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No

974.90 New Jersey. State Commission of Investigation  
T764 E-ZPass: the making of a procurement disaster.  
[2004](#) June, 2004, Trenton, 2004

§§1-11 -  
C.52:34-10.1 to  
52:34-10.11  
§9 -  
Note to 52:13D-21  
§17 - Note to §§1-16

P.L. 2005, CHAPTER 336, *approved January 12, 2006*  
Senate, No. 2194 (*Fourth Reprint*)

1 AN ACT concerning the State contracting process and the public  
2 officers and employees involved in the process, amending and  
3 supplementing various parts of the statutory law.

4

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

7

8 1. (New section) A communication relative to any <sup>1</sup>advised  
9 procurement by a <sup>1</sup> State agency <sup>1</sup>[advised procurement] , as  
10 defined in section 11 of P.L. , c. (C. ) (now pending before the  
11 Legislature as this bill),<sup>1</sup> shall be limited to the individual or entity  
12 designated by the agency as responsible for the procurement. An  
13 officer or employee of a State agency who communicates with a  
14 bidder, or potential bidder, or any person acting on behalf thereof, for  
15 a public contract regarding that contract shall maintain a written  
16 record of each communication from the date of the advertisement for  
17 bids to the date the contract is awarded. The State agency shall retain  
18 the record of each communication for the term of the contract and at  
19 least three years thereafter, or such longer period as may be  
20 established in the agency's record retention schedule.

21 <sup>1</sup>[As used in this section, "State agency" means the principal  
22 departments in the Executive Branch of the State Government, and  
23 any division, board, bureau, office, commission or other  
24 instrumentality within or created by such department; the Legislature  
25 of the State and the Judicial Branch of the State, and any division,  
26 board, bureau, office, commission or other instrumentality within or  
27 created by the Legislative Branch or the Judicial Branch; or any  
28 independent State authority, commission, instrumentality or agency,  
29 but shall not include a county, municipality or school district.]<sup>1</sup>

30

31 2. (New section) A State agency, as defined in section <sup>1</sup>[1 of  
32 P.L. ] 11 of P.L. , c. <sup>1</sup>(C. ) (now pending before the  
33 Legislature as this bill) that is authorized by law to engage in the

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate floor amendments adopted March 14, 2005.

<sup>2</sup> Assembly ASG committee amendments adopted May 19, 2005.

<sup>3</sup> Assembly ABU committee amendments adopted June 27, 2005.

<sup>4</sup> Senate amendments adopted in accordance with Governor's recommendations December 8, 2005.

1 procurement of goods or services may, when deemed appropriate,  
2 issue on the Internet a notice of the agency's intent to advertise  
3 specifications and invitations for bids preliminary to the awarding of  
4 a contract and request information thereto from potential bidders. The  
5 purpose of such notice shall be to solicit comments from potential  
6 bidders on the nature and content of the specifications and to answer  
7 such questions as the potential bidders may have prior to the  
8 advertisement for bids. If such a notice is issued, an officer or  
9 employee of the State agency who communicates with a potential  
10 bidder, or any person acting on behalf thereof, shall maintain a written  
11 record of each such communication from the date of the issuance of  
12 the notice on the Internet until the date of the advertisement for bids.

13

14 3. (New section) a. When <sup>1</sup>[the State, or any board, commission,  
15 committee, authority or agency of the State,] a State agency, as  
16 defined in section 11 of P.L. , c. (C. ) (now pending before the  
17 Legislature as this bill),<sup>1</sup> is a contracting agency, the members of any  
18 evaluation committee shall have no personal interest, financial or  
19 familial, in any of the contract vendors, or principals thereof, to be  
20 evaluated. This provision shall apply whether the members of such  
21 committee are appointed by the Director of the Division of Purchase  
22 and Property or pursuant to any other procedure as appropriate to the  
23 contracting agency.

24 b. When <sup>1</sup>[the State, or any board, commission, committee,  
25 authority or agency of the State,] a State agency<sup>1</sup> is a contracting  
26 agency for a contract that includes, but is not limited to, the financing  
27 of a capital project, one member of any evaluation committee, whether  
28 appointed by the Director of the Division of Purchase and Property or  
29 pursuant to any other procedure as appropriate to the contracting  
30 agency, shall be a person proficient in the financing of public projects.  
31 When a contract encompasses a purchase of information technology  
32 goods or services, including the creation or modification of such  
33 technology, one member of any evaluation committee shall be a person  
34 proficient in such technology for public projects.

35 c. In all cases, persons appointed to an evaluation committee shall  
36 have the relevant experience necessary to evaluate the project. When  
37 the contract is awarded, the names of the members of any evaluation  
38 committee shall be made public and the members<sup>1</sup> names, educational  
39 and professional qualifications, and practical experience, that were the  
40 basis for the appointment, shall be reported to the State Treasurer  
41 <sup>1</sup>[and the Director of Purchase and Property]<sup>1</sup>.

42

43 4. (New section) The Director of the Division of Purchase and  
44 Property in the Department of Treasury shall promulgate regulations,  
45 applicable to all contracts for which the director is responsible, that  
46 establish procedures for (1) contract oversight and the monitoring of

1 contract performance; and (2) complaint resolution. The director shall  
2 establish a vendor performance database.

