

SENATE, No. 4043

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 8, 2021

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

Raises statutory threshold for certain public bidding, permits bidder disqualification due to prior negative experience, and adds exemptions to requirement for public advertising and bidding under “State College Contracts Law.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/9/2021)

1 **AN ACT** concerning the awarding of State college and university
2 contracts, amending N.J.S.18A:64-6 and P.L.1992, c.61, and
3 amending and supplementing P.L.1986, c.43.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. N.J.S.18A:64-6 is amended to read as follows:

9 18A:64-6. The board of trustees of a State college shall have
10 general supervision over and shall be vested with the conduct of the
11 college. It shall have the power and duty to:

12 a. Adopt and use a corporate seal;

13 b. Determine the educational curriculum and program of the
14 college consistent with the programmatic mission of the institution
15 or approved by the Commission on Higher Education;

16 c. Determine policies for the organization, administration and
17 development of the college;

18 d. Study the educational and financial needs of the college;
19 annually acquaint the Governor and Legislature with the condition
20 of the college; and prepare and present the annual budget to the
21 Governor, the Division of Budget and Accounting in the
22 Department of the Treasury and the Legislature in accordance with
23 law;

24 e. Disburse all moneys appropriated to the college by the
25 Legislature and all moneys received from tuition, fees, auxiliary
26 services and other sources;

27 f. Direct and control expenditures and transfers of funds
28 appropriated to the college and tuition received by the college, in
29 accordance with the provisions of the State budget and
30 appropriation acts of the Legislature, reporting changes and
31 additions thereto and transfers thereof to the Director of the
32 Division of Budget and Accounting in the State Department of the
33 Treasury and as to funds received from other sources, direct and
34 control expenditures and transfers in accordance with the terms of
35 any applicable trusts, gifts, bequests, or other special provisions.
36 All accounts of the college shall be subject to audit by the State at
37 any time;

38 g. In accordance with the provisions of the State budget and
39 appropriation acts of the Legislature, appoint and fix the
40 compensation of a president of the college, who shall be the
41 executive officer of the college and an ex officio member of the
42 board of trustees, without vote, and shall serve at the pleasure of the
43 board of trustees;

44 h. Notwithstanding the provisions of Title 11, Civil Service, of
45 the Revised Statutes, upon nomination by the president appoint a

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 treasurer and such deans and other professional members of the
2 academic, administrative and teaching staffs as defined in section
3 13 of P.L.1986, c.42 (C.18A:64-21.2) as shall be required and fix
4 their compensation and terms of employment in accordance with
5 salary ranges and policies which shall prescribe qualifications for
6 various classifications and shall limit the percentage of the
7 educational staff that may be in any given classification;

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

14 j. Grant diplomas, certificates and degrees;

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

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

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

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

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

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

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

46 r. Employ architects , engineers, consultants, and other
47 professionals to plan buildings; secure bids for the construction of
48 buildings and for the equipment thereof; make contracts for the

1 construction of buildings and for equipment; and supervise the
2 construction of buildings;

3 s. Manage and maintain, and provide for the payment of all
4 charges and expenses in respect to all properties utilized by the
5 college;

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

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

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

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

24 x. Pursuant to the "State College Contracts Law," P.L.1986,
25 c.43 (C.18A:64-52 et seq.), award contracts and agreements for the
26 construction of buildings and other improvements to the lowest
27 responsible bidder, whose bid, conforming to the invitation for bids,
28 will be the most advantageous to the State college.

