

ASSEMBLY, No. 2505

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 14, 1996

By Assemblymen **KRAMER** and **DORIA**

1 **AN ACT** concerning certain public contracts, revising various parts of
2 the statutory law, and supplementing chapter 18A of Title 18A of
3 the New Jersey Statutes, P.L.1986, c.43 (C.18A:64-52 et seq.),
4 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), P.L.1971, c.198
5 (C.40A:11-1 et seq.), and chapter 32 of Title 52 of the Revised
6 Statutes.

7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10
11 1. (New section) a. Except as otherwise provided in this section,
12 when the entire cost of the construction, renovation, alteration, or
13 repair of any building, structure, facility, or other improvement to real
14 property by a board of education will exceed the amount set forth in,
15 or calculated by the Governor pursuant to, N.J.S.18A:18A-3,
16 whichever is applicable, the board of education or its contracting agent
17 shall advertise for and receive, in the manner provided by law, bids for
18 a single overall contract for all construction work and materials
19 required to complete the project. Bidders shall be from a list of
20 bidders qualified and classified by the Division of Building and
21 Construction at the time of the bid due date in accordance with
22 R.S.52:35-1 et seq. unless the board has implemented, pursuant to
23 statutory authorization, its own qualification and classification
24 procedure as approved by the Division of Building and Construction
25 or the Department of Community Affairs.

26 b. Non-construction items that are part of the project but unrelated
27 to the completion and coordination of the construction work and
28 materials may be included in the overall contract or may be contracted
29 for on a separate basis. The Director of the Division of Building and
30 Construction shall determine which items are considered non-
31 construction and unrelated to completion and coordination of the
32 construction work and materials and therefore are eligible to be bid
33 and contracted for on a separate basis. The determination of the
34 director shall be consistent with customary and historical practices in

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.

1 the construction industry.

2 c. If the board is permitted by law to include any proprietary items
3 as part of the construction work and materials, these items shall be
4 included in the bid as allowances. A proprietary item is an item which
5 is only available from a single source. An allowance is an amount
6 which shall be established by the board prior to bid to cover the cost
7 of a prescribed item, with the provision that any variation between the
8 amount established and the finally determined cost of the item will be
9 reflected in a change order.

10 d. Subcontractors for the following categories of work shall be
11 qualified and classified in the same manner as the general contractor:
12 sitework; concrete; historical restoration; masonry; structural steel;
13 plumbing; heating, ventilating, and air conditioning; and electrical.

14 e. If the cost of any one trade constitutes at least 50% of the
15 estimated total cost of the construction work and materials, this trade
16 may be advertised for bid and contracted for on a separate basis,
17 subject to the approval of the Director of the Division of Building and
18 Construction. Bidders shall be from a list of bidders qualified and
19 classified as set forth in subsection a. of this section.

20 f. In addition to the exception provided for in subsection e., the
21 director shall have the authority to make other exceptions to the
22 requirement for a single overall contract for construction work and
23 materials if the nature of one or more categories of the work is unique
24 in some manner or form so that a single overall contract would result
25 in the work not being performed by a qualified contractor. In that
26 event the board of education or its contracting agent may advertise for
27 bids for those unique categories of work on a separate basis, or require
28 that subcontractors for those categories of work be separately listed
29 in the bid for the single overall contract; such bidders and
30 subcontractors shall be qualified and classified as set forth in
31 subsection a. of this section.

32 g. In all cases a contract shall be awarded to the lowest responsible
33 bidder.

34

35 2. (New section) a. Except as otherwise provided in this section,
36 when the entire cost of the construction, renovation, alteration, or
37 repair of any building, structure, facility, or other improvement to real
38 property by a State college will exceed the amount set forth in, or
39 calculated by the Governor pursuant to, section 3 of P.L.1986, c.43
40 (C.18A:64-54), whichever is applicable, the contracting agent shall
41 advertise for and receive, in the manner provided by law, bids for a
42 single overall contract for all construction work and materials required
43 to complete the project. Bidders shall be from a list of bidders
44 qualified and classified by the Division of Building and Construction
45 at the time of the bid due date in accordance with R.S.52:35-1 et seq.
46 unless the State college has implemented, pursuant to statutory

1 authorization, its own qualification and classification procedure as
2 approved by the Division of Building and Construction or the
3 Department of Community Affairs.