3

4 5. (New section) Whenever a governmental entity in this State is  
5 authorized to purchase any goods or services under any contract or  
6 contracts entered into on behalf of the State by the Division of  
7 Purchase and Property in the Department of the Treasury, the  
8 contractor shall report periodically to the division the value of the  
9 goods and services <sup>2</sup> , not including proprietary information.<sup>2</sup>  
10 purchased by such governmental entities. The division shall by  
11 regulation provide for the content of such reports, how often they are  
12 to be made, and the form to be used for the making of such reports.

13

14 6. (New section) a. Notwithstanding the provisions of any law to  
15 the contrary, any purchase by the State or by a State agency or local  
16 government unit of equipment, goods or services related to homeland  
17 security and domestic preparedness, that is paid for or reimbursed by  
18 federal funds awarded by the U.S. Department of Homeland Security  
19 or other federal agency, may be made through the receipt of public  
20 bids or as an alternative to public bidding and subject to the provisions  
21 of this section, through direct purchase without advertising for bids or  
22 rejecting bids already received but not awarded.

23 b. The equipment, goods or services purchased by a local  
24 government unit shall be referred to in the grant agreement issued by  
25 the State administrative agency administering such funds and shall be  
26 authorized by resolution of the governing body of the local  
27 government unit entering into the grant agreement. Such resolution  
28 may, without subsequent action of the local governing body, authorize  
29 the contracting agent of the local government unit to procure the  
30 equipment, goods or services. A copy of such resolution shall be filed  
31 with the chief financial officer of the local government unit, the State  
32 administrative agency and the Division of Local Government Services  
33 in the Department of Community Affairs.

34 c. Purchases made without public bidding shall be from vendors  
35 that shall either (1) be holders of a current State contract for the  
36 equipment, goods or services sought, or (2) be participating in a  
37 federal procurement program established by a federal department or  
38 agency, or (3) have been approved by the State Treasurer in  
39 consultation with the New Jersey Domestic Security Preparedness  
40 Task Force. All homeland security purchases herein shall continue to  
41 be subject to all grant requirements and conditions approved by the  
42 State administrative agency.

43 d. The Director of the Division of Purchase and Property may enter  
44 into or participate in purchasing agreements with one or more other  
45 states, or political subdivisions or compact agencies thereof, for the  
46 purchase of such equipment, goods or services to meet the domestic

1 preparedness and homeland security needs of this State. Such  
2 purchasing agreement may provide for the sharing of costs and the  
3 methods of payments relating to such purchases.

4  
5 7. (New section) The State Contract Manager shall be the State  
6 employee who shall be responsible for the overall management and  
7 administration of a State contract <sup>1</sup>entered into on behalf of the State  
8 by the Division of Purchase and Property in the Department of the  
9 Treasury<sup>1</sup>. The State agency using the contract shall designate the  
10 State Contract Manager for that contract and inform the <sup>1</sup>[director]  
11 Director of the Division of Purchase and Property<sup>1</sup> of its designation,  
12 except that the director may designate the State Contract Manager  
13 when the director deems necessary.

14 The State Contract Manager for each contract shall be identified at  
15 the time of execution of the contract. At that time, the contractor  
16 shall be provided with the State Contract Manager's name, department,  
17 division, agency, address, telephone number, fax phone number, and  
18 E-mail address.

19 For a contract where only one State agency uses the contract, the  
20 State Contract Manager shall be responsible for engaging the  
21 contractor, assuring that purchase orders are issued to the contractor,  
22 directing the contractor to perform the work of the contract,  
23 approving the deliverables and approving payment vouchers. The  
24 State Contract Manager shall be the person that the contractor  
25 contacts after the contract is executed for answers to any questions  
26 and concerns about any aspect of the contract. The State Contract  
27 Manager shall be responsible for coordinating the use and resolving  
28 minor disputes between the contractor and the State agency.

29 If the contract has multiple users, the director may designate the  
30 State Contract Manager for that contract. The State Contract  
31 Manager shall be the central coordinator of the use of the contract for  
32 all using agencies, while other <sup>1</sup>[state] State<sup>1</sup> employees engage and  
33 pay the contractor. All persons and agencies that use the contract  
34 shall notify and coordinate the use of the contract with the State  
35 Contract Manager.

36 The State Contract Manager shall have the following additional  
37 duties:

38 if the State Contract Manager determines that the contractor has  
39 failed to perform the required work and is unable to resolve that  
40 failure to perform directly with the contractor, the State Contract  
41 Manager shall file a formal complaint with the contract compliance  
42 unit in the Division of Purchase and Property and request that office  
43 to assist in the resolution of the contract performance problem with  
44 the contractor;

45 the State Contract Manager shall be responsible for arranging for  
46 contract extensions and preparing any re-procurement of the contract

1 with the Purchase Bureau;

2 the State Contract Manager shall be responsible for obtaining  
3 permission from the director to reduce the scope of work, amend the  
4 contract or add work or special projects to the contract after contract  
5 award;

6 the State Contract Manager shall be responsible for completion of  
7 a project performance assessment form for submission to the division,  
8 with a copy to the Office of Management and Budget; and

9 the State Contract Manager shall be responsible for submitting the  
10 <sup>1</sup>[Contractor] contractor<sup>1</sup> final deliverables to the Associate Director  
11 of <sup>1</sup>[OMB] the Office of Management and Budget<sup>1</sup>.

