

## 40A:11-4.1

**LEGISLATIVE HISTORY CHECK**  
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**LAWS OF:** 1999 **CHAPTER:** 440

**NJSA:** 40A:11-4.1 (Public contracts)

**BILL NO:** A3519 (Substituted for S2203)

**SPONSOR(S):** Malone and Heck

**DATE INTRODUCED:** November 15, 1999

**COMMITTEE:** **ASSEMBLY:** -----

**SENATE:** -----

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** December 13, 1999

**SENATE:** January 10, 2000

**DATE OF APPROVAL:** January 18, 2000

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL:** First Reprint  
(Amendments during passage denoted by superscript numbers)

**A3519**

**SPONSORS STATEMENT:** (Begins on page 104 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

**S2203**

**SPONSORS STATEMENT:** (Begins on page 104 of original bill) [Yes](#)  
Bill and Sponsors Statement identical to A3519

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** [Yes](#)

Identical to Floor Amendment Statement for A3519

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** Yes

Local Finance Notice AU 2000-1R. New Jersey Department of Community Affairs.  
"Procurement Reform Law Is Signed - Public Contracting Law Update."  
February 15, 2000, revised May 1, 2000. [\[PDF copy of Notice\]](#)

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

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§§1-5  
C.40A:11-4.1  
to  
40A:11-4.5  
§13  
C.40A:11-7.1  
§§20, 21  
C.40A:11-13.1  
&  
40A:11-13.2  
§44  
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§§45-49  
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§108  
Repealer  
§109  
Note to all sections

P.L. 1999, CHAPTER 440, *approved January 18, 2000*  
Assembly, No. 3519 (*First Reprint*)

1 **AN ACT** concerning public procurement and amending, supplementing  
2 and repealing various parts of the statutory law.

3

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

6

7 1. (New section) Notwithstanding the provisions of any law, rule  
8 or regulation to the contrary, competitive contracting may be used by  
9 local contracting units in lieu of public bidding for procurement of  
10 specialized goods and services the price of which exceeds the bid  
11 threshold, for the following purposes:

12 a. The purchase or licensing of proprietary computer software  
13 designed for contracting unit purposes, which may include hardware  
14 intended for use with the proprietary software. This subsection shall  
15 not be utilized for the purpose of acquiring general purpose computer  
16 hardware or software;

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly floor amendments adopted December 9, 1999.

- 1       b. The hiring of a for-profit entity or a not-for-profit entity  
2 incorporated under Title 15A of the New Jersey Statutes for the  
3 purpose of:
- 4       (1) the operation and management of a wastewater treatment  
5 system or a water supply or distribution facility of the type described  
6 in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15) ,  
7 provided that competitive contracting shall not be used as a means of  
8 awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et seq.) and  
9 P.L.1985, c.72 (C.58:27-1 et seq.);
- 10       (2) the operation, management or administration of recreation or  
11 social service facilities or programs <sup>1</sup>, which shall not include the  
12 administration of benefits under the Work First New Jersey program  
13 established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.), or under  
14 General Assistance<sup>1</sup>; or
- 15       (3) the operation, management or administration of data processing  
16 services;
- 17       c. Services performed by an energy services company, including  
18 the design, measurement, financing and maintenance of energy savings  
19 equipment or renovations, which result in payment derived, in whole  
20 or in part, from the sale of verified energy savings over the term of an  
21 agreement with a public utility or subsidiary, but not the provision or  
22 performance of the physical improvements that result in energy  
23 savings, provided that such savings are calculated pursuant to  
24 guidelines promulgated by the Board of Public Utilities and further  
25 provided that the Local Finance Board shall find that the terms and  
26 conditions of any financing agreement are reasonable;
- 27       d. Homemaker--home health services;
- 28       e. Laboratory testing services;
- 29       f. Emergency medical services;
- 30       g. Contracted food services;
- 31       h. Performance of patient care services by contracted medical staff  
32 at county hospitals, correctional facilities and long-term care facilities;
- 33       i. At the option of the governing body of the contracting unit, any  
34 good or service that is exempt from bidding pursuant to section 5 of  
35 P.L.1971, c.198 (C.40A:11-5);
- 36       j. Concessions;
- 37       k. The operation, management or administration of other services,  
38 with the approval of the Director of the Division of Local Government  
39 Services.
- 40       Any purpose included herein shall not be considered by a  
41 contracting unit as an extraordinary unspecifiable service pursuant to  
42 paragraph (a)(ii) of subsection (1) of section 5 of P.L.1971, c.198  
43 (C.40A:11-5).
- 44
- 45       2. (New section) Unless an exception is provided for under section  
46 15 of P.L.1971, c.198 (C.40A:11-15) permitting a longer contract  
47 duration, contracts awarded pursuant to section 5 of P.L. , c. (C. )

1 (pending before the Legislature as this bill) may be for a term not to  
2 exceed five years.

3

4 3. (New section) a. In order to initiate competitive contracting,  
5 the governing body shall pass a resolution authorizing the use of  
6 competitive contracting each time specialized goods or services  
7 enumerated in section 1 of P.L. , c. (C. ) (pending before the  
8 Legislature as this bill) are desired to be contracted. If the desired  
9 goods or services have previously been contracted for using the  
10 competitive contracting process then the original resolution of the  
11 governing body shall suffice.

12 b. The competitive contracting process shall be administered by a  
13 purchasing agent qualified pursuant to subsection b. (pending before  
14 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
15 c.198 (C.40A:11-9), or, by legal counsel of the contracting unit, or by  
16 an administrator of the contracting unit. Any contracts awarded under  
17 this process shall be made by resolution of the governing body of the  
18 contracting unit, subject to the provisions of subsection e. of section  
19 5 of P.L. , c. (C. )(now before the Legislature as this bill).

20

21 4. (New section) The competitive contracting process shall utilize  
22 request for proposals documentation in accordance with the following  
23 provisions:

24 a. The purchasing agent or counsel or administrator shall prepare  
25 or have prepared request for proposal documentation, which shall  
26 include: all requirements deemed appropriate and necessary to allow  
27 for full and free competition between vendors; information necessary  
28 for potential vendors to submit a proposal; and a methodology by  
29 which the contracting unit will evaluate and rank proposals received  
30 from vendors.

31 b. The methodology for the awarding of competitive contracts shall  
32 be based on an evaluation and ranking, which shall include technical,  
33 management, and cost related criteria, and may include a weighting of  
34 criteria, all developed in a way that is intended to meet the specific  
35 needs of the contracting unit, and where such criteria shall not unfairly  
36 or illegally discriminate against or exclude otherwise capable vendors.  
37 When an evaluation methodology uses a weighting of criteria, at the  
38 option of the contracting unit the weighting to be accorded to each  
39 criterion may be disclosed to vendors prior to receipt of the proposals.  
40 The methodology for awarding competitive contracts shall comply  
41 with such rules and regulations as the director may adopt, after  
42 consultation with the Commissioner of Education, pursuant to the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.).

45 c. At no time during the proposal solicitation process shall the  
46 purchasing agent or counsel or administrator convey information,  
47 including price, to any potential vendor which could confer an unfair

1 advantage upon that vendor over any other potential vendor. If a  
2 purchasing agent or counsel or administrator desires to change  
3 proposal documentation, the purchasing agent or counsel or  
4 administrator shall notify only those potential vendors who received  
5 the proposal documentation of any and all changes in writing and all  
6 existing documentation shall be changed appropriately.

7 d. All proposals and contracts shall be subject to the provisions of  
8 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
9 statement of corporate ownership and the provisions of P.L.1975,  
10 c.127(C.10:5-31 et seq.) concerning equal employment opportunity  
11 and affirmative action.

12

13 5. (New section) Competitive contracting proposals shall be  
14 solicited in the following manner:

15 a. A notice of the availability of request for proposal  
16 documentation shall be published in an official newspaper of the  
17 contracting unit at least 20 days prior to the date established for the  
18 submission of proposals. The contracting unit shall promptly reply to  
19 any request by an interested vendor by providing a copy of the request  
20 for proposals. The contracting unit may charge a fee for the proposal  
21 documentation that shall not exceed \$50.00 or the cost of reproducing  
22 the documentation, whichever is greater.

23 b. Each interested vendor shall submit a proposal which shall  
24 include all the information required by the request for proposals.  
25 Failure to meet the requirements of the request for proposals may  
26 result in the contracting unit disqualifying the vendor from further  
27 consideration. Under no circumstances shall the provisions of a  
28 proposal be subject to negotiation by the contracting unit.

29 c. If the contracting unit, at the time of solicitation, utilizes its own  
30 employees to provide the goods or perform the services, or both,  
31 considered for competitive contracting, the governing body shall, at  
32 any time prior to, but no later than the time of solicitation for  
33 competitive contracting proposals, notify affected employees of the  
34 governing body's intention to solicit competitive contracting proposals.  
35 Employees or their representatives shall be permitted to submit  
36 recommendations and proposals affecting wages, hours, and terms and  
37 conditions of employment in such a manner as to meet the goals of the  
38 competitive contract. If employees are represented by an organization  
39 that has negotiated a contract with the contracting unit, only the  
40 bargaining unit shall be authorized to submit such recommendations or  
41 proposals. When requested by such employees, the governing body  
42 shall provide such information regarding budgets and the costs of  
43 performing the services by such employees as may be available.  
44 Nothing shall prevent such employees from making recommendations  
45 that may include modifications to existing labor agreements in order  
46 to reduce such costs in lieu of award of a competitive contract, and  
47 agreements implementing such recommendations may be considered

- 1 as cause for rejecting all other proposals.
- 2 d. The purchasing agent or counsel or administrator shall evaluate  
3 all proposals only in accordance with the methodology described in the  
4 request for proposals. After proposals have been evaluated, the  
5 purchasing agent or counsel or administrator shall prepare a report  
6 evaluating and recommending the award of a contract or contracts.  
7 The report shall list the names of all potential vendors who submitted  
8 a proposal and shall summarize the proposals of each vendor. The  
9 report shall rank vendors in order of evaluation, shall recommend the  
10 selection of a vendor or vendors, as appropriate, for a contract, shall  
11 be clear in the reasons why the vendor or vendors have been selected  
12 among others considered, and shall detail the terms, conditions, scope  
13 of services, fees, and other matters to be incorporated into a contract.  
14 The report shall be made available to the public at least 48 hours prior  
15 to the awarding of the contract, or when made available to the  
16 governing body, whichever is sooner. The governing body shall have  
17 the right to reject all proposals for any of the reasons set forth in  
18 section 21 of P.L. , c. (C. )(now before the Legislature as this bill).
- 19 e. Award of a contract shall be made by resolution of the governing  
20 body of the contracting unit within 60 days of the receipt of the  
21 proposals, except that the proposals of any vendors who consent  
22 thereto, may, at the request of the contracting unit, be held for  
23 consideration for such longer period as may be agreed.
- 24 f. The report prepared pursuant to subsection d. of this section  
25 shall become part of the public record and shall reflect the final action  
26 of the governing body. Contracts shall be executed pursuant to  
27 section 14 of P.L.1971, c.198 (C.40A:11-14).
- 28 g. The clerk or secretary of the contracting unit shall publish a  
29 notice in the official newspaper of the contracting unit summarizing  
30 the award of a contract, which shall include but not be limited to, the  
31 nature, duration, and amount of the contract, the name of the vendor  
32 and a statement that the resolution and contract are on file and  
33 available for public inspection in the office of the clerk or secretary of  
34 the municipality, county, local public authority or special district of the  
35 governing body.
- 36 h. All contract awards shall be subject to rules concerning  
37 certification of availability of funds adopted pursuant to section 3 of  
38 P.L.1971, c.198 (C.40A:11-3) and section 15 of P.L.1971, c.198  
39 (C.40A:11-15).
- 40 i. The director, after consultation with the Commissioner of  
41 Education, may adopt additional rules and regulations, in accordance  
42 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
43 1 et seq.), as may be necessary to effectuate the provisions of sections  
44 1 through 5 of P.L. , c. (C. )(pending before the Legislature as this  
45 bill).

1       6. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read  
2 as follows:

3       2. As used herein the following words have the following  
4 definitions, unless the context otherwise indicates:

5       (1) "Contracting unit" means:

6       (a) Any county; or

7       (b) Any municipality; or

8       (c) Any board, commission, committee, authority or agency, which  
9 is not a State board, commission, committee, authority or agency, and  
10 which has administrative jurisdiction over any district other than a  
11 school district, project, or facility, included or operating in whole or  
12 in part, within the territorial boundaries of any county or municipality  
13 which exercises functions which are appropriate for the exercise by  
14 one or more units of local government, and which has statutory power  
15 to make purchases and enter into contracts [or agreements] awarded  
16 by a contracting agent for the provision or performance of [any work  
17 or the furnishing or hiring of any materials or supplies usually  
18 required, the cost or contract price of which is to be paid with or out  
19 of public funds] goods or services.

20       The term shall not include a private firm that has entered into a  
21 contract with a public entity for the provision of water supply services  
22 pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

23       "Contracting unit" shall not include a private firm or public  
24 authority that has entered into a contract with a public entity for the  
25 provision of wastewater treatment services pursuant to P.L.1995,  
26 c.216 (C.58:27-19 et al.).

27       (2) "Governing body" means:

28       (a) The governing body of the county, when the purchase is to be  
29 made or the contract is to be entered into by, or in behalf of, a county;  
30 or

31       (b) The governing body of the municipality, when the purchase is  
32 to be made or the contract is to be entered into by, or on behalf of, a  
33 municipality; or

34       (c) Any board, commission, committee, authority or agency of the  
35 character described in subsection (1) (c) of this section.

36       (3) "Contracting agent" means the governing body of a contracting  
37 unit, or [any board, commission, committee, officer, department,  
38 branch or agency] its authorized designee, which has the power to  
39 prepare the advertisements, to advertise for and receive bids and, as  
40 permitted by this act, to make awards for the contracting unit in  
41 connection with contracts.

42       (4) "Purchase" [is] means a transaction, for a valuable  
43 consideration, creating or acquiring an interest in goods, services and  
44 property, except real property or any interest therein.

45       (5) ["Materials" includes goods and property subject to chapter 2  
46 of Title 12A of the New Jersey Statutes, apparatus, or any other



1 tangible thing, except real property or any interest therein.] (Deleted  
2 by amendment, P.L. c. .) (Pending before the Legislature as this bill.)

3 (6) "Professional services" means services rendered or performed  
4 by a person authorized by law to practice a recognized profession,  
5 whose practice is regulated by law, and the performance of which  
6 services requires knowledge of an advanced type in a field of learning  
7 acquired by a prolonged formal course of specialized instruction and  
8 study as distinguished from general academic instruction or  
9 apprenticeship and training. Professional services may also mean  
10 services rendered in the provision or performance of [work] goods or  
11 services that [is] are original and creative in character in a recognized  
12 field of artistic endeavor.

13 (7) "Extraordinary unspecifiable services" means services which are  
14 specialized and qualitative in nature requiring expertise, extensive  
15 training and proven reputation in the field of endeavor.

16 (8) ["Project" means any work, undertaking, program, activity,  
17 development, redevelopment, construction or reconstruction of any  
18 area or areas.] (Deleted by amendment, P.L. ., c. .) (Pending before  
19 the Legislature as this bill.)

20 (9) "Work" [includes services and any other activity of a tangible  
21 or intangible nature] means any task, program, undertaking, or  
22 activity, related to any development, redevelopment, construction or  
23 reconstruction performed or [assumed] provided pursuant to a  
24 contract [or agreement] with a contracting unit.

25 (10) "Homemaker--home health services" means at home personal  
26 care and home management provided to an individual or members of  
27 [his] the individual's family who reside with [him] the individual, or  
28 both, necessitated by the individual's illness or incapacity.  
29 "Homemaker--home health services" includes, but is not limited to, the  
30 services of a trained homemaker.

31 (11) "Recyclable material" means those materials which would  
32 otherwise become municipal solid waste, and which may be collected,  
33 separated or processed and returned to the economic mainstream in  
34 the form of raw materials or products.

35 (12) "Recycling" means any process by which materials which  
36 would otherwise become solid waste are collected, separated or  
37 processed and returned to the economic mainstream in the form of raw  
38 materials or products.

39 (13) "Marketing" means the [marketing of designated recyclable  
40 materials source separated in a municipality which entails a marketing  
41 cost less than the cost of transporting the recyclable materials to solid  
42 waste facilities and disposing of the materials as municipal solid waste  
43 at the facility utilized by the municipality] sale, disposition,  
44 assignment, or placement of designated recyclable materials with, or  
45 the granting of a concession to, a reseller, processor, materials  
46 recovery facility, or end-user of recyclable material, in accordance

1 with a district solid waste management plan adopted pursuant to  
2 P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection  
3 of such recyclable material when collected through a system of routes  
4 by local government unit employees or under a contract administered  
5 by a local government unit.

6 (14) "Municipal solid waste" means, as appropriate to the  
7 circumstances, all residential, commercial and institutional solid waste  
8 generated within the boundaries of a municipality; or the formal  
9 collection of such solid wastes or recyclable material in any  
10 combination thereof when collected through a system of routes by  
11 local government unit employees or under a contract administered by  
12 a local government unit.

13 (15) "Distribution" (when used in relation to electricity) means the  
14 process of conveying electricity from a contracting unit [who] that is  
15 a generator of electricity or a wholesale purchaser of electricity to  
16 retail customers or other end users of electricity.

17 (16) "Transmission" (when used in relation to electricity) means  
18 the conveyance of electricity from its point of generation to a  
19 contracting unit [who] that purchases it on a wholesale basis for  
20 resale.

21 (17) "Disposition" means the transportation, placement, reuse, sale,  
22 donation, transfer or temporary storage of recyclable materials for all  
23 possible uses except for disposal as municipal solid waste.

24 (18) "Cooperative marketing" means the joint marketing by two or  
25 more contracting units [within the same county, or adjacent or  
26 proximate counties,] of the source separated recyclable materials  
27 designated in a district recycling plan required pursuant to section 3 of  
28 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative  
29 agreement entered into by the participating contracting units thereof.

30 (19) "Aggregate" means the sums expended or to be expended for  
31 the provision or performance of any goods or services in connection  
32 with the same immediate purpose or task, or the furnishing of similar  
33 goods or services, during the same contract year through a contract  
34 awarded by a contracting agent.

35 (20) "Bid threshold" means the dollar amount set in section 3 of  
36 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall  
37 advertise for and receive sealed bids in accordance with procedures set  
38 forth in P.L. , c. (C. ) (pending before the Legislature as this bill).

39 (21) "Contract" means any agreement, including but not limited to  
40 a purchase order or a formal agreement, which is a legally binding  
41 relationship enforceable by law, between a vendor who agrees to  
42 provide or perform goods or services and a contracting unit which  
43 agrees to compensate a vendor, as defined by and subject to the terms  
44 and conditions of the agreement. A contract also may include an  
45 arrangement whereby a vendor compensates a contracting unit for the  
46 vendor's right to perform a service, such as, but not limited to,  
47 operating a concession.

1       (22) "Contract year" means the period of 12 consecutive months  
2 following the award of a contract.

3       (23) "Competitive contracting" means the method described in  
4 sections 1 through 5 of P.L. , c. (C. ) (pending before the  
5 Legislature as this bill) of contracting for specialized goods and  
6 services in which formal proposals are solicited from vendors; formal  
7 proposals are evaluated by the purchasing agent or counsel or  
8 administrator; and the governing body awards a contract to a vendor  
9 or vendors from among the formal proposals received.

10       (24) "Goods and services" or "goods or services" means any work,  
11 labor, commodities, equipment, materials, or supplies of any tangible  
12 or intangible nature, except real property or any interest therein,  
13 provided or performed through a contract awarded by a contracting  
14 agent, including goods and property subject to N.J.S.12A:2-101 et  
15 seq.

16       (25) "Library and educational goods and services" means  
17 textbooks, copyrighted materials, student produced publications and  
18 services incidental thereto, including but not limited to books,  
19 periodicals, newspapers, documents, pamphlets, photographs,  
20 reproductions, microfilms, pictorial or graphic works, musical scores,  
21 maps, charts, globes, sound recordings, slides, films, filmstrips, video  
22 and magnetic tapes, other printed or published matter and audiovisual  
23 and other materials of a similar nature, necessary binding or rebinding  
24 of library materials, and specialized computer software used as a  
25 supplement or in lieu of textbooks or reference material.

26       (26) "Lowest price" means the least possible amount that meets all  
27 requirements of the request of a contracting agent.

28       (27) "Lowest responsible bidder or vendor" means the bidder or  
29 vendor: (a) whose response to a request for bids offers the lowest  
30 price and is responsive; and (b) who is responsible.

31       (28) "Official newspaper" means any newspaper designated by the  
32 contracting unit pursuant to R.S.35:1-1 et seq.

33       (29) "Purchase order" means a document issued by the contracting  
34 agent authorizing a purchase transaction with a vendor to provide or  
35 perform goods or services to the contracting unit, which, when  
36 fulfilled in accordance with the terms and conditions of a request of a  
37 contracting agent and other provisions and procedures that may be  
38 established by the contracting unit, will result in payment by the  
39 contracting unit.

40       (30) "Purchasing agent" means the individual duly assigned the  
41 authority, responsibility, and accountability for the purchasing activity  
42 of the contracting unit, and who has such duties as are defined by an  
43 authority appropriate to the form and structure of the contracting unit,  
44 and P.L.1971, c.198 (C.40A:11-1 et seq.).

45       (31) "Quotation" means the response to a formal or informal  
46 request made by a contracting agent by a vendor for provision or  
47 performance of goods or services, when the aggregate cost is less than

1 the bid threshold. Quotations may be in writing, or taken verbally if  
2 a record is kept by the contracting agent.

3 (32) "Responsible" means able to complete the contract in  
4 accordance with its requirements, including but not limited to  
5 requirements pertaining to experience, moral integrity, operating  
6 capacity, financial capacity, credit, and workforce, equipment, and  
7 facilities availability.

8 (33) "Responsive" means conforming in all material respects to the  
9 terms and conditions, specifications, legal requirements, and other  
10 provisions of the request.

11 (34) "Public works" means building, altering, repairing, improving  
12 or demolishing any public structure or facility constructed or acquired  
13 by a contracting unit to house local government functions or provide  
14 water, waste disposal, power, transportation, and other public  
15 infrastructures.

16 (35) "Director" means the Director of the Division of Local  
17 Government Services in the Department of Community Affairs.

18 (36) "Administrator" means a municipal administrator appointed  
19 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business  
20 administrator, a municipal manager or a municipal administrator  
21 appointed pursuant to the "Optional Municipal Charter Law,"  
22 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed  
23 pursuant to "the municipal manager form of government law,"  
24 R.S.40:79-1 et seq.; or the person holding responsibility for the overall  
25 operations of an authority that falls under the "Local Authorities Fiscal  
26 Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

27 (37) "Concession" means the granting of a license or right to act  
28 for or on behalf of the contracting unit, or to provide a service  
29 requiring the approval or endorsement of the contracting unit, and  
30 which may or may not involve a payment or exchange, or provision of  
31 services by or to the contracting unit.

32 (38) "Index rate" means the rate of annual percentage increase,  
33 rounded to the nearest half-percent, in the Implicit Price Deflator for  
34 State and Local Government Purchases of Goods and Services,  
35 computed and published quarterly by the United States Department of  
36 Commerce, Bureau of Economic Analysis.

37 (39) "Proprietary" means goods or services of a specialized nature,  
38 that may be made or marketed by a person or persons having the  
39 exclusive right to make or sell them, when the need for such goods or  
40 services has been certified in writing by the governing body of the  
41 contracting unit to be necessary for the conduct of its affairs.

42 (40) "Service or services" means the performance of work, or the  
43 furnishing of labor, time, or effort, or any combination thereof, not  
44 involving or connected to the delivery or ownership of a specified end  
45 product or goods or a manufacturing process. Service or services may  
46 also include an arrangement in which a vendor compensates the

1 contracting unit for the vendor's right to operate a concession.

2 (cf: P.L.1995, c.216, s.10)

3

4 7. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read  
5 as follows:

6 3. Bid threshold; period of contracts a. [Any purchase, contract  
7 or agreement for the performance of any work or the furnishing or  
8 hiring of materials or supplies,].

9 When the cost or price of [which, together with any other sums  
10 expended or to be expended for the performance of any work or  
11 services in connection with the same immediate program, undertaking,  
12 activity or project or the furnishing of similar materials or supplies  
13 during the same fiscal year] any contract [paid with or out of public  
14 funds,] awarded by the contracting agent in the aggregate does not  
15 exceed in [the fiscal] a contract year the total sum of [\$7,500.00 or  
16 the amount determined pursuant to subsection b. of this section]  
17 \$17,500, the contract may be [made, negotiated or] awarded by a  
18 [contracting] purchasing agent when so authorized by ordinance or  
19 resolution, as appropriate to the contracting unit, of the governing  
20 body of the contracting unit without public advertising for bids, except  
21 that the governing body of any contracting unit may adopt an  
22 ordinance or resolution to set a lower threshold for the receipt of  
23 public bids or the solicitation of competitive quotations. If the  
24 purchasing agent is qualified pursuant to subsection b. (pending before  
25 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
26 c.198 (C.40A:11-9), the governing body of the contracting unit may  
27 establish that the bid threshold may be up to \$25,000. Such  
28 authorization may be granted for each [purchase,] contract [or  
29 agreement] or by a general delegation of the power to [make,]  
30 negotiate [or] and award such [purchases,] contracts [or  
31 agreements] pursuant to this section.

32 b. Any [purchase,] contract [or agreement] made pursuant to this  
33 section may be awarded for a period of 24 consecutive months  
34 [notwithstanding that such 24-month period does not coincide with  
35 the fiscal year], except that contracts for professional services  
36 pursuant to subparagraph (i) of paragraph (a) of subsection (1) of  
37 section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a  
38 period not exceeding 12 consecutive months. The Division of Local  
39 Government Services shall adopt and promulgate rules and regulations  
40 concerning the methods of accounting for all contracts that do not  
41 coincide with the contracting unit's fiscal year.

42 [b.] c. The Governor, in consultation with the Department of the  
43 Treasury, shall, no later than March 1 of [each odd-numbered] every  
44 fifth year beginning in the fifth year after the year in which P.L. , c.  
45 (now before the Legislature as this bill) takes effect, adjust the  
46 threshold amount and the higher threshold amount which the

1 governing body is permitted to establish, as set forth in subsection a.  
2 of this section, or [subsequent to 1985] the threshold amount  
3 resulting from any adjustment under this subsection [or section 17 of  
4 P.L.1985, c.469], in direct proportion to the rise or fall of the  
5 [Consumer Price Index for all urban consumers in the New York City  
6 and the Philadelphia areas as reported by the United States  
7 Department of Labor] index rate as that term is defined in section 2  
8 of P.L.1971, c.198 (C.40A:11-2) (pending before the Legislature as  
9 section 6 of this bill), and shall round the adjustment to the nearest  
10 \$1,000. The Governor shall, no later than June 1 of [each  
11 odd-numbered] every fifth year, notify each governing body of the  
12 adjustment. The adjustment shall become effective on July 1 of [each  
13 odd-numbered year] the year in which it is made.

14 (cf: P.L.1996, c.113, s.18)

15

16 8. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to read  
17 as follows:

18 4. [Contracts and agreements required to be advertised.] a. Every  
19 contract [or agreement] awarded by the contracting agent for the  
20 provision or performance of any [work or the furnishing or hiring of  
21 any materials or supplies] goods or services, the cost [or the contract  
22 price whereof is to be paid with or out of public funds, not included  
23 within the terms of section 3 of this act] of which in the aggregate  
24 exceeds the bid threshold, shall be [made or] awarded only by  
25 resolution of the governing body of the contracting unit to the lowest  
26 responsible bidder after public advertising for bids and bidding  
27 therefor, except as is provided otherwise in this act or specifically by  
28 any other law. [No work, materials or supplies shall be undertaken,  
29 acquired or furnished for a sum exceeding in the aggregate the amount  
30 set forth in, or the amount calculated by the Governor pursuant to,  
31 section 3 of P.L.1971, c.198 (C.40A:11-3), except by contract or  
32 agreement.] The governing body of a contracting unit may, by  
33 resolution approved by a majority of the governing body and subject  
34 to subsections b. and c. of this section, disqualify a bidder who would  
35 otherwise be determined to be the lowest responsible bidder, if the  
36 governing body finds that it has had prior negative experience with the  
37 bidder.

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

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

46 (2) the bidder defaulted on a contract, thereby requiring the local

1 unit to utilize the services of another contractor to provide the goods  
2 or perform the services or to correct or complete the contract;

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

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

10 c. The following conditions apply if the governing body of a  
11 contracting unit is contemplating a disqualification based on prior  
12 negative experience:

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

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

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

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

33 (5) A disqualification<sup>1</sup>, other than a disqualification pursuant to  
34 which a governing body is prohibited by law from entering into a  
35 contract with a bidder,<sup>1</sup> may be voided or the period thereof may be  
36 reduced, in the discretion of the governing body, upon the submission  
37 of a good faith application under oath, supported by documentary  
38 evidence, setting forth substantial and appropriate grounds for the  
39 granting of relief, such as reversal of a judgment, or actual change of  
40 ownership, management or control of the bidder.

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

47 (cf: P.L.1985, c.469, s.7)

1 9. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read  
2 as follows:

3 5. Exceptions. Any [purchase,] contract [or agreement of the  
4 character described in section 4 of P.L.1971, c.198 (C.40A:11-4)] the  
5 amount of which exceeds the bid threshold, may be [made,]  
6 negotiated [or] and awarded by the governing body without public  
7 advertising for bids and bidding therefor and shall be awarded by  
8 resolution of the governing body if:

9 (1) The subject matter thereof consists of:

10 (a) (i) Professional services. The governing body shall in each  
11 instance state supporting reasons for its action in the resolution  
12 awarding each contract and shall forthwith cause to be printed once,  
13 in [a] the official newspaper [authorized by law to publish its legal  
14 advertisements], a brief notice stating the nature, duration, service and  
15 amount of the contract, and that the resolution and contract are on file  
16 and available for public inspection in the office of the clerk of the  
17 county or municipality, or, in the case of a contracting unit created by  
18 more than one county or municipality, of the counties or municipalities  
19 creating such contracting unit; or (ii) Extraordinary unspecifiable  
20 services. The application of this exception shall be construed narrowly  
21 in favor of open competitive bidding, where possible, and the Division  
22 of Local Government Services is authorized to adopt and promulgate  
23 rules and regulations after consultation with the Commissioner of  
24 Education limiting the use of this exception in accordance with the  
25 intention herein expressed. The governing body shall in each instance  
26 state supporting reasons for its action in the resolution awarding each  
27 contract and shall forthwith cause to be printed, in the manner set  
28 forth in subsection (1) (a) (i) of this section, a brief notice of the  
29 award of such contract;

30 (b) The doing of any work by employees of the contracting unit;

31 (c) The printing of legal briefs, records and appendices to be used  
32 in any legal proceeding in which the contracting [party] unit may be  
33 a party;

34 (d) The furnishing of a tax map or maps for the contracting [party]  
35 unit;

36 (e) The purchase of perishable foods as a subsistence supply;

37 (f) The supplying of any product or the rendering of any service by  
38 a public utility, which is subject to the jurisdiction of the Board of  
39 Public Utilities or the Federal Energy Regulatory Commission or its  
40 successor, in accordance with tariffs and schedules of charges made,  
41 charged or exacted, filed with the board or commission;

42 (g) The acquisition, subject to prior approval of the Attorney  
43 General, of special equipment for confidential investigation;

44 (h) The printing of bonds and documents necessary to the issuance  
45 and sale thereof by a contracting unit;

46 (i) Equipment repair service if in the nature of an extraordinary



- 1 unspecifiable service and necessary parts furnished in connection with  
2 such service, which exception shall be in accordance with the  
3 requirements for extraordinary unspecifiable services;
- 4 (j) The publishing of legal notices in newspapers as required by  
5 law;
- 6 (k) The acquisition of artifacts or other items of unique intrinsic,  
7 artistic or historical character;
- 8 (l) ~~【Election expenses】~~ Those goods and services necessary or  
9 required to prepare and conduct an election;
- 10 (m) Insurance, including the purchase of insurance coverage and  
11 consultant services, which exception shall be in accordance with the  
12 requirements for extraordinary unspecifiable services;
- 13 (n) The doing of any work by handicapped persons employed by a  
14 sheltered workshop;
- 15 (o) The provision of any ~~【service or the furnishing of materials】~~  
16 goods or services including those of a commercial nature, attendant  
17 upon the operation of a restaurant by any nonprofit, duly incorporated,  
18 historical society at or on any historical preservation site;
- 19 (p) ~~【Homemaker--home health services performed by voluntary,~~  
20 ~~nonprofit agencies;】~~ ~~(Deleted by amendment, P.L. , c. .) (Pending~~  
21 ~~before the Legislature as this bill.)~~
- 22 (q) ~~【The purchase of materials and services for a law library~~  
23 ~~established pursuant to R.S.40:33-14, including books, periodicals,~~  
24 ~~newspapers, documents, pamphlets, photographs, reproductions,~~  
25 ~~microforms, pictorial or graphic works, copyright and patent materials,~~  
26 ~~maps, charts, globes, sound recordings, slides, films, filmscripts, video~~  
27 ~~and magnetic tapes, and other audiovisual, printed, or published~~  
28 ~~material of a similar nature; necessary binding or rebinding of law~~  
29 ~~library materials; and specialized library services】~~ Library and  
30 educational goods and services;
- 31 (r) On-site inspections undertaken by private agencies pursuant to  
32 the "State Uniform Construction Code Act," P.L.1975, c.217  
33 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- 34 (s) ~~【The marketing of recyclable materials recovered through a~~  
35 ~~recycling program, or the marketing of any product intentionally~~  
36 ~~produced or derived from solid waste received at a resource recovery~~  
37 ~~facility or recovered through a resource recovery program, including,~~  
38 ~~but not limited to, refuse-derived fuel, compost materials, methane~~  
39 ~~gas, and other similar products;】~~ <sup>1</sup>~~[(Deleted by amendment, P.L. c.~~  
40 ~~.) (Pending before the Legislature as this bill.)】~~ The marketing of  
41 recyclable materials recovered through a recycling program, or the  
42 marketing of any product intentionally produced or derived from solid  
43 waste received at a resource recovery facility or recovered through a  
44 resource recovery program, including, but not limited to,  
45 refuse-derived fuel, compost materials, methane gas, and other similar  
46 products;<sup>1</sup>

1 (t) [Emergency medical services provided by a hospital to the  
2 residents of a municipality or county, provided that: (a) such  
3 exception be allowed only after the governing body determines that the  
4 emergency services are available only from one provider; and (b) if  
5 the contract is awarded without advertising for bids or bidding the  
6 governing body shall in each instance state supporting reasons for its  
7 action in a resolution awarding the contract and cause to be printed  
8 once in a newspaper authorized by law to publish its legal  
9 advertisements a brief notice stating the nature, duration, service, and  
10 amount of the contract; and (c) the contract shall be kept on file for  
11 public inspection in the office of the clerk of the municipality;]  
12 (Deleted by amendment, P.L. c. .) (Pending before the Legislature  
13 as this bill.)

14 (u) Contracting unit towing and storage contracts, provided that  
15 all such contracts shall be pursuant to reasonable non-exclusionary and  
16 non-discriminatory terms and conditions, which may include the  
17 provision of such services on a rotating basis, at the rates and charges  
18 set by the municipality pursuant to section 1 of P.L.1979, c.101  
19 (C.40:48-2.49). All contracting unit towing and storage contracts for  
20 services to be provided at rates and charges other than those  
21 established pursuant to the terms of this paragraph shall only be  
22 awarded to the lowest responsible bidder in accordance with the  
23 provisions of the "Local Public Contracts Law" and without regard for  
24 the value of the contract therefor;

25 (v) The purchase of steam or electricity from, or the rendering of  
26 services directly related to the purchase of such steam or electricity  
27 from a qualifying small power production facility or a qualifying  
28 cogeneration facility as defined pursuant to 16 U.S.C.796;

29 (w) The purchase of electricity or administrative or dispatching  
30 services directly related to the transmission of such purchased  
31 electricity by a contracting unit engaged in the generation of  
32 electricity;

33 (x) The printing of municipal ordinances or other services  
34 necessarily incurred in connection with the revision and codification  
35 of municipal ordinances;

36 (y) An agreement for the purchase of an equitable interest in a  
37 water supply facility or for the provision of water supply services  
38 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
39 an agreement entered into pursuant to P.L.1989, c.109  
40 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no  
41 later than six months after the effective date of P.L.1993, c.381;

42 (z) A contract for the provision of water supply services entered  
43 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

44 (aa) [The cooperative marketing of recyclable materials recovered  
45 through a recycling program; or] <sup>1</sup>[(Deleted by amendment, P.L. ,  
46 c. .) (Pending before the Legislature as this bill.)] The cooperative  
47 marketing of recyclable materials recovered through a recycling

1 program:<sup>1</sup>

2 (bb) A contract for the provision of wastewater treatment services  
3 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

4 (cc) Expenses for travel and conferences;

5 (dd) The provision or performance of goods or services for the  
6 support or maintenance of proprietary computer hardware and  
7 software, except that this provision shall not be utilized to acquire or  
8 upgrade non-proprietary hardware or to acquire or update non-  
9 proprietary software;

10 (ee) The management or operation of an airport owned by the  
11 contracting unit pursuant to R.S.40:8-1 et seq<sup>1</sup>;

12 (ff) Purchases of goods and services at rates set by the Universal  
13 Service Fund administered by the Federal Communications  
14 Commission<sup>1</sup>.

15 (2) It is to be made or entered into with the United States of  
16 America, the State of New Jersey, county or municipality or any  
17 board, body, officer, agency or authority thereof **[and]** or any other  
18 state or subdivision thereof.

19 (3) **[The contracting agent has]** Bids have been advertised **[for**  
20 **bids]** pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two  
21 occasions and (a) **[ has received]** no bids have been received on both  
22 occasions in response to **[its]** the advertisement, or (b) the governing  
23 body has rejected such bids on two occasions because **[the contracting**  
24 **agent]** it has determined that they are not reasonable as to price, on  
25 the basis of cost estimates prepared for or by the contracting agent  
26 prior to the advertising therefor, or have not been independently  
27 arrived at in open competition, or (c) on one occasion no bids were  
28 received pursuant to (a) and on one occasion all bids were rejected  
29 pursuant to (b), in whatever sequence; any such contract **[or**  
30 **agreement]** may then be negotiated and may be awarded upon  
31 adoption of a resolution by a two-thirds affirmative vote of the  
32 authorized membership of the governing body authorizing such  
33 contract **[or agreement]**; provided, however, that:

34 (i) A reasonable effort is first made by the contracting agent to  
35 determine that the same or equivalent **[materials or supplies]** goods  
36 or services, at a cost which is lower than the negotiated price, are not  
37 available from an agency or authority of the United States, the State  
38 of New Jersey or of the county in which the contracting unit is  
39 located, or any municipality in close proximity to the contracting unit;

40 (ii) The terms, conditions, restrictions and specifications set forth  
41 in the negotiated contract **[or agreement]** are not substantially  
42 different from those which were the subject of competitive bidding  
43 pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

44 (iii) Any minor amendment or modification of any of the terms,  
45 conditions, restrictions and specifications, which were the subject of  
46 competitive bidding pursuant to section 4 of P.L.1971, c.198

1 (C.40A:11-4), shall be stated in the resolution awarding such contract  
2 [or agreement]; provided further, however, that if on the second  
3 occasion the bids received are rejected as unreasonable as to price, the  
4 contracting agent shall notify each responsible bidder submitting bids  
5 on the second occasion of its intention to negotiate, and afford each  
6 bidder a reasonable opportunity to negotiate, but the governing body  
7 shall not award such contract [or agreement] unless the negotiated  
8 price is lower than the lowest rejected bid price submitted on the  
9 second occasion by a responsible bidder, is the lowest negotiated price  
10 offered by any responsible [supplier] vendor, and is a reasonable price  
11 for such [work, materials, supplies] goods or services.

12 Whenever a contracting unit shall determine that a bid was not  
13 arrived at independently in open competition pursuant to subsection  
14 (3) of this section it shall thereupon notify the county prosecutor of  
15 the county in which the contracting unit is located and the Attorney  
16 General of the facts upon which its determination is based, and when  
17 appropriate, it may institute appropriate proceedings in any State or  
18 federal court of competent jurisdiction for a violation of any State or  
19 federal antitrust law or laws relating to the unlawful restraint of trade.

20 (4) The contracting unit has solicited and received at least three  
21 quotations on materials, supplies or equipment for which a State  
22 contract has been issued pursuant to section 12 of P.L.1971, c.198  
23 (C.40A:11-12), and the lowest responsible quotation is at least 10%  
24 less than the price the contracting unit would be charged for the  
25 identical materials, supplies or equipment, in the same quantities,  
26 under the State contract. Any such contract entered into pursuant to  
27 this subsection may be awarded only upon adoption of a resolution by  
28 the affirmative vote of two-thirds of the full membership of the  
29 governing body of the contracting unit at a meeting thereof  
30 authorizing such a contract. <sup>1</sup>A copy of the purchase order relating to  
31 any such contract, the requisition for purchase order, if applicable, and  
32 documentation identifying the price of the materials, supplies or  
33 equipment under the State contract and the State contract number  
34 shall be filed with the director within five working days of the award  
35 of any such contract by the contracting unit. The director shall notify  
36 the contracting unit of receipt of the material and shall make the  
37 material available to the State Treasurer. The contracting unit shall  
38 make available to the director upon request any other documents  
39 relating to the solicitation and award of the contract, including, but not  
40 limited to, quotations, requests for quotations, and resolutions. The  
41 director periodically shall review material submitted by contracting  
42 units to determine the impact of such contracts on local contracting  
43 and shall consult with the State Treasurer on the impact of such  
44 contracts on the State procurement process. The director may, after  
45 consultation with the State Treasurer, adopt rules in accordance with  
46 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
47 seq.) to limit the use of this subsection, after considering the impact of

1 contracts awarded under this subsection on State and local  
2 contracting, or after considering the extent to which the award of  
3 contracts pursuant to this subsection is consistent with and in  
4 furtherance of the purposes of the public contracting laws.<sup>1</sup>

5 (5) Notwithstanding any provision of law, rule or regulation to the  
6 contrary, the subject matter consists of the <sup>1</sup>combined<sup>1</sup> collection and  
7 marketing, or the cooperative <sup>1</sup>combined<sup>1</sup> collection and marketing  
8 of recycled material recovered through a recycling program, or any  
9 product intentionally produced or derived from solid waste received  
10 at a resource recovery facility or recovered through a resource  
11 recovery program including, but not limited to refuse-derived fuel  
12 <sup>1</sup>[compost materials]<sup>1</sup>, compost materials, methane gas, and other  
13 similar products, provided that in lieu of engaging in such public  
14 advertising for bids and the bidding therefor, the contracting unit shall,  
15 prior to commencing the procurement process, submit for approval to  
16 the Director of the Division of Local Government Services, a written  
17 detailed description of the process to be followed in securing said  
18 services. Within 30 days after receipt of the written description the  
19 director shall, if the director finds that the process provides for fair  
20 competition and integrity in the negotiation process, approve, in  
21 writing, the description submitted by the contracting unit. If the  
22 director finds that the process does not provide for fair competition  
23 and integrity in the negotiation process, the director shall advise the  
24 contracting unit of the deficiencies that must be remedied. If the  
25 director fails to respond in writing to the contracting unit within 30  
26 days, the procurement process as described shall be deemed approved.  
27 As used in this section, "collection" means the physical removal of  
28 recyclable materials from curbside or any other location selected by  
29 the contracting unit.

30 (cf: P.L.1997, c.387, s.2)

31  
32 10. Section 6 of P.L.1971, c.198 (C.40A:11-6) is amended to read  
33 as follows:

34 6. Emergency **[purchases and]** contracts. Any **[purchase,]**  
35 contract **[or agreement]** may be **[made,]** negotiated or awarded for  
36 a contracting unit without public advertising for bids and bidding  
37 therefor, notwithstanding that the **[cost or]** contract price will exceed  
38 the **[amount set forth in, or the amount calculated by the Governor**  
39 **pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3)] bid threshold,**  
40 when an emergency affecting the public health, safety or welfare  
41 requires the immediate delivery of **[the articles] goods** or the  
42 performance of **[the] services**; provided that the awarding **[or**  
43 **making]** of such **[purchases,] contracts [or agreements are]** is made  
44 in the following manner:

45 a. **[A written requisition for the performance of such work or**  
46 **labor, or the furnishing of materials, supplies or services is filed with**

1 the contracting agent or his deputy in charge describing the nature of  
2 the emergency, the time of its occurrence and the need for invoking  
3 this section, certified by the officer or director in charge of the  
4 department wherein the emergency occurred, or such other officer or  
5 employee as may be authorized to act in place of said officer or  
6 director, and the contracting agent or his deputy in charge, being  
7 satisfied that the emergency exists, is hereby authorized to award a  
8 contract for said work or labor, materials, supplies or services.] The  
9 official in charge of the agency wherein the emergency occurred, or  
10 such other officer or employee as may be authorized to act in place of  
11 that official, shall notify the purchasing agent, a supervisor of the  
12 purchasing agent, or a designated representative of the governing  
13 body, as may be appropriate to the form of government, of the need  
14 for the performance of a contract, the nature of the emergency, the  
15 time of its occurrence and the need for invoking this section. If that  
16 person is satisfied that an emergency exists, that person shall be  
17 authorized to award a contract or contracts for such purposes as may  
18 be necessary to respond to the emergent needs. Such notification shall  
19 be reduced to writing and filed with the purchasing agent as soon as  
20 practicable.

21 b. Upon the furnishing of such [work or labor, materials, supplies]  
22 goods or services, in accordance with the terms of the contract [or  
23 agreement], the contractor furnishing such [work or labor, materials,  
24 supplies] goods or services shall be entitled to be paid therefor and the  
25 contracting unit shall be obligated for said payment. The governing  
26 body of the contracting unit shall take such action as shall be required  
27 to provide for the payment of the contract price.

28 c. The Director of the Division of Local Government Services in  
29 the Department of Community Affairs shall prescribe rules and  
30 procedures to implement the requirements of this section.

31 d. The governing body of the contracting unit may prescribe  
32 additional rules and procedures to implement the requirements of this  
33 section.

34 (cf: P.L.1985, c.469, s.8)

35

36 11. Section 6 of P.L.1975, c.353 (C.40A:11-6.1) is amended to  
37 read as follows:

38 6. All contracts enumerated in this section shall be awarded as  
39 follows:

40 [All purchases, contracts or agreements which require public  
41 advertisement for bids shall be awarded to the lowest responsible  
42 bidder.

43 Prior to the award of any other purchase, contract or agreement,  
44 the contracting agent shall, except in the case of the performance of  
45 professional services, solicit quotations, whenever practicable, on any  
46 such purchase, contract or agreement the estimated cost or price of  
47 which is \$1,000.00 or more, and the award thereof shall be made, in

1 accordance with sections 3 (C.40A:11-3) or 4 (C.40A:11-4), as the  
2 case may be, of the Local Public Contracts Law, on the basis of the  
3 lowest responsible quotation received, which quotation is most  
4 advantageous to the contracting unit, price and other factors  
5 considered; provided, however, that if the contracting agent deems it  
6 impracticable to solicit competitive quotations in the case of  
7 extraordinary, unspecifiable service, or, in the case of such or any  
8 other purchase, contract or agreement awarded hereunder, having  
9 sought such quotations determines that it should not be awarded on  
10 the basis of the lowest quotation received, the contracting agent shall  
11 file a statement of explanation of the reason or reasons therefor,  
12 which shall be placed on file with said purchase, contract or  
13 agreement.]

14 a. For all contracts that in the aggregate are less than the bid  
15 threshold but 15 percent or more of that amount, and for those  
16 contracts that are for subject matter enumerated in subsection (1) of  
17 section 5 of P.L.1971, c.198 (C.40A:11-5), except for paragraph (a)  
18 of that subsection concerning professional services and paragraph (b)  
19 of that subsection concerning work by employees of the contracting  
20 unit, the contracting agent shall award the contract after soliciting at  
21 least two competitive quotations, if practicable. The award shall be  
22 made to a vendor whose response is most advantageous, price and  
23 other factors considered. The contracting agent shall retain the record  
24 of the quotation solicitation and shall include a copy of the record with  
25 the voucher used to pay the vendor.

26 b. When in excess of the bid threshold, and after documented effort  
27 by the contracting agent to secure competitive quotations, a contract  
28 for extraordinary unspecifiable services may be awarded upon a  
29 determination in writing by the contracting agent that the solicitation  
30 of competitive quotations is impracticable. Any such contract shall be  
31 awarded by resolution of the governing body.

32 c. If authorized by the governing body by resolution or ordinance,  
33 all contracts that are in the aggregate less than 15 percent of the bid  
34 threshold may be awarded by the contracting agent without soliciting  
35 competitive quotations.

36 d. Whenever two or more responses to a request of a contracting  
37 agent offer equal prices and are the lowest responsible bids or  
38 proposals, the contracting unit may award the contract to the vendor  
39 whose response, in the discretion of the contracting unit, is the most  
40 advantageous, price and other factors considered. In such a case, the  
41 award resolution or purchase order documentation shall explain why  
42 the vendor selected is the most advantageous.

43 (cf: P.L.1983, c.418, s.1)

44

45 12. Section 7 of P.L.1971, c.198 (C.40A:11-7) is amended to read  
46 as follows:

47 7. Contracts not to be divided. [No purchase, contract or

1 agreement, which is single in character or which necessarily or by  
2 reason of the quantities required to effectuate the purpose of the  
3 purchase, contract or agreement includes the furnishing of additional  
4 services or buying or hiring of materials or supplies or the doing of  
5 additional work, shall be subdivided, so as to bring it or any of the  
6 parts thereof under the maximum price or cost limitation of the  
7 amount set forth in, or the amount calculated by the Governor  
8 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3) thus  
9 dispensing with the requirement of public advertising and bidding  
10 therefor, and in purchasing or contracting for, or agreeing for the  
11 furnishing of, any services, the doing of any work or the supplying of  
12 any materials or the supplying or hiring of any materials or supplies,  
13 included in or incident to the performance or completion of any  
14 project, program, activity or undertaking which is single in character  
15 or inclusive of the furnishing of additional services or buying or hiring  
16 of materials or supplies or the doing of additional work, or which  
17 requires the furnishing of more than one article of equipment or buying  
18 or hiring of materials or supplies, all of the services, materials or  
19 property requisite for the completion of such project shall be included  
20 in one purchase, contract or agreement]

21 a. No contract in the aggregate which is single in character or  
22 which necessarily or by reason of the quantities required to effectuate  
23 the purpose of the contract includes the provision or performance of  
24 additional goods or services, shall be divided, so as to bring it or any  
25 of the parts thereof under the bid threshold, for the purpose of  
26 dispensing with the requirement of public advertising and bidding  
27 therefor.

28 b. In contracting for the provision or performance of any goods or  
29 services included in or incidental to the provision or performance of  
30 any work which is single in character or inclusive of the provision or  
31 performance of additional goods or services, all of the goods or  
32 services requisite for the completion of such contract shall be included  
33 in one contract.

34 (cf: P.L.1985, c.469, s.9)

35

36 13. (New section) For the purpose of ensuring consistency  
37 between the "Local Public Contracts Law," P.L.1971, c.198  
38 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
39 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
40 Government Services in the Department of Community Affairs, after  
41 consultation with the Commissioner of Education and pursuant to the  
42 "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et  
43 seq.), shall adopt rules concerning determinations of aggregation for  
44 the purposes of whether a contract is subject to public bidding as set  
45 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
46 and 40A:11-7)and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
47 N.J.S.18A:18A-8.



1       14. Section 8 of P.L.1971, c.198 (C.40A:11-8) is amended to read  
2 as follows:

3       8. Every contracting agent shall, at intervals to be fixed by the  
4 governing body, solicit by public advertisement the submission of bids  
5 for the [furnishing of all work, materials and supplies] provision or  
6 performance of goods or services which are and which under section  
7 4 of [this act] P.L.1971, c.198 (C.40A:11-4) can be [purchased or  
8 agreed or] contracted to be [furnished] provided or performed only  
9 after public advertisement for bids and bidding therefor and all  
10 [purchases, or] contracts [or agreements for the furnishing, of such  
11 work, materials and supplies] for the provision or performance of such  
12 goods or services shall be [made and] awarded only in that manner.  
13 (cf: P.L.1971, c.198, s.8)

14

15       15. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to read  
16 as follows:

17       9. Purchasing agent, department or board; establishment; powers

18       a. The governing body of any [local] contracting unit may by  
19 ordinance, in the case of a municipality, by ordinance or resolution, as  
20 the case may be, in the case of a county, or by resolution in all other  
21 cases, establish the office of purchasing agent, or a purchasing  
22 department or a purchasing board, with the authority, responsibility,  
23 and accountability as its contracting agent, for the purchasing activity  
24 for the contracting unit, to prepare public advertising for bids and to  
25 receive bids for the [purchase of work, materials and supplies]  
26 provision or performance of goods or services on behalf of the  
27 contracting unit and[, unless otherwise required by the provisions of  
28 this act,] to [make awards of] award contracts permitted pursuant to  
29 subsection a. of section 3 of P.L.1971, c. 198 (C.40A:11-3) in the  
30 name of the contracting unit, and conduct any activities as may be  
31 necessary or appropriate to the purchasing function of the contracting  
32 unit.

33       b. The Director of the Division of Local Government Services,  
34 after consultation with the Commissioner of Education, shall establish  
35 criteria to qualify individuals who have completed appropriate training  
36 and possess such purchasing experience as deemed necessary to  
37 exercise such supplemental authority as may be set forth in subsection  
38 a. of section 3 of P.L.1971, c.198 (C.40A:11-3). These criteria also  
39 shall authorize county purchasing agents certified pursuant to  
40 P.L.1981, c.380 (C.40A:9-30.1 et seq.) to exercise such supplemental  
41 authority.

42 (cf: P.L.1977, c.53, s.5)

43

44       16. Section 10 of P.L.1971, c.198 (C.40A:11-10) is amended to  
45 read as follows:

46       10. Joint agreements for [purchase of work, materials, supplies]

1 provision and performance of goods and services; cooperative  
2 marketing; authorization

3 (a) (1) The governing bodies of two or more contracting units  
4 **[within the same county, or adjoining counties,]** may provide by joint  
5 agreement for the **[purchase of work, materials and supplies]**  
6 provision and performance of goods and services for use by their  
7 respective jurisdictions.

8 (2) The governing bodies of two or more contracting units  
9 providing sewerage services pursuant to the "sewerage authorities  
10 law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county  
11 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.),  
12 R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint  
13 agreement for the purchase of **[work]** goods and services related to  
14 sewage sludge disposal.

15 (3) The governing body of two or more contracting units providing  
16 electrical distribution services pursuant to and in **[accord]** accordance  
17 with R.S.40:62-12 through R.S.40:62-25, may provide by joint  
18 agreement for the **[purchase]** provision or performance of **[work,**  
19 **material and supplies]** goods or services related to the distribution of  
20 electricity.

21 (4) The governing bodies of two or more contracting units may  
22 provide for the cooperative marketing of recyclable materials  
23 recovered through a recycling program.

24 (b) The governing body of any **[county or municipality]**  
25 contracting unit may provide by joint agreement with the board of  
26 education of any school district **[located wholly or partially within the**  
27 **geographic boundaries of the county or municipality]** for the  
28 **[purchase of work, materials and supplies]** provision and performance  
29 of goods and services for use by their respective jurisdictions.

30 (c) Such agreement shall be entered into by resolution adopted by  
31 each of the participating bodies and boards, which shall set forth the  
32 categories of **[work, materials and supplies]** goods or services to be  
33 **[purchased]** provided or performed, the manner of advertising for bids  
34 and of awarding of contracts, the method of payment by each  
35 participating body and board, and other matters deemed necessary to  
36 carry out the purposes of the agreement.

37 (d) Each participating body's and board's share of expenditures for  
38 purchases under any such agreement shall be appropriated and paid in  
39 the manner set forth in the agreement and in the same manner as for  
40 other expenses of the participating body and board.

41 (cf: P.L.1995, c.356, s.7)

42

43 17. Section 11 of P.L.1971, c.198 (C.40A:11-11) is amended to  
44 read as follows:

45 11. Additional matters regarding **[agreements]** contracts for the  
46 **[purchases of work, materials and supplies]** provision and

1 performance of goods and services

2 (1) The contracting units entering into a joint agreement pursuant  
3 to section 10 of [this act] P.L.1971, c.198 (C.40A:11-10) may  
4 designate a joint [purchasing] contracting agent[, department or  
5 board pursuant to section 9 of this act. Any such agent, board or  
6 department already designated pursuant to section 9 may serve as the  
7 joint agent, department or board designated pursuant to this section].

8 (2) [Purchases, contracts or agreements] Contracts made pursuant  
9 to a joint purchasing agreement shall be subject to all of the terms and  
10 conditions of this act.

11 (3) Any [county or municipality] contracting unit serving as a  
12 [purchasing] joint contracting agent [, board or department]  
13 pursuant to this section [11], may make an appropriation to enable it  
14 to perform any such contract and may anticipate as revenue payments  
15 to be made and received by it from any other party to the agreement.  
16 Any items so included in a local budget shall be subject to the approval  
17 of the Director, Division of Local Government Services, who shall  
18 consider the matter in conjunction with the requirements of chapter 4  
19 of Title 40A of the New Jersey Statutes. The agreement and any  
20 subsequent amendment or revisions thereto shall be filed with the  
21 Director of the Division of Local Government Services in the  
22 Department of Community Affairs.

23 (4) Any joint contracting agent [, department or board] so  
24 designated pursuant to a joint purchasing agreement shall have the sole  
25 responsibility to comply with the provisions of section 23 of [this act]  
26 P.L.1971, c.198 (C.40A:11-23).

27 (5) The governing bodies of two or more contracting units or  
28 boards of education [within the same county, or adjoining counties;]  
29 or for purposes related to the distribution of electricity, the governing  
30 bodies of two or more contracting units providing electrical  
31 distribution services pursuant to R.S.40:62-12 through R.S.40:62-25,  
32 may by resolution establish a cooperative pricing system as hereinafter  
33 provided. Any such resolution shall establish procedures whereby one  
34 participating contracting unit in the cooperative pricing system shall  
35 be empowered to advertise and receive bids to provide prices for all  
36 other participating contracting units in such system for the [purchase]  
37 provision or performance of [work, materials and supplies] goods or  
38 services; provided, however, that no [purchase or] contract shall be  
39 [made] awarded by any participating contracting unit for a price  
40 which exceeds any other price available to the participating contracting  
41 unit, or for a purchase of goods or services in deviation from the  
42 specifications, price or quality set forth by the participating contracting  
43 unit.

44 (6) The governing body of a county government may establish a  
45 cooperative pricing system for the voluntary use of contracting units  
46 within the county.

1 No vendor shall be required or permitted to extend [his] bid prices  
2 to participating contracting units in a cooperative pricing system  
3 unless so specified in the bids.

4 No cooperative pricing system and agreements entered into  
5 pursuant to such system, or joint purchase agreements established  
6 pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208  
7 (C.40:8A-1 et seq.) or any other provision of law, shall become  
8 effective without prior approval of the Director of the Division of  
9 Local Government Services and said approval shall be valid for a  
10 period not to exceed five years.

11 The director's approval shall be based on the following:

12 (a) Provision for maintaining adequate records and orderly  
13 procedures to facilitate audit and efficient administration, and

14 (b) Adequacy of public disclosure of such actions as are taken by  
15 the participants, and

16 (c) Adequacy of procedures to facilitate compliance with all  
17 provisions of the "Local Public Contracts Law" and corresponding  
18 regulations, and

19 (d) Clarity of provisions to assure that the responsibilities of the  
20 respective parties are understood.

21 Failure of the Director of the Division of Local Government  
22 Services to approve or disapprove a properly executed and completed  
23 application to establish a cooperative pricing system and agreements  
24 entered into pursuant to such system or other joint purchase agreement  
25 within 45 days from the date of receipt of said application by the  
26 director shall constitute approval of said application, which shall be  
27 valid for a period of five years, commencing from the date of receipt  
28 of said application by the director.

29 The Director of the Division of Local Government Services is  
30 hereby authorized to promulgate rules and regulations specifying  
31 procedures pertaining to cooperative pricing systems and joint  
32 purchase agreements entered into pursuant to this act, the "Interlocal  
33 Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) and any other  
34 provision of law.

35 (cf: P.L.1995, c.356, s.8)

36

37 18. Section 12 of P.L.1971, c.198 (C.40A:11-12) is amended to  
38 read as follows:

39 12. a. Any contracting unit under this act may without advertising  
40 for bids, or having rejected all bids obtained pursuant to advertising  
41 therefor, purchase any [materials, supplies,] goods[,] or services [or  
42 equipment] under any contract or contracts for such [materials,  
43 supplies,] goods[,] or services [or equipment] entered into on behalf  
44 of the State by the Division of Purchase and Property in the  
45 Department of the Treasury.

46 b. A contracting unit may also use, without advertising for bids, or  
47 having rejected all bids obtained pursuant to advertising, the Federal

1 Supply Schedules of the General Services Administration [as  
2 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
3 Pub.L. 103-355, and federal regulations adopted thereunder.]  
4 promulgated by the Director of the Division of Purchase and Property  
5 in the Department of the Treasury pursuant to section 1 of P.L.1996,  
6 c.16 (C.52:34-6.1), subject to the following conditions:

7 (1) the price of the goods <sup>1</sup>or services<sup>1</sup> being procured is no  
8 greater than the price offered to federal agencies;

9 (2) the Federal Supply Schedules may be used only for purchases  
10 of up to \$500,000 per year or for one product unit at any price and  
11 only for reprographic equipment or services, including digital copiers,  
12 used by the contracting unit; <sup>1</sup>[ and]<sup>1</sup>

13 (3) the contracting unit receives the benefit of federally mandated  
14 price reductions during the term of the contract and is protected from  
15 price increases during that time <sup>1</sup>;

16 (4) the price of the goods or services being procured is no greater  
17 than the price of the same or equivalent goods or services under the  
18 State contract, unless the contracting unit determines that because of  
19 factors other than price, selection of a vendor from the Federal Supply  
20 Schedules would be more advantageous to the contracting unit;

21 (5) a copy of the purchase order relating to any such contract, the  
22 requisition or request for purchase order, if applicable, and  
23 documentation identifying the price of the goods or services under the  
24 Federal Supply Schedules shall be filed with the director within five  
25 working days of the award of any such contract by the contracting  
26 unit. The director shall notify the contracting unit of the receipt of the  
27 material and shall make the material available to the State Treasurer.  
28 The contracting unit shall make available to the director upon request  
29 any other documents relating to the solicitation and award of the  
30 contract<sup>1</sup> .

31 c. Whenever a purchase is made, the contracting unit shall place its  
32 order with the vendor offering the lowest price, including delivery  
33 charges, that best meets the requirements of the contracting unit.  
34 Prior to placing such an order, the contracting unit shall document  
35 with specificity that the [materials, supplies,] goods[, ] or services [or  
36 equipment] selected best meet the requirements of the contracting  
37 unit.

38 (cf: P.L.1996, c.16, s.3)

39

40 19. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to  
41 read as follows:

42 13. Specifications. Any specifications for [an acquisition] the  
43 provision or performance of goods or services under this act[, whether  
44 by purchase, contract or agreement,] shall be drafted in a manner to  
45 encourage free, open and competitive bidding. In particular, no  
46 specifications under this act may:

47 (a) Require any standard, restriction, condition or limitation not

1 directly related to the purpose, function or activity for which the  
2  ~~[purchase,] contract [or agreement] is [made] awarded; or~~

3 (b) Require that any bidder be a resident of, or that  ~~[his] the~~  
4  ~~bidder's~~ place of business be located in, the county or municipality in  
5 which the  ~~[purchase] contract~~ will be  ~~[made] awarded~~ or  ~~[the~~  
6  ~~contract or agreement]~~ performed, unless the physical proximity of the  
7 bidder is requisite to the efficient and economical  ~~[purchase or]~~  
8 performance of the contract  ~~[or agreement]~~; except that no  
9 specification for a contract for the collection and disposal of municipal  
10 solid waste shall require any bidder to be a resident of, or that  ~~[his]~~  
11  ~~the bidder's~~ place of business be located in, the county or municipality  
12 in which the contract will be performed; or

13 (c) Discriminate on the basis of race, religion, sex, national origin ,  
14  ~~creed, color, ancestry, age, marital status, affectional or sexual~~  
15  ~~orientation, familial status, liability for service in the Armed Forces of~~  
16  ~~the United States, or nationality;~~ or

17 (d) Require, with regard to any  ~~[purchase,] contract [or~~  
18  ~~agreement]~~, the furnishing of any "brand name," but may in all cases  
19 require "brand name or equivalent," except that if the  ~~[materials]~~  
20  ~~goods or services~~ to be  ~~[supplied or purchased] provided or~~  
21  ~~performed~~ are  ~~[patented or copyrighted] proprietary,~~ such  ~~[materials~~  
22  ~~or supplies] goods or services~~ may be purchased by  ~~stipulating the~~  
23  ~~proprietary goods or services in the bid~~ specification in any case in  
24 which the  ~~[ordinance or] resolution~~ authorizing the  ~~[purchase,]~~  
25  ~~contract[, sale or agreement]~~ so indicates, and the special need for  
26 such  ~~[patented or copyrighted materials or supplies] proprietary~~  
27  ~~goods or services~~ is directly related to the performance, completion or  
28 undertaking of the purpose for which the  ~~[purchase,] contract [or~~  
29  ~~agreement]~~ is  ~~[made] awarded;~~ or

30 (e) Fail to include any option for renewal, extension, or release  
31 which the contracting unit may intend to exercise or require; or any  
32 terms and conditions necessary for the performance of any extra work;  
33 or fail to disclose any matter necessary to the substantial performance  
34 of the contract  ~~[or agreement]~~.

35 Any specification  ~~[adopted by the governing body,]~~ which  
36 knowingly excludes prospective bidders by reason of the impossibility  
37 of performance, bidding or qualification by any but one bidder, except  
38 as provided herein, shall be null and void and of no effect and  ~~[subject~~  
39  ~~purchase, contract or agreement]~~ shall be readvertised  ~~for receipt of~~  
40  ~~new bids,~~ and the original  ~~[purchase,] contract [or agreement]~~ shall  
41 be set aside by the governing body.

42 Any specification  ~~[adopted by the governing body]~~ for a contract  
43 for the collection and disposal of municipal solid waste shall conform  
44 to the uniform bid specifications for municipal solid waste collection  
45 contracts established pursuant to section 22 of P.L.1991, c.381  
46 (C.48:13A-7.22).

1 Any specification [adopted by the governing body] may include an  
2 item for the cost, which shall be paid by the contractor, of creating a  
3 file to maintain the notices of the delivery of labor or materials  
4 required by N.J.S.2A:44-128.

5 Any prospective bidder who wishes to challenge a bid specification  
6 shall file such challenges in writing with the contracting agent no less  
7 than three business days prior to the opening of the bids. Challenges  
8 filed after that time shall be considered void and having no impact on  
9 the contracting unit or the award of a contract.

10 (cf: P.L.1996, c.81, s.7)

11  
12 20. (New section) Goods or services, the payment for which  
13 utilizes only funds received by a contracting unit from a bequest,  
14 legacy or gift, shall be subject to the provisions of P.L.1971, c.198  
15 (C.40A:11-1 et seq.), except that if such bequest, legacy or gift  
16 contains written instructions as to the specifications, manufacturer or  
17 vendor, or source of supply of the goods or services to be provided or  
18 performed, such instructions shall be honored, provided that the  
19 bequest, legacy or gift is used in a manner consistent with  
20 N.J.S.40A:5-29.

21  
22 21. (New section) A contracting unit may reject all bids for any of  
23 the following reasons:

24 a. The lowest bid substantially exceeds the cost estimates for the  
25 goods or services;

26 b. The lowest bid substantially exceeds the contracting unit's  
27 appropriation for the goods or services;

28 c. The governing body of the contracting unit decides to abandon  
29 the project for provision or performance of the goods or services;

30 d. The contracting unit wants to substantially revise the  
31 specifications for the goods or services;

32 e. The purposes or provisions or both of P.L.1971, c.198  
33 (C.40A:11-1 et seq.) are being violated;

34 f. The governing body of the contracting unit decides to use the  
35 State authorized contract pursuant to section 12 of P.L.1971, c.198  
36 (C.40A:11-12).

37  
38 22. Section 14 of P.L.1971, c.198 (C.40A:11-14) is amended to  
39 read as follows:

40 14. All contracts for the [performing of work or furnishing  
41 materials, supplies] provision or performance of goods or services  
42 shall be in writing. The governing body of any contracting unit may,  
43 subject to the requirements of law, prescribe the form and manner in  
44 which contracts shall be made and executed, and the form and manner  
45 of execution and approval of all guarantee, indemnity, fidelity and  
46 other bonds.

47 (cf: P.L.1975, c.353, s.10)

1 23. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to  
2 read as follows:

3 15. All ~~contracts~~ ~~or agreements~~ for the  
4 ~~performing of work or the furnishing of materials, supplies~~ provision  
5 or performance of goods or services shall be ~~made~~ awarded for a  
6 period not to exceed 24 consecutive months, except that contracts for  
7 professional services pursuant to subparagraph (i) of paragraph (a) of  
8 subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be  
9 ~~made~~ awarded for a period not to exceed 12 consecutive months.  
10 Contracts ~~or agreements~~ may be ~~entered into~~ awarded for longer  
11 periods of time as follows:

12 (1) Supplying of:

13 (a) (Deleted by amendment, P.L.1996, c.113.)

14 (b) (Deleted by amendment, P.L.1996, c.113.)

15 (c) Thermal energy produced by a cogeneration facility, for use for  
16 heating or air conditioning or both, for any term not exceeding 40  
17 years, when the contract is approved by the Board of Public Utilities.  
18 For the purposes of this paragraph, "cogeneration" means the  
19 simultaneous production in one facility of electric power and other  
20 forms of useful energy such as heating or process steam;

21 (2) (Deleted by amendment, P.L.1977, c.53.)

22 (3) The collection and disposal of municipal solid waste, the  
23 collection and disposition of recyclable material, or the disposal of  
24 sewage sludge, for any term not exceeding in the aggregate, five years;

25 (4) The collection and recycling of methane gas from a sanitary  
26 landfill facility, for any term not exceeding 25 years, when such  
27 contract is in conformance with a district solid waste management plan  
28 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the  
29 approval of the Division of Local Government Services in the  
30 Department of Community Affairs and the Department of  
31 Environmental Protection. The contracting unit shall award the  
32 contract to the highest responsible bidder, notwithstanding that the  
33 contract price may be in excess of the amount of any necessarily  
34 related administrative expenses; except that if the contract requires the  
35 contracting unit to expend funds only, the contracting unit shall award  
36 the contract to the lowest responsible bidder. The approval by the  
37 Division of Local Government Services of public bidding requirements  
38 shall not be required for those contracts exempted therefrom pursuant  
39 to section 5 of P.L.1971, c.198 (C.40A:11-5);

40 (5) Data processing service, for any term of not more than ~~three~~  
41 seven years;

42 (6) Insurance, including the purchase of insurance coverages,  
43 insurance consulting or administrative services, claims administration  
44 services and including participation in a joint self-insurance fund, risk  
45 management program or related services provided by a contracting  
46 unit insurance group, or participation in an insurance fund established  
47 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund



- 1 ~~established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.),~~ for any  
2 term of not more than three years;
- 3 (7) Leasing or servicing of automobiles, motor vehicles, machinery  
4 and equipment of every nature and kind, for a period not to exceed  
5 ~~[three]~~ five years; provided, however, such contracts shall be  
6 ~~[entered into]~~ awarded only subject to and in accordance with the  
7 rules and regulations promulgated by the Director of the Division of  
8 Local Government Services of the Department of Community Affairs;
- 9 (8) The supplying of any product or the rendering of any service  
10 by a ~~[telephone]~~ company ~~[which is subject to the jurisdiction of the~~  
11 ~~Board of Public Utilities]~~ providing voice, data, transmission or  
12 switching services for a term not exceeding five years;
- 13 (9) Any single project for the construction, reconstruction or  
14 rehabilitation of any public building, structure or facility, or any public  
15 works project, including the retention of the services of any architect  
16 or engineer in connection therewith, for the length of time authorized  
17 and necessary for the completion of the actual construction;
- 18 (10) The providing of food services for any term not exceeding  
19 three years;
- 20 (11) On-site inspections and plan review services undertaken by  
21 private agencies pursuant to the "State Uniform Construction Code  
22 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not  
23 more than three years;
- 24 (12) The provision or performance of ~~[work]~~ goods or services  
25 ~~[or the furnishing of materials or supplies]~~ for the purpose of  
26 conserving energy in buildings owned by, or operations conducted by,  
27 the contracting unit, the entire price of which to be established as a  
28 percentage of the resultant savings in energy costs, for a term not to  
29 exceed ~~[10]~~ 15 years; provided, however, that such contracts shall be  
30 entered into only subject to and in accordance with ~~[rules and~~  
31 ~~regulations]~~ guidelines promulgated by the ~~[Department of~~  
32 ~~Environmental Protection]~~ Board of Public Utilities establishing a  
33 methodology for computing energy cost savings;
- 34 (13) ~~[The performance of work or services or the furnishing of~~  
35 ~~materials or supplies for the purpose of elevator maintenance for any~~  
36 ~~term not exceeding three years;]~~ ~~(Deleted by amendment, P.L. ,~~  
37 ~~c. .) (Pending before the Legislature as this bill.)~~
- 38 (14) ~~[Leasing or servicing of electronic communications equipment~~  
39 ~~for a period not to exceed five years; provided, however, such contract~~  
40 ~~shall be entered into only subject to and in accordance with the rules~~  
41 ~~and regulations promulgated by the Director of the Division of Local~~  
42 ~~Government Services of the Department of Community Affairs;]~~  
43 ~~(Deleted by amendment, P.L. , c. .) (Pending before the Legislature~~  
44 ~~as this bill.)~~
- 45 (15) Leasing of motor vehicles, machinery and other equipment  
46 primarily used to fight fires, for a term not to exceed ten years, when  
47 the contract includes an option to purchase, subject to and in

1 accordance with rules and regulations promulgated by the Director of  
2 the Division of Local Government Services of the Department of  
3 Community Affairs;

4 (16) The provision of water supply services or the designing,  
5 financing, construction, operation, or maintenance, or any combination  
6 thereof, of a water supply facility, or any component part or parts  
7 thereof, including a water filtration system, for a period not to exceed  
8 40 years, when the contract for these services is approved by the  
9 Division of Local Government Services in the Department of  
10 Community Affairs, the Board of Public Utilities, and the Department  
11 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et  
12 al.), except for those contracts otherwise exempted pursuant to  
13 subsection (30), (31), (34) or (35) of this section. For the purposes  
14 of this subsection, "water supply services" means any service provided  
15 by a water supply facility; "water filtration system" means any  
16 equipment, plants, structures, machinery, apparatus, or land, or any  
17 combination thereof, acquired, used, constructed, rehabilitated, or  
18 operated for the collection, impoundment, storage, improvement,  
19 filtration, or other treatment of drinking water for the purposes of  
20 purifying and enhancing water quality and insuring its potability prior  
21 to the distribution of the drinking water to the general public for  
22 human consumption, including plants and works, and other personal  
23 property and appurtenances necessary for their use or operation; and  
24 "water supply facility" means and refers to the real property and the  
25 plants, structures, interconnections between existing water supply  
26 facilities, machinery and equipment and other property, real, personal  
27 and mixed, acquired, constructed or operated, or to be acquired,  
28 constructed or operated, in whole or in part by or on behalf of a  
29 political subdivision of the State or any agency thereof, for the  
30 purpose of augmenting the natural water resources of the State and  
31 making available an increased supply of water for all uses, or of  
32 conserving existing water resources, and any and all appurtenances  
33 necessary, useful or convenient for the collecting, impounding, storing,  
34 improving, treating, filtering, conserving or transmitting of water and  
35 for the preservation and protection of these resources and facilities and  
36 providing for the conservation and development of future water supply  
37 resources;

38 (17) The provision of resource recovery services by a qualified  
39 vendor, the disposal of the solid waste delivered for disposal which  
40 cannot be processed by a resource recovery facility or the residual ash  
41 generated at a resource recovery facility, including hazardous waste  
42 and recovered metals and other materials for reuse, or the design,  
43 financing, construction, operation or maintenance of a resource  
44 recovery facility for a period not to exceed 40 years when the contract  
45 is approved by the Division of Local Government Services in the  
46 Department of Community Affairs, and the Department of  
47 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et  
48 al.); and when the resource recovery facility is in conformance with a

1 district solid waste management plan approved pursuant to P.L.1970,  
2 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,  
3 "resource recovery facility" means a solid waste facility constructed  
4 and operated for the incineration of solid waste for energy production  
5 and the recovery of metals and other materials for reuse; or a  
6 mechanized composting facility, or any other facility constructed or  
7 operated for the collection, separation, recycling, and recovery of  
8 metals, glass, paper, and other materials for reuse or for energy  
9 production; and "residual ash" means the bottom ash, fly ash, or any  
10 combination thereof, resulting from the combustion of solid waste at  
11 a resource recovery facility;

12 (18) The sale of electricity or thermal energy, or both, produced by  
13 a resource recovery facility for a period not to exceed 40 years when  
14 the contract is approved by the Department of Environmental  
15 Protection, and when the resource recovery facility is in conformance  
16 with a district solid waste management plan approved pursuant to  
17 P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this  
18 subsection, "resource recovery facility" means a solid waste facility  
19 constructed and operated for the incineration of solid waste for energy  
20 production and the recovery of metals and other materials for reuse;  
21 or a mechanized composting facility, or any other facility constructed  
22 or operated for the collection, separation, recycling, and recovery of  
23 metals, glass, paper, and other materials for reuse or for energy  
24 production;

25 (19) The provision of wastewater treatment services or the  
26 designing, financing, construction, operation, or maintenance, or any  
27 combination thereof, of a wastewater treatment system, or any  
28 component part or parts thereof, for a period not to exceed 40 years,  
29 when the contract for these services is approved by the Division of  
30 Local Government Services in the Department of Community Affairs  
31 and the Department of Environmental Protection pursuant to  
32 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise  
33 exempted pursuant to subsection (36) of this section. For the  
34 purposes of this subsection, "wastewater treatment services" means  
35 any services provided by a wastewater treatment system, and  
36 "wastewater treatment system" means equipment, plants, structures,  
37 machinery, apparatus, or land, or any combination thereof, acquired,  
38 used, constructed, or operated for the storage, collection, reduction,  
39 recycling, reclamation, disposal, separation, or other treatment of  
40 wastewater or sewage sludge, or for the final disposal of residues  
41 resulting from the treatment of wastewater, including, but not limited  
42 to, pumping and ventilating stations, facilities, plants and works,  
43 connections, outfall sewers, interceptors, trunk lines, and other  
44 personal property and appurtenances necessary for their operation;

45 (20) The supplying of **[materials]** goods or services for the  
46 purpose of lighting public streets, for a term not to exceed five years  
47 **[**, provided that the rates, fares, tariffs or charges for the supplying of  
48 electricity for that purpose are approved by the Board of Public

1 Utilities];

2 (21) [In the case of a contracting unit which is a county or  
3 municipality, the] The provision of emergency medical services [by a  
4 hospital to residents of a municipality or county as appropriate] for a  
5 term not to exceed five years;

6 (22) Towing and storage contracts, awarded pursuant to paragraph  
7 u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for  
8 any term not exceeding three years;

9 (23) Fuel for the purpose of generating electricity for a term not to  
10 exceed eight years;

11 (24) The purchase of electricity or administrative or dispatching  
12 services related to the transmission of such electricity, from a public  
13 utility company subject to the jurisdiction of the Board of Public  
14 Utilities, a similar regulatory body of another state, or a federal  
15 regulatory agency, or from a qualifying small power producing facility  
16 or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, by  
17 a contracting unit engaged in the generation of electricity for retail  
18 sale, as of May 24,1991, for a term not to exceed 40 years;

19 (25) Basic life support services, for a period not to exceed five  
20 years. For the purposes of this subsection, "basic life support" means  
21 a basic level of prehospital care, which includes but need not be limited  
22 to patient stabilization, airway clearance, cardiopulmonary  
23 resuscitation, hemorrhage control, initial wound care and fracture  
24 stabilization;

25 (26) [Claims administration services, for any term not to exceed  
26 three years;] (Deleted by amendment, P.L. , c. .) (Pending before  
27 the Legislature as this bill.)

28 (27) The provision of transportation services to elderly, disabled  
29 or indigent persons for any term of not more than three years. For the  
30 purposes of this subsection, "elderly persons" means persons who are  
31 60 years of age or older. "Disabled persons" means persons of any age  
32 who, by reason of illness, injury, age, congenital malfunction, or other  
33 permanent or temporary incapacity or disability, are unable, without  
34 special facilities or special planning or design to utilize mass  
35 transportation facilities and services as effectively as persons who are  
36 not so affected. "Indigent persons" means persons of any age whose  
37 income does not exceed 100 percent of the poverty level, adjusted for  
38 family size, established and adjusted under section 673(2) of subtitle  
39 B, the "Community Services Block Grant Act," Pub.L.97-35 (42  
40 U.S.C. s.9902 (2));

41 (28) The supplying of liquid oxygen or other chemicals, for a term  
42 not to exceed five years, when the contract includes the installation of  
43 tanks or other storage facilities by the supplier, on or near the  
44 premises of the contracting unit;

45 (29) The performance of patient care services by contracted  
46 medical staff at county hospitals, correction facilities and long term  
47 care facilities, for any term of not more than three years;

1 (30) The acquisition of an equitable interest in a water supply  
2 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or [an  
3 agreement] a contract entered into pursuant to the "County and  
4 Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the  
5 [agreement] contract is entered into no later than January 7, 1995, for  
6 any term of not more than forty years;

7 (31) The provision of water supply services or the financing,  
8 construction, operation or maintenance or any combination thereof, of  
9 a water supply facility or any component part or parts thereof, by a  
10 partnership or copartnership established pursuant to a contract  
11 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a  
12 period not to exceed 40 years;

13 (32) Laundry service and the rental, supply and cleaning of  
14 uniforms for any term of not more than three years;

15 (33) The supplying of any product or the rendering of any service,  
16 including consulting services, by a cemetery management company for  
17 the maintenance and preservation of a municipal cemetery operating  
18 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for  
19 a term not exceeding 15 years;

20 (34) A contract between a public entity and a private firm pursuant  
21 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water  
22 supply services may be entered into for any term which, when all  
23 optional extension periods are added, may not exceed 40 years;

24 (35) [An agreement] A contract for the purchase of a supply of  
25 water from a public utility company subject to the jurisdiction of the  
26 Board of Public Utilities in accordance with tariffs and schedules of  
27 charges made, charged or exacted or contracts filed with the Board of  
28 Public Utilities, for any term of not more than 40 years;

29 (36) A contract between a public entity and a private firm or public  
30 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the  
31 provision of wastewater treatment services may be entered into for any  
32 term of not more than 40 years, including all optional extension  
33 periods;[ and]

34 (37) The operation and management of a facility under a license  
35 issued or permit approved by the Department of Environmental  
36 Protection, including a wastewater treatment system or a water supply  
37 or distribution facility, as the case may be, for any term of not more  
38 than [seven] ten years. For the purposes of this subsection,  
39 "wastewater treatment system" refers to facilities operated or  
40 maintained for the storage, collection, reduction, disposal, or other  
41 treatment of wastewater or sewage sludge, remediation of  
42 groundwater contamination, stormwater runoff, or the final disposal  
43 of residues resulting from the treatment of wastewater; and "water  
44 supply or distribution facility" refers to facilities operated or  
45 maintained for augmenting the natural water resources of the State,  
46 increasing the supply of water, conserving existing water resources, or  
47 distributing water to users;

1     (38) Municipal solid waste collection from facilities owned by a  
2 contracting unit, for any term of not more than three years;

3     (39) Fuel for heating purposes, for any term of not more than  
4 three years;

5     (40) Fuel or oil for use in motor vehicles for any term of not more  
6 than three years;

7     (41) Plowing and removal of snow and ice for any term of not  
8 more than three years;

9     (42) Purchases made under a contract awarded by the Director of  
10 the Division of Purchase and Property in the Department of the  
11 Treasury for use by counties, municipalities or other contracting units  
12 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term  
13 not to exceed the term of that contract.

14     Any contract for services other than professional services, the  
15 statutory length of which contract is for three years or less, may  
16 include provisions for no more than one two-year, or two one-year,  
17 extensions, subject to the following limitations: a. The contract shall  
18 be awarded by resolution of the governing body upon a finding by the  
19 governing body that the services are being performed in an effective  
20 and efficient manner; b. No such contract shall be extended so that it  
21 runs for more than a total of five consecutive years; c. Any price  
22 change included as part of an extension shall be based upon the price  
23 of the original contract as cumulatively adjusted pursuant to any  
24 previous adjustment or extension and shall not exceed the change in  
25 the index rate for the 12 months preceding the most recent quarterly  
26 calculation available at the time the contract is renewed; and d. The  
27 terms and conditions of the contract remain substantially the same.

28     All multiyear leases and contracts entered into pursuant to this  
29 section, including any two-year or one-year extensions, except  
30 [contracts for the leasing or servicing of equipment supplied by a  
31 telephone company which is subject to the jurisdiction of the Board of  
32 Public Utilities,] contracts involving the supplying of electricity for the  
33 purpose of lighting public streets and contracts for thermal energy  
34 authorized pursuant to subsection (1) above, construction contracts  
35 authorized pursuant to subsection (9) above, contracts [and  
36 agreements] for the provision or performance of [work] goods or  
37 services or the supplying of equipment to promote energy conservation  
38 authorized pursuant to subsection (12) above, contracts for water  
39 supply services or for a water supply facility, or any component part  
40 or parts thereof authorized pursuant to subsection (16), (30), (31),  
41 (34), (35) or (37) above, contracts for resource recovery services or  
42 a resource recovery facility authorized pursuant to subsection (17)  
43 above, contracts for the sale of energy produced by a resource  
44 recovery facility authorized pursuant to subsection (18) above,  
45 contracts for wastewater treatment services or for a wastewater  
46 treatment system or any component part or parts thereof authorized  
47 pursuant to subsection (19), (36) or (37) above, and contracts for the

1 purchase of electricity or administrative or dispatching services related  
2 to the transmission of such electricity authorized pursuant to  
3 subsection (24) above, shall contain a clause making them subject to  
4 the availability and appropriation annually of sufficient funds as may  
5 be required to meet the extended obligation, or contain an annual  
6 cancellation clause.

7 The Division of Local Government Services in the Department of  
8 Community Affairs shall adopt and promulgate rules and regulations  
9 concerning the methods of accounting for all contracts that do not  
10 coincide with the fiscal year.

11 All contracts shall cease to have effect at the end of the contracted  
12 period and shall not be extended by any mechanism or provision,  
13 unless in conformance with the "Local Public Contracts Law,"  
14 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be  
15 extended by mutual agreement of the parties to the contract when a  
16 contracting unit has commenced rebidding prior to the time the  
17 contract expires or when the awarding of a contract is pending at the  
18 time the contract expires.

19 (cf: P.L.1999, c.23, s.64)

20

21 24. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to  
22 read as follows:

23 16. Separate plans for various types of work; bids; contracts. In the  
24 preparation of plans and specifications for the [erection] construction,  
25 alteration or repair of any public building by any contracting unit,  
26 when the entire cost of the work will exceed the [amount set forth in,  
27 or the amount calculated by the Governor pursuant to, section 3 of  
28 P.L.1971, c.198 (C.40A:11-3)] bid threshold, the architect, engineer  
29 or other person preparing the plans and specifications may prepare  
30 separate plans and specifications for

31 (1) The plumbing and gas fitting and all kindred work;

32 (2) Steam power plants, steam and hot water heating and  
33 ventilating apparatus and all kindred work;

34 (3) Electrical work;

35 (4) Structural steel and ornamental iron work; and

36 (5) All other work required for the completion of the project.

37 The [contracting unit or its] contracting agent shall advertise for  
38 and receive, in the manner provided by law, either (a) separate bids for  
39 each of said branches of work, or (b) bids for all the work [and  
40 materials] , goods and services required to complete the building to be  
41 included in a single overall contract, or (c) both. In the case of a  
42 single bid under (b) or (c), there [will] shall be set forth in the bid the  
43 name or names of all subcontractors to whom the bidder will  
44 subcontract the furnishing of plumbing and gas fitting, and all kindred  
45 work, and of the steam and hot water heating and ventilating  
46 apparatus, steam power plants and kindred work, and electrical work,  
47 structural steel and ornamental iron work, each of which

1 subcontractors shall be qualified in accordance with [this act]  
2 P.L.1971, c.198 (C.40A:11-1 et seq.). The contracting unit shall  
3 require evidence of performance security to be submitted  
4 simultaneously with the list of the subcontractors. Evidence of  
5 performance security may be supplied by the bidder on behalf of  
6 himself and any or all subcontractors, or by each respective  
7 subcontractor, or by any combination thereof which results in evidence  
8 of performance security [equalling] equaling, but in no event  
9 exceeding, the total amount bid.

10 Whenever a bid sets forth more than one subcontractor for any of  
11 the specialty trade categories (1) through (4) specified hereinabove in  
12 this section, the bidder shall submit to the contracting unit a certificate  
13 signed by the bidder listing each subcontractor named in the bid for  
14 that category. The certificate shall set forth the scope of work, goods  
15 and services for which the subcontractor has submitted a price quote  
16 and which the bidder has agreed to award to each subcontractor  
17 should the bidder be awarded the contract. The certificate shall be  
18 submitted to the contracting unit simultaneously with the list of the  
19 subcontractors. The certificate may take the form of a single  
20 certificate listing all subcontractors or, alternatively, a separate  
21 certificate may be submitted for each subcontractor. If a bidder does  
22 not submit a certificate or certificates to the contracting unit, the  
23 contracting unit shall award the contract to the next lowest responsible  
24 bidder.

25 Contracts shall be awarded to the lowest responsible bidder. In the  
26 event that a contract is advertised in accordance with (c) above said  
27 contract shall be awarded in the following manner: If the sum total of  
28 the amounts bid by the lowest responsible bidder for each branch is  
29 less than the amount bid by the lowest responsible bidder for all the  
30 work [and materials] , goods and services, the contracting unit shall  
31 award separate contracts for each of such branches to the lowest  
32 responsible bidder therefor, but if the sum total of the amounts bid by  
33 the lowest responsible bidder for each branch is not less than the  
34 amount bid by the lowest responsible bidder for all the work [and  
35 materials] , goods and services, the contracting unit shall award a  
36 single overall contract to the lowest responsible bidder for all of such  
37 work [and materials] , goods and services. In every case in which a  
38 contract is awarded under (b) above, all payments required to be made  
39 under such contract for work [and materials] , goods and services  
40 supplied by a subcontractor shall, upon the certification of the  
41 contractor of the amount due to the subcontractor, be paid directly to  
42 the subcontractor.

43 (cf: P.L.1997, c.408, s.1)

44

45 25. Section 1 of P.L.1979, c.464 (C.40A:11-16.2) is amended to  
46 read as follows:

47 1. Any contract [or agreement], the total price of which exceeds



1 \$100,000.00, entered into by a contracting unit involving the  
2 construction, reconstruction, alteration, repair or maintenance of any  
3 building, structure, facility or other improvement to real property,  
4 shall provide for partial payments to be made at least once each month  
5 as the work progresses, unless the contractor shall agree to deposit  
6 bonds with the contracting unit pursuant to P.L.1979, c.152  
7 (C.40A:11-16.1).

8 (cf: P.L.1979, c.464, s.1)

9

10 26. Section 2 of P.L.1979, c.464, (C.40A:11-16.3) is amended to  
11 read as follows:

12 2. a. With respect to any contract [or agreement] entered into by  
13 a contracting unit pursuant to section 1 of [this act] P.L.1979, c.464  
14 (C.40A:11-16.2) for which the contractor shall agree to the  
15 withholding of payments pursuant to P.L.1979, c.152  
16 (C.40A:11-16.1), 2% of the amount due on each partial payment shall  
17 be withheld by the contracting unit pending completion of the contract  
18 [or agreement].

19 b. Upon acceptance of the work performed pursuant to the  
20 contract [or agreement] for which the contractor has agreed to the  
21 withholding of payments pursuant to subsection a. of this section, all  
22 amounts being withheld by the contracting unit shall be released and  
23 paid in full to the contractor within 45 days of the final acceptance  
24 date agreed upon by the contractor and the contracting unit, without  
25 further withholding of any amounts for any purpose whatsoever,  
26 provided that the contract has been completed as indicated. If the  
27 contracting unit requires maintenance security after acceptance of the  
28 work performed pursuant to the contract [or agreement], such  
29 security shall be obtained in the form of a maintenance bond. The  
30 maintenance bond shall be no longer than two years and shall be no  
31 more than 100% of the project costs.

32 (cf: P.L.1991, c.434, s.2)

33

34 27. Section 3 of P.L.1979, c.464, (C.40A:11-16.4) is amended to  
35 read as follows:

36 3. Any contract [or agreement] entered into by a contracting unit  
37 pursuant to section 1 of [this act] P.L.1979, c.464 (C.40A:11-16.2)  
38 may also provide for partial payments at least once in each month with  
39 respect to all materials placed along or upon the site, or stored at  
40 secured locations, which are suitable for use in the execution of the  
41 contract [or agreement], if the person providing the materials  
42 furnishes releases of liens for the materials at the time each estimate  
43 of work is submitted for payment. The total of all the partial  
44 payments shall not exceed the cost of the materials.

45 (cf: P.L.1979, c.464, s.3)

1       28. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to  
2 read as follows:

3       19. Any contract **[or agreement]** made pursuant to **[this act]**  
4 P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages  
5 for the violation of any of the terms and conditions thereof or the  
6 failure to perform said contract **[or agreement]** in accordance with its  
7 terms and conditions, or the terms and conditions of **[this act]**  
8 P.L.1971, c.198 (C.40A:11-1 et seq.).  
9 (cf: P.L.1971, c.198, s.19)  
10

11       29. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to  
12 read as follows:

13       21. A person bidding on a contract **[or agreement]** for the  
14 erection, alteration or repair of a public building, structure, facility or  
15 other improvement to real property, the total price of which exceeds  
16 \$100,000, shall furnish a guarantee as provided for herein. A  
17 contracting unit may provide that a person bidding on any other  
18 contract **[or agreement]**, advertised in accordance with law, shall  
19 furnish a guarantee as provided for herein. The guarantee shall be  
20 payable to the contracting unit so that if the contract **[or agreement]**  
21 is awarded to the bidder, the bidder will enter into a contract therefor  
22 and will furnish any performance bond or other security required as  
23 a guarantee or indemnification. The guarantee shall be in the amount  
24 of 10% of the bid, but not in excess of \$20,000.00, except as  
25 otherwise provided herein, and may be given, at the option of the  
26 bidder, by certified check, cashier's check or bid bond. In the event  
27 that any law or regulation of the United States imposes any condition  
28 upon the awarding of a monetary grant to any contracting unit, which  
29 condition requires the depositing of a guarantee in an amount other  
30 than 10% of the bid or in excess of \$20,000.00 the provisions of this  
31 section shall not apply and the requirements of the law or regulation  
32 of the United States shall govern.  
33 (cf: P.L.1999, c.39, s.3)  
34

35       30. Section 22 of P.L.1971, c.198 (C.40A:11-22) is amended to  
36 read as follows:

37       22. a. A person bidding on a contract **[or agreement]** for the  
38 erection, alteration or repair of a building, structure, facility or other  
39 improvement to real property, the total price of which exceeds  
40 \$100,000, shall furnish a certificate from a surety company, as  
41 provided for herein. A contracting unit may provide that a person  
42 bidding on any other contract shall furnish a certificate from a surety  
43 company, as provided for herein.

44       b. When a surety company bond is required in the advertisement  
45 or specifications for a contract **[or agreement]**, every contracting unit  
46 shall require from any bidder submitting a bid in accordance with  
47 plans, specifications and advertisements, as provided for by law, a

1 certificate from a surety company stating that it will provide the  
2 contractor with a bond in such sum as is required in the advertisement  
3 or in the specifications.

4 This certificate shall be obtained for a bond--

5 (1) For the faithful performance of all provisions of the  
6 specifications or for all matters which may be contained in the notice  
7 to bidders, relating to the performance of the contract [or  
8 agreement], and

9 (2) If any be required, for a guarantee bond for the faithful  
10 performance of the contract provisions relating to the repair and  
11 maintenance of any work, project or facility and its appurtenances and  
12 keeping the same in good and serviceable condition during the term  
13 of the bond as provided for in the notice to bidders or in the  
14 specifications, or

15 (3) In such other form as may be provided in the notice to bidders  
16 or in the specifications.

17 If a bidder desires to offer the bond of an individual instead of that  
18 of a surety company, the bidder shall submit with the bid a certificate  
19 signed by such individual similar to that required of a surety company.

20 The contracting unit may reject any such bid if it is not satisfied  
21 with the sufficiency of the individual surety offered.

22 (cf: P.L.1999, c.39, s.4)

23

24 31. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to  
25 read as follows:

26 23. [a.] Advertisements for bids; bids; general requirements. a.  
27 All advertisements for bids shall be published in [a legal] an official  
28 newspaper of the contracting unit sufficiently in advance of the date  
29 fixed for receiving the bids to promote competitive bidding, but in no  
30 event less than 10 days prior to such date; except that all  
31 advertisements for bids on contracts for the collection and disposal of  
32 municipal solid waste shall be published in [a legal] an official  
33 newspaper of the contracting unit circulating in the county or  
34 municipality, and in at least one newspaper of general circulation  
35 published in the State, sufficiently in advance of the date fixed for  
36 receiving the bids to promote competitive bidding, but not less than 60  
37 days prior to that date.

38 b. The advertisement shall designate the manner of submitting and  
39 the method of receiving the bids and the time and place at which the  
40 bids will be received. If the published specifications provide for  
41 receipt of bids by mail, those bids which are mailed to the contracting  
42 unit shall be sealed and shall only be opened for examination at such  
43 time and place as all bids received are unsealed and announced. At  
44 such time and place the contracting agent of the contracting unit shall  
45 publicly receive the bids, and thereupon immediately proceed to unseal  
46 them and publicly announce the contents, which announcement shall  
47 be made in the presence of any parties bidding or their agents, who are

1 then and there present, and shall also make proper record of the prices  
2 and terms, upon the minutes of the governing body, if the award is to  
3 be made by the governing body of the contracting unit, or in a book  
4 kept for that purpose, if the award is to be made by other than the  
5 governing body, and in such latter case it shall be reported to the  
6 governing body of the contracting unit for its action thereon, when  
7 such action thereon is required. No bids shall be received after the time  
8 designated in the advertisement.

9 c. Notice of revisions or addenda to advertisements or bid  
10 documents shall be provided as follows:

11 1) For all contracts except those for construction work and  
12 municipal solid waste collection and disposal service, notice shall be  
13 published no later than five days, Saturdays, Sundays, and holidays  
14 excepted, prior to the date for acceptance of bids, in an official  
15 newspaper of the contracting unit and be provided to any person who  
16 has submitted a bid or who has received a bid package, in one of the  
17 following ways: i) in writing by certified mail or ii) by certified  
18 facsimile transmission, meaning that the sender's facsimile machine  
19 produces a receipt showing date and time of transmission and that the  
20 transmission was successful or iii) by a delivery service that provides  
21 certification of delivery to the sender.

22 2) For all contracts for construction work, notice shall be provided  
23 no later than seven days, Saturday, Sundays, or holidays excepted,  
24 prior to the date for acceptance of bids, to any person who has  
25 submitted a bid or who has received a bid package in any of the  
26 following ways: i) in writing by certified mail or ii) by certified  
27 facsimile transmission, meaning that the sender's facsimile machine  
28 produces a receipt showing date and time of transmission and that the  
29 transmission was successful or iii) by a delivery service that provides  
30 certification of delivery to the sender.