4 b. Non-construction items that are part of the project but unrelated
5 to the completion and coordination of the construction work and
6 materials may be included in the overall contract or may be contracted
7 for on a separate basis. The Director of the Division of Building and
8 Construction shall determine which items are considered non-
9 construction and unrelated to completion and coordination of the
10 construction work and materials and therefore are eligible to be bid
11 and contracted for on a separate basis. The determination of the
12 director shall be consistent with customary and historical practices in
13 the construction industry.

14 c. If the State college is permitted by law to include any
15 proprietary items as part of the construction work and materials, these
16 items shall be included in the bid as allowances. A proprietary item is
17 an item which is only available from a single source. An allowance is
18 an amount which shall be established by the State college prior to bid
19 to cover the cost of a prescribed item, with the provision that any
20 variation between the amount established and the finally determined
21 cost of the item will be reflected in a change order.

22 d. Subcontractors for the following categories of work shall be
23 qualified and classified in the same manner as the general contractor:
24 sitework; concrete; historical restoration; masonry; structural steel;
25 plumbing; heating, ventilating, and air conditioning; and electrical.

26 e. If the cost of any one trade constitutes at least 50% of the
27 estimated total cost of the construction work and materials, this trade
28 may be advertised for bid and contracted for on a separate basis,
29 subject to the approval of the Director of the Division of Building and
30 Construction. Bidders shall be from a list of bidders qualified and
31 classified as set forth in subsection a. of this section.

32 f. In addition to the exception provided for in subsection e., the
33 director shall have the authority to make other exceptions to the
34 requirement for a single overall contract for construction work and
35 materials if the nature of one or more categories of the work is unique
36 in some manner or form so that a single overall contract would result
37 in the work not being performed by a qualified contractor. In that
38 event the contracting agent may advertise for bids for those unique
39 categories of work on a separate basis, or require that subcontractors
40 for those categories of work be separately listed in the bid for the
41 single overall contract; such bidders and subcontractors shall be
42 qualified and classified as set forth in subsection a. of this section.

43 g. In all cases a contract shall be awarded to the lowest responsible
44 bidder.

45

46 3. (New section) a. Except as otherwise provided in this section,

1 when the entire cost of the construction, renovation, alteration, or
2 repair of any building, structure, facility, or other improvement to real
3 property by a county college will exceed the amount set forth in, or
4 calculated by the Governor pursuant to, section 3 of P.L.1982, c.189
5 (C.18A:64A-25.3), whichever is applicable, the contracting agent shall
6 advertise for and receive, in the manner provided by law, bids for a
7 single overall contract for all construction work and materials required
8 to complete the project. Bidders shall be from a list of bidders
9 qualified and classified by the Division of Building and Construction
10 at the time of the bid due date in accordance with R.S.52:35-1 et seq.
11 unless the county college has implemented, pursuant to statutory
12 authorization, its own qualification and classification procedure as
13 approved by the Division of Building and Construction or the
14 Department of Community Affairs.

15 b. Non-construction items that are part of the project but unrelated
16 to the completion and coordination of the construction work and
17 materials may be included in the overall contract or may be contracted
18 for on a separate basis. The Director of the Division of Building and
19 Construction shall determine which items are considered non-
20 construction and unrelated to completion and coordination of the
21 construction work and materials and therefore are eligible to be bid
22 and contracted for on a separate basis. The determination of the
23 director shall be consistent with customary and historical practices in
24 the construction industry.

25 c. If the county college is permitted by law to include any
26 proprietary items as part of the construction work and materials, these
27 items shall be included in the bid as allowances. A proprietary item is
28 an item which is only available from a single source. An allowance is
29 an amount which shall be established by the county college prior to bid
30 to cover the cost of a prescribed item, with the provision that any
31 variation between the amount established and the finally determined
32 cost of the item will be reflected in a change order.

33 d. Subcontractors for the following categories of work shall be
34 qualified and classified in the same manner as the general contractor:
35 sitework; concrete; historical restoration; masonry; structural steel;
36 plumbing; heating, ventilating, and air conditioning; and electrical.