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

30

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

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

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

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

42 c. "Contracts" means contracts or agreements for the
43 performance of work or the furnishing or hiring of services,
44 materials **【or】** supplies , or construction, as distinguished from
45 contracts of employment;

46 d. "Legal newspaper" means a newspaper circulating in this
47 State which has been printed and published in the English language
48 at least once a week for at least one year continuously;

- 1 e. "Materials" includes goods and property subject to chapter 2
2 of Title 12A of the New Jersey Statutes, apparatus or any other
3 tangible thing, except real property or any interest therein;
- 4 f. "Extraordinary unspecifiable services" means services or
5 products which cannot be reasonably described by written
6 specifications;
- 7 g. "Professional services" means services rendered or
8 performed by a person authorized by law to practice a recognized
9 profession and whose practice is regulated by law and the
10 performance of which services requires knowledge of an advanced
11 type in a field of learning acquired by a prolonged formal course of
12 specialized instruction and study as distinguished from general
13 academic instruction or apprenticeship and training. Professional
14 services also means services rendered in the performance of work
15 that is original and creative in character in a recognized field of
16 artistic endeavor;
- 17 h. "Project" means any work, undertaking, construction or
18 alteration;
- 19 i. "Purchases" are transactions, for a valuable consideration,
20 creating or acquiring an interest in goods, services and property
21 except real property or any interest therein;
- 22 j. "State college" means an institution of higher education
23 established pursuant to chapter 64 of Title 18A of the New Jersey
24 Statutes;
- 25 k. "Work" includes services and any other activity of a tangible
26 or intangible nature performed or assumed pursuant to a contract or
27 agreement with a State college;
- 28 l. "Information technology" means telecommunication and
29 computing goods and services, including, but not limited to,
30 software, hardware, cloud computing, and systems implementation
31 and support for voice, data and video.
32 (cf: P.L.2005, c.369, s.2)

33
34 3. Section 3 of P.L.1986, c.43 (C.18A:64-54) is amended to
35 read as follows:

- 36 3. a. (1) Any purchase, contract or agreement for the
37 performance of any work or the furnishing or hiring of materials or
38 supplies , through which workers employed in the performance of
39 the contract are paid in accordance to the "New Jersey Prevailing
40 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the cost or
41 price of which, together with any sums expended for the
42 performance of any work or services in connection with the same
43 project or the furnishing of similar materials or supplies during the
44 same fiscal year, paid with or out of college funds, does not exceed
45 the total sum of \$26,200 or, commencing January 1, 2005, the
46 amount determined pursuant to subsection b. of this section, in any
47 fiscal year may be made, negotiated and awarded by a contracting
48 agent, when so authorized by resolution of the board of trustees of

1 the State college without public advertising for bids and bidding
2 therefor.

3 (2) Any purchase, contract or agreement for the performance of
4 any work or the furnishing or hiring of materials or supplies,
5 through which workers employed in the performance of the contract
6 are not paid in accordance to the "New Jersey Prevailing Wage
7 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the cost or price of
8 which, together with any sums expended for the performance of any
9 work or services in connection with the same project or the
10 furnishing of similar materials or supplies during the same fiscal
11 year, paid with or out of college funds, does not exceed the total
12 sum of \$100,000 or, commencing January 1, 2022, the amount
13 determined pursuant to subsection b. of this section, in any fiscal
14 year may be made, negotiated and awarded by a contracting agent,
15 when so authorized by resolution of the board of trustees of the
16 State college without public advertising for bids and bidding
17 therefor.

18 b. Commencing January 1, 2005 and every two years
19 thereafter, the Governor, in consultation with the Department of the
20 Treasury, shall adjust the threshold amount set forth in subsection a.
21 of this section in direct proportion to the rise or fall of the
22 Consumer Price Index for all urban consumers in the New York and
23 Northeastern New Jersey and the Philadelphia areas, as reported by
24 the United States Department of Labor. The adjustment shall
25 become effective on July 1 of the year in which it is reported.

26 c. Any purchase, contract or agreement made pursuant to this
27 section may be awarded for a period of 36 consecutive months,
28 notwithstanding that the 36 -month period does not coincide with
29 the fiscal year.