31 3) For municipal solid waste collection and disposal contracts,  
32 notice shall be published in an official newspaper of the contracting  
33 unit and in at least one newspaper of general circulation published in  
34 the State no later than five days, Saturdays, Sundays, and holidays  
35 excepted, prior to the date for acceptance of bids.

36 d. Failure of the contracting unit to advertise for the receipt of bids  
37 or to provide proper notification of revisions or addenda to  
38 advertisements or bid documents related to bids as prescribed by this  
39 section shall prevent the contracting unit from accepting the bids and  
40 require the readvertisement for bids pursuant to subsection a. of this  
41 section. Failure to obtain a receipt when good faith notice is sent or  
42 delivered to the address or telephone facsimile number on file with the  
43 contracting unit shall not be considered failure by the contracting unit  
44 to provide notice.

45 (cf: P.L.1997, c.243, s.1)

46

47 32. Section 25 of P.L.1971, c.198 (C.40A:11-25) is amended to  
48 read as follows:

1       25. The governing body of any contracting unit may establish  
2 reasonable regulations appropriate for controlling the qualifications of  
3 prospective bidders upon contracts to be awarded on behalf of the  
4 contracting unit, by the class or category of [work to be performed or  
5 materials and supplies to be furnished or hired] goods or services to  
6 be provided or performed, which may fix the qualifications required  
7 according to the financial ability and experience of the bidders and the  
8 capital and equipment available to them pertinent to and reasonably  
9 related to the class or category of [work to be performed or materials  
10 and supplies to be furnished or hired] goods or services to be provided  
11 or performed in the performance of any such contract, and may require  
12 each bidder to furnish a statement thereof; and if such governing body  
13 is not satisfied with the qualifications of any bidder as founded upon  
14 such statement, it may refuse to furnish [him] the bidder with any  
15 plans or specifications for any public contract or consider any bid  
16 made by [him] the bidder for any contract.

17       Prior to the adoption of any such regulations, a contracting unit  
18 shall submit them to a public hearing. Notice of the hearing and a  
19 general description of the subject matter of the regulations to be  
20 adopted shall be published in not less than two newspapers circulating  
21 in the county or municipality in which the contracting unit is located.  
22 Publication shall precede by at least 20 days the date set in the notice  
23 for the hearing. The clerk or secretary of the governing body of the  
24 contracting unit shall keep a record of the proceedings and of the  
25 testimony of any citizen or prospective bidder. Within 10 days after  
26 the completion of the hearings, the proposed regulations and a true  
27 copy of the hearings shall be forwarded to the Director of the Division  
28 of Local [Finance] Government Services for [his] the director's  
29 approval. This approval shall be indicated by a letter from the director  
30 to the governing body of the contracting unit. If the director fails to  
31 approve or disapprove the regulations within 30 days of their receipt  
32 by [him] the director, they shall take effect without [his] the  
33 director's approval. The director may disapprove such proposed  
34 regulations only if [he] the director finds that:

35       (a) They are written in a manner which will unnecessarily  
36 discourage full, free and open competition; or

37       (b) They unnecessarily restrict the participation of small businesses  
38 in the public bidding process; or

39       (c) They create undue preferences; or

40       (d) They violate any other provision of this act, or any other law.

41       If the director disapproves such proposed regulations within the  
42 30-day period prescribed, they shall be of no force and effect and may  
43 not be required as a condition to the acceptance of a bid on any public  
44 contract by the contracting unit. Any appeal from a decision of the  
45 director to the Local Finance Board shall be subject to the provisions  
46 of the Local Government Supervision Act (P.L.1947, c.151,  
47 C.52:27BB-1 et seq.).

1 No qualification rating of any bidder shall be influenced by [his] the  
2 bidder's race, religion, sex, national origin, nationality or [his] place  
3 of residence or business.

4 Nothing contained in this act shall limit the right of any court to  
5 review a refusal to furnish any such plans or specifications or [the  
6 consideration or] to consider any bid on any contract advertised.

7 Any such governing body may adopt a standard form of statement  
8 or questionnaire for bidders on public works [and] contracts, and in  
9 such case their action shall be governed as provided herein.

10 (cf: P.L.1971, c.198, s.25)

11

12 33. Section 26 of P.L.1971, c.198 (C.40A:11-26) is amended to  
13 read as follows:

14 26. The governing body of any contracting unit may adopt a  
15 standard form of statement or questionnaire for bidders [on public  
16 works and contracts] and may require from any person proposing to  
17 bid upon any such [public work or] contract a statement or answers  
18 showing [his]the bidder's financial ability and experience in  
19 performing public sector work and describing the equipment available  
20 to such bidder in the performance of such [work or] contract, and if  
21 not satisfied with the sufficiency of this statement or answers may  
22 refuse to furnish plans and specifications to [him]the bidder.

23 (cf: P.L.1971, c.198, s.26)

24

25 34. Section 27 of P.L.1971, c.198 (C.40A:11-27) is amended to  
26 read as follows:

27 27. Such statements and questionnaires shall be standardized for  
28 like classes of [work] goods or services to be submitted to  
29 prospective bidders who may be required to respond to questions  
30 under oath. The statement or answer shall disclose fully the financial  
31 ability, adequacy of plant and equipment, organization and prior  
32 experience of the prospective bidder, and such other pertinent and  
33 material facts as may be required.

34 (cf: P.L.1971, c.198, s.27)

35

36 35. Section 28 of P.L.1971, c.198 (C.40A:11-28) is amended to  
37 read as follows:

38 28. Prospective bidders shall be classified as to the character and  
39 amount of [public work or] goods or services contracts as to which  
40 they shall be qualified to submit bids, and bids shall be accepted only  
41 from persons so qualified. The classification shall be made and an  
42 immediate notice thereof shall be sent to the prospective bidders by  
43 certified or registered mail within 8 days after the date of receipt of  
44 the responsive statement or answers.

45 (cf: P.L.1971, c.198, s.28)

1       36. Section 29 of P.L.1971, c.198 (C. 40A:11-29) is amended to  
2 read as follows:

3       29. If any person, after being notified of **[his]**a classification, shall  
4 be dissatisfied therewith or with the classification of other bidders,  
5 **[he]** that person may request in writing a hearing before such  
6 governing body, and may present such further evidence with respect  
7 to the financial responsibility, organization, plant and equipment, or  
8 experience of **[himself]** that person or other prospective bidders as  
9 might tend to justify a different classification.

10       Where a request is made for the change of classification of another  
11 prospective bidder, the applicant therefor shall notify such other bidder  
12 by certified or registered mail of the time and place of hearing, as fixed  
13 by the governing body, and at the hearing shall present satisfactory  
14 evidence that the notice was served as herein required, before any  
15 matters pertaining to a change of classification of such other bidder  
16 shall be taken up. After hearing such evidence the governing body  
17 may, in its discretion, by appropriate action, change or retain the  
18 classification of any bidder.

19       No change in classification to be effective for any **[public work or]**  
20 contract where bidding therefor has been duly advertised, shall be  
21 made unless the written request therefor shall have been received at  
22 least 20 days before the final day for submission of bids.

23       All requests for change in classification and notice of any action  
24 sent by certified or registered mail to the parties directly affected  
25 thereby, shall be acted upon by the governing body concerned at least  
26 8 days prior to the date fixed for the next opening of bids on any  
27 contract or contracts for which such persons might be qualified to bid  
28 as a result of the reclassification.

29 (cf: P.L.1971, c.198, s.29)

30

31       37. Section 31 of P.L.1971, c.198 (C.40A:11-31) is amended to  
32 read as follows:

33       31. Any prospective bidder who is dissatisfied with **[his]** an  
34 original classification or reclassification may upon receipt of notice  
35 thereof, request in writing a hearing of the matter before the board of  
36 review. The request shall be filed with the contracting agent and the  
37 secretary of the board.

38       The board shall hold a hearing at which the prospective bidder shall  
39 be entitled to be heard and to submit additional information.

40       The board shall review the responsibility of all prospective bidders  
41 who have filed statements or answers, considering both the statement,  
42 answers and any additional information given at the hearing, and shall  
43 certify to the contracting unit concerned, its decision as to the original  
44 classifications or reclassifications, if any. The decisions shall be made  
45 by a majority vote.

46       In order for any change in classification by the board to be effective  
47 for **[public work or]** a contract previously advertised, the request shall

1 be filed not less than 5 days prior to the final day for submission of  
2 bids, and the board shall hold a hearing and act upon the request not  
3 less than 2 days prior to the date fixed for the next opening of bids on  
4 any public [work or] works contract for which such prospective  
5 bidders might be qualified to bid as a result of the reclassification.  
6 (cf: P.L.1971, c.198, s.31)

7

8 38. Section 32 of P.L.1971, c.198 (C.40A:11-32) is amended to  
9 read as follows:

10 32. Nothing herein contained shall be construed as depriving any  
11 [contracting agent] governing body of the right to reject a bid at any  
12 time prior to the actual award of a [public work or] contract, where  
13 the circumstances of the prospective bidder have changed subsequent  
14 to the qualification and classification of the [said] bidder, which in  
15 the opinion of the awarding contracting unit would adversely affect  
16 the responsibility of the bidder. Before taking final action on any such  
17 bid, the contracting agent concerned shall notify the [said] bidder and  
18 afford [him] the bidder an opportunity to present any additional  
19 information which might tend to sustain the existing classification.

20 No person shall be qualified to bid on any [public work or]  
21 contract unless [he] that person shall have submitted a statement or  
22 answers as herein required within a period of 6 months preceding the  
23 date of opening of bids for the [public work or] contract, if the  
24 bidders thereon are required to be classified hereunder. In any case  
25 where the contracting unit shall require classification of the bidders  
26 in compliance with these sections, each bidder on any [public work  
27 or] contract shall be required to submit a statement listing the  
28 changes in the statement or answers herein required as part of [his]  
29 the bidder's bid submission.

30 (cf: P.L.1971, c.198, s.32)

31

32 39. Section 36 of P.L.1971, c.198 (C.40A:11-36) is amended to  
33 read as follows:

34 36. Any contracting unit by resolution of its governing body may  
35 authorize by sealed bid or public auction the sale of its personal  
36 property not needed for public use.

37 (1) If the estimated fair value of the property to be sold exceeds  
38 [\$2,500.00] 15 percent of the bid threshold in any one sale and it is  
39 neither livestock nor perishable goods, it shall be sold at public sale  
40 to the highest bidder.

41 (2) The contracting unit need not advertise for bids when it makes  
42 any such sale to the United States, the State of New Jersey, another  
43 contracting unit [or to] , any body politic to which it contributes tax  
44 raised funds, any foreign nation which has diplomatic relations with  
45 the United States, or any governmental unit in the United States.

46 (3) Notice of the date, time and place of the public sale together  
47 with a description of the items to be sold and the conditions of sale



1 shall be published in [a] an official newspaper [circulating in the  
2 contracting unit]. Such sale shall be held not less than 7 nor more  
3 than 14 days after the latest publication of the notice thereof.

4 (4) If no bids are received the property may then be sold at private  
5 sale without further publication or notice thereof, but in no event at  
6 less than the estimated fair value; or the contracting unit may if it so  
7 [elect] elects reoffer the property at public sale. As used herein,  
8 "estimated fair value" means the market value of the property  
9 between a willing seller and a willing buyer less the cost to the  
10 [municipality] contracting unit to continue storage or maintenance of  
11 any personal property not needed for public use to be sold pursuant  
12 to this section.

13 (5) A contracting unit may reject all bids if it determines such  
14 rejection to be in the public interest. In any case in which the  
15 contracting unit has rejected all bids, it may readvertise such personal  
16 property for a subsequent public sale. If it elects to reject all bids at  
17 a second public sale, pursuant to this section, it may then sell such  
18 personal property without further publication or notice thereof at  
19 private sale, provided that in no event shall the negotiated price at  
20 private sale be less than the highest price of any bid rejected at the  
21 preceding two public sales and provided further that in no event shall  
22 the terms or conditions of sale be changed or amended.

23 (6) If the estimated fair value of the property to be sold does not  
24 exceed the applicable bid threshold in any one sale or is either  
25 livestock or perishable goods, it may be sold at private sale without  
26 advertising for bids.

27 (7) Notwithstanding the provisions of this section, by resolution of  
28 the governing body, a contracting agent may include the sale of  
29 personal property no longer needed for public use as part of  
30 specifications to offset the price of a new purchase.

31 (cf: P.L.1971, c.198, s.36)

32

33 40. Section 37 of P.L.1971, c.198 (C.40A:11-37) is amended to  
34 read as follows:

35 37. The Division of Local [Finance] Government Services in the  
36 Department of Community Affairs is hereby authorized to assist  
37 contracting units in all matters affecting the administration of this law.

38 (cf: P.L.1971, c.198, s.37)

39

40 41. R.S.40:8-2 is amended to read as follows:

41 40:8-2. The governing body of any municipality may acquire,  
42 establish, construct, own, control, lease, equip, improve, maintain,  
43 operate and regulate airports or landing fields for the use of airplanes  
44 and other aircraft within or without the limits of such municipality and  
45 may use for such purpose or purposes any property, owned or  
46 controlled by such municipality, suitable therefor, provided that the  
47 provision or performance of goods or services in connection with the

1 operation, management or administration of an airport shall be done  
2 pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
3 (C.40A:11-1 et seq.) and any supplements thereto.  
4 (cf: P.L.1947, c.85, s.1)

5

6 42. R.S.40:8-3 is amended to read as follows:

7 40:8-3. The governing body of any county may acquire, by lease  
8 or purchase, and establish, construct, own, control, lease, equip,  
9 improve, maintain, operate and regulate airports or landing fields for  
10 the use of airplanes and other aircraft within the limits of such  
11 counties, and may use for such purpose or purposes any property,  
12 owned or controlled by such county, suitable therefor, provided that  
13 the provision or performance of goods or services in connection with  
14 the operation, management or administration of an airport shall be  
15 done pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
16 (C.40A:11-1 et seq.) and any supplements thereto.  
17 (cf: R.S.40:8-3)

18

19 43. R.S.40:8-6 is amended to read as follows:

20 40:8-6. The governing body of a municipality or county which has  
21 established an airport or landing field and acquired, leased or set apart  
22 real property for such purpose may construct, improve, equip,  
23 maintain and operate the same, or may vest jurisdiction for the  
24 construction, improvement, equipment, maintenance and operation  
25 thereof, in any suitable officer, board or body of such municipality or  
26 county. Provision or performance of goods or services in connection  
27 with the operation, management or administration of an airport shall  
28 be done pursuant to the "Local Public Contracts Law," P.L.1971,  
29 c.198 (C.40A:11-1 et seq.) and any supplements thereto. The  
30 expenses of such construction, improvement, equipment, maintenance  
31 and operation shall be a municipal or county charge, as the case may  
32 be.

33 The governing body of any municipality or county may adopt  
34 regulations and establish fees or charges for the use of such airport or  
35 landing field, or may authorize an officer, board or body of such  
36 municipality or county having jurisdiction to adopt such regulations  
37 and establish such fees or charges, subject, however, to the approval  
38 of such governing body before they shall take effect.

39 (cf: R.S.40:8-6)

40

41 44. (New section) Pursuant to the "Administrative Procedure  
42 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
43 Division of Local Government Services after consultation with the  
44 Commissioner of Education may adopt rules implementing the  
45 provisions of the "Local Public Contracts Law," P.L.1971, c.198  
46 (C.40A:11-1 et seq.) and the "Public Schools Contracts Law,"  
47 N.J.S.18A:18A-1 et seq..

- 1       45. (New section) Notwithstanding the provisions of any law, rule  
2 or regulation to the contrary, competitive contracting may be used by  
3 boards of education in lieu of public bidding for procurement of  
4 specialized goods and services the price of which exceeds the bid  
5 threshold, for the following purposes:
- 6       a. The purchase or licensing of proprietary computer software  
7 designed for board of education purposes, which may include  
8 hardware intended for use with the proprietary software. This  
9 subsection shall not be utilized for the purpose of acquiring general  
10 purpose computer hardware or software;
- 11       b. The hiring of a for-profit entity or a not-for-profit entity  
12 incorporated under Title 15A of the New Jersey Statutes for the  
13 purpose of:
- 14       (1) the operation, management or administration of recreation or  
15 social service facilities or programs; or
- 16       (2) the operation, management or administration of data processing  
17 services;
- 18       c. Services performed by an energy services company, including  
19 the design, measurement, financing and maintenance of energy savings  
20 equipment or renovations, which result in payment derived, in whole  
21 or in part, from the sale of verified energy savings over the term of an  
22 agreement with a public utility or subsidiary, but not the provision or  
23 performance of the physical improvements that result in energy  
24 savings, provided that such savings are calculated pursuant to  
25 guidelines promulgated by the Board of Public Utilities and further  
26 provided that the Local Finance Board, in consultation with the State  
27 Board of Education, shall find that the terms and conditions of any  
28 financing agreement are reasonable;
- 29       d. Telecommunications transmission or switching services that are  
30 not part of a tariff or schedule of charges filed with the Board of  
31 Public Utilities;
- 32       e. The purchase of specialized machinery or equipment of a  
33 technical nature, or servicing thereof, which will not reasonably permit  
34 the drawing of specifications;
- 35       f. Food services provided by food service management companies  
36 when not part of programs administered by the New Jersey  
37 Department of Agriculture, Bureau of Child Nutrition Programs;
- 38       g. Driver education courses provided by licensed driver education  
39 schools;
- 40       h. At the option of the board of education, any good or service that  
41 is exempt from bidding pursuant to N.J.S.18A:18A-5;
- 42       i. Laboratory testing services;
- 43       j. Concessions;
- 44       k. The operation, management or administration of other services,  
45 with the approval of the Division of Local Government Services in the  
46 Department of Community Affairs.
- 47       Any purpose included herein shall not be considered by a board of  
48 education as an extraordinary unspecifiable service pursuant to

1 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

2

3 46. (New section) Unless an exception is provided for under  
4 N.J.S.18A:18A-42 permitting a longer contract duration, contracts  
5 awarded pursuant to section 49 of P.L. , c. (C. ) (pending before  
6 the Legislature as this bill) may be for a term not to exceed five years.

7

8 47. (New section) a. In order to initiate competitive contracting,  
9 the board of education shall pass a resolution authorizing the use of  
10 competitive contracting each time specialized goods or services  
11 enumerated in section 45 of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill) are desired to be contracted. If the desired  
13 goods or services have previously been contracted for using the  
14 competitive contracting process then the original resolution of the  
15 board of education shall suffice.

16 b. The competitive contracting process shall be administered by a  
17 purchasing agent qualified pursuant to subsection b. (pending before  
18 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
19 c.198 (C.40A:11-9) or by legal counsel of the board of education, or  
20 by the school business administrator of the board of education. Any  
21 contracts awarded under this process shall be made by resolution of  
22 the board of education subject to the provisions of subsection e. of  
23 section 49 of P.L. , c. (C. )(now before the Legislature as this bill).

24

25 48. (New section) The competitive contracting process shall utilize  
26 request for proposals documentation in accordance with the following  
27 provisions:

28 a. The purchasing agent or counsel or school business  
29 administrator shall prepare or have prepared request for proposal  
30 documentation, which shall include: all requirements deemed  
31 appropriate and necessary to allow for full and free competition  
32 between vendors; information necessary for potential vendors to  
33 submit a proposal; and a methodology by which the board of education  
34 will evaluate and rank proposals received from vendors.

35 b. The methodology for the awarding of competitive contracts shall  
36 be based on an evaluation and ranking, which shall include technical,  
37 management, and cost related criteria, and may include a weighting of  
38 criteria, all developed in a way that is intended to meet the specific  
39 needs of the contracting unit, and where such criteria shall not unfairly  
40 or illegally discriminate against or exclude otherwise capable vendors.  
41 When an evaluation methodology uses a weighting of criteria, at the  
42 option of the board of education the weighting to be accorded to each  
43 criterion may be disclosed to vendors prior to receipt of the proposals.  
44 The methodology for awarding competitive contracts shall comply  
45 with such rules and regulations as the Director of the Division of Local  
46 Government Services in the Department of Community Affairs, after  
47 consultation with the Commissioner of Education may adopt pursuant

1 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
2 et seq.).

3 c. At no time during the proposal solicitation process shall the  
4 purchasing agent or counsel or school business administrator convey  
5 information, including price, to any potential vendor which could  
6 confer an unfair advantage upon that vendor over any other potential  
7 vendor. If a purchasing agent or counsel or school business  
8 administrator desires to change proposal documentation, the  
9 purchasing agent or counsel or school business administrator shall  
10 notify only those potential vendors who received the proposal  
11 documentation of any and all changes in writing and all existing  
12 documentation shall be changed appropriately .

13 d. All proposals and contracts shall be subject to the provisions of  
14 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
15 statement of corporate ownership and the provisions of P.L.1975,  
16 c.127 (C.10:5-31 et seq.) concerning equal employment opportunity  
17 and affirmative action.

18

19 49. (New section) Competitive contracting proposals shall be  
20 solicited in the following manner:

21 a. A notice of the availability of request for proposal  
22 documentation shall be published in an official newspaper of the board  
23 of education at least 20 days prior to the date established for the  
24 submission of proposals. The board of education shall promptly reply  
25 to any request by an interested vendor by providing a copy of the  
26 request for proposals. The board of education may charge a fee for  
27 the proposal documentation that shall not exceed \$50.00 or the cost  
28 of reproducing the documentation, whichever is greater.

29 b. Each interested vendor shall submit a proposal which shall  
30 include all the information required by the request for proposals.  
31 Failure to meet the requirements of the request for proposals may  
32 result in the board of education disqualifying the vendor from further  
33 consideration. Under no circumstances shall the provisions of a  
34 proposal be subject to negotiation by the board of education.

35 c. If the board of education, at the time of solicitation, utilizes its  
36 own employees to provide the goods or perform the services, or both  
37 considered for competitive contracting, the board of education shall,  
38 at any time prior to, but no later than the time of solicitation for  
39 competitive contracting proposals, notify affected employees of the  
40 board of education's intention to solicit competitive contracting  
41 proposals. Employees or their representatives shall be permitted to  
42 submit recommendations and proposals affecting wages, hours, and  
43 terms and conditions of employment in such a manner as to meet the  
44 goals of the competitive contract. If employees are represented by an  
45 organization that has negotiated a contract with the board of  
46 education, only the bargaining unit shall be authorized to submit such  
47 recommendations or proposals. When requested by such employees,  
48 the board of education shall provide such information regarding

1 budgets and the costs of performing the services by such employees as  
2 may be available. Nothing shall prevent such employees from making  
3 recommendations that may include modifications to existing labor  
4 agreements in order to reduce such costs in lieu of award of a  
5 competitive contract, and agreements implementing such  
6 recommendations may be considered as cause for rejecting all other  
7 proposals.

8 d. The purchasing agent or counsel or school business  
9 administrator shall evaluate all proposals only in accordance with the  
10 methodology described in the request for proposals. After proposals  
11 have been evaluated, the purchasing agent or counsel or school  
12 business administrator shall prepare a report evaluating and  
13 recommending the award of a contract or contracts. The report shall  
14 list the names of all potential vendors who submitted a proposal and  
15 shall summarize the proposals of each vendor. The report shall rank  
16 vendors in order of evaluation, shall recommend the selection of a  
17 vendor or vendors, as appropriate, for a contract, shall be clear in the  
18 reasons why the vendor or vendors have been selected among others  
19 considered, and shall detail the terms, conditions, scope of services,  
20 fees, and other matters to be incorporated into a contract. The report  
21 shall be made available to the public at least 48 hours prior to the  
22 awarding of the contract, or when made available to the board of  
23 education, whichever is sooner. The board of education shall have the  
24 right to reject all proposals for any of the reasons set forth in  
25 N.J.S.18A:18A-22.

26 e. Award of a contract shall be made by resolution of the board of  
27 education within 60 days of the receipt of the proposals, except that  
28 the proposals of any vendors who consent thereto, may, at the request  
29 of the board of education, be held for consideration for such longer  
30 period as may be agreed.

31 f. The report prepared pursuant to subsection d. of this section  
32 shall become part of the public record and shall reflect the final action  
33 of the board of education. Contracts shall be executed pursuant to  
34 N.J.S.18A:18A-40.

35 g. The secretary of the board of education shall publish a notice in  
36 the official newspaper of the board of education summarizing the  
37 award of a contract, which shall include but not be limited to, the  
38 nature, duration, and amount of the contract, the name of the vendor  
39 and a statement that the resolution and contract are on file and  
40 available for public inspection in the office of the secretary of the  
41 board of education.

42 h. The Director of the Division of Local Government Services in  
43 the Department of Community Affairs, after consultation with the  
44 Commissioner of Education, may adopt additional rules and  
45 regulations, in accordance with the "Administrative Procedure Act,"  
46 P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to  
47 effectuate the provisions of sections 45 through 49 of P.L. , c. (C. )  
48 (pending before the Legislature as this bill).

1 50. N.J.S.18A:18A-2 is amended to read as follows:

2 18A:18A-2. As used in this chapter, unless the context otherwise  
3 indicates:

4 a. "Board of education" means and includes the board of education  
5 of any local school district, consolidated school district, regional  
6 school district, county vocational school and any other board of  
7 education or other similar body other than the State Board of  
8 Education, the Commission on Higher Education or the Presidents'  
9 Council, established and operating under the provisions of Title 18A  
10 of the New Jersey Statutes and having authority to make purchases  
11 and to enter into contracts[, agreements or leases] for the provision  
12 or performance of [any work or the furnishing or hiring of any  
13 materials, supplies, equipment or services usually required, the cost or  
14 contract price is to be paid with or out of board funds] goods or  
15 services. The term "board of education" also shall include the board  
16 of trustees of a charter school established under P.L.1995, c.426  
17 (C.18A:36A-1 et seq.).

18 b. "[Contracting] Purchasing agent" means the secretary, business  
19 administrator or the business manager of the board of education duly  
20 assigned the authority, responsibility and accountability for the  
21 purchasing activity of the board of education and having the power to  
22 prepare advertisements, to advertise for and receive bids and to [make  
23 awards for the board of education in connection with purchases,]  
24 award contracts [or agreements] as permitted by this chapter, but if  
25 there be no secretary, business administrator or business manager,  
26 such officer, committees or employees to whom such power has been  
27 delegated by the board of education.

28 c. ["Contracts" for the purpose of this chapter means contracts  
29 or agreements for the performance of work or the furnishing or hiring  
30 of services, materials, or supplies as distinguished from contracts of  
31 employment.] (Deleted by amendment, P.L. , c. .) (Pending before  
32 the Legislature as this bill.)

33 d. "District" means and includes any local school district,  
34 consolidated school district, regional school district, county vocational  
35 school and any other board of education or other similar body other  
36 than the State board, established under the provisions of Title 18A of  
37 the New Jersey Statutes.

38 e. ["Legal newspaper" means a newspaper circulating in the  
39 district, printed and published in the English language at least once a  
40 week for at least one year continuously.] (Deleted by amendment,  
41 P.L. , c. .) (Pending before the Legislature as this bill.)

42 f. ["Materials" includes goods and property subject to Article 2 of  
43 Title 12A of the New Jersey Statutes, apparatus, or any other tangible  
44 thing, except real property or any interest therein .] (Deleted by  
45 amendment, P.L. , c. .) (Pending before the Legislature as this bill.)

46 g. "Extraordinary unspecifiable services" means services which are  
47 specialized and qualitative in nature requiring expertise, extensive

- 1 training and proven reputation in the field of endeavor.
- 2 h. "Professional services" means services rendered or performed  
3 by a person authorized by law to practice a recognized profession and  
4 whose practice is regulated by law and the performance of which  
5 services requires knowledge of an advanced type in a field of learning  
6 acquired by a prolonged formal course of specialized instruction and  
7 study as distinguished from general academic instruction or  
8 apprenticeship and training. Professional services may also [means]  
9 mean services rendered in the provision or performance of [work]  
10 goods or services that [is] are original and creative in character in a  
11 recognized field of artistic endeavor.
- 12 i. ["Project" means any work, undertaking, construction or  
13 alteration.] (Deleted by amendment, P.L. , c. ) (Pending before the  
14 Legislature as this bill.)
- 15 j. "Purchases" [are] means transactions, for a valuable  
16 consideration, creating or acquiring an interest in goods, services and  
17 property, except real property or any interest therein.
- 18 k. "Work" [includes services and any other activity of a tangible  
19 or intangible nature] means any task, program, undertaking, or  
20 activity, related to any development, redevelopment, construction or  
21 reconstruction performed or [assumed] provided pursuant to a  
22 contract [or agreement] with a board of education.
- 23 l. "Aggregate" means the sums expended or to be expended for the  
24 provision or performance of any goods or services in connection with  
25 the same immediate purpose or task, or the furnishing of similar goods  
26 or services, during the same contract year through a contract awarded  
27 by a purchasing agent.
- 28 m. "Bid threshold" means the dollar amount set in N.J.S.18A:18A-  
29 3, above which a board of education shall advertise for and receive  
30 sealed bids in accordance with procedures set forth in N.J.S.18A:18A-  
31 1 et seq.
- 32 n. "Contract" means any agreement, including but not limited to a  
33 purchase order or a formal agreement, which is a legally binding  
34 relationship enforceable by law, between a vendor who agrees to  
35 provide or perform goods or services and a board of education which  
36 agrees to compensate a vendor, as defined by and subject to the terms  
37 and conditions of the agreement. A contract also may include an  
38 arrangement whereby a vendor compensates a board of education for  
39 the vendor's right to perform a service, such as, but not limited to,  
40 operating a concession.
- 41 o. "Contract year" means the period of 12 consecutive months  
42 following the award of a contract.
- 43 p. "Competitive contracting" means the method described in  
44 sections 45 through 49 of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) of contracting for specialized goods and  
46 services in which formal proposals are solicited from vendors; formal  
47 proposals are evaluated by the purchasing agent or counsel or school



1 business administrator; and the board of education awards a contract  
2 to a vendor or vendors from among the formal proposals received.

3 q. "Goods and services" or "goods or services" means any work,  
4 labor, commodities, equipment, materials, or supplies of any tangible  
5 or intangible nature, except real property or any interest therein,  
6 provided or performed through a contract awarded by a purchasing  
7 agent , including goods and property subject to N.J.S.12A:2-101 et  
8 seq.

9 r. "Library and educational goods and services" means textbooks,  
10 copyrighted materials, student produced publications and services  
11 incidental thereto, including but not limited to books, periodicals,  
12 newspapers, documents, pamphlets, photographs, reproductions,  
13 microfilms, pictorial or graphic works, musical scores, maps, charts,  
14 globes, sound recordings, slides, films, filmstrips, video and magnetic  
15 tapes, other printed or published matter and audiovisual and other  
16 materials of a similar nature, necessary binding or rebinding of library  
17 materials, and specialized computer software used as a supplement or  
18 in lieu of textbooks or reference material.

19 s. "Lowest price" means the least possible amount that meets all  
20 requirements of the request of a purchasing agent.

21 t. "Lowest responsible bidder or vendor" means the bidder or  
22 vendor: (1) whose response to a request for bids offers the lowest  
23 price and is responsive; and (2) who is responsible.

24 u. "Official newspaper" means any newspaper designated by the  
25 board of education pursuant to R.S.35:1-1 et seq.

26 v. "Purchase order" means a document issued by the purchasing  
27 agent authorizing a purchase transaction with a vendor to provide or  
28 perform goods or services to the board of education, which, when  
29 fulfilled in accordance with the terms and conditions of a request of a  
30 purchasing agent and other provisions and procedures that may be  
31 established by the board of education, will result in payment by the  
32 board of education.

33 w. "Quotation" means the response to a formal or informal request  
34 made by a purchasing agent to a vendor for provision or performance  
35 of goods or services, when the aggregate cost is less than the bid  
36 threshold. Quotations may be in writing, or taken verbally if a record  
37 is kept by the purchasing agent.

38 x. "Responsible" means able to complete the contract in  
39 accordance with its requirements, including but not limited to  
40 requirements pertaining to experience, moral integrity, operating  
41 capacity, financial capacity, credit, and workforce, equipment, and  
42 facilities availability.

43 y. "Responsive" means conforming in all material respects to the  
44 terms and conditions, specifications, legal requirements, and other  
45 provisions of the request.

46 z. "Public works" means building, altering, repairing, improving or  
47 demolishing any public structure or facility constructed or acquired by  
48 a board of education to house school district functions or provide

1 water, waste disposal, power, transportation and other public  
2 infrastructures.

3 aa. "Concession" means the granting of a license or right to act for  
4 or on behalf of the board of education, or to provide a service  
5 requiring the approval or endorsement of the board of education, and  
6 which may or may not involve a payment or exchange, or provision of  
7 services by or to the board of education, provided that the term  
8 concession shall not include vending machines.

9 bb. "Index rate" means the rate of annual percentage increase,  
10 rounded to the nearest half-percent, in the Implicit Price Deflator for  
11 State and Local Government Purchases of Goods and Services,  
12 computed and published quarterly by the United States Department of  
13 Commerce, Bureau of Economic Analysis.

14 cc. "Proprietary" means goods or services of a specialized nature,  
15 that may be made or marketed by a person or persons having the  
16 exclusive right to make or sell them, when the need for such goods or  
17 services has been certified in writing by the board of education to be  
18 necessary for the conduct of its affairs.

19 dd. "Service or services" means the performance of work, or the  
20 furnishing of labor, time, or effort, or any combination thereof, not  
21 involving or connected to the delivery or ownership of a specified end  
22 product or goods or a manufacturing process. Service or services may  
23 also include an arrangement in which a vendor compensates the board  
24 of education for the vendor's right to operate a concession.

25 (cf: P.L.1994, c.48, s.59)

26

27 51. N.J.S.18A:18A-3 is amended to read as follows:

28 18A:18A-3. [a. Any purchase, contract or agreement for the  
29 performance of any work or the furnishing or hiring of materials or  
30 supplies,]

31 a. When the cost or price of [which, together with any other sums  
32 expended or foreseeably to be expended for the performance of any  
33 work or services in connection with the same project or the furnishing  
34 of similar materials or supplies during the same fiscal year paid with or  
35 out of school funds] any contract awarded by the purchasing agent in  
36 the aggregate, does not exceed in a contract year the total sum of  
37 [\$7,500.00 or the amount determined pursuant to subsection b. of this  
38 section, in the fiscal year or, in the case of purchases that are not  
39 annually recurring, in a period of one year] \$17,500, the contract may  
40 be [made, negotiated and] awarded by a [contracting] purchasing  
41 agent when so authorized by resolution of the board of education  
42 without public advertising for bids and bidding therefor, except that  
43 the board of education may adopt a resolution to set a lower threshold  
44 for the receipt of public bids or the solicitation of competitive  
45 quotations. If the purchasing agent is qualified pursuant to subsection  
46 b. (pending before the Legislature as section 15 of this bill) of section  
47 9 of P.L.1971, c.198 (C.40A:11-9) the board of education may

1 establish that the bid threshold may be up to \$25,000. Such  
2 authorization may be granted for each contract or by a general  
3 delegation of the power to negotiate and award such contracts  
4 pursuant to this section.

5 b. Commencing [January 1, 1983 and every two] in the fifth year  
6 after the year in which P.L. , c. (now before the Legislature as this  
7 bill) takes effect, and every five years thereafter, the Governor, in  
8 consultation with the Department of Treasury, shall adjust the  
9 threshold amount and the higher threshold amount which the board of  
10 education is permitted to establish as set forth in subsection a. of this  
11 section or the threshold amount resulting from any adjustment under  
12 this subsection, in direct proportion to the rise or fall of the  
13 [consumer price index for all urban consumers in the New York City  
14 and the Philadelphia areas as reported by the United States  
15 Department of Labor] index rate as that term is defined in  
16 N.J.S.18A:18A-2 (pending before the Legislature as section 50 of this  
17 bill), and shall round the adjustment to the nearest \$1,000. The  
18 Governor shall notify all local school districts of the adjustment no  
19 later than June 1 of every fifth year. The adjustment shall become  
20 effective on July 1 of the year in which it is [reported] made.

21 Any contract made pursuant to this section may be awarded for a  
22 period of 24 consecutive months, except that contracts for  
23 professional services pursuant to paragraph (1) of subsection a. of  
24 N.J.S.18A:18A-5 may be awarded for a period not exceeding 12  
25 consecutive months.

26 (cf: P.L.1983, c.171, s.1)

27

28 52. N.J.S.18A:18A-4 is amended to read as follows:

29 18A:18A-4. a. Every contract [or agreement] for the provision or  
30 performance of any [work or the furnishing or hiring of any materials  
31 or supplies] goods or services, the cost [or the contract price whereof  
32 is to be paid with or out of school funds, not included within the terms  
33 of N.J.S.18A:18A-3] of which in the aggregate exceeds the bid  
34 threshold, shall be [made and] awarded only by resolution of the  
35 board of education to the lowest responsible bidder after public  
36 advertising for bids and bidding therefor, except as is provided  
37 otherwise in this chapter or specifically by any other law.

38 [No work, materials or supplies shall be undertaken, acquired or  
39 furnished for a sum exceeding in the aggregate the amount set forth in,  
40 or calculated by the Governor pursuant to, N.J.S. 18A:18A-3, except  
41 by contract or agreement.] The board of education may, by resolution  
42 approved by a majority of the board of education and subject to  
43 subsections b. and c. of this section, disqualify a bidder who would  
44 otherwise be determined to be the lowest responsible bidder, if the  
45 board of education finds that it has had prior negative experience with  
46 the bidder.

47 b. As used in this section, "prior negative experience" means any

1 of the following:

2 (1) the bidder has been found, through either court adjudication,  
3 arbitration, mediation, or other contractually stipulated alternate  
4 dispute resolution mechanism, to have: failed to provide or perform  
5 goods or services; or failed to complete the contract in a timely  
6 manner; or otherwise performed unsatisfactorily under a prior contract  
7 with the board of education;

8 (2) the bidder defaulted on a contract, thereby requiring the board  
9 of education to utilize the services of another contractor to provide the  
10 goods or perform the services or to correct or complete the contract;

11 (3) the bidder defaulted on a contract, thereby requiring the board  
12 of education to look to the bidder's surety for completion of the  
13 contract or tender of the costs of completion; or

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

18 c. The following conditions apply if the board of education is  
19 contemplating a disqualification based on prior negative experience:

20 (1) The existence of any of the indicators of prior negative  
21 experience set forth in this section shall not require that a bidder be  
22 disqualified. In each instance, the decision to disqualify shall be made  
23 within the discretion of the board of education and shall be rendered  
24 in the best interests of the board of education.

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

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

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

40 (5) A disqualification<sup>1</sup>, other than a disqualification pursuant to  
41 which a board of education is prohibited by law from entering into a  
42 contract with a bidder,<sup>1</sup> may be voided or the period thereof may be  
43 reduced, in the discretion of the board of education, upon the  
44 submission of a good faith application under oath, supported by  
45 documentary evidence, setting forth substantial and appropriate  
46 grounds for the granting of relief, such as reversal of a judgment, or  
47 actual change of ownership, management or control of the bidder.

48 (6) An opportunity for a hearing need not be offered to a bidder

1 whose disqualification is based on its suspension or debarment by an  
2 agency or department of the executive branch of the State of New  
3 Jersey. The term of such a disqualification shall be concurrent with  
4 the term of the suspension or debarment by the State agency or  
5 department.

6 d. The purchase of text books and materials that exceed the bid  
7 threshold and are approved by a board of education pursuant to  
8 N.J.S.18A-34-1 shall not require the further adoption of a resolution  
9 for purchase.

10 (cf: P.L.1983, c.171, s.2)

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

13 18A:18A-5. Exceptions to requirement for advertising. Any  
14 [purchase,] contract [or agreement of the character described in  
15 N.J.S.18A:18A-4 may], the amount of which exceeds the bid  
16 threshold, shall be [made,] negotiated [or] and awarded by the board  
17 of education by resolution at a public meeting without public  
18 advertising for bids and bidding therefor if

19 a. The subject matter thereof consists of:

20 (1) Professional services. The board of education shall in each  
21 instance state supporting reasons for its action in the resolution  
22 awarding each contract and shall forthwith cause to be printed once,  
23 in an official newspaper, a brief notice stating the nature, duration,  
24 service and amount of the contract, and that the resolution and  
25 contract are on file and available for public inspection in the office of  
26 the board of education;

27 (2) Extraordinary unspecifiable services which cannot reasonably  
28 be described by written specifications[, which]. The application of  
29 this exception as to extraordinary unspecifiable services shall be  
30 construed narrowly in favor of open competitive bidding where  
31 possible and the [State Board of Education] Director of the Division  
32 of Local Government Services in the Department of Community  
33 Affairs is authorized to establish rules and regulations after  
34 consultation with the Commissioner of Education limiting its use in  
35 accordance with the intention herein expressed; and the board of  
36 education shall in each instance state supporting reasons for its action  
37 in the resolution awarding the contract for extraordinary unspecifiable  
38 services and shall forthwith cause to be printed, in the manner set forth  
39 in paragraph (1) of this subsection, a brief notice of the award of such  
40 contract;

41 (3) The doing of any work by employees of the [contracting unit]  
42 board of education;

43 (4) The printing of all legal notices; and legal briefs, records and  
44 appendices to be used in any legal proceeding in which the  
45 [contracting party] board of education may be a party;

46 (5) [Textbooks, copyrighted materials, kindergarten supplies, and  
47 student produced publications and services incidental thereto] Library

1 and educational goods and services;

2 (6) Food ~~services and~~ supplies, including food supplies for home  
3 economics classes, when purchased pursuant to rules and regulations  
4 of the State board and in accordance with the provisions of  
5 N.J.S.18A:18A-6;

6 (7) The supplying of any product or the rendering of any service  
7 by a public utility, which is subject to the jurisdiction of the Board of  
8 Public Utilities, in accordance with the tariffs and schedules of charges  
9 made, charged and exacted, filed with said board;

10 (8) The printing of bonds and documents necessary to the issuance  
11 and sale thereof by a board of education;

12 (9) Equipment repair service if in the nature of an extraordinary  
13 unspecifiable service and necessary parts furnished in connection with  
14 such services, which exception shall be in accordance with the  
15 requirements for extraordinary unspecifiable services;

16 (10) Insurance, including the purchase of insurance coverage and  
17 consultant services, which exception shall be in accordance with the  
18 requirements for extraordinary unspecifiable services;

19 (11) Publishing of legal notices in newspapers as required by law;

20 (12) The acquisition of artifacts or other items of unique intrinsic,  
21 artistic or historic character;

22 (13) ~~Election expenses, including advertising expenses incidental~~  
23 ~~thereto] Those goods and services necessary or required to prepare~~  
24 ~~and conduct an election;~~

25 (14) ~~Electronic data processing service obtained from another~~  
26 ~~board of education;] (Deleted by amendment, P.L. .c. .) (Pending~~  
27 ~~before the Legislature as this bill.)~~

28 (15) ~~Driver education courses provided by licensed driver~~  
29 ~~education schools;] <sup>1</sup>(Deleted by amendment, P.L. .c. .) (Pending~~  
30 ~~before the Legislature as this bill.)~~ ~~(Deleted by amendment, P.L.1999,~~  
31 ~~c.270).~~<sup>1</sup>

32 (16) ~~Performance of work or services or the furnishing of~~  
33 ~~materials, supplies or equipment for the purpose of conserving energy~~  
34 ~~in buildings owned by any local board of education, the entire price of~~  
35 ~~which shall be established as a percentage of the resultant savings in~~  
36 ~~energy costs;] (Deleted by amendment, P.L. .c. .) (Pending before~~  
37 ~~the Legislature as this bill.)~~

38 (17) The doing of any work by persons with disabilities employed  
39 by a sheltered workshop ~~].~~ :

40 (18) Expenses for travel and conferences;

41 (19) The provision or performance of goods or services for the  
42 support or maintenance of proprietary computer hardware and  
43 software, except that this provision shall not be utilized to acquire or  
44 upgrade non-proprietary hardware or acquire or update non-  
45 proprietary software;

46 (20) Purchases of goods and services at rates set by the Universal  
47 Service Fund administered by the Federal Communications

1 Commission:

2 (21) Goods and services paid with funds that: are raised by or  
3 collected from students to support the purchase of student oriented  
4 items or materials, such as yearbooks, class rings, and a class gift; and  
5 are deposited in school or student activity accounts; and require no  
6 budget appropriation from the board of education;

7 (22) Food services provided by food service management  
8 companies pursuant to procedures established by the New Jersey  
9 Department of Agriculture, Bureau of Child Nutrition Programs;

10 (23) Vending machines providing food or drink.

11 b. It is to be made or entered into with the United States of  
12 America, the State of New Jersey, county or municipality or any  
13 board, body, officer, agency [or], authority or board of education or  
14 any other state or subdivision thereof.

15 c. [The board of education has] Bids have been advertised [for  
16 bids] pursuant to N.J.S.18A:18A-4 on two occasions and [has  
17 received] (1) no bids have been received on both occasions in  
18 response to [its] the advertisement [and, after reasonable inquiry, it  
19 is determined that no board, body, officer, agency or authority of the  
20 United States, or of the State of New Jersey or of any county or  
21 municipality in which the board of education is located is willing and  
22 able to perform any work or furnish or hire any materials or supplies  
23 in conformity with the specifications of the board of education. Any],  
24 or (2) the board of education has rejected such bids on two occasions  
25 because it has determined that they are not reasonable as to price, on  
26 the basis of cost estimates prepared for or by the board of education  
27 prior to the advertising therefor, or have not been independently  
28 arrived at in open competition, or (3) on one occasion no bids were  
29 received pursuant to (1) and on one occasion all bids were rejected  
30 pursuant to (2), in whatever sequence; any such contract [or  
31 agreement entered into pursuant to this subsection c.] may then be  
32 [made,] negotiated [or] and may be awarded [only] upon adoption  
33 of a resolution by [the] a two-thirds affirmative vote of [two-thirds  
34 of] the [full] authorized membership of the board of education [at a  
35 meeting thereof] authorizing such a contract [or agreement.];  
36 provided, however, that:

37 (a) A reasonable effort is first made by the board of education to  
38 determine that the same or equivalent goods or services, at a cost  
39 which is lower than the negotiated price, are not available from an  
40 agency or authority of the United States, the State of New Jersey or  
41 of the county in which the board of education is located, or any  
42 municipality in close proximity to the board of education;

43 (b) The terms, conditions, restrictions and specifications set forth  
44 in the negotiated contract are not substantially different from those  
45 which were the subject of competitive bidding pursuant to  
46 N.J.S.18A:18A-4; and

47 (c) Any minor amendment or modification of any of the terms,

1 conditions, restrictions and specifications which were the subject of  
2 ~~the~~ competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated  
3 in the resolution awarding the contract; ~~provided further, however,~~  
4 ~~that if on the second occasion the bids received are rejected as~~  
5 ~~unreasonable as to price, the board of education shall notify each~~  
6 ~~responsible bidder submitting bids on the second occasion of its~~  
7 ~~intention to negotiate, and afford each bidder a reasonable opportunity~~  
8 ~~to negotiate, but the board of education shall not award such contract~~  
9 ~~unless the negotiated price is lower than the lowest rejected bid price~~  
10 ~~submitted on the second occasion by a responsible bidder, is the~~  
11 ~~lowest negotiated price offered by any responsible vendor, and is a~~  
12 ~~reasonable price for such goods or services.~~

13 d. [The board of education has advertised for bids pursuant to  
14 N.J.S.18A:18A-4 on two occasions and has rejected such bids on each  
15 occasion because the board of education has determined that they are  
16 not reasonable as to price on the basis of cost estimates prepared for  
17 the board of education prior to the advertising therefor or have not  
18 been independently arrived at in open competition, but no such  
19 contract or agreement may be entered into after such rejection of bids,  
20 unless:

21 (1) Notification of the intention to negotiate and a reasonable  
22 opportunity to negotiate shall have been given by the board of  
23 education to each responsible bidder;

24 (2) The negotiated price is lower than the lowest rejected bid price  
25 of a responsible bidder who bid thereon and is the lowest negotiated  
26 price offered by any responsible supplier and is a reasonable price for  
27 such work, materials, supplies or services;

28 (3) Any amendment or modification of the terms, conditions,  
29 restrictions and specifications which were the subject of competitive  
30 bidding pursuant to N.J.S.18A:18A-4 shall be stated in the resolution  
31 awarding the contract; and

32 (4) The negotiated price is lower than the price of the same or  
33 equivalent materials or supplies available from the State, county or  
34 municipality in which the board of education is located.]

35 Whenever a board of education shall determine that a bid was not  
36 arrived at independently in open competition pursuant to ~~this~~  
37 subsection ~~[d.] c.(2)~~ of N.J.S.18A:18A-5, it shall thereupon notify the  
38 county prosecutor of the county in which the board of education is  
39 located and the Attorney General of the facts upon which its  
40 determination is based, and when appropriate, it may institute  
41 appropriate proceedings in any State or federal court of competent  
42 jurisdiction for a violation of any State or federal antitrust law or laws  
43 relating to the unlawful restraint of trade.

44 e. The board of education has solicited and received at least three  
45 quotations on materials, supplies or equipment for which a State  
46 contract has been issued pursuant to N.J.S.18A:18A-10, and the  
47 lowest responsible quotation is at least 10% less than the price the



1 board would be charged for the identical materials, supplies or  
2 equipment, in the same quantities, under the State contract. Any such  
3 contract or agreement entered into pursuant to subsection d. or  
4 subsection e. may be made, negotiated or awarded only upon adoption  
5 of a resolution by the affirmative vote of two-thirds of the full  
6 membership of the board of education at a meeting thereof authorizing  
7 such a contract or agreement.<sup>1</sup>A copy of the purchase order relating  
8 to any such contract, the requisition for purchase order, if applicable,  
9 and documentation identifying the price of the materials, supplies or  
10 equipment under the State contract and the State contract number  
11 shall be filed with the Director of the Division of Local Government  
12 Services in the Department of Community Affairs within five working  
13 days of the award of any such contract by the board of education. The  
14 director shall notify the board of education of receipt of the material  
15 and shall make the material available to the State Treasurer. The  
16 board of education shall make available to the director upon request  
17 any other documents relating to the solicitation and award of the  
18 contract, including, but not limited to, quotations, requests for  
19 quotations, and resolutions.<sup>1</sup>

20 (cf: P.L.1999, c.270, s.1)

21

22 54. N.J.S.18A:18A-7 is amended to read as follows:

23 18A:18A-7. Emergency [purchases and] contracts. Any  
24 [purchase,] contract [or agreement] may be [made,] negotiated or  
25 awarded for a board of education without public advertising for bids  
26 and bidding therefor, notwithstanding that the [cost or] contract  
27 price will exceed the [amount set forth in, or calculated by the  
28 Governor pursuant to, N.J.S.18A:18A-3] bid threshold when an  
29 emergency affecting the health or safety of occupants of school  
30 property requires the immediate delivery of [the articles] goods or  
31 the performance of [the service] services, provided that the  
32 [awarding or making of such purchases,] contracts [or agreements  
33 are made] are awarded in the following manner:

34 a. [ A written requisition for the performance of such work or  
35 labor, or the furnishing of materials, supplies or services is filed with  
36 the contracting agent or his deputy in charge describing the nature of  
37 the emergency, the time of its occurrence and the need for invoking  
38 this section, certified by the employee in charge of the building,  
39 facility or equipment wherein the emergency occurred.

40 The contracting agent, or his deputy in charge, being satisfied that  
41 the emergency exists, is hereby authorized to award a contract for said  
42 work or labor, materials, supplies or services.] The official in charge  
43 of the building, facility or equipment wherein the emergency occurred  
44 or such other officer or employee as may be authorized to act in place  
45 of that official, shall notify the purchasing agent or a supervisor of the  
46 purchasing agent of the need for the performance of a contract, the  
47 nature of the emergency, the time of its occurrence and the need for

1 invoking this section. If that person is satisfied that an emergency  
2 exists, that person shall be authorized to award a contract or contracts  
3 for such purposes as may be necessary to respond to the emergent  
4 needs. Such notification shall be reduced to writing and filed with the  
5 purchasing agent as soon as practicable.

6 b. Upon the furnishing of such [work or labor, materials, supplies]  
7 goods or services, in accordance with the terms of the contract [or  
8 agreement], the contractor furnishing such [work or labor, materials,  
9 supplies] goods or services, shall be entitled to be paid therefor and  
10 the board of education shall be obligated for said payment. The board  
11 of education shall take such action as shall be required to provide for  
12 the payment of the contract price.

13 c. The [State Board of Education] Division of Local Government  
14 Services in the Department of Community Affairs, after consultation  
15 with the Commissioner of Education, shall prescribe rules and  
16 procedures to implement the requirements of this section.

17 d. The board of education may prescribe additional rules and  
18 procedures to implement the requirements of this section.

19 (cf: P.L.1983, c.171, s.3)

20

21 55. N.J.S.18A:18A-8 is amended to read as follows:

22 18A:18A-8. Contracts not to be divided. [ No purchase, contract  
23 or agreement, which is single in character or which necessarily or by  
24 reason of the quantities required to effectuate the purpose of the  
25 purchase, contract or agreement, includes the furnishing of additional  
26 services or equipment or buying materials or supplies or the doing of  
27 additional work, shall be subdivided, so as to bring it or any of the  
28 parts thereof under the maximum price or cost limitation of the  
29 amount set forth in, or calculated by the Governor pursuant to, N.J.S.  
30 18A:18A-3, thus dispensing with the requirement of public advertising  
31 and bidding therefor. In purchasing or contracting for, or agreeing  
32 for the furnishing of, any services, equipment, materials or supplies,  
33 the doing of any work included in or incident to the performance or  
34 completion of any project, which is single in character or inclusive of  
35 the furnishing of additional services or equipment or buying materials  
36 or supplies or the doing of additional work, or which requires the  
37 furnishing of more than one article of equipment or buying materials  
38 or supplies, all of the services, materials or supplies requisite for the  
39 completion of such project shall be included in one purchase, contract  
40 or agreement.] a. No contract in the aggregate which is single in  
41 character or which necessarily or by reason of the quantities required  
42 to effectuate the purpose of the contract includes the provision or  
43 performance of additional goods or services, shall be divided, so as to  
44 bring it or any of the parts thereof under the bid threshold, for the  
45 purpose of dispensing with the requirement of public advertising and  
46 bidding therefor.

47 b. In contracting for the provision or performance of any goods or

1 services included in or incidental to the provision or performance of  
2 any work which is single in character or inclusive of the provision or  
3 performance of additional goods or services, all of the goods or  
4 services requisite for the completion of such contract shall be included  
5 in one contract.

6 (cf: P.L.1983, c.171, s.4)

7

8 56. (New section) For the purpose of ensuring consistency  
9 between the "Local Public Contracts Law, " P.L.1971, c.198  
10 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
11 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
12 Government Services in the Department of Community Affairs, after  
13 consultation with the Commissioner of Education, and pursuant to the  
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
15 seq.), shall adopt rules concerning determinations of aggregation for  
16 the purposes of whether a contract is subject to public bidding as set  
17 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
18 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
19 N.J.S.18A:18A-8.

20

21 57. N.J.S.18A:18A-9 is amended to read as follows:

22 18A:18A-9. Periodic solicitation of bids. Every board of education  
23 shall, on an annual basis or at such lesser intervals to be fixed by it,  
24 solicit by public advertisement the submission of bids for the  
25 **[furnishing of all work, materials and supplies]** provision or  
26 performance of goods or services which are and which under  
27 N.J.S.18A:18A-4 can be **[purchased or agreed or]** contracted to be  
28 **[furnished]** provided or performed only after public advertisement for  
29 bids and bidding therefor and all **[purchases, or]** contracts **[or**  
30 **agreements for the furnishing, of such work, materials and supplies]**  
31 for the provision or performance of such goods or services shall be  
32 **[made and]** awarded only in that manner.

33 (cf: N.J.S.18A:18A-9)

34

35 58. N.J.S.18A:18A-10 is amended to read as follows:

36 18A:18A-10. Board of education purchases through State agency;  
37 procedure. a. A board of education, without advertising for bids, or  
38 after having rejected all bids obtained pursuant to advertising therefor,  
39 by resolution may purchase any **[materials, supplies,]** goods**[,]** or  
40 services **[or equipment]** pursuant to a contract or contracts for such  
41 **[materials, supplies ,]** goods**[,]** or services **[or equipment]** entered  
42 into on behalf of the State by the Division of Purchase and Property.

43 b. A board of education may also use, without advertising for bids,  
44 or having rejected all bids obtained pursuant to advertising, the  
45 Federal Supply Schedules of the General Services Administration **[as**  
46 **permitted by the "Federal Acquisition Streamlining Act of 1994,"**  
47 **Pub.L.103-355, and federal regulations adopted thereunder.]**

1 promulgated by the Director of the Division of Purchase and Property  
2 in the Department of the Treasury pursuant to section 1 of P.L.1996,  
3 c.16 (C.52:34-6.1), subject to the following conditions:

4 (1) the price of the goods <sup>1</sup>or services<sup>1</sup> being procured is no  
5 greater than the price offered to federal agencies;

6 (2) the Federal Supply Schedules may be used only for purchases  
7 of up to \$500,000 per year or for one product unit at any price and  
8 only for reprographic equipment or services, including digital copiers,  
9 used by the board of education; <sup>1</sup>[and]<sup>1</sup>

10 (3) the board of education receives the benefit of federally  
11 mandated price reductions during the term of the contract and is  
12 protected from price increases during that time<sup>1</sup>;

13 (4) the price of the goods or services being procured is no greater  
14 than the price of the same or equivalent goods or services under the  
15 State contract, unless the board of education determines that because  
16 of factors other than price, selection of a vendor from the Federal  
17 Supply Schedules would be more advantageous to the board of  
18 education;

19 (5) a copy of the purchase order relating to any such contract, the  
20 requisition or request for purchase order, if applicable, and  
21 documentation identifying the price of the goods or services under the  
22 Federal Supply Schedules shall be filed with the Director of the  
23 Division of Local Government Services in the Department of  
24 Community Affairs within five working days of the award of any such  
25 contract by the board of education. The director shall notify the board  
26 of education of the receipt of the material and shall make the material  
27 available to the State Treasurer. The board of education shall make  
28 available to the director upon request any other documents relating to  
29 the solicitation and award of the contract<sup>1</sup> .

30 c. Whenever a purchase is made, the board of education shall place  
31 its order with the vendor offering the lowest price, including delivery  
32 charges, that best meets the requirements of the board of education.  
33 Prior to placing such an order, the board of education shall document  
34 with specificity that the [materials, supplies,] goods[, ] or services [or  
35 equipment] selected best meet the requirements of the board of  
36 education.

37 (cf: P.L.1996, c.16, s.4)

38  
39 59. N.J.S.18A:18A-11 is amended to read as follows:

40 18A:18A-11. Joint purchases by districts, municipalities, counties;  
41 authority. The boards of education of two or more districts may  
42 provide jointly by agreement for the [purchasing of supplies, materials  
43 or work] provision and performance of goods and services for their  
44 respective districts, or one or more boards of education may provide  
45 for such [purchases] provision or performance of goods or services  
46 by joint agreement with the governing body of [the] any municipality  
47 or county [within whose boundaries any such district is wholly or

1 partly located].  
2 (cf: N.J.S.18A:18A-11)

3

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

5 18A:18A-12. Contents of agreement. a. Such agreements shall be  
6 entered into by resolution adopted by each participating board of  
7 education, municipality or county and shall set forth the categories of  
8 [work, materials and supplies] goods or services to be [purchased]  
9 provided or performed, the manner of advertising for bids and of  
10 awarding of contracts, the method of payment by each participating  
11 board of education, municipality or county, and other matters deemed  
12 necessary to carry out the purposes of the agreement.

13 b. Each participant's share of expenditures for purchases under any  
14 such agreement shall be appropriated and paid in the manner set forth  
15 in the agreement and in the same manner as for other expenses of the  
16 participant.

17 (cf: N.J.S.18A:18A-12)

18

19 61. N.J.S.18A:18A-13 is amended to read as follows:

20 18A:18A-13. Purchases and agreements subject to law and rules  
21 and regulations. Such purchases and all [agreements] contracts  
22 pertaining thereto shall be subject to all provisions of law and the  
23 applicable rules and regulations of the State board.

24 (cf: N.J.S.18A:18A-13)

25

26 62. N.J.S.18A:18A-14 is amended to read as follows:

27 18A:18A-14. Controversies or disputes; determination; appeal.  
28 In the event that any controversy or dispute shall arise among the  
29 parties (except a municipality or county) to any such [agreement]  
30 contract, the same shall be referred to the county superintendent of the  
31 county in which the districts are situate for determination and his  
32 determination thereon shall be binding, subject to appeal to the  
33 commissioner and the State board pursuant to law. In the event that  
34 the districts are in more than one county, the controversy or dispute  
35 shall be referred to the county superintendents of the counties for joint  
36 determination, and if they shall be unable to agree upon a joint  
37 determination within 30 days, the controversy or dispute shall be  
38 referred to the commissioner for determination.

39 (cf: N.J.S.18A:18A-14)

40

41 63. N.J.S.18A:18A-15 is amended to read as follows:

42 18A:18A-15. Specifications generally. Any specifications for [an  
43 acquisition] the provision or performance of goods or services under  
44 this chapter[, whether by purchase, contract or agreement,] shall be  
45 drafted in a manner to encourage free, open and competitive bidding.  
46 In particular, no specifications under this chapter may:

47 a. Require any standard, restriction, condition or limitation not

1 directly related to the purpose, function or activity for which the  
2 ~~[purchase,] contract [or agreement] is [made] awarded;~~ or

3 b. Require that any bidder be a resident of, or that ~~[his] the~~  
4 ~~bidder's~~ place of business be located in, the county or school district  
5 in which the ~~[purchase] contract~~ will be~~[made] awarded~~ or ~~[the~~  
6 ~~contract or agreement]~~ performed, unless the physical proximity of the  
7 bidder is requisite to the efficient and economical ~~[purchase or]~~  
8 performance of the contract ~~[or agreement]~~; or

9 c. Discriminate on the basis of race, religion, sex, national origin  
10 ~~creed, color, ancestry, age, marital status, affectional or sexual~~  
11 ~~orientation, familial status, liability for service in the Armed Forces of~~  
12 ~~the United States, or nationality;~~ or

13 d. Require, with regard to any ~~[purchase,] contract [or~~  
14 ~~agreement]~~, the furnishing of any "brand name," but may in all cases  
15 require "brand name or equivalent," except that if the ~~[materials]~~  
16 ~~goods or services~~ to be ~~[supplied or purchased] provided or~~  
17 ~~performed~~ are ~~[patented or copyrighted] proprietary,~~ such ~~[materials~~  
18 ~~or supplies]~~ goods or services may be purchased by stipulating the  
19 proprietary goods or services in the bid specification in any case in  
20 which the resolution authorizing the ~~[purchase,] contract[, sale or~~  
21 ~~agreement]~~ so indicates, and the special need for such ~~[patented or~~  
22 ~~copyrighted [materials or supplies] proprietary goods or services~~ is  
23 directly related to the performance, completion or undertaking of the  
24 purpose for which the ~~[purchase,] contract [or agreement] is [made]~~  
25 ~~awarded;~~ or

26 e. Fail to include any option for renewal, extension, or release  
27 which the board of education may intend to exercise or require; or any  
28 terms and conditions necessary for the performance of any extra work;  
29 or fail to disclose any matter necessary to the substantial performance  
30 of the contract ~~[or agreement]~~.

31 The specifications for every contract for public work, the entire  
32 cost whereof will exceed \$20,000.00, shall provide that the board of  
33 education, through its authorized agent, shall upon completion of the  
34 contract report to the department as to the contractor's performance,  
35 and shall also furnish such report from time to time during  
36 performance if the contractor is then in default.

37 Any specification ~~[adopted by the board of education]~~ which  
38 knowingly excludes prospective bidders by reason of the impossibility  
39 of performance, bidding or qualification by any but one bidder, except  
40 as provided herein, shall be null and void and of no effect and ~~[such~~  
41 ~~purchase, contract or agreement]~~ shall be readvertised for receipt of  
42 new bids, and the original ~~[purchase,] contract [or agreement]~~ shall  
43 be set aside by the board of education.

44 No provision in this section shall be construed to prevent a board  
45 of education from designating that a contract[, subcontract or other  
46 means of procurement of] for goods[,] or services[, equipment or

1 construction] shall be awarded to a small business enterprise, a  
2 minority business enterprise or a women's business enterprise pursuant  
3 to P.L.1985, c.490 (C.18A:18A-51 et seq.).

4 Any prospective bidder who wishes to challenge a bid specification  
5 shall file such challenges in writing with the purchasing agent no less  
6 than three business days prior to the opening of the bids. Challenges  
7 filed after that time shall be considered void and having no impact on  
8 the board of education or the award of a contract.

9 (cf: P.L.1988, c.37, s.10)

10

11 64. (New section) Goods or services, the payment for which  
12 utilizes only funds received by a board of education from a bequest,  
13 legacy or gift, shall be subject to the provisions of N.J.S.18A:18A-1  
14 et seq., except that if such bequest, legacy or gift contains written  
15 instructions as to the specifications, manufacturer or vendor, or source  
16 of supply of the goods or services to be provided or performed, such  
17 instructions shall be honored.

18

19 65. N.J.S.18A:18A-18 is amended to read as follows:

20 18A:18A-18. Separate plans for various types of work; bids;  
21 contracts. In the preparation of plans and specifications for the  
22 construction, alteration or repair of any building by a board of  
23 education, when the entire cost of the work [and materials] will  
24 exceed the [amount set forth in, or calculated by the Governor  
25 pursuant to, N.J.S.18A:18A-3] bid threshold, separate plans and  
26 specifications shall be prepared for each of the following, and all work  
27 [and materials] kindred thereto to be performed or furnished in  
28 connection therewith:

29 a. The plumbing and gas fitting work;

30 b. The heating and ventilating systems and equipment;

31 c. The electrical work, including any electrical power plant;

32 d. The structural steel and ornamental iron work;

33 e. All other work [and materials] required for the completion of  
34 the project.

35 The board of education or its [contracting] purchasing agent shall  
36 advertise for and receive, in the manner provided by law, (1) separate  
37 bids for each of said branches of work, and (2) bids for all the work  
38 [and materials] , goods and services required to complete the building  
39 to be included in a single overall contract. There will be set forth in the  
40 bid the name or names of [, and evidence of performance security  
41 from,] all subcontractors to whom the bidder will subcontract the  
42 furnishing of plumbing and gas fitting, and all kindred work, and of the  
43 heating and ventilating systems and equipment, and electrical work,  
44 structural steel and ornamental iron work, each of which  
45 subcontractors shall be qualified in accordance with [this chapter]  
46 N.J.S.18A:18A-1 et seq. The school district shall require evidence of  
47 performance security to be submitted simultaneously with the list of

1 the subcontractors. Evidence of performance security may be supplied  
2 by the bidder on behalf of himself and any or all subcontractors, or by  
3 each respective subcontractor, or by any combination thereof which  
4 results in evidence of performance security equaling, but in no event  
5 exceeding, the total amount bid.

6 Contracts shall be awarded to the lowest responsible bidder. The  
7 contract shall be awarded in the following manner: If the sum total of  
8 the amounts bid by the lowest responsible bidder for each branch is  
9 less than the amount bid by the lowest responsible bidder for all the  
10 work [and materials], goods and services, the board of education shall  
11 award separate contracts for each of such branches to the lowest  
12 responsible bidder therefor, but if the sum total of the amount bid by  
13 the lowest responsible bidder for each branch is not less than the  
14 amount bid by the lowest responsible bidder for all the work [and  
15 materials] , goods and services, the board of education shall award a  
16 single overall contract to the lowest responsible bidder for all of such  
17 work [and materials] , goods and services. In every case in which a  
18 contract is awarded under (2) above, all payments required to be made  
19 under such contract for work [and materials] , goods and services  
20 supplied by a subcontractor shall, upon the certification of the  
21 contractor of the amount due to the subcontractor, be paid directly to  
22 the subcontractor.

23 (cf: P.L.1983, c.171, s.5)

24  
25 66. N.J.S.18A:18A-20 is amended to read as follows:

26 18A:18A-20. American goods and products to be used where  
27 possible. Each board of education shall provide, in the specifications  
28 for all contracts for work for which it will pay any part of the cost or  
29 work which by contract it will ultimately own and maintain, that only  
30 manufactured and farm products of the United States, wherever  
31 available, be used in such work.

32 (cf: N.J.S.18A:18A-20)

33  
34 67. N.J.S.18A:18A-21 is amended to read as follows:

35 18A:18A-21. Advertisements for bids; bids; general requirements.

36 a. Except as provided in section 5 of P.L.1985, c.490  
37 (C.18A:18A-55), all advertisements for bids shall be published in [a  
38 legal] an official newspaper sufficiently in advance of the date fixed  
39 for receiving the bids to promote competitive bidding, but in no event  
40 less than 10 days prior to such date.

41 b. The advertisement shall designate the manner of submitting and  
42 of receiving the bids and the time and place at which the bids will be  
43 received. If the published specifications provide for receipt of bids by  
44 mail, those bids which are mailed to the board of education shall be  
45 sealed and shall be opened only for examination at such time and place  
46 as all bids received are unsealed and announced. At such time and  
47 place the purchasing agent of the board of education shall publicly



1 receive the bids and thereupon immediately proceed to unseal them  
2 and publicly announce the contents, which announcement shall be  
3 made in the presence of any parties bidding or their agents who are  
4 then and there present. A proper record of the prices and terms shall  
5 be made in the minutes of the board. No bids shall be received after  
6 the time designated in the advertisement.

7 c. Notice of revisions or addenda to advertisements or bid  
8 documents shall be provided as follows:

9 (1) For all contracts except those for construction work, notice  
10 shall be published no later than five days, Saturdays, Sundays, and  
11 holidays excepted, prior to the date for acceptance of bids, in an  
12 official newspaper of the board of education and be provided to any  
13 person who has submitted a bid or who has received a bid package, in  
14 one of the following ways: (a) in writing by certified mail or (b) by  
15 certified facsimile transmission, meaning that the sender's facsimile  
16 machine produces a receipt showing date and time of transmission and  
17 that the transmission was successful or (c) by a delivery service that  
18 provides certification of delivery to the sender.

19 (2) For all contracts for construction work, notice shall be  
20 provided no later than seven days, Saturday, Sundays, or holidays  
21 excepted, prior to the date for acceptance of bids, to any person who  
22 has submitted a bid or who has received a bid package in any of the  
23 following ways: i) in writing by certified mail or ii) by certified  
24 facsimile transmission, meaning that the sender's facsimile machine  
25 produces a receipt showing date and time of transmission and that the  
26 transmission was successful or iii) by a delivery service that provides  
27 certification of delivery to the sender.

28 d. Failure of the board of education to advertise for the receipt of  
29 bids or to provide proper notification of revisions or addenda to  
30 advertisements or bid documents related to bids as prescribed by this  
31 section shall prevent the board of education from accepting the bids  
32 and require the readvertisement for bids pursuant to subsection a. of  
33 this section. Failure to obtain a receipt when good faith notice is sent  
34 or delivered to the address or telephone facsimile number on file with  
35 the board of education shall not be considered failure by the board of  
36 education to provide notice.

37 (cf: P.L.1985, c.490, s.12)

38  
39 68. N.J.S.18A:18A-22 is amended to read as follows:

40 18A:18A-22. **[Bids to conform to specifications; rejection]**  
41 **Rejection of bids. [No bid shall be accepted which does not conform**  
42 **to the specifications furnished therefor. Nothing contained in this**  
43 **chapter shall be construed as depriving any] A board of education [of**  
44 **the right to] may reject all bids for any of the following reasons:**

45 **a. The lowest bid substantially exceeds the cost estimates for the**  
46 **goods or services;**

47 **b. The lowest bid substantially exceeds the board of education's**

1 appropriation for the goods or services;

2 c. The board of education decides to abandon the project for  
3 provision or performance of the goods or services;

4 d. The board of education wants to substantially revise the  
5 specifications for the goods or services;

6 e. The purposes or provisions or both of N.J.S.18A:18A-1 et seq.  
7 are being violated; and

8 f. The board of education decides to use the State authorized  
9 contract pursuant to N.J.S.18A:18A-10 .

10 (cf: N.J.S.18A:18A-22)

11

12 69. N.J.S.18A:18A-24 is amended to read as follows:

13 18A:18A-24. Security to accompany bid; amount. There may be  
14 required from any person bidding on any contract [or agreement],  
15 advertised in accordance with law, that the bid be accompanied by a  
16 guarantee payable to the board of education that, if the contract [or  
17 agreement] is awarded to [him, he] the bidder, the bidder will enter  
18 into a contract therefor and will furnish any performance bond or  
19 other security required as a guarantee or indemnification. The  
20 guarantee shall be in the amount of 10% of the bid, but not in excess  
21 of \$20,000.00, except as otherwise provided herein, and may be  
22 given, at the option of the bidder, by certified check, cashier's check  
23 or bid bond. In the event that any law or regulation of the United  
24 States imposes any condition upon the awarding of a monetary grant  
25 to any board of education, which condition requires the depositing of  
26 a guarantee in an amount other than 10% of the bid or in excess of  
27 \$20,000.00, the provisions of this section shall not apply and the  
28 requirements of the law or regulation of the United States shall  
29 govern.

30 (cf: N.J.S.18A:18A-24)

31

32 70. N.J.S.18A:18A-25 is amended to read as follows:

33 18A:18A-25. Guarantee certificate. When a surety company bond  
34 is required in the advertisement or specifications for a contract [or  
35 agreement], every board of education shall require from any bidder  
36 submitting a bid in accordance with plans, specifications and  
37 advertisements, as provided for by law, a certificate from a surety  
38 company stating that it will provide the contractor with a bond in such  
39 sum as is required in the advertisement or in the specifications.

40 This certificate shall be obtained for a bond--

41 a. For the faithful performance of all provisions of the  
42 specifications or for all matters which may be contained in the notice  
43 to bidders, relating to the performance of the contract [or  
44 agreement]; including the guarantees required under article 12 of  
45 chapter 44 of Title 2A of the New Jersey Statutes; and

46 b. If any be required, for a guarantee bond for the faithful  
47 performance of the contract provisions relating to the repair and

1 maintenance of any work, project or facility and its appurtenances and  
2 keeping the same in good and serviceable condition during the term  
3 of the bond as provided for in the notice to bidders or in the  
4 specifications; or

5 c. In such other form as may be provided in the notice to bidders  
6 or in the specifications.

7 If a bidder desires to offer the bond of an individual instead of that  
8 of a surety company, [he] the bidder shall submit with [his] the bid  
9 a certificate signed by such individual similar to that required of a  
10 surety company.

11 The board of education may reject any such bid if it is not satisfied  
12 with the sufficiency of the individual surety offered.

13 (cf: N.J.S.18A:18A-25)

14

15 71. N.J.S.18A:18A-27 is amended to read as follows:

16 18A:18A-27. [Authority of State Board of Education to adopt  
17 regulations providing for qualification of bidders. The State Board of  
18 Education] The State Treasurer may establish reasonable regulations  
19 appropriate for controlling the qualifications of prospective bidders  
20 upon contracts for public [work] works, the entire cost whereof will  
21 exceed [\$20,000.00] the bid threshold, by the amount, class or  
22 category of [work to be performed or materials and supplies to be  
23 furnished or hired] goods or services to be provided or performed  
24 which may fix the qualifications required according to the financial  
25 ability and experience of the bidders and the capital and equipment  
26 available to them pertinent to and reasonably related to the class or  
27 category of [work to be performed or materials and supplies to be  
28 furnished or hired] goods or services to be provided or performed  
29 in the performance of any such contract, and may require each bidder to  
30 furnish a statement thereof.

31 Such regulations shall be written in a manner:

32 a. Which will not unnecessarily discourage full, free and open  
33 competition; or

34 b. Which will not unnecessarily restrict the participation of small  
35 business in the public bidding process; or

36 c. Which will not create undue preferences; or

37 d. Which will not violate any other provision of this chapter, or any  
38 other law.

39 No qualification rating of any bidder shall be influenced by [his] the  
40 bidder's race, religion, sex, national origin, nationality or [his] place  
41 of residence.

42 [In lieu of adopting any qualification regulation under this section,  
43 the State Board may, in whole or in part, delegate by regulation to the  
44 Department of the Treasury or other appropriate State agency with its  
45 consent, the authority to qualify bidders subject to this article.

46 "Department," as used in this article, shall mean the Department of  
47 Education, Department of the Treasury or other State agency to which

1 the authority to qualify bidders has been delegated by the State  
2 Board.]

3 Such regulations shall not be effective unless they have been  
4 adopted as provided in the "Administrative Procedure Act" ,  
5 P.L.1968, c.410 (C.52:14B-1 et seq.).  
6 (cf: P.L.1983, c.266, s.3)

7

8 72. N.J.S.18A:18A-36 is amended to read as follows:

9 18A:18A-36. Time for making awards, deposits returned. a. The  
10 board of education shall award the contract or reject all bids within  
11 such time as may be specified in the invitation to bid, but in no case  
12 more than 60 days, except that the bids of any bidders who consent  
13 thereto may, at the request of the board of education, be held for  
14 consideration for such longer period as may be agreed. All bid  
15 security except the security of the three apparent lowest responsible  
16 bidders shall, if requested, be returned after 10 days from the opening  
17 of the bids, Sundays and holidays excepted and the bids of such  
18 bidders shall be considered as withdrawn. Within 3 days after the  
19 awarding of the contract and the approval of the contractor's  
20 performance bond the bid security of the remaining unsuccessful  
21 bidders shall be returned to them forthwith, Sundays and holidays  
22 excepted.

23 b. The contract shall be signed by all parties within the time limit  
24 set forth in the specifications, which shall not exceed 21 days, Sundays  
25 and holidays excepted, after the making of the award; provided,  
26 however, that all parties to the contract may agree to extend the limit  
27 set forth in the specifications beyond the 21 day limit required in this  
28 subsection. The contractor, upon written request to the board of  
29 education, is entitled to receive, within seven days of the request, an  
30 authorization to proceed pursuant to the terms of the contract on the  
31 date set forth in the contract for work to commence, or, if no date is  
32 set forth in the contract, upon receipt of authorization. If for any  
33 reason the contract is not awarded and the bidders have paid for or  
34 paid a deposit for the plans and specifications to the board of  
35 education, the payment or deposit shall immediately be returned to the  
36 bidders when the plans and specifications are returned in reasonable  
37 condition within 90 days of notice that the contract has not been  
38 awarded.

39 (cf: N.J.S.18A:18A-36)

40

41 73. N.J.S.18A:18A-37 is amended to read as follows:

42 18A:18A-37. Award of purchases, contracts or agreements. All  
43 contracts enumerated in this section shall be awarded as follows:

44 [All purchases, contracts or agreements which require public  
45 advertisement for bids shall be awarded to the lowest responsible  
46 bidder.

47 Prior to the award of any other purchase, contract or agreement,  
48 the contracting agent shall, except in the case of the performance of

1 professional services, solicit quotations, whenever practicable, on any  
2 such purchase, contract or agreement the estimated cost or price of  
3 which is 20% or more of the amount set forth in, or calculated by the  
4 Governor pursuant to, N.J.S.18A:18A-3 and the award thereof shall  
5 be made, in accordance with N.J.S.18A:18A-3 or N.J.S.18A:18A-4,  
6 as the case may be, on the basis of the lowest responsible quotation  
7 received, which quotation is most advantageous to the board of  
8 education, price and other factors considered; provided, however, that  
9 if the contracting agent deems it impractical to solicit competitive  
10 quotations in the case of extraordinary unspecifiable service, or, in the  
11 case of such or any other purchase, contract or agreement awarded  
12 hereunder, having sought such quotations determines that it should not  
13 be awarded on the basis of the lowest quotation received, the  
14 contracting agent shall file a statement of explanation of the reason or  
15 reasons therefor, which shall be placed on file with said purchase,  
16 contract or agreement.]

17 a. For all contracts that in the aggregate are less than the bid  
18 threshold but 15 percent or more of that amount, and for those  
19 contracts that are for subject matter enumerated in subsection a. of  
20 N.J.S.18A:18A-5, except for paragraph (1) of that subsection  
21 concerning professional services and paragraph (3) of that subsection  
22 concerning work by employees of the board of education, the  
23 purchasing agent shall award the contract after soliciting at least two  
24 competitive quotations , if practicable . The award shall be made to  
25 a vendor whose response is most advantageous, price and other  
26 factors considered. The purchasing agent shall retain the record of the  
27 quotation solicitation and shall include a copy of the record with the  
28 voucher used to pay the vendor.

29 b. When in excess of the bid threshold, and after documented effort  
30 by the purchasing agent to secure competitive quotations, a contract  
31 for extraordinary unspecifiable services may be awarded when the  
32 purchasing agent has determined in writing that solicitation of  
33 competitive quotations is impracticable. Any such contract shall be  
34 awarded by resolution of the board of education.

35 c. If authorized by the board of education by resolution, all  
36 contracts that are in the aggregate less than 15 percent of the bid  
37 threshold may be awarded by the purchasing agent without soliciting  
38 competitive quotations.

39 d. Whenever two or more responses to a request of a purchasing  
40 agent offer equal prices and are the lowest responsible bids or  
41 proposals, the board of education may award the contract to the  
42 vendor whose response, in the discretion of the board of education, is  
43 the most advantageous, price and other factors considered. In such a  
44 case, the award resolution or purchase order documentation shall  
45 explain why the vendor selected is the most advantageous.

46 (cf: P.L.1983, c.171, s.6)

47

48 74. N.J.S.18A:18A-40 is amended to read as follows:

1 18A:18A-40. Form and execution of contracts and bonds. All  
2 contracts for the [performing of work or furnishing materials,  
3 supplies] provision or performance of goods or services shall be in  
4 writing. The State Board of Education may, subject to the  
5 requirements of law, prescribe the forms and manner in which  
6 contracts shall be made and executed, and the form and manner of  
7 execution and approval of all guarantee, indemnity, fidelity and other  
8 bonds.

9 (cf: N.J.S.18A:18A-40)

10

11 75. Section 1 of P.L.1987, c.343 (C.18A:18A-40.1) is amended to  
12 read as follows:

13 1. Any contract [or agreement], the total price of which exceeds  
14 \$100,000.00, entered into by a board of education involving the  
15 construction, reconstruction, alteration, repair or maintenance of any  
16 building, structure, facility or other improvement to real property, shall  
17 provide for partial payments to be made at least once each month as  
18 the work progresses, unless the contractor shall agree to deposit bonds  
19 with the board of education pursuant to section 2 of [this act]  
20 P.L.1987, c.343 (C.18A:18A-40.2).

21 (cf: P.L.1987, c.343, s.1)

22

23 76. Section 3 of P.L.1987, c.343 (C.18A:18A-40.3) is amended to  
24 read as follows:

25 3. With respect to any contract [or agreement] entered into by a  
26 board of education pursuant to section 1 of P.L.1987, c.343  
27 (C.18A:18A-40.1) for which the contractor shall agree to the  
28 withholding of payments pursuant to section 2 of P.L.1987, c.343  
29 (C.18A:18A-40.2), 5% of the amount due on each partial payment  
30 shall be withheld by the board of education pending completion of the  
31 contract [or agreement] if the contractor does not have a performance  
32 bond. If the contractor does have a performance bond, 2% of the  
33 amount due on each partial payment shall be withheld by the board of  
34 education when the outstanding balance of the contract exceeds  
35 \$500,000, and 5% of the amount due on each partial payment shall be  
36 withheld by the board of education when the outstanding balance of  
37 the contract is \$500,000 or less.

38 (cf: P.L.1993, c.18, s.1)

39

40 77. N.J.S.18A:18A-41 is amended to read as follows:

41 18A:18A-41. Liquidated damages. Any contract [or agreement]  
42 made pursuant to [this] chapter 18A of Title 18A of the New Jersey  
43 Statutes may include liquidated damages for the violation of any of the  
44 terms and conditions thereof or the failure to perform said contract  
45 [or agreement] in accordance with its terms and conditions, or the  
46 terms and conditions of [this] chapter 18A of Title 18A of the New

1 Jersey Statutes.

2 (cf: N.J.S.18A:18A-41)

3

4 78. N.J.S.18A:18A-42 is amended to read as follows:

5 18A:18A-42. Multiyear contracts. All contracts for the provision  
6 or performance of goods or services shall be awarded for a period not  
7 to exceed 24 consecutive months, except that contracts for  
8 professional services pursuant to paragraph (1) of subsection a. of  
9 N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12  
10 consecutive months. Any board of education may [enter into] award  
11 a contract [exceeding the fiscal year for the] for longer periods of  
12 time as follows:

13 a. Supplying of:

14 (1) Fuel for heating purposes, for any term not exceeding in the  
15 aggregate, three years;

16 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles  
17 or equipment, for any term not exceeding in the aggregate, three years;

18 (3) Thermal energy produced by a cogeneration facility, for use for  
19 heating or air conditioning or both, for any term not exceeding [20]  
20 40 years, when the contract is approved by the Board of Public  
21 Utilities. For the purposes of this paragraph, "cogeneration" means  
22 the simultaneous production in one facility of electric power and other  
23 forms of useful energy such as heating or process steam; or

24 b. Plowing and removal of snow and ice, for any term not  
25 exceeding in the aggregate, three years; or

26 c. Collection and disposal of garbage and refuse, for any term not  
27 exceeding in the aggregate, three years; or

28 d. Data processing service, for any term of not more than [five]  
29 seven years; or

30 e. Insurance, including the purchase of insurance coverages,  
31 insurance consultant or administrative services, and including  
32 participation in a joint self-insurance fund, risk management program  
33 or related services provided by a school board insurance group, or  
34 participation in an insurance fund established by a county pursuant to  
35 N.J.S.40A:10-6, or a joint insurance fund established pursuant to  
36 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than  
37 three years; or

38 f. Leasing or servicing of automobiles, motor vehicles, electronic  
39 communications equipment, machinery and equipment of every nature  
40 and kind and textbooks and non-consumable instructional materials,  
41 for any term not exceeding in the aggregate, five years; provided,  
42 however, such contracts shall be [entered into] awarded only subject  
43 to and in accordance with rules and regulations promulgated by the  
44 State Board of Education; or

45 g. Supplying of any product or the rendering of any service by a  
46 [telephone] company [which is subject to the jurisdiction of the

- 1 Board of Public Utilities] providing voice, data, transmission or  
2 switching services, for a term not exceeding five years; or
- 3 h. [ Materials, supplies or services that are required on a recurring  
4 basis from year to year, for any term not exceeding in the aggregate,  
5 two years; however, such contract may be renewed yearly for a period  
6 not exceeding three additional years without any further solicitation  
7 for bids or bidding upon a finding by the board that the services are  
8 being performed in an effective and efficient manner, or that the  
9 materials and supplies continue to meet the original specifications. If  
10 a board of education elects to renew an existing contract, the terms  
11 and conditions of the existing contract shall remain substantially  
12 unchanged and any increase in the contract cost over the three year  
13 period shall be no greater than a total of 20% over the initial cost; or]  
14 (Deleted by amendment, P.L. , c. .) (Pending before the Legislature  
15 as this bill.)
- 16 i. Driver education instruction conducted by private, licensed  
17 driver education schools, for any term not exceeding in the aggregate,  
18 three years ; [or]
- 19 j. [Performance of work or services or the furnishing of materials,  
20 supplies or equipment] Provision or performance of goods or services  
21 for the purpose of conserving energy in the buildings owned by any  
22 local board of education, the entire price of which shall be established  
23 as a percentage of the resultant savings in energy costs, for a term not  
24 to exceed [10] 15 years; except that these contracts shall be entered  
25 into only subject to and in accordance with [rules and regulations]  
26 guidelines promulgated by the [New Jersey Commerce and Economic  
27 Growth pursuant to the "Administrative Procedure Act," P.L.1968,  
28 c.410 (C.52:14B-1 et seq.),] Board of Public Utilities establishing a  
29 methodology for computing energy costs;
- 30 k. Any single project for the construction, reconstruction or  
31 rehabilitation of any public building, structure or facility, or any public  
32 works project, including the retention of the services of any architect  
33 or engineer in connection therewith, for the length of time authorized  
34 and necessary for the completion of the actual construction;
- 35 l. Laundry service and the rental, supply and cleaning of uniforms  
36 for any term of not more than three years;
- 37 m. Food supplies and food services for any term of not more than  
38 three years;
- 39 n. Purchases made under a contract awarded by the Director of the  
40 Division of Purchase and Property in the Department of the Treasury  
41 for use by counties, municipalities or other contracting units pursuant  
42 to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to  
43 exceed the term of that contract.
- 44 Any contract for services other than professional services, the  
45 statutory length of which contract is for three years or less, may  
46 include provisions for no more than one two-year, or two one-year,



1 extensions, subject to the following limitations: a. the contract shall  
2 be awarded by resolution of the board of education upon a finding by  
3 the board of education that the services are being performed in an  
4 effective and efficient manner; b. no such contract shall be extended  
5 so that it runs for more than a total of five consecutive years; c. any  
6 price change included as part of an extension shall be based upon the  
7 price of the original contract as cumulatively adjusted pursuant to any  
8 previous adjustment or extension and shall not exceed the change in the  
9 index rate for the 12 months preceding the most recent quarterly  
10 calculation available at the time the contract is renewed; and d. the  
11 terms and conditions of the contract remain substantially the same.

12 . All multiyear leases and contracts entered into pursuant to this  
13 section 18A:18A-42, including any two-year or one-year extensions,  
14 except [contracts for the leasing or servicing of equipment supplied by  
15 a telephone company which is subject to the jurisdiction of the Board  
16 of Public Utilities,] contracts for insurance coverages, insurance  
17 consultant or administrative services, participation or membership in  
18 a joint self-insurance fund, risk management programs or related  
19 services of a school board insurance group, participation in an  
20 insurance fund established by a county pursuant to N.J.S.40A:10-6 or  
21 contracts for thermal energy authorized pursuant to subsection a.  
22 above, and contracts for the provision or performance of [work or  
23 services or the furnishing of materials, supplies or equipment] goods  
24 or services to promote energy conservation authorized pursuant to  
25 subsection j. of this section, shall contain a clause making them  
26 subject to the availability and appropriation annually of sufficient funds  
27 as may be required to meet the extended obligation, or contain an  
28 annual cancellation clause. All contracts shall cease to have effect at  
29 the end of the contracted period and shall not be extended by any  
30 mechanism or provision, unless in conformance with the "Public  
31 School Contracts Law," N.J.S.18A:18A-1 et seq., except that a  
32 contract may be extended by mutual agreement of the parties to the  
33 contract when a board of education has commenced rebidding prior to  
34 the time the contract expires or when the awarding of a contract is  
35 pending at the time the contract expires.

36 (cf: P.L.1998, c.55, s.2)

37

38 79. N.J.S.18A:18A-44 is amended to read as follows:

39 18A:18A-44. Inspection, condemnation and rejection of work and  
40 materials. All [work done and materials or supplies furnished] goods  
41 and services provided or performed under contract shall be inspected  
42 by the [business manager] purchasing agent of the district, if there be  
43 a [business manager] purchasing agent of the district, but if there be  
44 no [business manager] purchasing agent of the district, they may be  
45 inspected by an appropriate officer employed by the board to whom  
46 such power shall have been delegated by the board, and subject to the

1 approval of the board the [business manager] purchasing agent or  
2 such officer, as the case may be, shall condemn any [work and reject  
3 any material or supplies,] goods or services which in his judgment do  
4 not conform to the specifications of the contract therefor.

5 (cf: N.J.S.18A:18A-44)

6

7 80. N.J.S.18A:18A-45 is amended to read as follows:

8 18A:18A-45. Manner and method of sale. Any board of education  
9 may, by resolution and by sealed bid or public auction, authorize the  
10 sale of its personal property not needed for school purposes.

11 a. If the estimated fair value of the property to be sold exceeds [  
12 the amount set forth in, or calculated by the Governor pursuant to,  
13 N.J.S.18A:18A-3,] 15 percent of the bid threshold in any one sale and  
14 it is neither livestock nor perishable goods, it shall be sold at public  
15 sale to the highest bidder.

16 b. Notice of the date, time and place of the public sale, together  
17 with a description of the items to be sold and the conditions of sale,  
18 shall be published once in [a legal] an official newspaper. Such sale  
19 shall be held not less than seven nor more than 14 days after the  
20 publication of the notice thereof.

21 c. Personal property may be sold to the United States, the State of  
22 New Jersey, another board of education [or to] , any body politic, any  
23 foreign nation which has diplomatic relations with the United States,  
24 or any governmental unit in these United States by private sale without  
25 advertising for bids.

26 d. If no bids are received the property may then be sold at private  
27 sale without further publication or notice thereof, but in no event at  
28 less than the estimated fair value; or the board of education may if it  
29 so elect, reoffer the property at public sale. As used herein,  
30 "estimated fair value" means the market value of the property between  
31 a willing seller and a willing buyer less the cost to the board of  
32 education to continue storage or maintenance of any personal  
33 property not needed for school purposes to be sold pursuant to this  
34 section.

35 e. A board of education may reject all bids if it determines such  
36 rejection to be in the public interest. In any case in which the board  
37 of education has rejected all bids, it may readvertise such personal  
38 property for a subsequent public sale. If it elects to reject all bids at  
39 a second public sale, pursuant to this section, it may then sell such  
40 personal property without further publication or notice thereof at  
41 private sale, provided that in no event shall the negotiated price at  
42 private sale be less than the highest price of any bid rejected at the  
43 preceding two public sales and provided further that in no event shall  
44 the terms or conditions of sale be changed or amended.

45 f. If the estimated fair value of the property to be sold does not  
46 exceed [the amount set forth in, or calculated by the Governor

1 pursuant to, N.J.S.18A:18A-3,] the applicable bid threshold  
2 established pursuant to subsection a. of this section in any one sale or  
3 is either livestock or perishable goods, it may be sold at private sale  
4 without advertising for bids.

5 g. Notwithstanding the provisions of this section, by resolution of  
6 the board of education, a purchasing agent may include the sale of  
7 personal property no longer needed for school purposes as part of  
8 specifications to offset the price of a new purchase.

9 (cf: P.L.1983, c.171, s.7)

10

11 81. (New section) Pursuant to the "Administrative Procedure  
12 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
13 Division of Local Government Services in the Department of  
14 Community Affairs, after consultation with the Commissioner of  
15 Education, may adopt rules implementing the provisions of the "Public  
16 School Contracts Law," N.J.S.18A:18A-1 et seq.

17

18 82. Section 1 of P.L.1981, c.447 (C.5:10-21.1) is amended to read  
19 as follows:

20 1. a. All purchases, contracts, or agreements where the cost or  
21 contract price exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after  
22 ~~[June 30, 1985]~~ the effective date of P.L. , c. (now before the  
23 Legislature as this bill , the amount determined pursuant to subsection  
24 b. of this section shall, except as otherwise provided in this act, be  
25 made, negotiated, or awarded only after public advertisement for bids  
26 therefor and shall be awarded to that responsible bidder whose bid,  
27 conforming to the invitation for bids, is most advantageous to the  
28 authority, in its judgment, upon consideration of price and other  
29 factors. Any bid may be rejected when the authority determines that  
30 it is in the public interest to do so.

31 Any purchase, contract, or agreement where the cost or contract  
32 price is less than or equal to ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30,~~  
33 ~~1985]~~ the effective date of P.L. , c. (now before the Legislature as  
34 this bill) , the amount determined pursuant to subsection b. of this  
35 section may be made, negotiated, or awarded by the authority without  
36 advertising and in any manner which the authority, in its judgment,  
37 deems necessary to serve its unique interests and purposes and which  
38 promotes, whenever practicable, full and free competition by the  
39 acceptance of quotations or proposals or by the use of other suitable  
40 methods.

41 b. Commencing ~~[January 1, 1985]~~ in the fifth year after the year  
42 in which P.L. , c. (now before the Legislature as this bill) takes  
43 effect, and every five years thereafter , the Governor, in consultation  
44 with the Department of the Treasury, shall[, no later than March 1 of  
45 each odd-numbered year,] adjust the threshold amount set forth in  
46 subsection a. of this section, or ~~[subsequent to 1985]~~ after the

1 effective date of P.L. , c. (now before the Legislature as this bill, the  
2 threshold amount resulting from any adjustment under this subsection,  
3 in direct proportion to the rise or fall of the [consumer price index for  
4 all urban consumers in the New York City and the Philadelphia areas  
5 as reported by the United States Department of Labor] index rate as  
6 that term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and  
7 shall round the adjustment to the nearest \$1,000. The Governor shall,  
8 no later than June 1 of [each odd-numbered] every fifth year, notify  
9 the authority of the adjustment. The adjustment shall become  
10 effective on July 1 of [each odd-numbered year] the year in which it  
11 is made.

12 (cf: P.L.1984, c.128, s.1)

13

14 83. Section 4 of P.L.1981, c.447 (C.5:10-21.4) is amended to read  
15 as follows:

16 4. Any purchase, contract, or agreement may be made, negotiated,  
17 or awarded pursuant to section 2 of [this act] P.L.1981, c.447  
18 (C.5:10-21.2) when:

19 a. Standardization of equipment and interchangeability of parts is  
20 in the public interest;

21 b. Only one source of supply or service is available;

22 c. The safety or protection of the authority's or other public  
23 property requires;

24 d. The exigency of the authority's service will not admit of  
25 advertisement;

26 e. More favorable terms can be obtained from a primary source of  
27 supply of an item or service;

28 f. Bid prices, after advertising, are not reasonable or have not been  
29 independently arrived at in open competition; but no negotiated  
30 purchase, contract, or agreement may be entered into under this  
31 subsection after the rejection of all bids received unless (1) notification  
32 of the intention to negotiate and reasonable opportunity to negotiate  
33 is given to each responsible bidder; (2) the negotiated price is lower  
34 than the lowest rejected bid price of a responsible bidder; and (3) the  
35 negotiated price is the lowest negotiated price offered by any  
36 responsible contractor;

37 g. The purchase is to be made from, or the contract is to be made  
38 with, the federal or any state government or agency or political  
39 subdivision thereof; or

40 h. Purchases are to be made through or by the Director of the  
41 Division of Purchase and Property pursuant to section 1 of P.L.1959,  
42 c.40 (C.52:27B-56.1) , or through a contract made by any of the  
43 following: the Hackensack Meadowlands Development Commission  
44 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
45 Jersey Highway Authority established under section 4 of P.L.1952,  
46 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
47 under section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water

1 Supply Authority established under section 4 of P.L.1981, c.293  
2 (C.58:1B-4); the South Jersey Transportation Authority established  
3 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
4 of New York and New Jersey established under R.S.32:1-4; the  
5 Delaware River Port Authority established under R.S.32:3-2; the  
6 Higher Education Student Assistance Authority established under  
7 N.J.S.18A:71A-3 .

8 (cf: P.L.1981, c.447, s.4)

9

10 84. Section 6 of P.L.1984, c.128 (C.13:17-6.1) is amended to read  
11 as follows:

12 6. a. All purchases, contracts, or agreements where the cost or  
13 contract price exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after  
14 [June 30, 1985] the effective date of P.L. , c. (now before the  
15 Legislature as this bill) , the amount determined pursuant to  
16 subsection b. of this section shall be made, negotiated, or awarded  
17 only after public advertisement for bids therefor and shall be awarded  
18 to that responsible bidder whose bid, conforming to the invitation for  
19 bids, is most advantageous to the Hackensack Meadowlands  
20 Development Commission, in its judgment, upon consideration of  
21 price and other factors; provided, however, that such advertising shall  
22 not be required when the contract to be entered into is one for the  
23 furnishing or performing of services of a professional nature, or when  
24 the purchase is to be made through or by the Director of the Division  
25 of Purchase and Property pursuant to section 1 of P.L.1959, c.40  
26 (C.52:27B-56.1), or through a contract made by any of the following:  
27 the New Jersey Sports and Exposition Authority established under  
28 section 4 of P.L.1971, c.137 (C.5:10-4), the New Jersey Highway  
29 Authority established under section 4 of P.L.1952, c.16 (C.27:12B-4);  
30 the New Jersey Turnpike Authority established under section 3 of  
31 P.L.1948, c.454 (C.27:23-3); the New Jersey Water Supply Authority  
32 established under section 4 of P.L.1981, c.293 (C.58:1B-4); the South  
33 Jersey Transportation Authority established under section 4 of  
34 P.L.1991, c.252 (C.27:25A-4); the Port Authority of New York and  
35 New Jersey established under R.S.32:1-4; the Delaware River Port  
36 Authority established under R.S.32:3-2; the Higher Education Student  
37 Assistance Authority established under N.J.S.18A:71A-3. Any bid  
38 may be rejected when the commission determines that it is in the  
39 public interest to do so.

