

18A:64A-25.3 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:64A-25.3 et al (County colleges--contracts--increase bid threshold)

LAWS OF: 1984 **CHAPTER:** 241

Bill No: A1673

Sponsor(s): Bocchini and others

Date Introduced: March 20, 1984

Committee: Assembly: Higher Education and Regulated Professions

Senate: Education

Amended during passage: Yes Substituted for S1780(not attached since identical to A1673). Amendments during passage denoted by asterisks

Date of Passage: Assembly: May 7, 1984

Senate: Oct. 22, 1984

Date of Approval: December 28, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

Guidelines for energy conservation as mentioned in Senate Committee statement--attached.

Assembly
Senate

241
12-28-84 84

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1673

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1984

By Assemblymen BOCCHINI, DORIA, Assemblywomen GARVIN,
MUHLER and Assemblyman ROCCO

AN ACT to amend the "County College Contracts Law," approved
December 1, 1982 (P. L. 1982, c. 189).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 3 of P. L. 1982, c. 189 (C. 18A:64A-25.3) is amended
2 to read as follows:

3 3. Purchases, contracts and agreements not requiring advertis-
4 ing. *a.* Any purchase, contract or agreement for the performance
5 of any work or the furnishing or hiring of materials or supplies,
6 the cost or 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
9 the same fiscal year, paid with or out of college funds, does not
10 exceed the total sum of **[\$4,500.00]** *\$7,500.00 or, commencing Janu-*
11 *ary 1, 1985, the amount determined pursuant to subsection b. of*
12 *this section* in any fiscal year may be made, negotiated and awarded
13 by a contracting agent, when so authorized by resolution of the
14 board of trustees of the county college, without public advertising
15 for bids and bidding therefor.

16 *b. Commencing January 1, 1985 and every two years thereafter,*
17 *the Governor, in consultation with the Department of *the* Trea-*
18 *sury, shall adjust the threshold amount set forth in subsection a. of*
19 *this section in direct proportion to the rise or fall of the Consumer*
20 *Price Index for all urban consumers in the New York and North-*
21 *eastern New Jersey and the Philadelphia areas as reported by 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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted June 25, 1984.

22 *United States Department of Labor. The adjustment shall become*
 23 *effective on July 1 of the year in which it is reported.*

24 c. Any purchase, contract or agreement made pursuant to this
 25 section may be awarded for a period of 12 consecutive months, not-
 26 withstanding that such 12-month period does not coincide with the
 27 fiscal year. The Department of Higher Education shall adopt and
 28 promulgate rules and regulations concerning the methods of
 29 accounting for all contracts that do not coincide with the fiscal year.

1 2. Section 4 of P. L. 1982, c. 189 (C. 18A:64A-25.4) is amended
 2 to read as follows:

3 4. Contracts and agreements requiring advertising. Every con-
 4 tract or agreement for the performance of any work or the furnish-
 5 ing or hiring of any materials or supplies, the cost or the contract
 6 price of which is to be paid with or out of college funds, not
 7 included within the terms of section 3 hereof, shall be made and
 8 awarded only by the county college after public advertising for
 9 bids and bidding therefor except as provided otherwise in this
 10 article or specifically by any other law. No work, materials or
 11 supplies shall be undertaken, acquired or furnished for a sum ex-
 12 ceeding in the aggregate ~~[\$4,500.00]~~ \$7,500.00 or commencing Janu-
 13 ary 1, 1985, the amount determined pursuant to subsection b. of
 14 section 3 of P. L. 1982, c. 189 (C. 18A:64A-25.3) except by written
 15 contract or agreement.

1 *3. Section 5 of P. L. 1982, c. 189 (C. 18A:64A-25.5) is amended
 2 to read as follows:

3 5. Exceptions to requirement for advertising. Any purchase,
 4 contract or agreement of the character described in section 4 may
 5 be made, negotiated or awarded by the county college by resolution
 6 at a public meeting of its board of trustees without public adver-

8 a. The subject matter thereof consists of:

- 9 (1) Professional services; or
- 10 (2) Extraordinary unspecifiable services and products which
 11 cannot reasonably be described by written specification, subject
 12 however, to the rules and regulations of the Board of Higher
 13 Education consistent with open public bidding whenever possible;
 14 or
- 15 (3) Materials or supplies which are not available from more
 16 than one potential bidder, including without limitation materials
 17 or supplies which are patented or copyrighted; or
- 18 (4) The doing of any work by employees of the county college; or
- 19 (5) The printing of all legal notices and legal briefs, records
 20 and appendices to be used in any legal proceeding to which the
 21 county college may be a party; or

22 (6) Textbooks, copyrighted materials, student produced publi-
23 cations and services incidental thereto, library materials including
24 without limitation books, periodicals, newspapers, documents,
25 pamphlets, photographs, reproductions, microfilms, pictorial or
26 graphic works, musical scores, maps, charts, globes, sound record-
27 ings, slides, films, filmstrips, video and magnetic tapes, other
28 printed or published matter and audiovisual and other materials
29 of a similar nature, necessary binding or rebinding of library
30 materials and specialized library services; or

31 (7) Food supplies and services including food supplies and man-
32 agement contracts for student centers, dining rooms and cafeterias
33 pursuant to rules and regulations of the Board of Higher Educa-
34 tion; or

35 (8) The supplying of any product or the rendering of any ser-
36 vice by the public utility which is subject to the jurisdiction of the
37 Board of Public Utilities in accordance with tariffs and schedules
38 of charges made, charged and exacted, filed with said board; or

