

CHAPTER 73

AN ACT concerning certain local public contracts for projects involving the removal of soil, and amending and supplementing P.L.1999, c.39.

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

1. Section 1 of P.L.1999, c.39 (C.40A:11-23.1) is amended to read as follows:

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

1. All plans, specifications and bid proposal documents for the erection, alteration, or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), shall include:

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

b. a form listing those documentary and informational forms, certifications, and other documents that the contracting agent requires each bidder to submit with the bid. The form shall list each of the items to be submitted with the bid proposal and a place for the bidder to indicate, by initialing each entry, that the bidder has included those required items with the completed bid proposal. Each bidder shall complete this form and submit it with the bid proposal in addition to those documentary and informational forms, certifications, and other documents that are listed on the form; and

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

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

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

d. at the option of the contracting unit, specified alternate proposals in addition to a base specification. When the contracting unit specifies alternate proposals, the determination of which bidder's response to a request for bids offers the lowest price shall be made on the basis of the price of: (i) the base specification plus the price of any selected specified alternate proposals; or (ii) a choice of specified alternative proposals within the limit of funds that may be made available for a project. If a contracting unit provides for more than one specified alternate proposal, the contracting unit shall specify in the bid specification the criteria or ranked order by which specified alternate proposals shall be selected and included

in the award of the contract by the governing body, provided that this requirement shall only apply to a project with a total estimated cost, including specified alternate proposals, of greater than \$500,000. The aggregate dollar value of accepted specified alternative proposals shall not exceed 50 percent of the base bid. If a contracting unit is found in a court of law to have chosen specific alternative proposals in a manner intended to award a contract to a specific vendor, the bids shall be voided, the contracting unit shall rebid the project, and a plaintiff who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

For the purposes of this subsection:

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

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

e. in the case of a project that includes the removal of soil from the site, disclosure of any documentation relative to the known soil conditions at the site including, but not limited to, any test results specifying the level of contamination, if any, of the soil that has been found at the site of the project, or if a project is located on a site with historical or suspected contamination, a line item allowance or minimum unit price line item for soil testing and contaminated soil disposal, which shall be a good faith effort on the part of the contracting unit to reasonably estimate the total cost of testing the soil and disposing of it.

C.40A:11-23.1a Approval of change order under certain circumstances.

2. In the case of a project for the erection, alteration, or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), that does not have historical or suspected soil contamination, or for which the plans, specifications and bid proposal documents for the project do not include a line item allowance or minimum unit price line item for soil testing and contaminated soil disposal pursuant to subsection e. of section 1 of P.L.1999, c.39 (C.40A:11-23.1), and contaminated soil from the site cannot be disposed of pursuant to the plans, specifications and bid proposal documents due to the contaminated soil being found to be different from the type or quality originally disclosed, the contracting unit shall approve, consistent with and subject to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), and any rules or regulations adopted pursuant thereto, a change order to reimburse the contractor for the additional reasonable costs, as determined by the contracting unit, required to test and dispose of the contaminated soil.

3. This act shall take effect immediately.

Approved December 3, 2012.