40 Any purchase, contract, or agreement where the cost or contract  
41 price is less than or equal to ~~[\$7,500.00]~~ \$25,000 or, after [June 30,  
42 1985] the effective date of P.L. , c. (now before the Legislature as  
43 this bill) , the amount determined pursuant to subsection b. of this  
44 section may be made, negotiated, or awarded by the commission  
45 without advertising and in any manner which the commission, in its  
46 judgment, deems necessary to serve its unique interests and purposes  
47 and which promotes, whenever practicable, full and free competition

1 by the acceptance of quotations or proposals or by the use of other  
2 suitable methods.

3 b. Commencing [January 1, 1985] in the fifth year after the year  
4 in which P.L. , c. (now before the Legislature as this bill) takes  
5 effect, and every five years thereafter, the Governor, in consultation  
6 with the Department of the Treasury, shall[, no later than March 1 of  
7 each odd-numbered year,] adjust the threshold amount set forth in  
8 subsection a. of this section, or [subsequent to 1985] after the  
9 effective date of P.L. , c. (now before the Legislature as this bill),  
10 the threshold amount resulting from any adjustment under this  
11 subsection, in direct proportion to the rise or fall of the [consumer  
12 price index for all urban consumers in the New York City and the  
13 Philadelphia areas as reported by the United States Department of  
14 Labor] index rate as that term is defined in section 2 of P.L.1971,  
15 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
16 \$1,000. The Governor shall, no later than June 1 of [each  
17 odd-numbered] every fifth year, notify the commission of the  
18 adjustment. The adjustment shall become effective on July 1 of [each  
19 odd-numbered year] the year in which it is made.

20 (cf: P.L.1984, c.128, s.6)

21

22 85. Section 1 of P.L.1968, c.459 (C.27:12B-5.2) is amended to  
23 read as follows:

24 1. a. The New Jersey Highway Authority, in the exercise of its  
25 authority to make and enter into contracts and agreements necessary  
26 or incidental to the performance of its duties and the execution of its  
27 powers, shall adopt standing operating rules and procedures providing  
28 that, except as hereinafter provided, no contract on behalf of the  
29 authority shall be entered into for the doing of any work, or for the  
30 hiring of equipment or vehicles, where the sum to be expended  
31 exceeds the sum of [\$7,500.00] \$25,000 or, after [ June 30, 1985]  
32 the effective date of P.L. , c. (now before the Legislature as this  
33 bill) ,the amount determined pursuant to subsection b. of this section  
34 unless the authority shall first publicly advertise for bids therefor, and  
35 shall award the contract to the lowest responsible bidder; provided,  
36 however, that such advertising shall not be required where the  
37 contract to be entered into is one for the furnishing or performing of  
38 services of a professional nature, or for the supplying of any product  
39 or the rendering of any service by a public utility subject to the  
40 jurisdiction of the Board of Public Utilities of this State and tariffs and  
41 schedules of the charges, made, charged, or exacted by the public  
42 utility for any such products to be supplied or services to be rendered  
43 are filed with the said board, or when the purchase is to be made  
44 through or by the Director of the Division of Purchase and Property  
45 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
46 a contract made by any of the following: the New Jersey Sports and

1 Exposition Authority established under section 4 of P.L.1971, c.137  
2 (C.5:10-4); the Hackensack Meadowlands Development Commission  
3 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
4 Jersey Turnpike Authority established under section 3 of P.L.1948,  
5 c.454 (C.27:23-3); the New Jersey Water Supply Authority established  
6 under section 4 of P.L.1981, c.293 (C.58:1B-4); the South Jersey  
7 Transportation Authority established under section 4 of P.L.1991,  
8 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
9 established under R.S.32:1-4; the Delaware River Port Authority  
10 established under R.S.32:3-2; the Higher Education Student  
11 Assistance Authority established under N.J.S.18A:71A-3. Contracts  
12 for towing and storage services shall be advertised and awarded  
13 pursuant to subsection c. of this section.

14 This subsection shall not prevent the authority from having any  
15 work done by its own employees, nor shall it apply to repairs, or to  
16 the furnishing of materials, supplies or labor, or the hiring of  
17 equipment or vehicles, when the safety or protection of its or other  
18 public property or the public convenience require, or the exigency of  
19 the authority's service will not admit of such advertisement. In such  
20 case the authority shall, by resolution, passed by the affirmative vote  
21 of a majority of its members, declare the exigency or emergency to  
22 exist, and set forth in the resolution the nature thereof and the  
23 approximate amount to be so expended.

24 b. Commencing [January 1, 1985] in the fifth year after the year  
25 in which P.L. , c. (now before the Legislature as this bill) takes  
26 effect, and every five years thereafter , the Governor, in consultation  
27 with the Department of the Treasury, shall[, no later than March 1 of  
28 each odd-numbered year,] adjust the threshold amount set forth in  
29 subsection a. of this section, or [subsequent to 1985] after the  
30 effective date of P.L. , c. (now before the Legislature as this bill),  
31 the threshold amount resulting from any adjustment under this  
32 subsection, in direct proportion to the rise or fall of the [consumer  
33 price index for all urban consumers in the New York City and the  
34 Philadelphia areas as reported by the United States Department of  
35 Labor] index rate as that term is defined in section 2 of P.L.1971,  
36 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
37 \$1,000. The Governor shall, no later than June 1 of [each  
38 odd-numbered] every fifth year, notify the authority of the adjustment.  
39 The adjustment shall become effective on July 1 of [each  
40 odd-numbered year] the year in which it is made.

41 c. The authority shall adopt regulations, pursuant to the  
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
43 seq.), to provide open and competitive procedures for awarding  
44 contracts for towing and storage services. Towing and storage  
45 services on a highway project may be provided on a rotating basis,  
46 provided that the authority determines that there would be no

1 additional cost to the authority, excepting administrative costs, as a  
2 result of those services being provided on a rotating basis. The  
3 regulations shall fix maximum towing and storage fees, and establish  
4 objective criteria to be considered in awarding a contract for towing  
5 and storage services which shall include, but shall not be limited to,  
6 reliability, experience, response time, acceptance of credit cards and  
7 prepaid towing contracts, adequate equipment to safely handle a  
8 sufficient volume of common vehicle types under a variety of traffic  
9 and weather conditions, location of storage and repair facilities,  
10 security of vehicles towed or stored, financial return to the authority,  
11 maintenance of adequate liability insurance and appropriate safeguards  
12 to protect the personal safety of customers, including considerations  
13 related to the criminal background of employees. The Division of  
14 Consumer Affairs in the Department of Law and Public Safety shall  
15 provide, at the authority's request, a report to the authority on any  
16 prospective contractor for which the division has information relevant  
17 to the prospective contractor's service record, subject to the provisions  
18 of the New Jersey consumer fraud act, P.L.1960, c.39 (C. 56:8-1 et  
19 seq.). The Division of Insurance Fraud Prevention in the Department  
20 of Banking and Insurance also shall provide, at the authority's request,  
21 a report to the authority on any prospective contractor for which the  
22 division has information relevant to the prospective contractor's  
23 service record, subject to the "New Jersey Insurance Fraud Prevention  
24 Act," P.L.1983, c.320 (C.17:33A-1 et seq.).  
25 (cf: P.L.1997, c.390, s.1)

26

27 86. Section 1 of P.L.1968, c.461 (C.27:23-6.1) is amended to read  
28 as follows:

29 1. a. The New Jersey Turnpike Authority, in the exercise of its  
30 authority to make and enter into contracts and agreements necessary  
31 or incidental to the performance of its duties and the execution of its  
32 powers, shall adopt standing operating rules and procedures providing  
33 that, except as hereinafter provided, no contract on behalf of the  
34 authority shall be entered into for the doing of any work, or for the  
35 hiring of equipment or vehicles, where the sum to be expended  
36 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30, 1985]~~ the  
37 effective date of P.L. .c. (now before the Legislature as this bill, the  
38 amount determined pursuant to subsection b. of this section unless the  
39 authority shall first publicly advertise for bids therefor, and shall  
40 award the contract to the lowest responsible bidder; provided,  
41 however, that such advertising shall not be required where the  
42 contract to be entered into is one for the furnishing or performing  
43 services of a professional nature, or for the supplying of any product  
44 or the rendering of any service by a public utility subject to the  
45 jurisdiction of the Board of Public Utility Commissioners of this State  
46 and tariffs and schedules of the charges, made, charged, or exacted by  
47 the public utility for any such products to be supplied or services to



1 be rendered are filed with the said board, or when the purchase is to  
2 be made through or by the Director of the Division of Purchase and  
3 Property pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or  
4 through a contract made by any of the following: the New Jersey  
5 Sports and Exposition Authority established under section 4 of  
6 P.L.1971, c.137 (C.5:10-4); the Hackensack Meadowlands  
7 Development Commission established under section 5 of P.L.1968,  
8 c.404 (C.13:17-5); the New Jersey Highway Authority established  
9 under section 4 of P.L.1952, c.16 (C.27:12B-4); the New Jersey Water  
10 Supply Authority established under section 4 of P.L.1981, c.293  
11 (C.58:1B-4); the South Jersey Transportation Authority established  
12 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
13 of New York and New Jersey established under R.S.32:1-4; the  
14 Delaware River Port Authority established under R.S.32:3-2; the  
15 Higher Education Student Assistance Authority established under  
16 N.J.S.18A:71A-3.

17 This subsection shall not prevent the authority from having any  
18 work done by its own employees, nor shall it apply to repairs, or to  
19 the furnishing of materials, supplies or labor, or the hiring of  
20 equipment or vehicles, when the safety or protection of its or other  
21 public property or the public convenience require, or the exigency of  
22 the authority's service will not admit of such advertisement. In such  
23 case the authority shall, by resolution, passed by the affirmative vote  
24 of a majority of its members, declare the exigency or emergency to  
25 exist, and set forth in the resolution the nature thereof and the  
26 approximate amount to be so expended.

27 b. Commencing [January 1, 1985] in the fifth year after the year  
28 in which P.L. , c. (now before the Legislature as this bill) takes  
29 effect, and every five years thereafter , the Governor, in consultation  
30 with the Department of the Treasury, shall[, no later than March 1 of  
31 each odd-numbered year,] adjust the threshold amount set forth in  
32 subsection a. of this section, or [subsequent to 1985] after the  
33 effective date of P.L. , c. (now before the Legislature as this bill,  
34 the threshold amount resulting from any adjustment under this  
35 subsection, in direct proportion to the rise and fall of the [consumer  
36 price index for all urban consumers in the New York City and the  
37 Philadelphia areas as reported by the United States Department of  
38 Labor] index rate as that term is defined in section 2 of P.L.1971,  
39 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
40 \$1,000. The Governor shall, no later than June 1 of [each  
41 odd-numbered] every fifth year, notify the authority of the adjustment.  
42 The adjustment shall become effective on July 1 of [each  
43 odd-numbered year] the year in which it is made.

44 (cf: P.L.1984, c.128, s.5)

1 87. Section 8 of P.L.1991, c.252 (C.27:25A-8) is amended to read  
2 as follows:

3 8. a. All purchases, contracts or agreements made pursuant to this  
4 act shall be made or awarded directly by the authority, except as  
5 otherwise provided in this act, only after public advertisement for bids  
6 therefor in the manner provided by the authority and notwithstanding  
7 the provisions of any other laws to the contrary.

8 b. Any purchase, contract or agreement may be made, negotiated  
9 or awarded by the authority without public bid or advertising under  
10 the following circumstances:

11 (1) When the aggregate amount involved does not exceed the  
12 amount set forth in, or the amount calculated by the Governor  
13 pursuant to, section 2 of P.L.1954, c.48 (C.52:34-7);

14 (2) To acquire subject matter which is described in section 4 of  
15 P.L.1954, c.48 (C.52:34-9);

16 (3) To make a purchase or award or make a contract or agreement  
17 under the circumstances described in section 5 of P.L.1954, c.48  
18 (C.52:34-10);

19 (4) When the contract to be entered into is for the furnishing or  
20 performing services of a professional or technical nature or for the  
21 supplying of any product or the rendering of any service by a public  
22 utility;

23 (5) When the authority deems it appropriate to have any work  
24 performed by its own employees;

25 (6) When the authority has advertised for bids on two occasions  
26 and has received no bids on both occasions in response to its  
27 advertisement, or received no responsive bids. Any purchase, contract  
28 or agreement may then be negotiated and may be awarded to any  
29 contractor or supplier determined to be responsible except that the  
30 terms, conditions, restrictions and specifications set forth in the  
31 negotiated contract or agreement are not substantially different from  
32 those which were the subject of competitive bidding;

33 (7) When a piece of equipment or part thereof requires diagnostic  
34 repairs;

35 (8) The printing of bonds and documents necessary to the issuance  
36 and sale thereof; [and]

37 (9) To contract pursuant to subsection w. of section 7 of this act;  
38 or

39 (10) When a purchase is to be made through or by the Director of  
40 the Division of Purchase and Property pursuant to section 1 of  
41 P.L.1959, c.40 (C.52:27B-56.1), or through a contract made by any  
42 of the following: the New Jersey Sports and Exposition Authority  
43 established under section 4 of P.L.1971, c.137 (C.5:10-4); the  
44 Hackensack Meadowlands Development Commission established  
45 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
46 Highway Authority established under section 4 of P.L.1952, c.16  
47 (C.27:12B-4); the New Jersey Turnpike Authority established under

1 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
2 Supply Authority established under section 4 of P.L.1981, c.293  
3 (C.58:1B-4); the Port Authority of New York and New Jersey  
4 established under R.S.32:1-4; the Delaware River Port Authority  
5 established under R.S.32:3-2; the Higher Education Student  
6 Assistance Authority established under N.J.S.18A:71A-3.  
7 (cf: P.L.1991, c.252, s.8)

8  
9 88. Section 22 of P.L.1981, c.293 (C.58:1B-22) is amended to  
10 read as follows:

11 22. a. The authority is hereby authorized to make and enter into  
12 contracts and agreements necessary or incidental to the performance  
13 of its duties and the execution of its powers. No contract on behalf of  
14 the authority shall be entered into for the doing of any work, or for the  
15 hiring of equipment or vehicles, where the sum to be expended  
16 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or , after the effective date  
17 of P.L. , c. (now before the Legislature as this bill), the amount  
18 determined pursuant to subsection b. of this section, unless the  
19 authority shall first publicly advertise for bids therefor, and shall award  
20 the contract to the lowest responsible bidder; but advertising shall not  
21 be required where the contract to be entered into is one for the  
22 furnishing or performing services of a professional nature, or for the  
23 supplying of any product or the rendering of any service by a public  
24 utility subject to the jurisdiction of the Board of Public Utilities, and  
25 tariffs and schedules of the charges made, charged, or exacted by the  
26 public utility for any such products to be supplied or services to be  
27 rendered are filed with the board , or when the purchase is to be made  
28 through or by the Director of the Division of Purchase and Property  
29 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
30 a contract made by any of the following: the New Jersey Sports and  
31 Exposition Authority established under section 4 of P.L.1971, c.137  
32 (C.5:10-4); the Hackensack Meadowlands Development Commission  
33 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
34 Jersey Highway Authority established under section 4 of P.L.1952,  
35 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
36 under section 3 of P.L.1948, c.454 (C.27:23-3); the South Jersey  
37 Transportation Authority established under section 4 of P.L.1991,  
38 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
39 established under R.S.32:1-4; the Delaware River Port Authority  
40 established under R.S.32:3-2; the Higher Education Student  
41 Assistance Authority established under N.J.S.18A:71A-3. This  
42 subsection shall not prevent the authority from having any work done  
43 by its own employees, nor shall it apply to repairs, or to the furnishing  
44 of materials, supplies or labor, or the hiring of equipment or vehicles,  
45 when the safety or protection of its or other public property or the  
46 public convenience requires, or the exigency of the authority service  
47 will not admit of such advertisement. In such case the authority shall,

1 by resolution, passed by the affirmative vote of a majority of its  
2 members, declare the exigency or emergency to exist, and set forth in  
3 the resolution the nature thereof and the approximate amount to be  
4 expended.

5 b. ~~【The】 Commencing in the fifth year after the year in which~~  
6 ~~P.L. , c. (now before the Legislature as this bill) takes effect, and~~  
7 ~~every five years thereafter, the~~ Governor, in consultation with the  
8 Department of the Treasury, shall~~【, no later then March 1 of each~~  
9 ~~odd-numbered year,】~~ adjust the threshold amount set forth in  
10 subsection a. of this section, or ~~【subsequent to 1985】~~ after the  
11 effective date of P.L. , c. (now before the Legislature as this bill),  
12 the threshold amount resulting from any adjustment under this  
13 subsection ~~【or section 17 of P.L. 1985, c. 469,】~~ in direct proportion  
14 to the rise or fall of the ~~【Consumer Price Index for all urban~~  
15 ~~consumers in the New York City and the Philadelphia areas as~~  
16 ~~reported by the United States Department of Labor】~~ index rate as that  
17 term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall  
18 round the adjustment to the nearest \$1,000 . The Governor shall, no  
19 later than June 1 of ~~【each odd-numbered】~~ every fifth year, notify the  
20 authority of the adjustment. The adjustment shall become effective on  
21 July 1 of ~~【each odd-numbered year】~~ the year in which it is made.  
22 (cf: P.L.1985, c.469, s.14)

23

24 89. Section 1 of P.L.1959, c.40 (C.52:27B-56.1) is amended to  
25 read as follows:

26 1. The Director of the Division of Purchase and Property may, by  
27 joint action, purchase any articles used or needed by the State and the  
28 Palisades Interstate Park Commission, the New Jersey Highway  
29 Authority, the New Jersey Turnpike Authority, the Delaware River  
30 Joint Toll Bridge Commission, the Port Authority of New York and  
31 New Jersey, the South Jersey Port Corporation, the Passaic Valley  
32 Sewerage Commission, the Delaware River Port Authority, Rutgers,  
33 The State University, the University of Medicine and Dentistry of  
34 New Jersey, the New Jersey Sports and Exposition Authority, the  
35 New Jersey Housing Finance Agency, the New Jersey Mortgage  
36 Finance Authority, the New Jersey Health Care Facilities Financing  
37 Authority, the New Jersey Education Facilities Authority, the New  
38 Jersey Economic Development Authority, the ~~【New Jersey~~  
39 ~~Expressway】~~ South Jersey Transportation Authority , the Hackensack  
40 Meadowlands Development Commission, the New Jersey Water  
41 Supply Authority; the Higher Education Student Assistance Authority  
42 or any other agency, commission, board, authority or other such  
43 governmental entity which is established and is allocated to a State  
44 department or any bi-state governmental entity of which the State of  
45 New Jersey is a member.

46 (cf: P.L.1981, c.325, s.18)

1       90. Section 30 of P.L.1948, c.92 (C.52:18A-30) is amended to  
2 read as follows:

3       30. The State Treasurer, in addition to the functions, powers and  
4 duties specifically conferred and imposed upon ~~[him]~~the position,  
5 shall:

6       (a) Maintain suitable headquarters for the department and such  
7 other quarters within the State as he may deem necessary to the  
8 department's proper functioning;

9       (b) Have general responsibility for all of the department's  
10 operations under this act;

11       (c) Supervise the organization of the department and changes in  
12 the organization thereof, except that the divisions, boards,  
13 commissions and offices, herein specifically provided shall be  
14 maintained;

15       (d) Formulate and adopt rules and regulations for the efficient  
16 conduct of the work and general administration of the department, its  
17 officers and employees and as may be necessary for the Department of  
18 the Treasury to carry out its duties as set forth by law; and

19       (e) Make an annual report to the Governor and to the Legislature  
20 of the department's operations, and render such other reports as the  
21 Governor shall from time to time request.

22       The State Treasurer shall designate as Deputy State Treasurer any  
23 officer or employee in the department. Such designation shall be in  
24 writing and shall be filed with the Secretary of State. Such  
25 designation shall continue in effect until the State Treasurer shall, in  
26 the manner herein provided, designate another officer or employee in  
27 the department as such Deputy State Treasurer.

28       The Deputy State Treasurer shall have and exercise the powers and  
29 perform the functions and duties of the State Treasurer during the  
30 absence or disability of the State Treasurer. The Deputy State  
31 Treasurer shall also have and exercise such of the powers and perform  
32 such of the functions and duties of the State Treasurer as he shall be  
33 authorized and directed by the State Treasurer. Any such  
34 authorization and direction shall be in writing, signed by the State  
35 Treasurer and filed with the Secretary of State, and shall include a  
36 designation of the period during which it shall be and remain in force.  
37 No such authorization and direction shall be deemed to preclude the  
38 State Treasurer from himself exercising the powers and the  
39 performance of the duties included in said authorization and direction.  
40 In the event that the State Treasurer shall die, resign or be removed  
41 from office, or become disqualified to execute the duties of his office,  
42 or a vacancy shall occur in the office of State Treasurer for any cause  
43 whatsoever, the person then holding the office of Deputy State  
44 Treasurer shall continue to hold such office and shall have and  
45 exercise the powers and perform the functions and duties of the State  
46 Treasurer until the successor of the State Treasurer shall be appointed  
47 and shall qualify.

1 Notwithstanding any other provision in existing law, the State  
2 Treasurer may designate, authorize and direct the Deputy State  
3 Treasurer or any other officer or specially designated expert assistant  
4 in the department to exercise the power and perform the functions and  
5 duties of the State Treasurer as a member of the board of trustees,  
6 commission or council vested with the general administration of and  
7 responsibility for any employee benefit system, trust, fund, program  
8 or plan. Any such authorization and direction shall be in writing,  
9 signed by the State Treasurer and filed with the Secretary of State,  
10 and shall include a designation of the period during which it shall be  
11 and remain in force. No such authorization and direction shall be  
12 deemed to preclude the State Treasurer from himself exercising the  
13 powers and the performance of the duties included in said  
14 authorization and direction.

15 (cf: P.L.1974, c.34, s.1)

16

17 91. Section 3 of P.L.1969, c.104 (C.52:25-16.1) is amended to  
18 read as follows:

19 3. The Director of the Division of Purchase and Property may, at  
20 the director's discretion, include, in any such contract or contracts on  
21 behalf of the State, a provision for the purchase of such materials,  
22 supplies [or], equipment or services by any [county, municipality or  
23 school district] local contracting unit from such contractor or  
24 contractors. Such purchase may be effectuated either as an outright  
25 purchase or by installment, lease or rental, so long as the vendor offers  
26 financing at an interest rate that is equal to or lower than the State line  
27 of credit. The [county, municipality or school district] local  
28 contracting unit shall have sole responsibility for any payment due the  
29 vendor for any such purchase. All purchases shall be subject to audit  
30 and inspection by the [county, municipality or school district] local  
31 contracting unit for which made. The local contracting unit shall file  
32 such reports as the Director of the Division of Purchase and Property  
33 may require setting forth the expenditure on such contracts. For the  
34 purposes of this section, "local contracting unit" means any public  
35 agency subject to the provisions of the "Local Public Contracts Law,"  
36 P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts  
37 Law," N.J.S.18A:18A-1 et seq., the "State College Contracts Law,"  
38 P.L.1986, c.43 (C.18A:64-52 et seq.), or the "County College  
39 Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

40 (cf: P.L.1969, c.104, s.3)

41

42 92. Section 2 of P.L.1985, c.263 (C.52:25-16.6) is amended to  
43 read as follows:

44 2. a. An independent institution of higher education may, at the  
45 director's discretion, purchase materials, supplies [and], equipment or  
46 services under any contract [negotiated] awarded on behalf of the  
47 State by the Director of the Division of Purchase and Property,

1 subject to such rules as the director may establish.

2 b. The director may establish limitations with respect to  
3 ~~[commodities]~~materials, supplies, equipment and services available  
4 for purchase and impose other appropriate conditions upon purchasing  
5 as deemed necessary to protect the State's own purchasing interests.

6 c. The independent institution of higher education shall file such  
7 reports as the Director of the Division of Purchase and Property may  
8 require setting forth the expenditures on such contracts.

9 (cf: P.L. 1985, c.263, s.2)

10

11 93. R.S.52:25-23 is amended to read as follows:

12 52:25-23. The Director of the Division of Purchase and Property  
13 may, by written order, delegate purchasing authority to the using  
14 agencies for purchases or contracts not in excess of ~~[\$7,500.00]~~  
15 \$25,000.00; except that:

16 a. Purchases or contracts shall not be divided to circumvent the  
17 dollar limit imposed by this section;

18 b. Prior to issuing purchase orders pursuant to this section, a using  
19 agency shall verify the existence of funds for the purchase or contract  
20 and shall verify that the article or service to be purchased or  
21 contracted for is not available under any of the contracts issued by the  
22 Division of Purchase and Property; and

23 c. ~~[All]~~ Records of all purchases made or contracts negotiated  
24 under this section shall be ~~[reported to]~~ maintained by the using  
25 agency and made available for audit by or under the direction of the  
26 Director of the Division of Purchase and Property ~~[by the using~~  
27 ~~agency, in a manner prescribed by the Director of the Division of~~  
28 ~~Purchase and Property, which report]~~ and shall include proper proof  
29 that the purchase or contract was made or negotiated competitively,  
30 where competition is practicable.

31 The Director of the Division of Purchase and Property may, by  
32 written order, rescind or reduce the level of purchasing authority  
33 delegated to any using agency determined by the director to have  
34 violated the provisions of the delegated authorization.

35 (cf: P.L.1985, c.107, s.1)

36

37 94. Section 4 of article 6 of P.L.1944, c.112 (C.52:27B-56) is  
38 amended to read as follows:

39 4. The director is hereby vested with the powers, duties, and  
40 responsibilities involved in the efficient operation of a centralized  
41 State purchasing service, and with the custody, operation and  
42 maintenance of all State property not chargeable to a particular  
43 department. ~~[He]~~ The director shall have authority, subject to the  
44 ~~[commissioner's]~~ State Treasurer's approval, to organize the division  
45 for the effective performance of its functions and purposes herein set  
46 forth, and to establish and assess fees to cover administrative costs.

1 The director or the director's designee shall have the authority to  
2 conduct investigations and informal hearings regarding any bid protest  
3 or vendor performance issues. The director shall also have the  
4 authority to issue final agency decisions regarding any bid protest or  
5 vendor performance issues. Except as otherwise provided by statute  
6 and subject to the State Treasurer's approval, the director shall have  
7 final approval of all State contracts including, but not limited to, those  
8 entered into pursuant to P.L.1964, c.290 (C.30:6-17 et seq.).  
9 (cf: P.L.1944, c.112, art.6, s.4)

10

11 95. Section 2 of P.L.1954, c.48 (C.52:34-7) is amended to read as  
12 follows:

13 2. a. Any such purchase, contract or agreement may be made,  
14 negotiated, or awarded by the Director of the Division of Purchase and  
15 Property or the Director of the Division of Building and Construction,  
16 as the case may be, without advertising, in any manner which [he] the  
17 director may deem effective to promote full and free competition  
18 whenever competition is practicable, if: (1) the aggregate amount  
19 involved does not exceed [~~\$7,500.00~~] \$25,000.00 or the amount  
20 determined pursuant to subsection b. of this section; or (2) (Deleted  
21 by amendment, P.L.1985, c.107) or (3) the aggregate amount involved  
22 including labor and construction materials does not exceed \$25,000.00  
23 or the amount determined pursuant to subsection b. of this section in  
24 the case of contracts or agreements for the erection, construction,  
25 alteration, or repair of any public building or facility.

26 When the aggregate amount involved does not exceed \$25,000.00  
27 or the amount determined pursuant to subsection b. of this section in  
28 the case of contracts or agreements for the erection, construction,  
29 alteration, or repair of any public building or facility, the Director of  
30 the Division of Purchase and Property or the Director of the Division  
31 of Building and Construction may, at [his] the director's discretion,  
32 delegate to the appropriate State department or using agency [his] the  
33 director's authority to make, negotiate, or award a contract or  
34 agreement without advertising.

35 The [~~Administrator of the General Services Administration~~]  
36 Director of the Division of Purchase and Property or the Director of  
37 the Division of Building and Construction, as the case may be, shall  
38 establish, in accordance with the "Administrative Procedure Act"  
39 (P.L.1968, c.410; C.52:14B-1 et seq.), rules and regulations  
40 concerning procedural requirements for the making, negotiating or  
41 awarding of purchases, contracts or agreements pursuant to this  
42 section, at the director's discretion.

43 b. The Governor, in consultation with the Department of the  
44 Treasury, shall, no later than March 1 of [each odd-numbered] every  
45 fifth year beginning in the fifth year after the year in which P.L. , c.  
46 (now before the Legislature as this bill) takes effect , adjust the  
47 threshold amount set forth in subsection a. of this section, or  
48 [subsequent to 1985] the threshold amount resulting from any



1 adjustment under this subsection, in direct proportion to the rise or fall  
2 of the [Consumer Price Index for all urban consumers in the New  
3 York City and the Philadelphia areas as reported by the United States  
4 Department of Labor] index rate as that term is defined in section 2  
5 of P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to  
6 the nearest \$1,000. The Governor shall, no later than June 1 of [each  
7 odd-numbered] every fifth year, notify the Director of the Division of  
8 Purchase and Property and the Director of the Division of Building  
9 and Construction of the adjustment. The adjustment shall become  
10 effective on July 1 of [each odd-numbered year] the year in which it  
11 is made.

12 (cf: P.L.1985, c.349, s.1)

13

14 96. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read  
15 as follows:

16 7. Whenever advertising is required: (a) specifications and  
17 invitations for bids shall permit such full and free competition as is  
18 consistent with the procurement of supplies and services necessary to  
19 meet the requirements of the using agency and shall, wherever  
20 practicable, include such factors as life-cycle costs, sliding percentage  
21 preference scales, or other similar analysis as shall be deemed effective  
22 by the Director of the Division of Purchase and Property , hereinafter  
23 referred to as the director, (b) the advertisement for bids shall be in  
24 such newspaper or newspapers selected by the State Treasurer as will  
25 best give notice thereof to bidders and shall be sufficiently in advance  
26 of the purchase or contract to promote competitive bidding; (c) the  
27 advertisement shall designate the time and place when and where  
28 sealed proposals shall be received and publicly opened and read, the  
29 amount of the cash or certified check, if any, which must accompany  
30 each bid, and such other terms as the State Treasurer may deem  
31 proper; (d) notice of revisions or addenda to advertisements or bid  
32 documents relating to bids shall be published in a newspaper or  
33 newspapers as selected by the State Treasurer to best give notice to  
34 bidders and sent to the prospective bidder no later than five days,  
35 Saturdays, Sundays and holidays excepted, prior to the bid due date;  
36 (e) failure to advertise for the receipt of bids or to provide proper  
37 notification of revisions or addenda to advertisements or bid  
38 documents related to bids as prescribed by subsection (d) of this  
39 section shall prevent the acceptance of bids and require the  
40 readvertisement for bids; (f) for any procurement, the State Treasurer  
41 or the director may negotiate with bidders, after bid opening, the final  
42 terms and conditions of any procurement, including price; such ability  
43 to so negotiate must be expressly set forth in the applicable invitation  
44 to bid; (g) award shall be made with reasonable promptness, after  
45 negotiation with bidders where authorized, by written notice to that  
46 responsible bidder whose bid, conforming to the invitation for bids,  
47 will be most advantageous to the State, price and other factors

1 considered. Any or all bids may be rejected when the State Treasurer  
 2 or the Director of the Division of Purchase and Property determines  
 3 that it is in the public interest so to do. The State Treasurer or  
 4 designee may adopt, pursuant to the "Administrative Procedure Act,"  
 5 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as  
 6 may be necessary to implement the provisions of this section.

7 This section shall apply to all bids received on and after the date of  
 8 enactment of P.L. , c. (now before the Legislature as this bill).  
 9 (cf: P.L.1986, c.72, s.1)

10  
 11 97. (New section) a. A person commits a crime if the person  
 12 knowingly submits to the government any claim for payment for  
 13 performance of a government contract knowing such claim to be false,  
 14 fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or  
 15 above, the offender is guilty of a crime of the second degree. If the  
 16 claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is  
 17 guilty of a crime of the third degree. If the claim is for \$2,500.00 or  
 18 less, the offender is guilty of a crime of the fourth degree.

19 b. A person commits a crime if the person knowingly makes a  
 20 material representation that is false in connection with the negotiation,  
 21 award or performance of a government contract. If the contract  
 22 amount is for \$25,000.00 or above, the offender is guilty of a crime of  
 23 the second degree. If the contract amount exceeds \$2,500.00, but is  
 24 less than \$25,000.00, the offender is guilty of a crime of the third  
 25 degree. If the contract amount is for \$2,500.00 or less, the offender  
 26 is guilty of a crime of the fourth degree.

27  
 28 98. N.J.S.2C:27-4 is amended to read as follows:

29 2C:27-4. a. A person commits a crime if [he,] the person, as a  
 30 public servant:

31 (1) directly or indirectly, knowingly solicits, accepts or agrees to  
 32 accept any benefit [as compensation for having, as public servant,  
 33 given a decision, opinion, recommendation or vote favorable to  
 34 another, or for having otherwise exercised a discretion in his favor,]  
 35 from another for or because of any official act performed or to be  
 36 performed by the person or for [having violated his] or because of a  
 37 violation of official duty [or for the performance of his official  
 38 duties.] ;

39 (2) directly or indirectly, knowingly receives any benefit from  
 40 another who is or was in a position, different from that of a member  
 41 of the general public, to benefit, directly or indirectly, from a violation  
 42 of official duty or the performance of official duties; or

43 (3) directly or indirectly, knowingly receives any benefit from or  
 44 by reason of a contract or agreement for goods, property or services  
 45 if the contract or agreement is awarded, made or paid by the agency  
 46 that employs the person or if the goods, property or services are  
 47 provided to the government agency that employs the public servant.

1     b. A person commits a crime if ~~[he]~~ the person offers, confers or  
2 agrees to confer ~~[compensation]~~ a benefit, acceptance of which is  
3 prohibited by this section.

4     c. Any offense proscribed by this section is a crime of the second  
5 degree. If the benefit solicited, accepted, agreed to be accepted,  
6 offered, conferred or agreed to be conferred is of a value of \$200.00  
7 or less, any offense proscribed by this section is a crime of the third  
8 degree.

9 (cf: P.L.1979, c.178, s.50)

10

11     99. N.J.S.2C:27-6 is amended to read as follows:

12     2C:27-6. a. ~~[A]~~ Except as provided in subsection d.of this  
13 section, a public servant commits a crime if ~~[he]~~ the person,  
14 knowingly and under color of ~~[his]~~ office, directly or indirectly  
15 solicits, accepts or agrees to accept any benefit for that person or  
16 another not allowed by law ~~[to influence the performance of his~~  
17 ~~official duties]~~.

18     b. ~~[A]~~ Except as provided in subsection d.of this section, a person  
19 commits a crime if ~~[he]~~ the person, directly or indirectly, confers or  
20 agrees to confer any benefit not allowed by law to a public servant ~~[to~~  
21 ~~influence the performance of his official duties]~~.

22     c. ~~[In any prosecution under this section, the capacity to influence~~  
23 ~~a public servant in the performance of his official duties may be~~  
24 ~~presumed when the value of the benefit involved, the interests of the~~  
25 ~~person who offers, confers or agrees to confer such benefit, and the~~  
26 ~~duties of the public servant are such as to create a reasonable~~  
27 ~~likelihood that the public servant would perform his official duties in~~  
28 ~~a biased or partial manner.]~~ (Deleted by amendment; P.L. , c. .)  
29 (Pending before the Legislature as this bill.)

30     d. This section shall not apply to:

31     (1) Fees prescribed by law to be received by a public servant, or any  
32 other benefit to which ~~[he]~~ the public servant is otherwise legally  
33 entitled; or

34     (2) Gifts or other benefits conferred on account of kinship or other  
35 personal, professional or business relationship independent of the  
36 official status of the recipient; or

37     (3) Trivial benefits the receipt of which involve no risk that the  
38 public servant would perform ~~[his]~~ official duties in a biased or partial  
39 manner.

40     e. An offense under this section is a crime of the third degree. If  
41 the gift or other benefit is of a value of \$200.00 or less, any offense  
42 proscribed by this section is a crime of the fourth degree.

43 (cf: P.L.1979, c.178, s.51)

44

45     100. (New Section) A public servant commits a crime of the  
46 fourth degree if, while performing his official functions on behalf of a

1 governmental entity, the public servant knowingly transacts any  
2 business with himself, a member of his immediate family, or a business  
3 organization in which the public servant or an immediate family  
4 member has an interest. For purposes of this section, an interest in a  
5 business organization shall not include aggregate familial ownership or  
6 control of one percent or less of an interest in the capital or equity of  
7 the business organization. A public servant shall not be guilty of an  
8 offense under this section if the public servant's performance of official  
9 functions would not affect the public servant, family member or  
10 business organization differently than such performance would affect  
11 the public generally, or would not affect the public servant, family  
12 member or business organization, as a member of a business,  
13 profession, occupation or group, differently than such performance  
14 would affect any other member of such business, profession,  
15 occupation or group.

16

17 101. Section 10 of P.L.1991, c.29 (C.40A:9-22.10) is amended to  
18 read as follows:

19 10. a. An appointed local government officer or employee found  
20 guilty by the Local Finance Board or a county or municipal ethics  
21 board of the violation of any provision of [this act] P.L.1991, c.29  
22 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to  
23 [this act] P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less  
24 than \$100.00 nor more than \$500.00, which penalty may be collected  
25 in a summary proceeding pursuant to "the penalty enforcement law"  
26 (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics  
27 board shall report its findings to the office or agency having the power  
28 of removal or discipline of the appointed local government officer or  
29 employee and may recommend that further disciplinary action be  
30 taken.

31 b. An elected local government officer or employee found guilty  
32 by the Local Finance Board or a county or municipal ethics board of  
33 the violation of any provision of [this act] P.L.1991, c.29 (C.40A:9-  
34 22.1 et seq.) or of any code of ethics in effect pursuant to [this act]  
35 P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less than  
36 \$100.00 nor more than \$500.00, which penalty may be collected in a  
37 summary proceeding pursuant to "the penalty enforcement law"  
38 (N.J.S.2A:58-1 et seq.).

39 c. The remedies provided herein are in addition to all other criminal  
40 and civil remedies provided under the law.

41 (cf: P.L.1991, c.29, s.10)

42

43 102. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to  
44 read as follows:

45 10. (a) The Executive Commission on Ethical Standards created  
46 pursuant to P.L.1967, chapter 229 is continued and established in the  
47 Department of Law and Public Safety and shall constitute the first

1 commission under [this act] P.L.1971, c.182 (C.52:13D-12 et al.).

2 (b) The commission shall be composed of seven members appointed  
3 by the Governor from among State officers and employees serving in  
4 the Executive Branch. Each member shall serve at the pleasure of the  
5 Governor during the term of office of the Governor appointing [him]  
6 the member and until [his] the member's successor is appointed and  
7 qualified. The Governor shall designate one member to serve as  
8 chairman and one member to serve as vice-chairman of the  
9 commission.

10 (c) Each member of the said commission shall serve without  
11 compensation but shall be entitled to be reimbursed for all actual and  
12 necessary expenses incurred in the performance of [his] the member's  
13 duties.

14 (d) The Attorney General shall act as legal adviser and counsel to  
15 the said commission. [He] The Attorney General shall upon request  
16 advise the commission in the rendering of advisory opinions by the  
17 commission, in the approval and review of codes of ethics adopted by  
18 State agencies in the Executive Branch and in the recommendation of  
19 revisions in codes of ethics or legislation relating to the conduct of  
20 State officers and employees in the Executive Branch.

21 (e) The said commission may, within the limits of funds  
22 appropriated or otherwise made available to it for the purpose, employ  
23 such other professional, technical, clerical or other assistants,  
24 excepting legal counsel, and incur such expenses as may be necessary  
25 for the performance of its duties.

26 (f) The said commission, in order to perform its duties pursuant to  
27 the provisions of [this act] P.L.1971, c.182 (C.52:13D-12 et al.), shall  
28 have the power to conduct investigations, hold hearings, compel the  
29 attendance of witnesses and the production before it of such books and  
30 papers as it may deem necessary, proper and relevant to the matter  
31 under investigation. The members of the said commission and the  
32 persons appointed by the commission for such purpose are hereby  
33 empowered to administer oaths and examine witnesses under oath.

34 (g) The said commission is authorized to render advisory opinions  
35 as to whether a given set of facts and circumstances would, in its  
36 opinion, constitute a violation of the provisions of [this act] P.L.1971,  
37 c.182 (C.52:13D-12 et al.) or of a code of ethics promulgated  
38 pursuant to the provisions of [this act] P.L.1971, c.182 (C.52:13D-12  
39 et al.).

40 (h) The said commission shall have jurisdiction to initiate, receive,  
41 hear and review complaints regarding violations, by any State officer  
42 or employee or special State officer or employee in the Executive  
43 Branch, of the provisions of [this act] P.L.1971, c.182 (C.52:13D-12  
44 et al.) or of any code of ethics promulgated pursuant to the provisions  
45 of [this act] P.L.1971, c.182 (C.52:13D-12 et al.). Any complaint  
46 regarding a violation of a code of ethics may be referred by the

1 commission for disposition in accordance with subsection [12(d) of  
2 this act] (d) of section 12 of P.L.1971, c.182 (C.52:13D-23).

3 (i) Any State officer or employee or special State officer or  
4 employee found guilty by the commission of violating any provision  
5 of [this act] P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of  
6 ethics promulgated pursuant to the provisions of [this act] P.L.1971,  
7 c.182 (C.52:13D-12 et al.) shall be fined not less than \$100.00 nor  
8 more than \$500.00, which penalty may be collected in a summary  
9 proceeding pursuant to the Penalty Enforcement Law (N.J.S.  
10 2A:58-1), and may be suspended from his office or employment by  
11 order of the commission for a period of not in excess of 1 year. If the  
12 commission finds that the conduct of such officer or employee  
13 constitutes a willful and continuous disregard of the provisions of  
14 [this act] P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of ethics  
15 promulgated pursuant to the provisions of [this act] P.L.1971, c.182  
16 (C.52:13D-12 et al.), it may order such person removed from his  
17 office or employment and may further bar such person from holding  
18 any public office or employment in this State in any capacity  
19 whatsoever for a period of not exceeding 5 years from the date on  
20 which [he] the person was found guilty by the commission.

21 (j) The remedies provided herein are in addition to all other criminal  
22 and civil remedies provided under the law.

23 (cf: P.L.1971, c.182, s.10)

24

25 103. Section 13 of P.L.1954, c.48 (C.52:34-18) is amended to read  
26 as follows:

27 13. Any person [willfully] knowingly authorizing, consenting to,  
28 making or procuring to be made any purchase, contract or agreement  
29 in violation of any of the provisions of [this act] P.L.1954, c.48,  
30 (C.52:34-6 et seq.) or [willfully] knowingly making or procuring to  
31 be made payment of State funds for or on account of any purchase,  
32 contract or agreement known to him to have been made or entered  
33 into in violation of any of the provisions of [this act] P.L.1954, c.48  
34 (C.52:34-6 et seq.) shall be guilty of a [misdemeanor] crime of the  
35 fourth degree.

36 (cf: P.L.1954, c.48, s.13)

37

38 104. Section 11 of P.L.1970, c.73 (C.56:9-11) is amended to read  
39 as follows:

40 11. a. Any person [or corporation, or any officer or agent  
41 thereof,] who shall knowingly violate any of the provisions of [this  
42 act] P.L.1970, c.73 (C.56:9-1 et seq.) or knowingly aid or advise in  
43 such violation[, or who, as principal, manager, director, stockholder  
44 owning 10% or more of the aggregate outstanding capital stock of all  
45 classes of the corporation, agent, servant or employee, knowingly does  
46 any act comprising a part of such violation,] is guilty of a

1 [misdemeanor and shall be punished by imprisonment for not more  
2 than 3 years or by a fine of not more than \$50,000.00 or both; and if  
3 a corporation by a fine of not more than \$100,000.00] crime <sup>1</sup>[of the  
4 fourth degree]<sup>1</sup>.

5 b. Any person convicted pursuant to the provisions of subsection  
6 a. of this section [is hereby denied the right and is hereby prohibited  
7 from managing or owning any business organization within this State,  
8 and from serving as an officer, director, trustee, member of any  
9 executive board or similar governing body, principal, manager,  
10 stockholder owning 10% or more of the aggregate outstanding capital  
11 stock of all classes of any corporation doing business in this State,  
12 and all persons within this State, are hereby denied the right to handle  
13 the goods of or in any manner deal with, directly or indirectly, those  
14 persons, companies or corporations under the interdict specified  
15 herein. All persons knowingly violating any of the provisions of this  
16 section, either directly or indirectly, or aiding or abetting directly or  
17 indirectly in any violation of any provisions of this section, shall be  
18 deemed guilty of a misdemeanor and shall be fined not less than  
19 \$100.00 nor more than \$1,000.00 and shall be punished by  
20 imprisonment for not less than 30 days nor more than 6 months, and  
21 shall forfeit not less than \$1,000.00 for each and every day such  
22 violation may continue, to be collected by a summary proceeding in a  
23 court of competent jurisdiction] of a violation involving or affecting  
24 trade or commerce of a value less than \$1,000,000.00 shall be guilty  
25 of a crime of the third degree. Any person convicted pursuant to the  
26 provisions of subsection a. of this section of a violation involving or  
27 affecting trade or commerce of a value equal to or greater than  
28 \$1,000,000.00 shall be guilty of a crime of the second degree. Any  
29 person convicted pursuant to the provisions of subsection a. of this  
30 section of a violation involving bid rigging on public contracts,  
31 regardless of the value of trade or commerce involved or affected,  
32 shall be guilty of a crime of the second degree.

33 c. Notwithstanding the provisions of subsections a. and b. of  
34 N.J.S.2C:43-3, a person convicted of a crime of the second degree  
35 under this section shall be subject to a fine of not less than \$50,000.00  
36 nor more than \$300,000.00, or, in the case of a corporation,  
37 partnership, or other business entity, be subject to a fine of not less  
38 than \$250,000.00 nor more than \$1,000,000.00, or imprisonment, or  
39 both, and a person convicted of a crime of the third degree under this  
40 section shall be subject to a fine of not less than \$25,000.00 nor more  
41 than \$150,000.00, or, in the case of a corporation, partnership, or  
42 other business entity, be subject to a fine of not less than \$100,000.00  
43 nor more than \$300,000.00, or imprisonment, or both.

44 (cf: P.L.1970, c.73, s.11)

45

46 105. N.J.S.18A:71A-10 is amended to read as follows:

47 18A:71A-10. Contracts, Purchases, Records, Travel.

1 a. The authority, in the exercise of its power to make and enter  
2 into contracts and agreements necessary or incidental to the  
3 performance of its duties and the execution of its powers, shall adopt  
4 standing operating rules and procedures providing that, except as  
5 hereinafter provided, no contract on behalf of the authority shall be  
6 entered into for the doing of any work, or for the hiring of equipment  
7 or vehicles, when the sum to be expended exceeds the sum of  
8 ~~[\$12,300]~~ \$25,000 or, after ~~[June 30, 1998]~~ the effective date of  
9 P.L. , c. (now before the Legislature as this bill , the amount  
10 determined pursuant to subsection b. of this section, unless the  
11 authority shall first publicly advertise for bids therefor, and shall award  
12 the contract to the lowest responsible bidder; provided, however, that  
13 such advertising shall not be required when the contract to be entered  
14 into is one for the furnishing or performing of services of a  
15 professional nature, or when the purchase is to be made through or by  
16 the Director of the Division of Purchase and Property pursuant to  
17 section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through a contract  
18 made by any of the following: the New Jersey Sports and Exposition  
19 Authority established under section 4 of P.L.1971, c.137 (C.5:10-4);  
20 the Hackensack Meadowlands Development Commission established  
21 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
22 Highway Authority established under section 4 of P.L.1952, c.16  
23 (C.27:12B-4); the New Jersey Turnpike Authority established under  
24 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
25 Supply Authority established under section 4 of P.L.1981, c.293  
26 (C.58:1B-4); the South Jersey Transportation Authority established  
27 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
28 of New York and New Jersey established under R.S.32:1-4; and the  
29 Delaware River Port Authority established under R.S.32:3-2. Waiver  
30 of bid advertising and of actual bidding shall be made by resolution of  
31 the authority for those goods, services, and contracts described in  
32 sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 52:34-10).  
33 **[Special rules shall apply to the procurement of professional services**  
34 **when the authority shall consider a variety of factors associated with**  
35 **rendering the professional services, including price, in awarding of a**  
36 **contract.]**

37 This subsection shall not prevent the authority from having any  
38 work done by its own employees, nor shall it apply when the safety or  
39 protection of its or other public property requires. In the case of  
40 exigency or emergency, the authority shall, by resolution passed by the  
41 affirmative vote of a majority of its members, declare the exigency or  
42 emergency to exist, and set forth in the resolution the nature thereof  
43 and the approximate amount to be so expended.

44 b. **[The]** Commencing in the fifth year after the year in which  
45 P.L. , c. (now before the Legislature as this bill) takes effect, and  
46 every five years thereafter, the Governor, in consultation with the  
47 Department of the Treasury, shall **[**, not later than March 1 of each



1 odd-numbered year,] adjust the threshold amount set forth in  
2 subsection a. of this section, or the threshold amount resulting from  
3 any adjustment under this subsection, in direct proportion to the rise  
4 or fall of the [consumer price index for all urban consumers in the  
5 New York City and the Philadelphia areas as reported by the United  
6 States Department of Labor] index rate as that term is defined in  
7 section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the  
8 adjustment to the nearest \$1,000. The Governor shall, no later than  
9 June 1 of [each odd-numbered] every fifth year, notify the authority  
10 of the adjustment. The adjustment shall become effective July 1 of  
11 [each odd-numbered year] the year in which it is made .

12 c. The authority, in the exercise of its power to make purchases  
13 and enter into contracts, leases and agreements necessary or incidental  
14 to the performance of its duties and the execution of its powers, shall  
15 adopt standing operating rules and procedures providing that, subject  
16 to subsections a. and b. of this section, for purchases, contracts, leases  
17 and agreements payable exclusively with or out of funds transferred  
18 from the Higher Education Student Assistance Fund, the purchases,  
19 contracts, leases and agreements shall be subject to the authority's sole  
20 approval. Approval of the purchases, contracts, leases, and  
21 agreements shall not be required by any other department, division,  
22 board, bureau, agency, office or officer of the State.

23 d. The authority, without advertising for bids, or after having  
24 rejected all bids obtained pursuant to advertising therefor, may  
25 purchase any materials, supplies or equipment pursuant to a contract  
26 or contracts for the materials, supplies or equipment entered into on  
27 behalf of the State. Any department, division, commission, board,  
28 bureau, agency, office or officer of the State may, by joint action with  
29 the authority, purchase any articles used or needed by the State and  
30 the authority.

31 e. Records subject to the record retention requirements set forth  
32 under 20 U.S.C.s.1071 et seq., 20 U.S.C.s.1070c et seq., and 20  
33 U.S.C.s.1104 et seq. and implementing regulations and rules shall not  
34 be "public records" for purposes of the "Destruction of Public Records  
35 Law (1953)," P.L.1953, c.410 (C.47: 3-15 et seq.), notwithstanding  
36 the provisions of any law to the contrary.

37 f. The executive director shall have the power to approve of travel  
38 consistent with Office of Management and Budget travel regulations,  
39 except that for travel that is payable exclusively with or out of funds  
40 transferred from the Higher Education Student Assistance Fund, no  
41 approval shall be required by the Director of the Office of  
42 Management and Budget.

43 (cf: N.J.S.18A:71A-10)

44

45 106. Section 1 of P.L.1996, c.16 (C.52:34-6.1) is amended to read  
46 as follows:

47 1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et

1 seq.) to the contrary, [and as an alternative to the procedures  
2 concerning the awarding of public contracts pursuant to that act,] the  
3 Director of the Division of Purchase and Property in the Department  
4 of the Treasury [may purchase goods and services, for State agencies  
5 and for the entities defined in section 1 of P.L.1959, c.40  
6 (C.52:27B-56.1), from] shall promulgate the Federal Supply  
7 Schedules of the Federal General Services Administration [as  
8 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
9 Pub.L.103-355, and regulations adopted pursuant to that law and by  
10 the rules and regulations which the director may promulgate] pursuant  
11 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
12 et seq.) as an alternate price guide for the purchase of goods and  
13 services for State agencies and for the entities defined in section 1 of  
14 P.L.1959, c.40 (C.52:27B-56.1), subject to the following conditions:

15 (1) the price of the goods <sup>1</sup>or services<sup>1</sup> being procured is no  
16 greater than the price offered to federal agencies;

17 (2) the Federal Supply Schedules may be used only for purchases  
18 of up to \$500,000 per year or for one product unit at any price and  
19 only for reprographic equipment or services, including digital copiers,  
20 used by the State: <sup>1</sup>[and]<sup>1</sup>

21 (3) the State receives the benefit of federally mandated price  
22 reductions during the term of the contract and is protected from price  
23 increases during that time<sup>1</sup>; and

24 (4) the price of the goods or services being procured is no greater  
25 than the price of the same or equivalent goods or services under the  
26 State contract, unless the State determines that because of factors  
27 other than price, selection of a vendor from the Federal Supply  
28 Schedules would be more advantageous to the State<sup>1</sup> .

29 (cf: P.L.1996, c.16, s.1)

30

31 107. Section 2 of P.L.1996, c.16 (C.52:34-6.3) is amended to read  
32 as follows:

33 2. Notwithstanding the provisions of any other law to the contrary,  
34 [and as an alternative to the procedures concerning the awarding of  
35 public contracts pursuant to the applicable statutes,] the State  
36 authorities authorized to contract independently under various  
37 provisions of State law may[, without advertising for bids, or having  
38 rejected all bids obtained pursuant to advertising, purchase goods and  
39 services from the Federal Supply Schedules of the Federal General  
40 Services Administration as permitted by the "Federal Acquisition  
41 Streamlining Act of 1994," Pub.L.103-355, and regulations adopted  
42 pursuant to that law and by the rules and regulations which the  
43 authority may adopt] also use, without advertising for bids, or having  
44 rejected all bids obtained pursuant to advertising, the Federal Supply  
45 Schedules of the General Services Administration, promulgated by the  
46 Director of the Division of Purchase and Property in the Department

1 of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1),  
2 subject to the following conditions:

3 (1) the price of the goods <sup>1</sup>or services<sup>1</sup> being procured is no greater  
4 than the price offered to federal agencies;

5 (2) the Federal Supply Schedules may be used only for purchases  
6 of up to \$500,000 per year or for one product unit at any price and  
7 only for reprographic equipment or services, including digital copiers,  
8 used by the authority: <sup>1</sup>[and]<sup>1</sup>

9 (3) the authority receives the benefit of federally mandated price  
10 reductions during the term of the contract and is protected from price  
11 increases during that time<sup>1</sup>;

12 (4) the price of the goods or services being procured is no greater  
13 than the price of the same or equivalent goods or services under the  
14 State contract, unless the authority determines that because of factors  
15 other than price, selection of a vendor from the Federal Supply  
16 Schedules would be more advantageous to the authority;

17 (5) a copy of the purchase order relating to any such contract, the  
18 requisition or request for purchase order, if applicable, and  
19 documentation identifying the price of the goods or services under the  
20 Federal Supply Schedules shall be filed with the State Treasurer within  
21 five working days of the award of any such contract by the authority.  
22 The authority shall make available to the State Treasurer upon request  
23 any other documents relating to the solicitation and award of the  
24 contract<sup>1</sup> .

25 (cf: P.L.1996, c.16, s.2)

26

27 108. The following are repealed:

28 N.J.S.2C:27-7

29 P.L.1972, c.112 (C.40A:11-12.1 to 40A:11-12.6)

30 N.J.S.18A:18A-38

31 N.J.S.18A:18A-39

32 Section 1 of P.L.1981, c.186 (C.18A:18A-42.1)

33

34 109. This act shall take effect 90 days after enactment.

35

36

37

38

39 Revises and strengthens various laws concerning public contracting.

# ASSEMBLY, No. 3519

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED NOVEMBER 15, 1999

**Sponsored by:**

**Assemblyman JOSEPH R. MALONE, III**  
**District 30 (Burlington, Monmouth and Ocean)**  
**Assemblywoman ROSE MARIE HECK**  
**District 38 (Bergen)**

**Co-Sponsored by:**

**Assemblymen Cottrell, Kelly and Suliga**

**SYNOPSIS**

Revises and strengthens various laws concerning public contracting.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning public procurement and amending, supplementing  
2 and repealing various parts of the statutory law.

3

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

6

7 1. (New section) Notwithstanding the provisions of any law, rule  
8 or regulation to the contrary, competitive contracting may be used by  
9 local contracting units in lieu of public bidding for procurement of  
10 specialized goods and services the price of which exceeds the bid  
11 threshold, for the following purposes:

12 a. The purchase or licensing of proprietary computer software  
13 designed for contracting unit purposes, which may include hardware  
14 intended for use with the proprietary software. This subsection shall  
15 not be utilized for the purpose of acquiring general purpose computer  
16 hardware or software;

17 b. The hiring of a for-profit entity or a not-for-profit entity  
18 incorporated under Title 15A of the New Jersey Statutes for the  
19 purpose of:

20 (1) the operation and management of a wastewater treatment  
21 system or a water supply or distribution facility of the type described  
22 in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15) ,  
23 provided that competitive contracting shall not be used as a means of  
24 awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et seq.) and  
25 P.L.1985, c.72 (C.58:27-1 et seq.);

26 (2) the operation, management or administration of recreation or  
27 social service facilities or programs; or

28 (3) the operation, management or administration of data processing  
29 services;

30 c. Services performed by an energy services company, including  
31 the design, measurement, financing and maintenance of energy savings  
32 equipment or renovations, which result in payment derived, in whole  
33 or in part, from the sale of verified energy savings over the term of an  
34 agreement with a public utility or subsidiary, but not the provision or  
35 performance of the physical improvements that result in energy  
36 savings, provided that such savings are calculated pursuant to  
37 guidelines promulgated by the Board of Public Utilities and further  
38 provided that the Local Finance Board shall find that the terms and  
39 conditions of any financing agreement are reasonable;

40 d. Homemaker--home health services;

41 e. Laboratory testing services;

42 f. Emergency medical services;

43 g. Contracted food services;

44 h. Performance of patient care services by contracted medical staff

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 at county hospitals, correctional facilities and long-term care facilities;

2 i. At the option of the governing body of the contracting unit, any  
3 good or service that is exempt from bidding pursuant to section 5 of  
4 P.L.1971, c.198 (C.40A:11-5);

5 j. Concessions;

6 k. The operation, management or administration of other services,  
7 with the approval of the Director of the Division of Local Government  
8 Services.

9 Any purpose included herein shall not be considered by a  
10 contracting unit as an extraordinary unspecifiable service pursuant to  
11 paragraph (a)(ii) of subsection (1) of section 5 of P.L.1971, c.198  
12 (C.40A:11-5).

13

14 2. (New section) Unless an exception is provided for under section  
15 15 of P.L.1971, c.198 (C.40A:11-15) permitting a longer contract  
16 duration, contracts awarded pursuant to section 5 of P.L. , c. (C. )  
17 (pending before the Legislature as this bill) may be for a term not to  
18 exceed five years.

19

20 3. (New section) a. In order to initiate competitive contracting,  
21 the governing body shall pass a resolution authorizing the use of  
22 competitive contracting each time specialized goods or services  
23 enumerated in section 1 of P.L. , c. (C. ) (pending before the  
24 Legislature as this bill) are desired to be contracted. If the desired  
25 goods or services have previously been contracted for using the  
26 competitive contracting process then the original resolution of the  
27 governing body shall suffice.

28 b. The competitive contracting process shall be administered by a  
29 purchasing agent qualified pursuant to subsection b. (pending before  
30 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
31 c.198 (C.40A:11-9), or, by legal counsel of the contracting unit, or by  
32 an administrator of the contracting unit. Any contracts awarded under  
33 this process shall be made by resolution of the governing body of the  
34 contracting unit, subject to the provisions of subsection e. of section  
35 5 of P.L. , c. (C. )(now before the Legislature as this bill).

36

37 4. (New section) The competitive contracting process shall utilize  
38 request for proposals documentation in accordance with the following  
39 provisions:

40 a. The purchasing agent or counsel or administrator shall prepare  
41 or have prepared request for proposal documentation, which shall  
42 include: all requirements deemed appropriate and necessary to allow  
43 for full and free competition between vendors; information necessary  
44 for potential vendors to submit a proposal; and a methodology by  
45 which the contracting unit will evaluate and rank proposals received  
46 from vendors.

47 b. The methodology for the awarding of competitive contracts shall

1 be based on an evaluation and ranking, which shall include technical,  
2 management, and cost related criteria, and may include a weighting of  
3 criteria, all developed in a way that is intended to meet the specific  
4 needs of the contracting unit, and where such criteria shall not unfairly  
5 or illegally discriminate against or exclude otherwise capable vendors.  
6 When an evaluation methodology uses a weighting of criteria, at the  
7 option of the contracting unit the weighting to be accorded to each  
8 criterion may be disclosed to vendors prior to receipt of the proposals.  
9 The methodology for awarding competitive contracts shall comply  
10 with such rules and regulations as the director may adopt, after  
11 consultation with the Commissioner of Education, pursuant to the  
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
13 seq.).

14 c. At no time during the proposal solicitation process shall the  
15 purchasing agent or counsel or administrator convey information,  
16 including price, to any potential vendor which could confer an unfair  
17 advantage upon that vendor over any other potential vendor. If a  
18 purchasing agent or counsel or administrator desires to change  
19 proposal documentation, the purchasing agent or counsel or  
20 administrator shall notify only those potential vendors who received  
21 the proposal documentation of any and all changes in writing and all  
22 existing documentation shall be changed appropriately.

23 d. All proposals and contracts shall be subject to the provisions of  
24 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
25 statement of corporate ownership and the provisions of P.L.1975,  
26 c.127(C.10:5-31 et seq.) concerning equal employment opportunity  
27 and affirmative action.

28

29 5. (New section) Competitive contracting proposals shall be  
30 solicited in the following manner:

31 a. A notice of the availability of request for proposal  
32 documentation shall be published in an official newspaper of the  
33 contracting unit at least 20 days prior to the date established for the  
34 submission of proposals. The contracting unit shall promptly reply to  
35 any request by an interested vendor by providing a copy of the request  
36 for proposals. The contracting unit may charge a fee for the proposal  
37 documentation that shall not exceed \$50.00 or the cost of reproducing  
38 the documentation, whichever is greater.

39 b. Each interested vendor shall submit a proposal which shall  
40 include all the information required by the request for proposals.  
41 Failure to meet the requirements of the request for proposals may  
42 result in the contracting unit disqualifying the vendor from further  
43 consideration. Under no circumstances shall the provisions of a  
44 proposal be subject to negotiation by the contracting unit.

45 c. If the contracting unit, at the time of solicitation, utilizes its own  
46 employees to provide the goods or perform the services, or both,  
47 considered for competitive contracting, the governing body shall, at

1 any time prior to, but no later than the time of solicitation for  
2 competitive contracting proposals, notify affected employees of the  
3 governing body's intention to solicit competitive contracting proposals.  
4 Employees or their representatives shall be permitted to submit  
5 recommendations and proposals affecting wages, hours, and terms and  
6 conditions of employment in such a manner as to meet the goals of the  
7 competitive contract. If employees are represented by an organization  
8 that has negotiated a contract with the contracting unit, only the  
9 bargaining unit shall be authorized to submit such recommendations or  
10 proposals. When requested by such employees, the governing body  
11 shall provide such information regarding budgets and the costs of  
12 performing the services by such employees as may be available.  
13 Nothing shall prevent such employees from making recommendations  
14 that may include modifications to existing labor agreements in order  
15 to reduce such costs in lieu of award of a competitive contract, and  
16 agreements implementing such recommendations may be considered  
17 as cause for rejecting all other proposals.

18 d. The purchasing agent or counsel or administrator shall evaluate  
19 all proposals only in accordance with the methodology described in the  
20 request for proposals. After proposals have been evaluated, the  
21 purchasing agent or counsel or administrator shall prepare a report  
22 evaluating and recommending the award of a contract or contracts.  
23 The report shall list the names of all potential vendors who submitted  
24 a proposal and shall summarize the proposals of each vendor. The  
25 report shall rank vendors in order of evaluation, shall recommend the  
26 selection of a vendor or vendors, as appropriate, for a contract, shall  
27 be clear in the reasons why the vendor or vendors have been selected  
28 among others considered, and shall detail the terms, conditions, scope  
29 of services, fees, and other matters to be incorporated into a contract.  
30 The report shall be made available to the public at least 48 hours prior  
31 to the awarding of the contract, or when made available to the  
32 governing body, whichever is sooner. The governing body shall have  
33 the right to reject all proposals for any of the reasons set forth in  
34 section 21 of P.L. , c. (C. )(now before the Legislature as this bill).

35 e. Award of a contract shall be made by resolution of the governing  
36 body of the contracting unit within 60 days of the receipt of the  
37 proposals, except that the proposals of any vendors who consent  
38 thereto, may, at the request of the contracting unit, be held for  
39 consideration for such longer period as may be agreed.

40 f. The report prepared pursuant to subsection d. of this section  
41 shall become part of the public record and shall reflect the final action  
42 of the governing body. Contracts shall be executed pursuant to  
43 section 14 of P.L.1971, c.198 (C.40A:11-14).

44 g. The clerk or secretary of the contracting unit shall publish a  
45 notice in the official newspaper of the contracting unit summarizing  
46 the award of a contract, which shall include but not be limited to, the  
47 nature, duration, and amount of the contract, the name of the vendor



1 and a statement that the resolution and contract are on file and  
2 available for public inspection in the office of the clerk or secretary of  
3 the municipality, county, local public authority or special district of the  
4 governing body.

5 h. All contract awards shall be subject to rules concerning  
6 certification of availability of funds adopted pursuant to section 3 of  
7 P.L.1971, c.198 (C.40A:11-3) and section 15 of P.L.1971, c.198  
8 (C.40A:11-15).

9 i. The director, after consultation with the Commissioner of  
10 Education, may adopt additional rules and regulations, in accordance  
11 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
12 1 et seq.), as may be necessary to effectuate the provisions of sections  
13 1 through 5 of P.L. , c. (C. ) (pending before the Legislature as this  
14 bill).

15

16 6. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read  
17 as follows:

18 2. As used herein the following words have the following  
19 definitions, unless the context otherwise indicates:

20 (1) "Contracting unit" means:

21 (a) Any county; or

22 (b) Any municipality; or

23 (c) Any board, commission, committee, authority or agency, which  
24 is not a State board, commission, committee, authority or agency, and  
25 which has administrative jurisdiction over any district other than a  
26 school district, project, or facility, included or operating in whole or  
27 in part, within the territorial boundaries of any county or municipality  
28 which exercises functions which are appropriate for the exercise by  
29 one or more units of local government, and which has statutory power  
30 to make purchases and enter into contracts **【or agreements】 awarded**  
31 **by a contracting agent** for the **provision or** performance of **【any work**  
32 **or the furnishing or hiring of any materials or supplies usually**  
33 **required, the cost or contract price of which is to be paid with or out**  
34 **of public funds】 goods or services.**

35 The term shall not include a private firm that has entered into a  
36 contract with a public entity for the provision of water supply services  
37 pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

38 "Contracting unit" shall not include a private firm or public  
39 authority that has entered into a contract with a public entity for the  
40 provision of wastewater treatment services pursuant to P.L.1995,  
41 c.216 (C.58:27-19 et al.).

42 (2) "Governing body" means:

43 (a) The governing body of the county, when the purchase is to be  
44 made or the contract is to be entered into by, or in behalf of, a county;  
45 or

46 (b) The governing body of the municipality, when the purchase is  
47 to be made or the contract is to be entered into by, or on behalf of, a

1 municipality; or

2 (c) Any board, commission, committee, authority or agency of the  
3 character described in subsection (1) (c) of this section.

4 (3) "Contracting agent" means the governing body of a contracting  
5 unit, or ~~any board, commission, committee, officer, department,~~  
6 ~~branch or agency~~ its authorized designee, which has the power to  
7 prepare the advertisements, to advertise for and receive bids and, as  
8 permitted by this act, to make awards for the contracting unit in  
9 connection with contracts.

10 (4) "Purchase" ~~is~~ means a transaction, for a valuable  
11 consideration, creating or acquiring an interest in goods, services and  
12 property, except real property or any interest therein.

13 (5) ~~["Materials" includes goods and property subject to chapter 2~~  
14 ~~of Title 12A of the New Jersey Statutes, apparatus, or any other~~  
15 ~~tangible thing, except real property or any interest therein.]~~ ~~(Deleted~~  
16 ~~by amendment, P.L. c. .) (Pending before the Legislature as this bill.)~~

17 (6) "Professional services" means services rendered or performed  
18 by a person authorized by law to practice a recognized profession,  
19 whose practice is regulated by law, and the performance of which  
20 services requires knowledge of an advanced type in a field of learning  
21 acquired by a prolonged formal course of specialized instruction and  
22 study as distinguished from general academic instruction or  
23 apprenticeship and training. Professional services may also mean  
24 services rendered in the provision or performance of ~~work~~ goods or  
25 services that ~~is~~ are original and creative in character in a recognized  
26 field of artistic endeavor.

27 (7) "Extraordinary unspecifiable services" means services which are  
28 specialized and qualitative in nature requiring expertise, extensive  
29 training and proven reputation in the field of endeavor.

30 (8) ~~["Project" means any work, undertaking, program, activity,~~  
31 ~~development, redevelopment, construction or reconstruction of any~~  
32 ~~area or areas.]~~ ~~(Deleted by amendment, P.L. , c. .) (Pending before~~  
33 ~~the Legislature as this bill.)~~

34 (9) "Work" ~~includes services and any other activity of a tangible~~  
35 ~~or intangible nature~~ means any task, program, undertaking, or  
36 activity, related to any development, redevelopment, construction or  
37 reconstruction performed or ~~assumed~~ provided pursuant to a  
38 contract ~~or agreement~~ with a contracting unit.

39 (10) "Homemaker--home health services" means at home personal  
40 care and home management provided to an individual or members of  
41 ~~his~~ the individual's family who reside with ~~him~~ the individual, or  
42 both, necessitated by the individual's illness or incapacity.  
43 "Homemaker--home health services" includes, but is not limited to, the  
44 services of a trained homemaker.

45 (11) "Recyclable material" means those materials which would  
46 otherwise become municipal solid waste, and which may be collected,

1 separated or processed and returned to the economic mainstream in  
2 the form of raw materials or products.

3 (12) "Recycling" means any process by which materials which  
4 would otherwise become solid waste are collected, separated or  
5 processed and returned to the economic mainstream in the form of raw  
6 materials or products.

7 (13) "Marketing" means the **marketing of designated recyclable**  
8 **materials source separated in a municipality which entails a marketing**  
9 **cost less than the cost of transporting the recyclable materials to solid**  
10 **waste facilities and disposing of the materials as municipal solid waste**  
11 **at the facility utilized by the municipality** sale, disposition,  
12 assignment, or placement of designated recyclable materials with, or  
13 the granting of a concession to, a reseller, processor, materials  
14 recovery facility, or end-user of recyclable material, in accordance  
15 with a district solid waste management plan adopted pursuant to  
16 P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection  
17 of such recyclable material when collected through a system of routes  
18 by local government unit employees or under a contract administered  
19 by a local government unit.

20 (14) "Municipal solid waste" means, as appropriate to the  
21 circumstances, all residential, commercial and institutional solid waste  
22 generated within the boundaries of a municipality; or the formal  
23 collection of such solid wastes or recyclable material in any  
24 combination thereof when collected through a system of routes by  
25 local government unit employees or under a contract administered by  
26 a local government unit.

27 (15) "Distribution" (when used in relation to electricity) means the  
28 process of conveying electricity from a contracting unit **[who]** that is  
29 a generator of electricity or a wholesale purchaser of electricity to  
30 retail customers or other end users of electricity.

31 (16) "Transmission" (when used in relation to electricity) means  
32 the conveyance of electricity from its point of generation to a  
33 contracting unit **[who]** that purchases it on a wholesale basis for  
34 resale.

35 (17) "Disposition" means the transportation, placement, reuse, sale,  
36 donation, transfer or temporary storage of recyclable materials for all  
37 possible uses except for disposal as municipal solid waste.

38 (18) "Cooperative marketing" means the joint marketing by two or  
39 more contracting units **[within the same county, or adjacent or**  
40 **proximate counties,]** of the source separated recyclable materials  
41 designated in a district recycling plan required pursuant to section 3 of  
42 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative  
43 agreement entered into by the participating contracting units thereof.

44 (19) "Aggregate" means the sums expended or to be expended for  
45 the provision or performance of any goods or services in connection  
46 with the same immediate purpose or task, or the furnishing of similar

1 goods or services, during the same contract year through a contract  
2 awarded by a contracting agent.

3 (20) "Bid threshold" means the dollar amount set in section 3 of  
4 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall  
5 advertise for and receive sealed bids in accordance with procedures set  
6 forth in P.L. , c. (C. ) (pending before the Legislature as this bill).

7 (21) "Contract" means any agreement, including but not limited to  
8 a purchase order or a formal agreement, which is a legally binding  
9 relationship enforceable by law, between a vendor who agrees to  
10 provide or perform goods or services and a contracting unit which  
11 agrees to compensate a vendor, as defined by and subject to the terms  
12 and conditions of the agreement. A contract also may include an  
13 arrangement whereby a vendor compensates a contracting unit for the  
14 vendor's right to perform a service, such as, but not limited to,  
15 operating a concession.

16 (22) "Contract year" means the period of 12 consecutive months  
17 following the award of a contract.

18 (23) "Competitive contracting" means the method described in  
19 sections 1 through 5 of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill) of contracting for specialized goods and  
21 services in which formal proposals are solicited from vendors; formal  
22 proposals are evaluated by the purchasing agent or counsel or  
23 administrator; and the governing body awards a contract to a vendor  
24 or vendors from among the formal proposals received.

25 (24) "Goods and services" or "goods or services" means any work,  
26 labor, commodities, equipment, materials, or supplies of any tangible  
27 or intangible nature, except real property or any interest therein,  
28 provided or performed through a contract awarded by a contracting  
29 agent, including goods and property subject to N.J.S.12A:2-101 et  
30 seq.

31 (25) "Library and educational goods and services" means  
32 textbooks, copyrighted materials, student produced publications and  
33 services incidental thereto, including but not limited to books,  
34 periodicals, newspapers, documents, pamphlets, photographs,  
35 reproductions, microfilms, pictorial or graphic works, musical scores,  
36 maps, charts, globes, sound recordings, slides, films, filmstrips, video  
37 and magnetic tapes, other printed or published matter and audiovisual  
38 and other materials of a similar nature, necessary binding or rebinding  
39 of library materials, and specialized computer software used as a  
40 supplement or in lieu of textbooks or reference material.

41 (26) "Lowest price" means the least possible amount that meets all  
42 requirements of the request of a contracting agent.

43 (27) "Lowest responsible bidder or vendor" means the bidder or  
44 vendor: (a) whose response to a request for bids offers the lowest  
45 price and is responsive; and (b) who is responsible.

46 (28) "Official newspaper" means any newspaper designated by the  
47 contracting unit pursuant to R.S.35:1-1 et seq.

1     (29) "Purchase order" means a document issued by the contracting  
2 agent authorizing a purchase transaction with a vendor to provide or  
3 perform goods or services to the contracting unit, which, when  
4 fulfilled in accordance with the terms and conditions of a request of a  
5 contracting agent and other provisions and procedures that may be  
6 established by the contracting unit, will result in payment by the  
7 contracting unit.

8     (30) "Purchasing agent" means the individual duly assigned the  
9 authority, responsibility, and accountability for the purchasing activity  
10 of the contracting unit, and who has such duties as are defined by an  
11 authority appropriate to the form and structure of the contracting unit,  
12 and P.L.1971, c.198 (C.40A:11-1 et seq.).

13     (31) "Quotation" means the response to a formal or informal  
14 request made by a contracting agent by a vendor for provision or  
15 performance of goods or services, when the aggregate cost is less than  
16 the bid threshold. Quotations may be in writing, or taken verbally if  
17 a record is kept by the contracting agent.

18     (32) "Responsible" means able to complete the contract in  
19 accordance with its requirements, including but not limited to  
20 requirements pertaining to experience, moral integrity, operating  
21 capacity, financial capacity, credit, and workforce, equipment, and  
22 facilities availability.

23     (33) "Responsive" means conforming in all material respects to the  
24 terms and conditions, specifications, legal requirements, and other  
25 provisions of the request.

26     (34) "Public works" means building, altering, repairing, improving  
27 or demolishing any public structure or facility constructed or acquired  
28 by a contracting unit to house local government functions or provide  
29 water, waste disposal, power, transportation, and other public  
30 infrastructures.

31     (35) "Director" means the Director of the Division of Local  
32 Government Services in the Department of Community Affairs.

33     (36) "Administrator" means a municipal administrator appointed  
34 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business  
35 administrator, a municipal manager or a municipal administrator  
36 appointed pursuant to the "Optional Municipal Charter Law,"  
37 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed  
38 pursuant to "the municipal manager form of government law,"  
39 R.S.40:79-1 et seq.; or the person holding responsibility for the overall  
40 operations of an authority that falls under the "Local Authorities Fiscal  
41 Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

42     (37) "Concession" means the granting of a license or right to act  
43 for or on behalf of the contracting unit, or to provide a service  
44 requiring the approval or endorsement of the contracting unit, and  
45 which may or may not involve a payment or exchange, or provision of  
46 services by or to the contracting unit.

47     (38) "Index rate" means the rate of annual percentage increase,

1 rounded to the nearest half-percent, in the Implicit Price Deflator for  
2 State and Local Government Purchases of Goods and Services,  
3 computed and published quarterly by the United States Department of  
4 Commerce, Bureau of Economic Analysis.

5 (39) "Proprietary" means goods or services of a specialized nature,  
6 that may be made or marketed by a person or persons having the  
7 exclusive right to make or sell them, when the need for such goods or  
8 services has been certified in writing by the governing body of the  
9 contracting unit to be necessary for the conduct of its affairs.

10 (40) "Service or services" means the performance of work, or the  
11 furnishing of labor, time, or effort, or any combination thereof, not  
12 involving or connected to the delivery or ownership of a specified end  
13 product or goods or a manufacturing process. Service or services may  
14 also include an arrangement in which a vendor compensates the  
15 contracting unit for the vendor's right to operate a concession.

16 (cf: P.L.1995, c.216, s.10)

17  
18 7. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read  
19 as follows:

20 3. Bid threshold; period of contracts a. **【Any purchase, contract**  
21 **or agreement for the performance of any work or the furnishing or**  
22 **hiring of materials or supplies,】.**

23 When the cost or price of **【which, together with any other sums**  
24 **expended or to be expended for the performance of any work or**  
25 **services in connection with the same immediate program, undertaking,**  
26 **activity or project or the furnishing of similar materials or supplies**  
27 **during the same fiscal year】 any contract** **【paid with or out of public**  
28 **funds,】 awarded by the contracting agent in the aggregate does not**  
29 **exceed in 【the fiscal】 a contract year the total sum of 【\$7,500.00 or**  
30 **the amount determined pursuant to subsection b. of this section】**  
31 **\$17,500, the contract may be 【made, negotiated or】 awarded by a**  
32 **【contracting】 purchasing agent when so authorized by ordinance or**  
33 **resolution, as appropriate to the contracting unit, of the governing**  
34 **body of the contracting unit without public advertising for bids, except**  
35 **that the governing body of any contracting unit may adopt an**  
36 **ordinance or resolution to set a lower threshold for the receipt of**  
37 **public bids or the solicitation of competitive quotations. If the**  
38 **purchasing agent is qualified pursuant to subsection b. (pending before**  
39 **the Legislature as section 15 of this bill) of section 9 of P.L.1971,**  
40 **c.198 (C.40A:11-9), the governing body of the contracting unit may**  
41 **establish that the bid threshold may be up to \$25,000. Such**  
42 **authorization may be granted for each 【purchase,】 contract 【or**  
43 **agreement】 or by a general delegation of the power to 【make,】**  
44 **negotiate 【or】 and award such 【purchases,】 contracts 【or**  
45 **agreements】 pursuant to this section.**

46 **b. Any 【purchase,】 contract 【or agreement】 made pursuant to this**

1 section may be awarded for a period of 24 consecutive months  
2 **[notwithstanding that such 24-month period does not coincide with**  
3 **the fiscal year]**, except that contracts for professional services  
4 pursuant to subparagraph (i) of paragraph (a) of subsection (1) of  
5 section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a  
6 period not exceeding 12 consecutive months. The Division of Local  
7 Government Services shall adopt and promulgate rules and regulations  
8 concerning the methods of accounting for all contracts that do not  
9 coincide with the contracting unit's fiscal year.

10 **[b.] c.** The Governor, in consultation with the Department of the  
11 Treasury, shall, no later than March 1 of **[each odd-numbered]** every  
12 fifth year beginning in the fifth year after the year in which P.L. , c.  
13 (now before the Legislature as this bill) takes effect, adjust the  
14 threshold amount and the higher threshold amount which the  
15 governing body is permitted to establish, as set forth in subsection a.  
16 of this section, or **[subsequent to 1985]** the threshold amount  
17 resulting from any adjustment under this subsection **[or section 17 of**  
18 **P.L.1985, c.469]**, in direct proportion to the rise or fall of the  
19 **[Consumer Price Index for all urban consumers in the New York City**  
20 **and the Philadelphia areas as reported by the United States**  
21 **Department of Labor]** index rate as that term is defined in section 2  
22 of P.L.1971, c.198 (C.40A:11-2) (pending before the Legislature as  
23 section 6 of this bill), and shall round the adjustment to the nearest  
24 \$1,000. The Governor shall, no later than June 1 of **[each**  
25 **odd-numbered]** every fifth year, notify each governing body of the  
26 adjustment. The adjustment shall become effective on July 1 of **[each**  
27 **odd-numbered year]** the year in which it is made.  
28 (cf: P.L.1996, c.113, s.18)

29

30 8. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to read  
31 as follows:

32 4. **[Contracts and agreements required to be advertised.] a.** Every  
33 contract **[or agreement]** awarded by the contracting agent for the  
34 provision or performance of any [work or the furnishing or hiring of  
35 any materials or supplies] goods or services, the cost [or the contract  
36 price whereof is to be paid with or out of public funds, not included  
37 within the terms of section 3 of this act] of which in the aggregate  
38 exceeds the bid threshold, shall be [made or] awarded only by  
39 resolution of the governing body of the contracting unit to the lowest  
40 responsible bidder after public advertising for bids and bidding  
41 therefor, except as is provided otherwise in this act or specifically by  
42 any other law. **[No work, materials or supplies shall be undertaken,**  
43 **acquired or furnished for a sum exceeding in the aggregate the amount**  
44 **set forth in, or the amount calculated by the Governor pursuant to,**  
45 **section 3 of P.L.1971, c.198 (C.40A:11-3), except by contract or**

1 agreement.】 The governing body of a contracting unit may, by  
2 resolution approved by a majority of the governing body and subject  
3 to subsections b. and c. of this section, disqualify a bidder who would  
4 otherwise be determined to be the lowest responsible bidder, if the  
5 governing body finds that it has had prior negative experience with the  
6 bidder.

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

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

15 (2) the bidder defaulted on a contract, thereby requiring the local  
16 unit to utilize the services of another contractor to provide the goods  
17 or perform the services or to correct or complete the contract;

18 (3) the bidder defaulted on a contract, thereby requiring the local  
19 unit to look to the bidder's surety for completion of the contract or  
20 tender of the costs of completion; or

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

25 c. The following conditions apply if the governing body of a  
26 contracting unit is contemplating a disqualification based on prior  
27 negative experience:

28 (1) The existence of any of the indicators of prior negative  
29 experience set forth in this section shall not require that a bidder be  
30 disqualified. In each instance, the decision to disqualify shall be made  
31 within the discretion of the governing body and shall be rendered in  
32 the best interests of the contracting unit.

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

36 (3) The bidder shall be furnished by the governing body with a  
37 written notice (a)stating that a disqualification is being considered; (b)  
38 setting forth the reason for the disqualification; and (c) indicating that  
39 the bidder shall be accorded an opportunity for a hearing before the  
40 governing body if the bidder so requests within a stated period of time.  
41 At the hearing, the bidder shall show good cause why the bidder  
42 should not be disqualified by presenting documents and testimony. If  
43 the governing body determines that good cause has not been shown by  
44 the bidder, it may vote to find the bidder lacking in responsibility and,  
45 thus, disqualified.

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



1     (5) A disqualification may be voided or the period thereof may be  
2 reduced, in the discretion of the governing body, upon the submission  
3 of a good faith application under oath, supported by documentary  
4 evidence, setting forth substantial and appropriate grounds for the  
5 granting of relief, such as reversal of a judgment, or actual change of  
6 ownership, management or control of the bidder.

7     (6) An opportunity for a hearing need not be offered to a bidder  
8 whose disqualification is based on its suspension or debarment by an  
9 agency or department of the executive branch of the State of New  
10 Jersey. The term of such a disqualification shall be concurrent with  
11 the term of the suspension or debarment by the State agency or  
12 department.

13 (cf: P.L.1985, c.469, s.7)

14  
15     9. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read  
16 as follows:

17     5. Exceptions. Any **[purchase,]** contract **[or agreement of the**  
18 **character described in section 4 of P.L.1971, c.198 (C.40A:11-4)]** the  
19 amount of which exceeds the bid threshold, may be **[made,]**  
20 negotiated **[or]** and awarded by the governing body without public  
21 advertising for bids and bidding therefor and shall be awarded by  
22 resolution of the governing body if:

23     (1) The subject matter thereof consists of:

24     (a) (i) Professional services. The governing body shall in each  
25 instance state supporting reasons for its action in the resolution  
26 awarding each contract and shall forthwith cause to be printed once,  
27 in **[a]** the official newspaper **[authorized by law to publish its legal**  
28 **advertisements],** a brief notice stating the nature, duration, service and  
29 amount of the contract, and that the resolution and contract are on file  
30 and available for public inspection in the office of the clerk of the  
31 county or municipality, or, in the case of a contracting unit created by  
32 more than one county or municipality, of the counties or municipalities  
33 creating such contracting unit; or (ii) Extraordinary unspecifiable  
34 services. The application of this exception shall be construed narrowly  
35 in favor of open competitive bidding, where possible, and the Division  
36 of Local Government Services is authorized to adopt and promulgate  
37 rules and regulations after consultation with the Commissioner of  
38 Education limiting the use of this exception in accordance with the  
39 intention herein expressed. The governing body shall in each instance  
40 state supporting reasons for its action in the resolution awarding each  
41 contract and shall forthwith cause to be printed, in the manner set  
42 forth in subsection (1) (a) (i) of this section, a brief notice of the  
43 award of such contract;

44     (b) The doing of any work by employees of the contracting unit;

45     (c) The printing of legal briefs, records and appendices to be used  
46 in any legal proceeding in which the contracting **[party]** unit may be

- 1 a party;
- 2 (d) The furnishing of a tax map or maps for the contracting **[party]**  
3 unit;
- 4 (e) The purchase of perishable foods as a subsistence supply;
- 5 (f) The supplying of any product or the rendering of any service by  
6 a public utility, which is subject to the jurisdiction of the Board of  
7 Public Utilities or the Federal Energy Regulatory Commission or its  
8 successor, in accordance with tariffs and schedules of charges made,  
9 charged or exacted, filed with the board or commission;
- 10 (g) The acquisition, subject to prior approval of the Attorney  
11 General, of special equipment for confidential investigation;
- 12 (h) The printing of bonds and documents necessary to the issuance  
13 and sale thereof by a contracting unit;
- 14 (i) Equipment repair service if in the nature of an extraordinary  
15 unspecifiable service and necessary parts furnished in connection with  
16 such service, which exception shall be in accordance with the  
17 requirements for extraordinary unspecifiable services;
- 18 (j) The publishing of legal notices in newspapers as required by  
19 law;
- 20 (k) The acquisition of artifacts or other items of unique intrinsic,  
21 artistic or historical character;
- 22 (l) **[Election expenses]** Those goods and services necessary or  
23 required to prepare and conduct an election;
- 24 (m) Insurance, including the purchase of insurance coverage and  
25 consultant services, which exception shall be in accordance with the  
26 requirements for extraordinary unspecifiable services;
- 27 (n) The doing of any work by handicapped persons employed by a  
28 sheltered workshop;
- 29 (o) The provision of any **[service or the furnishing of materials]**  
30 goods or services including those of a commercial nature, attendant  
31 upon the operation of a restaurant by any nonprofit, duly incorporated,  
32 historical society at or on any historical preservation site;
- 33 (p) **[Homemaker--home health services performed by voluntary,**  
34 **nonprofit agencies;]** (Deleted by amendment, P.L. , c. .) (Pending  
35 before the Legislature as this bill.)
- 36 (q) **[The purchase of materials and services for a law library**  
37 **established pursuant to R.S.40:33-14, including books, periodicals,**  
38 **newspapers, documents, pamphlets, photographs, reproductions,**  
39 **microforms, pictorial or graphic works, copyright and patent materials,**  
40 **maps, charts, globes, sound recordings, slides, films, filmscripts, video**  
41 **and magnetic tapes, and other audiovisual, printed, or published**  
42 **material of a similar nature; necessary binding or rebinding of law**  
43 **library materials; and specialized library services]** Library and  
44 educational goods and services;
- 45 (r) On-site inspections undertaken by private agencies pursuant to  
46 the "State Uniform Construction Code Act," P.L.1975, c.217

1 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;

2 (s) **【**The marketing of recyclable materials recovered through a  
3 recycling program, or the marketing of any product intentionally  
4 produced or derived from solid waste received at a resource recovery  
5 facility or recovered through a resource recovery program, including,  
6 but not limited to, refuse-derived fuel, compost materials, methane  
7 gas, and other similar products;**】** (Deleted by amendment, P.L. c. .)  
8 (Pending before the Legislature as this bill.)

9 (t) **【**Emergency medical services provided by a hospital to the  
10 residents of a municipality or county, provided that: (a) such  
11 exception be allowed only after the governing body determines that the  
12 emergency services are available only from one provider; and (b) if  
13 the contract is awarded without advertising for bids or bidding the  
14 governing body shall in each instance state supporting reasons for its  
15 action in a resolution awarding the contract and cause to be printed  
16 once in a newspaper authorized by law to publish its legal  
17 advertisements a brief notice stating the nature, duration, service, and  
18 amount of the contract; and (c) the contract shall be kept on file for  
19 public inspection in the office of the clerk of the municipality;**】**  
20 (Deleted by amendment, P.L. c. .) (Pending before the Legislature  
21 as this bill.)

22 (u) Contracting unit towing and storage contracts, provided that  
23 all such contracts shall be pursuant to reasonable non-exclusionary and  
24 non-discriminatory terms and conditions, which may include the  
25 provision of such services on a rotating basis, at the rates and charges  
26 set by the municipality pursuant to section 1 of P.L.1979, c.101  
27 (C.40:48-2.49). All contracting unit towing and storage contracts for  
28 services to be provided at rates and charges other than those  
29 established pursuant to the terms of this paragraph shall only be  
30 awarded to the lowest responsible bidder in accordance with the  
31 provisions of the "Local Public Contracts Law" and without regard for  
32 the value of the contract therefor;

33 (v) The purchase of steam or electricity from, or the rendering of  
34 services directly related to the purchase of such steam or electricity  
35 from a qualifying small power production facility or a qualifying  
36 cogeneration facility as defined pursuant to 16 U.S.C.796;

37 (w) The purchase of electricity or administrative or dispatching  
38 services directly related to the transmission of such purchased  
39 electricity by a contracting unit engaged in the generation of  
40 electricity;

41 (x) The printing of municipal ordinances or other services  
42 necessarily incurred in connection with the revision and codification  
43 of municipal ordinances;

44 (y) An agreement for the purchase of an equitable interest in a  
45 water supply facility or for the provision of water supply services  
46 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
47 an agreement entered into pursuant to P.L.1989, c.109

- 1 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no  
2 later than six months after the effective date of P.L.1993, c.381;
- 3 (z) A contract for the provision of water supply services entered  
4 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 5 (aa) **【The cooperative marketing of recyclable materials recovered**  
6 **through a recycling program; or】** (Deleted by amendment, P.L. . . ,  
7 c. . . ) (Pending before the Legislature as this bill.)
- 8 (bb) A contract for the provision of wastewater treatment services  
9 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 10 (cc) Expenses for travel and conferences;
- 11 (dd) The provision or performance of goods or services for the  
12 support or maintenance of proprietary computer hardware and  
13 software, except that this provision shall not be utilized to acquire or  
14 upgrade non-proprietary hardware or to acquire or update non-  
15 proprietary software;
- 16 (ee) The management or operation of an airport owned by the  
17 contracting unit pursuant to R.S.40:8-1 et seq.
- 18 (2) It is to be made or entered into with the United States of  
19 America, the State of New Jersey, county or municipality or any  
20 board, body, officer, agency or authority thereof **【and】** or any other  
21 state or subdivision thereof.
- 22 (3) **【The contracting agent has】** Bids have been advertised **【for**  
23 **bids】** pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two  
24 occasions and (a) **【 has received】** no bids have been received on both  
25 occasions in response to **【its】** the advertisement, or (b) the governing  
26 body has rejected such bids on two occasions because **【the contracting**  
27 **agent】** it has determined that they are not reasonable as to price, on  
28 the basis of cost estimates prepared for or by the contracting agent  
29 prior to the advertising therefor, or have not been independently  
30 arrived at in open competition, or (c) on one occasion no bids were  
31 received pursuant to (a) and on one occasion all bids were rejected  
32 pursuant to (b), in whatever sequence; any such contract **【or**  
33 **agreement】** may then be negotiated and may be awarded upon  
34 adoption of a resolution by a two-thirds affirmative vote of the  
35 authorized membership of the governing body authorizing such  
36 contract **【or agreement】**; provided, however, that:
- 37 (i) A reasonable effort is first made by the contracting agent to  
38 determine that the same or equivalent **【materials or supplies】** goods  
39 or services, at a cost which is lower than the negotiated price, are not  
40 available from an agency or authority of the United States, the State  
41 of New Jersey or of the county in which the contracting unit is  
42 located, or any municipality in close proximity to the contracting unit;
- 43 (ii) The terms, conditions, restrictions and specifications set forth  
44 in the negotiated contract **【or agreement】** are not substantially  
45 different from those which were the subject of competitive bidding  
46 pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

1 (iii) Any minor amendment or modification of any of the terms,  
2 conditions, restrictions and specifications, which were the subject of  
3 competitive bidding pursuant to section 4 of P.L.1971, c.198  
4 (C.40A:11-4), shall be stated in the resolution awarding such contract  
5 **【or agreement】**; provided further, however, that if on the second  
6 occasion the bids received are rejected as unreasonable as to price, the  
7 contracting agent shall notify each responsible bidder submitting bids  
8 on the second occasion of its intention to negotiate, and afford each  
9 bidder a reasonable opportunity to negotiate, but the governing body  
10 shall not award such contract **【or agreement】** unless the negotiated  
11 price is lower than the lowest rejected bid price submitted on the  
12 second occasion by a responsible bidder, is the lowest negotiated price  
13 offered by any responsible **【supplier】** vendor, and is a reasonable price  
14 for such **【work, materials, supplies】** goods or services.

15 Whenever a contracting unit shall determine that a bid was not  
16 arrived at independently in open competition pursuant to subsection  
17 (3) of this section it shall thereupon notify the county prosecutor of  
18 the county in which the contracting unit is located and the Attorney  
19 General of the facts upon which its determination is based, and when  
20 appropriate, it may institute appropriate proceedings in any State or  
21 federal court of competent jurisdiction for a violation of any State or  
22 federal antitrust law or laws relating to the unlawful restraint of trade.

23 (4) The contracting unit has solicited and received at least three  
24 quotations on materials, supplies or equipment for which a State  
25 contract has been issued pursuant to section 12 of P.L.1971, c.198  
26 (C.40A:11-12), and the lowest responsible quotation is at least 10%  
27 less than the price the contracting unit would be charged for the  
28 identical materials, supplies or equipment, in the same quantities,  
29 under the State contract. Any such contract entered into pursuant to  
30 this subsection may be awarded only upon adoption of a resolution by  
31 the affirmative vote of two-thirds of the full membership of the  
32 governing body of the contracting unit at a meeting thereof  
33 authorizing such a contract.

34 (5) Notwithstanding any provision of law, rule or regulation to the  
35 contrary, the subject matter consists of the collection and marketing,  
36 or the cooperative collection and marketing of recycled material  
37 recovered through a recycling program, or any product intentionally  
38 produced or derived from solid waste received at a resource recovery  
39 facility or recovered through a resource recovery program including,  
40 but not limited to refuse-derived fuel compost materials, compost  
41 materials, methane gas, and other similar products, provided that in  
42 lieu of engaging in such public advertising for bids and the bidding  
43 therefor, the contracting unit shall, prior to commencing the  
44 procurement process, submit for approval to the Director of the  
45 Division of Local Government Services, a written detailed description  
46 of the process to be followed in securing said services. Within 30 days  
47 after receipt of the written description the director shall, if the director

1 finds that the process provides for fair competition and integrity in the  
2 negotiation process, approve, in writing, the description submitted by  
3 the contracting unit. If the director finds that the process does not  
4 provide for fair competition and integrity in the negotiation process,  
5 the director shall advise the contracting unit of the deficiencies that  
6 must be remedied. If the director fails to respond in writing to the  
7 contracting unit within 30 days, the procurement process as described  
8 shall be deemed approved. As used in this section, "collection" means  
9 the physical removal of recyclable materials from curbside or any other  
10 location selected by the contracting unit.

11 (cf: P.L.1997, c.387, s.2)

12

13 10. Section 6 of P.L.1971, c.198 (C.40A:11-6) is amended to read  
14 as follows:

15 6. Emergency **[purchases and]** contracts. Any **[purchase,]**  
16 contract **[or agreement]** may be **[made,]** negotiated or awarded for  
17 a contracting unit without public advertising for bids and bidding  
18 therefor, notwithstanding that the **[cost or]** contract price will exceed  
19 the **[amount set forth in, or the amount calculated by the Governor**  
20 **pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3)]** **bid threshold,**  
21 when an emergency affecting the public health, safety or welfare  
22 requires the immediate delivery of **[the articles]** goods or the  
23 performance of **[the]** services; provided that the awarding **[or**  
24 **making]** of such **[purchases,]** contracts **[or agreements are]** is made  
25 in the following manner:

26 a. **[A written requisition for the performance of such work or**  
27 **labor, or the furnishing of materials, supplies or services is filed with**  
28 **the contracting agent or his deputy in charge describing the nature of**  
29 **the emergency, the time of its occurrence and the need for invoking**  
30 **this section, certified by the officer or director in charge of the**  
31 **department wherein the emergency occurred, or such other officer or**  
32 **employee as may be authorized to act in place of said officer or**  
33 **director, and the contracting agent or his deputy in charge, being**  
34 **satisfied that the emergency exists, is hereby authorized to award a**  
35 **contract for said work or labor, materials, supplies or services.]** The  
36 official in charge of the agency wherein the emergency occurred, or  
37 such other officer or employee as may be authorized to act in place of  
38 that official, shall notify the purchasing agent, a supervisor of the  
39 purchasing agent, or a designated representative of the governing  
40 body, as may be appropriate to the form of government, of the need  
41 for the performance of a contract, the nature of the emergency, the  
42 time of its occurrence and the need for invoking this section. If that  
43 person is satisfied that an emergency exists, that person shall be  
44 authorized to award a contract or contracts for such purposes as may  
45 be necessary to respond to the emergent needs. Such notification shall  
46 be reduced to writing and filed with the purchasing agent as soon as

1 practicable.

2 b. Upon the furnishing of such **[work or labor, materials, supplies]**  
3 goods or services, in accordance with the terms of the contract **[or**  
4 **agreement]**, the contractor furnishing such **[work or labor, materials,**  
5 **supplies]** goods or services shall be entitled to be paid therefor and the  
6 contracting unit shall be obligated for said payment. The governing  
7 body of the contracting unit shall take such action as shall be required  
8 to provide for the payment of the contract price.