39 (9) Equipment repair service if in the nature of an extraordi-
40 nary unspecifiable service and necessary parts furnished in con-
41 nection with such services; or

42 (10) Specialized machinery or equipment of a technical nature
43 which will not reasonably permit the drawing of specifications, and
44 the procurement thereof without advertising is in the public in-
45 terest; or

46 (11) Insurance, including the purchase of insurance coverage
47 and consulting services, which exceptions shall be in accordance
48 with the requirements for extraordinary, unspecifiable services; or

49 (12) Publishing of legal notices in newspapers as required by
50 law; or

51 (13) The acquisition of artifacts or other items of unique in-
52 trinsic, artistic or historic character; or

53 (14) The collection of amounts due on student loans, including
54 without limitation loans guaranteed by or made with funds of the
55 United States of America; or

56 (15) Professional consulting services; or

57 (16) Entertainment, including without limitation theatrical
58 presentations, band and other concerts, movies and other audio-
59 visual productions; or

60 (17) Contracts employing funds created by student activities
61 fees charged to students or otherwise raised by students not under
62 the direct control of the college and expended by student organiza-
63 tions; or

64 (18) Printing, including without limitation catalogs, yearbooks
65 and course announcements; or

66 (19) Data processing, software programs, systems and service
67 and the rental or lease of data processing equipment; or

68 (20) Personnel recruitment and advertising including, without
69 limitation, advertising seeking student enrollment; or

70 (21) Educational supplies, books, articles of clothing and other
71 miscellaneous articles purchased by a county college bookstore, *or*
72 *by a service or management company under contract with a county*
73 *college to operate a county college book store* for resale to college
74 students and employees; or

75 (22) Purchase or rental of graduation caps and gowns and award
76 certificates or plaques.

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

81 c. The county college has advertised for bids pursuant to sec-
82 tion 4 on two occasions, and (i) has received no bids on both
83 occasions in response to its advertisement, or (ii) has rejected such
84 bids on two occasions because the county college has determined
85 that they are not reasonable as to price, on the basis of cost esti-
86 mates prepared for or by the county college prior to the advertising
87 therefor, or have not been independently arrived at in open competi-
88 tion, or (iii) on one occasion no bids were received pursuant to (i)
89 and on one occasion all bids were rejected pursuant to (ii), in what-
90 ever sequence; any such contract or agreement may then be nego-
91 tiated by a two-thirds affirmative vote of the authorized member-
92 ship of the board of trustees authorizing such contract or agree-
93 ment; provided, however, that:

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

100 (2) The terms, conditions, restrictions and specifications set forth
101 in the negotiated contract or agreement are not substantially differ-
102 ent from those which were the subject of competitive bidding pur-
103 suant to section 4; and

104 (3) Any minor amendment or modification of any of the terms,
105 conditions, restrictions and specifications, which were the subject
106 of competitive bidding pursuant to section 4 of this act, shall be

107 stated in the resolution awarding such contract or agreement; pro-
 108 vided, further, however, that if on the second occasion the bids
 109 received are rejected as unreasonable as to price, the county college
 110 shall notify each responsible bidder, submitting bids on the second
 111 occasion of its intention to negotiate and afford each such bidder a
 112 reasonable opportunity to negotiate, but the county college shall
 113 not award such contract or agreement unless the negotiated price is
 114 lower than the lowest rejected bid price submitted on the second
 115 occasion by a responsible bidder, is the lowest negotiated price
 116 offered by any responsible vendor, and is a reasonable price for
 117 such work, materials, supplies or services.

118 Whenever a county college shall determine that a bid was
 119 not arrived at independently in open competition pursuant to sub-
 120 section c. (ii) of section 5, it shall thereupon notify the
 121 county prosecutor of the county in which the county college is
 122 located and the Attorney General of the facts upon which its
 123 determination is based and, when appropriate, it may institute
 124 appropriate proceedings in any State or federal court of competent
 125 jurisdiction for a violation of any State or federal antitrust law or
 126 laws relating to the unlawful restraint of trade.*

1 ***[3.]*** *4.* Section 6 of P. L. 1982, c. 189 (C. 18A:64A-25.6) is
 2 amended to read as follows:

3 6. Emergency purchases and contracts. Any purchase, contract,
 4 or agreement may be made, negotiated or awarded by a county
 5 college without public advertising for bids and bidding therefor,
 6 notwithstanding that the cost or contract price will exceed
 7 **[\$4,500.00]** \$7,500.00 or, commencing January 1, 1985*,* the amount
 8 determined pursuant to subsection b. of section 3 of P. L. 1982, c.
 9 189 (C. 18A:64A-25.3), when an emergency affecting the health,
 10 safety or welfare of occupants of college property requires the
 11 immediate delivery of the materials or supplies or the performance
 12 of the work, provided that such purchases, contracts or agreements
 13 are awarded or made in the following manner:

14 a. A written requisition for the performance of such work or
 15 the furnishing of materials or supplies certified by the employee
 16 in charge of the building, facility or equipment where the emer-
 17 gency occurred, is filed with the contracting agent or his deputy
 17A in charge describing the nature of the emergency, the time of its
 18 occurrence, and the need for invoking this section. The contracting
 19 agent, or his deputy in charge, being satisfied that the emergency
 20 exists, is hereby authorized to award a contract for said work,
 21 materials or supplies.

