

SENATE, No. 1742

STATE OF NEW JERSEY

INTRODUCED DECEMBER 19, 1996

By Senators DiFRANCESCO, LESNIAK, Kyrillos, Adler and  
Codey

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

**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 director shall be consistent with customary and historical practices in  
2 the construction industry.

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

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

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

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

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

35

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

1 unless the State college has implemented, pursuant to statutory  
2 authorization, its own qualification and classification procedure as  
3 approved by the Division of Building and Construction or the  
4 Department of Community Affairs.

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

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

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

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

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

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

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

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

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

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

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

44       f. In addition to the exception provided for in subsection e., the  
45 director shall have the authority to make other exceptions to the  
46 requirement for a single overall contract for construction work and

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

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

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

13 18A:72A-5. The authority shall have power:

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

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

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

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

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

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

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

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

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

1 estimates;

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

10 (1) separate bids for the following categories of work;

11 (a) the plumbing and gas fitting work;

12 (b) the heating and ventilating systems and equipment;

13 (c) the electrical work, including any electrical power plants;

14 (d) the structural steel and ornamental iron work;

15 (e) all other work and materials required for the completion of the  
16 project, or

17 (2) bids for all work and materials required to complete the entire  
18 project if awarded as a single contract; or

19 (3) both (1) and (2) above.

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

24 Contracts shall be awarded to the lowest responsible bidder whose  
25 bid, conforming to the invitation for bids, will be the most  
26 advantageous to the authority], bids for a single overall contract for  
27 all construction work and materials required to complete the project.  
28 Bidders shall be from a list of bidders qualified and classified by the  
29 Division of Building and Construction at the time of the bid due date  
30 in accordance with R.S.52:35-1 et seq. unless the authority 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 (2) Non-construction items that are part of the project but  
35 unrelated to the completion and coordination of the construction work  
36 and materials may be included in the overall contract or may be  
37 contracted for on a separate basis. The Director of the Division of  
38 Building and Construction shall determine which items are considered  
39 non-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 (3) If the authority is permitted by law to include any proprietary  
45 items as part of the construction work and materials, these items shall  
46 be included in the bid as allowances. A proprietary item is an item

1 which is only available from a single source. An allowance is an  
2 amount which shall be established by the authority prior to bid to  
3 cover the cost of a prescribed item, with the provision that any  
4 variation between the amount established and the finally determined  
5 cost of the item will be reflected in a change order.

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

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

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

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

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

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

46 (m) Generally to fix and revise from time to time and to charge and

1 collect rates, rents, fees and other charges for the use of and for the  
2 services furnished or to be furnished by a project or any portion  
3 thereof and to contract with holders of its bonds and with any other  
4 person, party, association, corporation or other body, public or  
5 private, in respect thereof;

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

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

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

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

18

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

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

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

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

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

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

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

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

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

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

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

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

24 (3) The electrical work,

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

26 (5) All other work and materials required to complete the building;

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

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

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

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

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

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

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

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

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

1 classified as set forth in paragraph (1) of this subsection.

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

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

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

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

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

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

45 c. If the board, body, or person authorized by law to award  
46 contracts is permitted by law to include any proprietary items as part

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

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

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

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

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

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34 8. The following are repealed:

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

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

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

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

39 R.S.52:32-2.

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41 9. This act shall take effect immediately.

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#### STATEMENT

45

46 This bill concerns public contracts for the construction, renovation,

1 alteration, or repair of public buildings by the State, the New Jersey  
2 Building Authority, the New Jersey Educational Facilities Authority,  
3 State and county colleges, local governments, and school boards.

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

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

44 Some exceptions to the single overall contract requirement are  
45 permitted. If the cost of any one trade constitutes at least 50% of the  
46 estimated total cost of the construction work and materials, this trade

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

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

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