9 c. The Director of the Division of Local Government Services in  
10 the Department of Community Affairs shall prescribe rules and  
11 procedures to implement the requirements of this section.

12 d. The governing body of the contracting unit may prescribe  
13 additional rules and procedures to implement the requirements of this  
14 section.

15 (cf: P.L.1985, c.469, s.8)

16

17 11. Section 6 of P.L.1975, c.353 (C.40A:11-6.1) is amended to  
18 read as follows:

19 6. All contracts enumerated in this section shall be awarded as  
20 follows:

21 **[All purchases, contracts or agreements which require public**  
22 **advertisement for bids shall be awarded to the lowest responsible**  
23 **bidder.**

24 Prior to the award of any other purchase, contract or agreement,  
25 the contracting agent shall, except in the case of the performance of  
26 professional services, solicit quotations, whenever practicable, on any  
27 such purchase, contract or agreement the estimated cost or price of  
28 which is \$1,000.00 or more, and the award thereof shall be made, in  
29 accordance with sections 3 (C.40A:11-3) or 4 (C.40A:11-4), as the  
30 case may be, of the Local Public Contracts Law, on the basis of the  
31 lowest responsible quotation received, which quotation is most  
32 advantageous to the contracting unit, price and other factors  
33 considered; provided, however, that if the contracting agent deems it  
34 impracticable to solicit competitive quotations in the case of  
35 extraordinary, unspecifiable service, or, in the case of such or any  
36 other purchase, contract or agreement awarded hereunder, having  
37 sought such quotations determines that it should not be awarded on  
38 the basis of the lowest quotation received, the contracting agent shall  
39 file a statement of explanation of the reason or reasons therefor,  
40 which shall be placed on file with said purchase, contract or  
41 agreement.]

42 a. For all contracts that in the aggregate are less than the bid  
43 threshold but 15 percent or more of that amount, and for those  
44 contracts that are for subject matter enumerated in subsection (1) of  
45 section 5 of P.L.1971, c.198 (C.40A:11-5), except for paragraph (a)  
46 of that subsection concerning professional services and paragraph (b)

1 of that subsection concerning work by employees of the contracting  
2 unit, the contracting agent shall award the contract after soliciting at  
3 least two competitive quotations, if practicable. The award shall be  
4 made to a vendor whose response is most advantageous, price and  
5 other factors considered. The contracting agent shall retain the record  
6 of the quotation solicitation and shall include a copy of the record with  
7 the voucher used to pay the vendor.

8 b. When in excess of the bid threshold, and after documented effort  
9 by the contracting agent to secure competitive quotations, a contract  
10 for extraordinary unspecifiable services may be awarded upon a  
11 determination in writing by the contracting agent that the solicitation  
12 of competitive quotations is impracticable. Any such contract shall be  
13 awarded by resolution of the governing body.

14 c. If authorized by the governing body by resolution or ordinance,  
15 all contracts that are in the aggregate less than 15 percent of the bid  
16 threshold may be awarded by the contracting agent without soliciting  
17 competitive quotations.

18 d. Whenever two or more responses to a request of a contracting  
19 agent offer equal prices and are the lowest responsible bids or  
20 proposals, the contracting unit may award the contract to the vendor  
21 whose response, in the discretion of the contracting unit, is the most  
22 advantageous, price and other factors considered. In such a case, the  
23 award resolution or purchase order documentation shall explain why  
24 the vendor selected is the most advantageous.

25 (cf: P.L.1983, c.418, s.1)

26

27 12. Section 7 of P.L.1971, c.198 (C.40A:11-7) is amended to read  
28 as follows:

29 7. Contracts not to be divided. [No purchase, contract or  
30 agreement, which is single in character or which necessarily or by  
31 reason of the quantities required to effectuate the purpose of the  
32 purchase, contract or agreement includes the furnishing of additional  
33 services or buying or hiring of materials or supplies or the doing of  
34 additional work, shall be subdivided, so as to bring it or any of the  
35 parts thereof under the maximum price or cost limitation of the  
36 amount set forth in, or the amount calculated by the Governor  
37 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3) thus  
38 dispensing with the requirement of public advertising and bidding  
39 therefor, and in purchasing or contracting for, or agreeing for the  
40 furnishing of, any services, the doing of any work or the supplying of  
41 any materials or the supplying or hiring of any materials or supplies,  
42 included in or incident to the performance or completion of any  
43 project, program, activity or undertaking which is single in character  
44 or inclusive of the furnishing of additional services or buying or hiring  
45 of materials or supplies or the doing of additional work, or which  
46 requires the furnishing of more than one article of equipment or buying  
47 or hiring of materials or supplies, all of the services, materials or



1 property requisite for the completion of such project shall be included  
2 in one purchase, contract or agreement ]

3 a. No contract in the aggregate which is single in character or  
4 which necessarily or by reason of the quantities required to effectuate  
5 the purpose of the contract includes the provision or performance of  
6 additional goods or services, shall be divided, so as to bring it or any  
7 of the parts thereof under the bid threshold, for the purpose of  
8 dispensing with the requirement of public advertising and bidding  
9 therefor.

10 b. In contracting for the provision or performance of any goods or  
11 services included in or incidental to the provision or performance of  
12 any work which is single in character or inclusive of the provision or  
13 performance of additional goods or services, all of the goods or  
14 services requisite for the completion of such contract shall be included  
15 in one contract.

16 (cf: P.L.1985, c.469, s.9)

17

18 13. (New section) For the purpose of ensuring consistency  
19 between the "Local Public Contracts Law," P.L.1971, c.198  
20 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
21 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
22 Government Services in the Department of Community Affairs, after  
23 consultation with the Commissioner of Education and pursuant to the  
24 "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et  
25 seq.), shall adopt rules concerning determinations of aggregation for  
26 the purposes of whether a contract is subject to public bidding as set  
27 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
28 and 40A:11-7)and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
29 N.J.S.18A:18A-8.

30

31 14. Section 8 of P.L.1971, c.198 (C.40A:11-8) is amended to read  
32 as follows:

33 8. Every contracting agent shall, at intervals to be fixed by the  
34 governing body, solicit by public advertisement the submission of bids  
35 for the [furnishing of all work, materials and supplies] provision or  
36 performance of goods or services which are and which under section  
37 4 of [this act] P.L.1971, c.198 (C.40A:11-4) can be [purchased or  
38 agreed or] contracted to be [furnished] provided or performed only  
39 after public advertisement for bids and bidding therefor and all  
40 [purchases, or] contracts [or agreements for the furnishing, of such  
41 work, materials and supplies] for the provision or performance of such  
42 goods or services shall be [made and] awarded only in that manner.

43 (cf: P.L.1971, c.198, s.8)

44

45 15. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to read  
46 as follows:

1 9. Purchasing agent, department or board; establishment; powers  
2 a. The governing body of any **[local] contracting** unit may by  
3 ordinance, in the case of a municipality, by ordinance or resolution, as  
4 the case may be, in the case of a county, or by resolution in all other  
5 cases, establish the office of purchasing agent, or a purchasing  
6 department or a purchasing board, with the authority, responsibility,  
7 and accountability as its contracting agent, for the purchasing activity  
8 for the contracting unit, to prepare public advertising for bids and to  
9 receive bids for the **[purchase of work, materials and supplies]**  
10 provision or performance of goods or services on behalf of the  
11 contracting unit and**[, unless otherwise required by the provisions of**  
12 **this act,]** to **[make awards of] award** contracts permitted pursuant to  
13 subsection a. of section 3 of P.L.1971, c. 198 (C.40A:11-3) in the  
14 name of the contracting unit, and conduct any activities as may be  
15 necessary or appropriate to the purchasing function of the contracting  
16 unit.

17 b. The Director of the Division of Local Government Services,  
18 after consultation with the Commissioner of Education, shall establish  
19 criteria to qualify individuals who have completed appropriate training  
20 and possess such purchasing experience as deemed necessary to  
21 exercise such supplemental authority as may be set forth in subsection  
22 a. of section 3 of P.L.1971, c.198 (C.40A:11-3). These criteria also  
23 shall authorize county purchasing agents certified pursuant to  
24 P.L.1981, c.380 (C.40A:9-30.1 et seq.) to exercise such supplemental  
25 authority.

26 (cf: P.L.1977, c.53, s.5)

27

28 16. Section 10 of P.L.1971, c.198 (C.40A:11-10) is amended to  
29 read as follows:

30 10. Joint agreements for **[purchase of work, materials, supplies]**  
31 provision and performance of goods and services; cooperative  
32 marketing; authorization

33 (a) (1) The governing bodies of two or more contracting units  
34 **[within the same county, or adjoining counties,]** may provide by joint  
35 agreement for the **[purchase of work, materials and supplies]**  
36 provision and performance of goods and services for use by their  
37 respective jurisdictions.

38 (2) The governing bodies of two or more contracting units  
39 providing sewerage services pursuant to the "sewerage authorities  
40 law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county  
41 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.),  
42 R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint  
43 agreement for the purchase of **[work] goods and services** related to  
44 sewage sludge disposal.

45 (3) The governing body of two or more contracting units providing  
46 electrical distribution services pursuant to and in **[accord] accordance**

1 with R.S.40:62-12 through R.S.40:62-25, may provide by joint  
2 agreement for the **【purchase】 provision or performance** of **【work,**  
3 **material and supplies】 goods or services** related to the distribution of  
4 electricity.

5 (4) The governing bodies of two or more contracting units may  
6 provide for the cooperative marketing of recyclable materials  
7 recovered through a recycling program.

8 (b) The governing body of any **【county or municipality】**  
9 **contracting unit** may provide by joint agreement with the board of  
10 education of any school district **【located wholly or partially within the**  
11 **geographic boundaries of the county or municipality】** for the  
12 **【purchase of work, materials and supplies】 provision and performance**  
13 **of goods and services** for use by their respective jurisdictions.

14 (c) Such agreement shall be entered into by resolution adopted by  
15 each of the participating bodies and boards, which shall set forth the  
16 categories of **【work, materials and supplies】 goods or services** to be  
17 **【purchased】 provided or performed**, the manner of advertising for bids  
18 and of awarding of contracts, the method of payment by each  
19 participating body and board, and other matters deemed necessary to  
20 carry out the purposes of the agreement.

21 (d) Each participating body's and board's share of expenditures for  
22 purchases under any such agreement shall be appropriated and paid in  
23 the manner set forth in the agreement and in the same manner as for  
24 other expenses of the participating body and board.

25 (cf: P.L.1995, c.356, s.7)

26

27 17. Section 11 of P.L.1971, c.198 (C.40A:11-11) is amended to  
28 read as follows:

29 11. Additional matters regarding **【agreements】 contracts** for the  
30 **【purchases of work, materials and supplies】 provision and**  
31 **performance of goods and services**

32 (1) The contracting units entering into a joint agreement pursuant  
33 to section 10 of **【this act】 P.L.1971, c.198 (C.40A:11-10)** may  
34 designate a joint **【purchasing】 contracting agent** **【, department or**  
35 **board pursuant to section 9 of this act. Any such agent, board or**  
36 **department already designated pursuant to section 9 may serve as the**  
37 **joint agent, department or board designated pursuant to this section】.**

38 (2) **【Purchases, contracts or agreements】 Contracts** made pursuant  
39 to a joint purchasing agreement shall be subject to all of the terms and  
40 conditions of this act.

41 (3) Any **【county or municipality】 contracting unit** serving as a  
42 **【purchasing】 joint contracting agent** **【, board or department】**  
43 **pursuant to this section 【11】**, may make an appropriation to enable it  
44 to perform any such contract and may anticipate as revenue payments  
45 to be made and received by it from any other party to the agreement.  
46 Any items so included in a local budget shall be subject to the approval

1 of the Director, Division of Local Government Services, who shall  
2 consider the matter in conjunction with the requirements of chapter 4  
3 of Title 40A of the New Jersey Statutes. The agreement and any  
4 subsequent amendment or revisions thereto shall be filed with the  
5 Director of the Division of Local Government Services in the  
6 Department of Community Affairs.

7 (4) Any joint contracting agent [, department or board] so  
8 designated pursuant to a joint purchasing agreement shall have the sole  
9 responsibility to comply with the provisions of section 23 of [this act]  
10 P.L.1971, c.198 (C.40A:11-23).

11 (5) The governing bodies of two or more contracting units or  
12 boards of education [within the same county, or adjoining counties;]  
13 or for purposes related to the distribution of electricity, the governing  
14 bodies of two or more contracting units providing electrical  
15 distribution services pursuant to R.S.40:62-12 through R.S.40:62-25,  
16 may by resolution establish a cooperative pricing system as hereinafter  
17 provided. Any such resolution shall establish procedures whereby one  
18 participating contracting unit in the cooperative pricing system shall  
19 be empowered to advertise and receive bids to provide prices for all  
20 other participating contracting units in such system for the [purchase]  
21 provision or performance of [work, materials and supplies] goods or  
22 services; provided, however, that no [purchase or] contract shall be  
23 [made] awarded by any participating contracting unit for a price  
24 which exceeds any other price available to the participating contracting  
25 unit, or for a purchase of goods or services in deviation from the  
26 specifications, price or quality set forth by the participating contracting  
27 unit.

28 (6) The governing body of a county government may establish a  
29 cooperative pricing system for the voluntary use of contracting units  
30 within the county.

31 No vendor shall be required or permitted to extend [his] bid prices  
32 to participating contracting units in a cooperative pricing system  
33 unless so specified in the bids.

34 No cooperative pricing system and agreements entered into  
35 pursuant to such system, or joint purchase agreements established  
36 pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208  
37 (C.40:8A-1 et seq.) or any other provision of law, shall become  
38 effective without prior approval of the Director of the Division of  
39 Local Government Services and said approval shall be valid for a  
40 period not to exceed five years.

41 The director's approval shall be based on the following:

42 (a) Provision for maintaining adequate records and orderly  
43 procedures to facilitate audit and efficient administration, and

44 (b) Adequacy of public disclosure of such actions as are taken by  
45 the participants, and

46 (c) Adequacy of procedures to facilitate compliance with all

1 provisions of the "Local Public Contracts Law" and corresponding  
2 regulations, and

3 (d) Clarity of provisions to assure that the responsibilities of the  
4 respective parties are understood.

5 Failure of the Director of the Division of Local Government  
6 Services to approve or disapprove a properly executed and completed  
7 application to establish a cooperative pricing system and agreements  
8 entered into pursuant to such system or other joint purchase agreement  
9 within 45 days from the date of receipt of said application by the  
10 director shall constitute approval of said application, which shall be  
11 valid for a period of five years, commencing from the date of receipt  
12 of said application by the director.

13 The Director of the Division of Local Government Services is  
14 hereby authorized to promulgate rules and regulations specifying  
15 procedures pertaining to cooperative pricing systems and joint  
16 purchase agreements entered into pursuant to this act, the "Interlocal  
17 Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) and any other  
18 provision of law.

19 (cf: P.L.1995, c.356, s.8)

20

21 18. Section 12 of P.L.1971, c.198 (C.40A:11-12) is amended to  
22 read as follows:

23 12. a. Any contracting unit under this act may without advertising  
24 for bids, or having rejected all bids obtained pursuant to advertising  
25 therefor, purchase any [materials, supplies,] goods[, ] or services [or  
26 equipment] under any contract or contracts for such [materials,  
27 supplies,] goods[, ] or services [or equipment] entered into on behalf  
28 of the State by the Division of Purchase and Property in the  
29 Department of the Treasury.

30 b. A contracting unit may also use, without advertising for bids, or  
31 having rejected all bids obtained pursuant to advertising, the Federal  
32 Supply Schedules of the General Services Administration [as  
33 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
34 Pub.L. 103-355, and federal regulations adopted thereunder.]  
35 promulgated by the Director of the Division of Purchase and Property  
36 in the Department of the Treasury pursuant to section 1 of P.L.1996,  
37 c.16 (C.52:34-6.1), subject to the following conditions:

38 (1) the price of the goods being procured is no greater than the  
39 price offered to federal agencies;

40 (2) the Federal Supply Schedules may be used only for purchases  
41 of up to \$500,000 per year or for one product unit at any price and  
42 only for reprographic equipment or services, including digital copiers,  
43 used by the contracting unit; and

44 (3) the contracting unit receives the benefit of federally mandated  
45 price reductions during the term of the contract and is protected from  
46 price increases during that time.

47 c. Whenever a purchase is made, the contracting unit shall place its

1 order with the vendor offering the lowest price, including delivery  
2 charges, that best meets the requirements of the contracting unit.  
3 Prior to placing such an order, the contracting unit shall document  
4 with specificity that the **[materials, supplies,] goods[, ] or services [or**  
5 **equipment]** selected best meet the requirements of the contracting  
6 unit.

7 (cf: P.L.1996, c.16, s.3)

8

9 19. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to  
10 read as follows:

11 13. Specifications. Any specifications for **[an acquisition] the**  
12 **provision or performance of goods or services** under this act **[, whether**  
13 **by purchase, contract or agreement,]** shall be drafted in a manner to  
14 encourage free, open and competitive bidding. In particular, no  
15 specifications under this act may:

16 (a) Require any standard, restriction, condition or limitation not  
17 directly related to the purpose, function or activity for which the  
18 **[purchase,] contract [or agreement] is [made] awarded**; or

19 (b) Require that any bidder be a resident of, or that **[his] the**  
20 **bidder's** place of business be located in, the county or municipality in  
21 which the **[purchase] contract** will be **[made] awarded** or **[the**  
22 **contract or agreement]** performed, unless the physical proximity of the  
23 bidder is requisite to the efficient and economical **[purchase or]**  
24 **performance of the contract [or agreement];** except that no  
25 specification for a contract for the collection and disposal of municipal  
26 solid waste shall require any bidder to be a resident of, or that **[his]**  
27 **the bidder's** place of business be located in, the county or municipality  
28 in which the contract will be performed; or

29 (c) Discriminate on the basis of race, religion, sex, national origin ,  
30 **creed, color, ancestry, age, marital status, affectional or sexual**  
31 **orientation, familial status, liability for service in the Armed Forces of**  
32 **the United States, or nationality;** or

33 (d) Require, with regard to any **[purchase,] contract [or**  
34 **agreement],** the furnishing of any "brand name," but may in all cases  
35 require "brand name or equivalent," except that if the **[materials]**  
36 **goods or services** to be **[supplied or purchased] provided or**  
37 **performed** are **[patented or copyrighted] proprietary,** such **[materials**  
38 **or supplies] goods or services** may be purchased by **stipulating the**  
39 **proprietary goods or services in the bid** specification in any case in  
40 which the **[ordinance or] resolution** authorizing the **[purchase,]**  
41 **contract[, sale or agreement]** so indicates, and the special need for  
42 such **[patented or copyrighted materials or supplies] proprietary**  
43 **goods or services** is directly related to the performance, completion or  
44 undertaking of the purpose for which the **[purchase,] contract [or**  
45 **agreement] is [made] awarded**; or

1 (e) Fail to include any option for renewal, extension, or release  
2 which the contracting unit may intend to exercise or require; or any  
3 terms and conditions necessary for the performance of any extra work;  
4 or fail to disclose any matter necessary to the substantial performance  
5 of the contract **[or agreement]**.

6 Any specification **[adopted by the governing body,]** which  
7 knowingly excludes prospective bidders by reason of the impossibility  
8 of performance, bidding or qualification by any but one bidder, except  
9 as provided herein, shall be null and void and of no effect and **[subject**  
10 **purchase, contract or agreement]** shall be readvertised for receipt of  
11 new bids, and the original **[purchase,]** contract **[or agreement]** shall  
12 be set aside by the governing body.

13 Any specification **[adopted by the governing body]** for a contract  
14 for the collection and disposal of municipal solid waste shall conform  
15 to the uniform bid specifications for municipal solid waste collection  
16 contracts established pursuant to section 22 of P.L.1991, c.381  
17 (C.48:13A-7.22).

18 Any specification **[adopted by the governing body]** may include an  
19 item for the cost, which shall be paid by the contractor, of creating a  
20 file to maintain the notices of the delivery of labor or materials  
21 required by N.J.S.2A:44-128.

22 Any prospective bidder who wishes to challenge a bid specification  
23 shall file such challenges in writing with the contracting agent no less  
24 than three business days prior to the opening of the bids. Challenges  
25 filed after that time shall be considered void and having no impact on  
26 the contracting unit or the award of a contract.

27 (cf: P.L.1996, c.81, s.7)

28

29 20. (New section) Goods or services, the payment for which  
30 utilizes only funds received by a contracting unit from a bequest,  
31 legacy or gift, shall be subject to the provisions of P.L.1971, c.198  
32 (C.40A:11-1 et seq.), except that if such bequest, legacy or gift  
33 contains written instructions as to the specifications, manufacturer or  
34 vendor, or source of supply of the goods or services to be provided or  
35 performed, such instructions shall be honored, provided that the  
36 bequest, legacy or gift is used in a manner consistent with  
37 N.J.S.40A:5-29.

38

39 21. (New section) A contracting unit may reject all bids for any of  
40 the following reasons:

41 a. The lowest bid substantially exceeds the cost estimates for the  
42 goods or services;

43 b. The lowest bid substantially exceeds the contracting unit's  
44 appropriation for the goods or services;

45 c. The governing body of the contracting unit decides to abandon  
46 the project for provision or performance of the goods or services;

47 d. The contracting unit wants to substantially revise the

1 specifications for the goods or services;

2 e. The purposes or provisions or both of P.L.1971, c.198  
3 (C.40A:11-1 et seq.) are being violated;

4 f. The governing body of the contracting unit decides to use the  
5 State authorized contract pursuant to section 12 of P.L.1971, c.198  
6 (C.40A:11-12).

7

8 22. Section 14 of P.L.1971, c.198 (C.40A:11-14) is amended to  
9 read as follows:

10 14. All contracts for the **[performing of work or furnishing**  
11 **materials, supplies]** provision or performance of goods or services  
12 shall be in writing. The governing body of any contracting unit may,  
13 subject to the requirements of law, prescribe the form and manner in  
14 which contracts shall be made and executed, and the form and manner  
15 of execution and approval of all guarantee, indemnity, fidelity and  
16 other bonds.

17 (cf: P.L.1975, c.353, s.10)

18

19 23. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to  
20 read as follows:

21 15. All **[purchases,]** contracts **[or agreements]** for the  
22 **[performing of work or the furnishing of materials, supplies]** provision  
23 or performance of goods or services shall be **[made]** awarded for a  
24 period not to exceed 24 consecutive months, except that contracts for  
25 professional services pursuant to subparagraph (i) of paragraph (a) of  
26 subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be  
27 **[made]** awarded for a period not to exceed 12 consecutive months.  
28 Contracts **[or agreements]** may be **[entered into]** awarded for longer  
29 periods of time as follows:

30 (1) Supplying of:

31 (a) (Deleted by amendment, P.L.1996, c.113.)

32 (b) (Deleted by amendment, P.L.1996, c.113.)

33 (c) Thermal energy produced by a cogeneration facility, for use for  
34 heating or air conditioning or both, for any term not exceeding 40  
35 years, when the contract is approved by the Board of Public Utilities.  
36 For the purposes of this paragraph, "cogeneration" means the  
37 simultaneous production in one facility of electric power and other  
38 forms of useful energy such as heating or process steam;

39 (2) (Deleted by amendment, P.L.1977, c.53.)

40 (3) The collection and disposal of municipal solid waste, the  
41 collection and disposition of recyclable material, or the disposal of  
42 sewage sludge, for any term not exceeding in the aggregate, five years;

43 (4) The collection and recycling of methane gas from a sanitary  
44 landfill facility, for any term not exceeding 25 years, when such  
45 contract is in conformance with a district solid waste management plan  
46 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the  
47 approval of the Division of Local Government Services in the



1 Department of Community Affairs and the Department of  
2 Environmental Protection. The contracting unit shall award the  
3 contract to the highest responsible bidder, notwithstanding that the  
4 contract price may be in excess of the amount of any necessarily  
5 related administrative expenses; except that if the contract requires the  
6 contracting unit to expend funds only, the contracting unit shall award  
7 the contract to the lowest responsible bidder. The approval by the  
8 Division of Local Government Services of public bidding requirements  
9 shall not be required for those contracts exempted therefrom pursuant  
10 to section 5 of P.L.1971, c.198 (C.40A:11-5);

11 (5) Data processing service, for any term of not more than **[three]**  
12 seven years;

13 (6) Insurance, including the purchase of insurance coverages,  
14 insurance consulting or administrative services, claims administration  
15 services and including participation in a joint self-insurance fund, risk  
16 management program or related services provided by a contracting  
17 unit insurance group, or participation in an insurance fund established  
18 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund  
19 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any  
20 term of not more than three years;

21 (7) Leasing or servicing of automobiles, motor vehicles, machinery  
22 and equipment of every nature and kind, for a period not to exceed  
23 **[three]** five years; provided, however, such contracts shall be  
24 **[entered into]** awarded only subject to and in accordance with the  
25 rules and regulations promulgated by the Director of the Division of  
26 Local Government Services of the Department of Community Affairs;

27 (8) The supplying of any product or the rendering of any service  
28 by a **[telephone]** company **[which is subject to the jurisdiction of the**  
29 **Board of Public Utilities]** providing voice, data, transmission or  
30 switching services for a term not exceeding five years;

31 (9) Any single project for the construction, reconstruction or  
32 rehabilitation of any public building, structure or facility, or any public  
33 works project, including the retention of the services of any architect  
34 or engineer in connection therewith, for the length of time authorized  
35 and necessary for the completion of the actual construction;

36 (10) The providing of food services for any term not exceeding  
37 three years;

38 (11) On-site inspections and plan review services undertaken by  
39 private agencies pursuant to the "State Uniform Construction Code  
40 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not  
41 more than three years;

42 (12) The provision or performance of **[work]** goods or services  
43 **[or the furnishing of materials or supplies]** for the purpose of  
44 conserving energy in buildings owned by, or operations conducted by,  
45 the contracting unit, the entire price of which to be established as a  
46 percentage of the resultant savings in energy costs, for a term not to  
47 exceed **[10]** 15 years; provided, however, that such contracts shall be

1 entered into only subject to and in accordance with [rules and  
2 regulations] guidelines promulgated by the [Department of  
3 Environmental Protection] Board of Public Utilities establishing a  
4 methodology for computing energy cost savings;

5 (13) [The performance of work or services or the furnishing of  
6 materials or supplies for the purpose of elevator maintenance for any  
7 term not exceeding three years;] (Deleted by amendment, P.L. ,  
8 c. .) (Pending before the Legislature as this bill.)

9 (14) [Leasing or servicing of electronic communications equipment  
10 for a period not to exceed five years; provided, however, such contract  
11 shall be entered into only subject to and in accordance with the rules  
12 and regulations promulgated by the Director of the Division of Local  
13 Government Services of the Department of Community Affairs;]  
14 (Deleted by amendment, P.L. , c. .) (Pending before the Legislature  
15 as this bill.)

16 (15) Leasing of motor vehicles, machinery and other equipment  
17 primarily used to fight fires, for a term not to exceed ten years, when  
18 the contract includes an option to purchase, subject to and in  
19 accordance with rules and regulations promulgated by the Director of  
20 the Division of Local Government Services of the Department of  
21 Community Affairs;

22 (16) The provision of water supply services or the designing,  
23 financing, construction, operation, or maintenance, or any combination  
24 thereof, of a water supply facility, or any component part or parts  
25 thereof, including a water filtration system, for a period not to exceed  
26 40 years, when the contract for these services is approved by the  
27 Division of Local Government Services in the Department of  
28 Community Affairs, the Board of Public Utilities, and the Department  
29 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et  
30 al.), except for those contracts otherwise exempted pursuant to  
31 subsection (30), (31), (34) or (35) of this section. For the purposes  
32 of this subsection, "water supply services" means any service provided  
33 by a water supply facility; "water filtration system" means any  
34 equipment, plants, structures, machinery, apparatus, or land, or any  
35 combination thereof, acquired, used, constructed, rehabilitated, or  
36 operated for the collection, impoundment, storage, improvement,  
37 filtration, or other treatment of drinking water for the purposes of  
38 purifying and enhancing water quality and insuring its potability prior  
39 to the distribution of the drinking water to the general public for  
40 human consumption, including plants and works, and other personal  
41 property and appurtenances necessary for their use or operation; and  
42 "water supply facility" means and refers to the real property and the  
43 plants, structures, interconnections between existing water supply  
44 facilities, machinery and equipment and other property, real, personal  
45 and mixed, acquired, constructed or operated, or to be acquired,  
46 constructed or operated, in whole or in part by or on behalf of a  
47 political subdivision of the State or any agency thereof, for the

1 purpose of augmenting the natural water resources of the State and  
2 making available an increased supply of water for all uses, or of  
3 conserving existing water resources, and any and all appurtenances  
4 necessary, useful or convenient for the collecting, impounding, storing,  
5 improving, treating, filtering, conserving or transmitting of water and  
6 for the preservation and protection of these resources and facilities and  
7 providing for the conservation and development of future water supply  
8 resources;

9 (17) The provision of resource recovery services by a qualified  
10 vendor, the disposal of the solid waste delivered for disposal which  
11 cannot be processed by a resource recovery facility or the residual ash  
12 generated at a resource recovery facility, including hazardous waste  
13 and recovered metals and other materials for reuse, or the design,  
14 financing, construction, operation or maintenance of a resource  
15 recovery facility for a period not to exceed 40 years when the contract  
16 is approved by the Division of Local Government Services in the  
17 Department of Community Affairs, and the Department of  
18 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et  
19 al.); and when the resource recovery facility is in conformance with a  
20 district solid waste management plan approved pursuant to P.L.1970,  
21 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,  
22 "resource recovery facility" means a solid waste facility constructed  
23 and operated for the incineration of solid waste for energy production  
24 and the recovery of metals and other materials for reuse; or a  
25 mechanized composting facility, or any other facility constructed or  
26 operated for the collection, separation, recycling, and recovery of  
27 metals, glass, paper, and other materials for reuse or for energy  
28 production; and "residual ash" means the bottom ash, fly ash, or any  
29 combination thereof, resulting from the combustion of solid waste at  
30 a resource recovery facility;

31 (18) The sale of electricity or thermal energy, or both, produced by  
32 a resource recovery facility for a period not to exceed 40 years when  
33 the contract is approved by the Department of Environmental  
34 Protection, and when the resource recovery facility is in conformance  
35 with a district solid waste management plan approved pursuant to  
36 P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this  
37 subsection, "resource recovery facility" means a solid waste facility  
38 constructed and operated for the incineration of solid waste for energy  
39 production and the recovery of metals and other materials for reuse;  
40 or a mechanized composting facility, or any other facility constructed  
41 or operated for the collection, separation, recycling, and recovery of  
42 metals, glass, paper, and other materials for reuse or for energy  
43 production;

44 (19) The provision of wastewater treatment services or the  
45 designing, financing, construction, operation, or maintenance, or any  
46 combination thereof, of a wastewater treatment system, or any  
47 component part or parts thereof, for a period not to exceed 40 years,  
48 when the contract for these services is approved by the Division of

1 Local Government Services in the Department of Community Affairs  
2 and the Department of Environmental Protection pursuant to  
3 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise  
4 exempted pursuant to subsection (36) of this section. For the  
5 purposes of this subsection, "wastewater treatment services" means  
6 any services provided by a wastewater treatment system, and  
7 "wastewater treatment system" means equipment, plants, structures,  
8 machinery, apparatus, or land, or any combination thereof, acquired,  
9 used, constructed, or operated for the storage, collection, reduction,  
10 recycling, reclamation, disposal, separation, or other treatment of  
11 wastewater or sewage sludge, or for the final disposal of residues  
12 resulting from the treatment of wastewater, including, but not limited  
13 to, pumping and ventilating stations, facilities, plants and works,  
14 connections, outfall sewers, interceptors, trunk lines, and other  
15 personal property and appurtenances necessary for their operation;

16 (20) The supplying of **【materials】** goods or services for the  
17 purpose of lighting public streets, for a term not to exceed five years  
18 **【,** provided that the rates, fares, tariffs or charges for the supplying of  
19 electricity for that purpose are approved by the Board of Public  
20 Utilities**】**;

21 (21) **【In the case of a contracting unit which is a county or**  
22 **municipality, the】** The provision of emergency medical services **【by a**  
23 **hospital to residents of a municipality or county as appropriate】** for a  
24 term not to exceed five years;

25 (22) Towing and storage contracts, awarded pursuant to paragraph  
26 u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for  
27 any term not exceeding three years;

28 (23) Fuel for the purpose of generating electricity for a term not to  
29 exceed eight years;

30 (24) The purchase of electricity or administrative or dispatching  
31 services related to the transmission of such electricity, from a public  
32 utility company subject to the jurisdiction of the Board of Public  
33 Utilities, a similar regulatory body of another state, or a federal  
34 regulatory agency, or from a qualifying small power producing facility  
35 or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, by  
36 a contracting unit engaged in the generation of electricity for retail  
37 sale, as of May 24,1991, for a term not to exceed 40 years;

38 (25) Basic life support services, for a period not to exceed five  
39 years. For the purposes of this subsection, "basic life support" means  
40 a basic level of prehospital care, which includes but need not be limited  
41 to patient stabilization, airway clearance, cardiopulmonary  
42 resuscitation, hemorrhage control, initial wound care and fracture  
43 stabilization;

44 (26) **【Claims administration services, for any term not to exceed**  
45 **three years;】** (Deleted by amendment, P.L. , c. .) (Pending before  
46 the Legislature as this bill.)

47 (27) The provision of transportation services to elderly, disabled

1 or indigent persons for any term of not more than three years. For the  
2 purposes of this subsection, "elderly persons" means persons who are  
3 60 years of age or older. "Disabled persons" means persons of any age  
4 who, by reason of illness, injury, age, congenital malfunction, or other  
5 permanent or temporary incapacity or disability, are unable, without  
6 special facilities or special planning or design to utilize mass  
7 transportation facilities and services as effectively as persons who are  
8 not so affected. "Indigent persons" means persons of any age whose  
9 income does not exceed 100 percent of the poverty level, adjusted for  
10 family size, established and adjusted under section 673(2) of subtitle  
11 B, the "Community Services Block Grant Act," Pub.L.97-35 (42  
12 U.S.C. s.9902 (2));

13 (28) The supplying of liquid oxygen or other chemicals, for a term  
14 not to exceed five years, when the contract includes the installation of  
15 tanks or other storage facilities by the supplier, on or near the  
16 premises of the contracting unit;

17 (29) The performance of patient care services by contracted  
18 medical staff at county hospitals, correction facilities and long term  
19 care facilities, for any term of not more than three years;

20 (30) The acquisition of an equitable interest in a water supply  
21 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or **[an**  
22 **agreement]** a contract entered into pursuant to the "County and  
23 Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the  
24 **[agreement]** contract is entered into no later than January 7, 1995, for  
25 any term of not more than forty years;

26 (31) The provision of water supply services or the financing,  
27 construction, operation or maintenance or any combination thereof, of  
28 a water supply facility or any component part or parts thereof, by a  
29 partnership or copartnership established pursuant to a contract  
30 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a  
31 period not to exceed 40 years;

32 (32) Laundry service and the rental, supply and cleaning of  
33 uniforms for any term of not more than three years;

34 (33) The supplying of any product or the rendering of any service,  
35 including consulting services, by a cemetery management company for  
36 the maintenance and preservation of a municipal cemetery operating  
37 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for  
38 a term not exceeding 15 years;

39 (34) A contract between a public entity and a private firm pursuant  
40 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water  
41 supply services may be entered into for any term which, when all  
42 optional extension periods are added, may not exceed 40 years;

43 (35) **[An agreement]** A contract for the purchase of a supply of  
44 water from a public utility company subject to the jurisdiction of the  
45 Board of Public Utilities in accordance with tariffs and schedules of  
46 charges made, charged or exacted or contracts filed with the Board of  
47 Public Utilities, for any term of not more than 40 years;

1 (36) A contract between a public entity and a private firm or public  
2 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the  
3 provision of wastewater treatment services may be entered into for any  
4 term of not more than 40 years, including all optional extension  
5 periods; **[ and ]**

6 (37) The operation and management of a facility under a license  
7 issued or permit approved by the Department of Environmental  
8 Protection, including a wastewater treatment system or a water supply  
9 or distribution facility, as the case may be, for any term of not more  
10 than **[seven] ten** years. For the purposes of this subsection,  
11 "wastewater treatment system" refers to facilities operated or  
12 maintained for the storage, collection, reduction, disposal, or other  
13 treatment of wastewater or sewage sludge, remediation of  
14 groundwater contamination, stormwater runoff, or the final disposal  
15 of residues resulting from the treatment of wastewater; and "water  
16 supply or distribution facility" refers to facilities operated or  
17 maintained for augmenting the natural water resources of the State,  
18 increasing the supply of water, conserving existing water resources, or  
19 distributing water to users;

20 (38) Municipal solid waste collection from facilities owned by a  
21 contracting unit, for any term of not more than three years;

22 (39) Fuel for heating purposes, for any term of not more than  
23 three years;

24 (40) Fuel or oil for use in motor vehicles for any term of not more  
25 than three years;

26 (41) Plowing and removal of snow and ice for any term of not  
27 more than three years;

28 (42) Purchases made under a contract awarded by the Director of  
29 the Division of Purchase and Property in the Department of the  
30 Treasury for use by counties, municipalities or other contracting units  
31 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term  
32 not to exceed the term of that contract.

33 Any contract for services other than professional services, the  
34 statutory length of which contract is for three years or less, may  
35 include provisions for no more than one two-year, or two one-year,  
36 extensions, subject to the following limitations: a. The contract shall  
37 be awarded by resolution of the governing body upon a finding by the  
38 governing body that the services are being performed in an effective  
39 and efficient manner; b. No such contract shall be extended so that it  
40 runs for more than a total of five consecutive years; c. Any price  
41 change included as part of an extension shall be based upon the price  
42 of the original contract as cumulatively adjusted pursuant to any  
43 previous adjustment or extension and shall not exceed the change in  
44 the index rate for the 12 months preceding the most recent quarterly  
45 calculation available at the time the contract is renewed; and d. The  
46 terms and conditions of the contract remain substantially the same.

47 All multiyear leases and contracts entered into pursuant to this  
48 section, including any two-year or one-year extensions, except

1 **【contracts for the leasing or servicing of equipment supplied by a**  
2 **telephone company which is subject to the jurisdiction of the Board of**  
3 **Public Utilities,】** contracts involving the supplying of electricity for the  
4 purpose of lighting public streets and contracts for thermal energy  
5 authorized pursuant to subsection (1) above, construction contracts  
6 authorized pursuant to subsection (9) above, contracts **【and**  
7 **agreements】** for the provision or performance of **【work】** goods or  
8 services or the supplying of equipment to promote energy conservation  
9 authorized pursuant to subsection (12) above, contracts for water  
10 supply services or for a water supply facility, or any component part  
11 or parts thereof authorized pursuant to subsection (16), (30), (31),  
12 (34), (35) or (37) above, contracts for resource recovery services or  
13 a resource recovery facility authorized pursuant to subsection (17)  
14 above, contracts for the sale of energy produced by a resource  
15 recovery facility authorized pursuant to subsection (18) above,  
16 contracts for wastewater treatment services or for a wastewater  
17 treatment system or any component part or parts thereof authorized  
18 pursuant to subsection (19), (36) or (37) above, and contracts for the  
19 purchase of electricity or administrative or dispatching services related  
20 to the transmission of such electricity authorized pursuant to  
21 subsection (24) above, shall contain a clause making them subject to  
22 the availability and appropriation annually of sufficient funds as may  
23 be required to meet the extended obligation, or contain an annual  
24 cancellation clause.

25 The Division of Local Government Services in the Department of  
26 Community Affairs shall adopt and promulgate rules and regulations  
27 concerning the methods of accounting for all contracts that do not  
28 coincide with the fiscal year.

29 All contracts shall cease to have effect at the end of the contracted  
30 period and shall not be extended by any mechanism or provision,  
31 unless in conformance with the "Local Public Contracts Law,"  
32 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be  
33 extended by mutual agreement of the parties to the contract when a  
34 contracting unit has commenced rebidding prior to the time the  
35 contract expires or when the awarding of a contract is pending at the  
36 time the contract expires.

37 (cf: P.L.1999, c.23, s.64)

38

39 24. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to  
40 read as follows:

41 16. Separate plans for various types of work; bids; contracts. In the  
42 preparation of plans and specifications for the **【erection】** construction,  
43 alteration or repair of any public building by any contracting unit,  
44 when the entire cost of the work will exceed the **【amount set forth in,**  
45 or the amount calculated by the Governor pursuant to, section 3 of  
46 P.L.1971, c.198 (C.40A:11-3)】 bid threshold, the architect, engineer  
47 or other person preparing the plans and specifications may prepare

1 separate plans and specifications for

2 (1) The plumbing and gas fitting and all kindred work;

3 (2) Steam power plants, steam and hot water heating and  
4 ventilating apparatus and all kindred work;

5 (3) Electrical work;

6 (4) Structural steel and ornamental iron work; and

7 (5) All other work required for the completion of the project.

8 The [contracting unit or its] contracting agent shall advertise for  
9 and receive, in the manner provided by law, either (a) separate bids for  
10 each of said branches of work, or (b) bids for all the work [and  
11 materials] , goods and services required to complete the building to be  
12 included in a single overall contract, or (c) both. In the case of a  
13 single bid under (b) or (c), there [will] shall be set forth in the bid the  
14 name or names of all subcontractors to whom the bidder will  
15 subcontract the furnishing of plumbing and gas fitting, and all kindred  
16 work, and of the steam and hot water heating and ventilating  
17 apparatus, steam power plants and kindred work, and electrical work,  
18 structural steel and ornamental iron work, each of which  
19 subcontractors shall be qualified in accordance with [this act]  
20 P.L.1971, c.198 (C.40A:11-1 et seq.). The contracting unit shall  
21 require evidence of performance security to be submitted  
22 simultaneously with the list of the subcontractors. Evidence of  
23 performance security may be supplied by the bidder on behalf of  
24 himself and any or all subcontractors, or by each respective  
25 subcontractor, or by any combination thereof which results in evidence  
26 of performance security [equalling] equaling, but in no event  
27 exceeding, the total amount bid.

28 Whenever a bid sets forth more than one subcontractor for any of  
29 the specialty trade categories (1) through (4) specified hereinabove in  
30 this section, the bidder shall submit to the contracting unit a certificate  
31 signed by the bidder listing each subcontractor named in the bid for  
32 that category. The certificate shall set forth the scope of work, goods  
33 and services for which the subcontractor has submitted a price quote  
34 and which the bidder has agreed to award to each subcontractor  
35 should the bidder be awarded the contract. The certificate shall be  
36 submitted to the contracting unit simultaneously with the list of the  
37 subcontractors. The certificate may take the form of a single  
38 certificate listing all subcontractors or, alternatively, a separate  
39 certificate may be submitted for each subcontractor. If a bidder does  
40 not submit a certificate or certificates to the contracting unit, the  
41 contracting unit shall award the contract to the next lowest responsible  
42 bidder.

43 Contracts shall be awarded to the lowest responsible bidder. In the  
44 event that a contract is advertised in accordance with (c) above said  
45 contract shall be awarded in the following manner: If the sum total of  
46 the amounts bid by the lowest responsible bidder for each branch is  
47 less than the amount bid by the lowest responsible bidder for all the



1 work **【and materials】**, goods and services, the contracting unit shall  
2 award separate contracts for each of such branches to the lowest  
3 responsible bidder therefor, but if the sum total of the amounts bid by  
4 the lowest responsible bidder for each branch is not less than the  
5 amount bid by the lowest responsible bidder for all the work **【and**  
6 materials, goods and services, the contracting unit shall award a single  
7 overall contract to the lowest responsible bidder for all of such work  
8 **【and materials】**, goods and services. In every case in which a contract  
9 is awarded under (b) above, all payments required to be made under  
10 such contract for work **【and materials】**, goods and services supplied  
11 by a subcontractor shall, upon the certification of the contractor of the  
12 amount due to the subcontractor, be paid directly to the subcontractor.  
13 (cf: P.L.1997, c.408, s.1)

14

15 25. Section 1 of P.L.1979, c.464 (C.40A:11-16.2) is amended to  
16 read as follows:

17 1. Any contract **【or agreement】**, the total price of which exceeds  
18 \$100,000.00, entered into by a contracting unit involving the  
19 construction, reconstruction, alteration, repair or maintenance of any  
20 building, structure, facility or other improvement to real property,  
21 shall provide for partial payments to be made at least once each month  
22 as the work progresses, unless the contractor shall agree to deposit  
23 bonds with the contracting unit pursuant to P.L.1979, c.152  
24 (C.40A:11-16.1).

25 (cf: P.L.1979, c.464, s.1)

26

27 26. Section 2 of P.L.1979, c.464, (C.40A:11-16.3) is amended to  
28 read as follows:

29 2. a. With respect to any contract **【or agreement】** entered into by  
30 a contracting unit pursuant to section 1 of **【this act】** P.L.1979, c.464  
31 (C.40A:11-16.2) for which the contractor shall agree to the  
32 withholding of payments pursuant to P.L.1979, c.152  
33 (C.40A:11-16.1), 2% of the amount due on each partial payment shall  
34 be withheld by the contracting unit pending completion of the contract  
35 **【or agreement】**.

36 b. Upon acceptance of the work performed pursuant to the  
37 contract **【or agreement】** for which the contractor has agreed to the  
38 withholding of payments pursuant to subsection a. of this section, all  
39 amounts being withheld by the contracting unit shall be released and  
40 paid in full to the contractor within 45 days of the final acceptance  
41 date agreed upon by the contractor and the contracting unit, without  
42 further withholding of any amounts for any purpose whatsoever,  
43 provided that the contract has been completed as indicated. If the  
44 contracting unit requires maintenance security after acceptance of the  
45 work performed pursuant to the contract **【or agreement】**, such  
46 security shall be obtained in the form of a maintenance bond. The  
47 maintenance bond shall be no longer than two years and shall be no

1 more than 100% of the project costs.

2 (cf: P.L.1991, c.434, s.2)

3

4 27. Section 3 of P.L.1979, c.464, (C.40A:11-16.4) is amended to  
5 read as follows:

6 3. Any contract **【or agreement】** entered into by a contracting unit  
7 pursuant to section 1 of **【this act】** P.L.1979, c.464 (C.40A:11-16.2)  
8 may also provide for partial payments at least once in each month with  
9 respect to all materials placed along or upon the site, or stored at  
10 secured locations, which are suitable for use in the execution of the  
11 contract **【or agreement】**, if the person providing the materials  
12 furnishes releases of liens for the materials at the time each estimate  
13 of work is submitted for payment. The total of all the partial  
14 payments shall not exceed the cost of the materials.

15 (cf: P.L.1979, c.464, s.3)

16

17 28. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to  
18 read as follows:

19 19. Any contract **【or agreement】** made pursuant to **【this act】**  
20 P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages  
21 for the violation of any of the terms and conditions thereof or the  
22 failure to perform said contract **【or agreement】** in accordance with its  
23 terms and conditions, or the terms and conditions of **【this act】**  
24 P.L.1971, c.198 (C.40A:11-1 et seq.).

25 (cf: P.L.1971, c.198, s.19)

26

27 29. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to  
28 read as follows:

29 21. A person bidding on a contract **【or agreement】** for the  
30 erection, alteration or repair of a public building, structure, facility or  
31 other improvement to real property, the total price of which exceeds  
32 \$100,000, shall furnish a guarantee as provided for herein. A  
33 contracting unit may provide that a person bidding on any other  
34 contract **【or agreement】**, advertised in accordance with law, shall  
35 furnish a guarantee as provided for herein. The guarantee shall be  
36 payable to the contracting unit so that if the contract **【or agreement】**  
37 is awarded to the bidder, the bidder will enter into a contract therefor  
38 and will furnish any performance bond or other security required as  
39 a guarantee or indemnification. The guarantee shall be in the amount  
40 of 10% of the bid, but not in excess of \$20,000.00, except as  
41 otherwise provided herein, and may be given, at the option of the  
42 bidder, by certified check, cashier's check or bid bond. In the event  
43 that any law or regulation of the United States imposes any condition  
44 upon the awarding of a monetary grant to any contracting unit, which  
45 condition requires the depositing of a guarantee in an amount other  
46 than 10% of the bid or in excess of \$20,000.00 the provisions of this  
47 section shall not apply and the requirements of the law or regulation

1 of the United States shall govern.

2 (cf: P.L.1999, c.39, s.3)

3

4 30. Section 22 of P.L.1971, c.198 (C.40A:11-22) is amended to  
5 read as follows:

6 22. a. A person bidding on a contract **【or agreement】** for the  
7 erection, alteration or repair of a building, structure, facility or other  
8 improvement to real property, the total price of which exceeds  
9 \$100,000, shall furnish a certificate from a surety company, as  
10 provided for herein. A contracting unit may provide that a person  
11 bidding on any other contract shall furnish a certificate from a surety  
12 company, as provided for herein.

13 b. When a surety company bond is required in the advertisement  
14 or specifications for a contract **【or agreement】**, every contracting unit  
15 shall require from any bidder submitting a bid in accordance with  
16 plans, specifications and advertisements, as provided for by law, a  
17 certificate from a surety company stating that it will provide the  
18 contractor with a bond in such sum as is required in the advertisement  
19 or in the specifications.

20 This certificate shall be obtained for a bond--

21 (1) For the faithful performance of all provisions of the  
22 specifications or for all matters which may be contained in the notice  
23 to bidders, relating to the performance of the contract **【or**  
24 **agreement】**, and

25 (2) If any be required, for a guarantee bond for the faithful  
26 performance of the contract provisions relating to the repair and  
27 maintenance of any work, project or facility and its appurtenances and  
28 keeping the same in good and serviceable condition during the term  
29 of the bond as provided for in the notice to bidders or in the  
30 specifications, or

31 (3) In such other form as may be provided in the notice to bidders  
32 or in the specifications.

33 If a bidder desires to offer the bond of an individual instead of that  
34 of a surety company, the bidder shall submit with the bid a certificate  
35 signed by such individual similar to that required of a surety company.

36 The contracting unit may reject any such bid if it is not satisfied  
37 with the sufficiency of the individual surety offered.

38 (cf: P.L.1999, c.39, s.4)

39

40 31. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to  
41 read as follows:

42 23. **【a.】** Advertisements for bids; bids; general requirements. a.  
43 All advertisements for bids shall be published in **【a legal】** an official  
44 newspaper of the contracting unit sufficiently in advance of the date  
45 fixed for receiving the bids to promote competitive bidding, but in no  
46 event less than 10 days prior to such date; except that all  
47 advertisements for bids on contracts for the collection and disposal of

1 municipal solid waste shall be published in [a legal] an official  
2 newspaper of the contracting unit circulating in the county or  
3 municipality, and in at least one newspaper of general circulation  
4 published in the State, sufficiently in advance of the date fixed for  
5 receiving the bids to promote competitive bidding, but not less than 60  
6 days prior to that date.

7 b. The advertisement shall designate the manner of submitting and  
8 the method of receiving the bids and the time and place at which the  
9 bids will be received. If the published specifications provide for  
10 receipt of bids by mail, those bids which are mailed to the contracting  
11 unit shall be sealed and shall only be opened for examination at such  
12 time and place as all bids received are unsealed and announced. At  
13 such time and place the contracting agent of the contracting unit shall  
14 publicly receive the bids, and thereupon immediately proceed to unseal  
15 them and publicly announce the contents, which announcement shall  
16 be made in the presence of any parties bidding or their agents, who are  
17 then and there present, and shall also make proper record of the prices  
18 and terms, upon the minutes of the governing body, if the award is to  
19 be made by the governing body of the contracting unit, or in a book  
20 kept for that purpose, if the award is to be made by other than the  
21 governing body, and in such latter case it shall be reported to the  
22 governing body of the contracting unit for its action thereon, when  
23 such action thereon is required. No bids shall be received after the time  
24 designated in the advertisement.

25 c. Notice of revisions or addenda to advertisements or bid  
26 documents shall be provided as follows:

27 1) For all contracts except those for construction work and  
28 municipal solid waste collection and disposal service, notice shall be  
29 published no later than five days, Saturdays, Sundays, and holidays  
30 excepted, prior to the date for acceptance of bids, in an official  
31 newspaper of the contracting unit and be provided to any person who  
32 has submitted a bid or who has received a bid package, in one of the  
33 following ways: i) in writing by certified mail or ii) by certified  
34 facsimile transmission, meaning that the sender's facsimile machine  
35 produces a receipt showing date and time of transmission and that the  
36 transmission was successful or iii) by a delivery service that provides  
37 certification of delivery to the sender.

38 2) For all contracts for construction work, notice shall be provided  
39 no later than seven days, Saturday, Sundays, or holidays excepted,  
40 prior to the date for acceptance of bids, to any person who has  
41 submitted a bid or who has received a bid package in any of the  
42 following ways: i) in writing by certified mail or ii) by certified  
43 facsimile transmission, meaning that the sender's facsimile machine  
44 produces a receipt showing date and time of transmission and that the  
45 transmission was successful or iii) by a delivery service that provides  
46 certification of delivery to the sender.

47 3) For municipal solid waste collection and disposal contracts,  
48 notice shall be published in an official newspaper of the contracting

1 unit and in at least one newspaper of general circulation published in  
2 the State no later than five days, Saturdays, Sundays, and holidays  
3 excepted, prior to the date for acceptance of bids.

4 d. Failure of the contracting unit to advertise for the receipt of bids  
5 or to provide proper notification of revisions or addenda to  
6 advertisements or bid documents related to bids as prescribed by this  
7 section shall prevent the contracting unit from accepting the bids and  
8 require the readvertisement for bids pursuant to subsection a. of this  
9 section. Failure to obtain a receipt when good faith notice is sent or  
10 delivered to the address or telephone facsimile number on file with the  
11 contracting unit shall not be considered failure by the contracting unit  
12 to provide notice.

13 (cf: P.L.1997, c.243, s.1)

14

15 32. Section 25 of P.L.1971, c.198 (C.40A:11-25) is amended to  
16 read as follows:

17 25. The governing body of any contracting unit may establish  
18 reasonable regulations appropriate for controlling the qualifications of  
19 prospective bidders upon contracts to be awarded on behalf of the  
20 contracting unit, by the class or category of **[work to be performed or**  
21 **materials and supplies to be furnished or hired]** goods or services to  
22 be provided or performed, which may fix the qualifications required  
23 according to the financial ability and experience of the bidders and the  
24 capital and equipment available to them pertinent to and reasonably  
25 related to the class or category of **[work to be performed or materials**  
26 **and supplies to be furnished or hired]** goods or services to be provided  
27 or performed in the performance of any such contract, and may require  
28 each bidder to furnish a statement thereof; and if such governing body  
29 is not satisfied with the qualifications of any bidder as founded upon  
30 such statement, it may refuse to furnish **[him]** the bidder with any  
31 plans or specifications for any public contract or consider any bid  
32 made by **[him]** the bidder for any contract.

33 Prior to the adoption of any such regulations, a contracting unit  
34 shall submit them to a public hearing. Notice of the hearing and a  
35 general description of the subject matter of the regulations to be  
36 adopted shall be published in not less than two newspapers circulating  
37 in the county or municipality in which the contracting unit is located.  
38 Publication shall precede by at least 20 days the date set in the notice  
39 for the hearing. The clerk or secretary of the governing body of the  
40 contracting unit shall keep a record of the proceedings and of the  
41 testimony of any citizen or prospective bidder. Within 10 days after  
42 the completion of the hearings, the proposed regulations and a true  
43 copy of the hearings shall be forwarded to the Director of the Division  
44 of Local **[Finance]** Government Services for **[his]** the director's  
45 approval. This approval shall be indicated by a letter from the director  
46 to the governing body of the contracting unit. If the director fails to  
47 approve or disapprove the regulations within 30 days of their receipt

1 by **[him]** the director, they shall take effect without **[his]** the  
2 director's approval. The director may disapprove such proposed  
3 regulations only if **[he]** the director finds that:

4 (a) They are written in a manner which will unnecessarily  
5 discourage full, free and open competition; or

6 (b) They unnecessarily restrict the participation of small businesses  
7 in the public bidding process; or

8 (c) They create undue preferences; or

9 (d) They violate any other provision of this act, or any other law.

10 If the director disapproves such proposed regulations within the  
11 30-day period prescribed, they shall be of no force and effect and may  
12 not be required as a condition to the acceptance of a bid on any public  
13 contract by the contracting unit. Any appeal from a decision of the  
14 director to the Local Finance Board shall be subject to the provisions  
15 of the Local Government Supervision Act (P.L.1947, c.151,  
16 C.52:27BB-1 et seq.).

17 No qualification rating of any bidder shall be influenced by **[his]** the  
18 bidder's race, religion, sex, national origin, nationality or **[his]** place  
19 of residence or business.

20 Nothing contained in this act shall limit the right of any court to  
21 review a refusal to furnish any such plans or specifications or **[the**  
22 consideration or] to consider any bid on any contract advertised.

23 Any such governing body may adopt a standard form of statement  
24 or questionnaire for bidders on public works **[and]** contracts, and in  
25 such case their action shall be governed as provided herein.

26 (cf: P.L.1971, c.198, s.25)

27

28 33. Section 26 of P.L.1971, c.198 (C.40A:11-26) is amended to  
29 read as follows:

30 26. The governing body of any contracting unit may adopt a  
31 standard form of statement or questionnaire for bidders **[on public**  
32 works and contracts] and may require from any person proposing to  
33 bid upon any such **[public work or]** contract a statement or answers  
34 showing **[his]**the bidder's financial ability and experience in  
35 performing public sector work and describing the equipment available  
36 to such bidder in the performance of such **[work or]** contract, and if  
37 not satisfied with the sufficiency of this statement or answers may  
38 refuse to furnish plans and specifications to **[him]**the bidder.

39 (cf: P.L.1971, c.198, s.26)

40

41 34. Section 27 of P.L.1971, c.198 (C.40A:11-27) is amended to  
42 read as follows:

43 27. Such statements and questionnaires shall be standardized for  
44 like classes of **[work]** goods or services to be submitted to  
45 prospective bidders who may be required to respond to questions  
46 under oath. The statement or answer shall disclose fully the financial  
47 ability, adequacy of plant and equipment, organization and prior

1 experience of the prospective bidder, and such other pertinent and  
2 material facts as may be required.

3 (cf: P.L.1971, c.198, s.27)

4

5 35. Section 28 of P.L.1971, c.198 (C.40A:11-28) is amended to  
6 read as follows:

7 28. Prospective bidders shall be classified as to the character and  
8 amount of **[public work or]** goods or services contracts as to which  
9 they shall be qualified to submit bids, and bids shall be accepted only  
10 from persons so qualified. The classification shall be made and an  
11 immediate notice thereof shall be sent to the prospective bidders by  
12 certified or registered mail within 8 days after the date of receipt of  
13 the responsive statement or answers.

14 (cf: P.L.1971, c.198, s.28)

15

16 36. Section 29 of P.L.1971, c.198 (C. 40A:11-29) is amended to  
17 read as follows:

18 29. If any person, after being notified of **[his]**a classification, shall  
19 be dissatisfied therewith or with the classification of other bidders,  
20 **[he]** that person may request in writing a hearing before such  
21 governing body, and may present such further evidence with respect  
22 to the financial responsibility, organization, plant and equipment, or  
23 experience of **[himself]** that person or other prospective bidders as  
24 might tend to justify a different classification.

25 Where a request is made for the change of classification of another  
26 prospective bidder, the applicant therefor shall notify such other bidder  
27 by certified or registered mail of the time and place of hearing, as fixed  
28 by the governing body, and at the hearing shall present satisfactory  
29 evidence that the notice was served as herein required, before any  
30 matters pertaining to a change of classification of such other bidder  
31 shall be taken up. After hearing such evidence the governing body  
32 may, in its discretion, by appropriate action, change or retain the  
33 classification of any bidder.

34 No change in classification to be effective for any **[public work or]**  
35 contract where bidding therefor has been duly advertised, shall be  
36 made unless the written request therefor shall have been received at  
37 least 20 days before the final day for submission of bids.

38 All requests for change in classification and notice of any action  
39 sent by certified or registered mail to the parties directly affected  
40 thereby, shall be acted upon by the governing body concerned at least  
41 8 days prior to the date fixed for the next opening of bids on any  
42 contract or contracts for which such persons might be qualified to bid  
43 as a result of the reclassification.

44 (cf: P.L.1971, c.198, s.29)

45

46 37. Section 31 of P.L.1971, c.198 (C.40A:11-31) is amended to  
47 read as follows:

1       31. Any prospective bidder who is dissatisfied with **[his]** an  
2 original classification or reclassification may upon receipt of notice  
3 thereof, request in writing a hearing of the matter before the board of  
4 review. The request shall be filed with the contracting agent and the  
5 secretary of the board.

6       The board shall hold a hearing at which the prospective bidder shall  
7 be entitled to be heard and to submit additional information.

8       The board shall review the responsibility of all prospective bidders  
9 who have filed statements or answers, considering both the statement,  
10 answers and any additional information given at the hearing, and shall  
11 certify to the contracting unit concerned, its decision as to the original  
12 classifications or reclassifications, if any. The decisions shall be made  
13 by a majority vote.

14       In order for any change in classification by the board to be effective  
15 for **[public work or]** a contract previously advertised, the request shall  
16 be filed not less than 5 days prior to the final day for submission of  
17 bids, and the board shall hold a hearing and act upon the request not  
18 less than 2 days prior to the date fixed for the next opening of bids on  
19 any public **[work or]** works contract for which such prospective  
20 bidders might be qualified to bid as a result of the reclassification.  
21 (cf: P.L.1971, c.198, s.31)

22

23       38. Section 32 of P.L.1971, c.198 (C.40A:11-32) is amended to  
24 read as follows:

25       32. Nothing herein contained shall be construed as depriving any  
26 **[contracting agent]** governing body of the right to reject a bid at any  
27 time prior to the actual award of a **[public work or]** contract, where  
28 the circumstances of the prospective bidder have changed subsequent  
29 to the qualification and classification of the **[said]** bidder, which in  
30 the opinion of the awarding contracting unit would adversely affect  
31 the responsibility of the bidder. Before taking final action on any such  
32 bid, the contracting agent concerned shall notify the **[said]** bidder and  
33 afford **[him]** the bidder an opportunity to present any additional  
34 information which might tend to sustain the existing classification.

35       No person shall be qualified to bid on any **[public work or]**  
36 contract unless **[he]** that person shall have submitted a statement or  
37 answers as herein required within a period of 6 months preceding the  
38 date of opening of bids for the **[public work or]** contract, if the  
39 bidders thereon are required to be classified hereunder. In any case  
40 where the contracting unit shall require classification of the bidders  
41 in compliance with these sections, each bidder on any **[public work**  
42 **or]** contract shall be required to submit a statement listing the  
43 changes in the statement or answers herein required as part of **[his]**  
44 the bidder's bid submission.

45 (cf: P.L.1971, c.198, s.32)

46

47       39. Section 36 of P.L.1971, c.198 (C.40A:11-36) is amended to



1 read as follows:

2 36. Any contracting unit by resolution of its governing body may  
3 authorize by sealed bid or public auction the sale of its personal  
4 property not needed for public use.

5 (1) If the estimated fair value of the property to be sold exceeds  
6 ~~[\$2,500.00]~~ 15 percent of the bid threshold in any one sale and it is  
7 neither livestock nor perishable goods, it shall be sold at public sale  
8 to the highest bidder.

9 (2) The contracting unit need not advertise for bids when it makes  
10 any such sale to the United States, the State of New Jersey, another  
11 contracting unit ~~[or to]~~ , any body politic to which it contributes tax  
12 raised funds, any foreign nation which has diplomatic relations with  
13 the United States, or any governmental unit in the United States.

14 (3) Notice of the date, time and place of the public sale together  
15 with a description of the items to be sold and the conditions of sale  
16 shall be published in ~~[a]~~ an official newspaper ~~[circulating in the~~  
17 ~~contracting unit]~~. Such sale shall be held not less than 7 nor more  
18 than 14 days after the latest publication of the notice thereof.

19 (4) If no bids are received the property may then be sold at private  
20 sale without further publication or notice thereof, but in no event at  
21 less than the estimated fair value; or the contracting unit may if it so  
22 ~~[elect]~~ elects reoffer the property at public sale. As used herein,  
23 "estimated fair value" means the market value of the property  
24 between a willing seller and a willing buyer less the cost to the  
25 ~~[municipality]~~ contracting unit to continue storage or maintenance of  
26 any personal property not needed for public use to be sold pursuant  
27 to this section.

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

38 (6) If the estimated fair value of the property to be sold does not  
39 exceed the applicable bid threshold in any one sale or is either  
40 livestock or perishable goods, it may be sold at private sale without  
41 advertising for bids.

42 (7) Notwithstanding the provisions of this section, by resolution of  
43 the governing body, a contracting agent may include the sale of  
44 personal property no longer needed for public use as part of  
45 specifications to offset the price of a new purchase.

46 (cf: P.L.1971, c.198, s.36)

1       40. Section 37 of P.L.1971, c.198 (C.40A:11-37) is amended to  
2 read as follows:

3       37. The Division of Local **Finance** Government Services in the  
4 Department of Community Affairs is hereby authorized to assist  
5 contracting units in all matters affecting the administration of this law.  
6 (cf: P.L.1971, c.198, s.37)

7

8       41. R.S.40:8-2 is amended to read as follows:

9       40:8-2. The governing body of any municipality may acquire,  
10 establish, construct, own, control, lease, equip, improve, maintain,  
11 operate and regulate airports or landing fields for the use of airplanes  
12 and other aircraft within or without the limits of such municipality and  
13 may use for such purpose or purposes any property, owned or  
14 controlled by such municipality, suitable therefor, provided that the  
15 provision or performance of goods or services in connection with the  
16 operation, management or administration of an airport shall be done  
17 pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
18 (C.40A:11-1 et seq.) and any supplements thereto.  
19 (cf: P.L.1947, c.85, s.1)

20

21       42. R.S.40:8-3 is amended to read as follows:

22       40:8-3. The governing body of any county may acquire, by lease  
23 or purchase, and establish, construct, own, control, lease, equip,  
24 improve, maintain, operate and regulate airports or landing fields for  
25 the use of airplanes and other aircraft within the limits of such  
26 counties, and may use for such purpose or purposes any property,  
27 owned or controlled by such county, suitable therefor, provided that  
28 the provision or performance of goods or services in connection with  
29 the operation, management or administration of an airport shall be  
30 done pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
31 (C.40A:11-1 et seq.) and any supplements thereto.  
32 (cf: R.S.40:8-3)

33

34       43. R.S.40:8-6 is amended to read as follows:

35       40:8-6. The governing body of a municipality or county which has  
36 established an airport or landing field and acquired, leased or set apart  
37 real property for such purpose may construct, improve, equip,  
38 maintain and operate the same, or may vest jurisdiction for the  
39 construction, improvement, equipment, maintenance and operation  
40 thereof, in any suitable officer, board or body of such municipality or  
41 county. Provision or performance of goods or services in connection  
42 with the operation, management or administration of an airport shall  
43 be done pursuant to the "Local Public Contracts Law," P.L.1971,  
44 c.198 (C.40A:11-1 et seq.) and any supplements thereto. The  
45 expenses of such construction, improvement, equipment, maintenance  
46 and operation shall be a municipal or county charge, as the case may  
47 be.

48       The governing body of any municipality or county may adopt

1 regulations and establish fees or charges for the use of such airport or  
2 landing field, or may authorize an officer, board or body of such  
3 municipality or county having jurisdiction to adopt such regulations  
4 and establish such fees or charges, subject, however, to the approval  
5 of such governing body before they shall take effect.

6 (cf: R.S.40:8-6)

7

8 44. (New section) Pursuant to the "Administrative Procedure  
9 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
10 Division of Local Government Services after consultation with the  
11 Commissioner of Education may adopt rules implementing the  
12 provisions of the "Local Public Contracts Law," P.L.1971, c.198  
13 (C.40A:11-1 et seq.) and the "Public Schools Contracts Law,"  
14 N.J.S.18A:18A-1 et seq..

15

16 45. (New section) Notwithstanding the provisions of any law, rule  
17 or regulation to the contrary, competitive contracting may be used by  
18 boards of education in lieu of public bidding for procurement of  
19 specialized goods and services the price of which exceeds the bid  
20 threshold, for the following purposes:

21 a. The purchase or licensing of proprietary computer software  
22 designed for board of education purposes, which may include  
23 hardware intended for use with the proprietary software. This  
24 subsection shall not be utilized for the purpose of acquiring general  
25 purpose computer hardware or software;

26 b. The hiring of a for-profit entity or a not-for-profit entity  
27 incorporated under Title 15A of the New Jersey Statutes for the  
28 purpose of:

29 (1) the operation, management or administration of recreation or  
30 social service facilities or programs; or

31 (2) the operation, management or administration of data processing  
32 services;

33 c. Services performed by an energy services company, including  
34 the design, measurement, financing and maintenance of energy savings  
35 equipment or renovations, which result in payment derived, in whole  
36 or in part, from the sale of verified energy savings over the term of an  
37 agreement with a public utility or subsidiary, but not the provision or  
38 performance of the physical improvements that result in energy  
39 savings, provided that such savings are calculated pursuant to  
40 guidelines promulgated by the Board of Public Utilities and further  
41 provided that the Local Finance Board, in consultation with the State  
42 Board of Education, shall find that the terms and conditions of any  
43 financing agreement are reasonable;

44 d. Telecommunications transmission or switching services that are  
45 not part of a tariff or schedule of charges filed with the Board of  
46 Public Utilities;

47 e. The purchase of specialized machinery or equipment of a  
48 technical nature, or servicing thereof, which will not reasonably permit

1 the drawing of specifications;

2 f. Food services provided by food service management companies  
3 when not part of programs administered by the New Jersey  
4 Department of Agriculture, Bureau of Child Nutrition Programs;

5 g. Driver education courses provided by licensed driver education  
6 schools;

7 h. At the option of the board of education, any good or service that  
8 is exempt from bidding pursuant to N.J.S.18A:18A-5;

9 i. Laboratory testing services;

10 j. Concessions;

11 k. The operation, management or administration of other services,  
12 with the approval of the Division of Local Government Services in the  
13 Department of Community Affairs.

14 Any purpose included herein shall not be considered by a board of  
15 education as an extraordinary unspecifiable service pursuant to  
16 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

17

18 46. (New section) Unless an exception is provided for under  
19 N.J.S.18A:18A-42 permitting a longer contract duration, contracts  
20 awarded pursuant to section 49 of P.L. , c. (C. ) (pending before  
21 the Legislature as this bill) may be for a term not to exceed five years.

22

23 47. (New section) a. In order to initiate competitive contracting,  
24 the board of education shall pass a resolution authorizing the use of  
25 competitive contracting each time specialized goods or services  
26 enumerated in section 45 of P.L. , c. (C. ) (pending before the  
27 Legislature as this bill) are desired to be contracted. If the desired  
28 goods or services have previously been contracted for using the  
29 competitive contracting process then the original resolution of the  
30 board of education shall suffice.

31 b. The competitive contracting process shall be administered by a  
32 purchasing agent qualified pursuant to subsection b. (pending before  
33 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
34 c.198 (C.40A:11-9) or by legal counsel of the board of education, or  
35 by the school business administrator of the board of education. Any  
36 contracts awarded under this process shall be made by resolution of  
37 the board of education subject to the provisions of subsection e. of  
38 section 49 of P.L. , c. (C. )(now before the Legislature as this bill).

39

40 48. (New section) The competitive contracting process shall utilize  
41 request for proposals documentation in accordance with the following  
42 provisions:

43 a. The purchasing agent or counsel or school business  
44 administrator shall prepare or have prepared request for proposal  
45 documentation, which shall include: all requirements deemed  
46 appropriate and necessary to allow for full and free competition  
47 between vendors; information necessary for potential vendors to  
48 submit a proposal; and a methodology by which the board of education

1 will evaluate and rank proposals received from vendors.

2 b. The methodology for the awarding of competitive contracts shall  
3 be based on an evaluation and ranking, which shall include technical,  
4 management, and cost related criteria, and may include a weighting of  
5 criteria, all developed in a way that is intended to meet the specific  
6 needs of the contracting unit, and where such criteria shall not unfairly  
7 or illegally discriminate against or exclude otherwise capable vendors.  
8 When an evaluation methodology uses a weighting of criteria, at the  
9 option of the board of education the weighting to be accorded to each  
10 criterion may be disclosed to vendors prior to receipt of the proposals.  
11 The methodology for awarding competitive contracts shall comply  
12 with such rules and regulations as the Director of the Division of Local  
13 Government Services in the Department of Community Affairs, after  
14 consultation with the Commissioner of Education may adopt pursuant  
15 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
16 et seq.).

17 c. At no time during the proposal solicitation process shall the  
18 purchasing agent or counsel or school business administrator convey  
19 information, including price, to any potential vendor which could  
20 confer an unfair advantage upon that vendor over any other potential  
21 vendor. If a purchasing agent or counsel or school business  
22 administrator desires to change proposal documentation, the  
23 purchasing agent or counsel or school business administrator shall  
24 notify only those potential vendors who received the proposal  
25 documentation of any and all changes in writing and all existing  
26 documentation shall be changed appropriately .

27 d. All proposals and contracts shall be subject to the provisions of  
28 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
29 statement of corporate ownership and the provisions of P.L.1975,  
30 c.127 (C.10:5-31 et seq.) concerning equal employment opportunity  
31 and affirmative action.

32

33 49. (New section) Competitive contracting proposals shall be  
34 solicited in the following manner:

35 a. A notice of the availability of request for proposal  
36 documentation shall be published in an official newspaper of the board  
37 of education at least 20 days prior to the date established for the  
38 submission of proposals. The board of education shall promptly reply  
39 to any request by an interested vendor by providing a copy of the  
40 request for proposals. The board of education may charge a fee for  
41 the proposal documentation that shall not exceed \$50.00 or the cost  
42 of reproducing the documentation, whichever is greater.

43 b. Each interested vendor shall submit a proposal which shall  
44 include all the information required by the request for proposals.  
45 Failure to meet the requirements of the request for proposals may  
46 result in the board of education disqualifying the vendor from further  
47 consideration. Under no circumstances shall the provisions of a  
48 proposal be subject to negotiation by the board of education.

1 c. If the board of education, at the time of solicitation, utilizes its  
2 own employees to provide the goods or perform the services, or both  
3 considered for competitive contracting, the board of education shall,  
4 at any time prior to, but no later than the time of solicitation for  
5 competitive contracting proposals, notify affected employees of the  
6 board of education's intention to solicit competitive contracting  
7 proposals. Employees or their representatives shall be permitted to  
8 submit recommendations and proposals affecting wages, hours, and  
9 terms and conditions of employment in such a manner as to meet the  
10 goals of the competitive contract. If employees are represented by an  
11 organization that has negotiated a contract with the board of  
12 education, only the bargaining unit shall be authorized to submit such  
13 recommendations or proposals. When requested by such employees,  
14 the board of education shall provide such information regarding  
15 budgets and the costs of performing the services by such employees as  
16 may be available. Nothing shall prevent such employees from making  
17 recommendations that may include modifications to existing labor  
18 agreements in order to reduce such costs in lieu of award of a  
19 competitive contract, and agreements implementing such  
20 recommendations may be considered as cause for rejecting all other  
21 proposals.

22 d. The purchasing agent or counsel or school business  
23 administrator shall evaluate all proposals only in accordance with the  
24 methodology described in the request for proposals. After proposals  
25 have been evaluated, the purchasing agent or counsel or school  
26 business administrator shall prepare a report evaluating and  
27 recommending the award of a contract or contracts. The report shall  
28 list the names of all potential vendors who submitted a proposal and  
29 shall summarize the proposals of each vendor. The report shall rank  
30 vendors in order of evaluation, shall recommend the selection of a  
31 vendor or vendors, as appropriate, for a contract, shall be clear in the  
32 reasons why the vendor or vendors have been selected among others  
33 considered, and shall detail the terms, conditions, scope of services,  
34 fees, and other matters to be incorporated into a contract. The report  
35 shall be made available to the public at least 48 hours prior to the  
36 awarding of the contract, or when made available to the board of  
37 education, whichever is sooner. The board of education shall have the  
38 right to reject all proposals for any of the reasons set forth in  
39 N.J.S.18A:18A-22.

40 e. Award of a contract shall be made by resolution of the board of  
41 education within 60 days of the receipt of the proposals, except that  
42 the proposals of any vendors who consent thereto, may, at the request  
43 of the board of education, be held for consideration for such longer  
44 period as may be agreed.

45 f. The report prepared pursuant to subsection d. of this section  
46 shall become part of the public record and shall reflect the final action  
47 of the board of education. Contracts shall be executed pursuant to  
48 N.J.S.18A:18A-40.

1 g. The secretary of the board of education shall publish a notice in  
2 the official newspaper of the board of education summarizing the  
3 award of a contract, which shall include but not be limited to, the  
4 nature, duration, and amount of the contract, the name of the vendor  
5 and a statement that the resolution and contract are on file and  
6 available for public inspection in the office of the secretary of the  
7 board of education.

8 h. The Director of the Division of Local Government Services in  
9 the Department of Community Affairs, after consultation with the  
10 Commissioner of Education, may adopt additional rules and  
11 regulations, in accordance with the "Administrative Procedure Act,"  
12 P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to  
13 effectuate the provisions of sections 45 through 49 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill).

15

16 50. N.J.S.18A:18A-2 is amended to read as follows:

17 18A:18A-2. As used in this chapter, unless the context otherwise  
18 indicates:

19 a. "Board of education" means and includes the board of education  
20 of any local school district, consolidated school district, regional  
21 school district, county vocational school and any other board of  
22 education or other similar body other than the State Board of  
23 Education, the Commission on Higher Education or the Presidents'  
24 Council, established and operating under the provisions of Title 18A  
25 of the New Jersey Statutes and having authority to make purchases  
26 and to enter into contracts[, agreements or leases] for the provision  
27 or performance of [any work or the furnishing or hiring of any  
28 materials, supplies, equipment or services usually required, the cost or  
29 contract price is to be paid with or out of board funds] goods or  
30 services. The term "board of education" also shall include the board  
31 of trustees of a charter school established under P.L.1995, c.426  
32 (C.18A:36A-1 et seq.).

33 b. "[Contracting] Purchasing agent" means the secretary, business  
34 administrator or the business manager of the board of education duly  
35 assigned the authority, responsibility and accountability for the  
36 purchasing activity of the board of education and having the power to  
37 prepare advertisements, to advertise for and receive bids and to [make  
38 awards for the board of education in connection with purchases,]  
39 award contracts [or agreements] as permitted by this chapter, but if  
40 there be no secretary, business administrator or business manager,  
41 such officer, committees or employees to whom such power has been  
42 delegated by the board of education.

43 c. ["Contracts" for the purpose of this chapter means contracts  
44 or agreements for the performance of work or the furnishing or hiring  
45 of services, materials, or supplies as distinguished from contracts of  
46 employment.] (Deleted by amendment, P.L. , c. .) (Pending before  
47 the Legislature as this bill.)

- 1 d. "District" means and includes any local school district,  
2 consolidated school district, regional school district, county vocational  
3 school and any other board of education or other similar body other  
4 than the State board, established under the provisions of Title 18A of  
5 the New Jersey Statutes.
- 6 e. ~~["Legal newspaper" means a newspaper circulating in the  
7 district, printed and published in the English language at least once a  
8 week for at least one year continuously.] (Deleted by amendment,  
9 P.L. , c. .) (Pending before the Legislature as this bill.)~~
- 10 f. ~~["Materials" includes goods and property subject to Article 2 of  
11 Title 12A of the New Jersey Statutes, apparatus, or any other tangible  
12 thing, except real property or any interest therein .] (Deleted by  
13 amendment, P.L. , c. .) (Pending before the Legislature as this bill.)~~
- 14 g. "Extraordinary unspecifiable services" means services which are  
15 specialized and qualitative in nature requiring expertise, extensive  
16 training and proven reputation in the field of endeavor.
- 17 h. "Professional services" means services rendered or performed  
18 by a person authorized by law to practice a recognized profession and  
19 whose practice is regulated by law and the performance of which  
20 services requires knowledge of an advanced type in a field of learning  
21 acquired by a prolonged formal course of specialized instruction and  
22 study as distinguished from general academic instruction or  
23 apprenticeship and training. Professional services may also ~~["means"]~~  
24 mean services rendered in the provision or performance of ~~["work"]~~  
25 goods or services that ~~["is"]~~ are original and creative in character in a  
26 recognized field of artistic endeavor.
- 27 i. ~~["Project" means any work, undertaking, construction or  
28 alteration.] (Deleted by amendment, P.L. , c. .) (Pending before the  
29 Legislature as this bill.)~~
- 30 j. "Purchases" ~~["are"]~~ means transactions, for a valuable  
31 consideration, creating or acquiring an interest in goods, services and  
32 property, except real property or any interest therein.
- 33 k. "Work" ~~["includes services and any other activity of a tangible  
34 or intangible nature"]~~ means any task, program, undertaking, or  
35 activity, related to any development, redevelopment, construction or  
36 reconstruction performed or ~~["assumed"]~~ provided pursuant to a  
37 contract ~~["or agreement"]~~ with a board of education.
- 38 l. "Aggregate" means the sums expended or to be expended for the  
39 provision or performance of any goods or services in connection with  
40 the same immediate purpose or task, or the furnishing of similar goods  
41 or services, during the same contract year through a contract awarded  
42 by a purchasing agent.
- 43 m. "Bid threshold" means the dollar amount set in N.J.S.18A:18A-  
44 3, above which a board of education shall advertise for and receive  
45 sealed bids in accordance with procedures set forth in N.J.S.18A:18A-  
46 1 et seq.
- 47 n. "Contract" means any agreement, including but not limited to a



1 purchase order or a formal agreement, which is a legally binding  
2 relationship enforceable by law, between a vendor who agrees to  
3 provide or perform goods or services and a board of education which  
4 agrees to compensate a vendor, as defined by and subject to the terms  
5 and conditions of the agreement. A contract also may include an  
6 arrangement whereby a vendor compensates a board of education for  
7 the vendor's right to perform a service, such as, but not limited to,  
8 operating a concession.

9 o. "Contract year" means the period of 12 consecutive months  
10 following the award of a contract.

11 p. "Competitive contracting" means the method described in  
12 sections 45 through 49 of P.L. , c. (C. ) (pending before the  
13 Legislature as this bill) of contracting for specialized goods and  
14 services in which formal proposals are solicited from vendors; formal  
15 proposals are evaluated by the purchasing agent or counsel or school  
16 business administrator; and the board of education awards a contract  
17 to a vendor or vendors from among the formal proposals received.

18 q. "Goods and services" or "goods or services" means any work,  
19 labor, commodities, equipment, materials, or supplies of any tangible  
20 or intangible nature, except real property or any interest therein,  
21 provided or performed through a contract awarded by a purchasing  
22 agent , including goods and property subject to N.J.S.12A:2-101 et  
23 seq.

24 r. "Library and educational goods and services" means textbooks,  
25 copyrighted materials, student produced publications and services  
26 incidental thereto, including but not limited to books, periodicals,  
27 newspapers, documents, pamphlets, photographs, reproductions,  
28 microfilms, pictorial or graphic works, musical scores, maps, charts,  
29 globes, sound recordings, slides, films, filmstrips, video and magnetic  
30 tapes, other printed or published matter and audiovisual and other  
31 materials of a similar nature, necessary binding or rebinding of library  
32 materials, and specialized computer software used as a supplement or  
33 in lieu of textbooks or reference material.

34 s. "Lowest price" means the least possible amount that meets all  
35 requirements of the request of a purchasing agent.

36 t. "Lowest responsible bidder or vendor" means the bidder or  
37 vendor: (1) whose response to a request for bids offers the lowest  
38 price and is responsive; and (2) who is responsible.

39 u. "Official newspaper" means any newspaper designated by the  
40 board of education pursuant to R.S.35:1-1 et seq.

41 v. "Purchase order" means a document issued by the purchasing  
42 agent authorizing a purchase transaction with a vendor to provide or  
43 perform goods or services to the board of education, which, when  
44 fulfilled in accordance with the terms and conditions of a request of a  
45 purchasing agent and other provisions and procedures that may be  
46 established by the board of education, will result in payment by the  
47 board of education.

48 w. "Quotation" means the response to a formal or informal request

1 made by a purchasing agent to a vendor for provision or performance  
2 of goods or services, when the aggregate cost is less than the bid  
3 threshold. Quotations may be in writing, or taken verbally if a record  
4 is kept by the purchasing agent.

5 x. "Responsible" means able to complete the contract in  
6 accordance with its requirements, including but not limited to  
7 requirements pertaining to experience, moral integrity, operating  
8 capacity, financial capacity, credit, and workforce, equipment, and  
9 facilities availability.

10 y. "Responsive" means conforming in all material respects to the  
11 terms and conditions, specifications, legal requirements, and other  
12 provisions of the request.

13 z. "Public works" means building, altering, repairing, improving or  
14 demolishing any public structure or facility constructed or acquired by  
15 a board of education to house school district functions or provide  
16 water, waste disposal, power, transportation and other public  
17 infrastructures.

18 aa. "Concession" means the granting of a license or right to act for  
19 or on behalf of the board of education, or to provide a service  
20 requiring the approval or endorsement of the board of education, and  
21 which may or may not involve a payment or exchange, or provision of  
22 services by or to the board of education, provided that the term  
23 concession shall not include vending machines.

24 bb. "Index rate" means the rate of annual percentage increase,  
25 rounded to the nearest half-percent, in the Implicit Price Deflator for  
26 State and Local Government Purchases of Goods and Services,  
27 computed and published quarterly by the United States Department of  
28 Commerce, Bureau of Economic Analysis.

29 cc. "Proprietary" means goods or services of a specialized nature,  
30 that may be made or marketed by a person or persons having the  
31 exclusive right to make or sell them, when the need for such goods or  
32 services has been certified in writing by the board of education to be  
33 necessary for the conduct of its affairs.

34 dd. "Service or services" means the performance of work, or the  
35 furnishing of labor, time, or effort, or any combination thereof, not  
36 involving or connected to the delivery or ownership of a specified end  
37 product or goods or a manufacturing process. Service or services may  
38 also include an arrangement in which a vendor compensates the board  
39 of education for the vendor's right to operate a concession.

40 (cf: P.L.1994, c.48, s.59)

41  
42 51. N.J.S.18A:18A-3 is amended to read as follows:

43 18A:18A-3. **[a. Any purchase, contract or agreement for the**  
44 **performance of any work or the furnishing or hiring of materials or**  
45 **supplies,]**

46 **a. When** the cost or price of **[**which, together with any other sums  
47 expended or foreseeably to be expended for the performance of any  
48 work or services in connection with the same project or the furnishing

1 of similar materials or supplies during the same fiscal year paid with or  
2 out of school funds] any contract awarded by the purchasing agent in  
3 the aggregate, does not exceed in a contract year the total sum of  
4 [\$7,500.00 or the amount determined pursuant to subsection b. of this  
5 section, in the fiscal year or, in the case of purchases that are not  
6 annually recurring, in a period of one year] \$17,500, the contract may  
7 be [made, negotiated and] awarded by a [contracting] purchasing  
8 agent when so authorized by resolution of the board of education  
9 without public advertising for bids and bidding therefor, except that  
10 the board of education may adopt a resolution to set a lower threshold  
11 for the receipt of public bids or the solicitation of competitive  
12 quotations. If the purchasing agent is qualified pursuant to subsection  
13 b. (pending before the Legislature as section 15 of this bill) of section  
14 9 of P.L.1971, c.198 (C.40A:11-9) the board of education may  
15 establish that the bid threshold may be up to \$25,000. Such  
16 authorization may be granted for each contract or by a general  
17 delegation of the power to negotiate and award such contracts  
18 pursuant to this section.

19 b. Commencing [January 1, 1983 and every two] in the fifth year  
20 after the year in which P.L. , c. (now before the Legislature as this  
21 bill) takes effect, and every five years thereafter, the Governor, in  
22 consultation with the Department of Treasury, shall adjust the  
23 threshold amount and the higher threshold amount which the board of  
24 education is permitted to establish as set forth in subsection a. of this  
25 section or the threshold amount resulting from any adjustment under  
26 this subsection, in direct proportion to the rise or fall of the  
27 [consumer price index for all urban consumers in the New York City  
28 and the Philadelphia areas as reported by the United States  
29 Department of Labor] index rate as that term is defined in  
30 N.J.S.18A:18A-2 (pending before the Legislature as section 50 of this  
31 bill), and shall round the adjustment to the nearest \$1,000. The  
32 Governor shall notify all local school districts of the adjustment no  
33 later than June 1 of every fifth year. The adjustment shall become  
34 effective on July 1 of the year in which it is [reported] made.

35 Any contract made pursuant to this section may be awarded for a  
36 period of 24 consecutive months, except that contracts for  
37 professional services pursuant to paragraph (1) of subsection a. of  
38 N.J.S.18A:18A-5 may be awarded for a period not exceeding 12  
39 consecutive months.

40 (cf: P.L.1983, c.171, s.1)

41

42 52. N.J.S.18A:18A-4 is amended to read as follows:

43 18A:18A-4. a. Every contract [or agreement] for the provision or  
44 performance of any [work or the furnishing or hiring of any materials  
45 or supplies] goods or services, the cost [or the contract price whereof  
46 is to be paid with or out of school funds, not included within the terms  
47 of N.J.S.18A:18A-3] of which in the aggregate exceeds the bid

1 threshold, shall be ~~made and~~ awarded only by resolution of the  
2 board of education to the lowest responsible bidder after public  
3 advertising for bids and bidding therefor, except as is provided  
4 otherwise in this chapter or specifically by any other law.

5 ~~【No work, materials or supplies shall be undertaken, acquired or~~  
6 ~~furnished for a sum exceeding in the aggregate the amount set forth in,~~  
7 ~~or calculated by the Governor pursuant to, N.J.S. 18A:18A-3, except~~  
8 ~~by contract or agreement.】~~The board of education may, by resolution  
9 approved by a majority of the board of education and subject to  
10 subsections b. and c. of this section, disqualify a bidder who would  
11 otherwise be determined to be the lowest responsible bidder, if the  
12 board of education finds that it has had prior negative experience with  
13 the bidder.

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

16 (1) the bidder has been found, through either court adjudication,  
17 arbitration, mediation, or other contractually stipulated alternate  
18 dispute resolution mechanism, to have: failed to provide or perform  
19 goods or services; or failed to complete the contract in a timely  
20 manner; or otherwise performed unsatisfactorily under a prior contract  
21 with the board of education;

22 (2) the bidder defaulted on a contract, thereby requiring the board  
23 of education to utilize the services of another contractor to provide the  
24 goods or perform the services or to correct or complete the contract;

25 (3) the bidder defaulted on a contract, thereby requiring the board  
26 of education to look to the bidder's surety for completion of the  
27 contract or tender of the costs of completion; or

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

32 c. The following conditions apply if the board of education is  
33 contemplating a disqualification based on prior negative experience:

34 (1) The existence of any of the indicators of prior negative  
35 experience set forth in this section shall not require that a bidder be  
36 disqualified. In each instance, the decision to disqualify shall be made  
37 within the discretion of the board of education and shall be rendered  
38 in the best interests of the board of education.

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

42 (3) The bidder shall be furnished by the board of education with a  
43 written notice (a)stating that a disqualification is being considered; (b)  
44 setting forth the reason for the disqualification; and (c) indicating that  
45 the bidder shall be accorded an opportunity for a hearing before the  
46 board of education if the bidder so requests within a stated period of  
47 time. At the hearing, the bidder shall show good cause why the bidder  
48 should not be disqualified by presenting documents and testimony. If

1 the board of education determines that good cause has not been shown  
2 by the bidder, it may vote to find the bidder lacking in responsibility  
3 and, thus, disqualified.

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

6 (5) A disqualification may be voided or the period thereof may be  
7 reduced, in the discretion of the board of education, upon the  
8 submission of a good faith application under oath, supported by  
9 documentary evidence, setting forth substantial and appropriate  
10 grounds for the granting of relief, such as reversal of a judgment, or  
11 actual change of ownership, management or control of the bidder.

12 (6) An opportunity for a hearing need not be offered to a bidder  
13 whose disqualification is based on its suspension or debarment by an  
14 agency or department of the executive branch of the State of New  
15 Jersey. The term of such a disqualification shall be concurrent with  
16 the term of the suspension or debarment by the State agency or  
17 department.

18 d. The purchase of text books and materials that exceed the bid  
19 threshold and are approved by a board of education pursuant to  
20 N.J.S.18A-34-1 shall not require the further adoption of a resolution  
21 for purchase.

22 (cf: P.L.1983, c.171, s.2)

23

24 53. N.J.S.18A:18A-5 is amended to read as follows:

25 18A:18A-5. Exceptions to requirement for advertising. Any  
26 **[purchase,]** contract **[or agreement of the character described in**  
27 **N.J.S.18A:18A-4 may],** the amount of which exceeds the bid  
28 threshold, shall be [made,] negotiated [or] and awarded by the board  
29 of education by resolution at a public meeting without public  
30 advertising for bids and bidding therefor if

31 a. The subject matter thereof consists of:

32 (1) Professional services. The board of education shall in each  
33 instance state supporting reasons for its action in the resolution  
34 awarding each contract and shall forthwith cause to be printed once,  
35 in an official newspaper, a brief notice stating the nature, duration,  
36 service and amount of the contract, and that the resolution and  
37 contract are on file and available for public inspection in the office of  
38 the board of education;

39 (2) Extraordinary unspecifiable services which cannot reasonably  
40 be described by written specifications[, which]. The application of  
41 this exception as to extraordinary unspecifiable services shall be  
42 construed narrowly in favor of open competitive bidding where  
43 possible and the [State Board of Education] Director of the Division  
44 of Local Government Services in the Department of Community  
45 Affairs is authorized to establish rules and regulations after  
46 consultation with the Commissioner of Education limiting its use in  
47 accordance with the intention herein expressed; and the board of

1 education shall in each instance state supporting reasons for its action  
2 in the resolution awarding the contract for extraordinary unspecifiable  
3 services and shall forthwith cause to be printed, in the manner set forth  
4 in paragraph (1) of this subsection, a brief notice of the award of such  
5 contract;

6 (3) The doing of any work by employees of the **【contracting unit】**  
7 **board of education;**

8 (4) The printing of all legal notices; and legal briefs, records and  
9 appendices to be used in any legal proceeding in which the  
10 **【contracting party】 board of education** may be a party;

11 (5) **【Textbooks, copyrighted materials, kindergarten supplies, and**  
12 **student produced publications and services incidental thereto】 Library**  
13 **and educational goods and services;**

14 (6) Food **【services and】** supplies, including food supplies for home  
15 economics classes, when purchased pursuant to rules and regulations  
16 of the State board and in accordance with the provisions of  
17 N.J.S.18A:18A-6;

18 (7) The supplying of any product or the rendering of any service  
19 by a public utility, which is subject to the jurisdiction of the Board of  
20 Public Utilities, in accordance with the tariffs and schedules of charges  
21 made, charged and exacted, filed with said board;

22 (8) The printing of bonds and documents necessary to the issuance  
23 and sale thereof by a board of education;

24 (9) Equipment repair service if in the nature of an extraordinary  
25 unspecifiable service and necessary parts furnished in connection with  
26 such services, which exception shall be in accordance with the  
27 requirements for extraordinary unspecifiable services;

28 (10) Insurance, including the purchase of insurance coverage and  
29 consultant services, which exception shall be in accordance with the  
30 requirements for extraordinary unspecifiable services;

31 (11) Publishing of legal notices in newspapers as required by law;

32 (12) The acquisition of artifacts or other items of unique intrinsic,  
33 artistic or historic character;

34 (13) **【Election expenses, including advertising expenses incidental**  
35 **thereto】 Those goods and services necessary or required to prepare**  
36 **and conduct an election;**

37 (14) **【Electronic data processing service obtained from another**  
38 **board of education;】 (Deleted by amendment, P.L. .c. .) (Pending**  
39 **before the Legislature as this bill.)**

40 (15) **【Driver education courses provided by licensed driver**  
41 **education schools;】 (Deleted by amendment, P.L. .c. .) (Pending**  
42 **before the Legislature as this bill.)**

43 (16) **【Performance of work or services or the furnishing of**  
44 **materials, supplies or equipment for the purpose of conserving energy**  
45 **in buildings owned by any local board of education, the entire price of**  
46 **which shall be established as a percentage of the resultant savings in**  
47 **energy costs;】 (Deleted by amendment, P.L. .c. .) (Pending before**

1 the Legislature as this bill.)

2 (17) The doing of any work by persons with disabilities employed  
3 by a sheltered workshop **[.]** ;

4 (18) Expenses for travel and conferences;

5 (19) The provision or performance of goods or services for the  
6 support or maintenance of proprietary computer hardware and  
7 software, except that this provision shall not be utilized to acquire or  
8 upgrade non-proprietary hardware or acquire or update non-  
9 proprietary software;

10 (20) Purchases of goods and services at rates set by the Universal  
11 Service Fund administered by the Federal Communications  
12 Commission;

13 (21) Goods and services paid with funds that: are raised by or  
14 collected from students to support the purchase of student oriented  
15 items or materials, such as yearbooks, class rings, and a class gift; and  
16 are deposited in school or student activity accounts; and require no  
17 budget appropriation from the board of education;

18 (22) Food services provided by food service management  
19 companies pursuant to procedures established by the New Jersey  
20 Department of Agriculture, Bureau of Child Nutrition Programs;

21 (23) Vending machines providing food or drink.

22 b. It is to be made or entered into with the United States of  
23 America, the State of New Jersey, county or municipality or any  
24 board, body, officer, agency **[or]**, authority or board of education or  
25 any other state or subdivision thereof.

26 c. **[The board of education has]** Bids have been advertised **[for**  
27 **bids]** pursuant to N.J.S.18A:18A-4 on two occasions and **[has**  
28 **received]** (1) no bids have been received on both occasions in  
29 response to **[its]** the advertisement **[and, after reasonable inquiry, it**  
30 **is determined that no board, body, officer, agency or authority of the**  
31 **United States, or of the State of New Jersey or of any county or**  
32 **municipality in which the board of education is located is willing and**  
33 **able to perform any work or furnish or hire any materials or supplies**  
34 **in conformity with the specifications of the board of education. Any]**,  
35 or (2) the board of education has rejected such bids on two occasions  
36 because it has determined that they are not reasonable as to price, on  
37 the basis of cost estimates prepared for or by the board of education  
38 prior to the advertising therefor, or have not been independently  
39 arrived at in open competition, or (3) on one occasion no bids were  
40 received pursuant to (1) and on one occasion all bids were rejected  
41 pursuant to (2), in whatever sequence; any such contract **[or**  
42 **agreement entered into pursuant to this subsection c.]** may then be  
43 **[made,]** negotiated **[or]** and may be awarded **[only]** upon adoption  
44 of a resolution by **[the]** a two-thirds affirmative vote of **[two-thirds**  
45 **of]** the **[full]** authorized membership of the board of education **[at a**  
46 **meeting thereof]** authorizing such a contract **[or agreement.];**  
47 provided, however, that:

1       (a) A reasonable effort is first made by the board of education to  
2 determine that the same or equivalent goods or services, at a cost  
3 which is lower than the negotiated price, are not available from an  
4 agency or authority of the United States, the State of New Jersey or  
5 of the county in which the board of education is located, or any  
6 municipality in close proximity to the board of education;

7       (b) The terms, conditions, restrictions and specifications set forth  
8 in the negotiated contract are not substantially different from those  
9 which were the subject of competitive bidding pursuant to  
10 N.J.S.18A:18A-4; and

11       (c) Any minor amendment or modification of any of the terms,  
12 conditions, restrictions and specifications which were the subject of  
13 **[the]** competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated  
14 in the resolution awarding the contract; provided further, however,  
15 that if on the second occasion the bids received are rejected as  
16 unreasonable as to price, the board of education shall notify each  
17 responsible bidder submitting bids on the second occasion of its  
18 intention to negotiate, and afford each bidder a reasonable opportunity  
19 to negotiate, but the board of education shall not award such contract  
20 unless the negotiated price is lower than the lowest rejected bid price  
21 submitted on the second occasion by a responsible bidder, is the  
22 lowest negotiated price offered by any responsible vendor, and is a  
23 reasonable price for such goods or services.