22 b. Upon the furnishing of such work, materials or supplies in

23 accordance with the terms of the contract or agreement, the con-
 24 tractor furnishing such work, materials or supplies shall be entitled
 25 to be paid therefor and the county college shall be obligated for
 26 said payment.

27 c. The board of trustees may prescribe rules and procedures to
 28 implement the requirements of this section.

1 ***[4.]*** *5.* Section 16 of P. L. 1982, c. 189 (C. 18A :64A-25.16) is
 2 amended to read as follows :

3 16. Guaranty to accompany bids; amount. There may be re-
 4 quired from any person bidding on any purchase, contract or
 5 agreement, advertised in accordance with law, that the bid be
 6 accompanied by a guaranty payable to the county college that, if
 7 the purchase, contract or agreement is awarded to him, he will
 8 enter into a contract therefor and will furnish any performance
 9 bond or other security which may be required pursuant to section
 10 17. The guaranty shall be in the amount of 10% of the bid but not
 11 in excess of \$20,000.00, except as otherwise provided herein, and
 12 may be given, at the option of the bidder, by certified check,
 13 cashier's check or bid bond. *For a construction contract the guar-*
 14 *anty shall be in the amount of 10% of the bid.* In the event that
 15 any law or regulation of the United States imposes any condition
 16 upon the awarding of a monetary grant to any county college, which
 17 condition requires a guaranty in an amount other than 10% of the
 18 bid or in excess of \$20,000.00, the provisions of this section shall
 19 not apply and the requirements of the law or regulation of the
 20 United States shall govern.

21 The college may require a bid guaranty alone without also
 22 requiring a performance bond or other security in the contract.

1 ***[5.]*** *6.* Section 19 of P. L. 1982, c. 189 (C. 18A :64A-25.19) is
 2 amended to read as follows :

3 19. Award of purchases, contracts or agreements. All purchases,
 4 contracts or agreements which require public advertisement for
 5 bids shall be awarded by the board of trustees to the lowest re-
 6 sponsible bidder.

7 Prior to the award of any other purchase, contract or agreement
 8 the estimated cost of which is **[\$1,000.00]** 20% or more of the
 9 amount set forth in or, commencing January 1, 1985, 20% of the
 10 amount determined by the Governor pursuant to *subsection b. of*
 11 section 3 of P. L. 1982, c. 189 (C. 18A:64A-25.3), the contracting
 12 agent shall, except in the case of professional services, solicit
 13 quotations therefor whenever practicable, and the award thereof
 14 shall be made, in accordance with section 3, on the basis of the

15 lowest responsible quotation received which is most advantageous
 16 to the county college, price and other factors considered; provided,
 17 however, if the contracting agent deems it impractical to solicit
 18 competitive quotations or having sought such quotations deter-
 19 mines that the award should not be on the basis of the lowest
 20 quotation received, the contracting agent shall file a statement of
 21 explanation of the reason or reasons therefor which shall be placed
 22 on file with such purchase, contract or agreement.

1 *~~6.~~* *7.* Section 25 of P. L. 1982, c. 189 (C. 18A:64A-25.25) is
 2 amended to read as follows:

3 25. In the preparation of plans and specifications for the con-
 4 struction, alteration or repair of any building by a county college,
 5 when the entire cost of the work and materials will exceed
 6 ~~[\$4,500.00]~~ \$7,500.00 or, commencing January 1, 1985, the amount
 7 determined pursuant to subsection b. of section 3 of P. L. 1982,
 8 c. 189 (C. 18A:64A-25.3), separate plans and specifications may be
 9 prepared for each of the following to include all work and materials
 10 related thereto or to be performed or furnished in connection there-
 11 with:

- 12 (a) The plumbing and gas fitting work;
- 13 (b) The heating and ventilating systems and equipment;
- 14 (c) The electrical work, including any electrical power plants;
- 15 (d) The structural steel and ornamental iron work;
- 16 (e) All other work and materials required for the completion
 17 of the project.

18 The contracting agent shall advertise for and receive in the
 19 manner provided by law (1) separate bids for each of the foregoing
 20 categories (a) through (e) or (2) bids for all work and materials
 21 required to complete the entire project if awarded as a single
 22 contract or, (3) both. All bids submitted shall set forth the name
 23 or names of, and evidence of performance security from, all sub-
 24 contractors to whom the bidder will subcontract the work described
 25 in the foregoing categories (a) through (e).

26 Contracts shall be awarded to the lowest responsible bidder. In
 27 the event that a contract is advertised in accordance with (3)
 28 above, the contract shall be awarded in the following manner: if
 29 the sum total of the amounts bid by the lowest responsible bidder
 30 for each category (a) through (e) is less than the amount bid by
 31 the lowest responsible bidder for all the work and materials, the
 32 county college shall award separate contracts for each of such
 33 categories to the lowest responsible bidder therefor, but if the sum
 34 total of the amount bid by the lowest responsible bidder for each
 35 category is not less than the amount bid by the lowest responsible

36 bidder for all the work and materials, the county college shall award
 37 a single contract to the lowest responsible bidder for all of such
 38 work and materials. In every case in which a contract is awarded
 39 under (2) above, all payments required to be made under the
 40 contract for work and materials supplied by a subcontractor shall,
 41 upon the certification of the contractor of the amount due to the
 42 subcontractor, be paid directly to the subcontractor.

