

**18A:64-70.1; 18A:3B-6.5 et al**  
**LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 2021                    **CHAPTER:** 417

**NJSA:** 18A:64-70.1; 18A:3B-6.5 et al (Raises statutory threshold for certain public bidding, permits bidder disqualification due to prior negative experience, adds exemptions to public bidding requirement under "State College Contracts Law," and establishes process for cooperative pricing sys)

**BILL NO:** S4043                    (Substituted for A6005 (1R))

**SPONSOR(S)** Sandra B. Cunningham and others

**DATE INTRODUCED:** 11/8/2021

**COMMITTEE:**                    **ASSEMBLY:** Higher Education  
Appropriations

**SENATE:** Higher Education  
Budget & Appropriations

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** 1/10/2022

**SENATE:** 1/10/2022

**DATE OF APPROVAL:** 1/18/2022

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Second Reprint enacted)                    Yes

**S4043**

**INTRODUCED BILL**  
**(INCLUDES SPONSOR'S STATEMENT):**                    Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes                    Higher Education  
Appropriations

**SENATE:** Yes                    Higher Education  
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No  
**LEGISLATIVE FISCAL ESTIMATE:** Yes 12/23/2021  
1/10/2022

**A6005 (1R)**

**INTRODUCED BILL  
(INCLUDES SPONSOR'S STATEMENT):** Yes

**COMMITTEE STATEMENT: ASSEMBLY:** Yes Higher Education  
Appropriations

**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No  
**LEGISLATIVE FISCAL ESTIMATE:** Yes 1/10/2022

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

end

P.L. 2021, CHAPTER 417, *approved January 18, 2022*  
Senate, No. 4043 (*Second Reprint*)

1 AN ACT concerning the awarding of State college and university  
2 contracts, amending N.J.S.18A:64-6 and P.L.1992, c.61, and  
3 amending and supplementing <sup>1</sup>**[P.L.1986, c.43]** various parts of  
4 the statutory law<sup>1</sup>.  
5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*  
8

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

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

13 a. Adopt and use a corporate seal;

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

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SHI committee amendments adopted December 9, 2021.

<sup>2</sup>Assembly AHI committee amendments adopted January 3, 2022.

- 1 All accounts of the college shall be subject to audit by the State at  
2 any time;
- 3 g. In accordance with the provisions of the State budget and  
4 appropriation acts of the Legislature, appoint and fix the  
5 compensation of a president of the college, who shall be the  
6 executive officer of the college and an ex officio member of the  
7 board of trustees, without vote, and shall serve at the pleasure of the  
8 board of trustees;
- 9 h. Notwithstanding the provisions of Title 11, Civil Service, of  
10 the Revised Statutes, upon nomination by the president appoint a  
11 treasurer and such deans and other professional members of the  
12 academic, administrative and teaching staffs as defined in section  
13 13 of P.L.1986, c.42 (C.18A:64-21.2) as shall be required and fix  
14 their compensation and terms of employment in accordance with  
15 salary ranges and policies which shall prescribe qualifications for  
16 various classifications and shall limit the percentage of the  
17 educational staff that may be in any given classification;
- 18 i. Upon nomination by the president, appoint, remove, promote  
19 and transfer such other officers, agents or employees as may be  
20 required for carrying out the purposes of the college and assign  
21 their duties, determine their salaries and prescribe qualifications for  
22 all positions, all in accordance with the provisions of Title 11, Civil  
23 Service, of the Revised Statutes;
- 24 j. Grant diplomas, certificates and degrees;
- 25 k. Pursuant to the provisions of the "State College Contracts  
26 Law," P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and  
27 agreements for the purchase of lands, buildings, equipment,  
28 materials, supplies and services; enter into contracts and agreements  
29 with the State or any of its political subdivisions or with the United  
30 States, or with any public body, department or other agency of the  
31 State or the United States or with any individual, firm, or  
32 corporation, which are deemed necessary or advisable by the board  
33 for carrying out the purposes of the college;
- 34 l. If necessary, take and condemn land and other property in  
35 the manner provided by the "Eminent Domain Act of 1971,"  
36 P.L.1971, c.361 (C.20:3-1 et seq.), whenever authorized by law to  
37 purchase land or other property;
- 38 m. Adopt, after consultation with the president and faculty,  
39 bylaws and make and promulgate such rules, regulations and orders,  
40 not inconsistent with the provisions of this article, that are  
41 necessary and proper for the administration and operation of the  
42 college and the carrying out of its purposes;
- 43 n. Establish fees for room and board sufficient for the  
44 operation, maintenance, and rental of student housing and food  
45 service facilities;
- 46 o. Fix and determine tuition rates and other fees to be paid by  
47 students;

- 1 p. Accept from any government or governmental department,  
2 agency or other public or private body or from any other source  
3 grants or contributions of money or property, which the board may  
4 use for or in aid of any of its purposes;
- 5 q. Acquire by gift, purchase, condemnation or otherwise, own,  
6 lease, dispose of, use and operate property, whether real, personal  
7 or mixed, or any interest therein, which is necessary or desirable for  
8 college purposes;
- 9 r. Employ architects, engineers, consultants, and other  
10 professionals to plan buildings <sup>1</sup>, consistent with the provisions of  
11 the "Building Design Services Act," P.L.1989, c.277 (C.45:4B-  
12 1 et seq.)<sup>1</sup> ; secure bids for the construction of buildings and for the  
13 equipment thereof; make contracts for the construction of buildings  
14 and for equipment; and supervise the construction of buildings;
- 15 s. Manage and maintain, and provide for the payment of all  
16 charges and expenses in respect to all properties utilized by the  
17 college;
- 18 t. Borrow money for the needs of the college, as deemed  
19 requisite by the board, in such amounts, and for such time and upon  
20 such terms as may be determined by the board, provided that this  
21 borrowing shall not be deemed or construed to create or constitute a  
22 debt, liability, or a loan or pledge of the credit, or be payable out of  
23 property or funds, other than moneys appropriated for that purpose,  
24 of the State;
- 25 u. Authorize any new program, educational department or  
26 school consistent with the institution's programmatic mission or  
27 approved by the commission;
- 28 v. (Deleted by amendment, P.L.1994, c.48);
- 29 w. Pursuant to the "State College Contracts Law," P.L.1986,  
30 c.43 (C.18A:64-52 et seq.), award contracts and agreements for the  
31 purchase of goods and services, as distinct from contracts or  
32 agreements for the construction of buildings and other  
33 improvements, to that responsible bidder whose bid, conforming to  
34 the invitation for bids, will be most advantageous to the State  
35 college, price and other factors considered; and
- 36 x. Pursuant to the "State College Contracts Law," P.L.1986,  
37 c.43 (C.18A:64-52 et seq.), award contracts and agreements for the  
38 construction of buildings and other improvements to the lowest  
39 responsible bidder, whose bid, conforming to the invitation for bids,  
40 will be the most advantageous to the State college.  
41 (cf: P.L.2005, c.369, s.1)
- 42
- 43 2. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to  
44 read as follows:
- 45 2. As used in this article, unless the context otherwise  
46 indicates:
- 47 a. "Board of trustees" means the board of a State college;