12 Any contract user that is unable to resolve disputes with a  
13 contractor shall refer those disputes to the State Contract Manager for  
14 resolution. Any questions related to performance of the work of the  
15 contract by contract users shall be directed to the State Contract  
16 Manager. The contractor may contact the State Contract Manager if  
17 the contractor cannot resolve a dispute with contract users.

18

19 8. (New section) Contracts awarded for professional services by  
20 a State agency <sup>1</sup>, as defined in section 11 of P.L. , c. (C. )  
21 (now pending before the Legislature as this bill),<sup>1</sup> shall be contracts  
22 only for services rendered or performed by a person authorized by law  
23 to practice a recognized profession and whose practice is regulated by  
24 law or the performance of which services requires knowledge of an  
25 advanced type in a field of learning acquired by a prolonged formal  
26 course of specialized instruction and study as distinguished from  
27 general academic instruction or apprenticeship and training.  
28 Professional services contracts shall also include those services  
29 rendered in the provision of goods or performance of services that are  
30 original and creative in character in a recognized field of artistic  
31 endeavor. Professional services contracts shall also include contracts  
32 for extraordinary unspecifiable services if, after evaluation and  
33 assessment <sup>1</sup>[by the State Treasurer]<sup>1</sup>, such services are determined  
34 to be such that they cannot reasonably be described by written  
35 specifications.

36 <sup>1</sup>[As used in this section, "State agency" means the principal  
37 departments in the Executive Branch of the State Government, and  
38 any division, board, bureau, office, commission or other  
39 instrumentality within or created by such department; the Legislature  
40 of the State and the Judicial Branch of the State, and any division,  
41 board, bureau, office, commission or other instrumentality within or  
42 created by the Legislative Branch or the Judicial Branch; or any  
43 independent State authority, commission, instrumentality or agency,  
44 but shall not include a county, municipality or school district.]<sup>1</sup>

45

46 9. (New section) A State officer or employee, or special State

1 officer or employee, of a State agency <sup>1</sup>, as defined in section 11 of  
2 P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending before the Legislature as this  
3 bill),<sup>1</sup> shall file, in writing, with the head of the State agency and the  
4 Executive Commission on Ethical Standards, for the period covering  
5 five years prior to taking office or commencing employment to the  
6 date of filing, a disclosure statement <sup>2</sup>[detailing any professional  
7 relationship with, or interest held in, any person, firm, association,  
8 partnership, corporation or other business organization, or any  
9 subsidiary or related company thereof, or any personal relationship  
10 with a principal officer or director of such entity, whether by himself  
11 or herself or through any partnership, firm or corporation in which he  
12 or she has an interest or through any partner, officer or employee  
13 thereof, if the officer or employee is required or called upon to  
14 conduct any review or investigation, render any ruling, give any  
15 opinion, or work substantially and directly on any cause, proceeding,  
16 application or other matter, at any time during the course of his or her  
17 office or employment, involving a public contract sought by or  
18 awarded to that person, firm, association, partnership, corporation or  
19 other business organization] in a form to be determined by the  
20 Executive Commission on Ethical Standards<sup>2</sup> .

21

22 10. (New section) The Director of the Division of Purchase and  
23 Property shall institute a process whereby vendor challenges to the  
24 division's procurement process are investigated and considered by  
25 hearing officers appointed by the director and independent of the  
26 division's procurement process, and are resolved by written final  
27 agency determination of the director. Such challenges shall not be  
28 contested cases subject to the requirements of the "Administrative  
29 Procedure Act," P.L. 1968, C.410 (C.52:14B-1 et seq.), and the  
30 regulations promulgated pursuant to that act. A final agency  
31 determination shall be appealable to the Appellate Division of New  
32 Jersey Superior Court.

33

34 <sup>1</sup>11. (New section) a. As used in sections 1,2, 3, 8, and 9 of  
35 P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending before the Legislature as this bill),  
36 "State agency" means any of the principal departments in the  
37 Executive Branch of State Government, and any division, board,  
38 bureau, office, commission or other instrumentality within or created  
39 by such principal department, and any independent State authority,  
40 commission, instrumentality or agency.

