cost of asphalt cement. The pay item for asphalt price adjustment shall apply to each ton of hot mix asphalt purchased or used by the contracting unit. Any bid specification prepared pursuant to P.L. 1971, c.198 (C.40A:11-1 et seq.) that includes the purchase or use of less than 1,000 tons of hot mix asphalt shall include a pay item for an asphalt price adjustment applicable to any quantity of hot mix asphalt exceeding 1,000 tons that may be purchased or used in the work in the event that performance of the work, including change orders, requires more than 1,000 tons of hot mix asphalt. As set forth in section 7 of P.L. 1971, c.198 (C.40A:11-7), no contract shall be divided to disaggregate the quantity of hot mix asphalt or equivalent asphalt cement-based paving product to be purchased or used for the purpose of avoiding compliance with this paragraph.

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

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

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

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

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

- d. deleted in its entirety
 - e. (1), (2) and (3) deleted in its entirety
 - f. deleted in its entirety
- (cf: P.L.2015, c.201, s.2)

C.40A:5-16.: The governing body of any local unit shall not pay out any of its moneys

a. unless the person claiming or receiving the same shall first present a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct. The governing body may, by resolution, require an affidavit in lieu of the said certification, and the clerk or disbursing officer of the local unit may take such affidavit without cost, and

d. The provisions of subsection a. of this section shall not apply to payments made by a governing body of a local unit for the provision of:

(1) telecommunications or basic cable service provided by a telecommunications or cable television company under the jurisdiction of the Board of Public Utilities;

(2) electric, gas, water, or sewer utility service provided by a public utility, as that term is defined pursuant to R.S.48:2-13, that is regulated by the Board of Public Utilities pursuant to Title 48 of the Revised Statutes; or

(3) a service that is provided under a contract between a public utility, as that term is defined pursuant to R.S.48:2-13, and a governing body that is approved by the Board of Public Utilities under which rates for service are controlled by the terms of the contract.

(cf: P.L.2015, c.177, s.6)

This act shall take effect immediately, but shall remain inoperative for 60 days following the date of enactment. (March 11, 2016)

C. 18A:3B-3: Definitions

3. “Educational research and services corporation” means a nonprofit corporation whose voting members are public research universities, State colleges, county colleges, public institutions of higher education primarily located in the State of New Jersey, and nonprofit independent institutions of higher education that receive direct State aid.

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C. 18A:3B-6.1: Educational research and service corporation

2. a. (1) The governing board of a public research university or a State college may join with other public research universities, State colleges, county colleges, public institutions of higher education primarily located in the State of New Jersey, and nonprofit independent institutions of higher education that receive direct State aid, to form an educational research and services corporation to be operated exclusively for charitable, scientific, and educational purposes, within the meaning of paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code (26 U.S.C. s.501).

b. (1) An educational research and services corporation may act as a lead agency or contracting unit for the procurement of goods or services concerning educational technology systems and related services by those entities comprising the educational and research services corporation.

(2) An educational research and services corporation shall be deemed a local unit for the purposes of the “Uniform Shared Services and Consolidation Act,” sections 1 through 35 of P.L.2007, c.63 (C.40A:65-1 through C.40A:65-35) and may act as a lead agency or contracting unit for the procurement of goods or services concerning educational technology systems and related services by municipalities, fire districts, counties, local authorities subject to the “Local Authorities Fiscal Control Law,” P.L.1983, c.313 (C.40A:5A-1 et seq.), school districts, county colleges, State colleges, public research universities, nonprofit independent institutions of higher education that receive direct State aid, or any combination of those entities.

c. An educational research and services corporation formed under P.L. , c. (pending before the Legislature as this bill), shall be subject to all applicable requirements under all applicable State and local procurement laws, including, but not limited to, section 1 of P.L.1977, c.33 (C.52:25-24.2), P.L.2012, c.25 (C.52:32-55 et seq.), and P.L.2005, c.51 (C.19:44A-20.13 et seq.).

(cf: P.L.2015, c.140)