1       b. "Contracting agent" means the business officer of the State  
2 college having the power to prepare advertisements, to advertise for  
3 and receive bids, and to make awards for the State college in  
4 connection with the purchases, contracts or agreements permitted  
5 by this article or the officer, committee or employee to whom the  
6 power has been delegated by the State college;

7       c. "Contracts" means contracts or agreements for the  
8 performance of work or the furnishing or hiring of services,  
9 materials **[or]** <sup>2,2</sup> supplies, or construction, as distinguished from  
10 contracts of employment;

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

14       e. "Materials" includes goods and property subject to chapter 2  
15 of Title 12A of the New Jersey Statutes, apparatus or any other  
16 tangible thing, except real property or any interest therein;

17       f. "Extraordinary unspecifiable services" means services or  
18 products which cannot be reasonably described by written  
19 specifications;

20       g. "Professional services" means services rendered or  
21 performed by a person authorized by law to practice a recognized  
22 profession and whose practice is regulated by law and the  
23 performance of which services requires knowledge of an advanced  
24 type in a field of learning acquired by a prolonged formal course of  
25 specialized instruction and study as distinguished from general  
26 academic instruction or apprenticeship and training. Professional  
27 services also means services rendered in the performance of work  
28 that is original and creative in character in a recognized field of  
29 artistic endeavor;

30       h. "Project" means any work, undertaking, construction or  
31 alteration;

32       i. "Purchases" are transactions, for a valuable consideration,  
33 creating or acquiring an interest in goods, services and property  
34 except real property or any interest therein;

35       j. "State college" means an institution of higher education  
36 established pursuant to chapter 64 of Title 18A of the New Jersey  
37 Statutes;

38       k. "Work" includes services and any other activity of a tangible  
39 or intangible nature performed or assumed pursuant to a contract or  
40 agreement with a State college;

41       l. "Information technology" means telecommunication and  
42 computing goods and services, including, but not limited to,  
43 software, hardware, cloud computing, and systems implementation  
44 and support for voice, data and video.

45 (cf: P.L.2005, c.369, s.2)

46

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

1       3. a. (1) Any purchase, contract or agreement for the  
2 performance of any work or the furnishing or hiring of materials or  
3 supplies, through which workers employed in the performance of  
4 the contract are paid in accordance to the "New Jersey Prevailing  
5 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the cost or  
6 price of which, together with any sums expended for the  
7 performance of any work or services in connection with the same  
8 project or the furnishing of similar materials or supplies during the  
9 same fiscal year, paid with or out of college funds, does not exceed  
10 the total sum of \$26,200 or, commencing January 1, 2005, the  
11 amount determined pursuant to subsection b. of this section, in any  
12 fiscal year may be made, negotiated and awarded by a contracting  
13 agent, when so authorized by resolution of the board of trustees of  
14 the State college without public advertising for bids and bidding  
15 therefor.

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

31       b. Commencing January 1, 2005 and every two years  
32 thereafter, the Governor, in consultation with the Department of the  
33 Treasury, shall adjust the threshold **1[amount] amounts<sup>1</sup>** set forth in  
34 subsection a. of this section in direct proportion to the rise or fall of  
35 the Consumer Price Index for all urban consumers in the New York  
36 and Northeastern New Jersey and the Philadelphia areas, as reported  
37 by the United States Department of Labor. The adjustment shall  
38 become effective on July 1 of the year in which it is reported.

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

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

44  
45       4. Section 4 of P.L.1986, c.43 (C.18A:64-55) is amended to  
46 read as follows:

47       4. a. Every contract or agreement for the performance of any  
48 work or the furnishing or hiring of any materials or supplies,

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

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

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

30

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

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

38 a. The subject matter thereof consists of:

39 (1) Professional services; or

40 (2) Extraordinary unspecifiable services and products which  
41 cannot reasonably be described by written specifications, subject,  
42 however, to procedures consistent with open public bidding  
43 whenever possible; or

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

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



- 1 (5) The printing of all legal notices and legal briefs, records and  
2 appendices to be used in any legal proceeding to which the State  
3 college may be a party and the use of electronic data or media  
4 services, including the internet, for the printing of these legal  
5 notices and legal briefs, records and appendices; or
- 6 (6) Textbooks, copyrighted materials, student produced  
7 publications and services incidental thereto, library materials  
8 including without limitation books, periodicals, newspapers,  
9 documents, pamphlets, photographs, reproductions, microfilms,  
10 pictorial or graphic works, musical scores, maps, charts, globes,  
11 sound recordings, slides, films, filmstrips, video and magnetic  
12 tapes, other printed or published matter and audiovisual and other  
13 materials of a similar nature, necessary binding or rebinding of  
14 library materials and specialized library services, including  
15 electronic databases and digital formats; or
- 16 (7) Food supplies and services, including food supplies and  
17 management contracts for student centers, dining rooms and  
18 cafeterias; or
- 19 (8) The supplying of any product or the rendering of any service  
20 by the public utility which is subject to the jurisdiction of the Board  
21 of Public Utilities, in accordance with tariffs and schedules of  
22 charges made, charged and exacted, filed with that board; or
- 23 (9) Equipment repair service if in the nature of an extraordinary  
24 unspecifiable service and necessary parts furnished in connection  
25 with the services; or
- 26 (10) Specialized machinery or equipment of a technical nature  
27 which will not reasonably permit the drawing of specifications, and  
28 the procurement thereof without advertising is in the public interest;  
29 or
- 30 (11) Insurance, including the purchase of insurance coverage  
31 and consulting services, which exceptions shall be in accordance  
32 with the requirements for extraordinary unspecifiable services; or
- 33 (12) Publishing of legal notices in newspapers as required by  
34 law and the use of electronic data or media services, including the  
35 internet, for the publication of the legal notices; or
- 36 (13) The acquisition of artifacts or other items of unique  
37 intrinsic, artistic or historic character; or
- 38 (14) The collection of amounts due on student loans, including  
39 without limitation loans guaranteed by or made with funds of the  
40 United States of America, and amounts due on other financial  
41 obligations to the State college, including but not limited to, the  
42 amounts due on tuition and fees and room and board; or
- 43 (15) Professional consulting services; or
- 44 (16) Entertainment, including without limitation theatrical  
45 presentations, band and other concerts, movies and other  
46 audiovisual productions; or