37 e. If the cost of any one trade constitutes at least 50% of the
38 estimated total cost of the construction work and materials, this trade
39 may be advertised for bid and contracted for on a separate basis,
40 subject to the approval of the Director of the Division of Building and
41 Construction. Bidders shall be from a list of bidders qualified and
42 classified as set forth in subsection a. of this section.

43 f. In addition to the exception provided for in subsection e., the
44 director shall have the authority to make other exceptions to the
45 requirement for a single overall contract for construction work and
46 materials if the nature of one or more categories of the work is unique

1 in some manner or form so that a single overall contract would result
2 in the work not being performed by a qualified contractor. In that
3 event the contracting agent may advertise for bids for those unique
4 categories of work on a separate basis, or require that subcontractors
5 for those categories of work be separately listed in the bid for the
6 single overall contract; such bidders and subcontractors shall be
7 qualified and classified as set forth in subsection a. of this section.

8 g. In all cases a contract shall be awarded to the lowest responsible
9 bidder.

10
11 4. N.J.S.18A:72A-5 is amended to read as follows:

12 18A:72A-5. The authority shall have power:

13 (a) To adopt bylaws for the regulation of its affairs and the conduct
14 of its business;

15 (b) To adopt and have an official common seal and alter the same
16 at pleasure;

17 (c) To maintain an office at such place or places within the State
18 as it may designate;

19 (d) To sue and be sued in its own name, and plead and be
20 impleaded;

21 (e) To borrow money and to issue bonds and notes and other
22 obligations of the authority and to provide for the rights of the holders
23 thereof as provided in this chapter;

24 (f) To acquire, lease as lessee, hold and dispose of real and
25 personal property or any interest therein, in the exercise of its powers
26 and the performance of its duties under this chapter;

27 (g) To acquire in the name of the authority by purchase or
28 otherwise, on such terms and conditions and in such manner as it may
29 deem proper, or by the exercise of the power of eminent domain, any
30 land or interest therein and other property which it may determine is
31 reasonably necessary for any project, including any lands held by any
32 county, municipality or other governmental subdivision of the State;
33 and to hold and use the same and to sell, convey, lease or otherwise
34 dispose of property so acquired, no longer necessary for the authority's
35 purposes;

36 (h) To receive and accept, from any federal or other public agency
37 or governmental entity, grants or loans for or in aid of the acquisition
38 or construction of any project, and to receive and accept aid or
39 contributions from any other source, of either money, property, labor
40 or other things of value, to be held, used and applied only for the
41 purposes for which such grants, loans and contributions may be made;

42 (i) To prepare or cause to be prepared plans, specifications,
43 designs and estimates of costs for the construction and equipment of
44 projects for participating colleges under the provisions of this chapter,
45 and from time to time to modify such plans, specifications, designs or
46 estimates;

1 (j) By contract or contracts or by its own employees to construct,
2 acquire, reconstruct, rehabilitate and improve, and furnish and equip,
3 projects for participating colleges; (1) however, in any contract or
4 contracts undertaken by the authority for the construction,
5 reconstruction, rehabilitation or improvement of any public college
6 project where the cost of such work will exceed \$25,000, the
7 contracting agent shall, except as otherwise provided in this
8 subsection, advertise for and receive, in the manner provided by law]:

- 9 (1) separate bids for the following categories of work;
10 (a) the plumbing and gas fitting work;
11 (b) the heating and ventilating systems and equipment;
12 (c) the electrical work, including any electrical power plants;
13 (d) the structural steel and ornamental iron work;
14 (e) all other work and materials required for the completion of the
15 project, or
16 (2) bids for all work and materials required to complete the entire
17 project if awarded as a single contract; or
18 (3) both (1) and (2) above.

19 All bids submitted shall set forth the names and license numbers of,
20 and evidence of performance security from, all subcontractors to
21 whom the bidder will subcontract the work described in the foregoing
22 categories (1)(a) through (1)(e).

23 Contracts shall be awarded to the lowest responsible bidder whose
24 bid, conforming to the invitation for bids, will be the most
25 advantageous to the authority], bids for a single overall contract for
26 all construction work and materials required to complete the project.
27 Bidders shall be from a list of bidders qualified and classified by the
28 Division of Building and Construction at the time of the bid due date
29 in accordance with R.S.52:35-1 et seq. unless the authority has
30 implemented, pursuant to statutory authorization, its own qualification
31 and classification procedure as approved by the Division of Building
32 and Construction or the Department of Community Affairs.

