

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 4043**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 16, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 4043 (1R).

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 with 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: (1) the rental of space and equipment used for graduation and other events and ceremonies; (2) banking and investment services; (3) energy supply, such as electric and gas, from a third-party supplier; (4) hazardous waste collection and disposal services; (5) supplies and services for the administration of study abroad or remote programs; (6) transportation services; (7) vehicle maintenance; (8) vending services; and (8) 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 a 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.).

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the “New Jersey Prevailing Wage Act” may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law. These institutions may experience similar, marginal cost savings due to the bill’s expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process.

The bill’s provision permitting the governing board of a public institution of higher education to establish a cooperative pricing system may generate marginal cost savings for the public institutions. While lead agencies under the bill would still be subject to undergoing the process for executing a master contract for a particular good or service, participating contracting units may realize marginal cost savings to the extent that those units would not have to dedicate their own staff time and resources to executing a contract.