- 1 (17) Contracts employing funds created by student activities
- 2 fees charged to students or otherwise raised by students and
- 3 expended by student organizations; or
- 4 (18) Printing, including without limitation catalogs, yearbooks
- 5 and course announcements and the production and reproduction of
- 6 such material in electronic and digital formats, including compact
- 7 discs; or
- 8 (19) Information technology; or
- 9 (20) Personnel recruitment and advertising, including without
- 10 limitation advertising seeking student enrollment; or
- 11 (21) Educational supplies, books, articles of clothing and other
- 12 miscellaneous articles purchased by a State college for resale to
- 13 college students and employees; or
- 14 (22) Purchase or rental of graduation caps and gowns , and
- 15 award certificates or plaques , or the rental of space and equipment
- 16 used for graduation and other events and ceremonies ; or
- 17 (23) Items available from vendors at costs below State contract
- 18 pricing for the same product or service, which meets or exceeds the
- 19 State contract terms or conditions; or
- 20 (24) Management contracts for bookstores, performing arts
- 21 centers, residence halls, parking facilities and building operations;
- 22 or
- 23 (25) Consulting services involving information technology,
- 24 curricular or programmatic review, fund raising, transportation,
- 25 safety or security; or
- 26 (26) Construction management services for construction,
- 27 alteration or repair of any building or improvement; or
- 28 (27) Purchase or rental of equipment of a technical nature when
- 29 the procurement thereof without advertising is necessary in order to
- 30 assure standardization of equipment and interchangeability of parts
- 31 in the public interest; or
- 32 (28) Banking and investment services; or
- 33 (29) Energy supply, such as electric and gas, from a third-party
- 34 supplier; or
- 35 (30) Hazardous waste collection and disposal services; or
- 36 (31) Supplies and services for the administration of study
- 37 abroad or remote programs; or
- 38 (32) Transportation services; or
- 39 (33) Vehicle maintenance; or
- 40 (34) Vending services; or
- 41 (35) Medical testing.
- 42 b. It is to be made or entered into with the United States of
- 43 America, the State of New Jersey, a county or municipality or any
- 44 board, body, or officer, agency or authority or any other state or
- 45 subdivision thereof.
- 46 c. The State college has advertised for bids pursuant to section
- 47 4 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has
- 48 received no bids on both occasions in response to its advertisement,

1 or (ii) has rejected the bids on two occasions because the State  
2 college has determined that they are not reasonable as to price, on  
3 the basis of cost estimates prepared for or by the State college prior  
4 to the advertising therefor, or have not been independently arrived  
5 at in open competition, or (iii) on one occasion no bids were  
6 received pursuant to (i) and on one occasion all bids were rejected  
7 pursuant to (ii), in whatever sequence; any contract or agreement  
8 may then be negotiated by a two-thirds affirmative vote of the  
9 authorized membership of the board of trustees authorizing the  
10 contract or agreement; provided that:

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

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

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

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

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

45

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

1       6. Any purchase, contract, or agreement may be made,  
2 negotiated or awarded by a State college without public advertising  
3 for bids and bidding therefor, notwithstanding that the cost or  
4 contract price will exceed ~~[\$26,200]~~ <sup>1</sup>~~[\$100,000]~~ or, commencing  
5 January 1, 2005, the amount determined pursuant to  
6 subsection b. of ~~the appropriate threshold amount, as adjusted and~~  
7 established pursuant to<sup>1</sup> section 3 of P.L.1986, c.43 (C.18A:64-54),  
8 when an emergency affecting the health, safety or welfare of  
9 occupants of college property requires the immediate delivery of the  
10 materials or supplies or the performance of the work, if the  
11 purchases, contracts or agreements are awarded or made in the  
12 following manner:

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

21       b. Upon the furnishing of the work, materials or supplies in  
22 accordance with the terms of the contract or agreement, the  
23 contractor furnishing the work, materials or supplies is entitled to  
24 be paid therefor and the State college is obligated for the payment.

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

27 (cf: P.L.2005, c.369, s.6)

28

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

31       19. All contracts or agreements for the purchase of goods and  
32 services, as distinct from contracts or agreements for the  
33 construction of buildings and other improvements, which require  
34 public advertisement for bids shall be awarded by the board of  
35 trustees to the responsible bidder whose bid, conforming to the  
36 invitation for bids, will be most advantageous to the State college,  
37 price and other factors considered, except that a bid may be  
38 disqualified due to prior negative experience pursuant to the  
39 provisions of section 10 of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill).

41       Prior to the award of any contract or agreement which does not  
42 require public advertisement, the estimated cost of which is 20% or  
43 more of the amount set forth in this act or, commencing January 1,  
44 1985, 20% of the amount determined by the Governor pursuant to  
45 subsection b. of section 3 of this act, the contracting agent shall,  
46 except in the case of professional services, solicit quotations  
47 therefor whenever practicable, and the award thereof shall be made,  
48 in accordance with section 3 of this article, on the basis of the

1 quotation, conforming to the request for proposals, which is most  
2 advantageous to the State college, price and other factors  
3 considered; however, if the contracting agent deems it impractical  
4 to solicit competitive quotations or having sought the quotations  
5 determines that the award should not be made on that basis, the  
6 contracting agent shall file a statement of explanation of the reason  
7 or reasons therefor, which shall be placed on file with the purchase,  
8 contract, or agreement.

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

10

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

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

18 (1) separate bids for branches of work in the following  
19 categories:

20 (a) the plumbing and gas fitting work;

21 (b) the refrigeration, heating and ventilating systems and  
22 equipment;

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

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

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

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

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

31 In the case of separate bids under paragraph (1) or (3) of this  
32 subsection, prime contractors for categories (a) through (d) shall not  
33 be required to name subcontractors in their bid. In the case of a  
34 single bid under paragraph (2) or (3), all bids submitted shall set  
35 forth the names and license numbers of all subcontractors to whom  
36 the general contractor will subcontract the work described in the  
37 foregoing categories (a) through (d). Subcontractors who furnish  
38 non-specialty trade work pursuant to category (e) in paragraph (1)  
39 of this subsection or subcontractors who furnish work to named  
40 subcontractors pursuant to categories (a) through (d) in paragraph  
41 (1) of this subsection shall not be named in the bid.  
42 Notwithstanding the foregoing provisions of this subsection, a State  
43 college may choose to require in its bid specification that a  
44 subcontractor shall be named in a bid when, in the case of  
45 paragraph (1), separate bids for each category, the work of that  
46 subcontractor exceeds 35 percent of the State college's estimated  
47 amount of value of the work, which shall be set forth in the bid  
48 specification.

