SYNOPSIS

Allows certain public colleges and universities to use the design-build or construction manager at-risk method as the means to contract for the construction of buildings.

CURRENT VERSION OF TEXT

As introduced.
AN ACT concerning contracts at State colleges and universities and
amending various parts of the statutory law.

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

1. N.J.S.18A:64-6 is amended to read as follows:

18A:64-6. The board of trustees of a State college shall have
general supervision over and shall be vested with the conduct of the
college. It shall have the power and duty to:

1a. Adopt and use a corporate seal;
1b. Determine the educational curriculum and program of the
college consistent with the programmatic mission of the institution
or approved by the Commission on Higher Education;
1c. Determine policies for the organization, administration and
development of the college;
1d. Study the educational and financial needs of the college;
1e. Disburse all moneys appropriated to the college by the
Legislature and all moneys received from tuition, fees, auxiliary
services and other sources;
1f. Direct and control expenditures and transfers of funds
appropriated to the college and tuition received by the college, in
accordance with the provisions of the State budget and
appropriation acts of the Legislature, reporting changes and
additions thereto and transfers thereof to the Director of the
Division of Budget and Accounting in the State Department of the
Treasury and as to funds received from other sources, direct and
control expenditures and transfers in accordance with the terms of
any applicable trusts, gifts, bequests, or other special provisions.
All accounts of the college shall be subject to audit by the State at
any time;
1g. In accordance with the provisions of the State budget and
appropriation acts of the Legislature, appoint and fix the
compensation of a president of the college, who shall be the
executive officer of the college and an ex officio member of the
board of trustees, without vote, and shall serve at the pleasure of the
board of trustees;
1h. Notwithstanding the provisions of Title 11, Civil Service, of
the Revised Statutes, upon nomination by the president appoint a
treasurer and such deans and other professional members of the

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.
academic, administrative and teaching staff as defined in section 13 of P.L.1986, c.42 (C.18A:64-21.2) as shall be required and fix their compensation and terms of employment in accordance with salary ranges and policies which shall prescribe qualifications for various classifications and shall limit the percentage of the educational staff that may be in any given classification;

i. Upon nomination by the president, appoint, remove, promote and transfer such other officers, agents or employees as may be required for carrying out the purposes of the college and assign their duties, determine their salaries and prescribe qualifications for all positions, all in accordance with the provisions of Title 11, Civil Service, of the Revised Statutes;

j. Pursuant to the provisions of the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and agreements for the purchase of lands, buildings, equipment, materials, supplies and services; enter into contracts and agreements with the State or any of its political subdivisions or with the United States, or with any public body, department or other agency of the State or the United States or with any individual, firm, or corporation, which are deemed necessary or advisable by the board for carrying out the purposes of the college;

l. If necessary, take and condemn land and other property in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), whenever authorized by law to purchase land or other property;

m. Adopt, after consultation with the president and faculty, bylaws and make and promulgate such rules, regulations and orders, not inconsistent with the provisions of this article, that are necessary and proper for the administration and operation of the college and the carrying out of its purposes;

n. Establish fees for room and board sufficient for the operation, maintenance, and rental of student housing and food service facilities;

o. Fix and determine tuition rates and other fees to be paid by students;

p. Accept from any government or governmental department, agency or other public or private body or from any other source grants or contributions of money or property, which the board may use for or in aid of any of its purposes;

q. Acquire by gift, purchase, condemnation or otherwise, own, lease, dispose of, use and operate property, whether real, personal or mixed, or any interest therein, which is necessary or desirable for college purposes;

r. Employ architects to plan buildings; secure bids for the construction of buildings and for the equipment thereof; make contracts for the construction of buildings and for equipment; and supervise the construction of buildings;
s. Manage and maintain, and provide for the payment of all charges and expenses in respect to all properties utilized by the college;

t. Borrow money for the needs of the college, as deemed requisite by the board, in such amounts, and for such time and upon such terms as may be determined by the board, provided that this borrowing shall not be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, or be payable out of property or funds, other than moneys appropriated for that purpose, of the State;

u. Authorize any new program, educational department or school consistent with the institution's programmatic mission or approved by the commission;

v. (Deleted by amendment, P.L.1994, c.48);

w. Pursuant to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), award contracts and agreements for the purchase of goods and services, as distinct from contracts or agreements for the construction of buildings and other improvements, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State college, price and other factors considered; and

x. Pursuant to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), award contracts and agreements for the construction of buildings and other improvements, depending on the method of contracting selected pursuant to section 2 of P.L.1992, c.61 (C.18A:64-76.1), either to the lowest responsible bidder, whose bid, conforming to the invitation for bids, will be the most advantageous to the State college, or to the responsible bidder whose proposal, conforming to the invitation for proposals, will be the most advantageous to the State college, price and other factors considered.

