

CHAPTER 79
(CORRECTED COPY)

AN ACT concerning the duration and prevailing wage requirements of certain local public contracts and amending P.L.1971, c.198.

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

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

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

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, 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, is 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 line, adjusted for family size, established and adjusted under section 2 of the "Community Services Block Grant Act," (42 U.S.C. s.9902);

(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, 2003," P.L.2003, c.261 (C.45:27-1 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, a stormwater management 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; "stormwater management system" means the same as that term is defined in section 3 of P.L.2019, c.42 (C.40A:26B-3); and "water supply or distribution facility" refers to facilities operated or maintained for augmenting the natural water resources of the State, increasing the supply of water, conserving existing water resources, or distributing water to users;

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

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

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

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

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

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

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

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

(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;

(47) A contract entered into pursuant to paragraph (2) of subsection a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) between a county hospital authority and a manager for the management, operation, and maintenance of a hospital owned by the authority or the county for a term not to exceed 20 years, provided, however, that a contract entered into pursuant to paragraph (2) of subsection a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) may be renewed for two additional periods, not to exceed five years each; and

(48) (a) A lease agreement that provides for the use, lease, lease-back, acquisition, operation, or maintenance of ferry boats and related facilities and services, for a period not to exceed 20 years, except as provided by paragraph (b) of this subsection. For the purposes of this subsection, "related facilities and services" includes, but is not limited to, docks and terminals, parking facilities, intermodal facilities, ingress and egress to the parking and terminal facilities, and the provision of goods and services to the public, provided that a contract for the provision or performance of such goods or services is related to ferry services and requires:

(1) a total capital expenditure exceeding \$300,000, as certified by the chief financial officer of the contracting unit, including but not limited to capital expenditures made by the lessee; or

(2) a capital improvement that has a life expectancy upon completion exceeding 20 years, as certified by the chief financial officer of the contracting unit.

(b) A lease agreement for a capital improvement under subparagraph (2) of paragraph (a) of this subsection may be awarded for a period not to exceed 50 years.

(c) Each worker employed in a construction project under a contract executed pursuant to this subsection shall be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

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 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, contracts for the operation and maintenance of a stormwater management system authorized pursuant to subsection (37) 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.

2. This act shall take effect immediately and shall apply to contracts executed on or after the date of enactment.

Approved May 2, 2019.