1 ***[7.]*** *8.* Section 27 of P. L. 1982, c. 189 (C. 18A:64A-25.27) is
 2 amended to read as follows:

3 27. Any county college may, by resolution of its board of trustees,
 4 authorize the sale in the following manner of its personal property
 5 not needed for college purposes;

6 a. If the estimated fair value of the property to be sold exceeds
 7 **[\$2,500.00]** *\$7,500.00 or, commencing January 1, 1985, the amount*
 8 *determined pursuant to subsection b. of section 3 of P. L. 1982,*
 9 *c. 189 (C. 18A:64A-25.3)* in any one sale and the property does not
 10 consist of perishable goods, it shall be sold at public sale to the
 11 highest bidder.

12 b. Notice of the date, time and place of the public sale, together
 13 with a description of the items to be sold and the conditions of sale
 14 shall be published once in a legal newspaper. Such sales shall be
 15 held not less than seven nor more than 14 days after the publication
 16 of the notice thereof.

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

20 d. If no bids are received, the property may then be sold at
 21 private sale without further publication or notice thereof but in
 22 no event at less than the estimated fair value; or the county college
 23 may, if it so elects, reoffer the property at public sale. As used
 24 herein, "estimated fair value" means the market value of the prop-
 25 erty if sold by a willing seller to a willing buyer less the cost to
 26 the college of continuing to store or maintain such property.

27 e. A county college may reject all bids if it determines such
 28 rejection to be in the public interest. In any case in which the
 29 college has rejected all bids, it may readvertise such personal
 30 property for a subsequent public sale. If it elects to reject all bids
 31 at a second public sale pursuant to this section, it may then sell
 32 such personal property without further publication or notice
 33 thereof at private sale, provided that in no event shall the nego-
 34 tiated price at the private sale be less than the amount of the
 35 highest bid rejected at the preceding two public sales, and provided
 36 further that in no event shall the terms or conditions of sale be
 37 changed or amended.

38 f. If the estimated fair value of the property to be sold does not
 39 exceed ~~[\$2,500.00]~~ \$7,500.00 or, commencing January 1, 1985, the
 40 amount determined pursuant to subsection b. of section 3 of P. L.
 41 1982, c. 189 (C. 18A:64A-25.3) in any one sale or the property con-
 42 sists of perishable goods, it may be sold at private sale without
 43 advertising for bids.

1 *~~[8.]~~* *9.* Section 28 of P. L. 1982, c. 189 (C. 18A:64A-25.28) is
 2 amended to read as follows:

3 28. Duration of certain contracts. A county college may only
 4 enter into a contract exceeding 12 consecutive months for the:

5 a. supplying of:

6 (1) fuel for heating purposes for any term not exceeding in the
 7 aggregate three years; or

8 (2) fuel or oil for use in automobiles, autobuses, motor vehicles
 9 or equipment for any term not exceeding in the aggregate three
 10 years; or

11 b. plowing and removal of snow and ice for any term not exceed-
 12 ing in the aggregate three years; or

13 c. collection and disposal of garbage and refuse for any term
 14 not exceeding in the aggregate three years; or

15 d. data processing programs, systems and services or rental or
 16 lease of data processing equipment for any term of not more than
 17 five years; or

18 e. insurance for any term of not more than three years; or

19 f. leasing or service of automobiles, motor vehicles, electronic
 20 communications equipment, machinery and equipment of every
 21 nature and kind for any term not exceeding in the aggregate five
 22 years; provided, however, such contracts shall be entered into only
 23 subject to and in accordance with the rules and regulations promul-
 24 gated by the Board of Higher Education; or

25 g. supplying of any product or rendering of any service by a
 26 telephone company which is subject to the jurisdiction of the Board
 27 of Public Utilities for a term not exceeding five years; or

28 h. the providing of food supplies and services, including food
 29 supplies and management contracts for student centers, dining
 30 rooms and cafeterias, for a term not exceeding three years; or

31 i. the performance of work or services or the furnishing of ma-
 32 terials or supplies for the purpose of conserving energy in buildings
 33 owned by, or operations conducted by, the contracting unit, the
 34 entire price of which is to be established as a percentage of the
 35 resultant savings in energy costs, for a term not exceeding 10 years;
 36 provided that a contract is entered into only subject to and in ac-
 37 cordance with rules and regulations adopted by the Department of

38 *Energy establishing a methodology for computing energy cost sav-*
39 *ings; or*

40 *j. any single project for the construction, reconstruction or re-*
41 *habilitation of a public building, structure or facility, or a public*
42 *works project including the retention of the services of an architect*
43 *or engineer in connection with the project, for the length of time*
44 *necessary for the completion of the actual construction; or*

45 *k. the management and operation of bookstores for a term not*
46 *exceeding five year*[s.]**

47 **l. custodial or janitorial services for any term not exceeding in*
48 *the aggregate three years.**

49 All multi-year leases and contracts entered into pursuant to this
50 section, except contracts for the leasing or servicing of equipment
51 supplied by a telephone company which is subject to the jurisdiction
52 of the Board of Public Utilities or contracts and agreements for
53 the provision of work or the supplying of equipment to promote
54 energy conservation and authorized pursuant to subsection i. of this
55 section, shall contain a clause making them subject to the avail-
56 ability and appropriation annually of sufficient funds to meet the
57 extended obligation or contain an annual cancellation clause.

1 ***[9.]*** *10.* This act shall take effect immediately.