(cf: P.L.2005, c.369, s.1)

2. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to read as follows:

2. As used in this article, unless the context otherwise indicates:

a. "Board of trustees" means the board of a State college;

b. "Contracting agent" means the business officer of the State college having the power to prepare advertisements, to advertise for and receive bids, and to make awards for the State college in connection with the purchases, contracts or agreements permitted by this article or the officer, committee or employee to whom the power has been delegated by the State college;

c. "Contracts" means contracts or agreements for the performance of work or the furnishing or hiring of services, materials or supplies, as distinguished from contracts of employment;
d. "Legal newspaper" means a newspaper circulating in this State which has been printed and published in the English language at least once a week for at least one year continuously;
e. "Materials" includes goods and property subject to chapter 2 of Title 12A of the New Jersey Statutes, apparatus or any other tangible thing, except real property or any interest therein;
f. "Extraordinary unspecifiable services" means services or products which cannot be reasonably described by written specifications;
g. "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services also means services rendered in the performance of work that is original and creative in character in a recognized field of artistic endeavor;
h. "Project" means any work, undertaking, construction or alteration;
i. "Purchases" are transactions, for a valuable consideration, creating or acquiring an interest in goods, services and property except real property or any interest therein;
j. "State college" means an institution of higher education established pursuant to chapter 64 of Title 18A of the New Jersey Statutes;
k. "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a State college;
l. "Information technology" means telecommunication goods and services, including, but not limited to, software, hardware and systems implementation and support for voice, data and video.
m. "Construction manager at-risk method" means a construction method in which the State college enters into a single contract for both the construction of a building and construction management services, at a guaranteed maximum price.
n. "Design-build method" means a construction method in which the State college enters into a single contract for the design and construction of a building.

3. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to read as follows:

2. a. Whenever the entire cost for the construction, alteration or repair of any building by a State college will exceed the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), if the contracting agent does not solicit proposals in
the manner provided for in subsection c. of this section, the
contracting agent shall advertise for and receive in the manner
provided by law:
(1) separate bids for branches of work in the following
categories:
   (a) the plumbing and gas fitting work;
   (b) the refrigeration, heating and ventilating systems and
equipment;
   (c) the electrical work, including any electrical power plants,
tele-date, fire alarm, or security systems;
   (d) the structural steel and ornamental iron work;
   (e) general construction, which shall include all other work and
materials required for the completion of the project, or
(2) bids for all work and materials required to complete the
entire project if awarded as a single contract, or
   (3) both (1) and (2) above.
In the case of separate bids under paragraph (1) or (3) of this
subsection, prime contractors for categories (a) through (d) shall not
be required to name subcontractors in their bid. In the case of a
single bid under paragraph (2) or (3), all bids submitted shall set
forth the names and license numbers of all subcontractors to whom
the general contractor will subcontract the work described in the
foregoing categories (a) through (d). Subcontractors who furnish
non-specialty trade work pursuant to category (e) in paragraph (1)
of this subsection or subcontractors who furnish work to named
subcontractors pursuant to categories (a) through (d) in paragraph
(1) of this subsection shall not be named in the bid.
Notwithstanding the foregoing provisions of this subsection, a State
college may choose to require in its bid specification that a
subcontractor shall be named in a bid when, in the case of
paragraph (1), separate bids for each category, the work of that
subcontractor exceeds 35 percent of the State college's estimated
amount of value of the work, which shall be set forth in the bid
specification.

b. Contracts awarded pursuant to subsection a. of this section
shall be awarded to the lowest responsible bidder whose bid,
conforming to the invitation for bids, will be the most advantageous
to the State college. Whenever two or more bids of equal amounts
are the lowest bids submitted by responsible parties, the college
may award the contract to any of the parties, as, in its discretion, it
may determine.

c. Whenever the entire cost for the construction, alteration, or
repair of any building by a State college will exceed the amount
determined pursuant to subsection b. of section 3 of P.L.1986, c.43
(C.18A:64-54), if the contracting agent does not advertise for and
receive bids in the manner provided for in subsection a. of this
section, the contracting agent shall solicit proposals for work using
one of the following methods:
(1) the design-build method; or
(2) the construction manager at-risk method.
A State college shall invite proposals under this subsection from among a list of bidders prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform the work.
Contracts awarded under this subsection shall be awarded to the responsible bidder whose proposal, conforming to the request for proposals, will be the most advantageous to the State college, price and other factors considered.
(cf: P.L.2012, c.59, s.2)

4. This act shall take effect immediately.

STATEMENT

This bill would permit State colleges and universities to contract for the construction of buildings using the design-build or construction manager at-risk method. Under the design-build method, the State college or university would enter into a single contract for the design and construction of a building. Under this construction delivery method, a design-builder would be responsible for architectural, engineering, and other related design services, as well as labor, materials, and other construction services necessary to construct the project. Under the construction manager at-risk method, the State college or university would enter into a single contract for both the construction of the building and construction management services, at a guaranteed maximum price. Under this construction delivery method, the construction manager at-risk acts as an advocate of the State college or university through the development and design phase of the project and also as the general contractor during the construction phase. The construction manager at-risk is financially responsible for delivering the project within a guaranteed maximum price.

Building contracts awarded to a design-builder or a construction manager at-risk will be awarded to the responsible bidder whose proposal, conforming to the request for proposals, will be the most advantageous to the State college or university, price and other factors considered.