41 b. The Administrative Director of the Courts, in consultation and  
42 cooperation with the Director of the Division of Purchase and  
43 Property in the Department of the Treasury, shall adopt procurement  
44 and contracting processes for the Judicial Branch of the State that are  
45 consistent with the intent of sections 1, 2, 3, 8, and 9 of P.L. \_\_\_\_\_, c.  
46 (C. \_\_\_\_\_) (now pending before the Legislature as this bill)



1     c. The Legislature, in consultation and cooperation with the  
2 Director of the Division of Purchase and Property, shall adopt  
3 procurement and contracting processes for the Legislative Branch of  
4 the State that are consistent with the intent of sections 1, 2, 3, 8, and  
5 9 of P.L. , c. (C. ) (now pending before the Legislature as this  
6 bill.<sup>1</sup>

7  
8     <sup>1</sup>[11.] 12.<sup>1</sup> Section 1 of P.L.1996, c.16, (C.52:34-6.1) is amended  
9 to read as follows:

10     1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et  
11 seq.) to the contrary, the Director of the Division of Purchase and  
12 Property in the Department of the Treasury shall promulgate the  
13 Federal Supply Schedules of the Federal General Services  
14 Administration or schedules from other federal procurement programs  
15 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
16 (C.52:14B-1 et seq.) as an alternate price guide for the purchase of  
17 goods and services for State agencies and for the entities defined in  
18 section 1 of P.L.1959, c.40 (C.52:27B-56.1), subject to the following  
19 conditions:

20     (1) the price of the goods or services being procured is no greater  
21 than the price offered to federal agencies;

22     (2) ~~[the Federal Supply Schedules may be used only for purchases~~  
23 ~~of up to \$500,000 per year or for one product unit at any price and~~  
24 ~~only for reprographic equipment or services, including digital copiers,~~  
25 ~~used by the State] (Deleted by amendment, P.L. , c. (now pending~~  
26 ~~before the Legislature as this bill).);~~

27     (3) the State receives the benefit of federally mandated price  
28 reductions during the term of the contract [and is protected from price  
29 increases during that time]; and

30     (4) the price of the goods or services being procured is no greater  
31 than the price of the same or equivalent goods or services under the  
32 State contract, unless the State determines that because of factors  
33 other than price, selection of a vendor from the Federal Supply  
34 Schedules or schedules from other federal procurement programs  
35 would be more advantageous to the State.

36 (cf: P.L.1999, c.440, s.106.)

37  
38     <sup>1</sup>[12.] 13.<sup>1</sup> Section 7 of P. L.1996, c.16, (C. 52:34-6.2) is  
39 amended to read as follows:

40     7. a. Notwithstanding the provisions of any other law to the  
41 contrary except the provisions of R.S.30:4-95, and as an alternative to  
42 the procedures concerning the awarding of public contracts provided  
43 in P.L.1954, c.48 (C.52:34-6 et seq.), the Director of the Division of  
44 Purchase and Property in the Department of the Treasury may enter  
45 into cooperative purchasing agreements with one or more other states,

1 or political subdivisions thereof, for the purchase of goods and  
 2 services. A cooperative purchasing agreement shall allow the  
 3 jurisdictions which are parties thereto to standardize and combine their  
 4 requirements for the purchase of a particular good or service into a  
 5 single contract solicitation which shall be competitively bid and  
 6 awarded by one of the jurisdictions on behalf of jurisdictions  
 7 participating in the contract.

8 b. <sup>2</sup>(1)<sup>2</sup> The director may elect to purchase goods or services  
 9 through a contract awarded pursuant to a cooperative purchasing  
 10 agreement whenever the director determines this to be the most  
 11 cost-effective method of procurement. Prior to entering into any  
 12 contract to be awarded or already awarded through a cooperative  
 13 purchasing agreement, the director shall review and approve the  
 14 specifications and proposed terms and conditions of the contract.

15 <sup>2</sup>(2) The director may also elect to purchase goods or services  
 16 through a contract awarded pursuant to a nationally-recognized and  
 17 accepted cooperative purchasing agreement that has been developed  
 18 utilizing a competitive bidding process, in which other states  
 19 participate, whenever the director determines this to be the most  
 20 cost-effective method of procurement. Prior to entering into any  
 21 contract to be awarded through a nationally-recognized and accepted  
 22 cooperative purchasing agreement that has been developed utilizing a  
 23 competitive bidding process, the director shall review and approve the  
 24 specifications and proposed terms and conditions of the contract.<sup>2</sup>

25 c. The director may solicit bids and award contracts on behalf of  
 26 this State and other jurisdictions which are parties to a cooperative  
 27 purchasing agreement provided that the agreement specifies that each  
 28 jurisdiction participating in a contract is solely responsible for the  
 29 payment of the purchase price and cost of purchases made by it under  
 30 the terms of any contract awarded pursuant to the agreement.

31 d. The director may promulgate rules and regulations pursuant to  
 32 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 33 seq.), which are necessary to effectuate the purposes of this section.  
 34 (cf: P.L.1996, c.16, s.7.)

