ASSEMBLY, No. 3633

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JANUARY 6, 2011

Sponsored by:
Assemblywoman MILA M. JASEY
District 27 (Essex)
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Assemblywoman Wagner, Assemblyman Benson, Senators Bateman and Gordon

SYNOPSIS
Requires plans, specifications, and bid proposal documents for certain local public contracts to address soil contamination.

CURRENT VERSION OF TEXT
As reported by the Senate Environment and Energy Committee on December 12, 2011, with amendments.
AN ACT concerning certain local public contracts for projects involving the removal of soil \(^1\) and amending \(^2\) and supplementing \(^3\) 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:

   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

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.

Matter enclosed in superscript numerals has been adopted as follows:

\(^{\text{3}}\)Senate SEN committee amendments adopted December 12, 2011.
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, a statement provided by a laboratory using testing methods approved by the Department of Environmental Protection specifying the level of contamination, if any, of the soil that has been found at the site of the project, or 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 testing the soil, and if found to be contaminated, the cost of disposal of the contaminated soil.

(cf: P.L.2009, c.292, s.1)
2. (New section) The Department of Environmental Protection may adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the criteria under which soil testing shall be conducted, and the testing parameters therefor, for projects subject to the provisions of subsection e. of section 1 of P.L.1999, c.39 (C.40A:11-23.1), upon a determination that such rules and regulations are necessary for the protection of public health and safety.¹

³ This act shall take effect immediately.