33 (2) Non-construction items that are part of the project but
34 unrelated to the completion and coordination of the construction work
35 and materials may be included in the overall contract or may be
36 contracted for on a separate basis. The Director of the Division of
37 Building and Construction shall determine which items are considered
38 non-construction and unrelated to completion and coordination of the
39 construction work and materials and therefore are eligible to be bid
40 and contracted for on a separate basis. The determination of the
41 director shall be consistent with customary and historical practices in
42 the construction industry.

43 (3) If the authority is permitted by law to include any proprietary
44 items as part of the construction work and materials, these items shall
45 be included in the bid as allowances. A proprietary item is an item
46 which is only available from a single source. An allowance is an

1 amount which shall be established by the authority prior to bid to
2 cover the cost of a prescribed item, with the provision that any
3 variation between the amount established and the finally determined
4 cost of the item will be reflected in a change order.

5 (4) Subcontractors for the following categories of work shall be
6 qualified and classified in the same manner as the general contractor:
7 sitework; concrete; historical restoration; masonry; structural steel;
8 plumbing; heating, ventilating, and air conditioning; and electrical.

9 (5) If the cost of any one trade constitutes at least 50% of the
10 estimated total cost of the construction work and materials, this trade
11 may be advertised for bid and contracted for on a separate basis,
12 subject to the approval of the Director of the Division of Building and
13 Construction. Bidders shall be from a list of bidders qualified and
14 classified as set forth in paragraph (1) of this subsection.

15 (6) In addition to the exception provided for in paragraph (5), the
16 director shall have the authority to make other exceptions to the
17 requirement for a single overall contract for construction work and
18 materials if the nature of one or more categories of the work is unique
19 in some manner or form so that a single overall contract would result
20 in the work not being performed by a qualified contractor. In that
21 event the contracting agent may advertise for bids for those unique
22 categories of work on a separate basis, or require that subcontractors
23 for those categories of work be separately listed in the bid for the
24 single overall contract; such bidders and subcontractors shall be
25 qualified and classified as set forth in paragraph (1) of this subsection.

26 (7) In all cases a contract shall be awarded to the lowest
27 responsible bidder;

28 (k) To determine the location and character of any project to be
29 undertaken pursuant to the provisions of this chapter, and to
30 construct, reconstruct, maintain, repair, operate, lease, as lessee or
31 lessor, and regulate the same; to enter into contracts for any or all
32 such purposes; to enter into contracts for the management and
33 operation of a project, and to designate a participating college as its
34 agent to determine the location and character of a project undertaken
35 by such participating college under the provisions of this chapter and,
36 as the agent of the authority, to construct, reconstruct, maintain,
37 repair, operate, lease, as lessee or lessor, and regulate the same, and,
38 as agent of the authority, to enter into contracts for any and all such
39 purposes including contracts for the management and operation of
40 such project;

41 (l) To establish rules and regulations for the use of a project or any
42 portion thereof and to designate a participating college as its agent to
43 establish rules and regulations for the use of a project undertaken by
44 such participating college;

45 (m) Generally to fix and revise from time to time and to charge and
46 collect rates, rents, fees and other charges for the use of and for the

1 services furnished or to be furnished by a project or any portion
2 thereof and to contract with holders of its bonds and with any other
3 person, party, association, corporation or other body, public or
4 private, in respect thereof;

5 (n) To enter into any and all agreements or contracts, execute any
6 and all instruments, and do and perform any and all acts or things
7 necessary, convenient or desirable for the purposes of the authority or
8 to carry out any power expressly given in this chapter;

9 (o) To invest any moneys held in reserve or sinking funds, or any
10 moneys not required for immediate use or disbursement, at the
11 discretion of the authority, in such obligations as are authorized by law
12 for the investment of trust funds in the custody of the State Treasurer;

13 (p) To enter into any lease relating to higher education equipment
14 with a public or private institution of higher education pursuant to the
15 provisions of P.L.1993, c.136 (C.18A:72A-40 et al.).

