

# SENATE HIGHER EDUCATION COMMITTEE

## STATEMENT TO

### **SENATE, No. 4043**

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 9, 2021

The Senate Higher Education Committee reports favorably Senate Bill No. 4043 with committee amendments.

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

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

- the rental of space and equipment used for graduation and other events and ceremonies;
- banking and investment services;
- energy supply, such as electric and gas, from a third-party supplier;
- hazardous waste collection and disposal services;
- supplies and services for the administration of study abroad or remote programs;
- transportation services;
- vehicle maintenance;
- vending services; and
- medical testing.

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

The bill provides that a board of trustees of a State college may, by resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be determined to be most advantageous to the State college as applicable, if the board finds that a board of an institution of higher education in the State has had prior negative experience with the bidder within the past 15 years.

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

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

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

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

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

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

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

The bill provides that the governing board of a public institution of higher education may by resolution establish a cooperative pricing system with the governing boards of other public institutions of higher

education. A lead agency will procure goods and services through a cooperative pricing system using a master contract. A master contract is required to be secured in accordance with all applicable State contracting and procurement laws. A participating contracting unit may use the master contract during the contract period to procure goods or services of the same specification, quality, and price as that contained in the master contract with the lead agency. The bill provides that no vendor will be required to extend bid prices to participating contracting units in a cooperative pricing system unless so specified in the bids.

Finally, current law (N.J.S.18A:64-6) details the powers and duties of the board of trustees of a State college or university. One of the current powers is the power to employ architects to plan buildings. The bill broadens this provision to include the power to employ engineers, consultants, and other professionals, in addition to architects, to plan buildings, consistent with the “Building Design Services Act,” P.L.1989, c.277 (C.45:4B-1 et seq.).

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- provide that the authority of the board of trustees of a State college to employ architects, consultants, and other professionals to plan buildings must be used in a manner that is consistent with the provisions of the “Building Design Services Act,” P.L.1989, c.277 (C.45:4B-1 et seq.);
- require the Governor, in consultation with the Department of the Treasury, to adjust both public bidding thresholds set forth in section 3 of P.L.1986, c.43 (C.18A:64-54);
- clarify that a State college may make certain purchases above the cost of the applicable public bidding threshold amount in emergency circumstances; and
- provide that the governing board of a public institution of higher education may by resolution establish a cooperative pricing system with the governing boards of other public institutions of higher education, and to establish the roles of participating entities.