1       b. Contracts shall be awarded to the lowest responsible bidder  
2 whose bid, conforming to the invitation for bids, will be the most  
3 advantageous to the State college, except that a bid may be  
4 disqualified due to prior negative experience pursuant to the  
5 provisions of section 10 of P.L. , c. (C. ) (pending before the  
6 Legislature as this bill). Whenever two or more bids of equal  
7 amounts are the lowest bids submitted by responsible parties, the  
8 college may award the contract to any of the parties, as, in its  
9 discretion, it may determine.

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

11  
12       9. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to  
13 read as follows:

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

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

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

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

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

37       e. A State college may reject all bids if it determines a  
38 rejection to be in the public interest. In any case in which the  
39 college has rejected all bids, it may readvertise the personal  
40 property for a subsequent public sale. If it elects to reject all bids at  
41 a second public sale pursuant to this section, it may then sell the  
42 personal property without further publication or notice thereof at  
43 private sale, but in no event shall the negotiated price at the private  
44 sale be less than the amount of the highest bid rejected at the  
45 preceding two public sales, nor shall the terms or conditions of sale  
46 be changed or amended.

47       f. If the estimated fair value of the property to be sold does not  
48 exceed **[\$26,200]** \$100,000 or, commencing January 1, 2005, the

1 amount determined pursuant to subsection b. of section 3 of  
2 P.L.1986, c.43 (C.18A:64-54), in any one sale or the property  
3 consists of perishable goods, it may be sold at private sale without  
4 advertising for bids.

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

6

7 10. (New section) a. A board of trustees of a State college may,  
8 by resolution approved by a majority of the board and subject to  
9 subsections b. and c. of this section, disqualify a bidder who would  
10 otherwise be determined to be the lowest responsible bidder or the  
11 responsible bidder whose bid would otherwise be determined to be  
12 most advantageous to the State college as applicable, if the board  
13 finds that a board of an institution of higher education in the State  
14 has had prior negative experience with the bidder within the past 15  
15 years.

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

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

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

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

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

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

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

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

44 (3) The bidder shall be furnished by the State college with a  
45 written notice (a) stating that a disqualification is being considered;  
46 (b) setting forth the reason for the disqualification; and (c)  
47 indicating that the bidder shall be accorded an opportunity for a  
48 hearing before the State college if the bidder so requests within a

1 stated period of time. At the hearing, the bidder shall show good  
2 cause why the bidder should not be disqualified by presenting  
3 documents and testimony. If the State college determines that good  
4 cause has not been shown by the bidder, it may vote to find the  
5 bidder lacking in responsibility and, thus, disqualified.

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

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

16 (6) An opportunity for a hearing need not be offered to a bidder  
17 whose disqualification is based on its suspension or debarment by  
18 an agency or department of the executive branch of the State of  
19 New Jersey. The term of such a disqualification shall be concurrent  
20 with the term of the suspension or debarment by the State agency or  
21 department.

22  
23 <sup>1</sup>11. (New section) a. (1) The governing board of a public  
24 institution of higher education may by resolution establish a  
25 cooperative pricing system with the governing boards of other  
26 public institutions of higher education.

27 (2) A lead agency shall procure goods and services through a  
28 cooperative pricing system using a master contract. A master  
29 contract shall be secured in accordance with all applicable State  
30 contracting and procurement laws.

31 (3) A participating contracting unit may use the master contract  
32 during the contract period to procure goods or services of the same  
33 specification, quality, and price as that contained in the master  
34 contract with the lead agency.

35 b. No vendor shall be required to extend bid prices to  
36 participating contracting units in a cooperative pricing system  
37 unless so specified in the bids.

38 c. As used in this section:

39 “Cooperative pricing system” means a purchasing system in  
40 which one public institution of higher education acts as the lead  
41 agency in establishing a master contract with a vendor for the  
42 provision of goods or services and through which other public  
43 institutions of higher education may subsequently procure goods or  
44 services using the master contract.

45 “Lead agency” means a public institution of higher education  
46 that enters into a master contract under a cooperative pricing system  
47 pursuant to the provisions of this section.



1       “Participating contracting unit” means a public institution of  
2 higher education, other than the lead agency, that procures goods or  
3 services from a vendor using a master contract.<sup>1</sup>

4

5       <sup>1</sup>~~11.~~ 12.<sup>1</sup> This act shall take effect on the 30th day after the  
6 date of enactment.

7

8

9

10

11       Raises statutory threshold for certain public bidding, permits  
12 bidder disqualification due to prior negative experience, adds  
13 exemptions to public bidding requirement under "State College  
14 Contracts Law," and establishes process for cooperative pricing  
15 system.

# SENATE, No. 4043

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 8, 2021

**Sponsored by:**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**Co-Sponsored by:**

**Senator Ruiz**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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

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2

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

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

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

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

12 a. Adopt and use a corporate seal;

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

14 j. Grant diplomas, certificates and degrees;

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

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

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

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

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

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

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

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

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4

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

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

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

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

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

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

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

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

30

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

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

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

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

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

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

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1 e. "Materials" includes goods and property subject to chapter 2  
2 of Title 12A of the New Jersey Statutes, apparatus or any other  
3 tangible thing, except real property or any interest therein;

4 f. "Extraordinary unspecifiable services" means services or  
5 products which cannot be reasonably described by written  
6 specifications;

7 g. "Professional services" means services rendered or  
8 performed by a person authorized by law to practice a recognized  
9 profession and whose practice is regulated by law and the  
10 performance of which services requires knowledge of an advanced  
11 type in a field of learning acquired by a prolonged formal course of  
12 specialized instruction and study as distinguished from general  
13 academic instruction or apprenticeship and training. Professional  
14 services also means services rendered in the performance of work  
15 that is original and creative in character in a recognized field of  
16 artistic endeavor;

17 h. "Project" means any work, undertaking, construction or  
18 alteration;

19 i. "Purchases" are transactions, for a valuable consideration,  
20 creating or acquiring an interest in goods, services and property  
21 except real property or any interest therein;

22 j. "State college" means an institution of higher education  
23 established pursuant to chapter 64 of Title 18A of the New Jersey  
24 Statutes;

25 k. "Work" includes services and any other activity of a tangible  
26 or intangible nature performed or assumed pursuant to a contract or  
27 agreement with a State college;

28 l. "Information technology" means telecommunication and  
29 computing goods and services, including, but not limited to,  
30 software, hardware, cloud computing, and systems implementation  
31 and support for voice, data and video.