16 (cf: P.L.1993,c.136,s.4)

17

18 5. (New section) a. Except as otherwise provided in this section,
19 when the entire cost of the construction, renovation, alteration, or
20 repair of any building, structure, facility, or other improvement to real
21 property by any contracting unit will exceed the amount set forth in,
22 or calculated by the Governor pursuant to, section 3 of P.L.1971,
23 c.198 (C.40A:11-3), whichever is applicable, the contracting unit shall
24 advertise for and receive, in the manner provided by law, bids for a
25 single overall contract for all construction work and materials required
26 to complete the project. Bidders shall be from a list of bidders
27 qualified and classified by the Division of Building and Construction
28 at the time of the bid due date in accordance with R.S.52:35-1 et seq.
29 unless the contracting unit has implemented, pursuant to statutory
30 authorization, its own qualification and classification procedure as
31 approved by the Division of Building and Construction or the
32 Department of Community Affairs.

33 b. Non-construction items that are part of the project but unrelated
34 to the completion and coordination of the construction work and
35 materials may be included in the overall contract or may be contracted
36 for on a separate basis. The Director of the Division of Building and
37 Construction shall determine which items are considered non-
38 construction and unrelated to completion and coordination of the
39 construction work and materials and therefore are eligible to be bid
40 and contracted for on a separate basis. The determination of the
41 director shall be consistent with customary and historical practices in
42 the construction industry.

43 c. If the contracting unit is permitted by law to include any
44 proprietary items as part of the construction work and materials, these
45 items shall be included in the bid as allowances. A proprietary item is
46 an item which is only available from a single source. An allowance is

1 an amount which shall be established by the contracting unit prior to
2 bid to cover the cost of a prescribed item, with the provision that any
3 variation between the amount established and the finally determined
4 cost of the item will be reflected in a change order.

5 d. Subcontractors for the following categories of work shall be
6 qualified and classified in the same manner as the general contractor:
7 sitework; concrete; historical restoration; masonry; structural steel;
8 plumbing; heating, ventilating, and air conditioning; and electrical.

9 e. If the cost of any one trade constitutes at least 50% of the
10 estimated total cost of the construction work and materials, this trade
11 may be advertised for bid and contracted for on a separate basis,
12 subject to the approval of the Director of the Division of Building and
13 Construction. Bidders shall be from a list of bidders qualified and
14 classified as set forth in subsection a. of this section.

15 f. In addition to the exception provided for in subsection e., the
16 director shall have the authority to make other exceptions to the
17 requirement for a single overall contract for construction work and
18 materials if the nature of one or more categories of the work is unique
19 in some manner or form so that a single overall contract would result
20 in the work not being performed by a qualified contractor. In that
21 event the contracting unit may advertise for bids for those unique
22 categories of work on a separate basis, or require that subcontractors
23 for those categories of work be separately listed in the bid for the
24 single overall contract; such bidders and subcontractors shall be
25 qualified and classified as set forth in subsection a. of this section.

26 g. In all cases a contract shall be awarded to the lowest responsible
27 bidder.

28
29 6. Section 11 of P.L.1981, c.120 (C.52:18A-78.11) is amended to
30 read as follows:

31 11. a. The authority, in the exercise of its authority to make and
32 enter into contracts and agreements necessary or incidental to the
33 performance of its duties and the execution of its powers, shall adopt
34 standing rules and procedures providing that no contract on behalf of
35 the authority shall be entered into for the doing of any work, or for the
36 hiring of equipment or vehicles, where the sum to be expended
37 exceeds the sum of \$7,500.00 unless the authority shall first publicly
38 advertise for bids therefor, and shall award the contract to the lowest
39 responsible bidder. Advertising shall not be required where the
40 contract to be entered into is one for the furnishing or performing of
41 services of a professional nature or for the supplying of any product
42 or the rendering of any service by a public utility subject to the
43 jurisdiction of the Board of Public Utilities and tariffs and schedules
44 of the charges made, charged, or exacted by the public utility for any
45 products to be supplied or services to be rendered are filed with the
46 board. This section shall not prevent the authority from having any

1 work done by its own employees, nor shall it apply to repairs, or to
2 the furnishing of materials, supplies or labor, or the hiring of
3 equipment or vehicles, when the safety or protection of its or other
4 public property or the public convenience requires, or the exigency of
5 the accomplishment of the projects will not allow advertisement. In
6 that case, the board of directors of the authority shall, by resolution,
7 declare the exigency or emergency to exist, and set forth in the
8 resolution the nature thereof and the approximate amount to be so
9 expended.