30 (cf: P.L.2005, c.369, s.3)

31

32 4. Section 4 of P.L.1986, c.43 (C.18A:64-55) is amended to
33 read as follows:

34 4. a. Every contract or agreement for the performance of any
35 work or the furnishing or hiring of any materials or supplies,
36 through which the workers employed in the performance of the
37 contract are paid in accordance to the "New Jersey Prevailing Wage
38 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the cost or the
39 contract price of which is to be paid with or out of college funds,
40 not included within the terms of section 3 of this article, shall be
41 made and awarded only by the State college after public advertising
42 for bids and bidding therefor, except as provided otherwise in this
43 article or specifically by any other law. No work, materials or
44 supplies shall be undertaken, acquired or furnished for a sum
45 exceeding in the aggregate \$26,200 or, commencing January 1,
46 2005, the amount determined pursuant to subsection b. of section 3
47 of P.L.1986, c.43 (C.18A:64-54), except by written contract or
48 agreement.

1 b. Any purchase, contract or agreement for the performance of
2 any work or the furnishing or hiring of materials or supplies,
3 through which the workers employed in the performance of the
4 contract are not paid in accordance to the "New Jersey Prevailing
5 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the cost or
6 price of which, together with any sums expended for the
7 performance of any work or services in connection with the same
8 project or the furnishing of similar materials or supplies during the
9 same fiscal year, paid with or out of college funds, does not exceed
10 the total sum of \$100,000 or, commencing January 1, 2022, the
11 amount determined pursuant to subsection b. of section 3 of
12 P.L.1986, c.43 (C.18A:64-54), in any fiscal year may be made,
13 negotiated and awarded by a contracting agent, when so authorized
14 by resolution of the board of trustees of the State college without
15 public advertising for bids and bidding therefor.

16 (cf: P.L.2005, c.369, s.4)

17
18 5. Section 5 of P.L.1986, c.43 (C.18A:64-56) is amended to
19 read as follows:

20 5. Any purchase, contract or agreement of the character
21 described in section 4 of P.L.1986, c.43 (C.18A:64-55) may be
22 made, negotiated or awarded by the State college by resolution at a
23 public meeting of its board of trustees without public advertising for
24 bids or bidding therefor if:

25 a. The subject matter thereof consists of:

26 (1) Professional services; or

27 (2) Extraordinary unspecifiable services and products which
28 cannot reasonably be described by written specifications, subject,
29 however, to procedures consistent with open public bidding
30 whenever possible; or

31 (3) Materials or supplies which are not available from more than
32 one potential bidder, including without limitation materials or
33 supplies which are patented or copyrighted; or

34 (4) The doing of any work by employees of the State college; or

35 (5) The printing of all legal notices and legal briefs, records and
36 appendices to be used in any legal proceeding to which the State
37 college may be a party and the use of electronic data or media
38 services, including the internet, for the printing of these legal
39 notices and legal briefs, records and appendices; or

40 (6) Textbooks, copyrighted materials, student produced
41 publications and services incidental thereto, library materials
42 including without limitation books, periodicals, newspapers,
43 documents, pamphlets, photographs, reproductions, microfilms,
44 pictorial or graphic works, musical scores, maps, charts, globes,
45 sound recordings, slides, films, filmstrips, video and magnetic
46 tapes, other printed or published matter and audiovisual and other
47 materials of a similar nature, necessary binding or rebinding of
48 library materials and specialized library services, including
49 electronic databases and digital formats; or