24       d. **[**The board of education has advertised for bids pursuant to  
25 N.J.S.18A:18A-4 on two occasions and has rejected such bids on each  
26 occasion because the board of education has determined that they are  
27 not reasonable as to price on the basis of cost estimates prepared for  
28 the board of education prior to the advertising therefor or have not  
29 been independently arrived at in open competition, but no such  
30 contract or agreement may be entered into after such rejection of bids,  
31 unless:

32       (1) Notification of the intention to negotiate and a reasonable  
33 opportunity to negotiate shall have been given by the board of  
34 education to each responsible bidder;

35       (2) The negotiated price is lower than the lowest rejected bid price  
36 of a responsible bidder who bid thereon and is the lowest negotiated  
37 price offered by any responsible supplier and is a reasonable price for  
38 such work, materials, supplies or services;

39       (3) Any amendment or modification of the terms, conditions,  
40 restrictions and specifications which were the subject of competitive  
41 bidding pursuant to N.J.S.18A:18A-4 shall be stated in the resolution  
42 awarding the contract; and

43       (4) The negotiated price is lower than the price of the same or  
44 equivalent materials or supplies available from the State, county or  
45 municipality in which the board of education is located. **]**

46       Whenever a board of education shall determine that a bid was not  
47 arrived at independently in open competition pursuant to **[this]**



1 subsection **[d.] c.(2)** of N.J.S.18A:18A-5, it shall thereupon notify the  
2 county prosecutor of the county in which the board of education is  
3 located and the Attorney General of the facts upon which its  
4 determination is based, and when appropriate, it may institute  
5 appropriate proceedings in any State or federal court of competent  
6 jurisdiction for a violation of any State or federal antitrust law or laws  
7 relating to the unlawful restraint of trade.

8 e. The board of education has solicited and received at least three  
9 quotations on materials, supplies or equipment for which a State  
10 contract has been issued pursuant to N.J.S.18A:18A-10, and the  
11 lowest responsible quotation is at least 10% less than the price the  
12 board would be charged for the identical materials, supplies or  
13 equipment, in the same quantities, under the State contract. Any such  
14 contract or agreement entered into pursuant to subsection d. or  
15 subsection e. may be made, negotiated or awarded only upon adoption  
16 of a resolution by the affirmative vote of two-thirds of the full  
17 membership of the board of education at a meeting thereof authorizing  
18 such a contract or agreement.

19 (cf: P.L.1995, c.265, s.1)

20  
21 54. N.J.S.18A:18A-7 is amended to read as follows:

22 18A:18A-7. Emergency **[purchases and]** contracts. Any  
23 **[purchase,]** contract **[or agreement]** may be **[made,]** negotiated or  
24 awarded for a board of education without public advertising for bids  
25 and bidding therefor, notwithstanding that the **[cost or]** contract  
26 price will exceed the **[amount set forth in, or calculated by the]**  
27 **Governor pursuant to, N.J.S.18A:18A-3]** bid threshold when an  
28 emergency affecting the health or safety of occupants of school  
29 property requires the immediate delivery of **[the articles]** goods or  
30 the performance of **[the service]** services, provided that the  
31 **[awarding or making of such purchases,]** contracts **[or agreements]**  
32 **are made]** are awarded in the following manner:

33 a. **[** A written requisition for the performance of such work or  
34 labor, or the furnishing of materials, supplies or services is filed with  
35 the contracting agent or his deputy in charge describing the nature of  
36 the emergency, the time of its occurrence and the need for invoking  
37 this section, certified by the employee in charge of the building,  
38 facility or equipment wherein the emergency occurred.

39 The contracting agent, or his deputy in charge, being satisfied that  
40 the emergency exists, is hereby authorized to award a contract for said  
41 work or labor, materials, supplies or services.] The official in charge  
42 of the building, facility or equipment wherein the emergency occurred  
43 or such other officer or employee as may be authorized to act in place  
44 of that official, shall notify the purchasing agent or a supervisor of the  
45 purchasing agent of the need for the performance of a contract, the  
46 nature of the emergency, the time of its occurrence and the need for  
47 invoking this section. If that person is satisfied that an emergency

1 exists, that person shall be authorized to award a contract or contracts  
2 for such purposes as may be necessary to respond to the emergent  
3 needs. Such notification shall be reduced to writing and filed with the  
4 purchasing agent as soon as practicable.

5 b. Upon the furnishing of such **【work or labor, materials, supplies】**  
6 goods or services, in accordance with the terms of the contract **【or**  
7 agreement】, the contractor furnishing such **【work or labor, materials,**  
8 supplies】 goods or services, shall be entitled to be paid therefor and  
9 the board of education shall be obligated for said payment. The board  
10 of education shall take such action as shall be required to provide for  
11 the payment of the contract price.

12 c. The **【State Board of Education】** Division of Local Government  
13 Services in the Department of Community Affairs, after consultation  
14 with the Commissioner of Education, shall prescribe rules and  
15 procedures to implement the requirements of this section.

16 d. The board of education may prescribe additional rules and  
17 procedures to implement the requirements of this section.

18 (cf: P.L.1983, c.171, s.3)

19

20 55. N.J.S.18A:18A-8 is amended to read as follows:

21 18A:18A-8. Contracts not to be divided. **【 No purchase, contract**  
22 or agreement, which is single in character or which necessarily or by  
23 reason of the quantities required to effectuate the purpose of the  
24 purchase, contract or agreement, includes the furnishing of additional  
25 services or equipment or buying materials or supplies or the doing of  
26 additional work, shall be subdivided, so as to bring it or any of the  
27 parts thereof under the maximum price or cost limitation of the  
28 amount set forth in, or calculated by the Governor pursuant to, N.J.S.  
29 18A:18A-3, thus dispensing with the requirement of public advertising  
30 and bidding therefor. In purchasing or contracting for, or agreeing  
31 for the furnishing of, any services, equipment, materials or supplies,  
32 the doing of any work included in or incident to the performance or  
33 completion of any project, which is single in character or inclusive of  
34 the furnishing of additional services or equipment or buying materials  
35 or supplies or the doing of additional work, or which requires the  
36 furnishing of more than one article of equipment or buying materials  
37 or supplies, all of the services, materials or supplies requisite for the  
38 completion of such project shall be included in one purchase, contract  
39 or agreement.】 a. No contract in the aggregate which is single in  
40 character or which necessarily or by reason of the quantities required  
41 to effectuate the purpose of the contract includes the provision or  
42 performance of additional goods or services, shall be divided, so as to  
43 bring it or any of the parts thereof under the bid threshold, for the  
44 purpose of dispensing with the requirement of public advertising and  
45 bidding therefor.

46 b. In contracting for the provision or performance of any goods or  
47 services included in or incidental to the provision or performance of

1 any work which is single in character or inclusive of the provision or  
2 performance of additional goods or services, all of the goods or  
3 services requisite for the completion of such contract shall be included  
4 in one contract.

5 (cf: P.L.1983, c.171, s.4)

6  
7 56. (New section) For the purpose of ensuring consistency  
8 between the "Local Public Contracts Law, " P.L.1971, c.198  
9 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
10 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
11 Government Services in the Department of Community Affairs, after  
12 consultation with the Commissioner of Education, and pursuant to the  
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
14 seq.), shall adopt rules concerning determinations of aggregation for  
15 the purposes of whether a contract is subject to public bidding as set  
16 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
17 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
18 N.J.S.18A:18A-8.

19

20 57. N.J.S.18A:18A-9 is amended to read as follows:

21 18A:18A-9. Periodic solicitation of bids. Every board of education  
22 shall, on an annual basis or at such lesser intervals to be fixed by it,  
23 solicit by public advertisement the submission of bids for the  
24 **[furnishing of all work, materials and supplies]** provision or  
25 performance of goods or services which are and which under  
26 N.J.S.18A:18A-4 can be **[purchased or agreed or]** contracted to be  
27 **[furnished]** provided or performed only after public advertisement for  
28 bids and bidding therefor and all **[purchases, or]** contracts **[or**  
29 **agreements for the furnishing, of such work, materials and supplies]**  
30 for the provision or performance of such goods or services shall be  
31 **[made and]** awarded only in that manner.

32 (cf: N.J.S.18A:18A-9)

33

34 58. N.J.S.18A:18A-10 is amended to read as follows:

35 18A:18A-10. Board of education purchases through State agency;  
36 procedure. a. A board of education, without advertising for bids, or  
37 after having rejected all bids obtained pursuant to advertising therefor,  
38 by resolution may purchase any **[materials, supplies,]** goods~~[,]~~ or  
39 services **[or equipment]** pursuant to a contract or contracts for such  
40 **[materials, supplies ,]** goods~~[,]~~ or services **[or equipment]** entered  
41 into on behalf of the State by the Division of Purchase and Property.

42 b. A board of education may also use, without advertising for bids,  
43 or having rejected all bids obtained pursuant to advertising, the  
44 Federal Supply Schedules of the General Services Administration **[as**  
45 **permitted by the "Federal Acquisition Streamlining Act of 1994,"**  
46 **Pub.L.103-355, and federal regulations adopted thereunder.]**  
47 promulgated by the Director of the Division of Purchase and Property

1 in the Department of the Treasury pursuant to section 1 of P.L.1996,  
2 c.16 (C.52:34-6.1), subject to the following conditions:

3 (1) the price of the goods being procured is no greater than the  
4 price offered to federal agencies;

5 (2) the Federal Supply Schedules may be used only for purchases  
6 of up to \$500,000 per year or for one product unit at any price and  
7 only for reprographic equipment or services, including digital copiers,  
8 used by the board of education; and

9 (3) the board of education receives the benefit of federally  
10 mandated price reductions during the term of the contract and is  
11 protected from price increases during that time.

12 c. Whenever a purchase is made, the board of education shall place  
13 its order with the vendor offering the lowest price, including delivery  
14 charges, that best meets the requirements of the board of education.  
15 Prior to placing such an order, the board of education shall document  
16 with specificity that the **[materials, supplies,] goods[, ] or services [or**  
17 **equipment]** selected best meet the requirements of the board of  
18 education.

19 (cf: P.L.1996, c.16, s.4)

20

21 59. N.J.S.18A:18A-11 is amended to read as follows:

22 18A:18A-11. Joint purchases by districts, municipalities, counties;  
23 authority. The boards of education of two or more districts may  
24 provide jointly by agreement for the **[purchasing of supplies, materials**  
25 **or work]** provision and performance of goods and services for their  
26 respective districts, or one or more boards of education may provide  
27 for such **[purchases]** provision or performance of goods or services  
28 by joint agreement with the governing body of **[the] any** municipality  
29 or county **[within whose boundaries any such district is wholly or**  
30 **partly located]**.

31 (cf: N.J.S.18A:18A-11)

32

33 60. N.J.S.18A:18A-12 is amended to read as follows:

34 18A:18A-12. Contents of agreement. a. Such agreements shall be  
35 entered into by resolution adopted by each participating board of  
36 education, municipality or county and shall set forth the categories of  
37 **[work, materials and supplies]** goods or services to be **[purchased]**  
38 provided or performed, the manner of advertising for bids and of  
39 awarding of contracts, the method of payment by each participating  
40 board of education, municipality or county, and other matters deemed  
41 necessary to carry out the purposes of the agreement.

42 b. Each participant's share of expenditures for purchases under any  
43 such agreement shall be appropriated and paid in the manner set forth  
44 in the agreement and in the same manner as for other expenses of the  
45 participant.

46 (cf: N.J.S.18A:18A-12)

1 61. N.J.S.18A:18A-13 is amended to read as follows:

2 18A:18A-13. Purchases and agreements subject to law and rules  
3 and regulations. Such purchases and all **【agreements】** contracts  
4 pertaining thereto shall be subject to all provisions of law and the  
5 applicable rules and regulations of the State board.

6 (cf: N.J.S.18A:18A-13)

7

8 62. N.J.S.18A:18A-14 is amended to read as follows:

9 18A:18A-14. Controversies or disputes; determination; appeal.  
10 In the event that any controversy or dispute shall arise among the  
11 parties (except a municipality or county) to any such **【agreement】**  
12 contract, the same shall be referred to the county superintendent of the  
13 county in which the districts are situate for determination and his  
14 determination thereon shall be binding, subject to appeal to the  
15 commissioner and the State board pursuant to law. In the event that  
16 the districts are in more than one county, the controversy or dispute  
17 shall be referred to the county superintendents of the counties for joint  
18 determination, and if they shall be unable to agree upon a joint  
19 determination within 30 days, the controversy or dispute shall be  
20 referred to the commissioner for determination.

21 (cf: N.J.S.18A:18A-14)

22

23 63. N.J.S.18A:18A-15 is amended to read as follows:

24 18A:18A-15. Specifications generally. Any specifications for **【an**  
25 acquisition】 the provision or performance of goods or services under  
26 this chapter**【, whether by purchase, contract or agreement,】** shall be  
27 drafted in a manner to encourage free, open and competitive bidding.  
28 In particular, no specifications under this chapter may:

29 a. Require any standard, restriction, condition or limitation not  
30 directly related to the purpose, function or activity for which the  
31 **【purchase,】** contract **【or agreement】** is **【made】** awarded; or

32 b. Require that any bidder be a resident of, or that **【his】** the  
33 bidder's place of business be located in, the county or school district  
34 in which the **【purchase】** contract will be**【made】** awarded or **【the**  
35 **contract or agreement】** performed, unless the physical proximity of the  
36 bidder is requisite to the efficient and economical **【purchase or】**  
37 performance of the contract **【or agreement】**; or

38 c. Discriminate on the basis of race, religion, sex, national origin  
39 creed, color, ancestry, age, marital status, affectional or sexual  
40 orientation, familial status, liability for service in the Armed Forces of  
41 the United States, or nationality; or

42 d. Require, with regard to any **【purchase,】** contract **【or**  
43 **agreement】**, the furnishing of any "brand name," but may in all cases  
44 require "brand name or equivalent," except that if the **【materials】**  
45 goods or services to be **【supplied or purchased】** provided or  
46 performed are **【patented or copyrighted】** proprietary, such **【materials**  
47 **or supplies】** goods or services may be purchased by stipulating the

1 proprietary goods or services in the bid specification in any case in  
2 which the resolution authorizing the [purchase,] contract[, sale or  
3 agreement] so indicates, and the special need for such [patented or  
4 copyrighted [materials or supplies] proprietary goods or services is  
5 directly related to the performance, completion or undertaking of the  
6 purpose for which the [purchase,] contract [or agreement] is [made]  
7 awarded; or

8 e. Fail to include any option for renewal, extension, or release  
9 which the board of education may intend to exercise or require; or any  
10 terms and conditions necessary for the performance of any extra work;  
11 or fail to disclose any matter necessary to the substantial performance  
12 of the contract [or agreement].

13 The specifications for every contract for public work, the entire  
14 cost whereof will exceed \$20,000.00, shall provide that the board of  
15 education, through its authorized agent, shall upon completion of the  
16 contract report to the department as to the contractor's performance,  
17 and shall also furnish such report from time to time during  
18 performance if the contractor is then in default.

19 Any specification [adopted by the board of education] which  
20 knowingly excludes prospective bidders by reason of the impossibility  
21 of performance, bidding or qualification by any but one bidder, except  
22 as provided herein, shall be null and void and of no effect and [such  
23 purchase, contract or agreement] shall be readvertised for receipt of  
24 new bids, and the original [purchase,] contract [or agreement] shall  
25 be set aside by the board of education.

26 No provision in this section shall be construed to prevent a board  
27 of education from designating that a contract[, subcontract or other  
28 means of procurement of] for goods[, ] or services[, equipment or  
29 construction] shall be awarded to a small business enterprise, a  
30 minority business enterprise or a women's business enterprise pursuant  
31 to P.L.1985, c.490 (C.18A:18A-51 et seq.).

32 Any prospective bidder who wishes to challenge a bid specification  
33 shall file such challenges in writing with the purchasing agent no less  
34 than three business days prior to the opening of the bids. Challenges  
35 filed after that time shall be considered void and having no impact on  
36 the board of education or the award of a contract.

37 (cf: P.L.1988, c.37, s.10)

38

39 64. (New section) Goods or services, the payment for which  
40 utilizes only funds received by a board of education from a bequest,  
41 legacy or gift, shall be subject to the provisions of N.J.S.18A:18A-1  
42 et seq., except that if such bequest, legacy or gift contains written  
43 instructions as to the specifications, manufacturer or vendor, or source  
44 of supply of the goods or services to be provided or performed, such  
45 instructions shall be honored.

46

47 65. N.J.S.18A:18A-18 is amended to read as follows:

1 18A:18A-18. Separate plans for various types of work; bids;  
2 contracts. In the preparation of plans and specifications for the  
3 construction, alteration or repair of any building by a board of  
4 education, when the entire cost of the work **【and materials】** will  
5 exceed the **【amount set forth in, or calculated by the Governor**  
6 **pursuant to, N.J.S.18A:18A-3】** bid threshold, separate plans and  
7 specifications shall be prepared for each of the following, and all work  
8 **【and materials】** kindred thereto to be performed or furnished in  
9 connection therewith:

- 10 a. The plumbing and gas fitting work;  
11 b. The heating and ventilating systems and equipment;  
12 c. The electrical work, including any electrical power plant;  
13 d. The structural steel and ornamental iron work;  
14 e. All other work **【and materials】** required for the completion of  
15 the project.

16 The board of education or its **【contracting】** purchasing agent shall  
17 advertise for and receive, in the manner provided by law, (1) separate  
18 bids for each of said branches of work, and (2) bids for all the work  
19 **【and materials】** , goods and services required to complete the building  
20 to be included in a single overall contract. There will be set forth in the  
21 bid the name or names of **【**, and evidence of performance security  
22 from,**】** all subcontractors to whom the bidder will subcontract the  
23 furnishing of plumbing and gas fitting, and all kindred work, and of the  
24 heating and ventilating systems and equipment, and electrical work,  
25 structural steel and ornamental iron work, each of which  
26 subcontractors shall be qualified in accordance with **【this chapter】**  
27 N.J.S.18A:18A-1 et seq. The school district shall require evidence of  
28 performance security to be submitted simultaneously with the list of  
29 the subcontractors. Evidence of performance security may be supplied  
30 by the bidder on behalf of himself and any or all subcontractors, or by  
31 each respective subcontractor, or by any combination thereof which  
32 results in evidence of performance security equaling, but in no event  
33 exceeding, the total amount bid.

34 Contracts shall be awarded to the lowest responsible bidder. The  
35 contract shall be awarded in the following manner: If the sum total of  
36 the amounts bid by the lowest responsible bidder for each branch is  
37 less than the amount bid by the lowest responsible bidder for all the  
38 work **【and materials】**, goods and services, the board of education shall  
39 award separate contracts for each of such branches to the lowest  
40 responsible bidder therefor, but if the sum total of the amount bid by  
41 the lowest responsible bidder for each branch is not less than the  
42 amount bid by the lowest responsible bidder for all the work **【and**  
43 **materials】** , goods and services, the board of education shall award a  
44 single overall contract to the lowest responsible bidder for all of such  
45 work **【and materials】** , goods and services. In every case in which a  
46 contract is awarded under (2) above, all payments required to be made  
47 under such contract for work **【and materials】** , goods and services

1 supplied by a subcontractor shall, upon the certification of the  
2 contractor of the amount due to the subcontractor, be paid directly to  
3 the subcontractor.

4 (cf: P.L.1983, c.171, s.5)

5

6 66. N.J.S.18A:18A-20 is amended to read as follows:

7 18A:18A-20. American goods and products to be used where  
8 possible. Each board of education shall provide, in the specifications  
9 for all contracts for work for which it will pay any part of the cost or  
10 work which by contract it will ultimately own and maintain, that only  
11 manufactured and farm products of the United States, wherever  
12 available, be used in such work.

13 (cf: N.J.S.18A:18A-20)

14

15 67. N.J.S.18A:18A-21 is amended to read as follows:

16 18A:18A-21. Advertisements for bids; bids; general requirements.

17 a. Except as provided in section 5 of P.L.1985, c.490  
18 (C.18A:18A-55), all advertisements for bids shall be published in [a  
19 legal] an official newspaper sufficiently in advance of the date fixed  
20 for receiving the bids to promote competitive bidding, but in no event  
21 less than 10 days prior to such date.

22 b. The advertisement shall designate the manner of submitting and  
23 of receiving the bids and the time and place at which the bids will be  
24 received. If the published specifications provide for receipt of bids by  
25 mail, those bids which are mailed to the board of education shall be  
26 sealed and shall be opened only for examination at such time and place  
27 as all bids received are unsealed and announced. At such time and  
28 place the purchasing agent of the board of education shall publicly  
29 receive the bids and thereupon immediately proceed to unseal them  
30 and publicly announce the contents, which announcement shall be  
31 made in the presence of any parties bidding or their agents who are  
32 then and there present. A proper record of the prices and terms shall  
33 be made in the minutes of the board. No bids shall be received after  
34 the time designated in the advertisement.

35 c. Notice of revisions or addenda to advertisements or bid  
36 documents shall be provided as follows:

37 (1) For all contracts except those for construction work, notice  
38 shall be published no later than five days, Saturdays, Sundays, and  
39 holidays excepted, prior to the date for acceptance of bids, in an  
40 official newspaper of the board of education and be provided to any  
41 person who has submitted a bid or who has received a bid package, in  
42 one of the following ways: (a) in writing by certified mail or (b) by  
43 certified facsimile transmission, meaning that the sender's facsimile  
44 machine produces a receipt showing date and time of transmission and  
45 that the transmission was successful or (c) by a delivery service that  
46 provides certification of delivery to the sender.

47 (2) For all contracts for construction work, notice shall be  
48 provided no later than seven days, Saturday, Sundays, or holidays



1 excepted, prior to the date for acceptance of bids, to any person who  
2 has submitted a bid or who has received a bid package in any of the  
3 following ways: i) in writing by certified mail or ii) by certified  
4 facsimile transmission, meaning that the sender's facsimile machine  
5 produces a receipt showing date and time of transmission and that the  
6 transmission was successful or iii) by a delivery service that provides  
7 certification of delivery to the sender.

8 d. Failure of the board of education to advertise for the receipt of  
9 bids or to provide proper notification of revisions or addenda to  
10 advertisements or bid documents related to bids as prescribed by this  
11 section shall prevent the board of education from accepting the bids  
12 and require the readvertisement for bids pursuant to subsection a. of  
13 this section. Failure to obtain a receipt when good faith notice is sent  
14 or delivered to the address or telephone facsimile number on file with  
15 the board of education shall not be considered failure by the board of  
16 education to provide notice.

17 (cf: P.L.1985, c.490, s.12)

18  
19 68. N.J.S.18A:18A-22 is amended to read as follows:

20 18A:18A-22. **[Bids to conform to specifications; rejection]**  
21 **Rejection** of bids. **[No bid shall be accepted which does not conform**  
22 **to the specifications furnished therefor. Nothing contained in this**  
23 **chapter shall be construed as depriving any] A board of education [of**  
24 **the right to] may reject all bids for any of the following reasons:**

25 a. The lowest bid substantially exceeds the cost estimates for the  
26 goods or services;

27 b. The lowest bid substantially exceeds the board of education's  
28 appropriation for the goods or services;

29 c. The board of education decides to abandon the project for  
30 provision or performance of the goods or services;

31 d. The board of education wants to substantially revise the  
32 specifications for the goods or services;

33 e. The purposes or provisions or both of N.J.S.18A:18A-1 et seq.  
34 are being violated; and

35 f. The board of education decides to use the State authorized  
36 contract pursuant to N.J.S.18A:18A-10 .

37 (cf: N.J.S.18A:18A-22)

38  
39 69. N.J.S.18A:18A-24 is amended to read as follows:

40 18A:18A-24. Security to accompany bid; amount. There may be  
41 required from any person bidding on any contract **[or agreement]**,  
42 advertised in accordance with law, that the bid be accompanied by a  
43 guarantee payable to the board of education that, if the contract **[or**  
44 **agreement]** is awarded to **[him, he] the bidder, the bidder** will enter  
45 into a contract therefor and will furnish any performance bond or  
46 other security required as a guarantee or indemnification. The  
47 guarantee shall be in the amount of 10% of the bid, but not in excess

1 of \$20,000.00, except as otherwise provided herein, and may be  
2 given, at the option of the bidder, by certified check, cashier's check  
3 or bid bond. In the event that any law or regulation of the United  
4 States imposes any condition upon the awarding of a monetary grant  
5 to any board of education, which condition requires the depositing of  
6 a guarantee in an amount other than 10% of the bid or in excess of  
7 \$20,000.00, the provisions of this section shall not apply and the  
8 requirements of the law or regulation of the United States shall  
9 govern.

10 (cf: N.J.S.18A:18A-24)

11

12 70. N.J.S.18A:18A-25 is amended to read as follows:

13 18A:18A-25. Guarantee certificate. When a surety company bond  
14 is required in the advertisement or specifications for a contract [or  
15 agreement], every board of education shall require from any bidder  
16 submitting a bid in accordance with plans, specifications and  
17 advertisements, as provided for by law, a certificate from a surety  
18 company stating that it will provide the contractor with a bond in such  
19 sum as is required in the advertisement or in the specifications.

20 This certificate shall be obtained for a bond--

21 a. For the faithful performance of all provisions of the  
22 specifications or for all matters which may be contained in the notice  
23 to bidders, relating to the performance of the contract [or  
24 agreement]; including the guarantees required under article 12 of  
25 chapter 44 of Title 2A of the New Jersey Statutes; and

26 b. If any be required, for a guarantee bond for the faithful  
27 performance of the contract provisions relating to the repair and  
28 maintenance of any work, project or facility and its appurtenances and  
29 keeping the same in good and serviceable condition during the term  
30 of the bond as provided for in the notice to bidders or in the  
31 specifications; or

32 c. In such other form as may be provided in the notice to bidders  
33 or in the specifications.

34 If a bidder desires to offer the bond of an individual instead of that  
35 of a surety company, [he] the bidder shall submit with [his] the bid  
36 a certificate signed by such individual similar to that required of a  
37 surety company.

38 The board of education may reject any such bid if it is not satisfied  
39 with the sufficiency of the individual surety offered.

40 (cf: N.J.S.18A:18A-25)

41

42 71. N.J.S.18A:18A-27 is amended to read as follows:

43 18A:18A-27. [Authority of State Board of Education to adopt  
44 regulations providing for qualification of bidders. The State Board of  
45 Education] The State Treasurer may establish reasonable regulations  
46 appropriate for controlling the qualifications of prospective bidders  
47 upon contracts for public [work] works, the entire cost whereof will

1 exceed **[\$20,000.00]** the bid threshold, by the amount, class or  
2 category of **[work to be performed or materials and supplies to be**  
3 **furnished or hired]** goods or services to be provided or performed  
4 which may fix the qualifications required according to the financial  
5 ability and experience of the bidders and the capital and equipment  
6 available to them pertinent to and reasonably related to the class or  
7 category of **[work to be performed or materials and supplies to be**  
8 **furnished or hired]** goods or services to be provided or performed in  
9 the performance of any such contract, and may require each bidder to  
10 furnish a statement thereof.

11 Such regulations shall be written in a manner:

- 12 a. Which will not unnecessarily discourage full, free and open  
13 competition; or  
14 b. Which will not unnecessarily restrict the participation of small  
15 business in the public bidding process; or  
16 c. Which will not create undue preferences; or  
17 d. Which will not violate any other provision of this chapter, or any  
18 other law.

19 No qualification rating of any bidder shall be influenced by **[his]** the  
20 bidder's race, religion, sex, national origin, nationality or **[his]** place  
21 of residence.

22 **[In lieu of adopting any qualification regulation under this section,**  
23 **the State Board may, in whole or in part, delegate by regulation to the**  
24 **Department of the Treasury or other appropriate State agency with its**  
25 **consent, the authority to qualify bidders subject to this article.**

26 "Department," as used in this article, shall mean the Department of  
27 Education, Department of the Treasury or other State agency to which  
28 the authority to qualify bidders has been delegated by the State  
29 Board.]

30 Such regulations shall not be effective unless they have been  
31 adopted as provided in the "Administrative Procedure Act" ,  
32 P.L.1968, c.410 (C.52:14B-1 et seq.).

33 (cf: P.L.1983, c.266, s.3)

34

35 72. N.J.S.18A:18A-36 is amended to read as follows:

36 18A:18A-36. Time for making awards, deposits returned. a. The  
37 board of education shall award the contract or reject all bids within  
38 such time as may be specified in the invitation to bid, but in no case  
39 more than 60 days, except that the bids of any bidders who consent  
40 thereto may, at the request of the board of education, be held for  
41 consideration for such longer period as may be agreed. All bid  
42 security except the security of the three apparent lowest responsible  
43 bidders shall, if requested, be returned after 10 days from the opening  
44 of the bids, Sundays and holidays excepted and the bids of such  
45 bidders shall be considered as withdrawn. Within 3 days after the  
46 awarding of the contract and the approval of the contractor's  
47 performance bond the bid security of the remaining unsuccessful

1 bidders shall be returned to them forthwith, Sundays and holidays  
2 excepted.

3 b. The contract shall be signed by all parties within the time limit  
4 set forth in the specifications, which shall not exceed 21 days, Sundays  
5 and holidays excepted, after the making of the award; provided,  
6 however, that all parties to the contract may agree to extend the limit  
7 set forth in the specifications beyond the 21 day limit required in this  
8 subsection. The contractor, upon written request to the board of  
9 education, is entitled to receive, within seven days of the request, an  
10 authorization to proceed pursuant to the terms of the contract on the  
11 date set forth in the contract for work to commence, or, if no date is  
12 set forth in the contract, upon receipt of authorization. If for any  
13 reason the contract is not awarded and the bidders have paid for or  
14 paid a deposit for the plans and specifications to the board of  
15 education, the payment or deposit shall immediately be returned to the  
16 bidders when the plans and specifications are returned in reasonable  
17 condition within 90 days of notice that the contract has not been  
18 awarded.

19 (cf: N.J.S.18A:18A-36)

20

21 73. N.J.S.18A:18A-37 is amended to read as follows:

22 18A:18A-37. Award of purchases, contracts or agreements. All  
23 contracts enumerated in this section shall be awarded as follows:

24 【All purchases, contracts or agreements which require public  
25 advertisement for bids shall be awarded to the lowest responsible  
26 bidder.

27 Prior to the award of any other purchase, contract or agreement,  
28 the contracting agent shall, except in the case of the performance of  
29 professional services, solicit quotations, whenever practicable, on any  
30 such purchase, contract or agreement the estimated cost or price of  
31 which is 20% or more of the amount set forth in, or calculated by the  
32 Governor pursuant to, N.J.S.18A:18A-3 and the award thereof shall  
33 be made, in accordance with N.J.S.18A:18A-3 or N.J.S.18A:18A-4,  
34 as the case may be, on the basis of the lowest responsible quotation  
35 received, which quotation is most advantageous to the board of  
36 education, price and other factors considered; provided, however, that  
37 if the contracting agent deems it impractical to solicit competitive  
38 quotations in the case of extraordinary unspecifiable service, or, in the  
39 case of such or any other purchase, contract or agreement awarded  
40 hereunder, having sought such quotations determines that it should not  
41 be awarded on the basis of the lowest quotation received, the  
42 contracting agent shall file a statement of explanation of the reason or  
43 reasons therefor, which shall be placed on file with said purchase,  
44 contract or agreement. **】**

45 a. For all contracts that in the aggregate are less than the bid  
46 threshold but 15 percent or more of that amount, and for those  
47 contracts that are for subject matter enumerated in subsection a. of  
48 N.J.S.18A:18A-5, except for paragraph (1) of that subsection

1 concerning professional services and paragraph (3) of that subsection  
2 concerning work by employees of the board of education, the  
3 purchasing agent shall award the contract after soliciting at least two  
4 competitive quotations , if practicable . The award shall be made to  
5 a vendor whose response is most advantageous, price and other  
6 factors considered. The purchasing agent shall retain the record of the  
7 quotation solicitation and shall include a copy of the record with the  
8 voucher used to pay the vendor.

9 b. When in excess of the bid threshold, and after documented effort  
10 by the purchasing agent to secure competitive quotations, a contract  
11 for extraordinary unspecifiable services may be awarded when the  
12 purchasing agent has determined in writing that solicitation of  
13 competitive quotations is impracticable. Any such contract shall be  
14 awarded by resolution of the board of education.

15 c. If authorized by the board of education by resolution, all  
16 contracts that are in the aggregate less than 15 percent of the bid  
17 threshold may be awarded by the purchasing agent without soliciting  
18 competitive quotations.

19 d. Whenever two or more responses to a request of a purchasing  
20 agent offer equal prices and are the lowest responsible bids or  
21 proposals, the board of education may award the contract to the  
22 vendor whose response, in the discretion of the board of education, is  
23 the most advantageous, price and other factors considered. In such a  
24 case, the award resolution or purchase order documentation shall  
25 explain why the vendor selected is the most advantageous.

26 (cf: P.L.1983, c.171, s.6)

27

28 74. N.J.S.18A:18A-40 is amended to read as follows:

29 18A:18A-40. Form and execution of contracts and bonds. All  
30 contracts for the **performing of work or furnishing materials,**  
31 **supplies** provision or performance of goods or services shall be in  
32 writing. The State Board of Education may, subject to the  
33 requirements of law, prescribe the forms and manner in which  
34 contracts shall be made and executed, and the form and manner of  
35 execution and approval of all guarantee, indemnity, fidelity and other  
36 bonds.

37 (cf: N.J.S.18A:18A-40)

38

39 75. Section 1 of P.L.1987, c.343 (C.18A:18A-40.1) is amended to  
40 read as follows:

41 1. Any contract **or agreement**, the total price of which exceeds  
42 \$100,000.00, entered into by a board of education involving the  
43 construction, reconstruction, alteration, repair or maintenance of any  
44 building, structure, facility or other improvement to real property, shall  
45 provide for partial payments to be made at least once each month as  
46 the work progresses, unless the contractor shall agree to deposit bonds  
47 with the board of education pursuant to section 2 of **this act**

1 P.L.1987, c.343 (C.18A:18A-40.2).

2 (cf: P.L.1987, c.343, s.1)

3

4 76. Section 3 of P.L.1987, c.343 (C.18A:18A-40.3) is amended to  
5 read as follows:

6 3. With respect to any contract **[or agreement]** entered into by a  
7 board of education pursuant to section 1 of P.L.1987, c.343  
8 (C.18A:18A-40.1) for which the contractor shall agree to the  
9 withholding of payments pursuant to section 2 of P.L.1987, c.343  
10 (C.18A:18A-40.2), 5% of the amount due on each partial payment  
11 shall be withheld by the board of education pending completion of the  
12 contract **[or agreement]** if the contractor does not have a performance  
13 bond. If the contractor does have a performance bond, 2% of the  
14 amount due on each partial payment shall be withheld by the board of  
15 education when the outstanding balance of the contract exceeds  
16 \$500,000, and 5% of the amount due on each partial payment shall be  
17 withheld by the board of education when the outstanding balance of  
18 the contract is \$500,000 or less.

19 (cf: P.L.1993, c.18, s.1)

20

21 77. N.J.S.18A:18A-41 is amended to read as follows:

22 18A:18A-41. Liquidated damages. Any contract **[or agreement]**  
23 made pursuant to **[this]** chapter 18A of Title 18A of the New Jersey  
24 Statutes may include liquidated damages for the violation of any of the  
25 terms and conditions thereof or the failure to perform said contract  
26 **[or agreement]** in accordance with its terms and conditions, or the  
27 terms and conditions of **[this]** chapter 18A of Title 18A of the New  
28 Jersey Statutes.

29 (cf: N.J.S.18A:18A-41)

30

31 78. N.J.S.18A:18A-42 is amended to read as follows:

32 18A:18A-42. Multiyear contracts. All contracts for the provision  
33 or performance of goods or services shall be awarded for a period not  
34 to exceed 24 consecutive months, except that contracts for  
35 professional services pursuant to paragraph (1) of subsection a. of  
36 N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12  
37 consecutive months. Any board of education may **[enter into]** award  
38 a contract **[exceeding the fiscal year for the]** for longer periods of  
39 time as follows:

40 a. Supplying of:

41 (1) Fuel for heating purposes, for any term not exceeding in the  
42 aggregate, three years;

43 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles  
44 or equipment, for any term not exceeding in the aggregate, three years;

45 (3) Thermal energy produced by a cogeneration facility, for use for  
46 heating or air conditioning or both, for any term not exceeding **[20]**

- 1 40 years, when the contract is approved by the Board of Public  
2 Utilities. For the purposes of this paragraph, "cogeneration" means  
3 the simultaneous production in one facility of electric power and other  
4 forms of useful energy such as heating or process steam; or
- 5 b. Plowing and removal of snow and ice, for any term not  
6 exceeding in the aggregate, three years; or
- 7 c. Collection and disposal of garbage and refuse, for any term not  
8 exceeding in the aggregate, three years; or
- 9 d. Data processing service, for any term of not more than **[five]**  
10 seven years; or
- 11 e. Insurance, including the purchase of insurance coverages,  
12 insurance consultant or administrative services, and including  
13 participation in a joint self-insurance fund, risk management program  
14 or related services provided by a school board insurance group, or  
15 participation in an insurance fund established by a county pursuant to  
16 N.J.S.40A:10-6, or a joint insurance fund established pursuant to  
17 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than  
18 three years; or
- 19 f. Leasing or servicing of automobiles, motor vehicles, electronic  
20 communications equipment, machinery and equipment of every nature  
21 and kind and textbooks and non-consumable instructional materials,  
22 for any term not exceeding in the aggregate, five years; provided,  
23 however, such contracts shall be **[entered into]** awarded only subject  
24 to and in accordance with rules and regulations promulgated by the  
25 State Board of Education; or
- 26 g. Supplying of any product or the rendering of any service by a  
27 **[telephone]** company **[which is subject to the jurisdiction of the**  
28 **Board of Public Utilities]** providing voice, data, transmission or  
29 switching services, for a term not exceeding five years; or
- 30 h. **[ Materials, supplies or services that are required on a recurring**  
31 **basis from year to year, for any term not exceeding in the aggregate,**  
32 **two years; however, such contract may be renewed yearly for a period**  
33 **not exceeding three additional years without any further solicitation**  
34 **for bids or bidding upon a finding by the board that the services are**  
35 **being performed in an effective and efficient manner, or that the**  
36 **materials and supplies continue to meet the original specifications. If**  
37 **a board of education elects to renew an existing contract, the terms**  
38 **and conditions of the existing contract shall remain substantially**  
39 **unchanged and any increase in the contract cost over the three year**  
40 **period shall be no greater than a total of 20% over the initial cost; or]**  
41 (Deleted by amendment, P.L. , c. ) (Pending before the Legislature  
42 as this bill.)
- 43 i. Driver education instruction conducted by private, licensed  
44 driver education schools, for any term not exceeding in the aggregate,  
45 three years ; **[or]**
- 46 j. **[Performance of work or services or the furnishing of materials,**

1 supplies or equipment] Provision or performance of goods or services  
2 for the purpose of conserving energy in the buildings owned by any  
3 local board of education, the entire price of which shall be established  
4 as a percentage of the resultant savings in energy costs, for a term not  
5 to exceed [10] 15 years; except that these contracts shall be entered  
6 into only subject to and in accordance with [rules and regulations]  
7 guidelines promulgated by the [New Jersey Commerce and Economic  
8 Growth pursuant to the "Administrative Procedure Act," P.L.1968,  
9 c.410 (C.52:14B-1 et seq.),] Board of Public Utilities establishing a  
10 methodology for computing energy costs;

11 k. Any single project for the construction, reconstruction or  
12 rehabilitation of any public building, structure or facility, or any public  
13 works project, including the retention of the services of any architect  
14 or engineer in connection therewith, for the length of time authorized  
15 and necessary for the completion of the actual construction;

16 l. Laundry service and the rental, supply and cleaning of uniforms  
17 for any term of not more than three years;

18 m. Food supplies and food services for any term of not more than  
19 three years;

20 n. Purchases made under a contract awarded by the Director of the  
21 Division of Purchase and Property in the Department of the Treasury  
22 for use by counties, municipalities or other contracting units pursuant  
23 to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to  
24 exceed the term of that contract.

25 Any contract for services other than professional services, the  
26 statutory length of which contract is for three years or less, may  
27 include provisions for no more than one two-year, or two one-year,  
28 extensions, subject to the following limitations: a. the contract shall  
29 be awarded by resolution of the board of education upon a finding by  
30 the board of education that the services are being performed in an  
31 effective and efficient manner; b. no such contract shall be extended  
32 so that it runs for more than a total of five consecutive years; c. any  
33 price change included as part of an extension shall be based upon the  
34 price of the original contract as cumulatively adjusted pursuant to any  
35 revious adjustment or extension and shall not exceed the change in the  
36 index rate for the 12 months preceding the most recent quarterly  
37 calculation available at the time the contract is renewed; and d. the  
38 terms and conditions of the contract remain substantially the same.

39 All multiyear leases and contracts entered into pursuant to this  
40 section 18A:18A-42, including any two-year or one-year extensions,  
41 except [contracts for the leasing or servicing of equipment supplied by  
42 a telephone company which is subject to the jurisdiction of the Board  
43 of Public Utilities,] contracts for insurance coverages, insurance  
44 consultant or administrative services, participation or membership in  
45 a joint self-insurance fund, risk management programs or related  
46 services of a school board insurance group, participation in an



1 insurance fund established by a county pursuant to N.J.S.40A:10-6 or  
2 contracts for thermal energy authorized pursuant to subsection a.  
3 above, and contracts for the provision or performance of [work or  
4 services or the furnishing of materials, supplies or equipment] goods  
5 or services to promote energy conservation authorized pursuant to  
6 subsection j. of this section, shall contain a clause making them  
7 subject to the availability and appropriation annually of sufficient funds  
8 as may be required to meet the extended obligation, or contain an  
9 annual cancellation clause. All contracts shall cease to have effect at  
10 the end of the contracted period and shall not be extended by any  
11 mechanism or provision, unless in conformance with the "Public  
12 School Contracts Law," N.J.S.18A:18A-1 et seq., except that a  
13 contract may be extended by mutual agreement of the parties to the  
14 contract when a board of education has commenced rebidding prior to  
15 the time the contract expires or when the awarding of a contract is  
16 pending at the time the contract expires.

17 (cf: P.L.1998, c.55, s.2)

18

19 79. N.J.S.18A:18A-44 is amended to read as follows:

20 18A:18A-44. Inspection, condemnation and rejection of work and  
21 materials. All [work done and materials or supplies furnished] goods  
22 and services provided or performed under contract shall be inspected  
23 by the [business manager] purchasing agent of the district, if there be  
24 a [business manager] purchasing agent of the district, but if there be  
25 no [business manager] purchasing agent of the district, they may be  
26 inspected by an appropriate officer employed by the board to whom  
27 such power shall have been delegated by the board, and subject to the  
28 approval of the board the [business manager] purchasing agent or  
29 such officer, as the case may be, shall condemn any [work and reject  
30 any material or supplies,] goods or services which in his judgment do  
31 not conform to the specifications of the contract therefor.

32 (cf: N.J.S.18A:18A-44)

33

34 80. N.J.S.18A:18A-45 is amended to read as follows:

35 18A:18A-45. Manner and method of sale. Any board of education  
36 may, by resolution and by sealed bid or public auction, authorize the  
37 sale of its personal property not needed for school purposes.

38 a. If the estimated fair value of the property to be sold exceeds [  
39 the amount set forth in, or calculated by the Governor pursuant to,  
40 N.J.S.18A:18A-3,] 15 percent of the bid threshold in any one sale and  
41 it is neither livestock nor perishable goods, it shall be sold at public  
42 sale to the highest bidder.

43 b. Notice of the date, time and place of the public sale, together  
44 with a description of the items to be sold and the conditions of sale,  
45 shall be published once in [a legal] an official newspaper. Such sale  
46 shall be held not less than seven nor more than 14 days after the

1 publication of the notice thereof.

2 c. Personal property may be sold to the United States, the State of  
3 New Jersey, another board of education **[or to]** , any body politic, any  
4 foreign nation which has diplomatic relations with the United States,  
5 or any governmental unit in these United States by private sale without  
6 advertising for bids.

7 d. If no bids are received the property may then be sold at private  
8 sale without further publication or notice thereof, but in no event at  
9 less than the estimated fair value; or the board of education may if it  
10 so elect, reoffer the property at public sale. As used herein,  
11 "estimated fair value" means the market value of the property between  
12 a willing seller and a willing buyer less the cost to the board of  
13 education to continue storage or maintenance of any personal  
14 property not needed for school purposes to be sold pursuant to this  
15 section.

16 e. A board of education may reject all bids if it determines such  
17 rejection to be in the public interest. In any case in which the board  
18 of education has rejected all bids, it may readvertise such 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 such  
21 personal property without further publication or notice thereof at  
22 private sale, provided that in no event shall the negotiated price at  
23 private sale be less than the highest price of any bid rejected at the  
24 preceding two public sales and provided further that in no event shall  
25 the terms or conditions of sale be changed or amended.

26 f. If the estimated fair value of the property to be sold does not  
27 exceed **[the amount set forth in, or calculated by the Governor**  
28 **pursuant to, N.J.S.18A:18A-3,]** the applicable bid threshold  
29 established pursuant to subsection a. of this section in any one sale or  
30 is either livestock or perishable goods, it may be sold at private sale  
31 without advertising for bids.

32 g. Notwithstanding the provisions of this section, by resolution of  
33 the board of education, a purchasing agent may include the sale of  
34 personal property no longer needed for school purposes as part of  
35 specifications to offset the price of a new purchase.

36 (cf: P.L.1983, c.171, s.7)

37

38 81. (New section) Pursuant to the "Administrative Procedure  
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
40 Division of Local Government Services in the Department of  
41 Community Affairs, after consultation with the Commissioner of  
42 Education, may adopt rules implementing the provisions of the "Public  
43 School Contracts Law," N.J.S.18A:18A-1 et seq.

44

45 82. Section 1 of P.L.1981, c.447 (C.5:10-21.1) is amended to read  
46 as follows:

47 1. a. All purchases, contracts, or agreements where the cost or

1 contract price exceeds the sum of **[\$7,500.00]** \$25,000 or, after  
2 **[June 30, 1985]** the effective date of P.L. , c. (now before the  
3 Legislature as this bill , the amount determined pursuant to subsection  
4 b. of this section shall, except as otherwise provided in this act, be  
5 made, negotiated, or awarded only after public advertisement for bids  
6 therefor and shall be awarded to that responsible bidder whose bid,  
7 conforming to the invitation for bids, is most advantageous to the  
8 authority, in its judgment, upon consideration of price and other  
9 factors. Any bid may be rejected when the authority determines that  
10 it is in the public interest to do so.

11 Any purchase, contract, or agreement where the cost or contract  
12 price is less than or equal to **[\$7,500.00]** \$25,000 or, after **[June 30,**  
13 **1985]** the effective date of P.L. , c. (now before the Legislature as  
14 this bill) , the amount determined pursuant to subsection b. of this  
15 section may be made, negotiated, or awarded by the authority without  
16 advertising and in any manner which the authority, in its judgment,  
17 deems necessary to serve its unique interests and purposes and which  
18 promotes, whenever practicable, full and free competition by the  
19 acceptance of quotations or proposals or by the use of other suitable  
20 methods.

21 b. Commencing **[January 1, 1985]** in the fifth year after the year  
22 in which P.L. , c. (now before the Legislature as this bill) takes  
23 effect, and every five years thereafter , the Governor, in consultation  
24 with the Department of the Treasury, shall**[, no later than March 1 of**  
25 **each odd-numbered year,]** adjust the threshold amount set forth in  
26 subsection a. of this section, or **[subsequent to 1985]** after the  
27 effective date of P.L. , c. (now before the Legislature as this bill, the  
28 threshold amount resulting from any adjustment under this subsection,  
29 in direct proportion to the rise or fall of the **[consumer price index for**  
30 **all urban consumers in the New York City and the Philadelphia areas**  
31 **as reported by the United States Department of Labor]** index rate as  
32 that term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and  
33 shall round the adjustment to the nearest \$1,000. The Governor shall,  
34 no later than June 1 of **[each odd-numbered]** every fifth year, notify  
35 the authority of the adjustment. The adjustment shall become  
36 effective on July 1 of **[each odd-numbered year]** the year in which it  
37 is made.

38 (cf: P.L.1984, c.128, s.1)

39

40 83. Section 4 of P.L.1981, c.447 (C.5:10-21.4) is amended to read  
41 as follows:

42 4. Any purchase, contract, or agreement may be made, negotiated,  
43 or awarded pursuant to section 2 of **[this act]** P.L.1981, c.447  
44 (C.5:10-21.2) when:

45 a. Standardization of equipment and interchangeability of parts is  
46 in the public interest;

- 1       b. Only one source of supply or service is available;
- 2       c. The safety or protection of the authority's or other public  
3 property requires;
- 4       d. The exigency of the authority's service will not admit of  
5 advertisement;
- 6       e. More favorable terms can be obtained from a primary source of  
7 supply of an item or service;
- 8       f. Bid prices, after advertising, are not reasonable or have not been  
9 independently arrived at in open competition; but no negotiated  
10 purchase, contract, or agreement may be entered into under this  
11 subsection after the rejection of all bids received unless (1) notification  
12 of the intention to negotiate and reasonable opportunity to negotiate  
13 is given to each responsible bidder; (2) the negotiated price is lower  
14 than the lowest rejected bid price of a responsible bidder; and (3) the  
15 negotiated price is the lowest negotiated price offered by any  
16 responsible contractor;
- 17       g. The purchase is to be made from, or the contract is to be made  
18 with, the federal or any state government or agency or political  
19 subdivision thereof; or
- 20       h. Purchases are to be made through or by the Director of the  
21 Division of Purchase and Property pursuant to section 1 of P.L.1959,  
22 c.40 (C.52:27B-56.1) , or through a contract made by any of the  
23 following: the Hackensack Meadowlands Development Commission  
24 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
25 Jersey Highway Authority established under section 4 of P.L.1952,  
26 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
27 under section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
28 Supply Authority established under section 4 of P.L.1981, c.293  
29 (C.58:1B-4); the South Jersey Transportation Authority established  
30 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
31 of New York and New Jersey established under R.S.32:1-4; the  
32 Delaware River Port Authority established under R.S.32:3-2; the  
33 Higher Education Student Assistance Authority established under  
34 N.J.S.18A:71A-3 .  
35 (cf: P.L.1981, c.447, s.4)

36  
37       84. Section 6 of P.L.1984, c.128 (C.13:17-6.1) is amended to read  
38 as follows:

- 39       6. a. All purchases, contracts, or agreements where the cost or  
40 contract price exceeds the sum of **[\$7,500.00]** \$25,000 or, after  
41 **[June 30, 1985]** the effective date of P.L. , c. (now before the  
42 Legislature as this bill) , the amount determined pursuant to  
43 subsection b. of this section shall be made, negotiated, or awarded  
44 only after public advertisement for bids therefor and shall be awarded  
45 to that responsible bidder whose bid, conforming to the invitation for  
46 bids, is most advantageous to the Hackensack Meadowlands  
47 Development Commission, in its judgment, upon consideration of

1 price and other factors; provided, however, that such advertising shall  
2 not be required when the contract to be entered into is one for the  
3 furnishing or performing of services of a professional nature, or when  
4 the purchase is to be made through or by the Director of the Division  
5 of Purchase and Property pursuant to section 1 of P.L.1959, c.40  
6 (C.52:27B-56.1), or through a contract made by any of the following:  
7 the New Jersey Sports and Exposition Authority established under  
8 section 4 of P.L.1971, c.137 (C.5:10-4), the New Jersey Highway  
9 Authority established under section 4 of P.L.1952, c.16 (C.27:12B-4);  
10 the New Jersey Turnpike Authority established under section 3 of  
11 P.L.1948, c.454 (C.27:23-3); the New Jersey Water Supply Authority  
12 established under section 4 of P.L.1981, c.293 (C.58:1B-4); the South  
13 Jersey Transportation Authority established under section 4 of  
14 P.L.1991, c.252 (C.27:25A-4); the Port Authority of New York and  
15 New Jersey established under R.S.32:1-4; the Delaware River Port  
16 Authority established under R.S.32:3-2; the Higher Education Student  
17 Assistance Authority established under N.J.S.18A:71A-3. Any bid  
18 may be rejected when the commission determines that it is in the  
19 public interest to do so.

20 Any purchase, contract, or agreement where the cost or contract  
21 price is less than or equal to ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30,~~  
22 ~~1985]~~ the effective date of P.L. , c. (now before the Legislature as  
23 this bill) , the amount determined pursuant to subsection b. of this  
24 section may be made, negotiated, or awarded by the commission  
25 without advertising and in any manner which the commission, in its  
26 judgment, deems necessary to serve its unique interests and purposes  
27 and which promotes, whenever practicable, full and free competition  
28 by the acceptance of quotations or proposals or by the use of other  
29 suitable methods.

30 b. Commencing ~~[January 1, 1985]~~ in the fifth year after the year  
31 in which P.L. , c. (now before the Legislature as this bill) takes  
32 effect, and every five years thereafter, the Governor, in consultation  
33 with the Department of the Treasury, shall~~[],~~ no later than March 1 of  
34 each odd-numbered year,] adjust the threshold amount set forth in  
35 subsection a. of this section, or ~~[subsequent to 1985]~~ after the  
36 effective date of P.L. , c. (now before the Legislature as this bill),  
37 the threshold amount resulting from any adjustment under this  
38 subsection, in direct proportion to the rise or fall of the ~~[consumer~~  
39 ~~price index for all urban consumers in the New York City and the~~  
40 ~~Philadelphia areas as reported by the United States Department of~~  
41 ~~Labor]~~ index rate as that term is defined in section 2 of P.L.1971,  
42 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
43 \$1,000. The Governor shall, no later than June 1 of [each  
44 odd-numbered] every fifth year, notify the commission of the  
45 adjustment. The adjustment shall become effective on July 1 of ~~[each~~  
46 ~~odd-numbered year]~~ the year in which it is made.

47 (cf: P.L.1984, c.128, s.6)

1       85. Section 1 of P.L.1968, c.459 (C.27:12B-5.2) is amended to  
2 read as follows:

3       1. a. The New Jersey Highway Authority, in the exercise of its  
4 authority to make and enter into contracts and agreements necessary  
5 or incidental to the performance of its duties and the execution of its  
6 powers, shall adopt standing operating rules and procedures providing  
7 that, except as hereinafter provided, no contract on behalf of the  
8 authority shall be entered into for the doing of any work, or for the  
9 hiring of equipment or vehicles, where the sum to be expended  
10 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after ~~[ June 30, 1985]~~  
11 the effective date of P.L. , c. (now before the Legislature as this  
12 bill), the amount determined pursuant to subsection b. of this section  
13 unless the authority shall first publicly advertise for bids therefor, and  
14 shall award the contract to the lowest responsible bidder; provided,  
15 however, that such advertising shall not be required where the  
16 contract to be entered into is one for the furnishing or performing of  
17 services of a professional nature, or for the supplying of any product  
18 or the rendering of any service by a public utility subject to the  
19 jurisdiction of the Board of Public Utilities of this State and tariffs and  
20 schedules of the charges, made, charged, or exacted by the public  
21 utility for any such products to be supplied or services to be rendered  
22 are filed with the said board, or when the purchase is to be made  
23 through or by the Director of the Division of Purchase and Property  
24 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
25 a contract made by any of the following: the New Jersey Sports and  
26 Exposition Authority established under section 4 of P.L.1971, c.137  
27 (C.5:10-4); the Hackensack Meadowlands Development Commission  
28 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
29 Jersey Turnpike Authority established under section 3 of P.L.1948,  
30 c.454 (C.27:23-3); the New Jersey Water Supply Authority established  
31 under section 4 of P.L.1981, c.293 (C.58:1B-4); the South Jersey  
32 Transportation Authority established under section 4 of P.L.1991,  
33 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
34 established under R.S.32:1-4; the Delaware River Port Authority  
35 established under R.S.32:3-2; the Higher Education Student  
36 Assistance Authority established under N.J.S.18A:71A-3. Contracts  
37 for towing and storage services shall be advertised and awarded  
38 pursuant to subsection c. of this section.

39       This subsection shall not prevent the authority from having any  
40 work done by its own employees, nor shall it apply to repairs, or to  
41 the furnishing of materials, supplies or labor, or the hiring of  
42 equipment or vehicles, when the safety or protection of its or other  
43 public property or the public convenience require, or the exigency of  
44 the authority's service will not admit of such advertisement. In such  
45 case the authority shall, by resolution, passed by the affirmative vote  
46 of a majority of its members, declare the exigency or emergency to  
47 exist, and set forth in the resolution the nature thereof and the

1 approximate amount to be so expended.

2 b. Commencing January 1, 1985 in the fifth year after the year  
3 in which P.L. , c. (now before the Legislature as this bill) takes  
4 effect, and every five years thereafter , the Governor, in consultation  
5 with the Department of the Treasury, shall no later than March 1 of  
6 each odd-numbered year, adjust the threshold amount set forth in  
7 subsection a. of this section, or subsequent to 1985 after the  
8 effective date of P.L. , c. (now before the Legislature as this bill),  
9 the threshold amount resulting from any adjustment under this  
10 subsection, in direct proportion to the rise or fall of the consumer  
11 price index for all urban consumers in the New York City and the  
12 Philadelphia areas as reported by the United States Department of  
13 Labor index rate as that term is defined in section 2 of P.L.1971,  
14 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
15 \$1,000. The Governor shall, no later than June 1 of each  
16 odd-numbered every fifth year, notify the authority of the adjustment.  
17 The adjustment shall become effective on July 1 of each  
18 odd-numbered year the year in which it is made.

19 c. The authority shall adopt regulations, pursuant to the  
20 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
21 seq.), to provide open and competitive procedures for awarding  
22 contracts for towing and storage services. Towing and storage  
23 services on a highway project may be provided on a rotating basis,  
24 provided that the authority determines that there would be no  
25 additional cost to the authority, excepting administrative costs, as a  
26 result of those services being provided on a rotating basis. The  
27 regulations shall fix maximum towing and storage fees, and establish  
28 objective criteria to be considered in awarding a contract for towing  
29 and storage services which shall include, but shall not be limited to,  
30 reliability, experience, response time, acceptance of credit cards and  
31 prepaid towing contracts, adequate equipment to safely handle a  
32 sufficient volume of common vehicle types under a variety of traffic  
33 and weather conditions, location of storage and repair facilities,  
34 security of vehicles towed or stored, financial return to the authority,  
35 maintenance of adequate liability insurance and appropriate safeguards  
36 to protect the personal safety of customers, including considerations  
37 related to the criminal background of employees. The Division of  
38 Consumer Affairs in the Department of Law and Public Safety shall  
39 provide, at the authority's request, a report to the authority on any  
40 prospective contractor for which the division has information relevant  
41 to the prospective contractor's service record, subject to the provisions  
42 of the New Jersey consumer fraud act, P.L.1960, c.39 (C. 56:8-1 et  
43 seq.). The Division of Insurance Fraud Prevention in the Department  
44 of Banking and Insurance also shall provide, at the authority's request,  
45 a report to the authority on any prospective contractor for which the  
46 division has information relevant to the prospective contractor's

1 service record, subject to the "New Jersey Insurance Fraud Prevention  
2 Act," P.L.1983, c.320 (C.17:33A-1 et seq.).  
3 (cf: P.L.1997, c.390, s.1)

4  
5 86. Section 1 of P.L.1968, c.461 (C.27:23-6.1) is amended to read  
6 as follows:

7 1. a. The New Jersey Turnpike Authority, in the exercise of its  
8 authority to make and enter into contracts and agreements necessary  
9 or incidental to the performance of its duties and the execution of its  
10 powers, shall adopt standing operating rules and procedures providing  
11 that, except as hereinafter provided, no contract on behalf of the  
12 authority shall be entered into for the doing of any work, or for the  
13 hiring of equipment or vehicles, where the sum to be expended  
14 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30, 1985]~~ the  
15 effective date of P.L. .c. (now before the Legislature as this bill , the  
16 amount determined pursuant to subsection b. of this section unless the  
17 authority shall first publicly advertise for bids therefor, and shall  
18 award the contract to the lowest responsible bidder; provided,  
19 however, that such advertising shall not be required where the  
20 contract to be entered into is one for the furnishing or performing  
21 services of a professional nature, or for the supplying of any product  
22 or the rendering of any service by a public utility subject to the  
23 jurisdiction of the Board of Public Utility Commissioners of this State  
24 and tariffs and schedules of the charges, made, charged, or exacted by  
25 the public utility for any such products to be supplied or services to  
26 be rendered are filed with the said board, or when the purchase is to  
27 be made through or by the Director of the Division of Purchase and  
28 Property pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or  
29 through a contract made by any of the following: the New Jersey  
30 Sports and Exposition Authority established under section 4 of  
31 P.L.1971, c.137 (C.5:10-4); the Hackensack Meadowlands  
32 Development Commission established under section 5 of P.L.1968,  
33 c.404 (C.13:17-5); the New Jersey Highway Authority established  
34 under section 4 of P.L.1952, c.16 (C.27:12B-4); the New Jersey Water  
35 Supply Authority established under section 4 of P.L.1981, c.293  
36 (C.58:1B-4); the South Jersey Transportation Authority established  
37 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
38 of New York and New Jersey established under R.S.32:1-4; the  
39 Delaware River Port Authority established under R.S.32:3-2; the  
40 Higher Education Student Assistance Authority established under  
41 N.J.S.18A:71A-3.

42 This subsection shall not prevent the authority from having any  
43 work done by its own employees, nor shall it apply to repairs, or to  
44 the furnishing of materials, supplies or labor, or the hiring of  
45 equipment or vehicles, when the safety or protection of its or other  
46 public property or the public convenience require, or the exigency of  
47 the authority's service will not admit of such advertisement. In such



1 case the authority shall, by resolution, passed by the affirmative vote  
2 of a majority of its members, declare the exigency or emergency to  
3 exist, and set forth in the resolution the nature thereof and the  
4 approximate amount to be so expended.

5 b. Commencing 【January 1, 1985】 in the fifth year after the year  
6 in which P.L. , c. (now before the Legislature as this bill) takes  
7 effect, and every five years thereafter , the Governor, in consultation  
8 with the Department of the Treasury, shall 【, no later than March 1 of  
9 each odd-numbered year,】 adjust the threshold amount set forth in  
10 subsection a. of this section, or 【subsequent to 1985】 after the  
11 effective date of P.L. , c. (now before the Legislature as this bill,  
12 the threshold amount resulting from any adjustment under this  
13 subsection, in direct proportion to the rise and fall of the 【consumer  
14 price index for all urban consumers in the New York City and the  
15 Philadelphia areas as reported by the United States Department of  
16 Labor】 index rate as that term is defined in section 2 of P.L.1971,  
17 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
18 \$1,000. The Governor shall, no later than June 1 of 【each  
19 odd-numbered】 every fifth year, notify the authority of the adjustment.  
20 The adjustment shall become effective on July 1 of 【each  
21 odd-numbered year】 the year in which it is made.

22 (cf: P.L.1984, c.128, s.5)

23

24 87. Section 8 of P.L.1991, c.252 (C.27:25A-8) is amended to read  
25 as follows:

26 8. a. All purchases, contracts or agreements made pursuant to this  
27 act shall be made or awarded directly by the authority, except as  
28 otherwise provided in this act, only after public advertisement for bids  
29 therefor in the manner provided by the authority and notwithstanding  
30 the provisions of any other laws to the contrary.

31 b. Any purchase, contract or agreement may be made, negotiated  
32 or awarded by the authority without public bid or advertising under  
33 the following circumstances:

34 (1) When the aggregate amount involved does not exceed the  
35 amount set forth in, or the amount calculated by the Governor  
36 pursuant to, section 2 of P.L.1954, c.48 (C.52:34-7);

37 (2) To acquire subject matter which is described in section 4 of  
38 P.L.1954, c.48 (C.52:34-9);

39 (3) To make a purchase or award or make a contract or agreement  
40 under the circumstances described in section 5 of P.L.1954, c.48  
41 (C.52:34-10);

42 (4) When the contract to be entered into is for the furnishing or  
43 performing services of a professional or technical nature or for the  
44 supplying of any product or the rendering of any service by a public  
45 utility;

46 (5) When the authority deems it appropriate to have any work

1 performed by its own employees;

2 (6) When the authority has advertised for bids on two occasions  
3 and has received no bids on both occasions in response to its  
4 advertisement, or received no responsive bids. Any purchase, contract  
5 or agreement may then be negotiated and may be awarded to any  
6 contractor or supplier determined to be responsible except that the  
7 terms, conditions, restrictions and specifications set forth in the  
8 negotiated contract or agreement are not substantially different from  
9 those which were the subject of competitive bidding;

10 (7) When a piece of equipment or part thereof requires diagnostic  
11 repairs;

12 (8) The printing of bonds and documents necessary to the issuance  
13 and sale thereof; **[and]**

14 (9) To contract pursuant to subsection w. of section 7 of this act;  
15 or

16 (10) When a purchase is to be made through or by the Director of  
17 the Division of Purchase and Property pursuant to section 1 of  
18 P.L.1959, c.40 (C.52:27B-56.1), or through a contract made by any  
19 of the following: the New Jersey Sports and Exposition Authority  
20 established under section 4 of P.L.1971, c.137 (C.5:10-4); the  
21 Hackensack Meadowlands Development Commission established  
22 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
23 Highway Authority established under section 4 of P.L.1952, c.16  
24 (C.27:12B-4); the New Jersey Turnpike Authority established under  
25 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
26 Supply Authority established under section 4 of P.L.1981, c.293  
27 (C.58:1B-4); the Port Authority of New York and New Jersey  
28 established under R.S.32:1-4; the Delaware River Port Authority  
29 established under R.S.32:3-2; the Higher Education Student  
30 Assistance Authority established under N.J.S.18A:71A-3.

31 (cf: P.L.1991, c.252, s.8)

32

33 88. Section 22 of P.L.1981, c.293 (C.58:1B-22) is amended to  
34 read as follows:

35 22. a. The authority is hereby authorized to make and enter into  
36 contracts and agreements necessary or incidental to the performance  
37 of its duties and the execution of its powers. No contract on behalf of  
38 the authority shall be entered into for the doing of any work, or for the  
39 hiring of equipment or vehicles, where the sum to be expended  
40 exceeds the sum of **[\$7,500.00]** \$25,000 or , after the effective date  
41 of P.L. , c. (now before the Legislature as this bill), the amount  
42 determined pursuant to subsection b. of this section, unless the  
43 authority shall first publicly advertise for bids therefor, and shall award  
44 the contract to the lowest responsible bidder; but advertising shall not  
45 be required where the contract to be entered into is one for the  
46 furnishing or performing services of a professional nature, or for the  
47 supplying of any product or the rendering of any service by a public

1 utility subject to the jurisdiction of the Board of Public Utilities, and  
2 tariffs and schedules of the charges made, charged, or exacted by the  
3 public utility for any such products to be supplied or services to be  
4 rendered are filed with the board, or when the purchase is to be made  
5 through or by the Director of the Division of Purchase and Property  
6 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
7 a contract made by any of the following: the New Jersey Sports and  
8 Exposition Authority established under section 4 of P.L.1971, c.137  
9 (C.5:10-4); the Hackensack Meadowlands Development Commission  
10 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
11 Jersey Highway Authority established under section 4 of P.L.1952,  
12 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
13 under section 3 of P.L.1948, c.454 (C.27:23-3); the South Jersey  
14 Transportation Authority established under section 4 of P.L.1991,  
15 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
16 established under R.S.32:1-4; the Delaware River Port Authority  
17 established under R.S.32:3-2; the Higher Education Student  
18 Assistance Authority established under N.J.S.18A:71A-3. This  
19 subsection shall not prevent the authority from having any work done  
20 by its own employees, nor shall it apply to repairs, or to the furnishing  
21 of materials, supplies or labor, or the hiring of equipment or vehicles,  
22 when the safety or protection of its or other public property or the  
23 public convenience requires, or the exigency of the authority service  
24 will not admit of such advertisement. In such case the authority shall,  
25 by resolution, passed by the affirmative vote of a majority of its  
26 members, declare the exigency or emergency to exist, and set forth in  
27 the resolution the nature thereof and the approximate amount to be  
28 expended.

29 b. **【The】** Commencing in the fifth year after the year in which  
30 P.L. , c. (now before the Legislature as this bill) takes effect, and  
31 every five years thereafter, the Governor, in consultation with the  
32 Department of the Treasury, shall【, no later than March 1 of each  
33 odd-numbered year,】 adjust the threshold amount set forth in  
34 subsection a. of this section, or 【subsequent to 1985】 after the  
35 effective date of P.L. , c. (now before the Legislature as this bill),  
36 the threshold amount resulting from any adjustment under this  
37 subsection 【or section 17 of P.L. 1985, c. 469,】 in direct proportion  
38 to the rise or fall of the 【Consumer Price Index for all urban  
39 consumers in the New York City and the Philadelphia areas as  
40 reported by the United States Department of Labor】 index rate as that  
41 term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall  
42 round the adjustment to the nearest \$1,000 . The Governor shall, no  
43 later than June 1 of 【each odd-numbered】 every fifth year, notify the  
44 authority of the adjustment. The adjustment shall become effective on  
45 July 1 of 【each odd-numbered year】 the year in which it is made.  
46 (cf: P.L.1985, c.469, s.14)

1 89. Section 1 of P.L.1959, c.40 (C.52:27B-56.1) is amended to  
2 read as follows:

3 1. The Director of the Division of Purchase and Property may, by  
4 joint action, purchase any articles used or needed by the State and the  
5 Palisades Interstate Park Commission, the New Jersey Highway  
6 Authority, the New Jersey Turnpike Authority, the Delaware River  
7 Joint Toll Bridge Commission, the Port Authority of New York and  
8 New Jersey, the South Jersey Port Corporation, the Passaic Valley  
9 Sewerage Commission, the Delaware River Port Authority, Rutgers,  
10 The State University, the University of Medicine and Dentistry of  
11 New Jersey, the New Jersey Sports and Exposition Authority, the  
12 New Jersey Housing Finance Agency, the New Jersey Mortgage  
13 Finance Authority, the New Jersey Health Care Facilities Financing  
14 Authority, the New Jersey Education Facilities Authority, the New  
15 Jersey Economic Development Authority, the ~~the~~ **【New Jersey**  
16 **Expressway】** ~~South Jersey Transportation Authority, the Hackensack~~  
17 ~~Meadowlands Development Commission, the New Jersey Water~~  
18 ~~Supply Authority; the Higher Education Student Assistance Authority~~  
19 or any other agency, commission, board, authority or other such  
20 governmental entity which is established and is allocated to a State  
21 department or any bi-state governmental entity of which the State of  
22 New Jersey is a member.

23 (cf: P.L.1981, c.325, s.18)

24

25 90. Section 30 of P.L.1948, c.92 (C.52:18A-30) is amended to  
26 read as follows:

27 30. The State Treasurer, in addition to the functions, powers and  
28 duties specifically conferred and imposed upon ~~him~~ **【him】** ~~the position,~~  
29 shall:

30 (a) Maintain suitable headquarters for the department and such  
31 other quarters within the State as he may deem necessary to the  
32 department's proper functioning;

33 (b) Have general responsibility for all of the department's  
34 operations under this act;

35 (c) Supervise the organization of the department and changes in  
36 the organization thereof, except that the divisions, boards,  
37 commissions and offices, herein specifically provided shall be  
38 maintained;

39 (d) Formulate and adopt rules and regulations for the efficient  
40 conduct of the work and general administration of the department, its  
41 officers and employees and as may be necessary for the Department of  
42 the Treasury to carry out its duties as set forth by law; and

43 (e) Make an annual report to the Governor and to the Legislature  
44 of the department's operations, and render such other reports as the  
45 Governor shall from time to time request.

46 The State Treasurer shall designate as Deputy State Treasurer any  
47 officer or employee in the department. Such designation shall be in

1 writing and shall be filed with the Secretary of State. Such  
2 designation shall continue in effect until the State Treasurer shall, in  
3 the manner herein provided, designate another officer or employee in  
4 the department as such Deputy State Treasurer.

5 The Deputy State Treasurer shall have and exercise the powers and  
6 perform the functions and duties of the State Treasurer during the  
7 absence or disability of the State Treasurer. The Deputy State  
8 Treasurer shall also have and exercise such of the powers and perform  
9 such of the functions and duties of the State Treasurer as he shall be  
10 authorized and directed by the State Treasurer. Any such  
11 authorization and direction shall be in writing, signed by the State  
12 Treasurer and filed with the Secretary of State, and shall include a  
13 designation of the period during which it shall be and remain in force.  
14 No such authorization and direction shall be deemed to preclude the  
15 State Treasurer from himself exercising the powers and the  
16 performance of the duties included in said authorization and direction.  
17 In the event that the State Treasurer shall die, resign or be removed  
18 from office, or become disqualified to execute the duties of his office,  
19 or a vacancy shall occur in the office of State Treasurer for any cause  
20 whatsoever, the person then holding the office of Deputy State  
21 Treasurer shall continue to hold such office and shall have and  
22 exercise the powers and perform the functions and duties of the State  
23 Treasurer until the successor of the State Treasurer shall be appointed  
24 and shall qualify.

25 Notwithstanding any other provision in existing law, the State  
26 Treasurer may designate, authorize and direct the Deputy State  
27 Treasurer or any other officer or specially designated expert assistant  
28 in the department to exercise the power and perform the functions and  
29 duties of the State Treasurer as a member of the board of trustees,  
30 commission or council vested with the general administration of and  
31 responsibility for any employee benefit system, trust, fund, program  
32 or plan. Any such authorization and direction shall be in writing,  
33 signed by the State Treasurer and filed with the Secretary of State,  
34 and shall include a designation of the period during which it shall be  
35 and remain in force. No such authorization and direction shall be  
36 deemed to preclude the State Treasurer from himself exercising the  
37 powers and the performance of the duties included in said  
38 authorization and direction.

39 (cf: P.L.1974, c.34, s.1)

40

41 91. Section 3 of P.L.1969, c.104 (C.52:25-16.1) is amended to  
42 read as follows:

43 3. The Director of the Division of Purchase and Property may, at  
44 the director's discretion, include, in any such contract or contracts on  
45 behalf of the State, a provision for the purchase of such materials,  
46 supplies **[or]**, equipment or services by any **[county, municipality or**  
47 **school district]** local contracting unit from such contractor or

1 contractors. Such purchase may be effectuated either as an outright  
2 purchase or by installment, lease or rental, so long as the vendor offers  
3 financing at an interest rate that is equal to or lower than the State line  
4 of credit. The **【county, municipality or school district】**local  
5 contracting unit shall have sole responsibility for any payment due the  
6 vendor for any such purchase. All purchases shall be subject to audit  
7 and inspection by the **【county, municipality or school district】**local  
8 contracting unit for which made. The local contracting unit shall file  
9 such reports as the Director of the Division of Purchase and Property  
10 may require setting forth the expenditure on such contracts. For the  
11 purposes of this section, "local contracting unit" means any public  
12 agency subject to the provisions of the "Local Public Contracts Law,"  
13 P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts  
14 Law," N.J.S.18A:18A-1 et seq., the "State College Contracts Law,"  
15 P.L.1986, c.43 (C.18A:64-52 et seq.), or the "County College  
16 Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.).  
17 (cf: P.L.1969, c.104, s.3)

18

19 92. Section 2 of P.L.1985, c.263 (C.52:25-16.6) is amended to  
20 read as follows:

21 2. a. An independent institution of higher education may, at the  
22 director's discretion, purchase materials, supplies **【and】**, equipment or  
23 services under any contract **【negotiated】**awarded on behalf of the  
24 State by the Director of the Division of Purchase and Property,  
25 subject to such rules as the director may establish.

26 b. The director may establish limitations with respect to  
27 **【commodities】**materials, supplies, equipment and services available  
28 for purchase and impose other appropriate conditions upon purchasing  
29 as deemed necessary to protect the State's own purchasing interests.

30 c. The independent institution of higher education shall file such  
31 reports as the Director of the Division of Purchase and Property may  
32 require setting forth the expenditures on such contracts.

33 (cf: P.L. 1985, c.263, s.2)

34

35 93. R.S.52:25-23 is amended to read as follows:

36 52:25-23. The Director of the Division of Purchase and Property  
37 may, by written order, delegate purchasing authority to the using  
38 agencies for purchases or contracts not in excess of **【\$7,500.00】**  
39 \$25,000.00; except that:

40 a. Purchases or contracts shall not be divided to circumvent the  
41 dollar limit imposed by this section;

42 b. Prior to issuing purchase orders pursuant to this section, a using  
43 agency shall verify the existence of funds for the purchase or contract  
44 and shall verify that the article or service to be purchased or  
45 contracted for is not available under any of the contracts issued by the  
46 Division of Purchase and Property; and

1 c. ~~【All】~~ Records of all purchases made or contracts negotiated  
2 under this section shall be ~~【reported to】~~ maintained by the using  
3 agency and made available for audit by or under the direction of the  
4 Director of the Division of Purchase and Property ~~【by the using~~  
5 agency, in a manner prescribed by the Director of the Division of  
6 Purchase and Property, which report ~~】~~ and shall include proper proof  
7 that the purchase or contract was made or negotiated competitively,  
8 where competition is practicable.

9 The Director of the Division of Purchase and Property may, by  
10 written order, rescind or reduce the level of purchasing authority  
11 delegated to any using agency determined by the director to have  
12 violated the provisions of the delegated authorization.

13 (cf: P.L.1985, c.107, s.1)

14

15 94. Section 4 of article 6 of P.L.1944, c.112 (C.52:27B-56) is  
16 amended to read as follows:

17 4. The director is hereby vested with the powers, duties, and  
18 responsibilities involved in the efficient operation of a centralized  
19 State purchasing service, and with the custody, operation and  
20 maintenance of all State property not chargeable to a particular  
21 department. ~~【He】~~ The director shall have authority, subject to the  
22 ~~【commissioner's】~~ State Treasurer's approval, to organize the division  
23 for the effective performance of its functions and purposes herein set  
24 forth, and to establish and assess fees to cover administrative costs.  
25 The director or the director's designee shall have the authority to  
26 conduct investigations and informal hearings regarding any bid protest  
27 or vendor performance issues. The director shall also have the  
28 authority to issue final agency decisions regarding any bid protest or  
29 vendor performance issues. Except as otherwise provided by statute  
30 and subject to the State Treasurer's approval, the director shall have  
31 final approval of all State contracts including, but not limited to, those  
32 entered into pursuant to P.L.1964, c.290 (C.30:6-17 et seq.).

33 (cf: P.L.1944, c.112, art.6, s.4)

34

35 95. Section 2 of P.L.1954, c.48 (C.52:34-7) is amended to read as  
36 follows:

37 2. a. Any such purchase, contract or agreement may be made,  
38 negotiated, or awarded by the Director of the Division of Purchase and  
39 Property or the Director of the Division of Building and Construction,  
40 as the case may be, without advertising, in any manner which ~~【he】~~ the  
41 director may deem effective to promote full and free competition  
42 whenever competition is practicable, if: (1) the aggregate amount  
43 involved does not exceed ~~【\$7,500.00】~~ \$25,000.00 or the amount  
44 determined pursuant to subsection b. of this section; or (2) (Deleted  
45 by amendment, P.L.1985, c.107) or (3) the aggregate amount involved  
46 including labor and construction materials does not exceed \$25,000.00

1 or the amount determined pursuant to subsection b. of this section in  
2 the case of contracts or agreements for the erection, construction,  
3 alteration, or repair of any public building or facility.

4 When the aggregate amount involved does not exceed \$25,000.00  
5 or the amount determined pursuant to subsection b. of this section in  
6 the case of contracts or agreements for the erection, construction,  
7 alteration, or repair of any public building or facility, the Director of  
8 the Division of Purchase and Property or the Director of the Division  
9 of Building and Construction may, at [his] the director's discretion,  
10 delegate to the appropriate State department or using agency [his] the  
11 director's authority to make, negotiate, or award a contract or  
12 agreement without advertising.

13 The **[Administrator of the General Services Administration]**  
14 **Director of the Division of Purchase and Property or the Director of**  
15 **the Division of Building and Construction, as the case may be,** shall  
16 establish, in accordance with the "Administrative Procedure Act"  
17 (P.L.1968, c.410; C.52:14B-1 et seq.), rules and regulations  
18 concerning procedural requirements for the making, negotiating or  
19 awarding of purchases, contracts or agreements pursuant to this  
20 section , at the director's discretion.

21 b. The Governor, in consultation with the Department of the  
22 Treasury, shall, no later than March 1 of **[each odd-numbered]** every  
23 fifth year beginning in the fifth year after the year in which P.L. , c.  
24 (now before the Legislature as this bill) takes effect , adjust the  
25 threshold amount set forth in subsection a. of this section, or  
26 **[subsequent to 1985]** the threshold amount resulting from any  
27 adjustment under this subsection, in direct proportion to the rise or fall  
28 of the **[Consumer Price Index for all urban consumers in the New**  
29 **York City and the Philadelphia areas as reported by the United States**  
30 **Department of Labor]** index rate as that term is defined in section 2  
31 of P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to  
32 the nearest \$1,000. The Governor shall, no later than June 1 of **[each**  
33 **odd-numbered]** every fifth year, notify the Director of the Division of  
34 Purchase and Property and the Director of the Division of Building  
35 and Construction of the adjustment. The adjustment shall become  
36 effective on July 1 of **[each odd-numbered year]** the year in which it  
37 is made.

38 (cf: P.L.1985, c.349, s.1)

39

40 96. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read  
41 as follows:

42 7. Whenever advertising is required: (a) specifications and  
43 invitations for bids shall permit such full and free competition as is  
44 consistent with the procurement of supplies and services necessary to  
45 meet the requirements of the using agency and shall, wherever  
46 practicable, include such factors as life-cycle costs, sliding percentage  
47 preference scales, or other similar analysis as shall be deemed effective



1 by the Director of the Division of Purchase and Property hereinafter  
2 referred to as the director, (b) the advertisement for bids shall be in  
3 such newspaper or newspapers selected by the State Treasurer as will  
4 best give notice thereof to bidders and shall be sufficiently in advance  
5 of the purchase or contract to promote competitive bidding; (c) the  
6 advertisement shall designate the time and place when and where  
7 sealed proposals shall be received and publicly opened and read, the  
8 amount of the cash or certified check, if any, which must accompany  
9 each bid, and such other terms as the State Treasurer may deem  
10 proper; (d) notice of revisions or addenda to advertisements or bid  
11 documents relating to bids shall be published in a newspaper or  
12 newspapers as selected by the State Treasurer to best give notice to  
13 bidders and sent to the prospective bidder no later than five days,  
14 Saturdays, Sundays and holidays excepted, prior to the bid due date;  
15 (e) failure to advertise for the receipt of bids or to provide proper  
16 notification of revisions or addenda to advertisements or bid  
17 documents related to bids as prescribed by subsection (d) of this  
18 section shall prevent the acceptance of bids and require the  
19 readvertisement for bids; (f) for any procurement, the State Treasurer  
20 or the director may negotiate with bidders, after bid opening, the final  
21 terms and conditions of any procurement, including price; such ability  
22 to so negotiate must be expressly set forth in the applicable invitation  
23 to bid; (g) award shall be made with reasonable promptness, after  
24 negotiation with bidders where authorized, by written notice to that  
25 responsible bidder whose bid, conforming to the invitation for bids,  
26 will be most advantageous to the State, price and other factors  
27 considered. Any or all bids may be rejected when the State Treasurer  
28 or the Director of the Division of Purchase and Property determines  
29 that it is in the public interest so to do. The State Treasurer or  
30 designee may adopt, pursuant to the "Administrative Procedure Act,"  
31 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as  
32 may be necessary to implement the provisions of this section.

33 This section shall apply to all bids received on and after the date of  
34 enactment of P.L. , c. (now before the Legislature as this bill).  
35 (cf: P.L.1986, c.72, s.1)

36  
37 97. (New section) a. A person commits a crime if the person  
38 knowingly submits to the government any claim for payment for  
39 performance of a government contract knowing such claim to be false,  
40 fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or  
41 above, the offender is guilty of a crime of the second degree. If the  
42 claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is  
43 guilty of a crime of the third degree. If the claim is for \$2,500.00 or  
44 less, the offender is guilty of a crime of the fourth degree.

45 b. A person commits a crime if the person knowingly makes a  
46 material representation that is false in connection with the negotiation,  
47 award or performance of a government contract. If the contract

1 amount is for \$25,000.00 or above, the offender is guilty of a crime of  
2 the second degree. If the contract amount exceeds \$2,500.00, but is  
3 less than \$25,000.00, the offender is guilty of a crime of the third  
4 degree. If the contract amount is for \$2,500.00 or less, the offender  
5 is guilty of a crime of the fourth degree.

6  
7 98. N.J.S.2C:27-4 is amended to read as follows:

8 2C:27-4. a. A person commits a crime if **[he,]** the person, as a  
9 public servant:

10 (1) directly or indirectly, knowingly solicits, accepts or agrees to  
11 accept any benefit [as compensation for having, as public servant,  
12 given a decision, opinion, recommendation or vote favorable to  
13 another, or for having otherwise exercised a discretion in his favor,]  
14 from another for or because of any official act performed or to be  
15 performed by the person or for [having violated his] or because of a  
16 violation of official duty [or for the performance of his official  
17 duties.];

18 (2) directly or indirectly, knowingly receives any benefit from  
19 another who is or was in a position, different from that of a member  
20 of the general public, to benefit, directly or indirectly, from a violation  
21 of official duty or the performance of official duties; or

22 (3) directly or indirectly, knowingly receives any benefit from or  
23 by reason of a contract or agreement for goods, property or services  
24 if the contract or agreement is awarded, made or paid by the agency  
25 that employs the person or if the goods, property or services are  
26 provided to the government agency that employs the public servant.

27 b. A person commits a crime if **[he]** the person offers, confers or  
28 agrees to confer **[compensation]** a benefit, acceptance of which is  
29 prohibited by this section.

30 c. Any offense proscribed by this section is a crime of the second  
31 degree. If the benefit solicited, accepted, agreed to be accepted,  
32 offered, conferred or agreed to be conferred is of a value of \$200.00  
33 or less, any offense proscribed by this section is a crime of the third  
34 degree.

35 (cf: P.L.1979, c.178, s.50)

36  
37 99. N.J.S.2C:27-6 is amended to read as follows:

38 2C:27-6. a. **[A]** Except as provided in subsection d.of this  
39 section, a public servant commits a crime if [he] the person,  
40 knowingly and under color of [his] office, directly or indirectly  
41 solicits, accepts or agrees to accept any benefit for that person or  
42 another not allowed by law [to influence the performance of his  
43 official duties].

44 b. **[A]** Except as provided in subsection d.of this section, a person  
45 commits a crime if [he] the person, directly or indirectly, confers or  
46 agrees to confer any benefit not allowed by law to a public servant [to

1 influence the performance of his official duties].

2 c. [In any prosecution under this section, the capacity to influence  
3 a public servant in the performance of his official duties may be  
4 presumed when the value of the benefit involved, the interests of the  
5 person who offers, confers or agrees to confer such benefit, and the  
6 duties of the public servant are such as to create a reasonable  
7 likelihood that the public servant would perform his official duties in  
8 a biased or partial manner.] (Deleted by amendment; P.L. , c. .)  
9 (Pending before the Legislature as this bill.)

10 d. This section shall not apply to:

11 (1) Fees prescribed by law to be received by a public servant, or any  
12 other benefit to which [he] the public servant is otherwise legally  
13 entitled; or

14 (2) Gifts or other benefits conferred on account of kinship or other  
15 personal, professional or business relationship independent of the  
16 official status of the recipient; or

17 (3) Trivial benefits the receipt of which involve no risk that the  
18 public servant would perform [his] official duties in a biased or partial  
19 manner.

20 e. An offense under this section is a crime of the third degree. If  
21 the gift or other benefit is of a value of \$200.00 or less, any offense  
22 proscribed by this section is a crime of the fourth degree.

23 (cf: P.L.1979, c.178, s.51)

24

25 100. (New Section) A public servant commits a crime of the  
26 fourth degree if, while performing his official functions on behalf of a  
27 governmental entity, the public servant knowingly transacts any  
28 business with himself, a member of his immediate family, or a business  
29 organization in which the public servant or an immediate family  
30 member has an interest. For purposes of this section, an interest in a  
31 business organization shall not include aggregate familial ownership or  
32 control of one percent or less of an interest in the capital or equity of  
33 the business organization. A public servant shall not be guilty of an  
34 offense under this section if the public servant's performance of official  
35 functions would not affect the public servant, family member or  
36 business organization differently than such performance would affect  
37 the public generally, or would not affect the public servant, family  
38 member or business organization, as a member of a business,  
39 profession, occupation or group, differently than such performance  
40 would affect any other member of such business, profession,  
41 occupation or group.

42

43 101. Section 10 of P.L.1991, c.29 (C.40A:9-22.10) is amended to  
44 read as follows:

45 10. a. An appointed local government officer or employee found  
46 guilty by the Local Finance Board or a county or municipal ethics

1 board of the violation of any provision of **[this act]** P.L.1991, c.29  
2 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to  
3 **[this act]** P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less  
4 than \$100.00 nor more than \$500.00, which penalty may be collected  
5 in a summary proceeding pursuant to "the penalty enforcement law"  
6 (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics  
7 board shall report its findings to the office or agency having the power  
8 of removal or discipline of the appointed local government officer or  
9 employee and may recommend that further disciplinary action be  
10 taken.

11 b. An elected local government officer or employee found guilty  
12 by the Local Finance Board or a county or municipal ethics board of  
13 the violation of any provision of **[this act]** P.L.1991, c.29 (C.40A:9-  
14 22.1 et seq.) or of any code of ethics in effect pursuant to **[this act]**  
15 P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less than  
16 \$100.00 nor more than \$500.00, which penalty may be collected in a  
17 summary proceeding pursuant to "the penalty enforcement law"  
18 (N.J.S.2A:58-1 et seq.).

19 c. The remedies provided herein are in addition to all other criminal  
20 and civil remedies provided under the law.

21 (cf: P.L.1991, c.29, s.10)

22

23 102. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to  
24 read as follows:

25 10. (a) The Executive Commission on Ethical Standards created  
26 pursuant to P.L.1967, chapter 229 is continued and established in the  
27 Department of Law and Public Safety and shall constitute the first  
28 commission under **[this act]** P.L.1971, c.182 (C.52:13D-12 et al.).

29 (b) The commission shall be composed of seven members appointed  
30 by the Governor from among State officers and employees serving in  
31 the Executive Branch. Each member shall serve at the pleasure of the  
32 Governor during the term of office of the Governor appointing **[him]**  
33 the member and until **[his]** the member's successor is appointed and  
34 qualified. The Governor shall designate one member to serve as  
35 chairman and one member to serve as vice-chairman of the  
36 commission.

37 (c) Each member of the said commission shall serve without  
38 compensation but shall be entitled to be reimbursed for all actual and  
39 necessary expenses incurred in the performance of **[his]** the member's  
40 duties.

41 (d) The Attorney General shall act as legal adviser and counsel to  
42 the said commission. **[He]** The Attorney General shall upon request  
43 advise the commission in the rendering of advisory opinions by the  
44 commission, in the approval and review of codes of ethics adopted by  
45 State agencies in the Executive Branch and in the recommendation of  
46 revisions in codes of ethics or legislation relating to the conduct of

1 State officers and employees in the Executive Branch.

2 (e) The said commission may, within the limits of funds  
3 appropriated or otherwise made available to it for the purpose, employ  
4 such other professional, technical, clerical or other assistants,  
5 excepting legal counsel, and incur such expenses as may be necessary  
6 for the performance of its duties.

7 (f) The said commission, in order to perform its duties pursuant to  
8 the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)**, shall  
9 have the power to conduct investigations, hold hearings, compel the  
10 attendance of witnesses and the production before it of such books and  
11 papers as it may deem necessary, proper and relevant to the matter  
12 under investigation. The members of the said commission and the  
13 persons appointed by the commission for such purpose are hereby  
14 empowered to administer oaths and examine witnesses under oath.

15 (g) The said commission is authorized to render advisory opinions  
16 as to whether a given set of facts and circumstances would, in its  
17 opinion, constitute a violation of the provisions of **[this act] P.L.1971,**  
18 **c.182 (C.52:13D-12 et al.)** or of a code of ethics promulgated  
19 pursuant to the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12**  
20 **et al.)**.

21 (h) The said commission shall have jurisdiction to initiate, receive,  
22 hear and review complaints regarding violations, by any State officer  
23 or employee or special State officer or employee in the Executive  
24 Branch, of the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12**  
25 **et al.)** or of any code of ethics promulgated pursuant to the provisions  
26 of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)**. Any complaint  
27 regarding a violation of a code of ethics may be referred by the  
28 commission for disposition in accordance with subsection **[12(d) of**  
29 **this act] (d) of section 12 of P.L.1971, c.182 (C.52:13D-23)**.

30 (i) Any State officer or employee or special State officer or  
31 employee found guilty by the commission of violating any provision  
32 of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)** or of a code of  
33 ethics promulgated pursuant to the provisions of **[this act] P.L.1971,**  
34 **c.182 (C.52:13D-12 et al.)** shall be fined not less than \$100.00 nor  
35 more than \$500.00, which penalty may be collected in a summary  
36 proceeding pursuant to the Penalty Enforcement Law (N.J.S.  
37 2A:58-1), and may be suspended from his office or employment by  
38 order of the commission for a period of not in excess of 1 year. If the  
39 commission finds that the conduct of such officer or employee  
40 constitutes a willful and continuous disregard of the provisions of  
41 **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)** or of a code of ethics  
42 promulgated pursuant to the provisions of **[this act] P.L.1971, c.182**  
43 **(C.52:13D-12 et al.)**, it may order such person removed from his  
44 office or employment and may further bar such person from holding  
45 any public office or employment in this State in any capacity  
46 whatsoever for a period of not exceeding 5 years from the date on

1 which **[he]** the person was found guilty by the commission.

2 (j) The remedies provided herein are in addition to all other criminal  
3 and civil remedies provided under the law.

4 (cf: P.L.1971, c.182, s.10)

5

6 103. Section 13 of P.L.1954, c.48 (C.52:34-18) is amended to read  
7 as follows:

8 13. Any person **[willfully]** knowingly authorizing, consenting to,  
9 making or procuring to be made any purchase, contract or agreement  
10 in violation of any of the provisions of **[this act]** P.L.1954, c.48,  
11 (C.52:34-6 et seq.) or **[willfully]** knowingly making or procuring to  
12 be made payment of State funds for or on account of any purchase,  
13 contract or agreement known to him to have been made or entered  
14 into in violation of any of the provisions of **[this act]** P.L.1954, c.48  
15 (C.52:34-6 et seq.) shall be guilty of a **[misdemeanor]** crime of the  
16 fourth degree.

17 (cf: P.L.1954, c.48, s.13)

18

19 104. Section 11 of P.L.1970, c.73 (C.56:9-11) is amended to read  
20 as follows:

21 11. a. Any person **[or corporation, or any officer or agent**  
22 **thereof,]** who shall knowingly violate any of the provisions of **[this**  
23 **act]** P.L.1970, c.73 (C.56:9-1 et seq.) or knowingly aid or advise in  
24 such violation**[, or who, as principal, manager, director, stockholder**  
25 **owning 10% or more of the aggregate outstanding capital stock of all**  
26 **classes of the corporation, agent, servant or employee, knowingly does**  
27 **any act comprising a part of such violation,]** is guilty of a  
28 **[misdemeanor and shall be punished by imprisonment for not more**  
29 **than 3 years or by a fine of not more than \$50,000.00 or both; and if**  
30 **a corporation by a fine of not more than \$100,000.00]** crime of the  
31 fourth degree.

32 b. Any person convicted pursuant to the provisions of subsection  
33 a. of this section **[is hereby denied the right and is hereby prohibited**  
34 **from managing or owning any business organization within this State,**  
35 **and from serving as an officer, director, trustee, member of any**  
36 **executive board or similar governing body, principal, manager,**  
37 **stockholder owning 10% or more of the aggregate outstanding capital**  
38 **stock of all classes of any corporation doing business in this State,**  
39 **and all persons within this State, are hereby denied the right to handle**  
40 **the goods of or in any manner deal with, directly or indirectly, those**  
41 **persons, companies or corporations under the interdict specified**  
42 **herein. All persons knowingly violating any of the provisions of this**  
43 **section, either directly or indirectly, or aiding or abetting directly or**  
44 **indirectly in any violation of any provisions of this section, shall be**  
45 **deemed guilty of a misdemeanor and shall be fined not less than**  
46 **\$100.00 nor more than \$1,000.00 and shall be punished by**

1 imprisonment for not less than 30 days nor more than 6 months, and  
2 shall forfeit not less than \$1,000.00 for each and every day such  
3 violation may continue, to be collected by a summary proceeding in a  
4 court of competent jurisdiction] of a violation involving or affecting  
5 trade or commerce of a value less than \$1,000,000.00 shall be guilty  
6 of a crime of the third degree. Any person convicted pursuant to the  
7 provisions of subsection a. of this section of a violation involving or  
8 affecting trade or commerce of a value equal to or greater than  
9 \$1,000,000.00 shall be guilty of a crime of the second degree. Any  
10 person convicted pursuant to the provisions of subsection a. of this  
11 section of a violation involving bid rigging on public contracts,  
12 regardless of the value of trade or commerce involved or affected,  
13 shall be guilty of a crime of the second degree.

14 c. Notwithstanding the provisions of subsections a. and b. of  
15 N.J.S.2C:43-3, a person convicted of a crime of the second degree  
16 under this section shall be subject to a fine of not less than \$50,000.00  
17 nor more than \$300,000.00, or, in the case of a corporation,  
18 partnership, or other business entity, be subject to a fine of not less  
19 than \$250,000.00 nor more than \$1,000,000.00, or imprisonment, or  
20 both, and a person convicted of a crime of the third degree under this  
21 section shall be subject to a fine of not less than \$25,000.00 nor more  
22 than \$150,000.00, or, in the case of a corporation, partnership, or  
23 other business entity, be subject to a fine of not less than \$100,000.00  
24 nor more than \$300,000.00, or imprisonment, or both.

25 (cf: P.L.1970, c.73, s.11)

26

27 105. N.J.S.18A:71A-10 is amended to read as follows:

28 18A:71A-10. Contracts, Purchases, Records, Travel.

29 a. The authority, in the exercise of its power to make and enter  
30 into contracts and agreements necessary or incidental to the  
31 performance of its duties and the execution of its powers, shall adopt  
32 standing operating rules and procedures providing that, except as  
33 hereinafter provided, no contract on behalf of the authority shall be  
34 entered into for the doing of any work, or for the hiring of equipment  
35 or vehicles, when the sum to be expended exceeds the sum of  
36 [\$12,300] \$25,000 or, after [June 30, 1998] the effective date of  
37 P.L. , c. (now before the Legislature as this bill , the amount  
38 determined pursuant to subsection b. of this section, unless the  
39 authority shall first publicly advertise for bids therefor, and shall award  
40 the contract to the lowest responsible bidder; provided, however, that  
41 such advertising shall not be required when the contract to be entered  
42 into is one for the furnishing or performing of services of a  
43 professional nature, or when the purchase is to be made through or by  
44 the Director of the Division of Purchase and Property pursuant to  
45 section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through a contract  
46 made by any of the following: the New Jersey Sports and Exposition  
47 Authority established under section 4 of P.L.1971, c.137 (C.5:10-4);

1 the Hackensack Meadowlands Development Commission established  
2 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
3 Highway Authority established under section 4 of P.L.1952, c.16  
4 (C.27:12B-4); the New Jersey Turnpike Authority established under  
5 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
6 Supply Authority established under section 4 of P.L.1981, c.293  
7 (C.58:1B-4); the South Jersey Transportation Authority established  
8 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
9 of New York and New Jersey established under R.S.32:1-4; and the  
10 Delaware River Port Authority established under R.S.32:3-2. Waiver  
11 of bid advertising and of actual bidding shall be made by resolution of  
12 the authority for those goods, services, and contracts described in  
13 sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 52:34-10).  
14 **[Special rules shall apply to the procurement of professional services**  
15 **when the authority shall consider a variety of factors associated with**  
16 **rendering the professional services, including price, in awarding of a**  
17 **contract.]**

18 This subsection shall not prevent the authority from having any  
19 work done by its own employees, nor shall it apply when the safety or  
20 protection of its or other public property requires. In the case of  
21 exigency or emergency, the authority shall, by resolution passed by the  
22 affirmative vote of a majority of its members, declare the exigency or  
23 emergency to exist, and set forth in the resolution the nature thereof  
24 and the approximate amount to be so expended.