32 (cf: P.L.2005, c.369, s.2)

33

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

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

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

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

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

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

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

31

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

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

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

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

17

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

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

25        a. The subject matter thereof consists of:

26            (1) Professional services; or

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

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

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

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

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



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8

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

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

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

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

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

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

16 (28) Banking and investment services; or

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

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

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

22 (32) Transportation services; or

23 (33) Vehicle maintenance; or

24 (34) Vending services; or

25 (35) Medical testing.

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

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

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

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

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

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

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

29

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

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

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

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

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

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

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

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

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

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

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

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

48       (a) the plumbing and gas fitting work;

- 1 (b) the refrigeration, heating and ventilating systems and  
2 equipment;
- 3 (c) the electrical work, including any electrical power plants,  
4 tele-date, fire alarm, or security systems;
- 5 (d) the structural steel and ornamental iron work;
- 6 (e) general construction, which shall include all other work and  
7 materials required for the completion of the project, or
- 8 (2) bids for all work and materials required to complete the  
9 entire project if awarded as a single contract, or
- 10 (3) both (1) and (2) above.

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

29 b. Contracts shall be awarded to the lowest responsible bidder  
30 whose bid, conforming to the invitation for bids, will be the most  
31 advantageous to the State college , except that a bid may be  
32 disqualified due to prior negative experience pursuant to the  
33 provisions of section 10 of P.L. , c. (C. ) (pending before the  
34 Legislature as this bill). Whenever two or more bids of equal  
35 amounts are the lowest bids submitted by responsible parties, the  
36 college may award the contract to any of the parties, as, in its  
37 discretion, it may determine.  
38 (cf: P.L.2012, c.59, s.2)

39  
40 9. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to  
41 read as follows:

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

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

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

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

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

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

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

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

33

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3

4

5

STATEMENT

6

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

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

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

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

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



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

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

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

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

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

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

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

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

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

# SENATE HIGHER EDUCATION COMMITTEE

## STATEMENT TO

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

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 9, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

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

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 4043**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 16, 2021

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

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: (1) the rental of space and equipment used for graduation and other events and ceremonies; (2) banking and investment services; (3) energy supply, such as electric and gas, from a third-party supplier; (4) hazardous waste collection and disposal services; (5) supplies and services for the administration of study abroad or remote programs; (6) transportation services; (7) vehicle maintenance; (8) vending services; and (8) medical testing.

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

The bill provides that a board of trustees of a State college may, by resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be determined to be most advantageous to the State college as applicable,

if the board finds that a board of an institution of higher education in the State has had a prior negative experience with the bidder within the past 15 years.

The bill defines "prior negative experience" to include any of the following: (1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with a State college; (2) the bidder defaulted on a contract, thereby requiring a State college to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract; (3) the bidder defaulted on a contract, thereby requiring a State college to look to the bidder's surety for completion of the contract or tender of the costs of completion; or (4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with a State college.

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

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

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

Finally, current law (N.J.S.18A:64-6) details the powers and duties of the board of trustees of a State college or university. One of the current powers is the power to employ architects to plan buildings.

The bill broadens this provision to include the power to employ engineers, consultants, and other professionals, in addition to architects, to plan buildings, consistent with the “Building Design Services Act,” P.L.1989, c.277 (C.45:4B-1 et seq.).

FISCAL IMPACT:

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

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

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 4043 STATE OF NEW JERSEY 219th LEGISLATURE

DATED: DECEMBER 23, 2021

### SUMMARY

- Synopsis:** Raises statutory threshold for certain public bidding, permits bidder disqualification due to prior negative experience, adds exemptions to public bidding requirement under "State College Contracts Law," and establishes process for cooperative pricing system.
- Type of Impact:** Annual State college and university expenditure reduction.
- Agencies Affected:** State colleges and universities.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State College and University Cost Reduction</b>		Indeterminate	

- The Office of Legislative Services (OLS) determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the "New Jersey Prevailing Wage Act" may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law.
- State colleges and universities may experience marginal cost savings due to the bill's expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process.
- The bill's provision permitting the governing board of a public institution of higher education to establish a cooperative pricing system may generate marginal cost savings for the public institutions. While lead agencies under the bill would still be subject to undergoing the process for executing a master contract for a particular good or service, participating contracting units



may realize marginal cost savings to the extent that those units would not have to dedicate their own staff time and resources to executing a contract.

## **BILL DESCRIPTION**

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: the rental of space and equipment used for graduation and other events and ceremonies; banking and investment services; energy supply, such as electric and gas, from a third-party supplier; hazardous waste collection and disposal services; supplies and services for the administration of study abroad or remote programs; transportation services; vehicle maintenance; vending services; and medical testing.

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

The bill permits a board of trustees of a State college to, by adopting a resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be determined to be most advantageous to the State college as applicable, if the board finds that a board of an institution of higher education in the State has had prior negative experience with the bidder within the past 15 years. The bill establishes a definition of “prior negative experience” for these purposes and sets forth conditions that must be applied if a State college is contemplating a bidder disqualification based on prior negative experience.

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

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

**FISCAL ANALYSIS*****EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the “New Jersey Prevailing Wage Act” may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law. The extent to which the State colleges and universities would experience workload reductions due to the increased bid threshold is unknown. Therefore, the OLS cannot estimate the amount of any resulting cost savings.

State colleges and universities may experience similar, marginal cost savings due to the bill’s expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process. Due to the lack of detailed information concerning the costs associated with the public advertising of bids for a contract or agreement for the performance of any work or the furnishing or hiring of any materials or supplies exempted by the bill, the OLS cannot estimate the amount of cost savings that may be realized.

The bill’s provision permitting the governing board of a public institution of higher education to establish a cooperative pricing system may generate marginal cost savings for participating public institutions of higher education. While these provisions of the bill would continue to subject lead agencies, with respect to executing a master contract for a particular good or service, to all applicable State contracting and procurement laws, any participating public institutions of higher education (other than a public institution of higher education acting as a lead agency) may realize marginal cost savings to the extent that those public institutions of higher education would not have to dedicate their own staff time and resources to executing a contract. The OLS notes that there is insufficient information available to estimate these cost savings.

*Section: Education*

*Analyst: Robert A. Melcher  
Section Chief*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY HIGHER EDUCATION COMMITTEE

## STATEMENT TO

[First Reprint]

## SENATE, No. 4043

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 3, 2022

The Assembly Higher Education Committee reports favorably Senate Bill No. 4043, (1R) with committee amendments.