10 b. [In] (1) Except as otherwise provided in this subsection, in
11 undertaking any project where the cost of construction,
12 reconstruction, rehabilitation or improvement will exceed \$25,000.00,
13 the authority shall be subject to the rules and regulations of the
14 Division of Building and Construction concerning procedural
15 requirements for the making, negotiating or awarding of purchases,
16 contracts or agreements; and the authority, with the assistance of the
17 division, shall [prepare, or cause to be prepared, separate plans and
18 specifications for:

19 (1) The plumbing and gas fitting and all work and materials kindred
20 thereto,

21 (2) The steam and hot water heating and ventilating apparatus,
22 steam power plants and all work and materials kindred thereto,

23 (3) The electrical work,

24 (4) Structural steel and ornamental iron work and materials, and

25 (5) All other work and materials required to complete the building;
26 and the authority shall receive (a) separate bids for each of these
27 branches of the work and (b) bids for all the work and materials
28 required to complete the project to be included in a single overall
29 contract, in which case there shall be set forth in the bid the name or
30 names of all subcontractors to whom the bidder will subcontract for
31 the furnishing of any of the work and materials specified in (a) above.

32 If the sum total of the amounts bid by the lowest responsible bidder
33 for each branch is less than the amount bid by the lowest responsible
34 bidder for all of the work and materials, the authority shall award
35 separate contracts for each of branches to the lowest responsible
36 bidder therefor, but if the sum total of the amount bid by the lowest
37 responsible bidder for each branch is not less than the amount bid by
38 the lowest responsible bidder for all the work and materials, the
39 authority shall award a single over-all contract to the lowest
40 responsible bidder for all of the work and materials.

41 Whenever a contract is awarded under (b) above, all payments
42 required to be made by the authority under the contract for work and
43 materials supplied by a subcontractor shall, upon the certification of
44 the contractor of the amount due to the subcontractor, be paid
45 directly to the subcontractor.] advertise for and receive, in the manner
46 provided by law, bids for a single overall contract for all construction

1 work and materials required to complete the project. Bidders shall be
2 from a list of bidders qualified and classified by the Division of
3 Building and Construction at the time of the bid due date in
4 accordance with R.S.52:35-1 et seq. unless the authority has
5 implemented, pursuant to statutory authorization, its own qualification
6 and classification procedure as approved by the Division of Building
7 and Construction or the Department of Community Affairs.

8 (2) Non-construction items that are part of the project but
9 unrelated to the completion and coordination of the construction work
10 and materials may be included in the overall contract or may be
11 contracted for on a separate basis. The Director of the Division of
12 Building and Construction shall determine which items are considered
13 non-construction and unrelated to completion and coordination of the
14 construction work and materials and therefore are eligible to be bid
15 and contracted for on a separate basis. The determination of the
16 director shall be consistent with customary and historical practices in
17 the construction industry.

18 (3) If the authority is permitted by law to include any proprietary
19 items as part of the construction work and materials, these items shall
20 be included in the bid as allowances. A proprietary item is an item
21 which is only available from a single source. An allowance is an
22 amount which shall be established by the authority prior to bid to
23 cover the cost of a prescribed item, with the provision that any
24 variation between the amount established and the finally determined
25 cost of the item will be reflected in a change order.

26 (4) Subcontractors for the following categories of work shall be
27 qualified and classified in the same manner as the general contractor:
28 sitework; concrete; historical restoration; masonry; structural steel;
29 plumbing; heating, ventilating, and air conditioning; and electrical.

30 (5) If the cost of any one trade constitutes at least 50% of the
31 estimated total cost of the construction work and materials, this trade
32 may be advertised for bid and contracted for on a separate basis,
33 subject to the approval of the Director of the Division of Building and
34 Construction. Bidders shall be from a list of bidders qualified and
35 classified as set forth in paragraph (1) of this subsection.