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- 1 (7) Food supplies and services, including food supplies and
2 management contracts for student centers, dining rooms and
3 cafeterias; or
- 4 (8) The supplying of any product or the rendering of any service
5 by the public utility which is subject to the jurisdiction of the Board
6 of Public Utilities, in accordance with tariffs and schedules of
7 charges made, charged and exacted, filed with that board; or
- 8 (9) Equipment repair service if in the nature of an extraordinary
9 unspecifiable service and necessary parts furnished in connection
10 with the services; or
- 11 (10) Specialized machinery or equipment of a technical nature
12 which will not reasonably permit the drawing of specifications, and
13 the procurement thereof without advertising is in the public interest;
14 or
- 15 (11) Insurance, including the purchase of insurance coverage
16 and consulting services, which exceptions shall be in accordance
17 with the requirements for extraordinary unspecifiable services; or
- 18 (12) Publishing of legal notices in newspapers as required by
19 law and the use of electronic data or media services, including the
20 internet, for the publication of the legal notices; or
- 21 (13) The acquisition of artifacts or other items of unique
22 intrinsic, artistic or historic character; or
- 23 (14) The collection of amounts due on student loans, including
24 without limitation loans guaranteed by or made with funds of the
25 United States of America, and amounts due on other financial
26 obligations to the State college, including but not limited to, the
27 amounts due on tuition and fees and room and board; or
- 28 (15) Professional consulting services; or
- 29 (16) Entertainment, including without limitation theatrical
30 presentations, band and other concerts, movies and other
31 audiovisual productions; or
- 32 (17) Contracts employing funds created by student activities
33 fees charged to students or otherwise raised by students and
34 expended by student organizations; or
- 35 (18) Printing, including without limitation catalogs, yearbooks
36 and course announcements and the production and reproduction of
37 such material in electronic and digital formats, including compact
38 discs; or
- 39 (19) Information technology; or
- 40 (20) Personnel recruitment and advertising, including without
41 limitation advertising seeking student enrollment; or
- 42 (21) Educational supplies, books, articles of clothing and other
43 miscellaneous articles purchased by a State college for resale to
44 college students and employees; or
- 45 (22) Purchase or rental of graduation caps and gowns , and
46 award certificates or plaques , or the rental of space and equipment
47 used for graduation and other events and ceremonies ; or

1 (23) Items available from vendors at costs below State contract
2 pricing for the same product or service, which meets or exceeds the
3 State contract terms or conditions; or

4 (24) Management contracts for bookstores, performing arts
5 centers, residence halls, parking facilities and building operations;
6 or

7 (25) Consulting services involving information technology,
8 curricular or programmatic review, fund raising, transportation,
9 safety or security; or

10 (26) Construction management services for construction,
11 alteration or repair of any building or improvement; or

12 (27) Purchase or rental of equipment of a technical nature when
13 the procurement thereof without advertising is necessary in order to
14 assure standardization of equipment and interchangeability of parts
15 in the public interest; or

16 (28) Banking and investment services; or

17 (29) Energy supply, such as electric and gas, from a third-party
18 supplier; or

19 (30) Hazardous waste collection and disposal services; or

20 (31) Supplies and services for the administration of study abroad
21 or remote programs; or

22 (32) Transportation services; or

23 (33) Vehicle maintenance; or

24 (34) Vending services; or

25 (35) Medical testing.

26 b. It is to be made or entered into with the United States of
27 America, the State of New Jersey, a county or municipality or any
28 board, body, or officer, agency or authority or any other state or
29 subdivision thereof.

30 c. The State college has advertised for bids pursuant to section
31 4 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has
32 received no bids on both occasions in response to its advertisement,
33 or (ii) has rejected the bids on two occasions because the State
34 college has determined that they are not reasonable as to price, on
35 the basis of cost estimates prepared for or by the State college prior
36 to the advertising therefor, or have not been independently arrived
37 at in open competition, or (iii) on one occasion no bids were
38 received pursuant to (i) and on one occasion all bids were rejected
39 pursuant to (ii), in whatever sequence; any contract or agreement
40 may then be negotiated by a two-thirds affirmative vote of the
41 authorized membership of the board of trustees authorizing the
42 contract or agreement; provided that:

43 (1) A reasonable effort is just made by the contracting agent to
44 determine that the same or equivalent materials or supplies at a cost
45 which is lower than the negotiated price are not available from any
46 agency or authority of the United States, the State of New Jersey or
47 of the county in which the State college is located, or any
48 municipality in close proximity to the State college;

1 (2) The terms, conditions, restrictions and specifications set
2 forth in the negotiated contract or agreement are not substantially
3 different from those which were the subject of competitive bidding
4 pursuant to section 4 of this article; and