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: (1) the rental of space and equipment used for graduation and other events and ceremonies; (2) banking and investment services; (3) energy supply, such as electric and gas, from a third-party supplier; (4) hazardous waste collection and disposal services; (5) supplies and services for the administration of study abroad or remote programs; (6) transportation services; (7) vehicle maintenance; (8) vending services; and (8) medical testing.

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

The bill provides that a board of trustees of a State college may, by resolution approved by a majority of the board, disqualify a bidder

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

The bill defines "prior negative experience" to include any of the following: (1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with a State college; (2) the bidder defaulted on a contract, thereby requiring a State college to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract; (3) the bidder defaulted on a contract, thereby requiring a State college to look to the bidder's surety for completion of the contract or tender of the costs of completion; or (4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with a State college.

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

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

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

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

As amended and reported by the committee, this bill is identical to Assembly Bill No. 6005 (1R), which was also amended and reported by the committee on this same date.

COMMITTEE AMENDMENTS:

The committee amended the bill to correct a grammatical error.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Second Reprint]

**SENATE, No. 4043**

# **STATE OF NEW JERSEY**

DATED: JANUARY 6, 2022

The Assembly Appropriations Committee reports favorably Senate Bill No. 4043 (2R).

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: (1) the rental of space and equipment used for graduation and other events and ceremonies; (2) banking and investment services; (3) energy supply, such as electric and gas, from a third-party supplier; (4) hazardous waste collection and disposal services; (5) supplies and services for the administration of study abroad or remote programs; (6) transportation services; (7) vehicle maintenance; (8) vending services; and (8) medical testing.

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

The bill provides that a board of trustees of a State college may, by resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be determined to be most advantageous to the State college as applicable,

if the board finds that a board of an institution of higher education in the State has had a prior negative experience with the bidder within the past 15 years.

The bill defines "prior negative experience" to include any of the following: (1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with a State college; (2) the bidder defaulted on a contract, thereby requiring a State college to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract; (3) the bidder defaulted on a contract, thereby requiring a State college to look to the bidder's surety for completion of the contract or tender of the costs of completion; or (4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with a State college.

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

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

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

Finally, current law (N.J.S.18A:64-6) details the powers and duties of the board of trustees of a State college or university. One of the

current powers is the power to employ architects to plan buildings. The bill broadens this provision to include the power to employ engineers, consultants, and other professionals, in addition to architects, to plan buildings, consistent with the “Building Design Services Act,” P.L.1989, c.277 (C.45:4B-1 et seq.).

As reported by the committee, Senate Bill No. 4043 (2R) is identical to Assembly Bill No. 6005 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the “New Jersey Prevailing Wage Act” may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law.

State colleges and universities may experience marginal cost savings due to the bill’s expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process.

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



# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**SENATE, No. 4043**

## **STATE OF NEW JERSEY 219th LEGISLATURE**

DATED: JANUARY 10, 2022

### **SUMMARY**

- Synopsis:** Raises statutory threshold for certain public bidding, permits bidder disqualification due to prior negative experience, adds exemptions to public bidding requirement under "State College Contracts Law," and establishes process for cooperative pricing system.
- Type of Impact:** Annual State college and university expenditure reduction.
- Agencies Affected:** State colleges and universities.

#### **Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State College and University Cost Reduction</b>		Indeterminate	

- The Office of Legislative Services (OLS) determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the "New Jersey Prevailing Wage Act" may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law.
- State colleges and universities may experience marginal cost savings due to the bill's expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process.
- The bill's provision permitting the governing board of a public institution of higher education to establish a cooperative pricing system may generate marginal cost savings for the public institutions. While lead agencies under the bill would still be subject to undergoing the process for executing a master contract for a particular good or service, participating contracting units

may realize marginal cost savings to the extent that those units would not have to dedicate their own staff time and resources to executing a contract.

## **BILL DESCRIPTION**

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: the rental of space and equipment used for graduation and other events and ceremonies; banking and investment services; energy supply, such as electric and gas, from a third-party supplier; hazardous waste collection and disposal services; supplies and services for the administration of study abroad or remote programs; transportation services; vehicle maintenance; vending services; and medical testing.

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

The bill permits a board of trustees of a State college to, by adopting a resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be determined to be most advantageous to the State college as applicable, if the board finds that a board of an institution of higher education in the State has had prior negative experience with the bidder within the past 15 years. The bill establishes a definition of “prior negative experience” for these purposes and sets forth conditions that must be applied if a State college is contemplating a bidder disqualification based on prior negative experience.

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

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

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

The OLS determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the “New Jersey Prevailing Wage Act” may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law. The extent to which the State colleges and universities would experience workload reductions due to the increased bid threshold is unknown. Therefore, the OLS cannot estimate the amount of any resulting cost savings.

State colleges and universities may experience similar, marginal cost savings due to the bill’s expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process. Due to the lack of detailed information concerning the costs associated with the public advertising of bids for a contract or agreement for the performance of any work or the furnishing or hiring of any materials or supplies exempted by the bill, the OLS cannot estimate the amount of cost savings that may be realized.

The bill’s provision permitting the governing board of a public institution of higher education to establish a cooperative pricing system may generate marginal cost savings for participating public institutions of higher education. While these provisions of the bill would continue to subject lead agencies, with respect to executing a master contract for a particular good or service, to all applicable State contracting and procurement laws, any participating public institutions of higher education (other than a public institution of higher education acting as a lead agency) may realize marginal cost savings to the extent that those public institutions of higher education would not have to dedicate their own staff time and resources to executing a contract. The OLS notes that there is insufficient information available to estimate these cost savings.