36 (6) In addition to the exception provided for in paragraph (5), the
37 director shall have the authority to make other exceptions to the
38 requirement for a single overall contract for construction work and
39 materials if the nature of one or more categories of the work is unique
40 in some manner or form so that a single overall contract would result
41 in the work not being performed by a qualified contractor. In that
42 event the authority may advertise for bids for those unique categories
43 of work on a separate basis, or require that subcontractors for those
44 categories of work be separately listed in the bid for the single overall
45 contract; such bidders and subcontractors shall be qualified and
46 classified as set forth in paragraph (1) of this subsection.

1 (7) In all cases a contract shall be awarded to the lowest
2 responsible bidder.

3 (8) All construction, reconstruction, rehabilitation or improvement
4 undertaken by the authority pursuant to this act shall be subject during
5 such undertaking to the supervision of the Division of Building and
6 Construction to the same extent as any project undertaken by the
7 State.

8 c. With respect to the lease or sale of any project or portion
9 thereof to any person, firm, partnership or corporation, for subsequent
10 lease to or purchase by a State agency, no agreement for that lease or
11 sale shall be entered into, unless the authority shall first publicly
12 advertise for bids therefor. The authority shall employ a person, firm,
13 partnership or corporation, independent from any other aspect or
14 component of the financing of or any ownership or leasehold interest
15 in that project, to assist in the bid procedure and evaluation.

16 (cf: P.L.1983, c.138, s.8)

17

18 7. (New section) a. Except as otherwise provided in this section,
19 when the entire cost of the construction, renovation, alteration, or
20 repair by the State of any building, structure, facility, or other
21 improvement to real property will exceed the amount set forth in, or
22 calculated by the Governor pursuant to, section 2 of P.L.1954, c.48
23 (C.52:34-7), whichever is applicable, the board, body, or person
24 authorized by law to award contracts for such work shall advertise for
25 and receive, in the manner provided by law, bids for a single overall
26 contract for all construction work and materials required to complete
27 the project. Bidders shall be from a list of bidders qualified and
28 classified by the Division of Building and Construction at the time of
29 the bid due date in accordance with R.S.52:35-1 et seq. unless the
30 board, body, or person authorized by law to award contracts has
31 implemented, pursuant to statutory authorization, its own qualification
32 and classification procedure as approved by the Division of Building
33 and Construction or the Department of Community Affairs.

34 b. Non-construction items that are part of the project but unrelated
35 to the completion and coordination of the construction work and
36 materials may be included in the overall contract or may be contracted
37 for on a separate basis. The Director of the Division of Building and
38 Construction shall determine which items are considered non-
39 construction and unrelated to completion and coordination of the
40 construction work and materials and therefore are eligible to be bid
41 and contracted for on a separate basis. The determination of the
42 director shall be consistent with customary and historical practices in
43 the construction industry.

44 c. If the board, body, or person authorized by law to award
45 contracts is permitted by law to include any proprietary items as part
46 of the construction work and materials, these items shall be included

1 in the bid as allowances. A proprietary item is an item which is only
2 available from a single source. An allowance is an amount which shall
3 be established by the board, body, or person authorized by law to
4 award contracts, prior to bid, to cover the cost of a prescribed item,
5 with the provision that any variation between the amount established
6 and the finally determined cost of the item will be reflected in a change
7 order.

8 d. Subcontractors for the following categories of work shall be
9 qualified and classified in the same manner as the general contractor:
10 sitework; concrete; historical restoration; masonry; structural steel;
11 plumbing; heating, ventilating, and air conditioning; and electrical.

12 e. If the cost of any one trade constitutes at least 50% of the
13 estimated total cost of the construction work and materials, this trade
14 may be advertised for bid and contracted for on a separate basis,
15 subject to the approval of the Director of the Division of Building and
16 Construction. Bidders shall be from a list of bidders qualified and
17 classified as set forth in subsection a. of this section.

18 f. In addition to the exception provided for in subsection e., the
19 director shall have the authority to make other exceptions to the
20 requirement for a single overall contract for construction work and
21 materials if the nature of one or more categories of the work is unique
22 in some manner or form so that a single overall contract would result
23 in the work not being performed by a qualified contractor. In that
24 event the board, body, or person authorized by law to award contracts
25 may advertise for bids for those unique categories of work on a
26 separate basis, or require that subcontractors for those categories of
27 work be separately listed in the bid for the single overall contract;
28 such bidders and subcontractors shall be qualified and classified as set
29 forth in subsection a. of this section.