5 (3) Any minor amendment or modification of any of the terms,
6 conditions, restrictions and specifications, which were the subject of
7 competitive bidding pursuant to section 4 of P.L.1986, c.43
8 (C.18A:64-55), shall be stated in the resolution awarding the
9 contract or agreement; except that if on the second occasion the
10 bids received are rejected as unreasonable as to price, the State
11 college shall notify each responsible bidder submitting bids on the
12 second occasion of its intention to negotiate and afford each bidder
13 a reasonable opportunity to negotiate, but the State college shall not
14 award the contract or agreement unless the negotiated price is lower
15 than the lowest rejected bid price submitted on the second occasion
16 by a responsible bidder, is the lowest negotiated price offered by
17 any reasonable vendor, and is a reasonable price for the work,
18 materials, supplies or services. Whenever a State college shall
19 determine that a bid was not arrived at independently in open
20 competition pursuant to subsection c. (ii) of this section, it shall
21 thereupon notify the Attorney General of the facts upon which its
22 determination is based and, when appropriate, it may institute
23 appropriate proceedings in any State or federal court of competent
24 jurisdiction for a violation of any State or federal antitrust law or
25 laws relating to the unlawful restraint of trade.

26 d. It is to be awarded through a reverse auction for the purchase
27 of utilities and other commodities.

28 (cf: P.L.2005, c.369, s.5)

29
30 6. Section 6 of P.L.1986, c.43 (C.18A:64-57) is amended to
31 read as follows:

32 6. Any purchase, contract, or agreement may be made,
33 negotiated or awarded by a State college without public advertising
34 for bids and bidding therefor, notwithstanding that the cost or
35 contract price will exceed **【\$26,200】** \$100,000 or, commencing
36 January 1, 2005, the amount determined pursuant to subsection b. of
37 section 3 of P.L.1986, c.43 (C.18A:64-54), when an emergency
38 affecting the health, safety or welfare of occupants of college
39 property requires the immediate delivery of the materials or
40 supplies or the performance of the work, if the purchases, contracts
41 or agreements are awarded or made in the following manner:

42 a. A written requisition for the performance of the work or the
43 furnishing of materials or supplies, certified by the employee in
44 charge of the building, facility or equipment where the emergency
45 occurred, is filed with the contracting agent or his deputy in charge
46 describing the nature of the emergency, the time of its occurrence,
47 and the need for invoking this section. The contracting agent, or his
48 deputy in charge, being satisfied that the emergency exists, is
49 authorized to award a contract for the work, materials or supplies.

1 b. Upon the furnishing of the work, materials or supplies in
2 accordance with the terms of the contract or agreement, the
3 contractor furnishing the work, materials or supplies is entitled to
4 be paid therefor and the State college is obligated for the payment.

5 c. The board of trustees may prescribe rules and procedures to
6 implement the requirements of this section.
7 (cf: P.L.2005, c.369, s.6)

8
9 7. Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to
10 read as follows:

11 19. All contracts or agreements for the purchase of goods and
12 services, as distinct from contracts or agreements for the
13 construction of buildings and other improvements, which require
14 public advertisement for bids shall be awarded by the board of
15 trustees to the responsible bidder whose bid, conforming to the
16 invitation for bids, will be most advantageous to the State college,
17 price and other factors considered , except that a bid may be
18 disqualified due to prior negative experience pursuant to the
19 provisions of section 10 of P.L. , c. (C.) (pending before the
20 Legislature as this bill).

21 Prior to the award of any contract or agreement which does not
22 require public advertisement, the estimated cost of which is 20% or
23 more of the amount set forth in this act or, commencing January 1,
24 1985, 20% of the amount determined by the Governor pursuant to
25 subsection b. of section 3 of this act, the contracting agent shall,
26 except in the case of professional services, solicit quotations
27 therefor whenever practicable, and the award thereof shall be made,
28 in accordance with section 3 of this article, on the basis of the
29 quotation, conforming to the request for proposals, which is most
30 advantageous to the State college, price and other factors
31 considered; however, if the contracting agent deems it impractical
32 to solicit competitive quotations or having sought the quotations
33 determines that the award should not be made on that basis, the
34 contracting agent shall file a statement of explanation of the reason
35 or reasons therefor, which shall be placed on file with the purchase,
36 contract, or agreement.