35  
 36 <sup>1</sup>[13.] 14.<sup>1</sup> Section 7 of P.L.1954, c.48 (C.52:34-12) is amended  
 37 to read as follows:

38 7. a. Whenever advertising is required: (a) specifications and  
 39 invitations for bids shall permit such full and free competition as is  
 40 consistent with the procurement of supplies and services necessary to  
 41 meet the requirements of the using agency and shall, wherever  
 42 practicable, include such factors as life-cycle costs, sliding percentage  
 43 preference scales, or other similar analysis as shall be deemed effective  
 44 by the Director of the Division of Purchase and Property, hereinafter  
 45 referred to as the director, (b) the advertisement for bids shall be in  
 46 such newspaper or newspapers <sup>1</sup>[or] <sup>2</sup>[and] <sup>1</sup>[ or <sup>2</sup>] and <sup>4</sup>other

1 medium or media selected by the State Treasurer as will best give  
2 notice thereof to bidders and shall be sufficiently in advance of the  
3 purchase or contract to promote competitive bidding; (c) the  
4 advertisement shall designate the time and [place] secure location  
5 when and where [sealed] proposals, which may be submitted in  
6 electronic or other format designated by the director, shall be received  
7 [and publicly], opened and [read,] publicly announced, the amount  
8 of the cash or certified check, if any, which must accompany each bid,  
9 and such other terms as the State Treasurer may deem proper; (d)  
10 notice of revisions or addenda to advertisements or bid documents  
11 relating to bids shall be published in a newspaper or newspapers [as]  
12 <sup>1</sup>[or] <sup>2</sup>[and<sup>1</sup>] <sup>4</sup>[or<sup>2</sup>] and <sup>4</sup> other medium or media selected by the  
13 State Treasurer to [best] give notice to bidders [and sent to the  
14 prospective bidder no later than] at least five days, Saturdays,  
15 Sundays and holidays excepted, prior to the bid due date; (e) failure  
16 to advertise for the receipt of bids or to provide proper notification of  
17 revisions or addenda to advertisements or bid documents related to  
18 bids as prescribed by subsection (d) of this section shall prevent the  
19 acceptance of bids and require the readvertisement for bids; (f) for any  
20 procurement, the State Treasurer or the director may negotiate with  
21 bidders[, after bid opening,] the final terms and conditions of any  
22 procurement, including price; such ability to so negotiate must be  
23 expressly set forth in the applicable invitation to bid and such bids shall  
24 not be publicly accessible until after negotiations have been completed  
25 and the notice of intent to award the contract has been issued; (g)  
26 award shall be made with reasonable promptness, after negotiation  
27 with bidders where authorized, by written or electronic notice to that  
28 responsible bidder whose bid, conforming to the invitation for bids,  
29 will be most advantageous to the State, price and other factors  
30 considered <sup>2</sup>; and (h) the Treasurer shall require, with respect to  
31 contracts for information technology goods and services, a limitation  
32 of liability <sup>3</sup>[of the value of the contract]<sup>3</sup> determined by the Director  
33 of the Division of Purchase and Property<sup>2</sup> . When negotiations occur  
34 pursuant to subparagraph f. of this section, a written record of the  
35 nature and content of the negotiations, as well as the dates and persons  
36 involved, shall become a public record when the notice of intent to  
37 award the contract is issued.

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

44 This section shall apply to all bids received on and after the date of  
45 enactment of P.L.1999, c.440.

1     b. Whenever by law a State independent authority may negotiate  
2 with bidders, after bid opening, the final terms and conditions of any  
3 procurement, including price, and such ability to so negotiate is  
4 expressly set forth in the applicable invitation to bid, a written record  
5 of the nature and content of the negotiations, as well as the dates and  
6 persons involved, shall not be publicly accessible until after the notice  
7 of intent to award the contract is issued.

8 (cf: P.L.1999, c.440, s.96)

9  
10     <sup>1</sup>[14.] 15.<sup>1</sup> Section 1 of P.L.1986, c.26 (C. 52:34-12.1) is  
11 amended to read as follows:

12     1. a. When awarding contracts pursuant to section 7 of P.L.1954,  
13 c.48 (C.52:34-12), the Director of the Division of Purchase and  
14 Property may make awards to multiple bidders, to furnish the same or  
15 similar materials, supplies, services or equipment, where multiple  
16 bidders are necessary:

17         (1) to furnish the quantities required by using agencies;

18         (2) to provide expeditious and cost-efficient local deliveries to  
19 using agencies;

20         (3) to enable using agencies to purchase materials, supplies,  
21 services or equipment which are compatible with those previously  
22 purchased;

23         (4) to provide for standardization of equipment, interchangeability  
24 of parts or continuation of services; [or]

25         (5) to provide using agencies or participants in cooperative  
26 purchasing arrangements with a diversity of product choices to meet  
27 the collective safety, environmental or technological needs of such  
28 agencies or cooperative purchasers; or

29         (6) when the director determines that multiple <sup>1</sup>[bidders] awards<sup>1</sup>  
30 are necessary to serve the State's interests.

31     b. The director may determine whether the anticipated use of a  
32 contract by entities authorized by law to participate in cooperative  
33 purchasing arrangements with the State justifies awarding a contract  
34 to multiple bidders on the basis of any one or more of the criteria set  
35 forth in subsection a. of this section.

36     c. Where multiple contracts have been awarded pursuant to  
37 subsection a. of this section, a using agency shall make purchases from  
38 that contractor whose contract terms and conditions are most  
39 advantageous to the agency, price and other factors considered.

40     d. All purchases made by using agencies under subsection c. of this  
41 section shall be reported to the director, in a manner prescribed by the  
42 director. The report shall include the reasons for selecting a particular  
43 contractor under subsection c. of this section.