*Section: Education*

*Analyst: Robert A. Melcher  
Section Chief*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 6005

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 15, 2021

**Sponsored by:**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 12/2/2021)

A6005 JASEY, GREENWALD

2

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

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

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

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

12 a. Adopt and use a corporate seal;

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

14 j. Grant diplomas, certificates and degrees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30

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

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

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

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

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

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

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

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

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



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

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

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

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

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

31

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

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

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

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

17

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

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

25        a. The subject matter thereof consists of:

26        (1) Professional services; or

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

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

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

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

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

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

- 1 (22) Purchase or rental of graduation caps and gowns , and  
2 award certificates or plaques , or the rental of space and equipment  
3 used for graduation and other events and ceremonies ; or  
4 (23) Items available from vendors at costs below State contract  
5 pricing for the same product or service, which meets or exceeds the  
6 State contract terms or conditions; or  
7 (24) Management contracts for bookstores, performing arts  
8 centers, residence halls, parking facilities and building operations;  
9 or  
10 (25) Consulting services involving information technology,  
11 curricular or programmatic review, fund raising, transportation,  
12 safety or security; or  
13 (26) Construction management services for construction,  
14 alteration or repair of any building or improvement; or  
15 (27) Purchase or rental of equipment of a technical nature when  
16 the procurement thereof without advertising is necessary in order to  
17 assure standardization of equipment and interchangeability of parts  
18 in the public interest; or  
19 (28) Banking and investment services; or  
20 (29) Energy supply, such as electric and gas, from a third-party  
21 supplier; or  
22 (30) Hazardous waste collection and disposal services; or  
23 (31) Supplies and services for the administration of study abroad  
24 or remote programs; or  
25 (32) Transportation services; or  
26 (33) Vehicle maintenance; or  
27 (34) Vending services; or  
28 (35) Medical testing.  
29 b. It is to be made or entered into with the United States of  
30 America, the State of New Jersey, a county or municipality or any  
31 board, body, or officer, agency or authority or any other state or  
32 subdivision thereof.  
33 c. The State college has advertised for bids pursuant to section  
34 4 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has  
35 received no bids on both occasions in response to its advertisement,  
36 or (ii) has rejected the bids on two occasions because the State  
37 college has determined that they are not reasonable as to price, on  
38 the basis of cost estimates prepared for or by the State college prior  
39 to the advertising therefor, or have not been independently arrived  
40 at in open competition, or (iii) on one occasion no bids were  
41 received pursuant to (i) and on one occasion all bids were rejected  
42 pursuant to (ii), in whatever sequence; any contract or agreement  
43 may then be negotiated by a two-thirds affirmative vote of the  
44 authorized membership of the board of trustees authorizing the  
45 contract or agreement; provided that:  
46 (1) A reasonable effort is just made by the contracting agent to  
47 determine that the same or equivalent materials or supplies at a cost  
48 which is lower than the negotiated price are not available from any

1 agency or authority of the United States, the State of New Jersey or  
2 of the county in which the State college is located, or any  
3 municipality in close proximity to the State college;

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

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

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

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

32

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

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

45 a. A written requisition for the performance of the work or the  
46 furnishing of materials or supplies, certified by the employee in  
47 charge of the building, facility or equipment where the emergency  
48 occurred, is filed with the contracting agent or his deputy in charge

1 describing the nature of the emergency, the time of its occurrence,  
2 and the need for invoking this section. The contracting agent, or his  
3 deputy in charge, being satisfied that the emergency exists, is  
4 authorized to award a contract for the work, materials or supplies.

5 b. Upon the furnishing of the work, materials or supplies in  
6 accordance with the terms of the contract or agreement, the  
7 contractor furnishing the work, materials or supplies is entitled to  
8 be paid therefor and the State college is obligated for the payment.

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

11 (cf: P.L.2005, c.369, s.6)

12

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

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

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

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

42

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

45 2. a. Whenever the entire cost for the construction, alteration  
46 or repair of any building by a State college will exceed the amount  
47 determined pursuant to subsection b. of section 3 of P.L.1986, c.43

1 (C.18A:64-54), the contracting agent shall advertise for and receive  
2 in the manner provided by law:

3 (1) separate bids for branches of work in the following  
4 categories:

5 (a) the plumbing and gas fitting work;

6 (b) the refrigeration, heating and ventilating systems and  
7 equipment;

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

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

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

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

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

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

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

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

44

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

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

4 a. If the estimated fair value of the property to be sold exceeds  
5 **[\$26,200]** \$100,000 or, commencing January 1,2005, the amount  
6 determined pursuant to subsection b. of section 3 of P.L.1986, c.43  
7 (C.18A:64-54), in any one sale and the property does not consist of  
8 perishable goods, it shall be sold at public sale to the highest bidder.

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

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

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

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

34 f. If the estimated fair value of the property to be sold does not  
35 exceed **[\$26,200]** \$100,000 or, commencing January 1, 2005, the  
36 amount determined pursuant to subsection b. of section 3 of  
37 P.L.1986, c.43 (C.18A:64-54), in any one sale or the property  
38 consists of perishable goods, it may be sold at private sale without  
39 advertising for bids.

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

41  
42 10. (New section) a. A board of trustees of a State college may,  
43 by resolution approved by a majority of the board and subject to  
44 subsections b. and c. of this section, disqualify a bidder who would  
45 otherwise be determined to be the lowest responsible bidder or the  
46 responsible bidder whose bid would otherwise be determined to be  
47 most advantageous to the State college as applicable, if the board



1 finds that a board of an institution of higher education in the State  
2 has had prior negative experience with the bidder within the past 15  
3 years.

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

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

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

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

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

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

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

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

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

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

44 (5) A disqualification, other than a disqualification pursuant to  
45 which a State college is prohibited by law from entering into a  
46 contract with a bidder, may be voided or the period thereof may be  
47 reduced, in the discretion of the State college, upon the submission  
48 of a good faith application under oath, supported by documentary

1 evidence, setting forth substantial and appropriate grounds for the  
2 granting of relief, such as reversal of a judgment, or actual change  
3 of ownership, management or control of the bidder.

4 (6) An opportunity for a hearing need not be offered to a bidder  
5 whose disqualification is based on its suspension or debarment by  
6 an agency or department of the executive branch of the State of  
7 New Jersey. The term of such a disqualification shall be concurrent  
8 with the term of the suspension or debarment by the State agency or  
9 department.

10

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

13

14

15

#### STATEMENT

16

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

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

- 37 • the rental of space and equipment used for graduation and  
38 other events and ceremonies;
- 39 • banking and investment services;
- 40 • energy supply, such as electric and gas, from a third-party  
41 supplier;
- 42 • hazardous waste collection and disposal services;
- 43 • supplies and services for the administration of study abroad  
44 or remote programs;
- 45 • transportation services;
- 46 • vehicle maintenance;
- 47 • vending services; and

1       • medical testing.

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

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

14 The bill defines "prior negative experience" to include any of the  
15 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  
21 contract with a State college.

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

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

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

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

46 Finally, current law (N.J.S.18A:64-6) details the powers and  
47 duties of the board of trustees of a State college or university. One  
48 of the current powers is the power to employ architects to plan

**A6005 JASEY, GREENWALD**

17

- 1 buildings. The bill broadens this provision to include the power to
- 2 employ engineers, consultants, and other professionals, in addition
- 3 to architects, to plan buildings.

# ASSEMBLY HIGHER EDUCATION COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 6005

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 3, 2022

The Assembly Higher Education Committee reports favorably Assembly Bill No, 6005, with committee amendments.