35 *resultant savings in energy costs, for a term not exceeding 10 years;*
 36 *provided that a contract is entered into only subject to and in ac-*
 37 *cordance with rules and regulations adopted by the Department of*
 38 *Energy establishing a methodology for computing energy cost sav-*
 39 *ings; or*

40 *j. any single project for the construction, reconstruction or re-*
 41 *habilitation of a public building, structure or facility, or a public*
 42 *works project including the retention of the services of an architect*
 43 *or engineer in connection with the project, for the length of time*
 44 *necessary for the completion of the actual construction; or*

45 *k. the management and operation of bookstores for a term not*
 46 *exceeding five years. All multi-year leases and contracts entered*
 47 *into pursuant to this section, except contracts for the leasing or*
 48 *servicing of equipment supplied by a telephone company which is*
 49 *subject to the jurisdiction of the Board of Public Utilities or con-*
 50 *tracts and agreements for the provision of work or the supplying*
 51 *of equipment to promote energy conservation and authorized pur-*
 52 *suant to subsection i. of this section, shall contain a clause making*
 53 *them subject to the availability and appropriation annually of suffi-*
 54 *cient funds to meet the extended obligation or contain an annual*
 55 *cancellation clause.*

1 9. This act shall take effect immediately.

STATEMENT

This bill amends the "County College Contracts Law," (P. L. 1982, c. 189; C. 18A:64A-25.1 et al.) to increase the bid threshold from \$4,500.00 to \$7,500.00. The bill also increases the quotation ceiling to 20% of the bid ceiling. These increases recognize the reduced purchasing power which has resulted from inflation over the last several years and is consistent with similar legislation enacted in 1983 for the public schools.

Finally, the bill also amends current law to permit contracts greater than 12 months in duration for certain energy conservation projects. Guidelines for these contracts have been established by the Department of Energy pursuant to P. L. 1981, c. 551.

A1673 (1984)

ASSEMBLY HIGHER EDUCATION AND REGULATED
PROFESSIONS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1673

STATE OF NEW JERSEY

DATED: APRIL 30, 1984

This bill amends the "County College Contracts Law," (P. L. 1982, c. 189) to raise the bid threshold for county college contracts from \$4,500.00 to \$7,500.00 and to change the ceiling for quotations from \$1,000.00 to 20% of the bid ceiling. The bill also provides that beginning in January, 1985, the Governor, in consultation with the Department of Treasury, will adjust the bid threshold every two years in proportion to the rise or fall of the New York and Northeastern New Jersey/Philadelphia Consumer Price Index.

Under current law, county colleges are required to advertise and solicit bids for any purchase or work the cost of which will exceed \$4,500.00. Under Assembly Bill No. 1673, this amount is immediately raised to \$7,500.00 and will be adjusted automatically every two years. Also under current law, a county college is required to solicit quotations whenever practicable for any purchase or work the cost of which will exceed \$1,000.00. This bill changes that figure to 20% of \$7,500.00 or the adjusted amount.

Assembly Bill No. 1673 also provides that if a county college wishes to sell its personal property, it may do so privately without advertising for bids if the value of the property does not exceed \$7,500.00. The present requirement is that its value not exceed \$2,500.00.

Finally, Assembly Bill 1673 amends the current law on multi-year contracts to allow such contracts for certain energy conservation projects, construction and reconstruction projects and the management and operation of bookstores.

SENATE EDUCATION COMMITTEE
STATEMENT TO
ASSEMBLY, No. 1673
with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 25, 1984

PROVISIONS:

As amended by the committee, this bill amends the "County College Contracts Law," (P. L. 1982, c. 189) to raise the bid threshold for county college contracts from \$4,500.00 to \$7,500.00 and to change the ceiling for quotations from \$1,000.00 to 20% of the bid ceiling. The bill also provides that beginning in January, 1985, the Governor, in consultation with the Department of Treasury, will adjust the bid threshold every two years in proportion to the rise or fall of the New York and North-eastern New Jersey/Philadelphia Consumer Price Index.

Under current law, county colleges are required to advertise and solicit bids for any purchase or work the cost of which will exceed \$4,500.00. Under Assembly Bill No. 1673, this amount is immediately raised to \$7,500.00 and will be adjusted automatically every two years. Also under current law, a county college is required to solicit quotations whenever practicable for any purchase or work the cost of which will exceed \$1,000.00. This bill changes that figure to 20% of \$7,500.00 or the adjusted amount. These increases recognize the reduced purchasing power which has resulted from inflation over the last several years and is consistent with similar legislation enacted in 1983 for the public schools.

Assembly Bill No. 1673 also provides that if a county college wishes to sell its personal property, it may do so privately without advertising for bids if the value of the property does not exceed \$7,500.00. The present requirement is that its value not exceed \$2,500.00.

In addition, the bill changes the current law on multi-year contracts to allow such contracts for certain energy conservation projects, construction and reconstruction projects and the management and operation of bookstores. It also clarifies the exemption from bidding by bookstores by specifying that purchases for college bookstores made by private bookstore management companies are exempt.

Finally, the bill amends current law to permit contracts greater than 12 months in duration for janitorial services and for certain energy conservation projects. Guidelines for energy conservation contracts have been established by the Department of Energy pursuant to P. L. 1981, c. 551.

With the amendments, this bill is identical with S-1780.

CHAPTER 12 ENERGY CONSERVATION MEASURES FINANCING

SUBCHAPTER 1 METHODOLOGY FOR COMPUTING ENERGY COST SAVINGS

14A:12-1.1 Scope

This subchapter shall apply to all contracts for the performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned or operations conducted by those entities subject to the provisions of the Local Public Contracts Law, P.L. 1971, c. 198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c. 551, the entire price of which contracts is established as a percentage of the resulting energy cost savings.