30 g. In all cases a contract shall be awarded to the lowest responsible
31 bidder.

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33 8. The following are repealed:

34 N.J.S.18A:18A-18;

35 section 2 of P.L.1992, c.61 (C.18A:64-76.1);

36 section 25 of P.L.1982, c.189 (C.18A:64A-25.25);

37 section 16 of P.L.1971, c.198 (C.40A:11-16); and

38 R.S.52:32-2.

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40 9. This act shall take effect immediately.

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STATEMENT

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45 This bill concerns public contracts for the construction, renovation,
46 alteration, or repair of public buildings by the State, the New Jersey

1 Building Authority, the New Jersey Educational Facilities Authority,
2 State and county colleges, local governments, and school boards.

3 Current law permits, or in the case of school boards, the State, and
4 the New Jersey Building Authority requires, separate bids on five
5 categories of work (plumbing and gas fitting work; heating and
6 ventilating systems and equipment; electrical work; structural steel
7 and ornamental iron work; and the remaining work and materials
8 required for completion of a project) as well as bids on all the work
9 and materials required. Current law also requires that: (1) if the work
10 on the five categories is going to be subcontracted, the names of all
11 subcontractors must be included in the bids; (2) if bids are received for
12 the five separate categories and the sum total is less than the amounts
13 bid for all the work, separate contracts shall be awarded, and if the
14 reverse is the case, a single overall contract shall be awarded; and (3)
15 if a single overall contract is awarded, the public entity (except in two
16 cases) shall pay the subcontractors directly.

17 This bill replaces this mode of operation with the requirements: (1)
18 that bids be received for a single overall contract for all construction
19 work and materials required to complete the project; and (2) that,
20 whatever the public entity awarding the contract, the bidders must be
21 from a list of bidders qualified and classified by the Division of
22 Building and Construction unless the entity has implemented, pursuant
23 to statutory authorization, its own qualification and classification
24 procedure as approved by the Division of Building and Construction
25 or the Department of Community Affairs. Non-construction items that
26 are part of the project but unrelated to the completion and
27 coordination of the construction work and materials may be included
28 in the overall contract or may be contracted for on a separate basis;
29 the Director of the Division of Building and Construction shall
30 determine which items are considered non-construction and unrelated
31 to the completion and coordination of the construction work and
32 materials and therefore are eligible to be bid and contracted for on a
33 separate basis (the determination shall be consistent with customary
34 and historical practices in the construction industry). If an entity is
35 permitted by law to include any proprietary items as part of the
36 construction work and materials, these items shall be included in the
37 bid as allowances (a "proprietary item " and an "allowance" are defined
38 in the bill). Subcontractors for the following categories of work shall
39 be qualified and classified in the same manner as the general
40 contractor: sitework; concrete; historical restoration; masonry;
41 structural steel; plumbing; heating, ventilating, and air conditioning;
42 and electrical.

43 Some exceptions to the single overall contract requirement are
44 permitted. If the cost of any one trade constitutes at least 50% of the
45 estimated total cost of the construction work and materials, this trade
46 may be advertised for bid and contracted for on a separate basis,

1 subject to the approval of the Director of the Division of Building and
2 Construction. In addition, the director shall have the authority to
3 make exceptions to the requirement for a single overall contract for
4 construction work and materials if the nature of one or more
5 categories of the work is unique in some manner or form so that a
6 single overall contract would result in the work not being performed
7 by a qualified contractor. In that event the contracting agent or entity
8 may advertise for bids for those unique categories of work on a
9 separate basis, or require that subcontractors for those categories of
10 work be separately listed in the bid for the single overall contract. In
11 all these cases the bidders or subcontractors shall be qualified and
12 classified in the same manner as for a general contractor.

13 As is the case in current law, a contract shall be awarded to the
14 lowest responsible bidder.

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19 Requires awarding of single overall contract for construction work on
20 public buildings, with certain exceptions when duly authorized.