44     e. [Any multiple award shall be made only to the number of  
45 contractors necessary to serve the needs of using agencies and  
46 cooperative purchasers for the service, item or group of items that is

1 the subject of the award. This provision, however, does not limit in  
2 any way the director's discretion to structure an invitation to bid to  
3 encompass more than one service, item or group of items and to award  
4 the number of contracts contemplated by the invitation to bid.]  
5 (Deleted by amendment, P.L. , c. (now pending before the  
6 Legislature as this bill).)  
7 (cf: P.L.2000, c.74, s.1)

8  
9 <sup>3</sup>[<sup>2</sup>16. (New section) a. In order to comply with the provisions of  
10 P.L. , c. (C. ) (now pending before the Legislature as this  
11 bill) and to identify any potential conflicts, as the first step of each bid  
12 evaluation process each Contract Manager shall compare all of the  
13 bidders, subbidders and related businesses with all of the businesses  
14 related directly or indirectly to the employees who may be involved in  
15 the procurement process. Information technology should be used to  
16 the extent practical to minimize any disruption or delay to the  
17 procurement process.

18 b. To facilitate the evaluation process set forth in subsection a., the  
19 State Treasurer or designee shall identify the legal names, trade style  
20 names, physical address, and mailing address for each business on each  
21 State employee's disclosure form as required by P.L. , c.  
22 (C. ) (now pending before the Legislature as this bill). The State  
23 Treasurer shall also identify the legal names, trade style names,  
24 physical address, and mailing address for all businesses in the same  
25 legal family tree as each business on each employee's form.

26 c. For all advertised solicitations, the State Treasurer or designee  
27 shall identify the legal names, trade style names, physical address, and  
28 mailing address of : (1) each prime bidder; (2) all businesses in the  
29 same legal family tree as the prime bidder; (3) each subbidder; and (4)  
30 all businesses in the same legal family tree as the subbidder.<sup>2</sup>]<sup>3</sup>

31  
32 <sup>3</sup>[<sup>2</sup>17. (New section) As part of each bid submission and pursuant  
33 to the instructions of the State Treasurer, each prime bidder and  
34 subbidder shall provide a report on the bidding and subbidding  
35 companies. Such report shall include all legal names, trade style  
36 names, physical address and mailing address for all businesses in the  
37 same legal family tree as the bidders and subbidders, information  
38 concerning suits, liens and judgments against the bidders and  
39 subbidders, information concerning financial status and stability of the  
40 bidders and subbidders, and any other information which the Director  
41 of the Division of Purchase and Property in the Department of the  
42 Treasury identified in a request for proposals. The Contract Manager  
43 shall use the report in the evaluation of the bidders. The Director of  
44 the Division of Purchase and Property, or the director's designee, shall  
45 identify, at the director's sole discretion, in the bid instructions the

1 company or companies which the director has designated as being able  
 2 to provide standardized, comprehensive information in the form of a  
 3 report for this evaluation process and the method for delivery of such  
 4 reports from independent third-party providers of such reports.<sup>2</sup><sup>3</sup>

5  
 6 <sup>1</sup>[15.] <sup>2</sup>[16.<sup>1</sup>] <sup>3</sup>[18.<sup>2</sup>] 16.<sup>3</sup> R.S.52:25-23 is amended to read as  
 7 follows:

8 52:25-23. The Director of the Division of Purchase and Property  
 9 may, by written order, delegate purchasing authority to the using  
 10 agencies for purchases or contracts not in excess of \$25,000.00;  
 11 except that:

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

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

19 c. Records of all purchases made or contracts negotiated under this  
 20 section shall be maintained by the using agency and made available for  
 21 audit by or under the direction of the Director of the Division of  
 22 Purchase and Property and shall include proper proof that the purchase  
 23 or contract was made or negotiated competitively, where competition  
 24 is practicable.

25 The Director of the Division of Purchase and Property may, by  
 26 written order, rescind or reduce the level of purchasing authority  
 27 delegated to any using agency determined by the director to have  
 28 violated the provisions of the delegated authorization.

29 d. The director may, by written order, delegate purchasing  
 30 authority to a specific agency for advertisement of purchases or  
 31 contracts not in excess of \$250,000, subject to the requirements set  
 32 forth in this section, when the director has determined that such  
 33 purchases or contracts are for the procurement of goods or services  
 34 which are unique to the operations of that particular using agency and  
 35 are not common or similar to goods or services used by other State  
 36 agencies and, therefore, are not suitable for leveraging with other  
 37 State agency procurements.

38 (cf: P.L.1999, c.440, s.93)

39  
 40 <sup>1</sup>[16.] <sup>2</sup>[17.<sup>1</sup>] <sup>3</sup>[19.<sup>2</sup>] 17.<sup>3</sup> This act shall take effect on the first  
 41 day of the third month following enactment.

42  
 43 \_\_\_\_\_  
 44  
 45 Makes various changes to State contracting process; imposes certain  
 46 disclosure on State officers and employees involved in contracting.