14A:12-1.2 Purpose

This subchapter fulfills the requirements of section 15(12) of P.L. 1981, c. 551, by establishing a methodology for computing the energy cost savings associated with contracts for the furnishing of energy conserving renovations on a shared-savings or guaranteed-savings basis.

14A:12-1.3 Definitions

The following words and terms when used in the context of this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Annualized price" means the average price of fuel to the user during the base period.

"Base period" means the preceding calendar year, preceding fiscal year, preceding 12 month period, or any consecutive period of time greater than one year specifically agreed upon by the firm and user which serves as the standard for measurement of energy consumption and energy savings due to energy conserving renovations.

"Complete energy audit" means an energy audit conducted in accordance with the requirements of N.J.A.C. 14A:12-1.5 (a) 3.

"Current cost" means the most recent delivered price of fuel to the user for the period of claimed savings.

"Degree days" means an index for measurement of differences in energy usage due solely to differences in weather conditions and equals the daily difference between 65 degrees F and the outdoor mean daily temperature.

"Department" means the New Jersey Department of Energy.

"Energy conserving renovation" means any equipment, services, work, materials or supplies, or combination thereof furnished by a firm and agreed upon by the user, for the purpose of conserving energy in buildings owned or operations conducted by a user.

"Energy cost savings" means energy savings converted into dollar savings.

"Energy savings" means the amount in energy units (e.g., BTUs, kilowatts) of energy saved by an energy conserving renovation.

"Firm" means a vendor engaged in the business of furnishing energy conserving renovations to users through a shared-savings or guaranteed-savings program, and includes all representatives, agents, assignees, and other persons or entities performing activities for or acting on behalf of the vendor.

"Guaranteed-savings" means a program in which a firm guarantees a user a predetermined reduction in energy costs and warrants that the energy costs of the user plus all costs of the energy conserving renovations provided by the firm will be less than the user's normal energy costs minus the cost reductions provided for in the program.

"Shared-savings" means a program in which the sole source of payment for energy conserving renovations provided by a firm is a predetermined percentage of the energy cost savings of the user resulting from the energy conserving renovations.

"User" means a municipality, county or other entity subject to the provisions of P.L. 1971, c.198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c. 551, entering into a shared-savings or guaranteed-savings contract with a firm.

14A:12-1.4 Pre-contract phase

(a) Prior to entering into any contract pursuant to N.J.A.C. 14A:12-1.5 for the furnishing of energy conserving renovations, the following requirements shall

be fulfilled:

1. Preliminary assessment of the energy consumption patterns and energy conservation renovation needs of the user: The assessment may take the form of a self-audit conducted by the user, an energy audit performed by an independent auditor, an energy audit performed by all firms as a condition of participation in a pre-Request For Bids Conference or an energy audit performed by all firms as part of a pre-qualification procedure conducted in accordance with N.J.S.A. 40A:11-25. Any meetings, discussions or other contact with firms during the preliminary assessment shall conform to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. The preliminary assessment shall be tailored to the needs of the user and shall provide the user with the following information:

i. A description of the building(s) audited, including but not limited to level of occupancy, schedule of operating hours, and size in square feet;

ii. An inventory and description of the building components and equipment affecting energy consumption;

iii. Base period energy consumption data.

The information shall be presented as follows:

(1) Factors influencing base period energy consumption (e.g., degree days, building operating schedules, equipment installation or removal, building renovations) shall be identified and the effect of each

(2) Consumption data shall be:

(A) Reported separately for each component type (e.g., for electricity, fuel oil, natural gas); and

(B) Stated in energy units, BTUs and dollars;

iv. A description of the suggested energy conserving renovations;

v. The projected impact of the suggested energy conserving renovations on base period energy consumption and energy costs; and

vi. The projected energy savings, BTU savings and energy cost savings which will be generated by the suggested energy conserving renovations;

2. Bidding: Upon completion of the preliminary assessment specified in (a) above, the user shall solicit bids in accordance with the requirements of the Local Public Contracts Law, 40A:11-1 et seq.

14A:12-1.5 Contract phase

(a) All contracts and modifications thereof for the furnishing of energy conserving renovations shall meet, in addition to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. and regulations promulgated thereunder, the minimum requirements stated below. The firm and user may agree to any additional

terms or conditions which do not limit, contradict or abrogate the said minimum requirements and which comply with the applicable provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. and regulations promulgated thereunder.

1. Be reduced to writing;
2. State the term or duration, which shall not exceed ten years;
3. Require the firm to conduct a complete energy audit and to furnish the user with a complete energy audit report. The complete energy audit report shall include but not be limited to the following:

- i. A description of the building(s) audited, including but not limited to information concerning level of occupancy, schedule of operating hours, and size in square feet;

- ii. An inventory and description of the building components and equipment affecting energy consumption;

- iii. Base period consumption data. The information shall be presented as follows:

- (i) Factors influencing base period energy consumption (e.g., degree days, building operating schedules, equipment installation or removal, building renovations) shall be identified. The effect of each factor shall be both quantified and discussed individually; and

(2) Consumption data shall be:

(A) Reported separately for each component type (e.g., for electricity, fuel oil, natural gas); and