37 (cf: P.L.2005, c.369, s.12)

38
39 8. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to
40 read as follows:

41 2. a. Whenever the entire cost for the construction, alteration
42 or repair of any building by a State college will exceed the amount
43 determined pursuant to subsection b. of section 3 of P.L.1986, c.43
44 (C.18A:64-54), the contracting agent shall advertise for and receive
45 in the manner provided by law:

46 (1) separate bids for branches of work in the following
47 categories:

48 (a) the plumbing and gas fitting work;

1 (b) the refrigeration, heating and ventilating systems and
2 equipment;

3 (c) the electrical work, including any electrical power plants,
4 tele-date, fire alarm, or security systems;

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

6 (e) general construction, which shall include all other work and
7 materials required for the completion of the project, or

8 (2) bids for all work and materials required to complete the
9 entire project if awarded as a single contract, or

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

11 In the case of separate bids under paragraph (1) or (3) of this
12 subsection, prime contractors for categories (a) through (d) shall not
13 be required to name subcontractors in their bid. In the case of a
14 single bid under paragraph (2) or (3), all bids submitted shall set
15 forth the names and license numbers of all subcontractors to whom
16 the general contractor will subcontract the work described in the
17 foregoing categories (a) through (d). Subcontractors who furnish
18 non-specialty trade work pursuant to category (e) in paragraph (1)
19 of this subsection or subcontractors who furnish work to named
20 subcontractors pursuant to categories (a) through (d) in paragraph
21 (1) of this subsection shall not be named in the bid.
22 Notwithstanding the foregoing provisions of this subsection, a State
23 college may choose to require in its bid specification that a
24 subcontractor shall be named in a bid when, in the case of
25 paragraph (1), separate bids for each category, the work of that
26 subcontractor exceeds 35 percent of the State college's estimated
27 amount of value of the work, which shall be set forth in the bid
28 specification.

29 b. Contracts shall be awarded to the lowest responsible bidder
30 whose bid, conforming to the invitation for bids, will be the most
31 advantageous to the State college , except that a bid may be
32 disqualified due to prior negative experience pursuant to the
33 provisions of section 10 of P.L. , c. (C.) (pending before the
34 Legislature as this bill). Whenever two or more bids of equal
35 amounts are the lowest bids submitted by responsible parties, the
36 college may award the contract to any of the parties, as, in its
37 discretion, it may determine.

38 (cf: P.L.2012, c.59, s.2)

39

40 9. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to
41 read as follows:

42 27. Any college may, by resolution of its board of trustees,
43 authorize the sale in the following manner of its personal property
44 not needed for college purposes:

45 a. If the estimated fair value of the property to be sold exceeds
46 **[\$26,200]** \$100,000 or, commencing January 1,2005, the amount
47 determined pursuant to subsection b. of section 3 of P.L.1986, c.43
48 (C.18A:64-54), in any one sale and the property does not consist of
49 perishable goods, it shall be sold at public sale to the highest bidder.

1 b. Notice of the date, time and place of the public sale, together
2 with a description of the items to be sold and the conditions of sale,
3 shall be published once in a legal newspaper. Sales shall be held
4 not less than seven nor more than 14 days after the publication of
5 the notice thereof.

6 c. Personal property may be sold to the United States, the State
7 of New Jersey, another college or to any body politic by private sale
8 without advertising for bids.

9 d. If no bids are received, the property may then be sold at
10 private sale without further publication or notice thereof but in no
11 event at less than the estimated fair value; or the State college may,
12 if it so elects, reoffer the property at public sale. As used herein,
13 "estimated fair value" means the market value of the property if
14 sold by a willing seller to a willing buyer less the cost to the college
15 of continuing to store or maintain the property.

16 e. A State college may reject all bids if it determines a
17 rejection to be in the public interest. In any case in which the
18 college has rejected all bids, it may readvertise the personal
19 property for a subsequent public sale. If it elects to reject all bids at
20 a second public sale pursuant to this section, it may then sell the
21 personal property without further publication or notice thereof at
22 private sale, but in no event shall the negotiated price at the private
23 sale be less than the amount of the highest bid rejected at the
24 preceding two public sales, nor shall the terms or conditions of sale
25 be changed or amended.