[Corrected Copy]

**SENATE, No. 2194**

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

INTRODUCED DECEMBER 13, 2004

**Sponsored by:**

**Senator ELLEN KARCHER**

**District 12 (Mercer and Monmouth)**

**Senator NICHOLAS SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Senator ROBERT E. LITTELL**

**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**

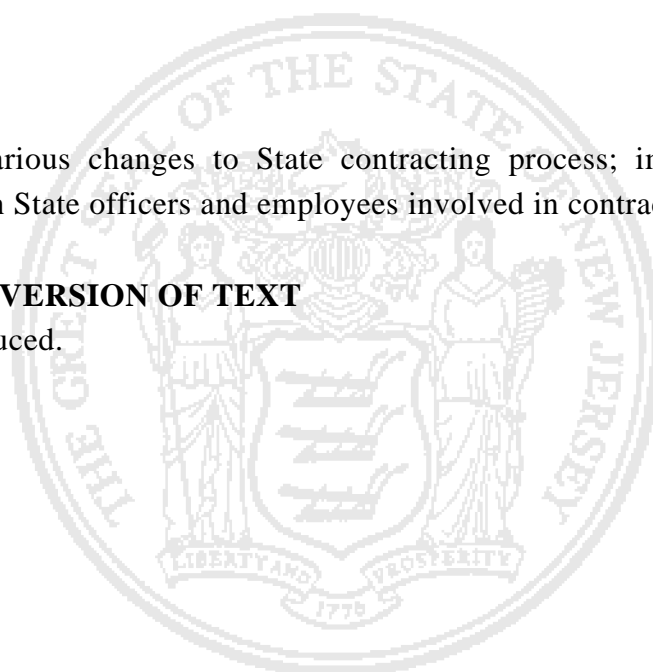
**Senators Asselta, Baer, Coniglio and Connors**

**SYNOPSIS**

Makes various changes to State contracting process; imposes certain disclosure on State officers and employees involved in contracting.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/1/2005)**

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2

1 **AN ACT** concerning the State contracting process and the public  
2 officers and employees involved in the process, amending and  
3 supplementing various parts of the statutory law.

4

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

7

8 1. (New section) A communication relative to any State agency  
9 advertised procurement shall be limited to the individual or entity  
10 designated by the agency as responsible for the procurement. An  
11 officer or employee of a State agency who communicates with a  
12 bidder, or potential bidder, or any person acting on behalf thereof, for  
13 a public contract regarding that contract shall maintain a written  
14 record of each communication from the date of the advertisement for  
15 bids to the date the contract is awarded. The State agency shall retain  
16 the record of each communication for the term of the contract and at  
17 least three years thereafter, or such longer period as may be  
18 established in the agency's record retention schedule.

19 As used in this section, "State agency" means the principal  
20 departments in the Executive Branch of the State Government, and  
21 any division, board, bureau, office, commission or other  
22 instrumentality within or created by such department; the Legislature  
23 of the State and the Judicial Branch of the State, and any division,  
24 board, bureau, office, commission or other instrumentality within or  
25 created by the Legislative Branch or the Judicial Branch; or any  
26 independent State authority, commission, instrumentality or agency,  
27 but shall not include a county, municipality or school district.

28

29 2. (New section) A State agency, as defined in section 1 of  
30 P.L. (C. ) (now pending before the Legislature as this bill) that is  
31 authorized by law to engage in the procurement of goods or services  
32 may, when deemed appropriate, issue on the Internet a notice of the  
33 agency's intent to advertise specifications and invitations for bids  
34 preliminary to the awarding of a contract and request information  
35 thereto from potential bidders. The purpose of such notice shall be to  
36 solicit comments from potential bidders on the nature and content of  
37 the specifications and to answer such questions as the potential bidders  
38 may have prior to the advertisement for bids. If such a notice is  
39 issued, an officer or employee of the State agency who communicates  
40 with a potential bidder, or any person acting on behalf thereof, shall  
41 maintain a written record of each such communication from the date  
42 of the issuance of the notice on the Internet until the date of the  
43 advertisement for bids.

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

**Matter underlined thus is new matter.**



1       3. (New section) a. When the State, or any board, commission,  
2 committee, authority or agency of the State, is a contracting agency,  
3 the members of any evaluation committee shall have no personal  
4 interest, financial or familial, in any of the contract vendors, or  
5 principals thereof, to be evaluated. This provision shall apply whether  
6 the members of such committee are appointed by the Director of the  
7 Division of Purchase and Property or pursuant to any other procedure  
8 as appropriate to the contracting agency.

9       b. When the State, or any board, commission, committee, authority  
10 or agency of the State, is a contracting agency for a contract that  
11 includes, but is not limited to, the financing of a capital project, one  
12 member of any evaluation committee, whether appointed by the  
13 Director of the Division of Purchase and Property or pursuant to any  
14 other procedure as appropriate to the contracting agency, shall be a  
15 person proficient in the financing of public projects. When a contract  
16 encompasses a purchase of information technology goods or services,  
17 including the creation or modification of such technology, one member  
18 of any evaluation committee shall be a person proficient in such  
19 technology for public projects.