(B) Stated in energy units, BTUs and dollars;

iv. A precise description of the proposed energy conserving renovations, including but not limited to equipment specifications, required modifications to or alteration of the building structure, engineering drawings, installation procedures and schedules, and estimated equipment and installation costs, as appropriate to the particular case;

v. The projected impact of each major energy conserving renovation and of the total program of energy conserving renovations on base period energy consumption and energy costs; and

vi. The projected energy savings, BTU savings and energy cost savings which will be generated by the proposed energy conserving renovations;

4. State a specific method of accounting for energy savings due to the energy conserving renovations:

f. The firm shall employ, alone or in combination, as appropriate, the following:

(1) Individual metering: The effect of each energy conserving renovation on energy savings shall

be determined, where feasible, by individually metering each energy conserving renovation;

(2) Calculating energy savings: In the event that (a)4i(1) of this section is not feasible the effect of each energy conserving renovation on energy savings shall be determined by calculating the amount of energy savings attributable to each energy conserving renovation. Calculations shall be based upon billings from utility or other energy suppliers, readings from energy meters, and/or measurements of energy storage facilities;

(3) Normalization: All energy savings produced by energy conserving renovations which are affected by degree day changes shall be normalized using the following: degree day method[†]; modified degree day method[†]; bin method[†]. Energy consumed by energy conserving renovations that are affected by degree day changes or the base period equivalent of such energy conserving renovations, for uses other than space heating or cooling shall be discounted before comparing energy consumption data using the degree day method; modified degree day method; or bin method.

5. Require energy savings determined in (a)4 above to be converted to BTU savings^{††};

6. Require the energy savings determined in (a)4 above to be converted to energy cost savings as follows:

i. Energy cost savings shall be equal to

energy savings adjusted by an energy cost factor. The energy cost factor may include but shall not be limited to:

- (1) Current cost; or
- (2) Annualized price.

ii. The calculations of energy cost savings shall be stated and explained to the user.

7. Contain a provision including or excluding the cost of metering in the cost of the energy conserving renovations, in the event that metering is used pursuant to (a)3 or (a)4;

8. Contain a provision incorporating changes in such factors as demand charges, power factors, time-of-day usage, delivery schedules, as appropriate, in the calculation of energy savings, BTU savings, and energy cost savings, in the event that fuel or utility billing is not based on energy usage;

9. Contain a provision including or excluding fuel adjustment clauses, in the event that the current cost method specified in (a)6i(1) above is used in the complete energy audit report to convert energy savings into energy cost savings;

10. Specify the extent to which the firm may have access to and control over the operation of equipment and facilities of the user;

11. Require the firm to familiarize personnel of the user with the operation and functions of the energy

conserving renovations;

12. Identify and provide a method of adjustment to account for variations in conditions or situations which may affect energy consumption and energy savings (e.g., activities affecting energy conservation undertaken by the user independent of the firm and not caused by the energy conserving renovations, changes in building use or operating schedules, installation or removal of equipment, additions to or alteration of building structure).

Appropriate adjustments may be made to base period or current energy consumption data to reflect such conditions or situations;

13. Define acceptable limits for variations in installed equipment performance, operating conditions and health, safety and comfort levels, and require the firm to maintain operations within said limits;

14. Require the firm to provide, at no cost to the user, maintenance, repair and replacement, and emergency services with respect to the energy conserving renovations or portions thereof, in the event that the firm retains ownership of or control over the energy conserving renovations. The firm shall agree to service all problems regarding maintenance, repair and replacement, and emergency services within 24 hours of notification by the user so as to eliminate any interruption in the operation of the user's facilities or essential equipment or any adverse effect on

health, safety and comfort;

15. State that payment for energy savings generated by the energy conserving renovations shall be required of the user only in the following circumstances and that no other payment shall be required:

i. The energy savings have actually occurred. No payment shall be required of the user until the energy conserving renovations have generated energy savings for the user; and

ii. The payment required is consistent with the energy savings generated. No payment shall be required of the user which is disproportionate to the energy savings generated by the energy conserving renovations;

16. Contain indemnification, insurance or other provisions regarding payment or reimbursement for injury to persons, or damage or loss of property, as the parties deem appropriate;

17. Specify that the firm shall furnish monthly summaries of energy consumption, energy savings, BTU savings and energy cost savings to the user. Calculations shall be made in accordance with (a)4, (a)5, and (a)6 above;

18. State the grounds for termination of the contract by the user or the firm prior to the conclusion of the term. The following grounds shall be specifically included:

i. Termination by buyout: The user shall

be permitted to terminate the contract at the user's election at any time during the term of the contract by purchasing the energy conserving renovation in accordance with a schedule of prices or, if no price schedule is established, fair market value. The right to termination by buyout and the schedule of prices shall be expressly stated in the contract.

19. Require the firm to remove or dispose of the energy conserving renovation at the conclusion of the contract term unless the user exercises an option to purchase, pursuant to (a) 18i; and

20. Specify the manner in which disputes are to be resolved.

† The Department adopts the energy estimating methods of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., contained in ASHRAE Systems Volume, Section IV, Chapter 43 (1980), with respect to the normalization of energy savings by the degree day method, modified degree day method and bin method.

Copies of the document may be obtained from the sponsor at: ASHRAE, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

†† The Department adopts the conversion factors of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., contained in ASHRAE Systems Volume, Section IV, Chapter 47 (1980), with respect to the conversion of energy savings to BTU savings.

14A:12-1.6 Technical assistance

The Department shall be available to provide technical assistance to users in connection with matters included in this subchapter.