26 f. If the estimated fair value of the property to be sold does not
27 exceed ~~【\$26,200】~~ \$100,000 or, commencing January 1, 2005, the
28 amount determined pursuant to subsection b. of section 3 of
29 P.L.1986, c.43 (C.18A:64-54), in any one sale or the property
30 consists of perishable goods, it may be sold at private sale without
31 advertising for bids.

32 (cf: P.L.2005, c.369, s.15)

33
34 10. (New section) a. A board of trustees of a State college may,
35 by resolution approved by a majority of the board and subject to
36 subsections b. and c. of this section, disqualify a bidder who would
37 otherwise be determined to be the lowest responsible bidder or the
38 responsible bidder whose bid would otherwise be determined to be
39 most advantageous to the State college as applicable, if the board
40 finds that a board of an institution of higher education in the State
41 has had prior negative experience with the bidder within the past 15
42 years.

43 b. As used in this section, "prior negative experience" means
44 any of the following:

45 (1) the bidder has been found, through either court adjudication,
46 arbitration, mediation, or other contractually stipulated alternate
47 dispute resolution mechanism, to have: failed to provide or perform
48 goods or services; or failed to complete the contract in a timely

1 manner; or otherwise performed unsatisfactorily under a prior
2 contract with a State college;

3 (2) the bidder defaulted on a contract, thereby requiring a State
4 college to utilize the services of another contractor to provide the
5 goods or perform the services or to correct or complete the contract;

6 (3) the bidder defaulted on a contract, thereby requiring a State
7 college to look to the bidder's surety for completion of the contract
8 or tender of the costs of completion; or

9 (4) the bidder is debarred or suspended from contracting with
10 any of the agencies or departments of the executive branch of the
11 State of New Jersey at the time of the contract award, whether or
12 not the action was based on experience with a State college.

13 c. The following conditions shall apply if the State college is
14 contemplating a disqualification based on prior negative experience:

15 (1) The existence of any of the indicators of prior negative
16 experience set forth in this section shall not require that a bidder be
17 disqualified. In each instance, the decision to disqualify shall be
18 made within the discretion of the State college and shall be
19 rendered in the best interests of the State college.

20 (2) All mitigating factors shall be considered in determining the
21 seriousness of the prior negative experience and in deciding
22 whether disqualification is warranted.

23 (3) The bidder shall be furnished by the State college with a
24 written notice (a) stating that a disqualification is being considered;
25 (b) setting forth the reason for the disqualification; and (c)
26 indicating that the bidder shall be accorded an opportunity for a
27 hearing before the State college if the bidder so requests within a
28 stated period of time. At the hearing, the bidder shall show good
29 cause why the bidder should not be disqualified by presenting
30 documents and testimony. If the State college determines that good
31 cause has not been shown by the bidder, it may vote to find the
32 bidder lacking in responsibility and, thus, disqualified.

33 (4) Disqualification shall be for a reasonable, defined period of
34 time which shall not exceed five years.

35 (5) A disqualification, other than a disqualification pursuant to
36 which a State college is prohibited by law from entering into a
37 contract with a bidder, may be voided or the period thereof may be
38 reduced, in the discretion of the State college, upon the submission
39 of a good faith application under oath, supported by documentary
40 evidence, setting forth substantial and appropriate grounds for the
41 granting of relief, such as reversal of a judgment, or actual change
42 of ownership, management or control of the bidder.

43 (6) An opportunity for a hearing need not be offered to a bidder
44 whose disqualification is based on its suspension or debarment by
45 an agency or department of the executive branch of the State of
46 New Jersey. The term of such a disqualification shall be concurrent
47 with the term of the suspension or debarment by the State agency or
48 department.

1 11. This act shall take effect on the 30th day after the date of
2 enactment.