25 b. **[The]** Commencing in the fifth year after the year in which  
26 P.L. , c. (now before the Legislature as this bill) takes effect, and  
27 every five years thereafter, the Governor, in consultation with the  
28 Department of the Treasury, shall [, not later than March 1 of each  
29 odd-numbered year,] adjust the threshold amount set forth in  
30 subsection a. of this section, or the threshold amount resulting from  
31 any adjustment under this subsection, in direct proportion to the rise  
32 or fall of the **[consumer price index for all urban consumers in the**  
33 **New York City and the Philadelphia areas as reported by the United**  
34 **States Department of Labor]** index rate as that term is defined in  
35 section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the  
36 adjustment to the nearest \$1,000. The Governor shall, no later than  
37 June 1 of **[each odd-numbered]** every fifth year, notify the authority  
38 of the adjustment. The adjustment shall become effective July 1 of  
39 **[each odd-numbered year]** the year in which it is made.

40 c. The authority, in the exercise of its power to make purchases  
41 and enter into contracts, leases and agreements necessary or incidental  
42 to the performance of its duties and the execution of its powers, shall  
43 adopt standing operating rules and procedures providing that, subject  
44 to subsections a. and b. of this section, for purchases, contracts, leases  
45 and agreements payable exclusively with or out of funds transferred  
46 from the Higher Education Student Assistance Fund, the purchases,



1 contracts, leases and agreements shall be subject to the authority's sole  
2 approval. Approval of the purchases, contracts, leases, and  
3 agreements shall not be required by any other department, division,  
4 board, bureau, agency, office or officer of the State.

5 d. The authority, without advertising for bids, or after having  
6 rejected all bids obtained pursuant to advertising therefor, may  
7 purchase any materials, supplies or equipment pursuant to a contract  
8 or contracts for the materials, supplies or equipment entered into on  
9 behalf of the State. Any department, division, commission, board,  
10 bureau, agency, office or officer of the State may, by joint action with  
11 the authority, purchase any articles used or needed by the State and  
12 the authority.

13 e. Records subject to the record retention requirements set forth  
14 under 20 U.S.C.s.1071 et seq., 20 U.S.C.s.1070c et seq., and 20  
15 U.S.C.s.1104 et seq. and implementing regulations and rules shall not  
16 be "public records" for purposes of the "Destruction of Public Records  
17 Law (1953)," P.L.1953, c.410 (C.47: 3-15 et seq.), notwithstanding  
18 the provisions of any law to the contrary.

19 f. The executive director shall have the power to approve of travel  
20 consistent with Office of Management and Budget travel regulations,  
21 except that for travel that is payable exclusively with or out of funds  
22 transferred from the Higher Education Student Assistance Fund, no  
23 approval shall be required by the Director of the Office of  
24 Management and Budget.

25 (cf: N.J.S.18A:71A-10)

26

27 106. Section 1 of P.L.1996, c.16 (C.52:34-6.1) is amended to read  
28 as follows:

29 1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et  
30 seq.) to the contrary, [and as an alternative to the procedures  
31 concerning the awarding of public contracts pursuant to that act,] the  
32 Director of the Division of Purchase and Property in the Department  
33 of the Treasury [may purchase goods and services, for State agencies  
34 and for the entities defined in section 1 of P.L.1959, c.40  
35 (C.52:27B-56.1), from] shall promulgate the Federal Supply  
36 Schedules of the Federal General Services Administration [as  
37 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
38 Pub.L.103-355, and regulations adopted pursuant to that law and by  
39 the rules and regulations which the director may promulgate] pursuant  
40 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
41 et seq.) as an alternate price guide for the purchase of goods and  
42 services for State agencies and for the entities defined in section 1 of  
43 P.L.1959, c.40 (C.52:27B-56.1), subject to the following conditions:

44 (1) the price of the goods being procured is no greater than the  
45 price offered to federal agencies;

46 (2) the Federal Supply Schedules may be used only for purchases

1 of up to \$500,000 per year or for one product unit at any price and  
2 only for reprographic equipment or services, including digital copiers,  
3 used by the State; and

4 (3) the State receives the benefit of federally mandated price  
5 reductions during the term of the contract and is protected from price  
6 increases during that time.

7 (cf: P.L.1996, c.16, s.1)

8

9 107. Section 2 of P.L.1996, c.16 (C.52:34-6.3) is amended to read  
10 as follows:

11 2. Notwithstanding the provisions of any other law to the contrary,  
12 **【and as an alternative to the procedures concerning the awarding of**  
13 **public contracts pursuant to the applicable statutes,】** the State  
14 authorities authorized to contract independently under various  
15 provisions of State law may**【, without advertising for bids, or having**  
16 **rejected all bids obtained pursuant to advertising, purchase goods and**  
17 **services from the Federal Supply Schedules of the Federal General**  
18 **Services Administration as permitted by the "Federal Acquisition**  
19 **Streamlining Act of 1994," Pub.L.103-355, and regulations adopted**  
20 **pursuant to that law and by the rules and regulations which the**  
21 **authority may adopt】** also use, without advertising for bids, or having  
22 rejected all bids obtained pursuant to advertising, the Federal Supply  
23 Schedules of the General Services Administration, promulgated by the  
24 Director of the Division of Purchase and Property in the Department  
25 of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1),  
26 subject to the following conditions:

27 (1) the price of the goods being procured is no greater than the  
28 price offered to federal agencies;

29 (2) the Federal Supply Schedules may be used only for purchases  
30 of up to \$500,000 per year or for one product unit at any price and  
31 only for reprographic equipment or services, including digital copiers,  
32 used by the authority; and

33 (3) the authority receives the benefit of federally mandated price  
34 reductions during the term of the contract and is protected from price  
35 increases during that time.

36 (cf: P.L.1996, c.16, s.2)

37

38 108. The following are repealed:

39 N.J.S.2C:27-7

40 P.L.1972, c.112 (C.40A:11-12.1 to 40A:11-12.6)

41 N.J.S.18A:18A-38

42 N.J.S.18A:18A-39

43 Section 1 of P.L.1981, c.186 (C.18A:18A-42.1)

44

45 109. This act shall take effect 90 days after enactment.

## 1 STATEMENT

2

3

4 This bill revises the "Local Public Contracts Law," P.L.1971, c.198  
5 (C.40A:11-1 et seq.), the "Public School Contracts Law,"  
6 N.J.S.18A:18A-1 et seq., and the laws governing State procurement.  
7 The bill also revises the criminal laws that deal with procurement  
8 procedures and the laws concerning the procurement procedures of  
9 certain independent authorities.

10 In revising the "Local Public Contracts Law" (LPCL) and the  
11 "Public School Contracts Law" (PSCL), the bill makes the laws more  
12 consistent with each other. Whenever possible, the bill eliminates  
13 variation among the laws to make public contracting procedures  
14 similar for all local and public school entities.

15 The bill establishes a competitive contracting procedure under the  
16 LPCL and the PSCL. The competitive contracting procedure will be  
17 used in lieu of public bidding for certain specified types of goods and  
18 services when the price of the goods and services being contracted for  
19 in the aggregate exceeds the bid threshold. The competitive  
20 contracting procedure requires proposals for competitive contracting  
21 to be awarded through a request for proposals process. The proposals  
22 will be evaluated by the purchasing agent according to the  
23 methodology described in the request for proposals. After evaluating  
24 the proposals, the purchasing agent will prepare a report evaluating  
25 and recommending the award of a contract or contracts. The report  
26 will list all vendors who submitted a proposal, rank them, recommend  
27 the vendor or vendors to be selected, explain the reasons for the  
28 selection, and detail the terms, conditions, scope of services, fees, and  
29 other matters to be incorporated into the contract. The awarding of  
30 the contract will be publicized in the official newspaper of the  
31 contracting unit.

32 The purpose of the competitive contracting procedure is to provide  
33 contracting units and boards of education with greater discretion in  
34 entering into contracts with qualified vendors than is permitted under  
35 the normal requirements of public bidding but to provide greater  
36 public oversight of the contracting process than is available under the  
37 current exceptions to public bidding for professional or extraordinary  
38 unspecifiable services.

39 In addition to establishing a competitive contracting procedure, the  
40 bill makes various changes and additions to existing law under the  
41 LPCL and the PSCL.

42 The bill adds, modifies and deletes certain definitions of terms used  
43 in the LPCL and PSCL.

44 The bill raises to \$17,500 the threshold above which a contract  
45 must be publicly advertised and publicly bid under the LPCL and the  
46 PSCL. It also permits a governing body or board of education to set  
47 a threshold lower than \$17,500 or to set a higher threshold of \$25,000  
if the purchasing agent is qualified pursuant to subsection b. of section

1 9 of P.L.1971, c.198 (C.40A:11-9), as proposed under section 15 of  
2 the bill. The bill authorizes the Governor to adjust the bid threshold  
3 every five years in proportion to the rise or fall of the "index rate,"  
4 which is the rate of annual percentage increase, rounded to the nearest  
5 half-percent, in the Implicit Price Deflator for State and Local  
6 Government Purchases of Goods and Services, computed and  
7 published quarterly by the United States Department of Commerce,  
8 Bureau of Economic Analysis. Under current law, the Governor is  
9 authorized to adjust the bid threshold every two years according to the  
10 Consumer Price Index.

11 The bill specifies that contracts required to be publicly advertised  
12 and bid are to be awarded to the lowest responsible bidder by  
13 resolution of the governing body or board of education, as the case  
14 may be. The bill permits a governing body or board of education to  
15 disqualify a bidder who would otherwise be qualified if the governing  
16 body or board of education finds that it has had prior negative  
17 experience with the bidder. The bill specifies the meaning of "prior  
18 negative experience" and the responsibilities of the governing body or  
19 board of education if it contemplates a disqualification based on prior  
20 negative experience.

21 The bill makes certain changes to the sections of both laws that  
22 enumerate exemptions to the requirement for public advertising and  
23 bidding. For the LPCL it adds a provision currently in the PSCL  
24 allowing contracts to be awarded without public advertising and  
25 bidding, by a resolution approved by two-thirds of the full membership  
26 of the governing body of the contracting unit, if the contracting unit  
27 has solicited and received at least three quotations on materials,  
28 supplies or equipment for which a State contract has been issued and  
29 the lowest responsible quotation is at least 10% less than the price the  
30 contracting unit would be charged for the identical items in the same  
31 quantities under the State contract.

32 Procedures to be followed for contracts that are not required to be  
33 publicly advertised and bid are specified in the bill. For contracts that  
34 in the aggregate are less than the bid threshold but 15 percent or more  
35 of that amount, and for contracts for certain items that are exempt  
36 from public bidding, the contract will be awarded after the solicitation  
37 of at least two competitive quotations, if practicable. A contract for  
38 extraordinary unspecifiable services, when in excess of the bid  
39 threshold and after documented effort by the contracting agent or  
40 purchasing agent to secure competitive quotations, can be awarded by  
41 resolution upon a determination in writing that the solicitation of  
42 competitive quotations is impracticable. Contracts that in the  
43 aggregate are less than 15 percent of the bid threshold can be awarded  
44 without soliciting competitive quotations.

45 Whenever two or more responses to a request of a contracting unit  
46 offer equal prices, and are the lowest responsible bids or proposals, the  
47 contract may be awarded to the vendor whose response is the most

1 advantageous, price and other factors considered.

2 The bill clarifies the language of existing law prohibiting the  
3 division of contracts in order to bring a contract or any of its parts  
4 under the bid threshold for the purpose of dispensing with the  
5 requirement of public advertising and bidding.

6 The bill permits the governing body of a contracting unit under the  
7 LPCL to establish the office of purchasing agent or a purchasing  
8 department or purchasing board with authority, responsibility and  
9 accountability as its contracting agent for the purchasing activity for  
10 the contracting unit, to prepare public advertising for bids, to receive  
11 bids on behalf of the contracting unit, to award contracts in the name  
12 of the contracting unit, and to conduct activities necessary or  
13 appropriate to the purchasing function of the contracting unit. The bill  
14 also requires the Director of the Division of Local Government  
15 Services in the Department of Community Affairs, after consultation  
16 with the Commissioner of Education, to establish criteria to qualify  
17 county purchasing agents and other individuals who have completed  
18 appropriate training and possess the necessary experience to exercise  
19 any supplemental authority set forth in the LPCL and PSCL. The bill  
20 also changes the term "contracting agent" to "purchasing agent" under  
21 the PSCL.

22 The bill permits joint agreements for the provision or performance  
23 of goods or services among any two or more contracting units under  
24 the LPCL and among one or more school districts and any  
25 municipality or county under the PSCL.

26 The bill permits local contracting units, boards of education, and  
27 the State authorities authorized to contract independently under  
28 various provisions of State law, without advertising for bids or having  
29 rejected all bids obtained pursuant to advertising, to use the Federal  
30 Supply Schedules of the General Services Administration promulgated  
31 by the Director of the Division of Purchase and Property in the  
32 Department of the Treasury pursuant to section 1 of P.L.1996, c.16  
33 (C.52:34-6.1), subject to certain conditions. The bill also requires the  
34 Director of the Division of Purchase and Property in the Department  
35 of the Treasury to promulgate the Federal Supply Schedules as an  
36 alternate price guide for the purchase of goods and services for State  
37 agencies and for the entities defined in section 1 of P.L.1959, c.40  
38 (C.52:27B-56.1), subject to the same conditions.

39 The bill adds a new provision to both the LPCL and the PSCL  
40 requiring that when goods or services are to be paid for by funds  
41 received from a bequest, legacy or gift containing written instructions  
42 as to specifications, manufacturer or vendor, or source of supply, the  
43 instructions must be honored.

44 The bill requires any prospective bidder who wishes to challenge a  
45 bid specification under the LPCL or the PSCL to file the challenge in  
46 writing with the contracting agent or purchasing agent not less than  
47 three business days prior to the opening of the bids.

1 The bill enumerates the reasons why all bids can be rejected under  
2 the LPCL and the PSCL.

3 For the PSCL, the bill permits contracts to be made for a period of  
4 24 months instead of 12 months as in current law. The LPCL already  
5 permits contracts to be made for 24 months. For both laws, the bill  
6 makes changes to the list of exceptions to the provision governing the  
7 maximum length of contracts.

8 The bill adds to both laws a provision permitting contracts for  
9 services other than professional services whose statutory length is  
10 three years or less to include provisions for no more than one two-year  
11 or two one-year extensions, subject to certain limitations.

12 The bill amends the sections under both the LPCL and the PSCL  
13 that permit separate plans for various types of work. The changes  
14 made by the bill would make the laws the same.

15 The bill requires that under the LPCL and the PSCL, personal  
16 property not needed for public use, the value of which exceeds 15  
17 percent of the bid threshold in any one sale, shall be sold at public sale  
18 to the highest bidder. Under current law the thresholds for public sale  
19 to the highest bidder differ between the two laws. The bill also  
20 permits the local contracting unit or board of education to authorize  
21 a public auction procedure or sealed bids and to make such a sale to  
22 any foreign nation that has diplomatic relations with the United States  
23 or any governmental unit in the United States without advertising for  
24 bids.

25 The bill makes various other amendments to provisions of the  
26 LPCL and PSCL in order to rephrase language in those provisions to  
27 comport with new terminology used in the bill.

28 The bill requires that the provision or performance of goods or  
29 services by a municipality or a county in connection with the  
30 operation, management or administration of an airport must be done  
31 according to the LPCL. It also exempts from the requirements of  
32 public advertising and bidding the management or operation of an  
33 airport owned by the contracting unit.

34 The bill raises to \$25,000 the bid thresholds of the following  
35 independent authorities: The New Jersey Sports and Exposition  
36 Authority, the Hackensack Meadowlands Development Commission,  
37 the New Jersey Highway Authority, the New Jersey Turnpike  
38 Authority, the New Jersey Water Supply Authority, the South Jersey  
39 Transportation Authority and the Higher Education Student Assistance  
40 Authority. For each of these authorities, the bill gives the Governor  
41 the authority to adjust the bid threshold every five years, according to  
42 the index rate. Each of these authorities is permitted to use the  
43 contracts of the other authorities as well as the contracts of the Port  
44 Authority of New York and New Jersey and the Delaware River Port  
45 Authority.

46 The bill permits the Director of the Division of Local Government  
47 Services, after consultation with the Commissioner of Education, to

1 adopt rules implementing the LPCL and the PSCL.

2 The bill raises the bid threshold for State agencies to \$25,000, to be  
3 adjusted by the Governor every five years according to the index rate.  
4 It also permits the Director of the Division of Purchase and Property  
5 to delegate purchasing authority to using agencies for purchases or  
6 contracts not in excess of \$25,000, subject to certain limitations. The  
7 bill gives the Director of the Division of Purchase and Property the  
8 power to establish and assess fees to cover the administrative costs of  
9 the operation and functioning of the division and the authority to  
10 conduct investigations and informal hearings and to issue final agency  
11 decisions regarding any bid protest or vendor performance issues.  
12 With certain exceptions, the bill gives the director final approval of all  
13 State contracts.

14 The bill allows the State Treasurer or the director to negotiate with  
15 bidders, after bid opening, the final terms and conditions of any  
16 contract, including price. This provision will apply to all bids received  
17 on and after the date of enactment of the bill.

18 The bill makes certain revisions to the criminal laws to clarify  
19 standards of conduct and enhance deterrence of criminal activity with  
20 respect to procurement procedures.

21 The bill permits purchases made under the State contract by local  
22 contracting units, boards of education, State colleges, or county  
23 colleges to be effectuated either as an outright purchase or by  
24 installment, lease or rental, so long as the vendor offers financing at an  
25 interest rate that is equal to or lower than the State line of credit.

26 The bill repeals N.J.S.2C:27-7, which concerns the crime of  
27 compensating a public servant for assisting private interests in relation  
28 to matters before the public servant. It also repeals P.L.1972, c.112  
29 (C.40A:11-12.1 through 12.6), which authorizes the governing body  
30 of any local unit to provide electronic data processing services for  
31 another governing body or bodies of other local units or to undertake  
32 joint operation of electronic data processing of official records and  
33 information. The bill also repeals N.J.S.18A:18A-38, which concerns  
34 the awarding of contracts under the PSCL when bids are equal; section  
35 1 of P.L.1981, c.186 (C.18A:18A-42.1), which concerns contracts for  
36 the services of a food management company under the PSCL; and  
37 N.J.S.18A:18A-39, which requires that a copy of contracts of more  
38 than \$10,000 for the construction, alteration, or repair of any building  
39 be filed with the State Board of Education within 10 days after being  
40 signed.

41 The bill takes effect 90 days after enactment.

STATEMENT TO  
**ASSEMBLY, No. 3519**

with Assembly Floor Amendments  
(Proposed By Assemblyman MALONE)

ADOPTED: DECEMBER 9, 1999

These amendments would make various changes to the bill.

First, the amendments change section 1 of the bill to specify that competitive contracting may not be used by local contracting units in lieu of public bidding for the administration of benefits under Work First New Jersey, established under P.L.1997, c.38 (C.44:10-55 et seq.), or under General Assistance.

Second, the amendments change section 8 of the bill, which amends section 4 of the "Local Public Contracts Law," P.L.1971, c.98 (C.40A:11-4), and change section 52 of the bill, which amends N.J.S.18A:18A-4 of the "Public School Contracts Law," to clarify that disqualification of a bidder for prior negative experience cannot be voided or shortened if pursuant to the disqualification a government body is prohibited by law from entering into a contract with a bidder.

Third, the amendments change section 9 of the bill, which amends section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5), to restore exemptions from public bidding for the marketing of recyclable materials recovered through a recycling program or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, and for the cooperative marketing of recyclable materials recovered through a recycling program.

Fourth, the amendments add to the types of contracts exempted from public advertising and bidding requirements under section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5), contracts for purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission. Section 53 of the bill already exempts these contracts from public advertising and bidding requirements under N.J.S.18A:18A-5 of the "Public School Contracts Law."

Fifth, the amendments clarify that the exemption from public advertising and bidding added by the bill to section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5) as subsection (5) of that section is for the combined collection and marketing or the combined cooperative collection and marketing of recycled material recovered through a recycling program or any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program.



Amendments to this subsection also make a technical correction to remove extraneous language.

Sixth, the amendments require additional procedures to be followed by local contracting units and boards of education when they utilize provisions under section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5) and N.J.S.18A:18A-5 of the "Public School Contracts Law," to purchase, without public advertising and bidding, materials, supplies or equipment for which a State contract has been issued, if the local contracting unit or board of education has solicited and received at least three quotations and the lowest responsible quotation is at least 10% less than the price under the State contract. The amendments require the local contracting unit or board of education to file with the Director of the Division of Local Government Services in the Department of Community Affairs, within five working days of the award of the contract, a copy of the purchase order relating to the contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number. The director will acknowledge receipt of the materials and make the materials available to the State Treasurer. The contracting unit or board of education will make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions.

In the case of local contracting units, the director periodically will review the material to determine the impact of the contracts on local contracting and will consult with the State Treasurer on the impact of the contracts on the State procurement process. The director, after consultation with the State Treasurer, may adopt rules to limit the use of this exemption after considering the impact of the exemption on State and local contracting or after considering the extent to which the award of contracts pursuant to this exemption is consistent with and in furtherance of the purposes of the public contracting laws.

Seventh, the amendments change section 18 of the bill, which amends section 12 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-12), section 58 of the bill, which amends N.J.S.18A:18A-10 of the "Public School Contracts Law," and section 107 of the bill, which amends section 2 of P.L.1996, c.16 (C.52:34-6.3), to require additional conditions to be met when local contracting units, boards of education, and certain State authorities make purchases from the Federal Supply Schedules of the General Services Administration without advertising for bids or having rejected all bids obtained pursuant to advertising. In order for such purchases to be made, the price of the goods or services being procured can be no greater than the price of the same or equivalent goods or services under the State contract, unless the contracting unit, board of education or authority determines that because of factors other than

price, selection of a vendor from the Federal Supply Schedules would be more advantageous. Also, a copy of the purchase order relating to any such contract, the requisition or request for purchase order, if applicable, and documentation identifying the price of the goods or services under the Federal Supply Schedules must be filed with the Director of the Division of Local Government Services in the Department of Community Affairs, or, in the case of authorities, with the State Treasurer, within five working days of the award of the contract. The director will acknowledge receipt of the materials and make them available to the State Treasurer. The local contracting unit, board of education or authority will make available to the director or State Treasurer upon request any other documents relating to the solicitation and award of the contract.

The amendments also amend section 106 of the bill, which amends section 1 of P.L.1996, c.16 (C.52:34-6.1), to require an additional condition to be met when State agencies make purchases from the Federal Supply Schedules. In order for such purchases to be made, the price of the goods or services can be no greater than the price of the same or equivalent goods or services under the State contract, unless the State determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules would be more advantageous to the State.

Eighth, the amendments change section 104 of the bill, which amends section 11 of P.L.1970, c.73 (C.56:9-11) to clarify that certain activities constitute a crime, rather than a crime of the fourth degree. The degree of the crime is determined pursuant to subsection b. of that section.

Finally, the amendments make technical changes to the bill to conform the text of a statute being amended to current law and to make terms used in different parts of the bill consistent with each other.

**SENATE, No. 2203**

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**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

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INTRODUCED NOVEMBER 8, 1999

**Sponsored by:**

**Senator WALTER J. KAVANAUGH**

**District 16 (Morris and Somerset)**

**SYNOPSIS**

Revises and strengthens various laws concerning public contracting.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning public procurement and amending, supplementing  
2 and repealing various parts of the statutory law.

3

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

6

7 1. (New section) Notwithstanding the provisions of any law, rule  
8 or regulation to the contrary, competitive contracting may be used by  
9 local contracting units in lieu of public bidding for procurement of  
10 specialized goods and services the price of which exceeds the bid  
11 threshold, for the following purposes:

12 a. The purchase or licensing of proprietary computer software  
13 designed for contracting unit purposes, which may include hardware  
14 intended for use with the proprietary software. This subsection shall  
15 not be utilized for the purpose of acquiring general purpose computer  
16 hardware or software;

17 b. The hiring of a for-profit entity or a not-for-profit entity  
18 incorporated under Title 15A of the New Jersey Statutes for the  
19 purpose of:

20 (1) the operation and management of a wastewater treatment  
21 system or a water supply or distribution facility of the type described  
22 in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15) ,  
23 provided that competitive contracting shall not be used as a means of  
24 awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et seq.) and  
25 P.L.1985, c.72 (C.58:27-1 et seq.);

26 (2) the operation, management or administration of recreation or  
27 social service facilities or programs; or

28 (3) the operation, management or administration of data processing  
29 services;

30 c. Services performed by an energy services company, including  
31 the design, measurement, financing and maintenance of energy savings  
32 equipment or renovations, which result in payment derived, in whole  
33 or in part, from the sale of verified energy savings over the term of an  
34 agreement with a public utility or subsidiary, but not the provision or  
35 performance of the physical improvements that result in energy  
36 savings, provided that such savings are calculated pursuant to  
37 guidelines promulgated by the Board of Public Utilities and further  
38 provided that the Local Finance Board shall find that the terms and  
39 conditions of any financing agreement are reasonable;

40 d. Homemaker--home health services;

41 e. Laboratory testing services;

42 f. Emergency medical services;

43 g. Contracted food services;

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

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1 h. Performance of patient care services by contracted medical staff  
2 at county hospitals, correctional facilities and long-term care facilities;

3 i. At the option of the governing body of the contracting unit, any  
4 good or service that is exempt from bidding pursuant to section 5 of  
5 P.L.1971, c.198 (C.40A:11-5);

6 j. Concessions;

7 k. The operation, management or administration of other services,  
8 with the approval of the Director of the Division of Local Government  
9 Services.

10 Any purpose included herein shall not be considered by a  
11 contracting unit as an extraordinary unspecifiable service pursuant to  
12 paragraph (a)(ii) of subsection (1) of section 5 of P.L.1971, c.198  
13 (C.40A:11-5).

14  
15 2. (New section) Unless an exception is provided for under section  
16 15 of P.L.1971, c.198 (C.40A:11-15) permitting a longer contract  
17 duration, contracts awarded pursuant to section 5 of P.L. , c. (C. )  
18 (pending before the Legislature as this bill) may be for a term not to  
19 exceed five years.

20  
21 3. (New section) a. In order to initiate competitive contracting,  
22 the governing body shall pass a resolution authorizing the use of  
23 competitive contracting each time specialized goods or services  
24 enumerated in section 1 of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill) are desired to be contracted. If the desired  
26 goods or services have previously been contracted for using the  
27 competitive contracting process then the original resolution of the  
28 governing body shall suffice.

29 b. The competitive contracting process shall be administered by a  
30 purchasing agent qualified pursuant to subsection b. (pending before  
31 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
32 c.198 (C.40A:11-9), or, by legal counsel of the contracting unit, or by  
33 an administrator of the contracting unit. Any contracts awarded under  
34 this process shall be made by resolution of the governing body of the  
35 contracting unit, subject to the provisions of subsection e. of section  
36 5 of P.L. , c. (C. )(now before the Legislature as this bill).

37  
38 4. (New section) The competitive contracting process shall utilize  
39 request for proposals documentation in accordance with the following  
40 provisions:

41 a. The purchasing agent or counsel or administrator shall prepare  
42 or have prepared request for proposal documentation, which shall  
43 include: all requirements deemed appropriate and necessary to allow  
44 for full and free competition between vendors; information necessary  
45 for potential vendors to submit a proposal; and a methodology by

1 which the contracting unit will evaluate and rank proposals received  
2 from vendors.

3 b. The methodology for the awarding of competitive contracts shall  
4 be based on an evaluation and ranking, which shall include technical,  
5 management, and cost related criteria, and may include a weighting of  
6 criteria, all developed in a way that is intended to meet the specific  
7 needs of the contracting unit, and where such criteria shall not unfairly  
8 or illegally discriminate against or exclude otherwise capable vendors.  
9 When an evaluation methodology uses a weighting of criteria, at the  
10 option of the contracting unit the weighting to be accorded to each  
11 criterion may be disclosed to vendors prior to receipt of the proposals.  
12 The methodology for awarding competitive contracts shall comply  
13 with such rules and regulations as the director may adopt, after  
14 consultation with the Commissioner of Education, pursuant to the  
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
16 seq.).

17 c. At no time during the proposal solicitation process shall the  
18 purchasing agent or counsel or administrator convey information,  
19 including price, to any potential vendor which could confer an unfair  
20 advantage upon that vendor over any other potential vendor. If a  
21 purchasing agent or counsel or administrator desires to change  
22 proposal documentation, the purchasing agent or counsel or  
23 administrator shall notify only those potential vendors who received  
24 the proposal documentation of any and all changes in writing and all  
25 existing documentation shall be changed appropriately.

26 d. All proposals and contracts shall be subject to the provisions of  
27 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
28 statement of corporate ownership and the provisions of P.L.1975,  
29 c.127(C.10:5-31 et seq.) concerning equal employment opportunity  
30 and affirmative action.

31

32 5. (New section) Competitive contracting proposals shall be  
33 solicited in the following manner:

34 a. A notice of the availability of request for proposal  
35 documentation shall be published in an official newspaper of the  
36 contracting unit at least 20 days prior to the date established for the  
37 submission of proposals. The contracting unit shall promptly reply to  
38 any request by an interested vendor by providing a copy of the request  
39 for proposals. The contracting unit may charge a fee for the proposal  
40 documentation that shall not exceed \$50.00 or the cost of reproducing  
41 the documentation, whichever is greater.

42 b. Each interested vendor shall submit a proposal which shall  
43 include all the information required by the request for proposals.  
44 Failure to meet the requirements of the request for proposals may  
45 result in the contracting unit disqualifying the vendor from further

1 consideration. Under no circumstances shall the provisions of a  
2 proposal be subject to negotiation by the contracting unit.

3 c. If the contracting unit, at the time of solicitation, utilizes its own  
4 employees to provide the goods or perform the services, or both,  
5 considered for competitive contracting, the governing body shall, at  
6 any time prior to, but no later than the time of solicitation for  
7 competitive contracting proposals, notify affected employees of the  
8 governing body's intention to solicit competitive contracting proposals.  
9 Employees or their representatives shall be permitted to submit  
10 recommendations and proposals affecting wages, hours, and terms and  
11 conditions of employment in such a manner as to meet the goals of the  
12 competitive contract. If employees are represented by an organization  
13 that has negotiated a contract with the contracting unit, only the  
14 bargaining unit shall be authorized to submit such recommendations or  
15 proposals. When requested by such employees, the governing body  
16 shall provide such information regarding budgets and the costs of  
17 performing the services by such employees as may be available.  
18 Nothing shall prevent such employees from making recommendations  
19 that may include modifications to existing labor agreements in order  
20 to reduce such costs in lieu of award of a competitive contract, and  
21 agreements implementing such recommendations may be considered  
22 as cause for rejecting all other proposals.

23 d. The purchasing agent or counsel or administrator shall evaluate  
24 all proposals only in accordance with the methodology described in the  
25 request for proposals. After proposals have been evaluated, the  
26 purchasing agent or counsel or administrator shall prepare a report  
27 evaluating and recommending the award of a contract or contracts.  
28 The report shall list the names of all potential vendors who submitted  
29 a proposal and shall summarize the proposals of each vendor. The  
30 report shall rank vendors in order of evaluation, shall recommend the  
31 selection of a vendor or vendors, as appropriate, for a contract, shall  
32 be clear in the reasons why the vendor or vendors have been selected  
33 among others considered, and shall detail the terms, conditions, scope  
34 of services, fees, and other matters to be incorporated into a contract.  
35 The report shall be made available to the public at least 48 hours prior  
36 to the awarding of the contract, or when made available to the  
37 governing body, whichever is sooner. The governing body shall have  
38 the right to reject all proposals for any of the reasons set forth in  
39 section 21 of P.L. , c. (C. )(now before the Legislature as this bill).

40 e. Award of a contract shall be made by resolution of the governing  
41 body of the contracting unit within 60 days of the receipt of the  
42 proposals, except that the proposals of any vendors who consent  
43 thereto, may, at the request of the contracting unit, be held for  
44 consideration for such longer period as may be agreed.

45 f. The report prepared pursuant to subsection d. of this section  
46 shall become part of the public record and shall reflect the final action

1 of the governing body. Contracts shall be executed pursuant to  
2 section 14 of P.L.1971, c.198 (C.40A:11-14).

3 g. The clerk or secretary of the contracting unit shall publish a  
4 notice in the official newspaper of the contracting unit summarizing  
5 the award of a contract, which shall include but not be limited to, the  
6 nature, duration, and amount of the contract, the name of the vendor  
7 and a statement that the resolution and contract are on file and  
8 available for public inspection in the office of the clerk or secretary of  
9 the municipality, county, local public authority or special district of the  
10 governing body.

11 h. All contract awards shall be subject to rules concerning  
12 certification of availability of funds adopted pursuant to section 3 of  
13 P.L.1971, c.198 (C.40A:11-3) and section 15 of P.L.1971, c.198  
14 (C.40A:11-15).

15 i. The director, after consultation with the Commissioner of  
16 Education, may adopt additional rules and regulations, in accordance  
17 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
18 1 et seq.), as may be necessary to effectuate the provisions of sections  
19 1 through 5 of P.L. , c. (C. ) (pending before the Legislature as this  
20 bill).

21

22 6. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read  
23 as follows:

24 2. As used herein the following words have the following  
25 definitions, unless the context otherwise indicates:

26 (1) "Contracting unit" means:

27 (a) Any county; or

28 (b) Any municipality; or

29 (c) Any board, commission, committee, authority or agency, which  
30 is not a State board, commission, committee, authority or agency, and  
31 which has administrative jurisdiction over any district other than a  
32 school district, project, or facility, included or operating in whole or  
33 in part, within the territorial boundaries of any county or municipality  
34 which exercises functions which are appropriate for the exercise by  
35 one or more units of local government, and which has statutory power  
36 to make purchases and enter into contracts **【or agreements】** awarded  
37 by a contracting agent for the provision or performance of **【any work**  
38 **or the furnishing or hiring of any materials or supplies usually**  
39 **required, the cost or contract price of which is to be paid with or out**  
40 **of public funds】** goods or services.

41 The term shall not include a private firm that has entered into a  
42 contract with a public entity for the provision of water supply services  
43 pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

44 "Contracting unit" shall not include a private firm or public  
45 authority that has entered into a contract with a public entity for the



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- 1 provision of wastewater treatment services pursuant to P.L.1995,  
2 c.216 (C.58:27-19 et al.).
- 3 (2) "Governing body" means:
- 4 (a) The governing body of the county, when the purchase is to be  
5 made or the contract is to be entered into by, or in behalf of, a county;  
6 or
- 7 (b) The governing body of the municipality, when the purchase is  
8 to be made or the contract is to be entered into by, or on behalf of, a  
9 municipality; or
- 10 (c) Any board, commission, committee, authority or agency of the  
11 character described in subsection (1) (c) of this section.
- 12 (3) "Contracting agent" means the governing body of a contracting  
13 unit, or **any board, commission, committee, officer, department,**  
14 **branch or agency** its authorized designee, which has the power to  
15 prepare the advertisements, to advertise for and receive bids and, as  
16 permitted by this act, to make awards for the contracting unit in  
17 connection with contracts.
- 18 (4) "Purchase" **is** means a transaction, for a valuable  
19 consideration, creating or acquiring an interest in goods, services and  
20 property, except real property or any interest therein.
- 21 (5) **["Materials" includes goods and property subject to chapter 2**  
22 **of Title 12A of the New Jersey Statutes, apparatus, or any other**  
23 **tangible thing, except real property or any interest therein.]** (Deleted  
24 by amendment, P.L. c. .) (Pending before the Legislature as this bill.)
- 25 (6) "Professional services" means services rendered or performed  
26 by a person authorized by law to practice a recognized profession,  
27 whose practice is regulated by law, and the performance of which  
28 services requires knowledge of an advanced type in a field of learning  
29 acquired by a prolonged formal course of specialized instruction and  
30 study as distinguished from general academic instruction or  
31 apprenticeship and training. Professional services may also mean  
32 services rendered in the provision or performance of **work** goods or  
33 services that **is** are original and creative in character in a recognized  
34 field of artistic endeavor.
- 35 (7) "Extraordinary unspecifiable services" means services which are  
36 specialized and qualitative in nature requiring expertise, extensive  
37 training and proven reputation in the field of endeavor.
- 38 (8) **["Project" means any work, undertaking, program, activity,**  
39 **development, redevelopment, construction or reconstruction of any**  
40 **area or areas.]** (Deleted by amendment, P.L. , c. .) (Pending before  
41 the Legislature as this bill.)
- 42 (9) "Work" **includes services and any other activity of a tangible**  
43 **or intangible nature** means any task, program, undertaking, or  
44 activity, related to any development, redevelopment, construction or

1 reconstruction performed or **【assumed】** provided pursuant to a  
2 contract **【or agreement】** with a contracting unit.

3 (10) "Homemaker--home health services" means at home personal  
4 care and home management provided to an individual or members of  
5 **【his】** the individual's family who reside with **【him】** the individual, or  
6 both, necessitated by the individual's illness or incapacity.  
7 "Homemaker--home health services" includes, but is not limited to, the  
8 services of a trained homemaker.

9 (11) "Recyclable material" means those materials which would  
10 otherwise become municipal solid waste, and which may be collected,  
11 separated or processed and returned to the economic mainstream in  
12 the form of raw materials or products.

13 (12) "Recycling" means any process by which materials which  
14 would otherwise become solid waste are collected, separated or  
15 processed and returned to the economic mainstream in the form of raw  
16 materials or products.

17 (13) "Marketing" means the **【marketing of designated recyclable**  
18 **materials source separated in a municipality which entails a marketing**  
19 **cost less than the cost of transporting the recyclable materials to solid**  
20 **waste facilities and disposing of the materials as municipal solid waste**  
21 **at the facility utilized by the municipality】** sale, disposition,  
22 assignment, or placement of designated recyclable materials with, or  
23 the granting of a concession to, a reseller, processor, materials  
24 recovery facility, or end-user of recyclable material, in accordance  
25 with a district solid waste management plan adopted pursuant to  
26 P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection  
27 of such recyclable material when collected through a system of routes  
28 by local government unit employees or under a contract administered  
29 by a local government unit.

30 (14) "Municipal solid waste" means , as appropriate to the  
31 circumstances, all residential, commercial and institutional solid waste  
32 generated within the boundaries of a municipality; or the formal  
33 collection of such solid wastes or recyclable material in any  
34 combination thereof when collected through a system of routes by  
35 local government unit employees or under a contract administered by  
36 a local government unit.

37 (15) "Distribution" (when used in relation to electricity) means the  
38 process of conveying electricity from a contracting unit **【who】**that is  
39 a generator of electricity or a wholesale purchaser of electricity to  
40 retail customers or other end users of electricity.

41 (16) "Transmission" (when used in relation to electricity) means  
42 the conveyance of electricity from its point of generation to a  
43 contracting unit **【who】** that purchases it on a wholesale basis for  
44 resale.

1 (17) "Disposition" means the transportation, placement, reuse, sale,  
2 donation, transfer or temporary storage of recyclable materials for all  
3 possible uses except for disposal as municipal solid waste.

4 (18) "Cooperative marketing" means the joint marketing by two or  
5 more contracting units **[within the same county, or adjacent or**  
6 **proximate counties,]** of the source separated recyclable materials  
7 designated in a district recycling plan required pursuant to section 3 of  
8 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative  
9 agreement entered into by the participating contracting units thereof.

10 (19) "Aggregate" means the sums expended or to be expended for  
11 the provision or performance of any goods or services in connection  
12 with the same immediate purpose or task, or the furnishing of similar  
13 goods or services, during the same contract year through a contract  
14 awarded by a contracting agent.

15 (20) "Bid threshold" means the dollar amount set in section 3 of  
16 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall  
17 advertise for and receive sealed bids in accordance with procedures set  
18 forth in P.L. , c. (C. ) (pending before the Legislature as this bill).

19 (21) "Contract" means any agreement, including but not limited to  
20 a purchase order or a formal agreement, which is a legally binding  
21 relationship enforceable by law, between a vendor who agrees to  
22 provide or perform goods or services and a contracting unit which  
23 agrees to compensate a vendor, as defined by and subject to the terms  
24 and conditions of the agreement. A contract also may include an  
25 arrangement whereby a vendor compensates a contracting unit for the  
26 vendor's right to perform a service, such as, but not limited to,  
27 operating a concession.

28 (22) "Contract year" means the period of 12 consecutive months  
29 following the award of a contract.

30 (23) "Competitive contracting" means the method described in  
31 sections 1 through 5 of P.L. , c. (C. ) (pending before the  
32 Legislature as this bill) of contracting for specialized goods and  
33 services in which formal proposals are solicited from vendors; formal  
34 proposals are evaluated by the purchasing agent or counsel or  
35 administrator; and the governing body awards a contract to a vendor  
36 or vendors from among the formal proposals received.

37 (24) "Goods and services" or "goods or services" means any work,  
38 labor, commodities, equipment, materials, or supplies of any tangible  
39 or intangible nature, except real property or any interest therein,  
40 provided or performed through a contract awarded by a contracting  
41 agent, including goods and property subject to N.J.S.12A:2-101 et  
42 seq.

43 (25) "Library and educational goods and services" means  
44 textbooks, copyrighted materials, student produced publications and  
45 services incidental thereto, including but not limited to books,  
46 periodicals, newspapers, documents, pamphlets, photographs,

1 reproductions, microfilms, pictorial or graphic works, musical scores,  
2 maps, charts, globes, sound recordings, slides, films, filmstrips, video  
3 and magnetic tapes, other printed or published matter and audiovisual  
4 and other materials of a similar nature, necessary binding or rebinding  
5 of library materials, and specialized computer software used as a  
6 supplement or in lieu of textbooks or reference material.

7 (26) "Lowest price" means the least possible amount that meets all  
8 requirements of the request of a contracting agent.

9 (27) "Lowest responsible bidder or vendor" means the bidder or  
10 vendor: (a) whose response to a request for bids offers the lowest  
11 price and is responsive; and (b) who is responsible.

12 (28) "Official newspaper" means any newspaper designated by the  
13 contracting unit pursuant to R.S.35:1-1 et seq.

14 (29) "Purchase order" means a document issued by the contracting  
15 agent authorizing a purchase transaction with a vendor to provide or  
16 perform goods or services to the contracting unit, which, when  
17 fulfilled in accordance with the terms and conditions of a request of a  
18 contracting agent and other provisions and procedures that may be  
19 established by the contracting unit, will result in payment by the  
20 contracting unit.

21 (30) "Purchasing agent" means the individual duly assigned the  
22 authority, responsibility, and accountability for the purchasing activity  
23 of the contracting unit, and who has such duties as are defined by an  
24 authority appropriate to the form and structure of the contracting unit,  
25 and P.L.1971, c.198 (C.40A:11-1 et seq.).

26 (31) "Quotation" means the response to a formal or informal  
27 request made by a contracting agent by a vendor for provision or  
28 performance of goods or services, when the aggregate cost is less than  
29 the bid threshold. Quotations may be in writing, or taken verbally if  
30 a record is kept by the contracting agent.

31 (32) "Responsible" means able to complete the contract in  
32 accordance with its requirements, including but not limited to  
33 requirements pertaining to experience, moral integrity, operating  
34 capacity, financial capacity, credit, and workforce, equipment, and  
35 facilities availability.

36 (33) "Responsive" means conforming in all material respects to the  
37 terms and conditions, specifications, legal requirements, and other  
38 provisions of the request.

39 (34) "Public works" means building, altering, repairing, improving  
40 or demolishing any public structure or facility constructed or acquired  
41 by a contracting unit to house local government functions or provide  
42 water, waste disposal, power, transportation, and other public  
43 infrastructures.

44 (35) "Director" means the Director of the Division of Local  
45 Government Services in the Department of Community Affairs.

46 (36) "Administrator" means a municipal administrator appointed

1 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business  
2 administrator, a municipal manager or a municipal administrator  
3 appointed pursuant to the "Optional Municipal Charter Law,"  
4 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed  
5 pursuant to "the municipal manager form of government law,"  
6 R.S.40:79-1 et seq.; or the person holding responsibility for the overall  
7 operations of an authority that falls under the "Local Authorities Fiscal  
8 Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

9 (37) "Concession" means the granting of a license or right to act  
10 for or on behalf of the contracting unit, or to provide a service  
11 requiring the approval or endorsement of the contracting unit, and  
12 which may or may not involve a payment or exchange, or provision of  
13 services by or to the contracting unit.

14 (38) "Index rate" means the rate of annual percentage increase,  
15 rounded to the nearest half-percent, in the Implicit Price Deflator for  
16 State and Local Government Purchases of Goods and Services,  
17 computed and published quarterly by the United States Department of  
18 Commerce, Bureau of Economic Analysis.

19 (39) "Proprietary" means goods or services of a specialized nature,  
20 that may be made or marketed by a person or persons having the  
21 exclusive right to make or sell them, when the need for such goods or  
22 services has been certified in writing by the governing body of the  
23 contracting unit to be necessary for the conduct of its affairs.

24 (40) "Service or services" means the performance of work, or the  
25 furnishing of labor, time, or effort, or any combination thereof, not  
26 involving or connected to the delivery or ownership of a specified end  
27 product or goods or a manufacturing process. Service or services may  
28 also include an arrangement in which a vendor compensates the  
29 contracting unit for the vendor's right to operate a concession.

30 (cf: P.L.1995, c.216, s.10)

31  
32 7. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read  
33 as follows:

34 3. Bid threshold; period of contracts a. **【Any purchase, contract**  
35 **or agreement for the performance of any work or the furnishing or**  
36 **hiring of materials or supplies,】.**

37 When the cost or price of **【which, together with any other sums**  
38 **expended or to be expended for the performance of any work or**  
39 **services in connection with the same immediate program, undertaking,**  
40 **activity or project or the furnishing of similar materials or supplies**  
41 **during the same fiscal year】** any contract **【paid with or out of public**  
42 **funds,】** awarded by the contracting agent in the aggregate does not  
43 exceed in **【the fiscal】** a contract year the total sum of **【\$7,500.00 or**  
44 **the amount determined pursuant to subsection b. of this section】**  
45 \$17,500, the contract may be **【made, negotiated or】** awarded by a

1 **[contracting]** purchasing agent when so authorized by ordinance or  
2 resolution, as appropriate to the contracting unit, of the governing  
3 body of the contracting unit without public advertising for bids, except  
4 that the governing body of any contracting unit may adopt an  
5 ordinance or resolution to set a lower threshold for the receipt of  
6 public bids or the solicitation of competitive quotations. If the  
7 purchasing agent is qualified pursuant to subsection b. (pending before  
8 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
9 c.198 (C.40A:11-9), the governing body of the contracting unit may  
10 establish that the bid threshold may be up to \$25,000. Such  
11 authorization may be granted for each **[purchase,]** contract **[or**  
12 **agreement]** or by a general delegation of the power to **[make,]**  
13 negotiate **[or]** and award such **[purchases,]** contracts **[or agreements]**  
14 pursuant to this section.

15 **b.** Any **[purchase,]** contract **[or agreement]** made pursuant to this  
16 section may be awarded for a period of 24 consecutive months  
17 **[notwithstanding that such 24-month period does not coincide with**  
18 **the fiscal year]**, except that contracts for professional services  
19 pursuant to subparagraph (i) of paragraph (a) of subsection (1) of  
20 section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a  
21 period not exceeding 12 consecutive months. The Division of Local  
22 Government Services shall adopt and promulgate rules and regulations  
23 concerning the methods of accounting for all contracts that do not  
24 coincide with the contracting unit's fiscal year.

25 **[b.] c.** The Governor, in consultation with the Department of the  
26 Treasury, shall, no later than March 1 of **[each odd-numbered]** every  
27 fifth year beginning in the fifth year after the year in which P.L. , c.  
28 (now before the Legislature as this bill) takes effect, adjust the  
29 threshold amount and the higher threshold amount which the  
30 governing body is permitted to establish, as set forth in subsection a.  
31 of this section, or **[subsequent to 1985]** the threshold amount  
32 resulting from any adjustment under this subsection **[or section 17 of**  
33 **P.L.1985, c.469]**, in direct proportion to the rise or fall of the  
34 **[Consumer Price Index for all urban consumers in the New York City**  
35 **and the Philadelphia areas as reported by the United States**  
36 **Department of Labor]** index rate as that term is defined in section 2  
37 of P.L.1971, c.198 (C.40A:11-2) (pending before the Legislature as  
38 section 6 of this bill), and shall round the adjustment to the nearest  
39 \$1,000 . The Governor shall, no later than June 1 of **[each**  
40 **odd-numbered]** every fifth year, notify each governing body of the  
41 adjustment. The adjustment shall become effective on July 1 of **[each**  
42 **odd-numbered year]** the year in which it is made.  
43 (cf: P.L.1996, c.113, s.18)

1 8. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to read  
2 as follows:

3 4. **【Contracts and agreements required to be advertised.】** a. Every  
4 contract **【or agreement】** awarded by the contracting agent for the  
5 provision or performance of any [work or the furnishing or hiring of  
6 any materials or supplies] goods or services, the cost **【or the contract**  
7 **price whereof is to be paid with or out of public funds, not included**  
8 **within the terms of section 3 of this act】** of which in the aggregate  
9 exceeds the bid threshold, shall be **【made or】** awarded only by  
10 resolution of the governing body of the contracting unit to the lowest  
11 responsible bidder after public advertising for bids and bidding  
12 therefor, except as is provided otherwise in this act or specifically by  
13 any other law. **【No work, materials or supplies shall be undertaken,**  
14 **acquired or furnished for a sum exceeding in the aggregate the amount**  
15 **set forth in, or the amount calculated by the Governor pursuant to,**  
16 **section 3 of P.L.1971, c.198 (C.40A:11-3), except by contract or**  
17 **agreement.】** The governing body of a contracting unit may, by  
18 resolution approved by a majority of the governing body and subject  
19 to subsections b. and c. of this section, disqualify a bidder who would  
20 otherwise be determined to be the lowest responsible bidder, if the  
21 governing body finds that it has had prior negative experience with the  
22 bidder.

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

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

31 (2) the bidder defaulted on a contract, thereby requiring the local  
32 unit to utilize the services of another contractor to provide the goods  
33 or perform the services or to correct or complete the contract;

34 (3) the bidder defaulted on a contract, thereby requiring the local  
35 unit to look to the bidder's surety for completion of the contract or  
36 tender of the costs of completion; or

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

41 c. The following conditions apply if the governing body of a  
42 contracting unit is contemplating a disqualification based on prior  
43 negative experience:

44 (1) The existence of any of the indicators of prior negative  
45 experience set forth in this section shall not require that a bidder be  
46 disqualified. In each instance, the decision to disqualify shall be made

1 within the discretion of the governing body and shall be rendered in  
2 the best interests of the contracting unit.

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

6 (3) The bidder shall be furnished by the governing body with a  
7 written notice (a)stating that a disqualification is being considered; (b)  
8 setting forth the reason for the disqualification; and (c) indicating that  
9 the bidder shall be accorded an opportunity for a hearing before the  
10 governing body if the bidder so requests within a stated period of time.  
11 At the hearing, the bidder shall show good cause why the bidder  
12 should not be disqualified by presenting documents and testimony. If  
13 the governing body determines that good cause has not been shown by  
14 the bidder, it may vote to find the bidder lacking in responsibility and,  
15 thus, disqualified.

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

18 (5) A disqualification may be voided or the period thereof may be  
19 reduced, in the discretion of the governing body, upon the submission  
20 of a good faith application under oath, supported by documentary  
21 evidence, setting forth substantial and appropriate grounds for the  
22 granting of relief, such as reversal of a judgment, or actual change of  
23 ownership, management or control of the bidder.

24 (6) An opportunity for a hearing need not be offered to a bidder  
25 whose disqualification is based on its suspension or debarment by an  
26 agency or department of the executive branch of the State of New  
27 Jersey. The term of such a disqualification shall be concurrent with  
28 the term of the suspension or debarment by the State agency or  
29 department.

30 (cf: P.L.1985, c.469, s.7)

31

32 9. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read  
33 as follows:

34 5. Exceptions. Any **[purchase,]** contract **[or agreement of the**  
35 **character described in section 4 of P.L.1971, c.198 (C.40A:11-4)]** the  
36 amount of which exceeds the bid threshold, may be **[made,]**  
37 negotiated **[or]** and awarded by the governing body without public  
38 advertising for bids and bidding therefor and shall be awarded by  
39 resolution of the governing body if:

40 (1) The subject matter thereof consists of:

41 (a) (i) Professional services. The governing body shall in each  
42 instance state supporting reasons for its action in the resolution  
43 awarding each contract and shall forthwith cause to be printed once,  
44 in **[a]** the official newspaper **[authorized by law to publish its legal**  
45 **advertisements],** a brief notice stating the nature, duration, service and  
46 amount of the contract, and that the resolution and contract are on file



1 and available for public inspection in the office of the clerk of the  
2 county or municipality, or, in the case of a contracting unit created by  
3 more than one county or municipality, of the counties or municipalities  
4 creating such contracting unit; or (ii) Extraordinary unspecifiable  
5 services. The application of this exception shall be construed narrowly  
6 in favor of open competitive bidding, where possible, and the Division  
7 of Local Government Services is authorized to adopt and promulgate  
8 rules and regulations after consultation with the Commissioner of  
9 Education limiting the use of this exception in accordance with the  
10 intention herein expressed. The governing body shall in each instance  
11 state supporting reasons for its action in the resolution awarding each  
12 contract and shall forthwith cause to be printed, in the manner set  
13 forth in subsection (1) (a) (i) of this section, a brief notice of the  
14 award of such contract;

15 (b) The doing of any work by employees of the contracting unit;

16 (c) The printing of legal briefs, records and appendices to be used  
17 in any legal proceeding in which the contracting **[party]** unit may be  
18 a party;

19 (d) The furnishing of a tax map or maps for the contracting **[party]**  
20 unit;

21 (e) The purchase of perishable foods as a subsistence supply;

22 (f) The supplying of any product or the rendering of any service by  
23 a public utility, which is subject to the jurisdiction of the Board of  
24 Public Utilities or the Federal Energy Regulatory Commission or its  
25 successor, in accordance with tariffs and schedules of charges made,  
26 charged or exacted, filed with the board or commission;

27 (g) The acquisition, subject to prior approval of the Attorney  
28 General, of special equipment for confidential investigation;

29 (h) The printing of bonds and documents necessary to the issuance  
30 and sale thereof by a contracting unit;

31 (i) Equipment repair service if in the nature of an extraordinary  
32 unspecifiable service and necessary parts furnished in connection with  
33 such service, which exception shall be in accordance with the  
34 requirements for extraordinary unspecifiable services;

35 (j) The publishing of legal notices in newspapers as required by  
36 law;

37 (k) The acquisition of artifacts or other items of unique intrinsic,  
38 artistic or historical character;

39 (l) **[Election expenses]** Those goods and services necessary or  
40 required to prepare and conduct an election;

41 (m) Insurance, including the purchase of insurance coverage and  
42 consultant services, which exception shall be in accordance with the  
43 requirements for extraordinary unspecifiable services;

44 (n) The doing of any work by handicapped persons employed by a  
45 sheltered workshop;

46 (o) The provision of any **[service or the furnishing of materials]**

1 goods or services including those of a commercial nature, attendant  
2 upon the operation of a restaurant by any nonprofit, duly incorporated,  
3 historical society at or on any historical preservation site;

4 (p) **【Homemaker--home health services performed by voluntary,**  
5 **nonprofit agencies;】** (Deleted by amendment, P.L. , c. .) (Pending  
6 before the Legislature as this bill.)

7 (q) **【The purchase of materials and services for a law library**  
8 **established pursuant to R.S.40:33-14, including books, periodicals,**  
9 **newspapers, documents, pamphlets, photographs, reproductions,**  
10 **microforms, pictorial or graphic works, copyright and patent materials,**  
11 **maps, charts, globes, sound recordings, slides, films, filmstrips, video**  
12 **and magnetic tapes, and other audiovisual, printed, or published**  
13 **material of a similar nature; necessary binding or rebinding of law**  
14 **library materials; and specialized library services】** Library and  
15 educational goods and services;

16 (r) On-site inspections undertaken by private agencies pursuant to  
17 the "State Uniform Construction Code Act," P.L.1975, c.217  
18 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;

19 (s) **【The marketing of recyclable materials recovered through a**  
20 **recycling program, or the marketing of any product intentionally**  
21 **produced or derived from solid waste received at a resource recovery**  
22 **facility or recovered through a resource recovery program, including,**  
23 **but not limited to, refuse-derived fuel, compost materials, methane**  
24 **gas, and other similar products;】** (Deleted by amendment, P.L. c. .)  
25 (Pending before the Legislature as this bill.)

26 (t) **【Emergency medical services provided by a hospital to the**  
27 **residents of a municipality or county, provided that: (a) such**  
28 **exception be allowed only after the governing body determines that the**  
29 **emergency services are available only from one provider; and (b) if**  
30 **the contract is awarded without advertising for bids or bidding the**  
31 **governing body shall in each instance state supporting reasons for its**  
32 **action in a resolution awarding the contract and cause to be printed**  
33 **once in a newspaper authorized by law to publish its legal**  
34 **advertisements a brief notice stating the nature, duration, service, and**  
35 **amount of the contract; and (c) the contract shall be kept on file for**  
36 **public inspection in the office of the clerk of the municipality;】**  
37 (Deleted by amendment, P.L. c. .) (Pending before the Legislature  
38 as this bill.)

39 (u) Contracting unit towing and storage contracts, provided that  
40 all such contracts shall be pursuant to reasonable non-exclusionary and  
41 non-discriminatory terms and conditions, which may include the  
42 provision of such services on a rotating basis, at the rates and charges  
43 set by the municipality pursuant to section 1 of P.L.1979, c.101  
44 (C.40:48-2.49). All contracting unit towing and storage contracts for  
45 services to be provided at rates and charges other than those  
46 established pursuant to the terms of this paragraph shall only be

1 awarded to the lowest responsible bidder in accordance with the  
2 provisions of the "Local Public Contracts Law" and without regard for  
3 the value of the contract therefor;

4 (v) The purchase of steam or electricity from, or the rendering of  
5 services directly related to the purchase of such steam or electricity  
6 from a qualifying small power production facility or a qualifying  
7 cogeneration facility as defined pursuant to 16 U.S.C.796;

8 (w) The purchase of electricity or administrative or dispatching  
9 services directly related to the transmission of such purchased  
10 electricity by a contracting unit engaged in the generation of  
11 electricity;

12 (x) The printing of municipal ordinances or other services  
13 necessarily incurred in connection with the revision and codification  
14 of municipal ordinances;

15 (y) An agreement for the purchase of an equitable interest in a  
16 water supply facility or for the provision of water supply services  
17 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
18 an agreement entered into pursuant to P.L.1989, c.109  
19 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no  
20 later than six months after the effective date of P.L.1993, c.381;

21 (z) A contract for the provision of water supply services entered  
22 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

23 (aa) **【The cooperative marketing of recyclable materials recovered**  
24 **through a recycling program; or】** (Deleted by amendment, P.L. . . .  
25 c. . .) (Pending before the Legislature as this bill.)

26 (bb) A contract for the provision of wastewater treatment services  
27 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

28 (cc) Expenses for travel and conferences;

29 (dd) The provision or performance of goods or services for the  
30 support or maintenance of proprietary computer hardware and  
31 software, except that this provision shall not be utilized to acquire or  
32 upgrade non-proprietary hardware or to acquire or update non-  
33 proprietary software;

34 (ee) The management or operation of an airport owned by the  
35 contracting unit pursuant to R.S.40:8-1 et seq.

36 (2) It is to be made or entered into with the United States of  
37 America, the State of New Jersey, county or municipality or any  
38 board, body, officer, agency or authority thereof **【and】** or any other  
39 state or subdivision thereof.

40 (3) **【The contracting agent has】** Bids have been advertised **【for**  
41 **bids】** pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two  
42 occasions and (a) **【 has received】** no bids have been received on both  
43 occasions in response to **【its】** the advertisement, or (b) the governing  
44 body has rejected such bids on two occasions because **【the contracting**  
45 **agent】** it has determined that they are not reasonable as to price, on

1 the basis of cost estimates prepared for or by the contracting agent  
2 prior to the advertising therefor, or have not been independently  
3 arrived at in open competition, or (c) on one occasion no bids were  
4 received pursuant to (a) and on one occasion all bids were rejected  
5 pursuant to (b), in whatever sequence; any such contract **[or**  
6 **agreement]** may then be negotiated and may be awarded upon  
7 adoption of a resolution by a two-thirds affirmative vote of the  
8 authorized membership of the governing body authorizing such  
9 contract **[or agreement]**; provided, however, that:

10 (i) A reasonable effort is first made by the contracting agent to  
11 determine that the same or equivalent **[materials or supplies]** goods  
12 or services, at a cost which is lower than the negotiated price, are not  
13 available from an agency or authority of the United States, the State  
14 of New Jersey or of the county in which the contracting unit is  
15 located, or any municipality in close proximity to the contracting unit;

16 (ii) The terms, conditions, restrictions and specifications set forth  
17 in the negotiated contract **[or agreement]** are not substantially  
18 different from those which were the subject of competitive bidding  
19 pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

20 (iii) Any minor amendment or modification of any of the terms,  
21 conditions, restrictions and specifications, which were the subject of  
22 competitive bidding pursuant to section 4 of P.L.1971, c.198  
23 (C.40A:11-4), shall be stated in the resolution awarding such contract  
24 **[or agreement]**; provided further, however, that if on the second  
25 occasion the bids received are rejected as unreasonable as to price, the  
26 contracting agent shall notify each responsible bidder submitting bids  
27 on the second occasion of its intention to negotiate, and afford each  
28 bidder a reasonable opportunity to negotiate, but the governing body  
29 shall not award such contract **[or agreement]** unless the negotiated  
30 price is lower than the lowest rejected bid price submitted on the  
31 second occasion by a responsible bidder, is the lowest negotiated price  
32 offered by any responsible **[supplier]** vendor, and is a reasonable price  
33 for such **[work, materials, supplies]** goods or services.

34 Whenever a contracting unit shall determine that a bid was not  
35 arrived at independently in open competition pursuant to subsection  
36 (3) of this section it shall thereupon notify the county prosecutor of  
37 the county in which the contracting unit is located and the Attorney  
38 General of the facts upon which its determination is based, and when  
39 appropriate, it may institute appropriate proceedings in any State or  
40 federal court of competent jurisdiction for a violation of any State or  
41 federal antitrust law or laws relating to the unlawful restraint of trade.

42 (4) The contracting unit has solicited and received at least three  
43 quotations on materials, supplies or equipment for which a State  
44 contract has been issued pursuant to section 12 of P.L.1971, c.198  
45 (C.40A:11-12), and the lowest responsible quotation is at least 10%

1 less than the price the contracting unit would be charged for the  
2 identical materials, supplies or equipment, in the same quantities,  
3 under the State contract. Any such contract entered into pursuant to  
4 this subsection may be awarded only upon adoption of a resolution by  
5 the affirmative vote of two-thirds of the full membership of the  
6 governing body of the contracting unit at a meeting thereof  
7 authorizing such a contract.

8 (5) Notwithstanding any provision of law, rule or regulation to the  
9 contrary, the subject matter consists of the collection and marketing,  
10 or the cooperative collection and marketing of recycled material  
11 recovered through a recycling program, or any product intentionally  
12 produced or derived from solid waste received at a resource recovery  
13 facility or recovered through a resource recovery program including,  
14 but not limited to refuse-derived fuel compost materials, compost  
15 materials, methane gas, and other similar products, provided that in  
16 lieu of engaging in such public advertising for bids and the bidding  
17 therefor, the contracting unit shall, prior to commencing the  
18 procurement process, submit for approval to the Director of the  
19 Division of Local Government Services, a written detailed description  
20 of the process to be followed in securing said services. Within 30 days  
21 after receipt of the written description the director shall, if the director  
22 finds that the process provides for fair competition and integrity in the  
23 negotiation process, approve, in writing, the description submitted by  
24 the contracting unit. If the director finds that the process does not  
25 provide for fair competition and integrity in the negotiation process,  
26 the director shall advise the contracting unit of the deficiencies that  
27 must be remedied. If the director fails to respond in writing to the  
28 contracting unit within 30 days, the procurement process as described  
29 shall be deemed approved. As used in this section, "collection" means  
30 the physical removal of recyclable materials from curbside or any other  
31 location selected by the contracting unit.

32 (cf: P.L.1997, c.387, s.2)

33  
34 10. Section 6 of P.L.1971, c.198 (C.40A:11-6) is amended to read  
35 as follows:

36 6. Emergency **[purchases and]** contracts. Any **[purchase,]**  
37 contract **[or agreement]** may be **[made,]** negotiated or awarded for  
38 a contracting unit without public advertising for bids and bidding  
39 therefor, notwithstanding that the **[cost or]** contract price will exceed  
40 the **[amount set forth in, or the amount calculated by the Governor**  
41 **pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3)]** bid threshold,  
42 when an emergency affecting the public health, safety or welfare  
43 requires the immediate delivery of **[the articles]** goods or the  
44 performance of **[the]** services; provided that the awarding **[or**  
45 **making]** of such **[purchases,]** contracts **[or agreements are]** is made  
46 in the following manner:

1 a. [A written requisition for the performance of such work or  
2 labor, or the furnishing of materials, supplies or services is filed with  
3 the contracting agent or his deputy in charge describing the nature of  
4 the emergency, the time of its occurrence and the need for invoking  
5 this section, certified by the officer or director in charge of the  
6 department wherein the emergency occurred, or such other officer or  
7 employee as may be authorized to act in place of said officer or  
8 director, and the contracting agent or his deputy in charge, being  
9 satisfied that the emergency exists, is hereby authorized to award a  
10 contract for said work or labor, materials, supplies or services.] The  
11 official in charge of the agency wherein the emergency occurred, or  
12 such other officer or employee as may be authorized to act in place of  
13 that official, shall notify the purchasing agent, a supervisor of the  
14 purchasing agent, or a designated representative of the governing  
15 body, as may be appropriate to the form of government, of the need  
16 for the performance of a contract, the nature of the emergency, the  
17 time of its occurrence and the need for invoking this section. If that  
18 person is satisfied that an emergency exists, that person shall be  
19 authorized to award a contract or contracts for such purposes as may  
20 be necessary to respond to the emergent needs. Such notification shall  
21 be reduced to writing and filed with the purchasing agent as soon as  
22 practicable.

23 b. Upon the furnishing of such [work or labor, materials, supplies]  
24 goods or services, in accordance with the terms of the contract [or  
25 agreement], the contractor furnishing such [work or labor, materials,  
26 supplies] goods or services shall be entitled to be paid therefor and the  
27 contracting unit shall be obligated for said payment. The governing  
28 body of the contracting unit shall take such action as shall be required  
29 to provide for the payment of the contract price.

30 c. The Director of the Division of Local Government Services in  
31 the Department of Community Affairs shall prescribe rules and  
32 procedures to implement the requirements of this section.

33 d. The governing body of the contracting unit may prescribe  
34 additional rules and procedures to implement the requirements of this  
35 section.

36 (cf: P.L.1985, c.469, s.8)

37

38 11. Section 6 of P.L.1975, c.353 (C.40A:11-6.1) is amended to  
39 read as follows:

40 6. All contracts enumerated in this section shall be awarded as  
41 follows:

42 . [ All purchases, contracts or agreements which require public  
43 advertisement for bids shall be awarded to the lowest responsible  
44 bidder.

45 Prior to the award of any other purchase, contract or agreement,  
46 the contracting agent shall, except in the case of the performance of

1 professional services, solicit quotations, whenever practicable, on any  
2 such purchase, contract or agreement the estimated cost or price of  
3 which is \$1,000.00 or more, and the award thereof shall be made, in  
4 accordance with sections 3 (C.40A:11-3) or 4 (C.40A:11-4), as the  
5 case may be, of the Local Public Contracts Law, on the basis of the  
6 lowest responsible quotation received, which quotation is most  
7 advantageous to the contracting unit, price and other factors  
8 considered; provided, however, that if the contracting agent deems it  
9 impracticable to solicit competitive quotations in the case of  
10 extraordinary, unspecifiable service, or, in the case of such or any  
11 other purchase, contract or agreement awarded hereunder, having  
12 sought such quotations determines that it should not be awarded on  
13 the basis of the lowest quotation received, the contracting agent shall  
14 file a statement of explanation of the reason or reasons therefor,  
15 which shall be placed on file with said purchase, contract or  
16 agreement. ]

17 a. For all contracts that in the aggregate are less than the bid  
18 threshold but 15 percent or more of that amount, and for those  
19 contracts that are for subject matter enumerated in subsection (1) of  
20 section 5 of P.L.1971, c.198 (C.40A:11-5), except for paragraph (a)  
21 of that subsection concerning professional services and paragraph (b)  
22 of that subsection concerning work by employees of the contracting  
23 unit, the contracting agent shall award the contract after soliciting at  
24 least two competitive quotations, if practicable. The award shall be  
25 made to a vendor whose response is most advantageous, price and  
26 other factors considered. The contracting agent shall retain the record  
27 of the quotation solicitation and shall include a copy of the record with  
28 the voucher used to pay the vendor.

29 b. When in excess of the bid threshold, and after documented effort  
30 by the contracting agent to secure competitive quotations, a contract  
31 for extraordinary unspecifiable services may be awarded upon a  
32 determination in writing by the contracting agent that the solicitation  
33 of competitive quotations is impracticable. Any such contract shall be  
34 awarded by resolution of the governing body.

35 c. If authorized by the governing body by resolution or ordinance,  
36 all contracts that are in the aggregate less than 15 percent of the bid  
37 threshold may be awarded by the contracting agent without soliciting  
38 competitive quotations.

39 d. Whenever two or more responses to a request of a contracting  
40 agent offer equal prices and are the lowest responsible bids or  
41 proposals, the contracting unit may award the contract to the vendor  
42 whose response, in the discretion of the contracting unit, is the most  
43 advantageous, price and other factors considered. In such a case, the  
44 award resolution or purchase order documentation shall explain why  
45 the vendor selected is the most advantageous.

46 (cf: P.L.1983, c.418, s.1)

1       12. Section 7 of P.L.1971, c.198 (C.40A:11-7) is amended to read  
2 as follows:

3       7. Contracts not to be divided. **【No purchase, contract or**  
4 **agreement, which is single in character or which necessarily or by**  
5 **reason of the quantities required to effectuate the purpose of the**  
6 **purchase, contract or agreement includes the furnishing of additional**  
7 **services or buying or hiring of materials or supplies or the doing of**  
8 **additional work, shall be subdivided, so as to bring it or any of the**  
9 **parts thereof under the maximum price or cost limitation of the**  
10 **amount set forth in, or the amount calculated by the Governor**  
11 **pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3) thus**  
12 **dispensing with the requirement of public advertising and bidding**  
13 **therefor, and in purchasing or contracting for, or agreeing for the**  
14 **furnishing of, any services, the doing of any work or the supplying of**  
15 **any materials or the supplying or hiring of any materials or supplies,**  
16 **included in or incident to the performance or completion of any**  
17 **project, program, activity or undertaking which is single in character**  
18 **or inclusive of the furnishing of additional services or buying or hiring**  
19 **of materials or supplies or the doing of additional work, or which**  
20 **requires the furnishing of more than one article of equipment or buying**  
21 **or hiring of materials or supplies, all of the services, materials or**  
22 **property requisite for the completion of such project shall be included**  
23 **in one purchase, contract or agreement】**

24       a. No contract in the aggregate which is single in character or  
25 which necessarily or by reason of the quantities required to effectuate  
26 the purpose of the contract includes the provision or performance of  
27 additional goods or services, shall be divided, so as to bring it or any  
28 of the parts thereof under the bid threshold, for the purpose of  
29 dispensing with the requirement of public advertising and bidding  
30 therefor.

31       b. In contracting for the provision or performance of any goods or  
32 services included in or incidental to the provision or performance of  
33 any work which is single in character or inclusive of the provision or  
34 performance of additional goods or services, all of the goods or  
35 services requisite for the completion of such contract shall be included  
36 in one contract.

37 (cf: P.L.1985, c.469, s.9)

38

39       13. (New section) For the purpose of ensuring consistency  
40 between the "Local Public Contracts Law," P.L.1971, c.198  
41 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
42 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
43 Government Services in the Department of Community Affairs, after  
44 consultation with the Commissioner of Education and pursuant to the  
45 "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et  
46 seq.), shall adopt rules concerning determinations of aggregation for



1 the purposes of whether a contract is subject to public bidding as set  
2 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
3 and 40A:11-7)and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
4 N.J.S.18A:18A-8.

5  
6 14. Section 8 of P.L.1971, c.198 (C.40A:11-8) is amended to read  
7 as follows:

8 8. Every contracting agent shall, at intervals to be fixed by the  
9 governing body, solicit by public advertisement the submission of bids  
10 for the **[furnishing of all work, materials and supplies]** provision or  
11 performance of goods or services which are and which under section  
12 4 of **[this act]** P.L.1971, c.198 (C.40A:11-4) can be **[purchased or**  
13 **agreed or]** contracted to be **[furnished]** provided or performed only  
14 after public advertisement for bids and bidding therefor and all  
15 **[purchases, or]** contracts **[or agreements for the furnishing, of such**  
16 **work, materials and supplies]** for the provision or performance of such  
17 goods or services shall be **[made and]** awarded only in that manner.  
18 (cf: P.L.1971, c.198, s.8)

19  
20 15. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to read  
21 as follows:

22 9. Purchasing agent, department or board; establishment; powers

23 a. The governing body of any **[local]** contracting unit may by  
24 ordinance, in the case of a municipality, by ordinance or resolution, as  
25 the case may be, in the case of a county, or by resolution in all other  
26 cases, establish the office of purchasing agent, or a purchasing  
27 department or a purchasing board, with the authority, responsibility,  
28 and accountability as its contracting agent,for the purchasing activity  
29 for the contracting unit, to prepare public advertising for bids and to  
30 receive bids for the **[purchase of work, materials and supplies]**  
31 provision or performance of goods or services on behalf of the  
32 contracting unit and**[, unless otherwise required by the provisions of**  
33 **this act,]** to **[make awards of]** award contracts permitted pursuant to  
34 subsection a. of section 3 of P.L.1971, c. 198 (C.40A:11-3) in the  
35 name of the contracting unit, and conduct any activities as may be  
36 necessary or appropriate to the purchasing function of the contracting  
37 unit.

38 b. The Director of the Division of Local Government Services,  
39 after consultation with the Commissioner of Education, shall establish  
40 criteria to qualify individuals who have completed appropriate training  
41 and possess such purchasing experience as deemed necessary to  
42 exercise such supplemental authority as may be set forth in subsection  
43 a. of section 3 of P.L.1971, c.198 (C.40A:11-3). These criteria also  
44 shall authorize county purchasing agents certified pursuant to

1 P.L.1981, c.380 (C.40A:9-30.1 et seq.) to exercise such supplemental  
2 authority.

3 (cf: P.L.1977, c.53, s.5)

4

5 16. Section 10 of P.L.1971, c.198 (C.40A:11-10) is amended to  
6 read as follows:

7 10. Joint agreements for **【purchase of work, materials, supplies】**  
8 provision and performance of goods and services; cooperative  
9 marketing; authorization

10 (a) (1) The governing bodies of two or more contracting units  
11 **【within the same county, or adjoining counties,】** may provide by joint  
12 agreement for the **【purchase of work, materials and supplies】**  
13 provision and performance of goods and services for use by their  
14 respective jurisdictions.

15 (2) The governing bodies of two or more contracting units  
16 providing sewerage services pursuant to the "sewerage authorities  
17 law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county  
18 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.),  
19 R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint  
20 agreement for the purchase of **【work】** goods and services related to  
21 sewage sludge disposal.

22 (3) The governing body of two or more contracting units providing  
23 electrical distribution services pursuant to and in **【accord】** accordance  
24 with R.S.40:62-12 through R.S.40:62-25, may provide by joint  
25 agreement for the **【purchase】** provision or performance of **【work,**  
26 **material and supplies】** goods or services related to the distribution of  
27 electricity.

28 (4) The governing bodies of two or more contracting units may  
29 provide for the cooperative marketing of recyclable materials  
30 recovered through a recycling program.

31 (b) The governing body of any **【county or municipality】**  
32 contracting unit may provide by joint agreement with the board of  
33 education of any school district **【located wholly or partially within the**  
34 **geographic boundaries of the county or municipality】** for the  
35 **【purchase of work, materials and supplies】** provision and performance  
36 of goods and services for use by their respective jurisdictions.

37 (c) Such agreement shall be entered into by resolution adopted by  
38 each of the participating bodies and boards, which shall set forth the  
39 categories of **【work, materials and supplies】** goods or services to be  
40 **【purchased】** provided or performed, the manner of advertising for bids  
41 and of awarding of contracts, the method of payment by each  
42 participating body and board, and other matters deemed necessary to  
43 carry out the purposes of the agreement.

44 (d) Each participating body's and board's share of expenditures for  
45 purchases under any such agreement shall be appropriated and paid in

1 the manner set forth in the agreement and in the same manner as for  
2 other expenses of the participating body and board.  
3 (cf: P.L.1995, c.356, s.7)

4  
5 17. Section 11 of P.L.1971, c.198 (C.40A:11-11) is amended to  
6 read as follows:

7 11. Additional matters regarding **【agreements】** contracts for the  
8 **【purchases of work, materials and supplies】** provision and  
9 performance of goods and services

10 (1) The contracting units entering into a joint agreement pursuant  
11 to section 10 of **【this act】** P.L.1971, c.198 (C.40A:11-10) may  
12 designate a joint **【purchasing】** contracting agent**【,** department or  
13 board pursuant to section 9 of this act. Any such agent, board or  
14 department already designated pursuant to section 9 may serve as the  
15 joint agent, department or board designated pursuant to this section**】**.

16 (2) **【Purchases, contracts or agreements】** Contracts made pursuant  
17 to a joint purchasing agreement shall be subject to all of the terms and  
18 conditions of this act.

19 (3) Any **【county or municipality】** contracting unit serving as a  
20 **【purchasing】** joint contracting agent **【,** board or department**】**  
21 pursuant to this section **【11】**, may make an appropriation to enable it  
22 to perform any such contract and may anticipate as revenue payments  
23 to be made and received by it from any other party to the agreement.  
24 Any items so included in a local budget shall be subject to the approval  
25 of the Director, Division of Local Government Services, who shall  
26 consider the matter in conjunction with the requirements of chapter 4  
27 of Title 40A of the New Jersey Statutes. The agreement and any  
28 subsequent amendment or revisions thereto shall be filed with the  
29 Director of the Division of Local Government Services in the  
30 Department of Community Affairs.

31 (4) Any joint contracting agent **【,** department or board**】** so  
32 designated pursuant to a joint purchasing agreement shall have the sole  
33 responsibility to comply with the provisions of section 23 of **【this act】**  
34 P.L.1971, c.198 (C.40A:11-23).

35 (5) The governing bodies of two or more contracting units or  
36 boards of education **【within the same county, or adjoining counties;】**  
37 or for purposes related to the distribution of electricity, the governing  
38 bodies of two or more contracting units providing electrical  
39 distribution services pursuant to R.S.40:62-12 through R.S.40:62-25,  
40 may by resolution establish a cooperative pricing system as hereinafter  
41 provided. Any such resolution shall establish procedures whereby one  
42 participating contracting unit in the cooperative pricing system shall  
43 be empowered to advertise and receive bids to provide prices for all  
44 other participating contracting units in such system for the **【purchase】**  
45 provision or performance of 【work, materials and supplies】 goods or

1 services; provided, however, that no **【purchase or】** contract shall be  
2 **【made】** awarded by any participating contracting unit for a price  
3 which exceeds any other price available to the participating contracting  
4 unit, or for a purchase of goods or services in deviation from the  
5 specifications, price or quality set forth by the participating contracting  
6 unit.

7 (6) The governing body of a county government may establish a  
8 cooperative pricing system for the voluntary use of contracting units  
9 within the county.

10 No vendor shall be required or permitted to extend **【his】** bid prices  
11 to participating contracting units in a cooperative pricing system  
12 unless so specified in the bids.

13 No cooperative pricing system and agreements entered into  
14 pursuant to such system, or joint purchase agreements established  
15 pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208  
16 (C.40:8A-1 et seq.) or any other provision of law, shall become  
17 effective without prior approval of the Director of the Division of  
18 Local Government Services and said approval shall be valid for a  
19 period not to exceed five years.

20 The director's approval shall be based on the following:

21 (a) Provision for maintaining adequate records and orderly  
22 procedures to facilitate audit and efficient administration, and

23 (b) Adequacy of public disclosure of such actions as are taken by  
24 the participants, and

25 (c) Adequacy of procedures to facilitate compliance with all  
26 provisions of the "Local Public Contracts Law" and corresponding  
27 regulations, and

28 (d) Clarity of provisions to assure that the responsibilities of the  
29 respective parties are understood.

30 Failure of the Director of the Division of Local Government  
31 Services to approve or disapprove a properly executed and completed  
32 application to establish a cooperative pricing system and agreements  
33 entered into pursuant to such system or other joint purchase agreement  
34 within 45 days from the date of receipt of said application by the  
35 director shall constitute approval of said application, which shall be  
36 valid for a period of five years, commencing from the date of receipt  
37 of said application by the director.

38 The Director of the Division of Local Government Services is  
39 hereby authorized to promulgate rules and regulations specifying  
40 procedures pertaining to cooperative pricing systems and joint  
41 purchase agreements entered into pursuant to this act, the "Interlocal  
42 Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) and any other  
43 provision of law.

44 (cf: P.L.1995, c.356, s.8)

1 18. Section 12 of P.L.1971, c.198 (C.40A:11-12) is amended to  
2 read as follows:

3 12. a. Any contracting unit under this act may without advertising  
4 for bids, or having rejected all bids obtained pursuant to advertising  
5 therefor, purchase any [materials, supplies,] goods[, ] or services [or  
6 equipment] under any contract or contracts for such [materials,  
7 supplies,] goods[, ] or services [or equipment] entered into on behalf  
8 of the State by the Division of Purchase and Property in the  
9 Department of the Treasury.

10 b. A contracting unit may also use, without advertising for bids, or  
11 having rejected all bids obtained pursuant to advertising, the Federal  
12 Supply Schedules of the General Services Administration [as  
13 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
14 Pub.L.103-355, and federal regulations adopted thereunder.]  
15 promulgated by the Director of the Division of Purchase and Property  
16 in the Department of the Treasury pursuant to section 1 of P.L.1996,  
17 c.16 (C.52:34-6.1), subject to the following conditions:

18 (1) the price of the goods being procured is no greater than the  
19 price offered to federal agencies;

20 (2) the Federal Supply Schedules may be used only for purchases  
21 of up to \$500,000 per year or for one product unit at any price and  
22 only for reprographic equipment or services, including digital copiers,  
23 used by the contracting unit; and

24 (3) the contracting unit receives the benefit of federally mandated  
25 price reductions during the term of the contract and is protected from  
26 price increases during that time.

27 c. Whenever a purchase is made, the contracting unit shall place its  
28 order with the vendor offering the lowest price, including delivery  
29 charges, that best meets the requirements of the contracting unit.  
30 Prior to placing such an order, the contracting unit shall document  
31 with specificity that the [materials, supplies,] goods[, ] or services [or  
32 equipment] selected best meet the requirements of the contracting  
33 unit.

34 (cf: P.L.1996, c.16, s.3)

35

36 19. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to  
37 read as follows:

38 13. Specifications. Any specifications for [an acquisition] the  
39 provision or performance of goods or services under this act[, , whether  
40 by purchase, contract or agreement,] shall be drafted in a manner to  
41 encourage free, open and competitive bidding. In particular, no  
42 specifications under this act may:

43 (a) Require any standard, restriction, condition or limitation not  
44 directly related to the purpose, function or activity for which the  
45 [purchase,] contract [or agreement] is [made] awarded; or

1 (b) Require that any bidder be a resident of, or that **[his]** the  
2 bidder's place of business be located in, the county or municipality in  
3 which the **[purchase]** contract will be **[made]**awarded or **[the**  
4 **contract or agreement]** performed, unless the physical proximity of the  
5 bidder is requisite to the efficient and economical **[purchase or]**  
6 performance of the contract **[or agreement]**; except that no  
7 specification for a contract for the collection and disposal of municipal  
8 solid waste shall require any bidder to be a resident of, or that **[his]**  
9 the bidder's place of business be located in, the county or municipality  
10 in which the contract will be performed; or

11 (c) Discriminate on the basis of race, religion, sex, national origin ,  
12 creed, color, ancestry, age, marital status, affectional or sexual  
13 orientation, familial status, liability for service in the Armed Forces of  
14 the United States, or nationality; or

15 (d) Require, with regard to any **[purchase,]** contract **[or**  
16 **agreement]**, the furnishing of any "brand name," but may in all cases  
17 require "brand name or equivalent," except that if the **[materials]**  
18 goods or services to be **[supplied or purchased]** provided or  
19 performed are **[patented or copyrighted]** proprietary, such **[materials**  
20 **or supplies]** goods or services may be purchased by stipulating the  
21 proprietary goods or services in the bid specification in any case in  
22 which the **[ordinance or]** resolution authorizing the **[purchase,]**  
23 contract**[, sale or agreement]** so indicates, and the special need for  
24 such **[patented or copyrighted materials or supplies]** proprietary  
25 goods or services is directly related to the performance, completion or  
26 undertaking of the purpose for which the **[purchase,]** contract **[or**  
27 **agreement]** is **[made]** awarded; or

28 (e) Fail to include any option for renewal, extension, or release  
29 which the contracting unit may intend to exercise or require; or any  
30 terms and conditions necessary for the performance of any extra work;  
31 or fail to disclose any matter necessary to the substantial performance  
32 of the contract **[or agreement]**.

33 Any specification **[adopted by the governing body,]** which  
34 knowingly excludes prospective bidders by reason of the impossibility  
35 of performance, bidding or qualification by any but one bidder, except  
36 as provided herein, shall be null and void and of no effect and **[subject**  
37 **purchase, contract or agreement]** shall be readvertised for receipt of  
38 new bids, and the original **[purchase,]** contract **[or agreement]** shall  
39 be set aside by the governing body.

40 Any specification **[adopted by the governing body]** for a contract  
41 for the collection and disposal of municipal solid waste shall conform  
42 to the uniform bid specifications for municipal solid waste collection  
43 contracts established pursuant to section 22 of P.L.1991, c.381  
44 (C.48:13A-7.22).

1 Any specification **【adopted by the governing body】** may include an  
2 item for the cost, which shall be paid by the contractor, of creating a  
3 file to maintain the notices of the delivery of labor or materials  
4 required by N.J.S.2A:44-128.

5 Any prospective bidder who wishes to challenge a bid specification  
6 shall file such challenges in writing with the contracting agent no less  
7 than three business days prior to the opening of the bids. Challenges  
8 filed after that time shall be considered void and having no impact on  
9 the contracting unit or the award of a contract.

10 (cf: P.L.1996, c.81, s.7)

11  
12 20. (New section) Goods or services, the payment for which  
13 utilizes only funds received by a contracting unit from a bequest,  
14 legacy or gift, shall be subject to the provisions of P.L.1971, c.198  
15 (C.40A:11-1 et seq.), except that if such bequest, legacy or gift  
16 contains written instructions as to the specifications, manufacturer or  
17 vendor, or source of supply of the goods or services to be provided or  
18 performed, such instructions shall be honored, provided that the  
19 bequest, legacy or gift is used in a manner consistent with  
20 N.J.S.40A:5-29.

21  
22 21. (New section) A contracting unit may reject all bids for any of  
23 the following reasons:

24 a. The lowest bid substantially exceeds the cost estimates for the  
25 goods or services;

26 b. The lowest bid substantially exceeds the contracting unit's  
27 appropriation for the goods or services;

28 c. The governing body of the contracting unit decides to abandon  
29 the project for provision or performance of the goods or services;

30 d. The contracting unit wants to substantially revise the  
31 specifications for the goods or services;

32 e. The purposes or provisions or both of P.L.1971, c.198  
33 (C.40A:11-1 et seq.) are being violated;

34 f. The governing body of the contracting unit decides to use the  
35 State authorized contract pursuant to section 12 of P.L.1971, c.198  
36 (C.40A:11-12).

37  
38 22. Section 14 of P.L.1971, c.198 (C.40A:11-14) is amended to  
39 read as follows:

40 14. All contracts for the **【performing of work or furnishing**  
41 **materials, supplies】** provision or performance of goods or services  
42 shall be in writing. The governing body of any contracting unit may,  
43 subject to the requirements of law, prescribe the form and manner in  
44 which contracts shall be made and executed, and the form and manner

1 of execution and approval of all guarantee, indemnity, fidelity and  
2 other bonds.

3 (cf: P.L.1975, c.353, s.10)

4

5 23. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to  
6 read as follows:

7 15. All **[purchases,]** contracts **[or agreements]** for the  
8 **[performing of work or the furnishing of materials, supplies]** provision  
9 or performance of goods or services shall be **[made]** awarded for a  
10 period not to exceed 24 consecutive months, except that contracts for  
11 professional services pursuant to subparagraph (i) of paragraph (a) of  
12 subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be  
13 **[made]** awarded for a period not to exceed 12 consecutive months.  
14 Contracts **[or agreements]** may be **[entered into]** awarded for longer  
15 periods of time as follows:

16 (1) Supplying of:

17 (a) (Deleted by amendment, P.L.1996, c.113.)

18 (b) (Deleted by amendment, P.L.1996, c.113.)

19 (c) Thermal energy produced by a cogeneration facility, for use for  
20 heating or air conditioning or both, for any term not exceeding 40  
21 years, when the contract is approved by the Board of Public Utilities.  
22 For the purposes of this paragraph, "cogeneration" means the  
23 simultaneous production in one facility of electric power and other  
24 forms of useful energy such as heating or process steam;

25 (2) (Deleted by amendment, P.L.1977, c.53.)

26 (3) The collection and disposal of municipal solid waste, the  
27 collection and disposition of recyclable material, or the disposal of  
28 sewage sludge, for any term not exceeding in the aggregate, five years;

29 (4) The collection and recycling of methane gas from a sanitary  
30 landfill facility, for any term not exceeding 25 years, when such  
31 contract is in conformance with a district solid waste management plan  
32 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the  
33 approval of the Division of Local Government Services in the  
34 Department of Community Affairs and the Department of  
35 Environmental Protection. The contracting unit shall award the  
36 contract to the highest responsible bidder, notwithstanding that the  
37 contract price may be in excess of the amount of any necessarily  
38 related administrative expenses; except that if the contract requires the  
39 contracting unit to expend funds only, the contracting unit shall award  
40 the contract to the lowest responsible bidder. The approval by the  
41 Division of Local Government Services of public bidding requirements  
42 shall not be required for those contracts exempted therefrom pursuant  
43 to section 5 of P.L.1971, c.198 (C.40A:11-5);

44 (5) Data processing service, for any term of not more than **[three]**  
45 seven years;



1 (6) Insurance, including the purchase of insurance coverages,  
2 insurance consulting or administrative services, claims administration  
3 services and including participation in a joint self-insurance fund, risk  
4 management program or related services provided by a contracting  
5 unit insurance group, or participation in an insurance fund established  
6 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund  
7 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any  
8 term of not more than three years;

9 (7) Leasing or servicing of automobiles, motor vehicles, machinery  
10 and equipment of every nature and kind, for a period not to exceed  
11 **[three]** five years; provided, however, such contracts shall be  
12 **[entered into]** awarded only subject to and in accordance with the  
13 rules and regulations promulgated by the Director of the Division of  
14 Local Government Services of the Department of Community Affairs;

15 (8) The supplying of any product or the rendering of any service  
16 by a **[telephone]** company **[which is subject to the jurisdiction of the**  
17 **Board of Public Utilities]** providing voice, data, transmission or  
18 switching services for a term not exceeding five years;

19 (9) Any single project for the construction, reconstruction or  
20 rehabilitation of any public building, structure or facility, or any public  
21 works project, including the retention of the services of any architect  
22 or engineer in connection therewith, for the length of time authorized  
23 and necessary for the completion of the actual construction;

24 (10) The providing of food services for any term not exceeding  
25 three years;

26 (11) On-site inspections and plan review services undertaken by  
27 private agencies pursuant to the "State Uniform Construction Code  
28 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not  
29 more than three years;

30 (12) The provision or performance of **[work]** goods or services  
31 **[or the furnishing of materials or supplies]** for the purpose of  
32 conserving energy in buildings owned by, or operations conducted by,  
33 the contracting unit, the entire price of which to be established as a  
34 percentage of the resultant savings in energy costs, for a term not to  
35 exceed **[10]** 15 years; provided, however, that such contracts shall be  
36 entered into only subject to and in accordance with **[rules and**  
37 **regulations]** guidelines promulgated by the **[Department of**  
38 **Environmental Protection]** Board of Public Utilities establishing a  
39 methodology for computing energy cost savings;

40 (13) **[The performance of work or services or the furnishing of**  
41 **materials or supplies for the purpose of elevator maintenance for any**  
42 **term not exceeding three years;]** (Deleted by amendment, P.L. \_\_\_\_,  
43 c. \_\_.) (Pending before the Legislature as this bill.)

44 (14) **[** Leasing or servicing of electronic communications  
45 equipment for a period not to exceed five years; provided, however,

1 such contract shall be entered into only subject to and in accordance  
2 with the rules and regulations promulgated by the Director of the  
3 Division of Local Government Services of the Department of  
4 Community Affairs;] (~~Deleted by amendment, P.L. , c. .~~) (Pending  
5 before the Legislature as this bill.)

6 (15) Leasing of motor vehicles, machinery and other equipment  
7 primarily used to fight fires, for a term not to exceed ten years, when  
8 the contract includes an option to purchase, subject to and in  
9 accordance with rules and regulations promulgated by the Director of  
10 the Division of Local Government Services of the Department of  
11 Community Affairs;

12 (16) The provision of water supply services or the designing,  
13 financing, construction, operation, or maintenance, or any combination  
14 thereof, of a water supply facility, or any component part or parts  
15 thereof, including a water filtration system, for a period not to exceed  
16 40 years, when the contract for these services is approved by the  
17 Division of Local Government Services in the Department of  
18 Community Affairs, the Board of Public Utilities, and the Department  
19 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et  
20 al.), except for those contracts otherwise exempted pursuant to  
21 subsection (30), (31), (34) or (35) of this section. For the purposes  
22 of this subsection, "water supply services" means any service provided  
23 by a water supply facility; "water filtration system" means any  
24 equipment, plants, structures, machinery, apparatus, or land, or any  
25 combination thereof, acquired, used, constructed, rehabilitated, or  
26 operated for the collection, impoundment, storage, improvement,  
27 filtration, or other treatment of drinking water for the purposes of  
28 purifying and enhancing water quality and insuring its potability prior  
29 to the distribution of the drinking water to the general public for  
30 human consumption, including plants and works, and other personal  
31 property and appurtenances necessary for their use or operation; and  
32 "water supply facility" means and refers to the real property and the  
33 plants, structures, interconnections between existing water supply  
34 facilities, machinery and equipment and other property, real, personal  
35 and mixed, acquired, constructed or operated, or to be acquired,  
36 constructed or operated, in whole or in part by or on behalf of a  
37 political subdivision of the State or any agency thereof, for the  
38 purpose of augmenting the natural water resources of the State and  
39 making available an increased supply of water for all uses, or of  
40 conserving existing water resources, and any and all appurtenances  
41 necessary, useful or convenient for the collecting, impounding, storing,  
42 improving, treating, filtering, conserving or transmitting of water and  
43 for the preservation and protection of these resources and facilities and  
44 providing for the conservation and development of future water supply  
45 resources;

1 (17) The provision of resource recovery services by a qualified  
2 vendor, the disposal of the solid waste delivered for disposal which  
3 cannot be processed by a resource recovery facility or the residual ash  
4 generated at a resource recovery facility, including hazardous waste  
5 and recovered metals and other materials for reuse, or the design,  
6 financing, construction, operation or maintenance of a resource  
7 recovery facility for a period not to exceed 40 years when the contract  
8 is approved by the Division of Local Government Services in the  
9 Department of Community Affairs, and the Department of  
10 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et  
11 al.); and when the resource recovery facility is in conformance with a  
12 district solid waste management plan approved pursuant to P.L.1970,  
13 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,  
14 "resource recovery facility" means a solid waste facility constructed  
15 and operated for the incineration of solid waste for energy production  
16 and the recovery of metals and other materials for reuse; or a  
17 mechanized composting facility, or any other facility constructed or  
18 operated for the collection, separation, recycling, and recovery of  
19 metals, glass, paper, and other materials for reuse or for energy  
20 production; and "residual ash" means the bottom ash, fly ash, or any  
21 combination thereof, resulting from the combustion of solid waste at  
22 a resource recovery facility;

23 (18) The sale of electricity or thermal energy, or both, produced by  
24 a resource recovery facility for a period not to exceed 40 years when  
25 the contract is approved by the Department of Environmental  
26 Protection, and when the resource recovery facility is in conformance  
27 with a district solid waste management plan approved pursuant to  
28 P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this  
29 subsection, "resource recovery facility" means a solid waste facility  
30 constructed and operated for the incineration of solid waste for energy  
31 production and the recovery of metals and other materials for reuse;  
32 or a mechanized composting facility, or any other facility constructed  
33 or operated for the collection, separation, recycling, and recovery of  
34 metals, glass, paper, and other materials for reuse or for energy  
35 production;

36 (19) The provision of wastewater treatment services or the  
37 designing, financing, construction, operation, or maintenance, or any  
38 combination thereof, of a wastewater treatment system, or any  
39 component part or parts thereof, for a period not to exceed 40 years,  
40 when the contract for these services is approved by the Division of  
41 Local Government Services in the Department of Community Affairs  
42 and the Department of Environmental Protection pursuant to  
43 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise  
44 exempted pursuant to subsection (36) of this section. For the  
45 purposes of this subsection, "wastewater treatment services" means  
46 any services provided by a wastewater treatment system, and

1 "wastewater treatment system" means equipment, plants, structures,  
2 machinery, apparatus, or land, or any combination thereof, acquired,  
3 used, constructed, or operated for the storage, collection, reduction,  
4 recycling, reclamation, disposal, separation, or other treatment of  
5 wastewater or sewage sludge, or for the final disposal of residues  
6 resulting from the treatment of wastewater, including, but not limited  
7 to, pumping and ventilating stations, facilities, plants and works,  
8 connections, outfall sewers, interceptors, trunk lines, and other  
9 personal property and appurtenances necessary for their operation;

10 (20) The supplying of **materials** goods or services for the  
11 purpose of lighting public streets, for a term not to exceed five years  
12 **], provided that the rates, fares, tariffs or charges for the supplying of**  
13 **electricity for that purpose are approved by the Board of Public**  
14 **Utilities];**

15 (21) **[In the case of a contracting unit which is a county or**  
16 **municipality, the] The provision of emergency medical services **[by a**  
17 **hospital to residents of a municipality or county as appropriate]** for a  
18 term not to exceed five years;**

19 (22) Towing and storage contracts, awarded pursuant to paragraph  
20 u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for  
21 any term not exceeding three years;

22 (23) Fuel for the purpose of generating electricity for a term not to  
23 exceed eight years;

24 (24) The purchase of electricity or administrative or dispatching  
25 services related to the transmission of such electricity, from a public  
26 utility company subject to the jurisdiction of the Board of Public  
27 Utilities, a similar regulatory body of another state, or a federal  
28 regulatory agency, or from a qualifying small power producing facility  
29 or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, by  
30 a contracting unit engaged in the generation of electricity for retail  
31 sale, as of May 24,1991, for a term not to exceed 40 years;

32 (25) Basic life support services, for a period not to exceed five  
33 years. For the purposes of this subsection, "basic life support" means  
34 a basic level of prehospital care, which includes but need not be limited  
35 to patient stabilization, airway clearance, cardiopulmonary  
36 resuscitation, hemorrhage control, initial wound care and fracture  
37 stabilization;

38 (26) **[Claims administration services, for any term not to exceed**  
39 **three years;] (Deleted by amendment, P.L. , c. .) (Pending before**  
40 **the Legislature as this bill.)**

41 (27) The provision of transportation services to elderly, disabled  
42 or indigent persons for any term of not more than three years. For the  
43 purposes of this subsection, "elderly persons" means persons who are  
44 60 years of age or older. "Disabled persons" means persons of any age  
45 who, by reason of illness, injury, age, congenital malfunction, or other  
46 permanent or temporary incapacity or disability, are unable, without

1 special facilities or special planning or design to utilize mass  
2 transportation facilities and services as effectively as persons who are  
3 not so affected. "Indigent persons" means persons of any age whose  
4 income does not exceed 100 percent of the poverty level, adjusted for  
5 family size, established and adjusted under section 673(2) of subtitle  
6 B, the "Community Services Block Grant Act," Pub.L.97-35 (42  
7 U.S.C. s.9902 (2));

8 (28) The supplying of liquid oxygen or other chemicals, for a term  
9 not to exceed five years, when the contract includes the installation of  
10 tanks or other storage facilities by the supplier, on or near the  
11 premises of the contracting unit;

12 (29) The performance of patient care services by contracted  
13 medical staff at county hospitals, correction facilities and long term  
14 care facilities, for any term of not more than three years;

15 (30) The acquisition of an equitable interest in a water supply  
16 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or [an  
17 agreement] a contract entered into pursuant to the "County and  
18 Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the  
19 [agreement] contract is entered into no later than January 7, 1995, for  
20 any term of not more than forty years;

21 (31) The provision of water supply services or the financing,  
22 construction, operation or maintenance or any combination thereof, of  
23 a water supply facility or any component part or parts thereof, by a  
24 partnership or copartnership established pursuant to a contract  
25 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a  
26 period not to exceed 40 years;

27 (32) Laundry service and the rental, supply and cleaning of  
28 uniforms for any term of not more than three years;

29 (33) The supplying of any product or the rendering of any service,  
30 including consulting services, by a cemetery management company for  
31 the maintenance and preservation of a municipal cemetery operating  
32 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for  
33 a term not exceeding 15 years;

34 (34) A contract between a public entity and a private firm pursuant  
35 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water  
36 supply services may be entered into for any term which, when all  
37 optional extension periods are added, may not exceed 40 years;

38 (35) [An agreement] A contract for the purchase of a supply of  
39 water from a public utility company subject to the jurisdiction of the  
40 Board of Public Utilities in accordance with tariffs and schedules of  
41 charges made, charged or exacted or contracts filed with the Board of  
42 Public Utilities, for any term of not more than 40 years;

43 (36) A contract between a public entity and a private firm or public  
44 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the  
45 provision of wastewater treatment services may be entered into for any

1 term of not more than 40 years, including all optional extension  
2 periods; **[ and ]**

3 (37) The operation and management of a facility under a license  
4 issued or permit approved by the Department of Environmental  
5 Protection, including a wastewater treatment system or a water supply  
6 or distribution facility, as the case may be, for any term of not more  
7 than **[seven]** ten years. For the purposes of this subsection,  
8 "wastewater treatment system" refers to facilities operated or  
9 maintained for the storage, collection, reduction, disposal, or other  
10 treatment of wastewater or sewage sludge, remediation of  
11 groundwater contamination, stormwater runoff, or the final disposal  
12 of residues resulting from the treatment of wastewater; and "water  
13 supply or distribution facility" refers to facilities operated or  
14 maintained for augmenting the natural water resources of the State,  
15 increasing the supply of water, conserving existing water resources, or  
16 distributing water to users;

17 (38) Municipal solid waste collection from facilities owned by a  
18 contracting unit, for any term of not more than three years;

19 (39) Fuel for heating purposes, for any term of not more than  
20 three years;

21 (40) Fuel or oil for use in motor vehicles for any term of not more  
22 than three years;

23 (41) Plowing and removal of snow and ice for any term of not  
24 more than three years;

25 (42) Purchases made under a contract awarded by the Director of  
26 the Division of Purchase and Property in the Department of the  
27 Treasury for use by counties, municipalities or other contracting units  
28 pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term  
29 not to exceed the term of that contract.