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: (1) the rental of space and equipment used for graduation and other events and ceremonies; (2) banking and investment services; (3) energy supply, such as electric and gas, from a third-party supplier; (4) hazardous waste collection and disposal services; (5) supplies and services for the administration of study abroad or remote programs; (6) transportation services; (7) vehicle maintenance; (8) vending services; and (8) medical testing.

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

The bill provides that a board of trustees of a State college may, by resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be

determined to be most advantageous to the State college as applicable, if the board finds that a board of an institution of higher education in the State has had a prior negative experience with the bidder within the past 15 years.

The bill defines "prior negative experience" to include any of the following: (1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with a State college; (2) the bidder defaulted on a contract, thereby requiring a State college to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract; (3) the bidder defaulted on a contract, thereby requiring a State college to look to the bidder's surety for completion of the contract or tender of the costs of completion; or (4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with a State college.

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

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

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

Finally, current law (N.J.S.18A:64-6) details the powers and duties of the board of trustees of a State college or university. One of the

current powers is the power to employ architects to plan buildings. The bill broadens this provision to include the power to employ engineers, consultants, and other professionals, in addition to architects, to plan buildings, consistent with the “Building Design Services Act,” P.L.1989, c.277 (C.45:4B-1 et seq.).

As amended and reported by the committee, this bill is identical to Senate Bill No. 4043 (2R), which was also amended and reported by the committee on this same date.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

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

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

### ASSEMBLY, No. 6005

# STATE OF NEW JERSEY

DATED: JANUARY 6, 2022

The Assembly Appropriations Committee reports favorably Assembly Bill No. 6005 (1R).

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: (1) the rental of space and equipment used for graduation and other events and ceremonies; (2) banking and investment services; (3) energy supply, such as electric and gas, from a third-party supplier; (4) hazardous waste collection and disposal services; (5) supplies and services for the administration of study abroad or remote programs; (6) transportation services; (7) vehicle maintenance; (8) vending services; and (8) medical testing.

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

The bill provides that a board of trustees of a State college may, by resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be determined to be most advantageous to the State college as applicable,



if the board finds that a board of an institution of higher education in the State has had a prior negative experience with the bidder within the past 15 years.

The bill defines "prior negative experience" to include any of the following: (1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with a State college; (2) the bidder defaulted on a contract, thereby requiring a State college to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract; (3) the bidder defaulted on a contract, thereby requiring a State college to look to the bidder's surety for completion of the contract or tender of the costs of completion; or (4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with a State college.

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

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

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

Finally, current law (N.J.S.18A:64-6) details the powers and duties of the board of trustees of a State college or university. One of the

current powers is the power to employ architects to plan buildings. The bill broadens this provision to include the power to employ engineers, consultants, and other professionals, in addition to architects, to plan buildings, consistent with the “Building Design Services Act,” P.L.1989, c.277 (C.45:4B-1 et seq.).

As reported by the committee, Assembly Bill No. 6005 (1R) is identical to Senate Bill No. 4043 (2R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the “New Jersey Prevailing Wage Act” may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law.

State colleges and universities may experience marginal cost savings due to the bill’s expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process.

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

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 6005

### STATE OF NEW JERSEY 219th LEGISLATURE

DATED: JANUARY 10, 2022

#### SUMMARY

- Synopsis:** Raises statutory threshold for certain public bidding, permits bidder disqualification due to prior negative experience, adds exemptions to public bidding requirement under "State College Contracts Law," and establishes process for cooperative pricing system.
- Type of Impact:** Annual State college and university expenditure reduction.
- Agencies Affected:** State colleges and universities.

#### Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State College and University Cost Reduction		Indeterminate	

- The Office of Legislative Services (OLS) determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the "New Jersey Prevailing Wage Act" may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law.
- State colleges and universities may experience marginal cost savings due to the bill's expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process.
- The bill's provision permitting the governing board of a public institution of higher education to establish a cooperative pricing system may generate marginal cost savings for the public institutions. While lead agencies under the bill would still be subject to undergoing the process for executing a master contract for a particular good or service, participating contracting units

may realize marginal cost savings to the extent that those units would not have to dedicate their own staff time and resources to executing a contract.

## **BILL DESCRIPTION**

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

The bill changes the law that enumerates numerous exemptions to the requirement for public advertising and bidding to also include: the rental of space and equipment used for graduation and other events and ceremonies; banking and investment services; energy supply, such as electric and gas, from a third-party supplier; hazardous waste collection and disposal services; supplies and services for the administration of study abroad or remote programs; transportation services; vehicle maintenance; vending services; and medical testing.

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

The bill permits a board of trustees of a State college to, by adopting a resolution approved by a majority of the board, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder or the responsible bidder whose bid would otherwise be determined to be most advantageous to the State college as applicable, if the board finds that a board of an institution of higher education in the State has had prior negative experience with the bidder within the past 15 years. The bill establishes a definition of “prior negative experience” for these purposes and sets forth conditions that must be applied if a State college is contemplating a bidder disqualification based on prior negative experience.

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

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

**FISCAL ANALYSIS*****EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS determines that this bill may result in marginal cost savings for the State colleges and universities. Under the bill, the increased public bid threshold for certain contracts not involving workers paid in accordance with the “New Jersey Prevailing Wage Act” may lead to State colleges and universities advertising for less contracts than would otherwise be the case under current law. The extent to which the State colleges and universities would experience workload reductions due to the increased bid threshold is unknown. Therefore, the OLS cannot estimate the amount of any resulting cost savings.

State colleges and universities may experience similar, marginal cost savings due to the bill’s expansion of the subject matter exemptions to the requirement for public advertising and bidding. The OLS determines the savings resulting from the bill would largely be realized in the form of reduced staff time and resources being dedicated to the public advertising and bidding process. Due to the lack of detailed information concerning the costs associated with the public advertising of bids for a contract or agreement for the performance of any work or the furnishing or hiring of any materials or supplies exempted by the bill, the OLS cannot estimate the amount of cost savings that may be realized.

The bill’s provision permitting the governing board of a public institution of higher education to establish a cooperative pricing system may generate marginal cost savings for participating public institutions of higher education. While these provisions of the bill would continue to subject lead agencies, with respect to executing a master contract for a particular good or service, to all applicable State contracting and procurement laws, any participating public institutions of higher education (other than a public institution of higher education acting as a lead agency) may realize marginal cost savings to the extent that those public institutions of higher education would not have to dedicate their own staff time and resources to executing a contract. The OLS notes that there is insufficient information available to estimate these cost savings.

*Section: Education*

*Analyst: Robert A. Melcher  
Section Chief*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).