3
4
5 STATEMENT

6
7 This bill makes various changes to the “State College Contracts
8 Law,” P.L.1986, c.43 (C.18A:64-52 et seq.). The public bid
9 threshold for State colleges and universities is currently \$34,400.
10 Pursuant to the “State College Contracts Law,” the threshold is
11 adjusted every two years by the Governor, in consultation with the
12 Department of the Treasury, in direct proportion to the rise or fall of
13 the Consumer Price Index for all urban consumers in New York and
14 Northeastern New Jersey and the Philadelphia areas, as reported by
15 the United States Department of Labor. This bill raises the
16 threshold to \$100,000 for contracts through which workers
17 employed in the performance of the contract are not paid in
18 accordance to the "New Jersey Prevailing Wage Act," P.L.1963,
19 c.150 (C.34:11-56.25 et seq.). The threshold for contracts through
20 which workers employed in the performance of the contract are paid
21 in accordance to the “New Jersey Prevailing Wage Act” remains
22 unchanged. Both thresholds will continue to be adjusted by the
23 Governor every two years in the same manner.

24 The bill changes the law that enumerates numerous exemptions
25 to the requirement for public advertising and bidding to also
26 include:

- 27 • the rental of space and equipment used for graduation and
28 other events and ceremonies;
29 • banking and investment services;
30 • energy supply, such as electric and gas, from a third-party
31 supplier;
32 • hazardous waste collection and disposal services;
33 • supplies and services for the administration of study abroad
34 or remote programs;
35 • transportation services;
36 • vehicle maintenance;
37 • vending services; and
38 • medical testing.

39 The bill also provides that a State college or university may
40 purchase without public advertising for bids if the purchase or
41 contract is to be awarded through a reverse auction for the purchase
42 of utilities and other commodities.

43 The bill provides that a board of trustees of a State college may,
44 by resolution approved by a majority of the board, disqualify a
45 bidder who would otherwise be determined to be the lowest
46 responsible bidder or the responsible bidder whose bid would
47 otherwise be determined to be most advantageous to the State
48 college as applicable, if the board finds that a board of an institution

1 of higher education in the State has had prior negative experience
2 with the bidder within the past 15 years.

3 The bill defines "prior negative experience" to include any of the
4 following:

5 (1) the bidder has been found, through either court adjudication,
6 arbitration, mediation, or other contractually stipulated alternate
7 dispute resolution mechanism, to have: failed to provide or perform
8 goods or services; or failed to complete the contract in a timely
9 manner; or otherwise performed unsatisfactorily under a prior
10 contract with a State college.

11 (2) the bidder defaulted on a contract, thereby requiring a State
12 college to utilize the services of another contractor to provide the
13 goods or perform the services or to correct or complete the contract;

14 (3) the bidder defaulted on a contract, thereby requiring a State
15 college to look to the bidder's surety for completion of the contract
16 or tender of the costs of completion; or

17 (4) the bidder is debarred or suspended from contracting with
18 any of the agencies or departments of the executive branch of the
19 State of New Jersey at the time of the contract award, whether or
20 not the action was based on experience with a State college.

21 The bill sets forth conditions that must be applied if a State
22 college is contemplating a bidder disqualification based on prior
23 negative experience including: giving the State college discretion to
24 disqualify a bidder; requiring consideration of mitigating factors;
25 requiring the provision of written notice to the bidder of a potential
26 disqualification; limiting the period of time during which a bidder
27 may be disqualified; and limiting the opportunity for a hearing
28 under certain circumstances.

29 The bill amends the definition of "contracts" in the "State
30 College Contracts Law" to include contracts or agreements for the
31 performance of work or the furnishing or hiring of construction.
32 The bill also amends the definition of "information technology" in
33 the law to include computing goods and services, and cloud
34 computing.

35 Finally, current law (N.J.S.18A:64-6) details the powers and
36 duties of the board of trustees of a State college or university. One
37 of the current powers is the power to employ architects to plan
38 buildings. The bill broadens this provision to include the power to
39 employ engineers, consultants, and other professionals, in addition
40 to architects, to plan buildings.