NEW JERSEY DEPARTMENT OF ENERGY
SHARED SAVINGS FINANCING OF ENERGY CONSERVATION MEASURES
SELECTION PROCESS FOR ENERGY SERVICE COMPANIES

INTRODUCTION

The New Jersey Department of Energy has adopted regulations which are to be used to measure the energy cost savings resulting from shared savings agreements (N.J.A.C. 14A:12-1). The regulations were promulgated in response to an amendment to the Local Public Contracts Law (N.J.S.A. 40A:11-15 as amended by P.L. 1981, c. 551) which enables certain entities ("users") to conclude shared savings contracts for terms of up to ten years. They provide for payment out of energy cost savings with no "up front cost" to the user.

Users that are subject to the requirements and procedures of competitive bidding laws must ensure that their selection processes comply with the conditions contained in those laws. Thus, the first task of the user is to determine whether the contract must be bid or whether it falls within an exception to the bidding requirements (e.g., extraordinary unspecifiable services pursuant to N.J.S.A. 40A:11-2(7)).

In the bid situation particular care should be taken to ensure that all potential bidders receive an equal opportunity to participate in any pre-bid activities. In cases where compliance with the Local Public Contracts Law does not apply, the requirements contained in N.J.A.C. 14A:12-1 might, nevertheless, be used as a checklist or be incorporated by reference into the contract.

CHOOSING AN ENERGY SERVICE COMPANY (ESCO)

An outline of some criteria that might be helpful in evaluating the overall capabilities of the ESCOs follows:

USER OBJECTIVES AND EVALUATION CRITERIA

USER'S OBJECTIVE	EVALUATION CRITERIA
Highest-yielding, most efficient bid(competitive) or proposal(non-competitive) which neither defers good savings opportunities nor precludes exploiting new opportunities as technology advances.	TECHNICAL COMPLETENESS/Bid or proposal should cover all systems and requirements and all savings opportunities.
	PROJECT INVENTORY/Identify specific actions to be taken referencing the walk-through audit.
	PROJECT YIELD/ESCO identifies cash flow by project year to user, investor and ESCo.

FUTURE OPTIONS/Bid or proposal should permit system adaptation as new technology develops.

Reasonable price.

REAL PROJECT/Bid or proposal should correspond to the energy audit results in scope, savings and cost/price.

PROJECT COST BREAKDOWN/Data needed to calculate yields and the calculations should be provided to user.

Insure project integrity including ability to adapt to unforeseen events and to manage foreseen contingencies which would affect energy savings.

CONTRACTUAL BASIS/Look for strength, completeness, applicability and adaptability of proposed contract. Look for ESCo willingness, ability and attitude toward developing/using contract that meets user needs.

PROJECT PERFORMANCE ASSURANCE/Look for bonding, equipment warranties and savings insurance.

WINDFALL PROTECTIONS/Look for proposed methods to protect user and project from large, unanticipated increases or decreases in fuel prices or general price levels.

Make sure proposed work is completed.

PROJECT TEAM APPROACH/Bid or proposal should identify who will do what work and the general implementation plan.

TEAM QUALIFICATIONS/Provide information showing experience and performance records.

TEAM INCENTIVES/Arrangements should give team incentive to maintain and improve project performance. (Team at this point includes user.)

Since many factors affect the ultimate success of an energy services contract, the primary concern of the user should be to negotiate a shared savings contract that best suits the needs of his facilities.

Therefore, before an ESCo is selected and the contract is signed, the user must obtain information concerning the scope of the project to be undertaken. This data is necessary to apprise the ESCOs of the nature of the project and the problems in the user's facilities. Without this

data, it will be difficult for the user to develop a sufficiently specific RFP (in the case of contracts subject to the bidding requirements of N.J.S.A. 40A:11-1) or evaluating proposals submitted by interested ESCOs (in the case of contracts that are not bid). As a result, the requested or proposed project may bear little resemblance to the actual needs of the user.

PRE-CONTRACT PHASE (N.J.A.C. 14A:12-1.4)

The user is required to secure a preliminary assessment (audit) of the facility (N.J.A.C. 14A:12-1.4) as a means of obtaining initial data. The preliminary assessment may be conducted, for example, by the user, an engineering firm or the ESCOs interested in the project. Since the results of the preliminary assessment will often form the basis of the ESCOs' bids (competitive) or the ESCOs' proposals (non-competitive), it is important that these companies "walk through" the facility at an early stage. "Walk through" audits should be provided free of charge to the user. Selection of the ESCo is made on the basis of the most responsive bid (where competitive bidding is used) or proposal (where no competitive bid is required).

CONTRACT PHASE (N.J.A.C. 14A:12-1.5)

The shared savings regulations specify a number of factors that must be addressed in any contract concluded by a user and an ESCo (N.J.A.C. 14A:12-1.5). The most important are the provisions related to the measurement of baseline energy consumption data and modification thereof, and the determination of projected savings and of savings split. As part of this process the ESCo is required to conduct an energy audit of the facility. Payment for the cost of the full energy audit is included in the contract by the ESCo selected for the project. If the owner terminates the selection process after the energy audit is performed but before finalizing the contract, the user pays for the audit. Other terms that must be addressed are the duration, special funding requirements (e.g., "funding out", buyout schedule, payment schedule), servicing of equipment, and the method of dispute resolution.

The New Jersey Department of Energy has adopted the energy estimating methods of the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc. It is important that the user be familiar with these procedures.

The New Jersey Department of Energy is available to provide technical assistance to users in connection with matters included in the regulations.

JANUARY 2, 1984