30 Any contract for services other than professional services, the  
31 statutory length of which contract is for three years or less, may  
32 include provisions for no more than one two-year, or two one-year,  
33 extensions, subject to the following limitations: a. The contract shall  
34 be awarded by resolution of the governing body upon a finding by the  
35 governing body that the services are being performed in an effective  
36 and efficient manner; b. No such contract shall be extended so that it  
37 runs for more than a total of five consecutive years; c. Any price  
38 change included as part of an extension shall be based upon the price  
39 of the original contract as cumulatively adjusted pursuant to any  
40 previous adjustment or extension and shall not exceed the change in  
41 the index rate for the 12 months preceding the most recent quarterly  
42 calculation available at the time the contract is renewed; and d. The  
43 terms and conditions of the contract remain substantially the same.

44 All multiyear leases and contracts entered into pursuant to this  
45 section, including any two-year or one-year extensions, except  
46 **[contracts for the leasing or servicing of equipment supplied by a**

1 telephone company which is subject to the jurisdiction of the Board of  
2 Public Utilities,] contracts involving the supplying of electricity for the  
3 purpose of lighting public streets and contracts for thermal energy  
4 authorized pursuant to subsection (1) above, construction contracts  
5 authorized pursuant to subsection (9) above, contracts [and  
6 agreements] for the provision or performance of [work] goods or  
7 services or the supplying of equipment to promote energy conservation  
8 authorized pursuant to subsection (12) above, contracts for water  
9 supply services or for a water supply facility, or any component part  
10 or parts thereof authorized pursuant to subsection (16), (30), (31),  
11 (34), (35) or (37) above, contracts for resource recovery services or  
12 a resource recovery facility authorized pursuant to subsection (17)  
13 above, contracts for the sale of energy produced by a resource  
14 recovery facility authorized pursuant to subsection (18) above,  
15 contracts for wastewater treatment services or for a wastewater  
16 treatment system or any component part or parts thereof authorized  
17 pursuant to subsection (19), (36) or (37) above, and contracts for the  
18 purchase of electricity or administrative or dispatching services related  
19 to the transmission of such electricity authorized pursuant to  
20 subsection (24) above, shall contain a clause making them subject to  
21 the availability and appropriation annually of sufficient funds as may  
22 be required to meet the extended obligation, or contain an annual  
23 cancellation clause.

24 The Division of Local Government Services in the Department of  
25 Community Affairs shall adopt and promulgate rules and regulations  
26 concerning the methods of accounting for all contracts that do not  
27 coincide with the fiscal year.

28 All contracts shall cease to have effect at the end of the contracted  
29 period and shall not be extended by any mechanism or provision,  
30 unless in conformance with the "Local Public Contracts Law,"  
31 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be  
32 extended by mutual agreement of the parties to the contract when a  
33 contracting unit has commenced rebidding prior to the time the  
34 contract expires or when the awarding of a contract is pending at the  
35 time the contract expires.

36 (cf: P.L.1999, c.23, s.64)

37

38 24. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to  
39 read as follows:

40 16. Separate plans for various types of work; bids; contracts. In the  
41 preparation of plans and specifications for the [erection] construction,  
42 alteration or repair of any public building by any contracting unit,  
43 when the entire cost of the work will exceed the [amount set forth in,  
44 or the amount calculated by the Governor pursuant to, section 3 of  
45 P.L.1971, c.198 (C.40A:11-3)] bid threshold, the architect, engineer  
46 or other person preparing the plans and specifications may prepare

1 separate plans and specifications for

2 (1) The plumbing and gas fitting and all kindred work;

3 (2) Steam power plants, steam and hot water heating and  
4 ventilating apparatus and all kindred work;

5 (3) Electrical work;

6 (4) Structural steel and ornamental iron work; and

7 (5) All other work required for the completion of the project.

8 The [contracting unit or its] contracting agent shall advertise for  
9 and receive, in the manner provided by law, either (a) separate bids for  
10 each of said branches of work, or (b) bids for all the work [and  
11 materials] , goods and services required to complete the building to be  
12 included in a single overall contract, or (c) both. In the case of a  
13 single bid under (b) or (c), there [will] shall be set forth in the bid the  
14 name or names of all subcontractors to whom the bidder will  
15 subcontract the furnishing of plumbing and gas fitting, and all kindred  
16 work, and of the steam and hot water heating and ventilating  
17 apparatus, steam power plants and kindred work, and electrical work,  
18 structural steel and ornamental iron work, each of which  
19 subcontractors shall be qualified in accordance with [this act]  
20 P.L.1971, c.198 (C.40A:11-1 et seq.). The contracting unit shall  
21 require evidence of performance security to be submitted  
22 simultaneously with the list of the subcontractors. Evidence of  
23 performance security may be supplied by the bidder on behalf of  
24 himself and any or all subcontractors, or by each respective  
25 subcontractor, or by any combination thereof which results in evidence  
26 of performance security [equalling] equaling, but in no event  
27 exceeding, the total amount bid.

28 Whenever a bid sets forth more than one subcontractor for any of  
29 the specialty trade categories (1) through (4) specified hereinabove in  
30 this section, the bidder shall submit to the contracting unit a certificate  
31 signed by the bidder listing each subcontractor named in the bid for  
32 that category. The certificate shall set forth the scope of work, goods  
33 and services for which the subcontractor has submitted a price quote  
34 and which the bidder has agreed to award to each subcontractor  
35 should the bidder be awarded the contract. The certificate shall be  
36 submitted to the contracting unit simultaneously with the list of the  
37 subcontractors. The certificate may take the form of a single  
38 certificate listing all subcontractors or, alternatively, a separate  
39 certificate may be submitted for each subcontractor. If a bidder does  
40 not submit a certificate or certificates to the contracting unit, the  
41 contracting unit shall award the contract to the next lowest responsible  
42 bidder.

43 Contracts shall be awarded to the lowest responsible bidder. In the  
44 event that a contract is advertised in accordance with (c) above said  
45 contract shall be awarded in the following manner: If the sum total of  
46 the amounts bid by the lowest responsible bidder for each branch is



1 less than the amount bid by the lowest responsible bidder for all the  
2 work **【and materials】** , goods and services, the contracting unit shall  
3 award separate contracts for each of such branches to the lowest  
4 responsible bidder therefor, but if the sum total of the amounts bid by  
5 the lowest responsible bidder for each branch is not less than the  
6 amount bid by the lowest responsible bidder for all the work **【and**  
7 **materials】** , goods and services, the contracting unit shall award a  
8 single overall contract to the lowest responsible bidder for all of such  
9 work **【and materials】** , goods and services. In every case in which a  
10 contract is awarded under (b) above, all payments required to be made  
11 under such contract for work **【and materials】** , goods and services  
12 supplied by a subcontractor shall, upon the certification of the  
13 contractor of the amount due to the subcontractor, be paid directly to  
14 the subcontractor.

15 (cf: P.L.1997, c.408, s.1)

16

17 25. Section 1 of P.L.1979, c.464 (C.40A:11-16.2) is amended to  
18 read as follows:

19 1. Any contract **【or agreement】**, the total price of which exceeds  
20 \$100,000.00, entered into by a contracting unit involving the  
21 construction, reconstruction, alteration, repair or maintenance of any  
22 building, structure, facility or other improvement to real property,  
23 shall provide for partial payments to be made at least once each month  
24 as the work progresses, unless the contractor shall agree to deposit  
25 bonds with the contracting unit pursuant to P.L.1979, c.152  
26 (C.40A:11-16.1).

27 (cf: P.L.1979, c.464, s.1)

28

29 26. Section 2 of P.L.1979, c.464, (C.40A:11-16.3) is amended to  
30 read as follows:

31 2. a. With respect to any contract **【or agreement】** entered into by  
32 a contracting unit pursuant to section 1 of **【this act】** P.L.1979, c.464  
33 (C.40A:11-16.2) for which the contractor shall agree to the  
34 withholding of payments pursuant to P.L.1979, c.152  
35 (C.40A:11-16.1), 2% of the amount due on each partial payment shall  
36 be withheld by the contracting unit pending completion of the contract  
37 **【or agreement】**.

38 b. Upon acceptance of the work performed pursuant to the  
39 contract **【or agreement】** for which the contractor has agreed to the  
40 withholding of payments pursuant to subsection a. of this section, all  
41 amounts being withheld by the contracting unit shall be released and  
42 paid in full to the contractor within 45 days of the final acceptance  
43 date agreed upon by the contractor and the contracting unit, without  
44 further withholding of any amounts for any purpose whatsoever,  
45 provided that the contract has been completed as indicated. If the

1 contracting unit requires maintenance security after acceptance of the  
2 work performed pursuant to the contract **[or agreement]**, such  
3 security shall be obtained in the form of a maintenance bond. The  
4 maintenance bond shall be no longer than two years and shall be no  
5 more than 100% of the project costs.

6 (cf: P.L.1991, c.434, s.2)

7

8 27. Section 3 of P.L.1979, c.464, (C.40A:11-16.4) is amended to  
9 read as follows:

10 3. Any contract **[or agreement]** entered into by a contracting unit  
11 pursuant to section 1 of **[this act]** P.L.1979, c.464 (C.40A:11-16.2)  
12 may also provide for partial payments at least once in each month with  
13 respect to all materials placed along or upon the site, or stored at  
14 secured locations, which are suitable for use in the execution of the  
15 contract **[or agreement]**, if the person providing the materials  
16 furnishes releases of liens for the materials at the time each estimate  
17 of work is submitted for payment. The total of all the partial  
18 payments shall not exceed the cost of the materials.

19 (cf: P.L.1979, c.464, s.3)

20

21 28. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to  
22 read as follows:

23 19. Any contract **[or agreement]** made pursuant to **[this act]**  
24 P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages  
25 for the violation of any of the terms and conditions thereof or the  
26 failure to perform said contract **[or agreement]** in accordance with its  
27 terms and conditions, or the terms and conditions of **[this act]**  
28 P.L.1971, c.198 (C.40A:11-1 et seq.).

29 (cf: P.L.1971, c.198, s.19)

30

31 29. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to  
32 read as follows:

33 21. A person bidding on a contract **[or agreement]** for the  
34 erection, alteration or repair of a public building, structure, facility or  
35 other improvement to real property, the total price of which exceeds  
36 \$100,000, shall furnish a guarantee as provided for herein. A  
37 contracting unit may provide that a person bidding on any other  
38 contract **[or agreement]**, advertised in accordance with law, shall  
39 furnish a guarantee as provided for herein. The guarantee shall be  
40 payable to the contracting unit so that if the contract **[or agreement]**  
41 is awarded to the bidder, the bidder will enter into a contract therefor  
42 and will furnish any performance bond or other security required as  
43 a guarantee or indemnification. The guarantee shall be in the amount  
44 of 10% of the bid, but not in excess of \$20,000.00, except as  
45 otherwise provided herein, and may be given, at the option of the

1 bidder, by certified check, cashier's check or bid bond. In the event  
2 that any law or regulation of the United States imposes any condition  
3 upon the awarding of a monetary grant to any contracting unit, which  
4 condition requires the depositing of a guarantee in an amount other  
5 than 10% of the bid or in excess of \$20,000.00 the provisions of this  
6 section shall not apply and the requirements of the law or regulation  
7 of the United States shall govern.

8 (cf: P.L.1999, c.39, s.3)

9

10 30. Section 22 of P.L.1971, c.198 (C.40A:11-22) is amended to  
11 read as follows:

12 22. a. A person bidding on a contract **[or agreement]** for the  
13 erection, alteration or repair of a building, structure, facility or other  
14 improvement to real property, the total price of which exceeds  
15 \$100,000, shall furnish a certificate from a surety company, as  
16 provided for herein. A contracting unit may provide that a person  
17 bidding on any other contract shall furnish a certificate from a surety  
18 company, as provided for herein.

19 b. When a surety company bond is required in the advertisement  
20 or specifications for a contract **[or agreement]**, every contracting unit  
21 shall require from any bidder submitting a bid in accordance with  
22 plans, specifications and advertisements, as provided for by law, a  
23 certificate from a surety company stating that it will provide the  
24 contractor with a bond in such sum as is required in the advertisement  
25 or in the specifications.

26 This certificate shall be obtained for a bond--

27 (1) For the faithful performance of all provisions of the  
28 specifications or for all matters which may be contained in the notice  
29 to bidders, relating to the performance of the contract **[or**  
30 **agreement]**, and

31 (2) If any be required, for a guarantee bond for the faithful  
32 performance of the contract provisions relating to the repair and  
33 maintenance of any work, project or facility and its appurtenances and  
34 keeping the same in good and serviceable condition during the term  
35 of the bond as provided for in the notice to bidders or in the  
36 specifications, or

37 (3) In such other form as may be provided in the notice to bidders  
38 or in the specifications.

39 If a bidder desires to offer the bond of an individual instead of that  
40 of a surety company, the bidder shall submit with the bid a certificate  
41 signed by such individual similar to that required of a surety company.

42 The contracting unit may reject any such bid if it is not satisfied  
43 with the sufficiency of the individual surety offered.

44 (cf: P.L.1999, c.39, s.4)

1       31. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to  
2 read as follows:

3       23. **[a.]** Advertisements for bids; bids; general requirements. **a.**  
4 All advertisements for bids shall be published in **[a legal] an official**  
5 newspaper of the contracting unit sufficiently in advance of the date  
6 fixed for receiving the bids to promote competitive bidding, but in no  
7 event less than 10 days prior to such date; except that all  
8 advertisements for bids on contracts for the collection and disposal of  
9 municipal solid waste shall be published in **[a legal] an official**  
10 newspaper of the contracting unit circulating in the county or  
11 municipality, and in at least one newspaper of general circulation  
12 published in the State, sufficiently in advance of the date fixed for  
13 receiving the bids to promote competitive bidding, but not less than 60  
14 days prior to that date.

15       b. The advertisement shall designate the manner of submitting and  
16 the method of receiving the bids and the time and place at which the  
17 bids will be received. If the published specifications provide for  
18 receipt of bids by mail, those bids which are mailed to the contracting  
19 unit shall be sealed and shall only be opened for examination at such  
20 time and place as all bids received are unsealed and announced. At  
21 such time and place the contracting agent of the contracting unit shall  
22 publicly receive the bids, and thereupon immediately proceed to unseal  
23 them and publicly announce the contents, which announcement shall  
24 be made in the presence of any parties bidding or their agents, who are  
25 then and there present, and shall also make proper record of the prices  
26 and terms, upon the minutes of the governing body, if the award is to  
27 be made by the governing body of the contracting unit, or in a book  
28 kept for that purpose, if the award is to be made by other than the  
29 governing body, and in such latter case it shall be reported to the  
30 governing body of the contracting unit for its action thereon, when  
31 such action thereon is required. No bids shall be received after the time  
32 designated in the advertisement.

33       c. Notice of revisions or addenda to advertisements or bid  
34 documents shall be provided as follows:

35       1) For all contracts except those for construction work and  
36 municipal solid waste collection and disposal service, notice shall be  
37 published no later than five days, Saturdays, Sundays, and holidays  
38 excepted, prior to the date for acceptance of bids, in an official  
39 newspaper of the contracting unit and be provided to any person who  
40 has submitted a bid or who has received a bid package, in one of the  
41 following ways: i) in writing by certified mail or ii) by certified  
42 facsimile transmission, meaning that the sender's facsimile machine  
43 produces a receipt showing date and time of transmission and that the  
44 transmission was successful or iii) by a delivery service that provides  
45 certification of delivery to the sender.

1       2) For all contracts for construction work, notice shall be provided  
2 no later than seven days, Saturday, Sundays, or holidays excepted,  
3 prior to the date for acceptance of bids, to any person who has  
4 submitted a bid or who has received a bid package in any of the  
5 following ways: i) in writing by certified mail or ii) by certified  
6 facsimile transmission, meaning that the sender's facsimile machine  
7 produces a receipt showing date and time of transmission and that the  
8 transmission was successful or iii) by a delivery service that provides  
9 certification of delivery to the sender.

10       3) For municipal solid waste collection and disposal contracts,  
11 notice shall be published in an official newspaper of the contracting  
12 unit and in at least one newspaper of general circulation published in  
13 the State no later than five days, Saturdays, Sundays, and holidays  
14 excepted, prior to the date for acceptance of bids.

15       d. Failure of the contracting unit to advertise for the receipt of bids  
16 or to provide proper notification of revisions or addenda to  
17 advertisements or bid documents related to bids as prescribed by this  
18 section shall prevent the contracting unit from accepting the bids and  
19 require the readvertisement for bids pursuant to subsection a. of this  
20 section. Failure to obtain a receipt when good faith notice is sent or  
21 delivered to the address or telephone facsimile number on file with the  
22 contracting unit shall not be considered failure by the contracting unit  
23 to provide notice.

24 (cf: P.L.1997, c.243, s.1)

25  
26       32. Section 25 of P.L.1971, c.198 (C.40A:11-25) is amended to  
27 read as follows:

28       25. The governing body of any contracting unit may establish  
29 reasonable regulations appropriate for controlling the qualifications of  
30 prospective bidders upon contracts to be awarded on behalf of the  
31 contracting unit, by the class or category of **【work to be performed or**  
32 **materials and supplies to be furnished or hired】** goods or services to  
33 be provided or performed, which may fix the qualifications required  
34 according to the financial ability and experience of the bidders and the  
35 capital and equipment available to them pertinent to and reasonably  
36 related to the class or category of **【work to be performed or materials**  
37 **and supplies to be furnished or hired】** goods or services to be provided  
38 or performed in the performance of any such contract, and may require  
39 each bidder to furnish a statement thereof; and if such governing body  
40 is not satisfied with the qualifications of any bidder as founded upon  
41 such statement, it may refuse to furnish **【him】** the bidder with any  
42 plans or specifications for any public contract or consider any bid  
43 made by **【him】** the bidder for any contract.

44       Prior to the adoption of any such regulations, a contracting unit  
45 shall submit them to a public hearing. Notice of the hearing and a  
46 general description of the subject matter of the regulations to be

1 adopted shall be published in not less than two newspapers circulating  
2 in the county or municipality in which the contracting unit is located.  
3 Publication shall precede by at least 20 days the date set in the notice  
4 for the hearing. The clerk or secretary of the governing body of the  
5 contracting unit shall keep a record of the proceedings and of the  
6 testimony of any citizen or prospective bidder. Within 10 days after  
7 the completion of the hearings, the proposed regulations and a true  
8 copy of the hearings shall be forwarded to the Director of the Division  
9 of Local ~~Finance~~ Government Services for ~~his~~ the director's  
10 approval. This approval shall be indicated by a letter from the director  
11 to the governing body of the contracting unit. If the director fails to  
12 approve or disapprove the regulations within 30 days of their receipt  
13 by ~~him~~ the director, they shall take effect without ~~his~~ the  
14 director's approval. The director may disapprove such proposed  
15 regulations only if ~~he~~ the director finds that:

16 (a) They are written in a manner which will unnecessarily  
17 discourage full, free and open competition; or

18 (b) They unnecessarily restrict the participation of small businesses  
19 in the public bidding process; or

20 (c) They create undue preferences; or

21 (d) They violate any other provision of this act, or any other law.

22 If the director disapproves such proposed regulations within the  
23 30-day period prescribed, they shall be of no force and effect and may  
24 not be required as a condition to the acceptance of a bid on any public  
25 contract by the contracting unit. Any appeal from a decision of the  
26 director to the Local Finance Board shall be subject to the provisions  
27 of the Local Government Supervision Act (P.L.1947, c.151,  
28 C.52:27BB-1 et seq.).

29 No qualification rating of any bidder shall be influenced by ~~his~~ the  
30 bidder's race, religion, sex, national origin, nationality or ~~his~~ place  
31 of residence or business.

32 Nothing contained in this act shall limit the right of any court to  
33 review a refusal to furnish any such plans or specifications or ~~the~~  
34 consideration or to consider any bid on any contract advertised.

35 Any such governing body may adopt a standard form of statement  
36 or questionnaire for bidders on public works ~~and~~ contracts, and in  
37 such case their action shall be governed as provided herein.

38 (cf: P.L.1971, c.198, s.25)

39

40 33. Section 26 of P.L.1971, c.198 (C.40A:11-26) is amended to  
41 read as follows:

42 26. The governing body of any contracting unit may adopt a  
43 standard form of statement or questionnaire for bidders ~~on public~~  
44 works and contracts and may require from any person proposing to  
45 bid upon any such ~~public work or~~ contract a statement or answers

1 showing **his** the bidder's financial ability and experience in  
2 performing public sector work and describing the equipment available  
3 to such bidder in the performance of such **work or** contract, and if  
4 not satisfied with the sufficiency of this statement or answers may  
5 refuse to furnish plans and specifications to **him** the bidder.

6 (cf: P.L.1971, c.198, s.26)

7

8 34. Section 27 of P.L.1971, c.198 (C.40A:11-27) is amended to  
9 read as follows:

10 27. Such statements and questionnaires shall be standardized for  
11 like classes of **work** goods or services to be submitted to  
12 prospective bidders who may be required to respond to questions  
13 under oath. The statement or answer shall disclose fully the financial  
14 ability, adequacy of plant and equipment, organization and prior  
15 experience of the prospective bidder, and such other pertinent and  
16 material facts as may be required.

17 (cf: P.L.1971, c.198, s.27)

18

19 35. Section 28 of P.L.1971, c.198 (C.40A:11-28) is amended to  
20 read as follows:

21 28. Prospective bidders shall be classified as to the character and  
22 amount of **public work or** goods or services contracts as to which  
23 they shall be qualified to submit bids, and bids shall be accepted only  
24 from persons so qualified. The classification shall be made and an  
25 immediate notice thereof shall be sent to the prospective bidders by  
26 certified or registered mail within 8 days after the date of receipt of  
27 the responsive statement or answers.

28 (cf: P.L.1971, c.198, s.28)

29

30 36. Section 29 of P.L.1971, c.198 (C. 40A:11-29) is amended to  
31 read as follows:

32 29. If any person, after being notified of **his** a classification, shall  
33 be dissatisfied therewith or with the classification of other bidders,  
34 **he** that person may request in writing a hearing before such  
35 governing body, and may present such further evidence with respect  
36 to the financial responsibility, organization, plant and equipment, or  
37 experience of **himself** that person or other prospective bidders as  
38 might tend to justify a different classification.

39 Where a request is made for the change of classification of another  
40 prospective bidder, the applicant therefor shall notify such other bidder  
41 by certified or registered mail of the time and place of hearing, as fixed  
42 by the governing body, and at the hearing shall present satisfactory  
43 evidence that the notice was served as herein required, before any  
44 matters pertaining to a change of classification of such other bidder  
45 shall be taken up. After hearing such evidence the governing body  
46 may, in its discretion, by appropriate action, change or retain the

1 classification of any bidder.

2 No change in classification to be effective for any **[public work or]**  
3 contract where bidding therefor has been duly advertised, shall be  
4 made unless the written request therefor shall have been received at  
5 least 20 days before the final day for submission of bids.

6 All requests for change in classification and notice of any action  
7 sent by certified or registered mail to the parties directly affected  
8 thereby, shall be acted upon by the governing body concerned at least  
9 8 days prior to the date fixed for the next opening of bids on any  
10 contract or contracts for which such persons might be qualified to bid  
11 as a result of the reclassification.

12 (cf: P.L.1971, c.198, s.29)

13

14 37. Section 31 of P.L.1971, c.198 (C.40A:11-31) is amended to  
15 read as follows:

16 31. Any prospective bidder who is dissatisfied with **[his]**an original  
17 classification or reclassification may upon receipt of notice thereof,  
18 request in writing a hearing of the matter before the board of review.  
19 The request shall be filed with the contracting agent and the secretary  
20 of the board.

21 The board shall hold a hearing at which the prospective bidder shall  
22 be entitled to be heard and to submit additional information.

23 The board shall review the responsibility of all prospective bidders  
24 who have filed statements or answers, considering both the statement,  
25 answers and any additional information given at the hearing, and shall  
26 certify to the contracting unit concerned, its decision as to the original  
27 classifications or reclassifications, if any. The decisions shall be made  
28 by a majority vote.

29 In order for any change in classification by the board to be effective  
30 for **[public work or]** a contract previously advertised, the request shall  
31 be filed not less than 5 days prior to the final day for submission of  
32 bids, and the board shall hold a hearing and act upon the request not  
33 less than 2 days prior to the date fixed for the next opening of bids on  
34 any public **[work or]** works contract for which such prospective  
35 bidders might be qualified to bid as a result of the reclassification.

36 (cf: P.L.1971, c.198, s.31)

37

38 38. Section 32 of P.L.1971, c.198 (C.40A:11-32) is amended to  
39 read as follows:

40 32. Nothing herein contained shall be construed as depriving any  
41 **[contracting agent]** governing body of the right to reject a bid at any  
42 time prior to the actual award of a **[public work or]** contract, where  
43 the circumstances of the prospective bidder have changed subsequent  
44 to the qualification and classification of the **[said]** bidder, which in  
45 the opinion of the awarding contracting unit would adversely affect  
46 the responsibility of the bidder. Before taking final action on any such



1 bid, the contracting agent concerned shall notify the **[said]** bidder and  
2 afford **[him]** the bidder an opportunity to present any additional  
3 information which might tend to sustain the existing classification.

4 No person shall be qualified to bid on any **[public work or]**  
5 contract unless **[he]** that person shall have submitted a statement or  
6 answers as herein required within a period of 6 months preceding the  
7 date of opening of bids for the **[public work or]** contract, if the  
8 bidders thereon are required to be classified hereunder. In any case  
9 where the contracting unit shall require classification of the bidders  
10 in compliance with these sections, each bidder on any **[public work**  
11 **or]** contract shall be required to submit a statement listing the  
12 changes in the statement or answers herein required as part of  
13 **[his]**the bidder's bid submission.

14 (cf: P.L.1971, c.198, s.32)

15

16 39. Section 36 of P.L.1971, c.198 (C.40A:11-36) is amended to  
17 read as follows:

18 36. Any contracting unit by resolution of its governing body may  
19 authorize by sealed bid or public auction the sale of its personal  
20 property not needed for public use.

21 (1) If the estimated fair value of the property to be sold exceeds  
22 **[\$2,500.00]** 15 percent of the bid threshold in any one sale and it is  
23 neither livestock nor perishable goods, it shall be sold at public sale  
24 to the highest bidder.

25 (2) The contracting unit need not advertise for bids when it makes  
26 any such sale to the United States, the State of New Jersey, another  
27 contracting unit **[or to]** , any body politic to which it contributes tax  
28 raised funds, any foreign nation which has diplomatic relations with  
29 the United States, or any governmental unit in the United States.

30 (3) Notice of the date, time and place of the public sale together  
31 with a description of the items to be sold and the conditions of sale  
32 shall be published in **[a]** an official newspaper **[circulating in the**  
33 **contracting unit]**. Such sale shall be held not less than 7 nor more  
34 than 14 days after the latest publication of the notice thereof.

35 (4) If no bids are received the property may then be sold at private  
36 sale without further publication or notice thereof, but in no event at  
37 less than the estimated fair value; or the contracting unit may if it so  
38 **[elect]** elects reoffer the property at public sale. As used herein,  
39 "estimated fair value" means the market value of the property  
40 between a willing seller and a willing buyer less the cost to the  
41 **[municipality]** contracting unit to continue storage or maintenance of  
42 any personal property not needed for public use to be sold pursuant  
43 to this section.

44 (5) A contracting unit may reject all bids if it determines such  
45 rejection to be in the public interest. In any case in which the

1 contracting unit has rejected all bids, it may readvertise such personal  
2 property for a subsequent public sale. If it elects to reject all bids at  
3 a second public sale, pursuant to this section, it may then sell such  
4 personal property without further publication or notice thereof at  
5 private sale, provided that in no event shall the negotiated price at  
6 private sale be less than the highest price of any bid rejected at the  
7 preceding two public sales and provided further that in no event shall  
8 the terms or conditions of sale be changed or amended.

9 (6) If the estimated fair value of the property to be sold does not  
10 exceed the applicable bid threshold in any one sale or is either  
11 livestock or perishable goods, it may be sold at private sale without  
12 advertising for bids.

13 (7) Notwithstanding the provisions of this section, by resolution of  
14 the governing body, a contracting agent may include the sale of  
15 personal property no longer needed for public use as part of  
16 specifications to offset the price of a new purchase.

17 (cf: P.L.1971, c.198, s.36)

18  
19 40. Section 37 of P.L.1971, c.198 (C.40A:11-37) is amended to  
20 read as follows:

21 37. The Division of Local **[Finance]** Government Services in the  
22 Department of Community Affairs is hereby authorized to assist  
23 contracting units in all matters affecting the administration of this law.  
24 (cf: P.L.1971, c.198, s.37)

25  
26 41. R.S.40:8-2 is amended to read as follows:

27 40:8-2. The governing body of any municipality may acquire,  
28 establish, construct, own, control, lease, equip, improve, maintain,  
29 operate and regulate airports or landing fields for the use of airplanes  
30 and other aircraft within or without the limits of such municipality and  
31 may use for such purpose or purposes any property, owned or  
32 controlled by such municipality, suitable therefor, provided that the  
33 provision or performance of goods or services in connection with the  
34 operation, management or administration of an airport shall be done  
35 pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
36 (C.40A:11-1 et seq.) and any supplements thereto.

37 (cf: P.L.1947, c.85, s.1)

38  
39 42. R.S.40:8-3 is amended to read as follows:

40 40:8-3. The governing body of any county may acquire, by lease  
41 or purchase, and establish, construct, own, control, lease, equip,  
42 improve, maintain, operate and regulate airports or landing fields for  
43 the use of airplanes and other aircraft within the limits of such  
44 counties, and may use for such purpose or purposes any property,  
45 owned or controlled by such county, suitable therefor, provided that  
46 the provision or performance of goods or services in connection with

1 the operation, management or administration of an airport shall be  
2 done pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
3 (C.40A:11-1 et seq.) and any supplements thereto.

4 (cf: R.S.40:8-3)

5  
6 43. R.S.40:8-6 is amended to read as follows:

7 40:8-6. The governing body of a municipality or county which has  
8 established an airport or landing field and acquired, leased or set apart  
9 real property for such purpose may construct, improve, equip,  
10 maintain and operate the same, or may vest jurisdiction for the  
11 construction, improvement, equipment, maintenance and operation  
12 thereof, in any suitable officer, board or body of such municipality or  
13 county. Provision or performance of goods or services in connection  
14 with the operation, management or administration of an airport shall  
15 be done pursuant to the "Local Public Contracts Law," P.L.1971,  
16 c.198 (C.40A:11-1 et seq.) and any supplements thereto. The  
17 expenses of such construction, improvement, equipment, maintenance  
18 and operation shall be a municipal or county charge, as the case may  
19 be.

20 The governing body of any municipality or county may adopt  
21 regulations and establish fees or charges for the use of such airport or  
22 landing field, or may authorize an officer, board or body of such  
23 municipality or county having jurisdiction to adopt such regulations  
24 and establish such fees or charges, subject, however, to the approval  
25 of such governing body before they shall take effect.

26 (cf: R.S.40:8-6)

27  
28 44. (New section) Pursuant to the "Administrative Procedure  
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
30 Division of Local Government Services after consultation with the  
31 Commissioner of Education may adopt rules implementing the  
32 provisions of the "Local Public Contracts Law," P.L.1971, c.198  
33 (C.40A:11-1 et seq.) and the "Public Schools Contracts Law,"  
34 N.J.S.18A:18A-1 et seq..

35  
36 45. (New section) Notwithstanding the provisions of any law, rule  
37 or regulation to the contrary, competitive contracting may be used by  
38 boards of education in lieu of public bidding for procurement of  
39 specialized goods and services the price of which exceeds the bid  
40 threshold, for the following purposes:

41 a. The purchase or licensing of proprietary computer software  
42 designed for board of education purposes, which may include  
43 hardware intended for use with the proprietary software. This  
44 subsection shall not be utilized for the purpose of acquiring general  
45 purpose computer hardware or software;

1       b. The hiring of a for-profit entity or a not-for-profit entity  
2 incorporated under Title 15A of the New Jersey Statutes for the  
3 purpose of:

4       (1) the operation, management or administration of recreation or  
5 social service facilities or programs; or

6       (2) the operation, management or administration of data processing  
7 services;

8       c. Services performed by an energy services company, including  
9 the design, measurement, financing and maintenance of energy savings  
10 equipment or renovations, which result in payment derived, in whole  
11 or in part, from the sale of verified energy savings over the term of an  
12 agreement with a public utility or subsidiary, but not the provision or  
13 performance of the physical improvements that result in energy  
14 savings, provided that such savings are calculated pursuant to  
15 guidelines promulgated by the Board of Public Utilities and further  
16 provided that the Local Finance Board, in consultation with the State  
17 Board of Education, shall find that the terms and conditions of any  
18 financing agreement are reasonable;

19       d. Telecommunications transmission or switching services that are  
20 not part of a tariff or schedule of charges filed with the Board of  
21 Public Utilities;

22       e. The purchase of specialized machinery or equipment of a  
23 technical nature, or servicing thereof, which will not reasonably permit  
24 the drawing of specifications;

25       f. Food services provided by food service management companies  
26 when not part of programs administered by the New Jersey  
27 Department of Agriculture, Bureau of Child Nutrition Programs;

28       g. Driver education courses provided by licensed driver education  
29 schools;

30       h. At the option of the board of education, any good or service that  
31 is exempt from bidding pursuant to N.J.S.18A:18A-5;

32       i. Laboratory testing services;

33       j. Concessions;

34       k. The operation, management or administration of other services,  
35 with the approval of the Division of Local Government Services in the  
36 Department of Community Affairs.

37       Any purpose included herein shall not be considered by a board of  
38 education as an extraordinary unspecifiable service pursuant to  
39 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

40

41       46. (New section) Unless an exception is provided for under  
42 N.J.S.18A:18A-42 permitting a longer contract duration, contracts  
43 awarded pursuant to section 49 of P.L. , c. (C. ) (pending before  
44 the Legislature as this bill) may be for a term not to exceed five years.

1       47. (New section) a. In order to initiate competitive contracting,  
2 the board of education shall pass a resolution authorizing the use of  
3 competitive contracting each time specialized goods or services  
4 enumerated in section 45 of P.L. , c. (C. ) (pending before the  
5 Legislature as this bill) are desired to be contracted. If the desired  
6 goods or services have previously been contracted for using the  
7 competitive contracting process then the original resolution of the  
8 board of education shall suffice.

9       b. The competitive contracting process shall be administered by a  
10 purchasing agent qualified pursuant to subsection b. (pending before  
11 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
12 c.198 (C.40A:11-9) or by legal counsel of the board of education, or  
13 by the school business administrator of the board of education. Any  
14 contracts awarded under this process shall be made by resolution of  
15 the board of education subject to the provisions of subsection e. of  
16 section 49 of P.L. , c. (C. )(now before the Legislature as this bill).

17

18       48. (New section) The competitive contracting process shall utilize  
19 request for proposals documentation in accordance with the following  
20 provisions:

21       a. The purchasing agent or counsel or school business  
22 administrator shall prepare or have prepared request for proposal  
23 documentation, which shall include: all requirements deemed  
24 appropriate and necessary to allow for full and free competition  
25 between vendors; information necessary for potential vendors to  
26 submit a proposal; and a methodology by which the board of education  
27 will evaluate and rank proposals received from vendors.

28       b. The methodology for the awarding of competitive contracts shall  
29 be based on an evaluation and ranking, which shall include technical,  
30 management, and cost related criteria, and may include a weighting of  
31 criteria, all developed in a way that is intended to meet the specific  
32 needs of the contracting unit, and where such criteria shall not unfairly  
33 or illegally discriminate against or exclude otherwise capable vendors.  
34 When an evaluation methodology uses a weighting of criteria, at the  
35 option of the board of education the weighting to be accorded to each  
36 criterion may be disclosed to vendors prior to receipt of the proposals.  
37 The methodology for awarding competitive contracts shall comply  
38 with such rules and regulations as the Director of the Division of Local  
39 Government Services in the Department of Community Affairs, after  
40 consultation with the Commissioner of Education may adopt pursuant  
41 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
42 et seq.).

43       c. At no time during the proposal solicitation process shall the  
44 purchasing agent or counsel or school business administrator convey  
45 information, including price, to any potential vendor which could  
46 confer an unfair advantage upon that vendor over any other potential

1 vendor. If a purchasing agent or counsel or school business  
2 administrator desires to change proposal documentation, the  
3 purchasing agent or counsel or school business administrator shall  
4 notify only those potential vendors who received the proposal  
5 documentation of any and all changes in writing and all existing  
6 documentation shall be changed appropriately .

7 d. All proposals and contracts shall be subject to the provisions of  
8 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
9 statement of corporate ownership and the provisions of P.L.1975,  
10 c.127(C.10:5-31 et seq.) concerning equal employment opportunity  
11 and affirmative action.

12

13 49. (New section) Competitive contracting proposals shall be  
14 solicited in the following manner:

15 a. A notice of the availability of request for proposal  
16 documentation shall be published in an official newspaper of the board  
17 of education at least 20 days prior to the date established for the  
18 submission of proposals. The board of education shall promptly reply  
19 to any request by an interested vendor by providing a copy of the  
20 request for proposals. The board of education may charge a fee for  
21 the proposal documentation that shall not exceed \$50.00 or the cost  
22 of reproducing the documentation, whichever is greater.

23 b. Each interested vendor shall submit a proposal which shall  
24 include all the information required by the request for proposals.  
25 Failure to meet the requirements of the request for proposals may  
26 result in the board of education disqualifying the vendor from further  
27 consideration. Under no circumstances shall the provisions of a  
28 proposal be subject to negotiation by the board of education.

29 c. If the board of education, at the time of solicitation, utilizes its  
30 own employees to provide the goods or perform the services, or both  
31 considered for competitive contracting, the board of education shall,  
32 at any time prior to, but no later than the time of solicitation for  
33 competitive contracting proposals, notify affected employees of the  
34 board of education's intention to solicit competitive contracting  
35 proposals. Employees or their representatives shall be permitted to  
36 submit recommendations and proposals affecting wages, hours, and  
37 terms and conditions of employment in such a manner as to meet the  
38 goals of the competitive contract. If employees are represented by an  
39 organization that has negotiated a contract with the board of  
40 education, only the bargaining unit shall be authorized to submit such  
41 recommendations or proposals. When requested by such employees,  
42 the board of education shall provide such information regarding  
43 budgets and the costs of performing the services by such employees as  
44 may be available. Nothing shall prevent such employees from making  
45 recommendations that may include modifications to existing labor  
46 agreements in order to reduce such costs in lieu of award of a

1 competitive contract, and agreements implementing such  
2 recommendations may be considered as cause for rejecting all other  
3 proposals.

4 d. The purchasing agent or counsel or school business  
5 administrator shall evaluate all proposals only in accordance with the  
6 methodology described in the request for proposals. After proposals  
7 have been evaluated, the purchasing agent or counsel or school  
8 business administrator shall prepare a report evaluating and  
9 recommending the award of a contract or contracts. The report shall  
10 list the names of all potential vendors who submitted a proposal and  
11 shall summarize the proposals of each vendor. The report shall rank  
12 vendors in order of evaluation, shall recommend the selection of a  
13 vendor or vendors, as appropriate, for a contract, shall be clear in the  
14 reasons why the vendor or vendors have been selected among others  
15 considered, and shall detail the terms, conditions, scope of services,  
16 fees, and other matters to be incorporated into a contract. The report  
17 shall be made available to the public at least 48 hours prior to the  
18 awarding of the contract, or when made available to the board of  
19 education, whichever is sooner. The board of education shall have the  
20 right to reject all proposals for any of the reasons set forth in  
21 N.J.S.18A:18A-22.

22 e. Award of a contract shall be made by resolution of the board of  
23 education within 60 days of the receipt of the proposals, except that  
24 the proposals of any vendors who consent thereto, may, at the request  
25 of the board of education, be held for consideration for such longer  
26 period as may be agreed.

27 f. The report prepared pursuant to subsection d. of this section  
28 shall become part of the public record and shall reflect the final action  
29 of the board of education. Contracts shall be executed pursuant to  
30 N.J.S.18A:18A-40.

31 g. The secretary of the board of education shall publish a notice in  
32 the official newspaper of the board of education summarizing the  
33 award of a contract, which shall include but not be limited to, the  
34 nature, duration, and amount of the contract, the name of the vendor  
35 and a statement that the resolution and contract are on file and  
36 available for public inspection in the office of the secretary of the  
37 board of education.

38 h. The Director of the Division of Local Government Services in  
39 the Department of Community Affairs, after consultation with the  
40 Commissioner of Education, may adopt additional rules and  
41 regulations, in accordance with the "Administrative Procedure Act,"  
42 P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to  
43 effectuate the provisions of sections 45 through 49 of P.L. ,  
44 c. (C. ) (pending before the Legislature as this bill).

45

46 50. N.J.S.18A:18A-2 is amended to read as follows:

1 18A:18A-2. As used in this chapter, unless the context otherwise  
2 indicates:

3 a. "Board of education" means and includes the board of education  
4 of any local school district, consolidated school district, regional  
5 school district, county vocational school and any other board of  
6 education or other similar body other than the State Board of  
7 Education, the Commission on Higher Education or the Presidents'  
8 Council, established and operating under the provisions of Title 18A  
9 of the New Jersey Statutes and having authority to make purchases  
10 and to enter into contracts~~], agreements or leases]~~ for the provision  
11 or performance of [any work or the furnishing or hiring of any  
12 materials, supplies, equipment or services usually required, the cost or  
13 contract price is to be paid with or out of board funds] goods or  
14 services. The term "board of education" also shall include the board  
15 of trustees of a charter school established under P.L.1995, c.426  
16 (C.18A:36A-1 et seq.).

17 b. "~~[Contracting] Purchasing agent~~" means the secretary, business  
18 administrator or the business manager of the board of education duly  
19 assigned the authority, responsibility and accountability for the  
20 purchasing activity of the board of education and having the power to  
21 prepare advertisements, to advertise for and receive bids and to ~~[make~~  
22 ~~awards for the board of education in connection with purchases,]~~  
23 award contracts ~~[or agreements]~~ as permitted by this chapter, but if  
24 there be no secretary, business administrator or business manager,  
25 such officer, committees or employees to whom such power has been  
26 delegated by the board of education.

27 c. ~~["Contracts" for the purpose of this chapter means contracts~~  
28 ~~or agreements for the performance of work or the furnishing or hiring~~  
29 ~~of services, materials, or supplies as distinguished from contracts of~~  
30 ~~employment.] (Deleted by amendment, P.L. , c. .) (Pending before~~  
31 ~~the Legislature as this bill.)~~

32 d. "District" means and includes any local school district,  
33 consolidated school district, regional school district, county vocational  
34 school and any other board of education or other similar body other  
35 than the State board, established under the provisions of Title 18A of  
36 the New Jersey Statutes.

37 e. ~~["Legal newspaper" means a newspaper circulating in the~~  
38 ~~district, printed and published in the English language at least once a~~  
39 ~~week for at least one year continuously.] (Deleted by amendment,~~  
40 ~~P.L. , c. .) (Pending before the Legislature as this bill.)~~

41 f. ~~["Materials" includes goods and property subject to Article 2 of~~  
42 ~~Title 12A of the New Jersey Statutes, apparatus, or any other tangible~~  
43 ~~thing, except real property or any interest therein .] (Deleted by~~  
44 ~~amendment, P.L. , c. .) (Pending before the Legislature as this bill.)~~



- 1 g. "Extraordinary unspecifiable services" means services which are  
2 specialized and qualitative in nature requiring expertise, extensive  
3 training and proven reputation in the field of endeavor.
- 4 h. "Professional services" means services rendered or performed  
5 by a person authorized by law to practice a recognized profession and  
6 whose practice is regulated by law and the performance of which  
7 services requires knowledge of an advanced type in a field of learning  
8 acquired by a prolonged formal course of specialized instruction and  
9 study as distinguished from general academic instruction or  
10 apprenticeship and training. Professional services may also **[means]**  
11 mean services rendered in the provision or performance of [work]  
12 goods or services that **[is]** are original and creative in character in a  
13 recognized field of artistic endeavor.
- 14 i. **["Project"** means any work, undertaking, construction or  
15 alteration.] (Deleted by amendment, P.L. , c. .) (Pending before the  
16 Legislature as this bill.)
- 17 j. "Purchases" **[are]** means transactions, for a valuable  
18 consideration, creating or acquiring an interest in goods, services and  
19 property, except real property or any interest therein.
- 20 k. "Work" **[includes services and any other activity of a tangible**  
21 **or intangible nature]** means any task, program, undertaking, or  
22 activity, related to any development, redevelopment, construction or  
23 reconstruction performed or [assumed] provided pursuant to a  
24 contract [or agreement] with a board of education.
- 25 l. "Aggregate" means the sums expended or to be expended for the  
26 provision or performance of any goods or services in connection with  
27 the same immediate purpose or task, or the furnishing of similar goods  
28 or services, during the same contract year through a contract awarded  
29 by a purchasing agent.
- 30 m. "Bid threshold" means the dollar amount set in N.J.S.18A:18A-  
31 3, above which a board of education shall advertise for and receive  
32 sealed bids in accordance with procedures set forth in N.J.S.18A:18A-  
33 1 et seq.
- 34 n. "Contract" means any agreement, including but not limited to a  
35 purchase order or a formal agreement, which is a legally binding  
36 relationship enforceable by law, between a vendor who agrees to  
37 provide or perform goods or services and a board of education which  
38 agrees to compensate a vendor, as defined by and subject to the terms  
39 and conditions of the agreement. A contract also may include an  
40 arrangement whereby a vendor compensates a board of education for  
41 the vendor's right to perform a service, such as, but not limited to,  
42 operating a concession.
- 43 o. "Contract year" means the period of 12 consecutive months  
44 following the award of a contract.

1     p. "Competitive contracting" means the method described in  
2 sections 45 through 49 of P.L. , c. (C. ) (pending before the  
3 Legislature as this bill) of contracting for specialized goods and  
4 services in which formal proposals are solicited from vendors; formal  
5 proposals are evaluated by the purchasing agent or counsel or school  
6 business administrator; and the board of education awards a contract  
7 to a vendor or vendors from among the formal proposals received.

8     q. "Goods and services" or "goods or services" means any work,  
9 labor, commodities, equipment, materials, or supplies of any tangible  
10 or intangible nature, except real property or any interest therein,  
11 provided or performed through a contract awarded by a purchasing  
12 agent , including goods and property subject to N.J.S.12A:2-101 et  
13 seq.

14     r. "Library and educational goods and services" means textbooks,  
15 copyrighted materials, student produced publications and services  
16 incidental thereto, including but not limited to books, periodicals,  
17 newspapers, documents, pamphlets, photographs, reproductions,  
18 microfilms, pictorial or graphic works, musical scores, maps, charts,  
19 globes, sound recordings, slides, films, filmstrips, video and magnetic  
20 tapes, other printed or published matter and audiovisual and other  
21 materials of a similar nature, necessary binding or rebinding of library  
22 materials, and specialized computer software used as a supplement or  
23 in lieu of textbooks or reference material.

24     s. "Lowest price" means the least possible amount that meets all  
25 requirements of the request of a purchasing agent.

26     t. "Lowest responsible bidder or vendor" means the bidder or  
27 vendor: (1) whose response to a request for bids offers the lowest  
28 price and is responsive; and (2) who is responsible.

29     u. "Official newspaper" means any newspaper designated by the  
30 board of education pursuant to R.S.35:1-1 et seq.

31     v. "Purchase order" means a document issued by the purchasing  
32 agent authorizing a purchase transaction with a vendor to provide or  
33 perform goods or services to the board of education, which, when  
34 fulfilled in accordance with the terms and conditions of a request of a  
35 purchasing agent and other provisions and procedures that may be  
36 established by the board of education, will result in payment by the  
37 board of education.

38     w. "Quotation" means the response to a formal or informal request  
39 made by a purchasing agent to a vendor for provision or performance  
40 of goods or services, when the aggregate cost is less than the bid  
41 threshold. Quotations may be in writing, or taken verbally if a record  
42 is kept by the purchasing agent.

43     x. "Responsible" means able to complete the contract in  
44 accordance with its requirements, including but not limited to  
45 requirements pertaining to experience, moral integrity, operating  
46 capacity, financial capacity, credit, and workforce, equipment, and

1 facilities availability .

2 y. "Responsive" means conforming in all material respects to the  
3 terms and conditions, specifications, legal requirements, and other  
4 provisions of the request.

5 z. "Public works" means building, altering, repairing, improving or  
6 demolishing any public structure or facility constructed or acquired by  
7 a board of education to house school district functions or provide  
8 water, waste disposal, power, transportation and other public  
9 infrastructures.

10 aa. "Concession" means the granting of a license or right to act for  
11 or on behalf of the board of education, or to provide a service  
12 requiring the approval or endorsement of the board of education, and  
13 which may or may not involve a payment or exchange, or provision of  
14 services by or to the board of education, provided that the term  
15 concession shall not include vending machines.

16 bb. "Index rate" means the rate of annual percentage increase,  
17 rounded to the nearest half-percent, in the Implicit Price Deflator for  
18 State and Local Government Purchases of Goods and Services,  
19 computed and published quarterly by the United States Department of  
20 Commerce, Bureau of Economic Analysis.

21 cc. "Proprietary" means goods or services of a specialized nature,  
22 that may be made or marketed by a person or persons having the  
23 exclusive right to make or sell them, when the need for such goods or  
24 services has been certified in writing by the board of education to be  
25 necessary for the conduct of its affairs.

26 dd. "Service or services" means the performance of work, or the  
27 furnishing of labor, time, or effort, or any combination thereof, not  
28 involving or connected to the delivery or ownership of a specified end  
29 product or goods or a manufacturing process. Service or services may  
30 also include an arrangement in which a vendor compensates the board  
31 of education for the vendor's right to operate a concession.

32 (cf: P.L.1994, c.48, s.59)

33

34 51. N.J.S.18A:18A-3 is amended to read as follows:

35 18A:18A-3. **【a. Any purchase, contract or agreement for the**  
36 **performance of any work or the furnishing or hiring of materials or**  
37 **supplies,】**

38 **a. When the cost or price of 【which, together with any other sums**  
39 **expended or foreseeably to be expended for the performance of any**  
40 **work or services in connection with the same project or the furnishing**  
41 **of similar materials or supplies during the same fiscal year paid with or**  
42 **out of school funds】 any contract awarded by the purchasing agent in**  
43 **the aggregate, does not exceed in a contract year the total sum of**  
44 **【\$7,500.00 or the amount determined pursuant to subsection b. of this**  
45 **section, in the fiscal year or, in the case of purchases that are not**  
46 **annually recurring, in a period of one year】 \$17,500, the contract may**

1 be **【made, negotiated and】** awarded by a **【contracting】** purchasing  
2 agent when so authorized by resolution of the board of education  
3 without public advertising for bids and bidding therefor, except that  
4 the board of education may adopt a resolution to set a lower threshold  
5 for the receipt of public bids or the solicitation of competitive  
6 quotations. If the purchasing agent is qualified pursuant to subsection  
7 b. (pending before the Legislature as section 15 of this bill) of section  
8 9 of P.L.1971, c.198 (C.40A:11-9) the board of education may  
9 establish that the bid threshold may be up to \$25,000. Such  
10 authorization may be granted for each contract or by a general  
11 delegation of the power to negotiate and award such contracts  
12 pursuant to this section.

13 b. Commencing **【January 1, 1983 and every two】** in the fifth year  
14 after the year in which P.L. , c. (now before the Legislature as this  
15 bill) takes effect, and every five years thereafter, the Governor, in  
16 consultation with the Department of Treasury, shall adjust the  
17 threshold amount and the higher threshold amount which the board of  
18 education is permitted to establish as set forth in subsection a. of this  
19 section or the threshold amount resulting from any adjustment under  
20 this subsection, in direct proportion to the rise or fall of the  
21 **【consumer price index for all urban consumers in the New York City**  
22 **and the Philadelphia areas as reported by the United States**  
23 **Department of Labor】** index rate as that term is defined in  
24 N.J.S.18A:18A-2 (pending before the Legislature as section 50 of this  
25 bill), and shall round the adjustment to the nearest \$1,000. The  
26 Governor shall notify all local school districts of the adjustment no  
27 later than June 1 of every fifth year. The adjustment shall become  
28 effective on July 1 of the year in which it is **【reported】** made.

29 Any contract made pursuant to this section may be awarded for a  
30 period of 24 consecutive months, except that contracts for  
31 professional services pursuant to paragraph (1) of subsection a. of  
32 N.J.S.18A:18A-5 may be awarded for a period not exceeding 12  
33 consecutive months.

34 (cf: P.L.1983, c.171, s.1)

35

36 52. N.J.S.18A:18A-4 is amended to read as follows:

37 18A:18A-4. a. Every contract **【or agreement】**for the provision or  
38 performance of any **【work or the furnishing or hiring of any materials**  
39 or supplies】 goods or services, the cost **【or the contract price whereof**  
40 is to be paid with or out of school funds, not included within the terms  
41 of N.J.S.18A:18A-3】 of which in the aggregate exceeds the bid  
42 threshold, shall be **【made and】** awarded only by resolution of the  
43 board of education to the lowest responsible bidder after public  
44 advertising for bids and bidding therefor, except as is provided  
45 otherwise in this chapter or specifically by any other law.

1        【No work, materials or supplies shall be undertaken, acquired or  
2 furnished for a sum exceeding in the aggregate the amount set forth in,  
3 or calculated by the Governor pursuant to, N.J.S. 18A:18A-3, except  
4 by contract or agreement.】The board of education may, by resolution  
5 approved by a majority of the board of education and subject to  
6 subsections b. and c. of this section, disqualify a bidder who would  
7 otherwise be determined to be the lowest responsible bidder, if the  
8 board of education finds that it has had prior negative experience with  
9 the bidder.

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

12        (1) the bidder has been found, through either court adjudication,  
13 arbitration, mediation, or other contractually stipulated alternate  
14 dispute resolution mechanism, to have: failed to provide or perform  
15 goods or services; or failed to complete the contract in a timely  
16 manner; or otherwise performed unsatisfactorily under a prior contract  
17 with the board of education;

18        (2) the bidder defaulted on a contract, thereby requiring the board  
19 of education to utilize the services of another contractor to provide the  
20 goods or perform the services or to correct or complete the contract;

21        (3) the bidder defaulted on a contract, thereby requiring the board  
22 of education to look to the bidder's surety for completion of the  
23 contract or tender of the costs of completion; or

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

28        c. The following conditions apply if the board of education is  
29 contemplating a disqualification based on prior negative experience:

30        (1) The existence of any of the indicators of prior negative  
31 experience set forth in this section shall not require that a bidder be  
32 disqualified. In each instance, the decision to disqualify shall be made  
33 within the discretion of the board of education and shall be rendered  
34 in the best interests of the board of education.

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

38        (3) The bidder shall be furnished by the board of education with a  
39 written notice (a)stating that a disqualification is being considered; (b)  
40 setting forth the reason for the disqualification; and (c) indicating that  
41 the bidder shall be accorded an opportunity for a hearing before the  
42 board of education if the bidder so requests within a stated period of  
43 time. At the hearing, the bidder shall show good cause why the bidder  
44 should not be disqualified by presenting documents and testimony. If  
45 the board of education determines that good cause has not been shown

1 by the bidder, it may vote to find the bidder lacking in responsibility  
2 and, thus, disqualified.

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

5 (5) A disqualification may be voided or the period thereof may be  
6 reduced, in the discretion of the board of education, upon the  
7 submission of a good faith application under oath, supported by  
8 documentary evidence, setting forth substantial and appropriate  
9 grounds for the granting of relief, such as reversal of a judgment, or  
10 actual change of ownership, management or control of the bidder.

11 (6) An opportunity for a hearing need not be offered to a bidder  
12 whose disqualification is based on its suspension or debarment by an  
13 agency or department of the executive branch of the State of New  
14 Jersey. The term of such a disqualification shall be concurrent with  
15 the term of the suspension or debarment by the State agency or  
16 department.

17 d. The purchase of text books and materials that exceed the bid  
18 threshold and are approved by a board of education pursuant to  
19 N.J.S.18A-34-1 shall not require the further adoption of a resolution  
20 for purchase.

21 (cf: P.L.1983, c.171, s.2)

22

23 53. N.J.S.18A:18A-5 is amended to read as follows:

24 18A:18A-5. Exceptions to requirement for advertising. Any  
25 **[purchase,] contract [or agreement of the character described in**  
26 **N.J.S.18A:18A-4 may] , the amount of which exceeds the bid**  
27 **threshold, shall be [made,] negotiated [or] and awarded by the board**  
28 of education by resolution at a public meeting without public  
29 advertising for bids and bidding therefor if

30 a. The subject matter thereof consists of:

31 (1) Professional services. The board of education shall in each  
32 instance state supporting reasons for its action in the resolution  
33 awarding each contract and shall forthwith cause to be printed once,  
34 in an official newspaper, a brief notice stating the nature, duration,  
35 service and amount of the contract, and that the resolution and  
36 contract are on file and available for public inspection in the office of  
37 the board of education;

38 (2) Extraordinary unspecifiable services which cannot reasonably  
39 be described by written specifications**[, which] . The application of**  
40 this exception as to extraordinary unspecifiable services shall be  
41 construed narrowly in favor of open competitive bidding where  
42 possible and the [State Board of Education] Director of the Division  
43 of Local Government Services in the Department of Community  
44 Affairs is authorized to establish rules and regulations after  
45 consultation with the Commissioner of Education limiting its use in  
46 accordance with the intention herein expressed; and the board of

1 education shall in each instance state supporting reasons for its action  
2 in the resolution awarding the contract for extraordinary unspecifiable  
3 services and shall forthwith cause to be printed, in the manner set forth  
4 in paragraph (1) of this subsection, a brief notice of the award of such  
5 contract;

6 (3) The doing of any work by employees of the **【contracting unit】**  
7 board of education;

8 (4) The printing of all legal notices; and legal briefs, records and  
9 appendices to be used in any legal proceeding in which the  
10 **【contracting party】 board of education** may be a party;

11 (5) **【Textbooks, copyrighted materials, kindergarten supplies, and**  
12 **student produced publications and services incidental thereto】** Library  
13 and educational goods and services;

14 (6) Food **【services and】** supplies, including food supplies for home  
15 economics classes, when purchased pursuant to rules and regulations  
16 of the State board and in accordance with the provisions of  
17 N.J.S.18A:18A-6;

18 (7) The supplying of any product or the rendering of any service  
19 by a public utility, which is subject to the jurisdiction of the Board of  
20 Public Utilities, in accordance with the tariffs and schedules of charges  
21 made, charged and exacted, filed with said board;

22 (8) The printing of bonds and documents necessary to the issuance  
23 and sale thereof by a board of education;

24 (9) Equipment repair service if in the nature of an extraordinary  
25 unspecifiable service and necessary parts furnished in connection with  
26 such services, which exception shall be in accordance with the  
27 requirements for extraordinary unspecifiable services;

28 (10) Insurance, including the purchase of insurance coverage and  
29 consultant services, which exception shall be in accordance with the  
30 requirements for extraordinary unspecifiable services;

31 (11) Publishing of legal notices in newspapers as required by law;

32 (12) The acquisition of artifacts or other items of unique intrinsic,  
33 artistic or historic character;

34 (13) **【Election expenses, including advertising expenses incidental**  
35 **thereto】** Those goods and services necessary or required to prepare  
36 and conduct an election;

37 (14) **【Electronic data processing service obtained from another**  
38 **board of education;】** (Deleted by amendment, P.L. .c. .) (Pending  
39 before the Legislature as this bill.)

40 (15) **【Driver education courses provided by licensed driver**  
41 **education schools;】** (Deleted by amendment, P.L. .c. .) (Pending  
42 before the Legislature as this bill.)

43 (16) **【Performance of work or services or the furnishing of**  
44 **materials, supplies or equipment for the purpose of conserving energy**  
45 **in buildings owned by any local board of education, the entire price of**

1 which shall be established as a percentage of the resultant savings in  
2 energy costs;] (Deleted by amendment, P.L. .c. .) (Pending before  
3 the Legislature as this bill.)

4 (17) The doing of any work by persons with disabilities employed  
5 by a sheltered workshop [. ] ;

6 (18) Expenses for travel and conferences;

7 (19) The provision or performance of goods or services for the  
8 support or maintenance of proprietary computer hardware and  
9 software, except that this provision shall not be utilized to acquire or  
10 upgrade non-proprietary hardware or acquire or update non-  
11 proprietary software;

12 (20) Purchases of goods and services at rates set by the Universal  
13 Service Fund administered by the Federal Communications  
14 Commission;

15 (21) Goods and services paid with funds that: are raised by or  
16 collected from students to support the purchase of student oriented  
17 items or materials, such as yearbooks, class rings, and a class gift; and  
18 are deposited in school or student activity accounts; and require no  
19 budget appropriation from the board of education;

20 (22) Food services provided by food service management  
21 companies pursuant to procedures established by the New Jersey  
22 Department of Agriculture, Bureau of Child Nutrition Programs;

23 (23) Vending machines providing food or drink.

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

28 c. [The board of education has] Bids have been advertised [for  
29 bids] pursuant to N.J.S.18A:18A-4 on two occasions and [has  
30 received] (1) no bids have been received on both occasions in  
31 response to [its] the advertisement [and, after reasonable inquiry, it  
32 is determined that no board, body, officer, agency or authority of the  
33 United States, or of the State of New Jersey or of any county or  
34 municipality in which the board of education is located is willing and  
35 able to perform any work or furnish or hire any materials or supplies  
36 in conformity with the specifications of the board of education. Any],  
37 or (2) the board of education has rejected such bids on two occasions  
38 because it has determined that they are not reasonable as to price, on  
39 the basis of cost estimates prepared for or by the board of education  
40 prior to the advertising therefor, or have not been independently  
41 arrived at in open competition, or (3) on one occasion no bids were  
42 received pursuant to (1) and on one occasion all bids were rejected  
43 pursuant to (2), in whatever sequence; any such contract [or  
44 agreement entered into pursuant to this subsection c.] may then be  
45 [made,] negotiated [or] and may be awarded [only] upon adoption



1 of a resolution by **the** a two-thirds affirmative vote of **two-thirds**  
2 of **the** **full** authorized membership of the board of education **at a**  
3 meeting thereof **authorizing such a contract [or agreement.];**  
4 provided, however, that:

5 (a) A reasonable effort is first made by the board of education to  
6 determine that the same or equivalent goods or services, at a cost  
7 which is lower than the negotiated price, are not available from an  
8 agency or authority of the United States, the State of New Jersey or  
9 of the county in which the board of education is located, or any  
10 municipality in close proximity to the board of education;

11 (b) The terms, conditions, restrictions and specifications set forth  
12 in the negotiated contract are not substantially different from those  
13 which were the subject of competitive bidding pursuant to  
14 N.J.S.18A:18A-4; and

15 (c) Any minor amendment or modification of any of the terms,  
16 conditions, restrictions and specifications which were the subject of  
17 **the** competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated  
18 in the resolution awarding the contract; provided further, however,  
19 that if on the second occasion the bids received are rejected as  
20 unreasonable as to price, the board of education shall notify each  
21 responsible bidder submitting bids on the second occasion of its  
22 intention to negotiate, and afford each bidder a reasonable opportunity  
23 to negotiate, but the board of education shall not award such contract  
24 unless the negotiated price is lower than the lowest rejected bid price  
25 submitted on the second occasion by a responsible bidder, is the  
26 lowest negotiated price offered by any responsible vendor, and is a  
27 reasonable price for such goods or services.

28 d. **The** board of education has advertised for bids pursuant to  
29 N.J.S.18A:18A-4 on two occasions and has rejected such bids on each  
30 occasion because the board of education has determined that they are  
31 not reasonable as to price on the basis of cost estimates prepared for  
32 the board of education prior to the advertising therefor or have not  
33 been independently arrived at in open competition, but no such  
34 contract or agreement may be entered into after such rejection of bids,  
35 unless:

36 (1) Notification of the intention to negotiate and a reasonable  
37 opportunity to negotiate shall have been given by the board of  
38 education to each responsible bidder;

39 (2) The negotiated price is lower than the lowest rejected bid price  
40 of a responsible bidder who bid thereon and is the lowest negotiated  
41 price offered by any responsible supplier and is a reasonable price for  
42 such work, materials, supplies or services;

43 (3) Any amendment or modification of the terms, conditions,  
44 restrictions and specifications which were the subject of competitive  
45 bidding pursuant to N.J.S.18A:18A-4 shall be stated in the resolution  
46 awarding the contract; and

1 (4) The negotiated price is lower than the price of the same or  
2 equivalent materials or supplies available from the State, county or  
3 municipality in which the board of education is located.】

4 Whenever a board of education shall determine that a bid was not  
5 arrived at independently in open competition pursuant to 【this】  
6 subsection 【d.】 c.(2) of N.J.S.18A:18A-5, it shall thereupon notify the  
7 county prosecutor of the county in which the board of education is  
8 located and the Attorney General of the facts upon which its  
9 determination is based, and when appropriate, it may institute  
10 appropriate proceedings in any State or federal court of competent  
11 jurisdiction for a violation of any State or federal antitrust law or laws  
12 relating to the unlawful restraint of trade.

13 e. The board of education has solicited and received at least three  
14 quotations on materials, supplies or equipment for which a State  
15 contract has been issued pursuant to N.J.S.18A:18A-10, and the  
16 lowest responsible quotation is at least 10% less than the price the  
17 board would be charged for the identical materials, supplies or  
18 equipment, in the same quantities, under the State contract. Any such  
19 contract or agreement entered into pursuant to subsection d. or  
20 subsection e. may be made, negotiated or awarded only upon adoption  
21 of a resolution by the affirmative vote of two-thirds of the full  
22 membership of the board of education at a meeting thereof authorizing  
23 such a contract or agreement.

24 (cf: P.L.1995, c.265, s.1)

25  
26 54. N.J.S.18A:18A-7 is amended to read as follows:

27 18A:18A-7. Emergency 【purchases and】 contracts. Any  
28 【purchase,】 contract 【or agreement】 may be 【made,】 negotiated or  
29 awarded for a board of education without public advertising for bids  
30 and bidding therefor, notwithstanding that the 【cost or】 contract  
31 price will exceed the 【amount set forth in, or calculated by the  
32 Governor pursuant to, N.J.S.18A:18A-3】 bid threshold when an  
33 emergency affecting the health or safety of occupants of school  
34 property requires the immediate delivery of 【the articles】 goods or  
35 the performance of 【the service】 services, provided that the  
36 【awarding or making of such purchases,】 contracts 【or agreements  
37 are made】 are awarded in the following manner:

38 a. 【 A written requisition for the performance of such work or  
39 labor, or the furnishing of materials, supplies or services is filed with  
40 the contracting agent or his deputy in charge describing the nature of  
41 the emergency, the time of its occurrence and the need for invoking  
42 this section, certified by the employee in charge of the building,  
43 facility or equipment wherein the emergency occurred.

44 The contracting agent, or his deputy in charge, being satisfied that  
45 the emergency exists, is hereby authorized to award a contract for said

1 work or labor, materials, supplies or services. ] The official in charge  
2 of the building, facility or equipment wherein the emergency occurred  
3 or such other officer or employee as may be authorized to act in place  
4 of that official, shall notify the purchasing agent or a supervisor of the  
5 purchasing agent of the need for the performance of a contract, the  
6 nature of the emergency, the time of its occurrence and the need for  
7 invoking this section. If that person is satisfied that an emergency  
8 exists, that person shall be authorized to award a contract or contracts  
9 for such purposes as may be necessary to respond to the emergent  
10 needs. Such notification shall be reduced to writing and filed with the  
11 purchasing agent as soon as practicable.

12 b. Upon the furnishing of such [work or labor, materials, supplies]  
13 goods or services, in accordance with the terms of the contract [or  
14 agreement], the contractor furnishing such [work or labor, materials,  
15 supplies] goods or services, shall be entitled to be paid therefor and  
16 the board of education shall be obligated for said payment. The board  
17 of education shall take such action as shall be required to provide for  
18 the payment of the contract price.

19 c. The [State Board of Education] Division of Local Government  
20 Services in the Department of Community Affairs, after consultation  
21 with the Commissioner of Education, shall prescribe rules and  
22 procedures to implement the requirements of this section.

23 d. The board of education may prescribe additional rules and  
24 procedures to implement the requirements of this section.

25 (cf: P.L.1983, c.171, s.3)

26

27 55. N.J.S.18A:18A-8 is amended to read as follows:

28 18A:18A-8. Contracts not to be divided. [ No purchase, contract  
29 or agreement, which is single in character or which necessarily or by  
30 reason of the quantities required to effectuate the purpose of the  
31 purchase, contract or agreement, includes the furnishing of additional  
32 services or equipment or buying materials or supplies or the doing of  
33 additional work, shall be subdivided, so as to bring it or any of the  
34 parts thereof under the maximum price or cost limitation of the  
35 amount set forth in, or calculated by the Governor pursuant to, N.J.S.  
36 18A:18A-3, thus dispensing with the requirement of public advertising  
37 and bidding therefor. In purchasing or contracting for, or agreeing  
38 for the furnishing of, any services, equipment, materials or supplies,  
39 the doing of any work included in or incident to the performance or  
40 completion of any project, which is single in character or inclusive of  
41 the furnishing of additional services or equipment or buying materials  
42 or supplies or the doing of additional work, or which requires the  
43 furnishing of more than one article of equipment or buying materials  
44 or supplies, all of the services, materials or supplies requisite for the  
45 completion of such project shall be included in one purchase, contract  
46 or agreement. ] a. No contract in the aggregate which is single in

1 character or which necessarily or by reason of the quantities required  
2 to effectuate the purpose of the contract includes the provision or  
3 performance of additional goods or services, shall be divided, so as to  
4 bring it or any of the parts thereof under the bid threshold, for the  
5 purpose of dispensing with the requirement of public advertising and  
6 bidding therefor.

7 b. In contracting for the provision or performance of any goods or  
8 services included in or incidental to the provision or performance of  
9 any work which is single in character or inclusive of the provision or  
10 performance of additional goods or services, all of the goods or  
11 services requisite for the completion of such contract shall be included  
12 in one contract.

13 (cf: P.L.1983, c.171, s.4)

14  
15 56. (New section) For the purpose of ensuring consistency  
16 between the "Local Public Contracts Law, " P.L.1971, c.198  
17 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
18 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
19 Government Services in the Department of Community Affairs, after  
20 consultation with the Commissioner of Education, and pursuant to the  
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
22 seq.), shall adopt rules concerning determinations of aggregation for  
23 the purposes of whether a contract is subject to public bidding as set  
24 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
25 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
26 N.J.S.18A:18A-8.

27  
28 57. N.J.S.18A:18A-9 is amended to read as follows:

29 18A:18A-9. Periodic solicitation of bids. Every board of education  
30 shall, on an annual basis or at such lesser intervals to be fixed by it,  
31 solicit by public advertisement the submission of bids for the  
32 **【furnishing of all work, materials and supplies】** provision or  
33 performance of goods or services which are and which under  
34 N.J.S.18A:18A-4 can be **【purchased or agreed or】** contracted to be  
35 **【furnished】** provided or performed only after public advertisement for  
36 bids and bidding therefor and all **【purchases, or】** contracts **【or**  
37 **agreements for the furnishing, of such work, materials and supplies】**  
38 for the provision or performance of such goods or services shall be  
39 **【made and】** awarded only in that manner.

40 (cf: N.J.S.18A:18A-9)

41  
42 58. N.J.S.18A:18A-10 is amended to read as follows:

43 18A:18A-10. Board of education purchases through State agency;  
44 procedure. a. A board of education, without advertising for bids, or  
45 after having rejected all bids obtained pursuant to advertising therefor,  
46 by resolution may purchase any **【materials, supplies,】** goods**【,】** or

1 services **[or equipment]** pursuant to a contract or contracts for such  
2 **[materials, supplies ,] goods[, ] or services [or equipment]** entered  
3 into on behalf of the State by the Division of Purchase and Property.

4 b. A board of education may also use, without advertising for bids,  
5 or having rejected all bids obtained pursuant to advertising, the  
6 Federal Supply Schedules of the General Services Administration **[as**  
7 **permitted by the "Federal Acquisition Streamlining Act of 1994,"**  
8 **Pub.L. 103-355, and federal regulations adopted thereunder.]**  
9 promulgated by the Director of the Division of Purchase and Property  
10 in the Department of the Treasury pursuant to section 1 of P.L.1996,  
11 c.16 (C.52:34-6.1), subject to the following conditions:

12 (1) the price of the goods being procured is no greater than the  
13 price offered to federal agencies;

14 (2) the Federal Supply Schedules may be used only for purchases  
15 of up to \$500,000 per year or for one product unit at any price and  
16 only for reprographic equipment or services, including digital copiers,  
17 used by the board of education; and

18 (3) the board of education receives the benefit of federally  
19 mandated price reductions during the term of the contract and is  
20 protected from price increases during that time.

21 c. Whenever a purchase is made, the board of education shall place  
22 its order with the vendor offering the lowest price, including delivery  
23 charges, that best meets the requirements of the board of education.  
24 Prior to placing such an order, the board of education shall document  
25 with specificity that the **[materials, supplies,] goods[, ] or services [or**  
26 **equipment]** selected best meet the requirements of the board of  
27 education.

28 (cf: P.L.1996, c.16, s.4)

29

30 59. N.J.S.18A:18A-11 is amended to read as follows:

31 18A:18A-11. Joint purchases by districts, municipalities, counties;  
32 authority. The boards of education of two or more districts may  
33 provide jointly by agreement for the **[purchasing of supplies, materials**  
34 **or work]** provision and performance of goods and services for their  
35 respective districts, or one or more boards of education may provide  
36 for such **[purchases]** provision or performance of goods or services  
37 by joint agreement with the governing body of **[the] any** municipality  
38 or county **[within whose boundaries any such district is wholly or**  
39 **partly located].**

40 (cf: N.J.S.18A:18A-11)

41

42 60. N.J.S.18A:18A-12 is amended to read as follows:

43 18A:18A-12. Contents of agreement. a. Such agreements shall be  
44 entered into by resolution adopted by each participating board of  
45 education, municipality or county and shall set forth the categories of

1 **【work, materials and supplies】** goods or services to be **【purchased】**  
2 provided or performed, the manner of advertising for bids and of  
3 awarding of contracts, the method of payment by each participating  
4 board of education, municipality or county, and other matters deemed  
5 necessary to carry out the purposes of the agreement.

6 b. Each participant's share of expenditures for purchases under any  
7 such agreement shall be appropriated and paid in the manner set forth  
8 in the agreement and in the same manner as for other expenses of the  
9 participant.

10 (cf: N.J.S.18A:18A-12)

11

12 61. N.J.S.18A:18A-13 is amended to read as follows:

13 18A:18A-13. Purchases and agreements subject to law and rules  
14 and regulations. Such purchases and all **【agreements】** contracts  
15 pertaining thereto shall be subject to all provisions of law and the  
16 applicable rules and regulations of the State board.

17 (cf: N.J.S.18A:18A-13)

18

19 62. N.J.S.18A:18A-14 is amended to read as follows:

20 18A:18A-14. Controversies or disputes; determination; appeal.  
21 In the event that any controversy or dispute shall arise among the  
22 parties (except a municipality or county) to any such **【agreement】**  
23 contract, the same shall be referred to the county superintendent of the  
24 county in which the districts are situate for determination and his  
25 determination thereon shall be binding, subject to appeal to the  
26 commissioner and the State board pursuant to law. In the event that  
27 the districts are in more than one county, the controversy or dispute  
28 shall be referred to the county superintendents of the counties for joint  
29 determination, and if they shall be unable to agree upon a joint  
30 determination within 30 days, the controversy or dispute shall be  
31 referred to the commissioner for determination.

32 (cf: N.J.S.18A:18A-14)

33

34 63. N.J.S.18A:18A-15 is amended to read as follows:

35 18A:18A-15. Specifications generally. Any specifications for **【an**  
36 **acquisition】** the provision or performance of goods or services under  
37 this chapter**【, whether by purchase, contract or agreement,】** shall be  
38 drafted in a manner to encourage free, open and competitive bidding.  
39 In particular, no specifications under this chapter may:

40 a. Require any standard, restriction, condition or limitation not  
41 directly related to the purpose, function or activity for which the  
42 **【purchase,】** contract **【or agreement】** is **【made】** awarded; or

43 b. Require that any bidder be a resident of, or that **【his】** the  
44 bidder's place of business be located in, the county or school district  
45 in which the **【purchase】** contract will be**【made】** awarded or **【the**

1 contract or agreement] performed, unless the physical proximity of the  
2 bidder is requisite to the efficient and economical [purchase or]  
3 performance of the contract [or agreement]; or

4 c. Discriminate on the basis of race, religion, sex, national origin  
5 creed, color, ancestry, age, marital status, affectional or sexual  
6 orientation, familial status, liability for service in the Armed Forces of  
7 the United States, or nationality; or

8 d. Require, with regard to any [purchase,] contract [or  
9 agreement], the furnishing of any "brand name," but may in all cases  
10 require "brand name or equivalent," except that if the [materials]  
11 goods or services to be [supplied or purchased] provided or  
12 performed are [patented or copyrighted] proprietary, such [materials  
13 or supplies] goods or services may be purchased by stipulating the  
14 proprietary goods or services in the bid specification in any case in  
15 which the resolution authorizing the [purchase,] contract[, sale or  
16 agreement] so indicates, and the special need for such [patented or  
17 copyrighted [materials or supplies] proprietary goods or services is  
18 directly related to the performance, completion or undertaking of the  
19 purpose for which the [purchase,] contract [or agreement] is [made]  
20 awarded; or

21 e. Fail to include any option for renewal, extension, or release  
22 which the board of education may intend to exercise or require; or any  
23 terms and conditions necessary for the performance of any extra work;  
24 or fail to disclose any matter necessary to the substantial performance  
25 of the contract [or agreement].

26 The specifications for every contract for public work, the entire  
27 cost whereof will exceed \$20,000.00, shall provide that the board of  
28 education, through its authorized agent, shall upon completion of the  
29 contract report to the department as to the contractor's performance,  
30 and shall also furnish such report from time to time during  
31 performance if the contractor is then in default.

32 Any specification [adopted by the board of education] which  
33 knowingly excludes prospective bidders by reason of the impossibility  
34 of performance, bidding or qualification by any but one bidder, except  
35 as provided herein, shall be null and void and of no effect and [such  
36 purchase, contract or agreement] shall be readvertised for receipt of  
37 new bids, and the original [purchase,] contract [or agreement] shall  
38 be set aside by the board of education.

39 No provision in this section shall be construed to prevent a board  
40 of education from designating that a contract[, subcontract or other  
41 means of procurement of] for goods[, ] or services[, equipment or  
42 construction] shall be awarded to a small business enterprise, a  
43 minority business enterprise or a women's business enterprise pursuant  
44 to P.L.1985, c.490 (C.18A:18A-51 et seq.).

45 Any prospective bidder who wishes to challenge a bid specification

1 shall file such challenges in writing with the purchasing agent no less  
2 than three business days prior to the opening of the bids. Challenges  
3 filed after that time shall be considered void and having no impact on  
4 the board of education or the award of a contract.

5 (cf: P.L.1988, c.37, s.10)

6

7 64. (New section) Goods or services, the payment for which  
8 utilizes only funds received by a board of education from a bequest,  
9 legacy or gift, shall be subject to the provisions of N.J.S.18A:18A-1  
10 et seq., except that if such bequest, legacy or gift contains written  
11 instructions as to the specifications, manufacturer or vendor, or source  
12 of supply of the goods or services to be provided or performed, such  
13 instructions shall be honored.

14

15 65. N.J.S.18A:18A-18 is amended to read as follows:

16 18A:18A-18. Separate plans for various types of work; bids;  
17 contracts. In the preparation of plans and specifications for the  
18 construction, alteration or repair of any building by a board of  
19 education, when the entire cost of the work **[and materials]** will  
20 exceed the **[amount set forth in, or calculated by the Governor**  
21 **pursuant to, N.J.S.18A:18A-3]** bid threshold, separate plans and  
22 specifications shall be prepared for each of the following, and all work  
23 **[and materials]** kindred thereto to be performed or furnished in  
24 connection therewith:

- 25 a. The plumbing and gas fitting work;  
26 b. The heating and ventilating systems and equipment;  
27 c. The electrical work, including any electrical power plant;  
28 d. The structural steel and ornamental iron work;  
29 e. All other work **[and materials]** required for the completion of  
30 the project.

31 The board of education or its **[contracting]** purchasing agent shall  
32 advertise for and receive, in the manner provided by law, (1) separate  
33 bids for each of said branches of work, and (2) bids for all the work  
34 **[and materials]** , goods and services required to complete the building  
35 to be included in a single overall contract. There will be set forth in the  
36 bid the name or names of **[**, and evidence of performance security  
37 from,**]** all subcontractors to whom the bidder will subcontract the  
38 furnishing of plumbing and gas fitting, and all kindred work, and of the  
39 heating and ventilating systems and equipment, and electrical work,  
40 structural steel and ornamental iron work, each of which  
41 subcontractors shall be qualified in accordance with **[this chapter]**  
42 N.J.S.18A:18A-1 et seq. The school district shall require evidence of  
43 performance security to be submitted simultaneously with the list of  
44 the subcontractors. Evidence of performance security may be supplied  
45 by the bidder on behalf of himself and any or all subcontractors, or by



1 each respective subcontractor, or by any combination thereof which  
2 results in evidence of performance security equaling, but in no event  
3 exceeding, the total amount bid.

4 Contracts shall be awarded to the lowest responsible bidder. The  
5 contract shall be awarded in the following manner: If the sum total of  
6 the amounts bid by the lowest responsible bidder for each branch is  
7 less than the amount bid by the lowest responsible bidder for all the  
8 work ~~【and materials】~~, goods and services, the board of education shall  
9 award separate contracts for each of such branches to the lowest  
10 responsible bidder therefor, but if the sum total of the amount bid by  
11 the lowest responsible bidder for each branch is not less than the  
12 amount bid by the lowest responsible bidder for all the work ~~【and~~  
13 ~~materials】~~ goods and services, the board of education shall award a  
14 single overall contract to the lowest responsible bidder for all of such  
15 work ~~【and materials】~~ goods and services. In every case in which a  
16 contract is awarded under (2) above, all payments required to be made  
17 under such contract for work ~~【and materials】~~ goods and services  
18 supplied by a subcontractor shall, upon the certification of the  
19 contractor of the amount due to the subcontractor, be paid directly to  
20 the subcontractor.

21 (cf: P.L.1983, c.171, s.5)

22  
23 66. N.J.S.18A:18A-20 is amended to read as follows:

24 18A:18A-20. American goods and products to be used where  
25 possible. Each board of education shall provide, in the specifications  
26 for all contracts for work for which it will pay any part of the cost or  
27 work which by contract it will ultimately own and maintain, that only  
28 manufactured and farm products of the United States, wherever  
29 available, be used in such work.

30 (cf: N.J.S.18A:18A-20)

31  
32 67. N.J.S.18A:18A-21 is amended to read as follows:

33 18A:18A-21. Advertisements for bids; bids; general requirements.

34 a. Except as provided in section 5 of P.L.1985, c.490  
35 (C.18A:18A-55), all advertisements for bids shall be published in ~~【a~~  
36 ~~legal】~~ an official newspaper sufficiently in advance of the date fixed  
37 for receiving the bids to promote competitive bidding, but in no event  
38 less than 10 days prior to such date.

39 b. The advertisement shall designate the manner of submitting and  
40 of receiving the bids and the time and place at which the bids will be  
41 received. If the published specifications provide for receipt of bids by  
42 mail, those bids which are mailed to the board of education shall be  
43 sealed and shall be opened only for examination at such time and place  
44 as all bids received are unsealed and announced. At such time and  
45 place the purchasing agent of the board of education shall publicly  
46 receive the bids and thereupon immediately proceed to unseal them

1 and publicly announce the contents, which announcement shall be  
2 made in the presence of any parties bidding or their agents who are  
3 then and there present. A proper record of the prices and terms shall  
4 be made in the minutes of the board. No bids shall be received after  
5 the time designated in the advertisement.

6 c. Notice of revisions or addenda to advertisements or bid  
7 documents shall be provided as follows:

8 (1) For all contracts except those for construction work, notice  
9 shall be published no later than five days, Saturdays, Sundays, and  
10 holidays excepted, prior to the date for acceptance of bids, in an  
11 official newspaper of the board of education and be provided to any  
12 person who has submitted a bid or who has received a bid package, in  
13 one of the following ways: (a) in writing by certified mail or (b) by  
14 certified facsimile transmission, meaning that the sender's facsimile  
15 machine produces a receipt showing date and time of transmission and  
16 that the transmission was successful or (c) by a delivery service that  
17 provides certification of delivery to the sender.

18 2) For all contracts for construction work, notice shall be provided  
19 no later than seven days, Saturday, Sundays, or holidays excepted,  
20 prior to the date for acceptance of bids, to any person who has  
21 submitted a bid or who has received a bid package in any of the  
22 following ways: i) in writing by certified mail or ii) by certified  
23 facsimile transmission, meaning that the sender's facsimile machine  
24 produces a receipt showing date and time of transmission and that the  
25 transmission was successful or iii) by a delivery service that provides  
26 certification of delivery to the sender.

27 d. Failure of the board of education to advertise for the receipt of  
28 bids or to provide proper notification of revisions or addenda to  
29 advertisements or bid documents related to bids as prescribed by this  
30 section shall prevent the board of education from accepting the bids  
31 and require the readvertisement for bids pursuant to subsection a. of  
32 this section. Failure to obtain a receipt when good faith notice is sent  
33 or delivered to the address or telephone facsimile number on file with  
34 the board of education shall not be considered failure by the board of  
35 education to provide notice.

36 (cf: P.L.1985, c.490, s.12)

37

38 68. N.J.S.18A:18A-22 is amended to read as follows:

39 18A:18A-22. **【Bids to conform to specifications; rejection】**  
40 **Rejection** of bids. **【No bid shall be accepted which does not conform**  
41 **to the specifications furnished therefor. Nothing contained in this**  
42 **chapter shall be construed as depriving any】** **A** board of education **【of**  
43 **the right to】** **may** reject all bids **for any of the following reasons:**

44 **a. The lowest bid substantially exceeds the cost estimates for the**  
45 **goods or services;**

46 **b. The lowest bid substantially exceeds the board of education's**

1 appropriation for the goods or services;

2 c. The board of education decides to abandon the project for  
3 provision or performance of the goods or services;

4 d. The board of education wants to substantially revise the  
5 specifications for the goods or services;

6 e. The purposes or provisions or both of N.J.S.18A:18A-1 et seq.  
7 are being violated; and

8 f. The board of education decides to use the State authorized  
9 contract pursuant to N.J.S.18A:18A-10 .

10 (cf: N.J.S.18A:18A-22)

11

12 69. N.J.S.18A:18A-24 is amended to read as follows:

13 18A:18A-24. Security to accompany bid; amount. There may be  
14 required from any person bidding on any contract **[or agreement]**,  
15 advertised in accordance with law, that the bid be accompanied by a  
16 guarantee payable to the board of education that, if the contract **[or**  
17 **agreement]** is awarded to **[him, he]** the bidder, the bidder will enter  
18 into a contract therefor and will furnish any performance bond or  
19 other security required as a guarantee or indemnification. The  
20 guarantee shall be in the amount of 10% of the bid, but not in excess  
21 of \$20,000.00, except as otherwise provided herein, and may be  
22 given, at the option of the bidder, by certified check, cashier's check  
23 or bid bond. In the event that any law or regulation of the United  
24 States imposes any condition upon the awarding of a monetary grant  
25 to any board of education, which condition requires the depositing of  
26 a guarantee in an amount other than 10% of the bid or in excess of  
27 \$20,000.00, the provisions of this section shall not apply and the  
28 requirements of the law or regulation of the United States shall  
29 govern.

30 (cf: N.J.S.18A:18A-24)

31

32 70. N.J.S.18A:18A-25 is amended to read as follows:

33 18A:18A-25. Guarantee certificate. When a surety company bond  
34 is required in the advertisement or specifications for a contract **[or**  
35 **agreement]**, every board of education shall require from any bidder  
36 submitting a bid in accordance with plans, specifications and  
37 advertisements, as provided for by law, a certificate from a surety  
38 company stating that it will provide the contractor with a bond in such  
39 sum as is required in the advertisement or in the specifications.

40 This certificate shall be obtained for a bond--

41 a. For the faithful performance of all provisions of the  
42 specifications or for all matters which may be contained in the notice  
43 to bidders, relating to the performance of the contract **[or**  
44 **agreement]**; including the guarantees required under article 12 of  
45 chapter 44 of Title 2A of the New Jersey Statutes; and

46 b. If any be required, for a guarantee bond for the faithful

1 performance of the contract provisions relating to the repair and  
2 maintenance of any work, project or facility and its appurtenances and  
3 keeping the same in good and serviceable condition during the term  
4 of the bond as provided for in the notice to bidders or in the  
5 specifications; or

6 c. In such other form as may be provided in the notice to bidders  
7 or in the specifications.

8 If a bidder desires to offer the bond of an individual instead of that  
9 of a surety company, **[he]** the bidder shall submit with **[his]** the bid  
10 a certificate signed by such individual similar to that required of a  
11 surety company.

12 The board of education may reject any such bid if it is not satisfied  
13 with the sufficiency of the individual surety offered.

14 (cf: N.J.S.18A:18A-25)

15

16 71. N.J.S.18A:18A-27 is amended to read as follows:

17 18A:18A-27. **[Authority of State Board of Education to adopt**  
18 **regulations providing for qualification of bidders. The State Board of**  
19 **Education]** The State Treasurer may establish reasonable regulations  
20 appropriate for controlling the qualifications of prospective bidders  
21 upon contracts for public **[work]** works, the entire cost whereof will  
22 exceed **[\$20,000.00]** the bid threshold, by the amount, class or  
23 category of **[work to be performed or materials and supplies to be**  
24 **furnished or hired]** goods or services to be provided or performed  
25 which may fix the qualifications required according to the financial  
26 ability and experience of the bidders and the capital and equipment  
27 available to them pertinent to and reasonably related to the class or  
28 category of **[work to be performed or materials and supplies to be**  
29 **furnished or hired]** goods or services to be provided or performed in  
30 the performance of any such contract, and may require each bidder to  
31 furnish a statement thereof.

32 Such regulations shall be written in a manner:

33 a. Which will not unnecessarily discourage full, free and open  
34 competition; or

35 b. Which will not unnecessarily restrict the participation of small  
36 business in the public bidding process; or

37 c. Which will not create undue preferences; or

38 d. Which will not violate any other provision of this chapter, or any  
39 other law.

40 No qualification rating of any bidder shall be influenced by **[his]** the  
41 bidder's race, religion, sex, national origin, nationality or **[his]** place  
42 of residence.

43 **[In lieu of adopting any qualification regulation under this section,**  
44 **the State Board may, in whole or in part, delegate by regulation to the**  
45 **Department of the Treasury or other appropriate State agency with its**

1 consent, the authority to qualify bidders subject to this article.

2 "Department," as used in this article, shall mean the Department of  
3 Education, Department of the Treasury or other State agency to which  
4 the authority to qualify bidders has been delegated by the State  
5 Board.】

6 Such regulations shall not be effective unless they have been  
7 adopted as provided in the "Administrative Procedure Act" ,  
8 P.L.1968, c.410 (C.52:14B-1 et seq.).  
9 (cf: P.L.1983, c.266, s.3)

10

11 72. N.J.S.18A:18A-36 is amended to read as follows:

12 18A:18A-36. Time for making awards, deposits returned. a. The  
13 board of education shall award the contract or reject all bids within  
14 such time as may be specified in the invitation to bid, but in no case  
15 more than 60 days, except that the bids of any bidders who consent  
16 thereto may, at the request of the board of education, be held for  
17 consideration for such longer period as may be agreed. All bid  
18 security except the security of the three apparent lowest responsible  
19 bidders shall, if requested, be returned after 10 days from the opening  
20 of the bids, Sundays and holidays excepted and the bids of such  
21 bidders shall be considered as withdrawn. Within 3 days after the  
22 awarding of the contract and the approval of the contractor's  
23 performance bond the bid security of the remaining unsuccessful  
24 bidders shall be returned to them forthwith, Sundays and holidays  
25 excepted.

26 b. The contract shall be signed by all parties within the time limit  
27 set forth in the specifications, which shall not exceed 21 days, Sundays  
28 and holidays excepted, after the making of the award; provided,  
29 however, that all parties to the contract may agree to extend the limit  
30 set forth in the specifications beyond the 21 day limit required in this  
31 subsection. The contractor, upon written request to the board of  
32 education, is entitled to receive, within seven days of the request, an  
33 authorization to proceed pursuant to the terms of the contract on the  
34 date set forth in the contract for work to commence, or, if no date is  
35 set forth in the contract, upon receipt of authorization. If for any  
36 reason the contract is not awarded and the bidders have paid for or  
37 paid a deposit for the plans and specifications to the board of  
38 education, the payment or deposit shall immediately be returned to the  
39 bidders when the plans and specifications are returned in reasonable  
40 condition within 90 days of notice that the contract has not been  
41 awarded.

42 (cf: N.J.S.18A:18A-36)

43

44 73. N.J.S.18A:18A-37 is amended to read as follows:

45 18A:18A-37. Award of purchases, contracts or agreements. All  
46 contracts enumerated in this section shall be awarded as follows:

1       【All purchases, contracts or agreements which require public  
2 advertisement for bids shall be awarded to the lowest responsible  
3 bidder.

4       Prior to the award of any other purchase, contract or agreement,  
5 the contracting agent shall, except in the case of the performance of  
6 professional services, solicit quotations, whenever practicable, on any  
7 such purchase, contract or agreement the estimated cost or price of  
8 which is 20% or more of the amount set forth in, or calculated by the  
9 Governor pursuant to, N.J.S.18A:18A-3 and the award thereof shall  
10 be made, in accordance with N.J.S.18A:18A-3 or N.J.S.18A:18A-4,  
11 as the case may be, on the basis of the lowest responsible quotation  
12 received, which quotation is most advantageous to the board of  
13 education, price and other factors considered; provided, however, that  
14 if the contracting agent deems it impractical to solicit competitive  
15 quotations in the case of extraordinary unspecifiable service, or, in the  
16 case of such or any other purchase, contract or agreement awarded  
17 hereunder, having sought such quotations determines that it should not  
18 be awarded on the basis of the lowest quotation received, the  
19 contracting agent shall file a statement of explanation of the reason or  
20 reasons therefor, which shall be placed on file with said purchase,  
21 contract or agreement.】

22       a. For all contracts that in the aggregate are less than the bid  
23 threshold but 15 percent or more of that amount, and for those  
24 contracts that are for subject matter enumerated in subsection a. of  
25 N.J.S.18A:18A-5, except for paragraph (1) of that subsection  
26 concerning professional services and paragraph (3) of that subsection  
27 concerning work by employees of the board of education, the  
28 purchasing agent shall award the contract after soliciting at least two  
29 competitive quotations , if practicable . The award shall be made to  
30 a vendor whose response is most advantageous, price and other  
31 factors considered. The purchasing agent shall retain the record of the  
32 quotation solicitation and shall include a copy of the record with the  
33 voucher used to pay the vendor.

34       b. When in excess of the bid threshold, and after documented effort  
35 by the purchasing agent to secure competitive quotations, a contract  
36 for extraordinary unspecifiable services may be awarded when the  
37 purchasing agent has determined in writing that solicitation of  
38 competitive quotations is impracticable. Any such contract shall be  
39 awarded by resolution of the board of education.

40       c. If authorized by the board of education by resolution, all  
41 contracts that are in the aggregate less than 15 percent of the bid  
42 threshold may be awarded by the purchasing agent without soliciting  
43 competitive quotations.

44       d. Whenever two or more responses to a request of a purchasing  
45 agent offer equal prices and are the lowest responsible bids or  
46 proposals, the board of education may award the contract to the

1 vendor whose response, in the discretion of the board of education, is  
2 the most advantageous, price and other factors considered. In such a  
3 case, the award resolution or purchase order documentation shall  
4 explain why the vendor selected is the most advantageous.

5 (cf: P.L.1983, c.171, s.6)

6  
7 74. N.J.S.18A:18A-40 is amended to read as follows:

8 18A:18A-40. Form and execution of contracts and bonds. All  
9 contracts for the [performing of work or furnishing materials,  
10 supplies] provision or performance of goods or services shall be in  
11 writing. The State Board of Education may, subject to the  
12 requirements of law, prescribe the forms and manner in which  
13 contracts shall be made and executed, and the form and manner of  
14 execution and approval of all guarantee, indemnity, fidelity and other  
15 bonds.

16 (cf: N.J.S.18A:18A-40)

17  
18 75. Section 1 of P.L.1987, c.343 (C.18A:18A-40.1) is amended to  
19 read as follows:

20 1. Any contract [or agreement], the total price of which exceeds  
21 \$100,000.00, entered into by a board of education involving the  
22 construction, reconstruction, alteration, repair or maintenance of any  
23 building, structure, facility or other improvement to real property, shall  
24 provide for partial payments to be made at least once each month as  
25 the work progresses, unless the contractor shall agree to deposit bonds  
26 with the board of education pursuant to section 2 of [this act]  
27 P.L.1987, c.343 (C.18A:18A-40.2).

28 (cf: P.L.1987, c.343, s.1)

29  
30 76. Section 3 of P.L.1987, c.343 (C.18A:18A-40.3) is amended to  
31 read as follows:

32 3. With respect to any contract [or agreement] entered into by a  
33 board of education pursuant to section 1 of P.L.1987, c.343  
34 (C.18A:18A-40.1) for which the contractor shall agree to the  
35 withholding of payments pursuant to section 2 of P.L.1987, c.343  
36 (C.18A:18A-40.2), 5% of the amount due on each partial payment  
37 shall be withheld by the board of education pending completion of the  
38 contract [or agreement] if the contractor does not have a performance  
39 bond. If the contractor does have a performance bond, 2% of the  
40 amount due on each partial payment shall be withheld by the board of  
41 education when the outstanding balance of the contract exceeds  
42 \$500,000, and 5% of the amount due on each partial payment shall be  
43 withheld by the board of education when the outstanding balance of  
44 the contract is \$500,000 or less.

45 (cf: P.L.1993, c.18, s.1)

1 77. N.J.S.18A:18A-41 is amended to read as follows:

2 18A:18A-41. Liquidated damages. Any contract **[or agreement]**  
3 made pursuant to **[this]** chapter 18A of Title 18A of the New Jersey  
4 Statutes may include liquidated damages for the violation of any of the  
5 terms and conditions thereof or the failure to perform said contract  
6 **[or agreement]** in accordance with its terms and conditions, or the  
7 terms and conditions of **[this]** chapter 18A of Title 18A of the New  
8 Jersey Statutes.

9 (cf: N.J.S.18A:18A-41)

10

11 78. N.J.S.18A:18A-42 is amended to read as follows:

12 18A:18A-42. Multiyear contracts. All contracts for the provision  
13 or performance of goods or services shall be awarded for a period not  
14 to exceed 24 consecutive months, except that contracts for  
15 professional services pursuant to paragraph (1) of subsection a. of  
16 N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12  
17 consecutive months. Any board of education may **[enter into]** award  
18 a contract **[exceeding the fiscal year for the]** for longer periods of  
19 time as follows:

20 a. Supplying of:

21 (1) Fuel for heating purposes, for any term not exceeding in the  
22 aggregate, three years;

23 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles  
24 or equipment, for any term not exceeding in the aggregate, three years;

25 (3) Thermal energy produced by a cogeneration facility, for use for  
26 heating or air conditioning or both, for any term not exceeding **[20]**  
27 40 years, when the contract is approved by the Board of Public  
28 Utilities. For the purposes of this paragraph, "cogeneration" means  
29 the simultaneous production in one facility of electric power and other  
30 forms of useful energy such as heating or process steam; or

31 b. Plowing and removal of snow and ice, for any term not  
32 exceeding in the aggregate, three years; or

33 c. Collection and disposal of garbage and refuse, for any term not  
34 exceeding in the aggregate, three years; or

35 d. Data processing service, for any term of not more than **[five]**  
36 seven years; or

37 e. Insurance, including the purchase of insurance coverages,  
38 insurance consultant or administrative services, and including  
39 participation in a joint self-insurance fund, risk management program  
40 or related services provided by a school board insurance group, or  
41 participation in an insurance fund established by a county pursuant to  
42 N.J.S.40A:10-6, or a joint insurance fund established pursuant to  
43 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than  
44 three years; or

45 f. Leasing or servicing of automobiles, motor vehicles, electronic  
46 communications equipment, machinery and equipment of every nature



1 and kind and textbooks and non-consumable instructional materials,  
2 for any term not exceeding in the aggregate, five years; provided,  
3 however, such contracts shall be ~~entered into~~ awarded only subject  
4 to and in accordance with rules and regulations promulgated by the  
5 State Board of Education; or

6 g. Supplying of any product or the rendering of any service by a  
7 ~~telephone~~ company ~~which is subject to the jurisdiction of the~~  
8 ~~Board of Public Utilities~~ providing voice, data, transmission or  
9 switching services, for a term not exceeding five years; or

10 h. ~~Materials, supplies or services that are required on a recurring~~  
11 ~~basis from year to year, for any term not exceeding in the aggregate,~~  
12 ~~two years; however, such contract may be renewed yearly for a period~~  
13 ~~not exceeding three additional years without any further solicitation~~  
14 ~~for bids or bidding upon a finding by the board that the services are~~  
15 ~~being performed in an effective and efficient manner, or that the~~  
16 ~~materials and supplies continue to meet the original specifications. If~~  
17 ~~a board of education elects to renew an existing contract, the terms~~  
18 ~~and conditions of the existing contract shall remain substantially~~  
19 ~~unchanged and any increase in the contract cost over the three year~~  
20 ~~period shall be no greater than a total of 20% over the initial cost; or]~~  
21 ~~(Deleted by amendment, P.L. , c. ) (Pending before the Legislature~~  
22 ~~as this bill.)~~

23 i. Driver education instruction conducted by private, licensed  
24 driver education schools, for any term not exceeding in the aggregate,  
25 three years ; ~~or]~~

26 j. ~~Performance of work or services or the furnishing of materials,~~  
27 ~~supplies or equipment] Provision or performance of goods or services~~  
28 ~~for the purpose of conserving energy in the buildings owned by any~~  
29 ~~local board of education, the entire price of which shall be established~~  
30 ~~as a percentage of the resultant savings in energy costs, for a term not~~  
31 ~~to exceed [10] 15 years; except that these contracts shall be entered~~  
32 ~~into only subject to and in accordance with [rules and regulations]~~  
33 ~~guidelines promulgated by the [New Jersey Commerce and Economic~~  
34 ~~Growth pursuant to the "Administrative Procedure Act," P.L.1968,~~  
35 ~~c.410 (C.52:14B-1 et seq.),] Board of Public Utilities establishing a~~  
36 ~~methodology for computing energy costs;~~

37 ~~k. Any single project for the construction, reconstruction or~~  
38 ~~rehabilitation of any public building, structure or facility, or any public~~  
39 ~~works project, including the retention of the services of any architect~~  
40 ~~or engineer in connection therewith, for the length of time authorized~~  
41 ~~and necessary for the completion of the actual construction;~~

42 ~~l. Laundry service and the rental, supply and cleaning of uniforms~~  
43 ~~for any term of not more than three years;~~

44 ~~m. Food supplies and food services for any term of not more than~~  
45 ~~three years;~~

1       n. Purchases made under a contract awarded by the Director of the  
2 Division of Purchase and Property in the Department of the Treasury  
3 for use by counties, municipalities or other contracting units pursuant  
4 to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to  
5 exceed the term of that contract.

6       Any contract for services other than professional services, the  
7 statutory length of which contract is for three years or less, may  
8 include provisions for no more than one two-year, or two one-year,  
9 extensions, subject to the following limitations: a. the contract shall  
10 be awarded by resolution of the board of education upon a finding by  
11 the board of education that the services are being performed in an  
12 effective and efficient manner; b. no such contract shall be extended  
13 so that it runs for more than a total of five consecutive years; c. any  
14 price change included as part of an extension shall be based upon the  
15 price of the original contract as cumulatively adjusted pursuant to any  
16 previous adjustment or extension and shall not exceed the change in the  
17 index rate for the 12 months preceding the most recent quarterly  
18 calculation available at the time the contract is renewed; and d. the  
19 terms and conditions of the contract remain substantially the same.

20       All multiyear leases and contracts entered into pursuant to this  
21 section 18A:18A-42, including any two-year or one-year extensions,  
22 except [contracts for the leasing or servicing of equipment supplied by  
23 a telephone company which is subject to the jurisdiction of the Board  
24 of Public Utilities,] contracts for insurance coverages, insurance  
25 consultant or administrative services, participation or membership in  
26 a joint self-insurance fund, risk management programs or related  
27 services of a school board insurance group, participation in an  
28 insurance fund established by a county pursuant to N.J.S.40A:10-6 or  
29 contracts for thermal energy authorized pursuant to subsection a.  
30 above, and contracts for the provision or performance of [work or  
31 services or the furnishing of materials, supplies or equipment] goods  
32 or services to promote energy conservation authorized pursuant to  
33 subsection j. of this section, shall contain a clause making them  
34 subject to the availability and appropriation annually of sufficient funds  
35 as may be required to meet the extended obligation, or contain an  
36 annual cancellation clause. All contracts shall cease to have effect at  
37 the end of the contracted period and shall not be extended by any  
38 mechanism or provision, unless in conformance with the "Public  
39 School Contracts Law," N.J.S.18A:18A-1 et seq., except that a  
40 contract may be extended by mutual agreement of the parties to the  
41 contract when a board of education has commenced rebidding prior to  
42 the time the contract expires or when the awarding of a contract is  
43 pending at the time the contract expires.

44 (cf: P.L.1998, c.55, s.2)

1 79. N.J.S.18A:18A-44 is amended to read as follows:

2 18A:18A-44. Inspection, condemnation and rejection of work and  
3 materials. All **[work done and materials or supplies furnished]** goods  
4 and services provided or performed under contract shall be inspected  
5 by the **[business manager]** purchasing agent of the district, if there be  
6 a **[business manager]** purchasing agent of the district, but if there be  
7 no **[business manager]** purchasing agent of the district, they may be  
8 inspected by an appropriate officer employed by the board to whom  
9 such power shall have been delegated by the board, and subject to the  
10 approval of the board the **[business manager]** purchasing agent or  
11 such officer, as the case may be, shall condemn any **[work and reject**  
12 **any material or supplies,]** goods or services which in his judgment do  
13 not conform to the specifications of the contract therefor.

14 (cf: N.J.S.18A:18A-44)

15

16 80. N.J.S.18A:18A-45 is amended to read as follows:

17 18A:18A-45. Manner and method of sale. Any board of education  
18 may, by resolution and by sealed bid or public auction, authorize the  
19 sale of its personal property not needed for school purposes.

20 a. If the estimated fair value of the property to be sold exceeds**[**  
21 the amount set forth in, or calculated by the Governor pursuant to,  
22 N.J.S.18A:18A-3, **]** 15 percent of the bid threshold in any one sale and  
23 it is neither livestock nor perishable goods, it shall be sold at public  
24 sale to the highest bidder.

25 b. Notice of the date, time and place of the public sale, together  
26 with a description of the items to be sold and the conditions of sale,  
27 shall be published once in **[a legal]** an official newspaper. Such sale  
28 shall be held not less than seven nor more than 14 days after the  
29 publication of the notice thereof.

30 c. Personal property may be sold to the United States, the State of  
31 New Jersey, another board of education **[or to]** , any body politic, any  
32 foreign nation which has diplomatic relations with the United States,  
33 or any governmental unit in these United States by private sale without  
34 advertising for bids.

35 d. If no bids are received the property may then be sold at private  
36 sale without further publication or notice thereof, but in no event at  
37 less than the estimated fair value; or the board of education may if it  
38 so elect, reoffer the property at public sale. As used herein,  
39 "estimated fair value" means the market value of the property between  
40 a willing seller and a willing buyer less the cost to the board of  
41 education to continue storage or maintenance of any personal  
42 property not needed for school purposes to be sold pursuant to this  
43 section.

44 e. A board of education may reject all bids if it determines such  
45 rejection to be in the public interest. In any case in which the board

1 of education has rejected all bids, it may readvertise such personal  
2 property for a subsequent public sale. If it elects to reject all bids at  
3 a second public sale, pursuant to this section, it may then sell such  
4 personal property without further publication or notice thereof at  
5 private sale, provided that in no event shall the negotiated price at  
6 private sale be less than the highest price of any bid rejected at the  
7 preceding two public sales and provided further that in no event shall  
8 the terms or conditions of sale be changed or amended.

9 f. If the estimated fair value of the property to be sold does not  
10 exceed **the amount set forth in, or calculated by the Governor**  
11 **pursuant to, N.J.S.18A:18A-3,** the applicable bid threshold  
12 established pursuant to subsection a. of this section in any one sale or  
13 is either livestock or perishable goods, it may be sold at private sale  
14 without advertising for bids.

15 g. Notwithstanding the provisions of this section, by resolution of  
16 the board of education, a purchasing agent may include the sale of  
17 personal property no longer needed for school purposes as part of  
18 specifications to offset the price of a new purchase.

19 (cf: P.L.1983, c.171, s.7)

20  
21 81. (New section) Pursuant to the "Administrative Procedure  
22 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
23 Division of Local Government Services in the Department of  
24 Community Affairs, after consultation with the Commissioner of  
25 Education, may adopt rules implementing the provisions of the "Public  
26 School Contracts Law," N.J.S.18A:18A-1 et seq.

27  
28 82. Section 1 of P.L.1981, c.447 (C.5:10-21.1) is amended to read  
29 as follows:

30 1. a. All purchases, contracts, or agreements where the cost or  
31 contract price exceeds the sum of **[\$7,500.00] \$25,000** or, after  
32 **[June 30, 1985]** the effective date of P.L. , c. (now before the  
33 Legislature as this bill , the amount determined pursuant to subsection  
34 b. of this section shall, except as otherwise provided in this act, be  
35 made, negotiated, or awarded only after public advertisement for bids  
36 therefor and shall be awarded to that responsible bidder whose bid,  
37 conforming to the invitation for bids, is most advantageous to the  
38 authority, in its judgment, upon consideration of price and other  
39 factors. Any bid may be rejected when the authority determines that  
40 it is in the public interest to do so.

41 Any purchase, contract, or agreement where the cost or contract  
42 price is less than or equal to **[\$7,500.00] \$25,000** or, after **[June 30,**  
43 **1985]** the effective date of P.L. , c. (now before the Legislature as  
44 this bill) , the amount determined pursuant to subsection b. of this  
45 section may be made, negotiated, or awarded by the authority without  
46 advertising and in any manner which the authority, in its judgment,

1 deems necessary to serve its unique interests and purposes and which  
2 promotes, whenever practicable, full and free competition by the  
3 acceptance of quotations or proposals or by the use of other suitable  
4 methods.

5 b. Commencing 【January 1, 1985】 in the fifth year after the year  
6 in which P.L. , c. (now before the Legislature as this bill) takes  
7 effect, and every five years thereafter , the Governor, in consultation  
8 with the Department of the Treasury, shall【, no later than March 1 of  
9 each odd-numbered year,】 adjust the threshold amount set forth in  
10 subsection a. of this section, or 【subsequent to 1985】 after the  
11 effective date of P.L. , c. (now before the Legislature as this bill, the  
12 threshold amount resulting from any adjustment under this subsection,  
13 in direct proportion to the rise or fall of the 【consumer price index for  
14 all urban consumers in the New York City and the Philadelphia areas  
15 as reported by the United States Department of Labor】 index rate as  
16 that term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and  
17 shall round the adjustment to the nearest \$1,000. The Governor shall,  
18 no later than June 1 of 【each odd-numbered】 every fifth year, notify  
19 the authority of the adjustment. The adjustment shall become  
20 effective on July 1 of 【each odd-numbered year】 the year in which it  
21 is made.

22 (cf: P.L.1984, c.128, s.1)

23

24 83. Section 4 of P.L.1981, c.447 (C.5:10-21.4) is amended to read  
25 as follows:

26 4. Any purchase, contract, or agreement may be made, negotiated,  
27 or awarded pursuant to section 2 of 【this act】 P.L.1981, c.447  
28 (C.5:10-21.2) when:

29 a. Standardization of equipment and interchangeability of parts is  
30 in the public interest;

31 b. Only one source of supply or service is available;

32 c. The safety or protection of the authority's or other public  
33 property requires;

34 d. The exigency of the authority's service will not admit of  
35 advertisement;

36 e. More favorable terms can be obtained from a primary source of  
37 supply of an item or service;

38 f. Bid prices, after advertising, are not reasonable or have not been  
39 independently arrived at in open competition; but no negotiated  
40 purchase, contract, or agreement may be entered into under this  
41 subsection after the rejection of all bids received unless (1) notification  
42 of the intention to negotiate and reasonable opportunity to negotiate  
43 is given to each responsible bidder; (2) the negotiated price is lower  
44 than the lowest rejected bid price of a responsible bidder; and (3) the  
45 negotiated price is the lowest negotiated price offered by any

1 responsible contractor;

2 g. The purchase is to be made from, or the contract is to be made  
3 with, the federal or any state government or agency or political  
4 subdivision thereof; or

5 h. Purchases are to be made through or by the Director of the  
6 Division of Purchase and Property pursuant to section 1 of P.L.1959,  
7 c. 40 (C. 52:27B-56.1) , or through a contract made by any of the  
8 following: the Hackensack Meadowlands Development Commission  
9 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
10 Jersey Highway Authority established under section 4 of P.L.1952,  
11 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
12 under section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
13 Supply Authority established under section 4 of P.L.1981, c.293  
14 (C.58:1B-4); the South Jersey Transportation Authority established  
15 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
16 of New York and New Jersey established under R.S.32:1-4; the  
17 Delaware River Port Authority established under R.S.32:3-2; the  
18 Higher Education Student Assistance Authority established under  
19 N.J.S.18A:71A-3 .

20 (cf: P.L.1981, c.447, s.4)

21

22 84. Section 6 of P.L.1984, c.128 (C.13:17-6.1) is amended to read  
23 as follows:

24 6. a. All purchases, contracts, or agreements where the cost or  
25 contract price exceeds the sum of **[\$7,500.00]** \$25,000 or, after  
26 **[June 30, 1985]** the effective date of P.L. , c. (now before the  
27 Legislature as this bill) , the amount determined pursuant to  
28 subsection b. of this section shall be made, negotiated, or awarded  
29 only after public advertisement for bids therefor and shall be awarded  
30 to that responsible bidder whose bid, conforming to the invitation for  
31 bids, is most advantageous to the Hackensack Meadowlands  
32 Development Commission, in its judgment, upon consideration of  
33 price and other factors; provided, however, that such advertising shall  
34 not be required when the contract to be entered into is one for the  
35 furnishing or performing of services of a professional nature, or when  
36 the purchase is to be made through or by the Director of the Division  
37 of Purchase and Property pursuant to section 1 of P.L.1959, c.40  
38 (C.52:27B-56.1), or through a contract made by any of the following:  
39 the New Jersey Sports and Exposition Authority established under  
40 section 4 of P.L.1971, c.137 (C.5:10-4), the New Jersey Highway  
41 Authority established under section 4 of P.L.1952, c.16 (C.27:12B-4);  
42 the New Jersey Turnpike Authority established under section 3 of  
43 P.L.1948, c.454 (C.27:23-3); the New Jersey Water Supply Authority  
44 established under section 4 of P.L.1981, c.293 (C.58:1B-4); the South  
45 Jersey Transportation Authority established under section 4 of  
46 P.L.1991, c.252 (C.27:25A-4); the Port Authority of New York and

1 New Jersey established under R.S.32:1-4; the Delaware River Port  
2 Authority established under R.S.32:3-2; the Higher Education Student  
3 Assistance Authority established under N.J.S.18A:71A-3. Any bid  
4 may be rejected when the commission determines that it is in the  
5 public interest to do so.

6 Any purchase, contract, or agreement where the cost or contract  
7 price is less than or equal to **[\$7,500.00]** \$25,000 or, after **[June 30,**  
8 **1985]** the effective date of P.L. , c. (now before the Legislature as  
9 this bill) , the amount determined pursuant to subsection b. of this  
10 section may be made, negotiated, or awarded by the commission  
11 without advertising and in any manner which the commission, in its  
12 judgment, deems necessary to serve its unique interests and purposes  
13 and which promotes, whenever practicable, full and free competition  
14 by the acceptance of quotations or proposals or by the use of other  
15 suitable methods.

16 b. Commencing **[January 1, 1985]** in the fifth year after the year  
17 in which P.L. , c. (now before the Legislature as this bill) takes  
18 effect, and every five years thereafter, the Governor, in consultation  
19 with the Department of the Treasury, shall**[, no later than March 1 of**  
20 **each odd-numbered year,]** adjust the threshold amount set forth in  
21 subsection a. of this section, or **[subsequent to 1985]** after the  
22 effective date of P.L. , c. (now before the Legislature as this bill),  
23 the threshold amount resulting from any adjustment under this  
24 subsection, in direct proportion to the rise or fall of the **[consumer**  
25 **price index for all urban consumers in the New York City and the**  
26 **Philadelphia areas as reported by the United States Department of**  
27 **Labor]** index rate as that term is defined in section 2 of P.L.1971,  
28 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
29 \$1,000. The Governor shall, no later than June 1 of **[each**  
30 **odd-numbered]** every fifth year, notify the commission of the  
31 adjustment. The adjustment shall become effective on July 1 of **[each**  
32 **odd-numbered year]** the year in which it is made.

33 (cf: P.L.1984, c.128, s.6)

34  
35 85. Section 1 of P.L.1968, c.459 (C.27:12B-5.2) is amended to  
36 read as follows:

37 1. a. The New Jersey Highway Authority, in the exercise of its  
38 authority to make and enter into contracts and agreements necessary  
39 or incidental to the performance of its duties and the execution of its  
40 powers, shall adopt standing operating rules and procedures providing  
41 that, except as hereinafter provided, no contract on behalf of the  
42 authority shall be entered into for the doing of any work, or for the  
43 hiring of equipment or vehicles, where the sum to be expended  
44 exceeds the sum of **[\$7,500.00]** \$25,000 or, after**[ June 30, 1985]**  
45 the effective date of P.L. , c. (now before the Legislature as this

1 bill ,the amount determined pursuant to subsection b. of this section  
2 unless the authority shall first publicly advertise for bids therefor, and  
3 shall award the contract to the lowest responsible bidder; provided,  
4 however, that such advertising shall not be required where the  
5 contract to be entered into is one for the furnishing or performing of  
6 services of a professional nature, or for the supplying of any product  
7 or the rendering of any service by a public utility subject to the  
8 jurisdiction of the Board of Public Utilities of this State and tariffs and  
9 schedules of the charges, made, charged, or exacted by the public  
10 utility for any such products to be supplied or services to be rendered  
11 are filed with the said board, or when the purchase is to be made  
12 through or by the Director of the Division of Purchase and Property  
13 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
14 a contract made by any of the following: the New Jersey Sports and  
15 Exposition Authority established under section 4 of P.L.1971, c.137  
16 (C.5:10-4); the Hackensack Meadowlands Development Commission  
17 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
18 Jersey Turnpike Authority established under section 3 of P.L.1948,  
19 c.454 (C.27:23-3); the New Jersey Water Supply Authority established  
20 under section 4 of P.L.1981, c.293 (C.58:1B-4); the South Jersey  
21 Transportation Authority established under section 4 of P.L.1991,  
22 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
23 established under R.S.32:1-4; the Delaware River Port Authority  
24 established under R.S.32:3-2; the Higher Education Student  
25 Assistance Authority established under N.J.S.18A:71A-3. Contracts  
26 for towing and storage services shall be advertised and awarded  
27 pursuant to subsection c. of this section.

28 This subsection shall not prevent the authority from having any  
29 work done by its own employees, nor shall it apply to repairs, or to  
30 the furnishing of materials, supplies or labor, or the hiring of  
31 equipment or vehicles, when the safety or protection of its or other  
32 public property or the public convenience require, or the exigency of  
33 the authority's service will not admit of such advertisement. In such  
34 case the authority shall, by resolution, passed by the affirmative vote  
35 of a majority of its members, declare the exigency or emergency to  
36 exist, and set forth in the resolution the nature thereof and the  
37 approximate amount to be so expended.

38 b. Commencing **[January 1, 1985]** in the fifth year after the year  
39 in which P.L. , c. (now before the Legislature as this bill) takes  
40 effect, and every five years thereafter , the Governor, in consultation  
41 with the Department of the Treasury, shall**[**, no later than March 1 of  
42 each odd-numbered year,**]** adjust the threshold amount set forth in  
43 subsection a. of this section, or **[subsequent to 1985]** after the  
44 effective date of P.L. , c. (now before the Legislature as this bill),  
45 the threshold amount resulting from any adjustment under this  
46 subsection, in direct proportion to the rise or fall of the **[consumer**



1 price index for all urban consumers in the New York City and the  
2 Philadelphia areas as reported by the United States Department of  
3 Labor] index rate as that term is defined in section 2 of P.L.1971,  
4 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
5 \$1,000. The Governor shall, no later than June 1 of [each  
6 odd-numbered] every fifth year, notify the authority of the adjustment.  
7 The adjustment shall become effective on July 1 of [each  
8 odd-numbered year] the year in which it is made.

9 c. The authority shall adopt regulations, pursuant to the  
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
11 seq.), to provide open and competitive procedures for awarding  
12 contracts for towing and storage services. Towing and storage  
13 services on a highway project may be provided on a rotating basis,  
14 provided that the authority determines that there would be no  
15 additional cost to the authority, excepting administrative costs, as a  
16 result of those services being provided on a rotating basis. The  
17 regulations shall fix maximum towing and storage fees, and establish  
18 objective criteria to be considered in awarding a contract for towing  
19 and storage services which shall include, but shall not be limited to,  
20 reliability, experience, response time, acceptance of credit cards and  
21 prepaid towing contracts, adequate equipment to safely handle a  
22 sufficient volume of common vehicle types under a variety of traffic  
23 and weather conditions, location of storage and repair facilities,  
24 security of vehicles towed or stored, financial return to the authority,  
25 maintenance of adequate liability insurance and appropriate safeguards  
26 to protect the personal safety of customers, including considerations  
27 related to the criminal background of employees. The Division of  
28 Consumer Affairs in the Department of Law and Public Safety shall  
29 provide, at the authority's request, a report to the authority on any  
30 prospective contractor for which the division has information relevant  
31 to the prospective contractor's service record, subject to the provisions  
32 of the New Jersey consumer fraud act, P.L.1960, c.39 (C. 56:8-1 et  
33 seq.). The Division of Insurance Fraud Prevention in the Department  
34 of Banking and Insurance also shall provide, at the authority's request,  
35 a report to the authority on any prospective contractor for which the  
36 division has information relevant to the prospective contractor's  
37 service record, subject to the "New Jersey Insurance Fraud Prevention  
38 Act," P.L.1983, c.320 (C.17:33A-1 et seq.).  
39 (cf: P.L.1997, c.390, s.1)

40

41 86. Section 1 of P.L.1968, c.461 (C.27:23-6.1) is amended to read  
42 as follows:

43 1. a. The New Jersey Turnpike Authority, in the exercise of its  
44 authority to make and enter into contracts and agreements necessary  
45 or incidental to the performance of its duties and the execution of its  
46 powers, shall adopt standing operating rules and procedures providing

1 that, except as hereinafter provided, no contract on behalf of the  
2 authority shall be entered into for the doing of any work, or for the  
3 hiring of equipment or vehicles, where the sum to be expended  
4 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30, 1985]~~ the  
5 effective date of P.L. , c. (now before the Legislature as this bill), the  
6 amount determined pursuant to subsection b. of this section unless the  
7 authority shall first publicly advertise for bids therefor, and shall  
8 award the contract to the lowest responsible bidder; provided,  
9 however, that such advertising shall not be required where the  
10 contract to be entered into is one for the furnishing or performing  
11 services of a professional nature, or for the supplying of any product  
12 or the rendering of any service by a public utility subject to the  
13 jurisdiction of the Board of Public Utility Commissioners of this State  
14 and tariffs and schedules of the charges, made, charged, or exacted by  
15 the public utility for any such products to be supplied or services to  
16 be rendered are filed with the said board, or when the purchase is to  
17 be made through or by the Director of the Division of Purchase and  
18 Property pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or  
19 through a contract made by any of the following: the New Jersey  
20 Sports and Exposition Authority established under section 4 of  
21 P.L.1971, c.137 (C.5:10-4); the Hackensack Meadowlands  
22 Development Commission established under section 5 of P.L.1968,  
23 c.404 (C.13:17-5); the New Jersey Highway Authority established  
24 under section 4 of P.L.1952, c.16 (C.27:12B-4); the New Jersey Water  
25 Supply Authority established under section 4 of P.L.1981, c.293  
26 (C.58:1B-4); the South Jersey Transportation Authority established  
27 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
28 of New York and New Jersey established under R.S.32:1-4; the  
29 Delaware River Port Authority established under R.S.32:3-2; the  
30 Higher Education Student Assistance Authority established under  
31 N.J.S.18A:71A-3.

32 This subsection shall not prevent the authority from having any  
33 work done by its own employees, nor shall it apply to repairs, or to  
34 the furnishing of materials, supplies or labor, or the hiring of  
35 equipment or vehicles, when the safety or protection of its or other  
36 public property or the public convenience require, or the exigency of  
37 the authority's service will not admit of such advertisement. In such  
38 case the authority shall, by resolution, passed by the affirmative vote  
39 of a majority of its members, declare the exigency or emergency to  
40 exist, and set forth in the resolution the nature thereof and the  
41 approximate amount to be so expended.

42 b. Commencing ~~[January 1, 1985]~~ in the fifth year after the year  
43 in which P.L. , c. (now before the Legislature as this bill) takes  
44 effect, and every five years thereafter, the Governor, in consultation  
45 with the Department of the Treasury, shall ~~],~~ no later than March 1 of  
46 each odd-numbered year,] adjust the threshold amount set forth in

1 subsection a. of this section, or 【subsequent to 1985】 after the  
2 effective date of P.L. , c. (now before the Legislature as this bill,  
3 the threshold amount resulting from any adjustment under this  
4 subsection, in direct proportion to the rise and fall of the 【consumer  
5 price index for all urban consumers in the New York City and the  
6 Philadelphia areas as reported by the United States Department of  
7 Labor】 index rate as that term is defined in section 2 of P.L.1971,  
8 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
9 \$1,000. The Governor shall, no later than June 1 of 【each  
10 odd-numbered】 every fifth year, notify the authority of the adjustment.  
11 The adjustment shall become effective on July 1 of 【each  
12 odd-numbered year】 the year in which it is made.

13 (cf: P.L.1984, c. 128, s. 5)

14

15 87. Section 8 of P.L.1991, c.252 (C.27:25A-8) is amended to read  
16 as follows:

17 8. a. All purchases, contracts or agreements made pursuant to this  
18 act shall be made or awarded directly by the authority, except as  
19 otherwise provided in this act, only after public advertisement for bids  
20 therefor in the manner provided by the authority and notwithstanding  
21 the provisions of any other laws to the contrary.

22 b. Any purchase, contract or agreement may be made, negotiated  
23 or awarded by the authority without public bid or advertising under  
24 the following circumstances:

25 (1) When the aggregate amount involved does not exceed the  
26 amount set forth in, or the amount calculated by the Governor  
27 pursuant to, section 2 of P.L.1954, c.48 (C.52:34-7);

28 (2) To acquire subject matter which is described in section 4 of  
29 P.L.1954, c.48 (C.52:34-9);

30 (3) To make a purchase or award or make a contract or agreement  
31 under the circumstances described in section 5 of P.L.1954, c.48  
32 (C.52:34-10);

33 (4) When the contract to be entered into is for the furnishing or  
34 performing services of a professional or technical nature or for the  
35 supplying of any product or the rendering of any service by a public  
36 utility;

37 (5) When the authority deems it appropriate to have any work  
38 performed by its own employees;

39 (6) When the authority has advertised for bids on two occasions  
40 and has received no bids on both occasions in response to its  
41 advertisement, or received no responsive bids. Any purchase, contract  
42 or agreement may then be negotiated and may be awarded to any  
43 contractor or supplier determined to be responsible except that the  
44 terms, conditions, restrictions and specifications set forth in the  
45 negotiated contract or agreement are not substantially different from  
46 those which were the subject of competitive bidding;

1 (7) When a piece of equipment or part thereof requires diagnostic  
2 repairs;

3 (8) The printing of bonds and documents necessary to the issuance  
4 and sale thereof; **[and]**

5 (9) To contract pursuant to subsection w. of section 7 of this act;  
6 or

7 (10) When a purchase is to be made through or by the Director of  
8 the Division of Purchase and Property pursuant to section 1 of  
9 P.L.1959, c.40 (C.52:27B-56.1), or through a contract made by any  
10 of the following: the New Jersey Sports and Exposition Authority  
11 established under section 4 of P.L.1971, c.137 (C.5:10-4); the  
12 Hackensack Meadowlands Development Commission established  
13 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
14 Highway Authority established under section 4 of P.L.1952, c.16  
15 (C.27:12B-4); the New Jersey Turnpike Authority established under  
16 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
17 Supply Authority established under section 4 of P.L.1981, c.293  
18 (C.58:1B-4); the Port Authority of New York and New Jersey  
19 established under R.S.32:1-4; the Delaware River Port Authority  
20 established under R.S.32:3-2; the Higher Education Student  
21 Assistance Authority established under N.J.S.18A:71A-3.

22 (cf: P.L.1991, c.252, s.8)

23

24 88. Section 22 of P.L.1981, c.293 (C.58:1B-22) is amended to  
25 read as follows:

26 22. a. The authority is hereby authorized to make and enter into  
27 contracts and agreements necessary or incidental to the performance  
28 of its duties and the execution of its powers. No contract on behalf of  
29 the authority shall be entered into for the doing of any work, or for the  
30 hiring of equipment or vehicles, where the sum to be expended  
31 exceeds the sum of **[\$7,500.00]** \$25,000 or , after the effective date  
32 of P.L. , c. (now before the Legislature as this bill), the amount  
33 determined pursuant to subsection b. of this section, unless the  
34 authority shall first publicly advertise for bids therefor, and shall award  
35 the contract to the lowest responsible bidder; but advertising shall not  
36 be required where the contract to be entered into is one for the  
37 furnishing or performing services of a professional nature, or for the  
38 supplying of any product or the rendering of any service by a public  
39 utility subject to the jurisdiction of the Board of Public Utilities, and  
40 tariffs and schedules of the charges made, charged, or exacted by the  
41 public utility for any such products to be supplied or services to be  
42 rendered are filed with the board , or when the purchase is to be made  
43 through or by the Director of the Division of Purchase and Property  
44 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
45 a contract made by any of the following: the New Jersey Sports and  
46 Exposition Authority established under section 4 of P.L.1971, c.137

1 (C.5:10-4); the Hackensack Meadowlands Development Commission  
2 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
3 Jersey Highway Authority established under section 4 of P.L.1952,  
4 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
5 under section 3 of P.L.1948, c.454 (C.27:23-3); the South Jersey  
6 Transportation Authority established under section 4 of P.L.1991,  
7 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
8 established under R.S.32:1-4; the Delaware River Port Authority  
9 established under R.S.32:3-2; the Higher Education Student  
10 Assistance Authority established under N.J.S.18A:71A-3. This  
11 subsection shall not prevent the authority from having any work done  
12 by its own employees, nor shall it apply to repairs, or to the furnishing  
13 of materials, supplies or labor, or the hiring of equipment or vehicles,  
14 when the safety or protection of its or other public property or the  
15 public convenience requires, or the exigency of the authority service  
16 will not admit of such advertisement. In such case the authority shall,  
17 by resolution, passed by the affirmative vote of a majority of its  
18 members, declare the exigency or emergency to exist, and set forth in  
19 the resolution the nature thereof and the approximate amount to be  
20 expended.

21 b. 【The】 Commencing in the fifth year after the year in which  
22 P.L. , c. (now before the Legislature as this bill) takes effect, and  
23 every five years thereafter, the Governor, in consultation with the  
24 Department of the Treasury, shall【, no later than March 1 of each  
25 odd-numbered year,】 adjust the threshold amount set forth in  
26 subsection a. of this section, or 【subsequent to 1985】 after the  
27 effective date of P.L. , c. (now before the Legislature as this bill),  
28 the threshold amount resulting from any adjustment under this  
29 subsection 【or section 17 of P.L. 1985, c. 469,】 in direct proportion  
30 to the rise or fall of the 【Consumer Price Index for all urban  
31 consumers in the New York City and the Philadelphia areas as  
32 reported by the United States Department of Labor】 index rate as that  
33 term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall  
34 round the adjustment to the nearest \$1,000 . The Governor shall, no  
35 later than June 1 of 【each odd-numbered】 every fifth year, notify the  
36 authority of the adjustment. The adjustment shall become effective on  
37 July 1 of 【each odd-numbered year】 the year in which it is made.  
38 (cf: P.L.1985, c. 469, s. 14)

39

40 89. Section 1 of P.L.1959, c.40 (C.52:27B-56.1) is amended to  
41 read as follows:

42 1. The Director of the Division of Purchase and Property may, by  
43 joint action, purchase any articles used or needed by the State and the  
44 Palisades Interstate Park Commission, the New Jersey Highway  
45 Authority, the New Jersey Turnpike Authority, the Delaware River

1 Joint Toll Bridge Commission, the Port Authority of New York and  
2 New Jersey, the South Jersey Port Corporation, the Passaic Valley  
3 Sewerage Commission, the Delaware River Port Authority, Rutgers,  
4 The State University, the University of Medicine and Dentistry of  
5 New Jersey, the New Jersey Sports and Exposition Authority, the  
6 New Jersey Housing Finance Agency, the New Jersey Mortgage  
7 Finance Authority, the New Jersey Health Care Facilities Financing  
8 Authority, the New Jersey Education Facilities Authority, the New  
9 Jersey Economic Development Authority, the [New Jersey  
10 Expressway] South Jersey Transportation Authority, the Hackensack  
11 Meadowlands Development Commission, the New Jersey Water  
12 Supply Authority; the Higher Education Student Assistance Authority  
13 or any other agency, commission, board, authority or other such  
14 governmental entity which is established and is allocated to a State  
15 department or any bi-state governmental entity of which the State of  
16 New Jersey is a member.  
17 (cf: P.L.1981, c.325, s.18)

18

19 90. Section 30 of P.L.1948, c.92 (C.52:18A-30) is amended to  
20 read as follows:

21 30. The State Treasurer, in addition to the functions, powers and  
22 duties specifically conferred and imposed upon [him]the position,  
23 shall:

24 (a) Maintain suitable headquarters for the department and such  
25 other quarters within the State as he may deem necessary to the  
26 department's proper functioning;

27 (b) Have general responsibility for all of the department's operations  
28 under this act;

29 (c) Supervise the organization of the department and changes in the  
30 organization thereof, except that the divisions, boards, commissions  
31 and offices, herein specifically provided shall be maintained;

32 (d) Formulate and adopt rules and regulations for the efficient  
33 conduct of the work and general administration of the department, its  
34 officers and employees and as may be necessary for the Department of  
35 the Treasury to carry out its duties as set forth by law; and

36 (e) Make an annual report to the Governor and to the Legislature  
37 of the department's operations, and render such other reports as the  
38 Governor shall from time to time request.

39 The State Treasurer shall designate as Deputy State Treasurer any  
40 officer or employee in the department. Such designation shall be in  
41 writing and shall be filed with the Secretary of State. Such  
42 designation shall continue in effect until the State Treasurer shall, in  
43 the manner herein provided, designate another officer or employee in  
44 the department as such Deputy State Treasurer.

45 The Deputy State Treasurer shall have and exercise the powers and  
46 perform the functions and duties of the State Treasurer during the

1 absence or disability or the State Treasurer. The Deputy State  
2 Treasurer shall also have and exercise such of the powers and perform  
3 such of the functions and duties of the State Treasurer as he shall be  
4 authorized and directed by the State Treasurer. Any such  
5 authorization and direction shall be in writing, signed by the State  
6 Treasurer and filed with the Secretary of State, and shall include a  
7 designation of the period during which it shall be and remain in force.  
8 No such authorization and direction shall be deemed to preclude the  
9 State Treasurer from himself exercising the powers and the  
10 performance of the duties included in said authorization and direction.  
11 In the event that the State Treasurer shall die, resign or be removed  
12 from office, or become disqualified to execute the duties of his office,  
13 or a vacancy shall occur in the office of State Treasurer for any cause  
14 whatsoever, the person then holding the office of Deputy State  
15 Treasurer shall continue to hold such office and shall have and  
16 exercise the powers and perform the functions and duties of the State  
17 Treasurer until the successor of the State Treasurer shall be appointed  
18 and shall qualify.

19 Notwithstanding any other provision in existing law, the State  
20 Treasurer may designate, authorize and direct the Deputy State  
21 Treasurer or any other officer or specially designated expert assistant  
22 in the department to exercise the power and perform the functions and  
23 duties of the State Treasurer as a member of the board of trustees,  
24 commission or council vested with the general administration of and  
25 responsibility for any employee benefit system, trust, fund, program  
26 or plan. Any such authorization and direction shall be in writing,  
27 signed by the State Treasurer and filed with the Secretary of State,  
28 and shall include a designation of the period during which it shall be  
29 and remain in force. No such authorization and direction shall be  
30 deemed to preclude the State Treasurer from himself exercising the  
31 powers and the performance of the duties included in said  
32 authorization and direction.

33 (cf: P.L.1974, c.34, s.1)

34

35 91. Section 3 of P.L.1969, c.104 (C.52:25-16.1) is amended to  
36 read as follows:

37 3. The Director of the Division of Purchase and Property may, at  
38 the director's discretion, include, in any such contract or contracts on  
39 behalf of the State, a provision for the purchase of such materials,  
40 supplies ~~or~~, equipment or services by any ~~county, municipality or~~  
41 ~~school district~~ local contracting unit from such contractor or  
42 contractors. Such purchase may be effectuated either as an outright  
43 purchase or by installment, lease or rental, so long as the vendor offers  
44 financing at an interest rate that is equal to or lower than the State line  
45 of credit. The ~~county, municipality or school district~~ local  
46 contracting unit shall have sole responsibility for any payment due the

1 vendor for any such purchase. All purchases shall be subject to audit  
2 and inspection by the **county, municipality or school district** local  
3 contracting unit for which made. The local contracting unit shall file  
4 such reports as the Director of the Division of Purchase and Property  
5 may require setting forth the expenditure on such contracts. For the  
6 purposes of this section, "local contracting unit" means any public  
7 agency subject to the provisions of the "Local Public Contracts Law,"  
8 P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts  
9 Law," N.J.S.18A:18A-1 et seq., the "State College Contracts Law,"  
10 P.L.1986, c.43 (C.18A:64-52 et seq.), or the "County College  
11 Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.).  
12 (cf: P.L.1969, c.104, s.3)

13

14 92. Section 2 of P.L.1985, c.263 (C.52:25-16.6) is amended to  
15 read as follows:

16 2. a. An independent institution of higher education may, at the  
17 director's discretion, purchase materials, supplies **and**, equipment or  
18 services under any contract **negotiated** awarded on behalf of the  
19 State by the Director of the Division of Purchase and Property,  
20 subject to such rules as the director may establish.

21 b. The director may establish limitations with respect to  
22 **commodities** materials, supplies, equipment and services available  
23 for purchase and impose other appropriate conditions upon purchasing  
24 as deemed necessary to protect the State's own purchasing interests.

25 c. The independent institution of higher education shall file such  
26 reports as the Director of the Division of Purchase and Property may  
27 require setting forth the expenditures on such contracts.

28 (cf: P.L. 1985, c.263, s.2)

29

30 93. R.S.52:25-23 is amended to read as follows:

31 52:25-23. The Director of the Division of Purchase and Property  
32 may, by written order, delegate purchasing authority to the using  
33 agencies for purchases or contracts not in excess of **[\$7,500.00]**  
34 **\$25,000.00**; except that:

35 a. Purchases or contracts shall not be divided to circumvent the  
36 dollar limit imposed by this section;

37 b. Prior to issuing purchase orders pursuant to this section, a using  
38 agency shall verify the existence of funds for the purchase or contract  
39 and shall verify that the article or service to be purchased or  
40 contracted for is not available under any of the contracts issued by the  
41 Division of Purchase and Property; and

42 c. **[All]** Records of all purchases made or contracts negotiated  
43 under this section shall be **reported to** maintained by the using  
44 agency and made available for audit by or under the direction of the  
45 Director of the Division of Purchase and Property **by the using**  
46 agency, in a manner prescribed by the Director of the Division of



1 Purchase and Property, which report] and shall include proper proof  
2 that the purchase or contract was made or negotiated competitively,  
3 where competition is practicable.

4 The Director of the Division of Purchase and Property may, by  
5 written order, rescind or reduce the level of purchasing authority  
6 delegated to any using agency determined by the director to have  
7 violated the provisions of the delegated authorization.

8 (cf: P.L.1985, c.107, s.1)

9

10 94. Section 4 of article 6 of P.L.1944, c.112 (C.52:27B-56) is  
11 amended to read as follows:

12 4. The director is hereby vested with the powers, duties, and  
13 responsibilities involved in the efficient operation of a centralized  
14 State purchasing service, and with the custody, operation and  
15 maintenance of all State property not chargeable to a particular  
16 department. [He] The director shall have authority, subject to the  
17 [commissioner's] State Treasurer's approval, to organize the division  
18 for the effective performance of its functions and purposes herein set  
19 forth , and to establish and assess fees to cover administrative costs.  
20 The director or the director's designee shall have the authority to  
21 conduct investigations and informal hearings regarding any bid protest  
22 or vendor performance issues. The director shall also have the  
23 authority to issue final agency decisions regarding any bid protest or  
24 vendor performance issues. Except as otherwise provided by statute  
25 and subject to the State Treasurer's approval, the director shall have  
26 final approval of all State contracts including, but not limited to, those  
27 entered into pursuant to P.L.1964, c.290 (C.30:6-17 et seq.).

28 (cf: P.L.1944, c.112, art.6, s.4)

29

30 95. Section 2 of P.L.1954, c.48 (C.52:34-7) is amended to read as  
31 follows:

32 2. a. Any such purchase, contract or agreement may be made,  
33 negotiated, or awarded by the Director of the Division of Purchase and  
34 Property or the Director of the Division of Building and Construction,  
35 as the case may be, without advertising, in any manner which [he] the  
36 director may deem effective to promote full and free competition  
37 whenever competition is practicable, if: (1) the aggregate amount  
38 involved does not exceed ~~[\$7,500.00]~~ \$25,000.00 or the amount  
39 determined pursuant to subsection b. of this section; or (2) (Deleted  
40 by amendment, P.L.1985, c.107) or (3) the aggregate amount involved  
41 including labor and construction materials does not exceed \$25,000.00  
42 or the amount determined pursuant to subsection b. of this section in  
43 the case of contracts or agreements for the erection, construction,  
44 alteration, or repair of any public building or facility.

45 When the aggregate amount involved does not exceed \$25,000.00  
46 or the amount determined pursuant to subsection b. of this section in

1 the case of contracts or agreements for the erection, construction,  
2 alteration, or repair of any public building or facility, the Director of  
3 the Division of Purchase and Property or the Director of the Division  
4 of Building and Construction may, at **his** the director's discretion,  
5 delegate to the appropriate State department or using agency **his** the  
6 director's authority to make, negotiate, or award a contract or  
7 agreement without advertising.

8 The **Administrator of the General Services Administration**  
9 Director of the Division of Purchase and Property or the Director of  
10 the Division of Building and Construction, as the case may be, shall  
11 establish, in accordance with the "Administrative Procedure Act"  
12 (P.L.1968, c.410; C.52:14B-1 et seq.), rules and regulations  
13 concerning procedural requirements for the making, negotiating or  
14 awarding of purchases, contracts or agreements pursuant to this  
15 section , at the director's discretion.

16 b. The Governor, in consultation with the Department of the  
17 Treasury, shall, no later than March 1 of **each odd-numbered** every  
18 fifth year beginning in the fifth year after the year in which P.L. , c.  
19 (now before the Legislature as this bill) takes effect , adjust the  
20 threshold amount set forth in subsection a. of this section, or  
21 **subsequent to 1985** the threshold amount resulting from any  
22 adjustment under this subsection, in direct proportion to the rise or fall  
23 of the **Consumer Price Index for all urban consumers in the New**  
24 **York City and the Philadelphia areas as reported by the United States**  
25 **Department of Labor** index rate as that term is defined in section 2  
26 of P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to  
27 the nearest \$1,000. The Governor shall, no later than June 1 of **each**  
28 **odd-numbered** every fifth year, notify the Director of the Division of  
29 Purchase and Property and the Director of the Division of Building  
30 and Construction of the adjustment. The adjustment shall become  
31 effective on July 1 of **each odd-numbered year** the year in which it  
32 is made.

33 (cf: P.L.1985, c.349, s.1)

34

35 96. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read  
36 as follows:

37 7. Whenever advertising is required: (a) specifications and  
38 invitations for bids shall permit such full and free competition as is  
39 consistent with the procurement of supplies and services necessary to  
40 meet the requirements of the using agency and shall, wherever  
41 practicable, include such factors as life-cycle costs, sliding percentage  
42 preference scales, or other similar analysis as shall be deemed effective  
43 by the Director of the Division of Purchase and Property , hereinafter  
44 referred to as the director, (b) the advertisement for bids shall be in  
45 such newspaper or newspapers selected by the State Treasurer as will  
46 best give notice thereof to bidders and shall be sufficiently in advance

1 of the purchase or contract to promote competitive bidding; (c) the  
2 advertisement shall designate the time and place when and where  
3 sealed proposals shall be received and publicly opened and read, the  
4 amount of the cash or certified check, if any, which must accompany  
5 each bid, and such other terms as the State Treasurer may deem  
6 proper; (d) notice of revisions or addenda to advertisements or bid  
7 documents relating to bids shall be published in a newspaper or  
8 newspapers as selected by the State Treasurer to best give notice to  
9 bidders and sent to the prospective bidder no later than five days,  
10 Saturdays, Sundays and holidays excepted, prior to the bid due date;  
11 (e) failure to advertise for the receipt of bids or to provide proper  
12 notification of revisions or addenda to advertisements or bid  
13 documents related to bids as prescribed by subsection (d) of this  
14 section shall prevent the acceptance of bids and require the  
15 readvertisement for bids; (f) for any procurement, the State Treasurer  
16 or the director may negotiate with bidders, after bid opening, the final  
17 terms and conditions of any procurement, including price; such ability  
18 to so negotiate must be expressly set forth in the applicable invitation  
19 to bid; (g) award shall be made with reasonable promptness, after  
20 negotiation with bidders where authorized, by written notice to that  
21 responsible bidder whose bid, conforming to the invitation for bids,  
22 will be most advantageous to the State, price and other factors  
23 considered. Any or all bids may be rejected when the State Treasurer  
24 or the Director of the Division of Purchase and Property determines  
25 that it is in the public interest so to do. The State Treasurer or  
26 designee may adopt, pursuant to the "Administrative Procedure Act,"  
27 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as  
28 may be necessary to implement the provisions of this section.

29 This section shall apply to all bids received on and after the date of  
30 enactment of P.L. , c. (now before the Legislature as this bill).  
31 (cf: P.L.1986, c.72, s.1)

32

33 97. (New section) a. A person commits a crime if the person  
34 knowingly submits to the government any claim for payment for  
35 performance of a government contract knowing such claim to be false,  
36 fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or  
37 above, the offender is guilty of a crime of the second degree. If the  
38 claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is  
39 guilty of a crime of the third degree. If the claim is for \$2,500.00 or  
40 less, the offender is guilty of a crime of the fourth degree.

41 b. A person commits a crime if the person knowingly makes a  
42 material representation that is false in connection with the negotiation,  
43 award or performance of a government contract. If the contract  
44 amount is for \$25,000.00 or above, the offender is guilty of a crime of  
45 the second degree. If the contract amount exceeds \$2,500.00, but is  
46 less than \$25,000.00, the offender is guilty of a crime of the third

1 degree. If the contract amount is for \$2,500.00 or less, the offender  
2 is guilty of a crime of the fourth degree.

3

4 98. N.J.S.2C:27-4 is amended to read as follows:

5 2C:27-4. a. A person commits a crime if **[he,]** the person, as a  
6 public servant:

7 (1) directly or indirectly, knowingly solicits, accepts or agrees to  
8 accept any benefit **[as compensation for having, as public servant,**  
9 given a decision, opinion, recommendation or vote favorable to  
10 another, or for having otherwise exercised a discretion in his favor,]  
11 from another for or because of any official act performed or to be  
12 performed by the person or for **[having violated his]** or because of a  
13 violation of official duty **[or for the performance of his official**  
14 **duties.] ;**

15 (2) directly or indirectly, knowingly receives any benefit from  
16 another who is or was in a position, different from that of a member  
17 of the general public, to benefit, directly or indirectly, from a violation  
18 of official duty or the performance of official duties; or

19 (3) directly or indirectly, knowingly receives any benefit from or  
20 by reason of a contract or agreement for goods, property or services  
21 if the contract or agreement is awarded, made or paid by the agency  
22 that employs the person or if the goods, property or services are  
23 provided to the government agency that employs the public servant.

24 b. A person commits a crime if **[he]** the person offers, confers or  
25 agrees to confer **[compensation]** a benefit, acceptance of which is  
26 prohibited by this section.

27 c. Any offense proscribed by this section is a crime of the second  
28 degree. If the benefit solicited, accepted, agreed to be accepted,  
29 offered, conferred or agreed to be conferred is of a value of \$200.00  
30 or less, any offense proscribed by this section is a crime of the third  
31 degree.

32 (cf: P.L.1979, c.178, s.50)

33

34 99. N.J.S.2C:27-6 is amended to read as follows:

35 2C:27-6. a. **[A]** Except as provided in subsection d.of this  
36 section, a public servant commits a crime if **[he]** the person,  
37 knowingly and under color of **[his]** office, directly or indirectly  
38 solicits, accepts or agrees to accept any benefit for that person or  
39 another not allowed by law **[to influence the performance of his**  
40 **official duties].**

41 b. **[A]** Except as provided in subsection d.of this section, a person  
42 commits a crime if **[he]** the person, directly or indirectly, confers or  
43 agrees to confer any benefit not allowed by law to a public servant **[to**  
44 **influence the performance of his official duties].**

1 c. **[In any prosecution under this section, the capacity to influence**  
2 **a public servant in the performance of his official duties may be**  
3 **presumed when the value of the benefit involved, the interests of the**  
4 **person who offers, confers or agrees to confer such benefit, and the**  
5 **duties of the public servant are such as to create a reasonable**  
6 **likelihood that the public servant would perform his official duties in**  
7 **a biased or partial manner.]** (Deleted by amendment; P.L. , c. .)  
8 (Pending before the Legislature as this bill.)

9 d. This section shall not apply to:

10 (1) Fees prescribed by law to be received by a public servant, or any  
11 other benefit to which **[he]** the public servant is otherwise legally  
12 entitled; or

13 (2) Gifts or other benefits conferred on account of kinship or other  
14 personal, professional or business relationship independent of the  
15 official status of the recipient; or

16 (3) Trivial benefits the receipt of which involve no risk that the  
17 public servant would perform **[his]** official duties in a biased or partial  
18 manner.

19 e. An offense under this section is a crime of the third degree. If  
20 the gift or other benefit is of a value of \$200.00 or less, any offense  
21 proscribed by this section is a crime of the fourth degree.

22 (cf: P.L.1979, c.178, s.51)

23

24 100. (New Section) A public servant commits a crime of the  
25 fourth degree if, while performing his official functions on behalf of a  
26 governmental entity, the public servant knowingly transacts any  
27 business with himself, a member of his immediate family, or a business  
28 organization in which the public servant or an immediate family  
29 member has an interest. For purposes of this section, an interest in a  
30 business organization shall not include aggregate familial ownership or  
31 control of one percent or less of an interest in the capital or equity of  
32 the business organization. A public servant shall not be guilty of an  
33 offense under this section if the public servant's performance of official  
34 functions would not affect the public servant, family member or  
35 business organization differently than such performance would affect  
36 the public generally, or would not affect the public servant, family  
37 member or business organization, as a member of a business,  
38 profession, occupation or group, differently than such performance  
39 would affect any other member of such business, profession,  
40 occupation or group.

41

42 101. Section 10 of P.L.1991, c.29 (C.40A:9-22.10) is amended to  
43 read as follows:

44 10. a. An appointed local government officer or employee found  
45 guilty by the Local Finance Board or a county or municipal ethics  
46 board of the violation of any provision of **[this act]** P.L.1991, c.29

1 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to  
2 **【this act】** P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less  
3 than \$100.00 nor more than \$500.00, which penalty may be collected  
4 in a summary proceeding pursuant to "the penalty enforcement law"  
5 (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics  
6 board shall report its findings to the office or agency having the power  
7 of removal or discipline of the appointed local government officer or  
8 employee and may recommend that further disciplinary action be  
9 taken.

10 b. An elected local government officer or employee found guilty  
11 by the Local Finance Board or a county or municipal ethics board of  
12 the violation of any provision of **【this act】** P.L.1991, c.29 (C.40A:9-  
13 22.1 et seq.) or of any code of ethics in effect pursuant to **【this act】**  
14 P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less than  
15 \$100.00 nor more than \$500.00, which penalty may be collected in a  
16 summary proceeding pursuant to "the penalty enforcement law"  
17 (N.J.S.2A:58-1 et seq.).

18 c. The remedies provided herein are in addition to all other criminal  
19 and civil remedies provided under the law.

20 (cf: P.L.1991, c.29, s.10)

21

22 102. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to  
23 read as follows:

24 10. (a) The Executive Commission on Ethical Standards created  
25 pursuant to P.L.1967, chapter 229 is continued and established in the  
26 Department of Law and Public Safety and shall constitute the first  
27 commission under **【this act】** P.L.1971, c.182 (C.52:13D-12 et al.).

28 (b) The commission shall be composed of seven members appointed  
29 by the Governor from among State officers and employees serving in  
30 the Executive Branch. Each member shall serve at the pleasure of the  
31 Governor during the term of office of the Governor appointing **【him】**  
32 the member and until **【his】** the member's successor is appointed and  
33 qualified. The Governor shall designate one member to serve as  
34 chairman and one member to serve as vice-chairman of the  
35 commission.

36 (c) Each member of the said commission shall serve without  
37 compensation but shall be entitled to be reimbursed for all actual and  
38 necessary expenses incurred in the performance of **【his】** the member's  
39 duties.

40 (d) The Attorney General shall act as legal adviser and counsel to  
41 the said commission. **【He】** The Attorney General shall upon request  
42 advise the commission in the rendering of advisory opinions by the  
43 commission, in the approval and review of codes of ethics adopted by  
44 State agencies in the Executive Branch and in the recommendation of  
45 revisions in codes of ethics or legislation relating to the conduct of  
46 State officers and employees in the Executive Branch.

1 (e) The said commission may, within the limits of funds  
2 appropriated or otherwise made available to it for the purpose, employ  
3 such other professional, technical, clerical or other assistants,  
4 excepting legal counsel, and incur such expenses as may be necessary  
5 for the performance of its duties.

6 (f) The said commission, in order to perform its duties pursuant to  
7 the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)**, shall  
8 have the power to conduct investigations, hold hearings, compel the  
9 attendance of witnesses and the production before it of such books and  
10 papers as it may deem necessary, proper and relevant to the matter  
11 under investigation. The members of the said commission and the  
12 persons appointed by the commission for such purpose are hereby  
13 empowered to administer oaths and examine witnesses under oath.

14 (g) The said commission is authorized to render advisory opinions  
15 as to whether a given set of facts and circumstances would, in its  
16 opinion, constitute a violation of the provisions of **[this act] P.L.1971,**  
17 **c.182 (C.52:13D-12 et al.)** or of a code of ethics promulgated  
18 pursuant to the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12**  
19 **et al.)**.

20 (h) The said commission shall have jurisdiction to initiate, receive,  
21 hear and review complaints regarding violations, by any State officer  
22 or employee or special State officer or employee in the Executive  
23 Branch, of the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12**  
24 **et al.)** or of any code of ethics promulgated pursuant to the provisions  
25 of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)**. Any complaint  
26 regarding a violation of a code of ethics may be referred by the  
27 commission for disposition in accordance with subsection **[12(d) of**  
28 **this act] (d) of section 12 of P.L.1971, c.182 (C.52:13D-23)**.

29 (i) Any State officer or employee or special State officer or  
30 employee found guilty by the commission of violating any provision  
31 of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)** or of a code of  
32 ethics promulgated pursuant to the provisions of **[this act] P.L.1971,**  
33 **c.182 (C.52:13D-12 et al.)** shall be fined not less than \$100.00 nor  
34 more than \$500.00, which penalty may be collected in a summary  
35 proceeding pursuant to the Penalty Enforcement Law (N.J.S.  
36 2A:58-1), and may be suspended from his office or employment by  
37 order of the commission for a period of not in excess of 1 year. If the  
38 commission finds that the conduct of such officer or employee  
39 constitutes a willful and continuous disregard of the provisions of  
40 **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)** or of a code of ethics  
41 promulgated pursuant to the provisions of **[this act] P.L.1971, c.182**  
42 **(C.52:13D-12 et al.)**, it may order such person removed from his  
43 office or employment and may further bar such person from holding  
44 any public office or employment in this State in any capacity  
45 whatsoever for a period of not exceeding 5 years from the date on

1 which **[he]** the person was found guilty by the commission.

2 (j) The remedies provided herein are in addition to all other criminal  
3 and civil remedies provided under the law.

4 (cf: P.L.1971, c.182, s.10)

5

6 103. Section 13 of P.L.1954, c.48 (C.52:34-18) is amended to read  
7 as follows:

8 13. Any person **[willfully]** knowingly authorizing, consenting to,  
9 making or procuring to be made any purchase, contract or agreement  
10 in violation of any of the provisions of **[this act]** P.L.1954, c.48,  
11 (C.52:34-6 et seq.) or **[willfully]** knowingly making or procuring to  
12 be made payment of State funds for or on account of any purchase,  
13 contract or agreement known to him to have been made or entered  
14 into in violation of any of the provisions of **[this act]** P.L.1954, c.48  
15 (C.52:34-6 et seq.) shall be guilty of a **[misdemeanor]** crime of the  
16 fourth degree.

17 (cf: P.L.1954, c.48, s.13)

18

19 104. Section 11 of P.L.1970, c.73 (C.56:9-11) is amended to read  
20 as follows:

21 11. a. Any person **[or corporation, or any officer or agent**  
22 **thereof,]** who shall knowingly violate any of the provisions of **[this**  
23 **act]** P.L.1970, c.73 (C.56:9-1 et seq.) or knowingly aid or advise in  
24 such violation**[, or who, as principal, manager, director, stockholder**  
25 **owning 10% or more of the aggregate outstanding capital stock of all**  
26 **classes of the corporation, agent, servant or employee, knowingly does**  
27 **any act comprising a part of such violation,]** is guilty of a  
28 **[misdemeanor and shall be punished by imprisonment for not more**  
29 **than 3 years or by a fine of not more than \$50,000.00 or both; and if**  
30 **a corporation by a fine of not more than \$100,000.00]** crime of the  
31 fourth degree.

32 b. Any person convicted pursuant to the provisions of subsection  
33 a. of this section **[is hereby denied the right and is hereby prohibited**  
34 **from managing or owning any business organization within this State,**  
35 **and from serving as an officer, director, trustee, member of any**  
36 **executive board or similar governing body, principal, manager,**  
37 **stockholder owning 10% or more of the aggregate outstanding capital**  
38 **stock of all classes of any corporation doing business in this State,**  
39 **and all persons within this State, are hereby denied the right to handle**  
40 **the goods of or in any manner deal with, directly or indirectly, those**  
41 **persons, companies or corporations under the interdict specified**  
42 **herein. All persons knowingly violating any of the provisions of this**  
43 **section, either directly or indirectly, or aiding or abetting directly or**  
44 **indirectly in any violation of any provisions of this section, shall be**  
45 **deemed guilty of a misdemeanor and shall be fined not less than**



1 \$100.00 nor more than \$1,000.00 and shall be punished by  
2 imprisonment for not less than 30 days nor more than 6 months, and  
3 shall forfeit not less than \$1,000.00 for each and every day such  
4 violation may continue, to be collected by a summary proceeding in a  
5 court of competent jurisdiction] of a violation involving or affecting  
6 trade or commerce of a value less than \$1,000,000.00 shall be guilty  
7 of a crime of the third degree. Any person convicted pursuant to the  
8 provisions of subsection a. of this section of a violation involving or  
9 affecting trade or commerce of a value equal to or greater than  
10 \$1,000,000.00 shall be guilty of a crime of the second degree. Any  
11 person convicted pursuant to the provisions of subsection a. of this  
12 section of a violation involving bid rigging on public contracts,  
13 regardless of the value of trade or commerce involved or affected,  
14 shall be guilty of a crime of the second degree.

15 c. Notwithstanding the provisions of subsections a. and b. of  
16 N.J.S.2C:43-3, a person convicted of a crime of the second degree  
17 under this section shall be subject to a fine of not less than \$50,000.00  
18 nor more than \$300,000.00, or, in the case of a corporation,  
19 partnership, or other business entity, be subject to a fine of not less  
20 than \$250,000.00 nor more than \$1,000,000.00, or imprisonment, or  
21 both, and a person convicted of a crime of the third degree under this  
22 section shall be subject to a fine of not less than \$25,000.00 nor more  
23 than \$150,000.00, or, in the case of a corporation, partnership, or  
24 other business entity, be subject to a fine of not less than \$100,000.00  
25 nor more than \$300,000.00, or imprisonment, or both.

26 (cf: P.L.1970, c.73, s.11)

27

28 105. N.J.S.18A:71A-10 is amended to read as follows:

29 18A:71A-10. Contracts, Purchases, Records, Travel.

30 a. The authority, in the exercise of its power to make and enter  
31 into contracts and agreements necessary or incidental to the  
32 performance of its duties and the execution of its powers, shall adopt  
33 standing operating rules and procedures providing that, except as  
34 hereinafter provided, no contract on behalf of the authority shall be  
35 entered into for the doing of any work, or for the hiring of equipment  
36 or vehicles, when the sum to be expended exceeds the sum of  
37 [\$12,300] \$25,000 or, after [June 30, 1998] the effective date of  
38 P.L. , c. (now before the Legislature as this bill , the amount  
39 determined pursuant to subsection b. of this section, unless the  
40 authority shall first publicly advertise for bids therefor, and shall award  
41 the contract to the lowest responsible bidder; provided, however, that  
42 such advertising shall not be required when the contract to be entered  
43 into is one for the furnishing or performing of services of a  
44 professional nature, or when the purchase is to be made through or by  
45 the Director of the Division of Purchase and Property pursuant to  
46 section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through a contract

1 made by any of the following: the New Jersey Sports and Exposition  
2 Authority established under section 4 of P.L.1971, c.137 (C.5:10-4);  
3 the Hackensack Meadowlands Development Commission established  
4 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
5 Highway Authority established under section 4 of P.L.1952, c.16  
6 (C.27:12B-4); the New Jersey Turnpike Authority established under  
7 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
8 Supply Authority established under section 4 of P.L.1981, c.293  
9 (C.58:1B-4); the South Jersey Transportation Authority established  
10 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
11 of New York and New Jersey established under R.S.32:1-4; and the  
12 Delaware River Port Authority established under R.S.32:3-2. Waiver  
13 of bid advertising and of actual bidding shall be made by resolution of  
14 the authority for those goods, services, and contracts described in  
15 sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 52:34-10).  
16 **[Special rules shall apply to the procurement of professional services**  
17 **when the authority shall consider a variety of factors associated with**  
18 **rendering the professional services, including price, in awarding of a**  
19 **contract.]**

20 This subsection shall not prevent the authority from having any  
21 work done by its own employees, nor shall it apply when the safety or  
22 protection of its or other public property requires. In the case of  
23 exigency or emergency, the authority shall, by resolution passed by the  
24 affirmative vote of a majority of its members, declare the exigency or  
25 emergency to exist, and set forth in the resolution the nature thereof  
26 and the approximate amount to be so expended.

27 b. **[The]** Commencing in the fifth year after the year in which  
28 P.L. , c. (now before the Legislature as this bill) takes effect, and  
29 every five years thereafter, the Governor, in consultation with the  
30 Department of the Treasury, shall [, not later than March 1 of each  
31 odd-numbered year,] adjust the threshold amount set forth in  
32 subsection a. of this section, or the threshold amount resulting from  
33 any adjustment under this subsection, in direct proportion to the rise  
34 or fall of the **[consumer price index for all urban consumers in the**  
35 **New York City and the Philadelphia areas as reported by the United**  
36 **States Department of Labor]** index rate as that term is defined in  
37 section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the  
38 adjustment to the nearest \$1,000. The Governor shall, no later than  
39 June 1 of [each odd-numbered] every fifth year, notify the authority  
40 of the adjustment. The adjustment shall become effective July 1 of  
41 [each odd-numbered year] the year in which it is made.

42 c. The authority, in the exercise of its power to make purchases  
43 and enter into contracts, leases and agreements necessary or incidental  
44 to the performance of its duties and the execution of its powers, shall  
45 adopt standing operating rules and procedures providing that, subject

1 to subsections a. and b. of this section, for purchases, contracts, leases  
2 and agreements payable exclusively with or out of funds transferred  
3 from the Higher Education Student Assistance Fund, the purchases,  
4 contracts, leases and agreements shall be subject to the authority's sole  
5 approval. Approval of the purchases, contracts, leases, and  
6 agreements shall not be required by any other department, division,  
7 board, bureau, agency, office or officer of the State.

8 d. The authority, without advertising for bids, or after having  
9 rejected all bids obtained pursuant to advertising therefor, may  
10 purchase any materials, supplies or equipment pursuant to a contract  
11 or contracts for the materials, supplies or equipment entered into on  
12 behalf of the State. Any department, division, commission, board,  
13 bureau, agency, office or officer of the State may, by joint action with  
14 the authority, purchase any articles used or needed by the State and  
15 the authority.

16 e. Records subject to the record retention requirements set forth  
17 under 20 U.S.C.s.1071 et seq., 20 U.S.C.s.1070c et seq., and 20  
18 U.S.C.s.1104 et seq. and implementing regulations and rules shall not  
19 be "public records" for purposes of the "Destruction of Public Records  
20 Law (1953)," P.L.1953, c.410 (C.47: 3-15 et seq.), notwithstanding  
21 the provisions of any law to the contrary.

22 f. The executive director shall have the power to approve of travel  
23 consistent with Office of Management and Budget travel regulations,  
24 except that for travel that is payable exclusively with or out of funds  
25 transferred from the Higher Education Student Assistance Fund, no  
26 approval shall be required by the Director of the Office of  
27 Management and Budget.

28 (cf: N.J.S.18A:71A-10)

29

30 106. Section 1 of P.L.1996, c.16 (C.52:34-6.1) is amended to read  
31 as follows:

32 1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et  
33 seq.) to the contrary, [and as an alternative to the procedures  
34 concerning the awarding of public contracts pursuant to that act,] the  
35 Director of the Division of Purchase and Property in the Department  
36 of the Treasury [may purchase goods and services, for State agencies  
37 and for the entities defined in section 1 of P.L.1959, c.40  
38 (C.52:27B-56.1), from] shall promulgate the Federal Supply  
39 Schedules of the Federal General Services Administration [as  
40 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
41 Pub.L.103-355, and regulations adopted pursuant to that law and by  
42 the rules and regulations which the director may promulgate] pursuant  
43 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
44 et seq.) as an alternate price guide for the purchase of goods and  
45 services for State agencies and for the entities defined in section 1 of  
46 P.L.1959, c.40 (C.52:27B-56.1), subject to the following conditions:

1       (1) the price of the goods being procured is no greater than the  
2 price offered to federal agencies;

3       (2) the Federal Supply Schedules may be used only for purchases  
4 of up to \$500,000 per year or for one product unit at any price and  
5 only for reprographic equipment or services, including digital copiers,  
6 used by the State; and

7       (3) the State receives the benefit of federally mandated price  
8 reductions during the term of the contract and is protected from price  
9 increases during that time.

10 (cf: P.L.1996, c.16, s.1)

11  
12       107. Section 2 of P.L.1996, c.16 (C.52:34-6.3) is amended to read  
13 as follows:

14       2. Notwithstanding the provisions of any other law to the contrary,  
15 **[and as an alternative to the procedures concerning the awarding of**  
16 **public contracts pursuant to the applicable statutes,]** the State  
17 authorities authorized to contract independently under various  
18 provisions of State law may**[, without advertising for bids, or having**  
19 **rejected all bids obtained pursuant to advertising, purchase goods and**  
20 **services from the Federal Supply Schedules of the Federal General**  
21 **Services Administration as permitted by the "Federal Acquisition**  
22 **Streamlining Act of 1994," Pub.L.103-355, and regulations adopted**  
23 **pursuant to that law and by the rules and regulations which the**  
24 **authority may adopt]** also use, without advertising for bids, or having  
25 rejected all bids obtained pursuant to advertising, the Federal Supply  
26 Schedules of the General Services Administration, promulgated by the  
27 Director of the Division of Purchase and Property in the Department  
28 of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1),  
29 subject to the following conditions:

30       (1) the price of the goods being procured is no greater than the  
31 price offered to federal agencies;

32       (2) the Federal Supply Schedules may be used only for purchases  
33 of up to \$500,000 per year or for one product unit at any price and  
34 only for reprographic equipment or services, including digital copiers,  
35 used by the authority; and

36       (3) the authority receives the benefit of federally mandated price  
37 reductions during the term of the contract and is protected from price  
38 increases during that time.

39 (cf: P.L.1996, c.16, s.2)

40  
41       108. The following are repealed:

42       N.J.S.2C:27-7

43       P.L.1972, c.112 (C.40A:11-12.1 to 40A:11-12.6)

44       N.J.S.18A:18A-38

45       N.J.S.18A:18A-39

46       Section 1 of P.L.1981, c.186 (C.18A:18A-42.1)

1 109. This act shall take effect 90 days after enactment.

2

3

4

STATEMENT

5

6 This bill revises the "Local Public Contracts Law," P.L.1971, c.198  
7 (C.40A:11-1 et seq.), the "Public School Contracts Law,"  
8 N.J.S.18A:18A-1 et seq., and the laws governing State procurement.  
9 The bill also revises the criminal laws that deal with procurement  
10 procedures and the laws concerning the procurement procedures of  
11 certain independent authorities.

12 In revising the "Local Public Contracts Law" (LPCL) and the  
13 "Public School Contracts Law" (PSCL), the bill makes the laws more  
14 consistent with each other. Whenever possible, the bill eliminates  
15 variation among the laws to make public contracting procedures  
16 similar for all local and public school entities.

17 The bill establishes a competitive contracting procedure under the  
18 LPCL and the PSCL. The competitive contracting procedure will be  
19 used in lieu of public bidding for certain specified types of goods and  
20 services when the price of the goods and services being contracted for  
21 in the aggregate exceeds the bid threshold. The competitive  
22 contracting procedure requires proposals for competitive contracting  
23 to be awarded through a request for proposals process. The proposals  
24 will be evaluated by the purchasing agent according to the  
25 methodology described in the request for proposals. After evaluating  
26 the proposals, the purchasing agent will prepare a report evaluating  
27 and recommending the award of a contract or contracts. The report  
28 will list all vendors who submitted a proposal, rank them, recommend  
29 the vendor or vendors to be selected, explain the reasons for the  
30 selection, and detail the terms, conditions, scope of services, fees, and  
31 other matters to be incorporated into the contract. The awarding of  
32 the contract will be publicized in the official newspaper of the  
33 contracting unit.

34 The purpose of the competitive contracting procedure is to provide  
35 contracting units and boards of education with greater discretion in  
36 entering into contracts with qualified vendors than is permitted under  
37 the normal requirements of public bidding but to provide greater  
38 public oversight of the contracting process than is available under the  
39 current exceptions to public bidding for professional or extraordinary  
40 unspecifiable services.

41 In addition to establishing a competitive contracting procedure, the  
42 bill makes various changes and additions to existing law under the  
43 LPCL and the PSCL.

44 The bill adds, modifies and deletes certain definitions of terms used  
45 in the LPCL and PSCL.

1 The bill raises to \$17,500 the threshold above which a contract  
2 must be publicly advertised and publicly bid under the LPCL and the  
3 PSCL. It also permits a governing body or board of education to set  
4 a threshold lower than \$17,500 or to set a higher threshold of \$25,000  
5 if the purchasing agent is qualified pursuant to subsection b. of section  
6 9 of P.L.1971, c.198 (C.40A:11-9), as proposed under section 15 of  
7 the bill. The bill authorizes the Governor to adjust the bid threshold  
8 every five years in proportion to the rise or fall of the "index rate,"  
9 which is the rate of annual percentage increase, rounded to the nearest  
10 half-percent, in the Implicit Price Deflator for State and Local  
11 Government Purchases of Goods and Services, computed and  
12 published quarterly by the United States Department of Commerce,  
13 Bureau of Economic Analysis. Under current law, the Governor is  
14 authorized to adjust the bid threshold every two years according to the  
15 Consumer Price Index.

16 The bill specifies that contracts required to be publicly advertised  
17 and bid are to be awarded to the lowest responsible bidder by  
18 resolution of the governing body or board of education, as the case  
19 may be. The bill permits a governing body or board of education to  
20 disqualify a bidder who would otherwise be qualified if the governing  
21 body or board of education finds that it has had prior negative  
22 experience with the bidder. The bill specifies the meaning of "prior  
23 negative experience" and the responsibilities of the governing body or  
24 board of education if it contemplates a disqualification based on prior  
25 negative experience.

26 The bill makes certain changes to the sections of both laws that  
27 enumerate exemptions to the requirement for public advertising and  
28 bidding. For the LPCL it adds a provision currently in the PSCL  
29 allowing contracts to be awarded without public advertising and  
30 bidding, by a resolution approved by two-thirds of the full membership  
31 of the governing body of the contracting unit, if the contracting unit  
32 has solicited and received at least three quotations on materials,  
33 supplies or equipment for which a State contract has been issued and  
34 the lowest responsible quotation is at least 10% less than the price the  
35 contracting unit would be charged for the identical items in the same  
36 quantities under the State contract.

37 Procedures to be followed for contracts that are not required to be  
38 publicly advertised and bid are specified in the bill. For contracts that  
39 in the aggregate are less than the bid threshold but 15 percent or more  
40 of that amount, and for contracts for certain items that are exempt  
41 from public bidding, the contract will be awarded after the solicitation  
42 of at least two competitive quotations, if practicable. A contract for  
43 extraordinary unspecifiable services, when in excess of the bid  
44 threshold and after documented effort by the contracting agent or  
45 purchasing agent to secure competitive quotations, can be awarded by

1 resolution upon a determination in writing that the solicitation of  
2 competitive quotations is impracticable. Contracts that in the  
3 aggregate are less than 15 percent of the bid threshold can be awarded  
4 without soliciting competitive quotations.

5 Whenever two or more responses to a request of a contracting unit  
6 offer equal prices, and are the lowest responsible bids or proposals, the  
7 contract may be awarded to the vendor whose response is the most  
8 advantageous, price and other factors considered.

9 The bill clarifies the language of existing law prohibiting the  
10 division of contracts in order to bring a contract or any of its parts  
11 under the bid threshold for the purpose of dispensing with the  
12 requirement of public advertising and bidding.

13 The bill permits the governing body of a contracting unit under the  
14 LPCL to establish the office of purchasing agent or a purchasing  
15 department or purchasing board with authority, responsibility and  
16 accountability as its contracting agent for the purchasing activity for  
17 the contracting unit, to prepare public advertising for bids, to receive  
18 bids on behalf of the contracting unit, to award contracts in the name  
19 of the contracting unit, and to conduct activities necessary or  
20 appropriate to the purchasing function of the contracting unit. The bill  
21 also requires the Director of the Division of Local Government  
22 Services in the Department of Community Affairs, after consultation  
23 with the Commissioner of Education, to establish criteria to qualify  
24 county purchasing agents and other individuals who have completed  
25 appropriate training and possess the necessary experience to exercise  
26 any supplemental authority set forth in the LPCL and PSCL. The bill  
27 also changes the term "contracting agent" to "purchasing agent" under  
28 the PSCL.

29 The bill permits joint agreements for the provision or performance  
30 of goods or services among any two or more contracting units under  
31 the LPCL and among one or more school districts and any  
32 municipality or county under the PSCL.

33 The bill permits local contracting units, boards of education, and  
34 the State authorities authorized to contract independently under  
35 various provisions of State law, without advertising for bids or having  
36 rejected all bids obtained pursuant to advertising, to use the Federal  
37 Supply Schedules of the General Services Administration promulgated  
38 by the Director of the Division of Purchase and Property in the  
39 Department of the Treasury pursuant to section 1 of P.L.1996, c.16  
40 (C.52:34-6.1), subject to certain conditions. The bill also requires the  
41 Director of the Division of Purchase and Property in the Department  
42 of the Treasury to promulgate the Federal Supply Schedules as an  
43 alternate price guide for the purchase of goods and services for State  
44 agencies and for the entities defined in section 1 of P.L.1959, c.40  
45 (C.52:27B-56.1), subject to the same conditions.

1 The bill adds a new provision to both the LPCL and the PSCL  
2 requiring that when goods or services are to be paid for by funds  
3 received from a bequest, legacy or gift containing written instructions  
4 as to specifications, manufacturer or vendor, or source of supply, the  
5 instructions must be honored.

6 The bill requires any prospective bidder who wishes to challenge a  
7 bid specification under the LPCL or the PSCL to file the challenge in  
8 writing with the contracting agent or purchasing agent not less than  
9 three business days prior to the opening of the bids.

10 The bill enumerates the reasons why all bids can be rejected under  
11 the LPCL and the PSCL.

12 For the PSCL, the bill permits contracts to be made for a period of  
13 24 months instead of 12 months as in current law. The LPCL already  
14 permits contracts to be made for 24 months. For both laws, the bill  
15 makes changes to the list of exceptions to the provision governing the  
16 maximum length of contracts.

17 The bill adds to both laws a provision permitting contracts for  
18 services other than professional services whose statutory length is  
19 three years or less to include provisions for no more than one two-year  
20 or two one-year extensions, subject to certain limitations.

21 The bill amends the sections under both the LPCL and the PSCL  
22 that permit separate plans for various types of work. The changes  
23 made by the bill would make the laws the same.

24 The bill requires that under the LPCL and the PSCL, personal  
25 property not needed for public use, the value of which exceeds 15  
26 percent of the bid threshold in any one sale, shall be sold at public sale  
27 to the highest bidder. Under current law the thresholds for public sale  
28 to the highest bidder differ between the two laws. The bill also  
29 permits the local contracting unit or board of education to authorize  
30 a public auction procedure or sealed bids and to make such a sale to  
31 any foreign nation that has diplomatic relations with the United States  
32 or any governmental unit in the United States without advertising for  
33 bids.

34 The bill makes various other amendments to provisions of the  
35 LPCL and PSCL in order to rephrase language in those provisions to  
36 comport with new terminology used in the bill.

37 The bill requires that the provision or performance of goods or  
38 services by a municipality or a county in connection with the  
39 operation, management or administration of an airport must be done  
40 according to the LPCL. It also exempts from the requirements of  
41 public advertising and bidding the management or operation of an  
42 airport owned by the contracting unit.

43 The bill raises to \$25,000 the bid thresholds of the following  
44 independent authorities: The New Jersey Sports and Exposition  
45 Authority, the Hackensack Meadowlands Development Commission,  
46 the New Jersey Highway Authority, the New Jersey Turnpike



1 Authority, the New Jersey Water Supply Authority, the South Jersey  
2 Transportation Authority and the Higher Education Student Assistance  
3 Authority. For each of these authorities, the bill gives the Governor  
4 the authority to adjust the bid threshold every five years, according to  
5 the index rate. Each of these authorities is permitted to use the  
6 contracts of the other authorities as well as the contracts of the Port  
7 Authority of New York and New Jersey and the Delaware River Port  
8 Authority.

9 The bill permits the Director of the Division of Local Government  
10 Services, after consultation with the Commissioner of Education, to  
11 adopt rules implementing the LPCL and the PSCL.

12 The bill raises the bid threshold for State agencies to \$25,000, to be  
13 adjusted by the Governor every five years according to the index rate.  
14 It also permits the Director of the Division of Purchase and Property  
15 to delegate purchasing authority to using agencies for purchases or  
16 contracts not in excess of \$25,000, subject to certain limitations. The  
17 bill gives the Director of the Division of Purchase and Property the  
18 power to establish and assess fees to cover the administrative costs of  
19 the operation and functioning of the division and the authority to  
20 conduct investigations and informal hearings and to issue final agency  
21 decisions regarding any bid protest or vendor performance issues.  
22 With certain exceptions, the bill gives the director final approval of all  
23 State contracts.

24 The bill allows the State Treasurer or the director to negotiate with  
25 bidders, after bid opening, the final terms and conditions of any  
26 contract, including price. This provision will apply to all bids received  
27 on and after the date of enactment of the bill.

28 The bill makes certain revisions to the criminal laws to clarify  
29 standards of conduct and enhance deterrence of criminal activity with  
30 respect to procurement procedures.

31 The bill permits purchases made under the State contract by local  
32 contracting units, boards of education, State colleges, or county  
33 colleges to be effectuated either as an outright purchase or by  
34 installment, lease or rental, so long as the vendor offers financing at an  
35 interest rate that is equal to or lower than the State line of credit.

36 The bill repeals N.J.S.2C:27-7, which concerns the crime of  
37 compensating a public servant for assisting private interests in relation  
38 to matters before the public servant. It also repeals P.L.1972, c.112  
39 (C.40A:11-12.1 through 12.6), which authorizes the governing body  
40 of any local unit to provide electronic data processing services for  
41 another governing body or bodies of other local units or to undertake  
42 joint operation of electronic data processing of official records and  
43 information. The bill also repeals N.J.S.18A:18A-38, which concerns  
44 the awarding of contracts under the PSCL when bids are equal; section  
45 1 of P.L.1981, c.186 (C.18A:18A-42.1), which concerns contracts for  
46 the services of a food management company under the PSCL; and

**S2203 KAVANAUGH**

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1 N.J.S.18A:18A-39, which requires that a copy of contracts of more  
2 than \$10,000 for the construction, alteration, or repair of any building  
3 be filed with the State Board of Education within 10 days after being  
4 signed.

5 The bill takes effect 90 days after enactment.

STATEMENT TO  
**SENATE, No. 2203**

with Senate Floor Amendments  
(Proposed By Senator KYRILLOS)

ADOPTED: DECEMBER 13, 1999

These amendments would make various changes to the bill.

First, the amendments change section 1 of the bill to specify that competitive contracting may not be used by local contracting units in lieu of public bidding for the administration of benefits under Work First New Jersey, established under P.L.1997, c.38 (C.44:10-55 et seq.), or under General Assistance.

Second, the amendments change section 8 of the bill, which amends section 4 of the "Local Public Contracts Law," P.L.1971, c.98 (C.40A:11-4), and change section 52 of the bill, which amends N.J.S.18A:18A-4 of the "Public School Contracts Law," to clarify that disqualification of a bidder for prior negative experience cannot be voided or shortened if pursuant to the disqualification a government body is prohibited by law from entering into a contract with a bidder.

Third, the amendments change section 9 of the bill, which amends section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5), to restore exemptions from public bidding for the marketing of recyclable materials recovered through a recycling program or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, and for the cooperative marketing of recyclable materials recovered through a recycling program.

Fourth, the amendments add to the types of contracts exempted from public advertising and bidding requirements under section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5), contracts for purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission. Section 53 of the bill already exempts these contracts from public advertising and bidding requirements under N.J.S.18A:18A-5 of the "Public School Contracts Law."

Fifth, the amendments clarify that the exemption from public advertising and bidding added by the bill to section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5) as subsection (5) of that section is for the combined collection and marketing or the combined cooperative collection and marketing of recycled material recovered through a recycling program or any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program.

Amendments to this subsection also make a technical correction to remove extraneous language.

Sixth, the amendments require additional procedures to be followed by local contracting units and boards of education when they utilize provisions under section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5) and N.J.S.18A:18A-5 of the "Public School Contracts Law," to purchase, without public advertising and bidding, materials, supplies or equipment for which a State contract has been issued, if the local contracting unit or board of education has solicited and received at least three quotations and the lowest responsible quotation is at least 10% less than the price under the State contract. The amendments require the local contracting unit or board of education to file with the Director of the Division of Local Government Services in the Department of Community Affairs, within five working days of the award of the contract, a copy of the purchase order relating to the contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number. The director will acknowledge receipt of the materials and make the materials available to the State Treasurer. The contracting unit or board of education will make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions.

In the case of local contracting units, the director periodically will review the material to determine the impact of the contracts on local contracting and will consult with the State Treasurer on the impact of the contracts on the State procurement process. The director, after consultation with the State Treasurer, may adopt rules to limit the use of this exemption after considering the impact of the exemption on State and local contracting or after considering the extent to which the award of contracts pursuant to this exemption is consistent with and in furtherance of the purposes of the public contracting laws.

Seventh, the amendments change section 18 of the bill, which amends section 12 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-12), section 58 of the bill, which amends N.J.S.18A:18A-10 of the "Public School Contracts Law," and section 107 of the bill, which amends section 2 of P.L.1996, c.16 (C.52:34-6.3), to require additional conditions to be met when local contracting units, boards of education, and certain State authorities make purchases from the Federal Supply Schedules of the General Services Administration without advertising for bids or having rejected all bids obtained pursuant to advertising. In order for such purchases to be made, the price of the goods or services being procured can be no greater than the price of the same or equivalent goods or services under the State contract, unless the contracting unit, board of education or authority determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules would be more advantageous. Also, a copy of the purchase order relating to

any such contract, the requisition or request for purchase order, if applicable, and documentation identifying the price of the goods or services under the Federal Supply Schedules must be filed with the Director of the Division of Local Government Services in the Department of Community Affairs, or, in the case of authorities, with the State Treasurer, within five working days of the award of the contract. The director will acknowledge receipt of the materials and make them available to the State Treasurer. The local contracting unit, board of education or authority will make available to the director or State Treasurer upon request any other documents relating to the solicitation and award of the contract.

The amendments also amend section 106 of the bill, which amends section 1 of P.L.1996, c.16 (C.52:34-6.1), to require an additional condition to be met when State agencies make purchases from the Federal Supply Schedules. In order for such purchases to be made, the price of the goods or services can be no greater than the price of the same or equivalent goods or services under the State contract, unless the State determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules would be more advantageous to the State.

Eighth, the amendments change section 104 of the bill, which amends section 11 of P.L.1970, c.73 (C.56:9-11) to clarify that certain activities constitute a crime, rather than a crime of the fourth degree. The degree of the crime is determined pursuant to subsection b. of that section.

Finally, the amendments make technical changes to the bill to conform the text of a statute being amended to current law and to make terms used in different parts of the bill consistent with each other.

Notice Number

Date

**LOCAL FINANCE NOTICE**CHRISTINE TODD WHITMAN  
GOVERNORJANE M. KENNY  
COMMISSIONERULRICH H. STEINBERG, JR.  
DIRECTOR**Procurement Reform Law Is Signed - Public Contracting Law Update**(AU2000-1R (May 1, 2000) revisions in *bold italic*)

On January 18, 2000, Governor Whitman enacted P.L.1999, c.440, the first significant revision to local government and State contracting laws in many years. While it has been signed into law, it does not take affect until **90 days after the enactment date**, which will be April 17, 2000.

Originally known as Assembly Bill 30 (A-30), by the time the legislative process was concluded, its final reference was A-3519. With its origin in a State Treasury Task Force on Procurement in 1995, it evolved over the last five years into a comprehensive review of the Local Public Contracts Law, the Public School Contracts Law, amendments to State and State independent authority procurement laws, and changes to State criminal law regarding public procurement.

A major purpose of the law is to bring a common set of laws and rules to local government and public school procurement practices. To this end, N.J.S.A. 40A:11-1 (Local Public Contracts Law) and N.J.S.A. 18A:18A-1 (Public School Contracts Law) were revised to resolve differences and to add compatibility. One important element of this effort will be a common set of rules in the New Jersey Administrative Code that cover both laws. The rules will be promulgated by the Division of Local Government Services, with consultation from the Commissioner of Education. These rules are being drafted, will be reviewed by local government and public school procurement practitioners, and are expected to be proposed around the time the law takes effect.

To educate local and school officials about the law and rules, the Division of Local Government Services will be consulting with officials in the Department of Education to develop educational and explanatory information to inform local officials of the changes and intent of the law and to explain the new rules. This material will be mailed to local officials and be available on web sites. We are also developing ways to take advantage of the web and e-mail to facilitate answering questions and providing assistance.

To help educate local and school officials, over the next few months State personnel will be conducting a series of workshops and seminars sponsored by a number of professional organizations that will review the changes. A list of those program that have already been scheduled is attached. These groups will be promoting them through their regular channels. We strongly suggest that those involved in purchasing or advice related to it make every effort to attend at least one of the sessions to obtain the new information and material first hand.

**It is important to remember that the law does not take affect until April 17.** The Attorney General's office has advised us that local units cannot take advantage of the law until after that date – it is as if the changes do not presently exist. To assist in planning procurement activities after that date, as we get closer, we will provide information on how to deal with implementation issues.

Director's Office  
(609) 292-6613Local Government  
Research  
(609) 292-6110Financial Regulation  
and Assistance  
(609) 292-4806Local Finance  
Board  
(609) 292-0479Local Management  
Services  
(609) 292-7842Authority Regulation  
(609) 984-0132Fax  
(609) 984-7388

101 South Broad Street

P.O. Box 803

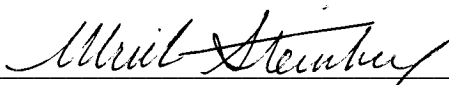
Trenton, New Jersey 08625-0803

<http://www.state.nj.us/dca/lgs/pages/dcadlgs.htm>

Attending one of the educational programs and reviewing the written material that is being prepared will go far in promoting understanding of the law and rules.

**Recipients of this Notice are asked to share this and other information concerning P.L.1999, c.440, with the appropriate administrative, purchasing, legal and financial personnel in their organizations.** If you have any questions concerning this Notice or require additional information regarding P.L.1999,c.440, please call (609) 292-7842 or (609) 984-7765. For those officials that have e-mail, we urge use of a special Local Public Contracts Law address: *lpcl@dca.state.nj.us*.

The balance of this Notice summarizes key provisions of the law. Following the description of the changes, we have provided a "frequently asked question" sheet that provides additional immediate information.

  
\_\_\_\_\_  
Ulrich H. Steinberg, Jr., Director  
Division of Local Government Services

Distribution: Municipal Clerks, Clerks to Boards of Chosen Freeholders, Municipal, County and Authority, Chief Financial Officers, Fire District Boards of Commissioners

## Central Themes of Chapter 440

The key purposes of the legislation were to provide for improvements in and application of consistent and sound procurement practices within a certain statutory frame work. The changes were accomplished by:

- Balancing administrative efficiency verses public accountability and responsibility.
- Eliminating non-competitive practices that result in higher prices and uncertain contract delivery and/or performance.
- Promoting competition by having as much as possible a common set of standards, practices and procedures between the two local contracts laws.
- Encouraging professionalism and application of sound procurement principles to public purchasing.
- Enhancing public integrity.

### Key Changes to the Laws

There are a number of important changes that were made to the laws. This section highlights the important ones. Copies of the law and additional information will be included in the material that will be sent to all local units and be available on Division of Local Government Services and Department of Education web sites.

- Definitions: key terms have been standardized and definitions provided where there were none before. We believe these changes will eliminate a good deal of uncertainty that has existed up until now.
- Contracting Process: the requirement to publicly bid (bid threshold) is now set at \$17,500 for all covered local units. Those organizations who have a “qualified” purchasing agent, one experienced in New Jersey public procurement practices (to be defined in the rules) will be able to set their threshold at a maximum of \$25,000.
- Awards of all contracts are under the jurisdiction of governing body. All contracts over the bid threshold must be awarded by formal action of the local unit’s governing body.
- A new form of contracting, “Competitive Contracting,” can be used in lieu of public bidding for the procurement of an itemized list of specialized goods and services which were exempt from receipt of formal bids, or were identified as impractical to specify, yet suitable for competition. It permits a less detailed specifications with a request for proposals (RFP) approach and uses evaluation criteria and ranking of proposals to determine the contractor who is the “most advantageous, price and other factors considered,” instead of an award to the “lowest responsible bidder.” To provide precedents, it follows practices employed by State government that have been codified in statutory and case law.
- The law also rationalizes bid exemptions, making common items the same in the two laws. It also provides that for items between 15% of the bid threshold and the bid threshold, the attempt to solicit and receive at least *two competitive* quotations, *if practicable* is required. Special provisions are made for those items where the local unit can obtain a state contract item for at least 10% less than the State contract. *The law contains specific steps that must be taken to use this provisions, which include obtaining three formal quotations and approval by the governing body (N.J.S.A. 40A:11-5(4) and 18A:18A-5(e)).*
- Intergovernmental cooperation in procurement is encouraged by permitting county governments to create a cooperative pricing system for voluntary use by local contracting units within the county.



- Actions of the courts were recognized by codifying circumstances under which a local unit can reject all bids, and clarifies the law when buying goods that are patented or copyrighted.
- Contract length standards are made common in the two laws, including a default maximum length of 24 months for most contracts (professional services remain at 12 months). In addition, service contracts for three years or less may include provisions for contract extensions of one 2 year, or two 1 year extensions, but not to exceed a total of 5 consecutive years.
- Changes to State law on issues of public integrity include:
  - Clarification of criminal laws regarding standards of conduct and enhances deterrence of crime
  - Makes submission of false claims or false representations subject to criminal penalties
  - A public servant may be convicted of a crime if the person illegally accepts benefits stemming from: an act taken, or violates the law on behalf of someone, or acts to benefit his/her family or business interest.
  - Clarifies that violations of government ethics laws are in addition to all other criminal and civil remedies.

## Chapter 440 Frequently Asked Questions

*When can I use the new \$17,500 bid threshold?*

The new threshold can be used for all procurements made after April 17, 2000. That means bids can be advertised after that date using the new threshold.

*When can I use the \$25,000 threshold?*

It will take several weeks after the law goes into effect for the Division of Local Government Services to make application forms for the Qualified Purchasing Agent program available. Until a purchasing agent receives their certificate from the Division, all local units must use the \$17,500 threshold.

*When will the rules be adopted?*

It is expected that the rules will be proposed by the time the law goes into effect. A summary of the rule will be provided to all local units. Once published, public comment will be accepted, they are subject to amendment, and not law until formally adopted. The formal adoption process is expected to be completed by July 1. While the proposed rules can be used as informal guidance, they have no binding authority and are subject to change based on comments that are received.

*When the law takes affect, I'm in the middle (or at the end) of my fiscal year. How do I use the new bid thresholds for aggregating purchases?*

As always, use of the aggregation threshold requires local judgment. The rule proposal will, for the first time, provide some definitive guidance on how aggregation can be interpreted. April 17 is the date the threshold increases to \$17,500, and is the date after which aggregation can be calculated at the higher level.

*Knowing the law takes affect on April 17, can I plan bid awards for April 18 using the new threshold?*

NO! The Attorney General's office has advised us that for the purposes of public bidding, it is the bid advertisement date that is affected by the effective date. Bids advertised prior to April 17 must be based on the existing threshold. Procurements *advertised* on or after April 17 can take advantage of the \$17,500 limit.

*What will the requirements be to obtain a Qualified Purchasing Agent (QPA) certification?*

The specifics will be contained in the rule proposal. The law requires that the rules "shall establish criteria to qualify individuals who have completed appropriate training and possess such purchasing experience as deemed necessary." Generally, training will include, at a minimum, completion of Rutgers Professional Public Purchasing Official Program and the course material required for qualification as a Certified School Business Administrator. Other professional certifications and course experience will also be considered. Along with the education will be a requirement for actual purchasing experience (the activity of only supervising purchasing agents will not qualify). The various professional organizations will be consulted as we move to establish the final criteria.