20       c. In all cases, persons appointed to an evaluation committee shall  
21 have the relevant experience necessary to evaluate the project. When  
22 the contract is awarded, the names of the members of any evaluation  
23 committee shall be made public and the members names, educational  
24 and professional qualifications, and practical experience, that were the  
25 basis for the appointment, shall be reported to the State Treasurer and  
26 the Director of Purchase and Property.

27  
28       4. (New section) The Director of the Division of Purchase and  
29 Property in the Department of Treasury shall promulgate regulations,  
30 applicable to all contracts for which the director is responsible, that  
31 establish procedures for (1) contract oversight and the monitoring of  
32 contract performance; and (2) complaint resolution. The director shall  
33 establish a vendor performance database.

34  
35       5. (New section) Whenever a governmental entity in this State is  
36 authorized to purchase any goods or services under any contract or  
37 contracts entered into on behalf of the State by the Division of  
38 Purchase and Property in the Department of the Treasury, the  
39 contractor shall report periodically to the division the value of the  
40 goods and services purchased by such governmental entities. The  
41 division shall by regulation provide for the content of such reports,  
42 how often they are to be made, and the form to be used for the making  
43 of such reports.

44  
45       6. (New section) a. Notwithstanding the provisions of any law to  
46 the contrary, any purchase by the State or by a State agency or local

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1 government unit of equipment, goods or services related to homeland  
2 security and domestic preparedness, that is paid for or reimbursed by  
3 federal funds awarded by the U.S. Department of Homeland Security  
4 or other federal agency, may be made through the receipt of public  
5 bids or as an alternative to public bidding and subject to the provisions  
6 of this section, through direct purchase without advertising for bids or  
7 rejecting bids already received but not awarded.

8 b. The equipment, goods or services purchased by a local  
9 government unit shall be referred to in the grant agreement issued by  
10 the State administrative agency administering such funds and shall be  
11 authorized by resolution of the governing body of the local  
12 government unit entering into the grant agreement. Such resolution  
13 may, without subsequent action of the local governing body, authorize  
14 the contracting agent of the local government unit to procure the  
15 equipment, goods or services. A copy of such resolution shall be filed  
16 with the chief financial officer of the local government unit, the State  
17 administrative agency and the Division of Local Government Services  
18 in the Department of Community Affairs.

19 c. Purchases made without public bidding shall be from vendors  
20 that shall either (1) be holders of a current State contract for the  
21 equipment, goods or services sought, or (2) be participating in a  
22 federal procurement program established by a federal department or  
23 agency, or (3) have been approved by the State Treasurer in  
24 consultation with the New Jersey Domestic Security Preparedness  
25 Task Force. All homeland security purchases herein shall continue to  
26 be subject to all grant requirements and conditions approved by the  
27 State administrative agency.

28 d. The Director of the Division of Purchase and Property may enter  
29 into or participate in purchasing agreements with one or more other  
30 states, or political subdivisions or compact agencies thereof, for the  
31 purchase of such equipment, goods or services to meet the domestic  
32 preparedness and homeland security needs of this State. Such  
33 purchasing agreement may provide for the sharing of costs and the  
34 methods of payments relating to such purchases.

35  
36 7. (New section) The State Contract Manager shall be the State  
37 employee who shall be responsible for the overall management and  
38 administration of a State contract. The State agency using the  
39 contract shall designate the State Contract Manager for that contract  
40 and inform the director of its designation, except that the director may  
41 designate the State Contract Manager when the director deems  
42 necessary.

43 The State Contract Manager for each contract shall be identified at  
44 the time of execution of the contract. At that time, the contractor  
45 shall be provided with the State Contract Manager's name, department,  
46 division, agency, address, telephone number, fax phone number, and

1 E-mail address.

2 For a contract where only one State agency uses the contract, the  
3 State Contract Manager shall be responsible for engaging the  
4 contractor, assuring that purchase orders are issued to the contractor,  
5 directing the contractor to perform the work of the contract,  
6 approving the deliverables and approving payment vouchers. The  
7 State Contract Manager shall be the person that the contractor  
8 contacts after the contract is executed for answers to any questions  
9 and concerns about any aspect of the contract. The State Contract  
10 Manager shall be responsible for coordinating the use and resolving  
11 minor disputes between the contractor and the State agency.

12 If the contract has multiple users, the director may designate the  
13 State Contract Manager for that contract. The State Contract  
14 Manager shall be the central coordinator of the use of the contract for  
15 all using agencies, while other state employees engage and pay the  
16 contractor. All persons and agencies that use the contract shall notify  
17 and coordinate the use of the contract with the State Contract  
18 Manager.

19 The State Contract Manager shall have the following additional  
20 duties:

21 if the State Contract Manager determines that the contractor has  
22 failed to perform the required work and is unable to resolve that  
23 failure to perform directly with the contractor, the State Contract  
24 Manager shall file a formal complaint with the contract compliance  
25 unit in the Division of Purchase and Property and request that office  
26 to assist in the resolution of the contract performance problem with  
27 the contractor;

28 the State Contract Manager shall be responsible for arranging for  
29 contract extensions and preparing any re-procurement of the contract  
30 with the Purchase Bureau;

31 the State Contract Manager shall be responsible for obtaining  
32 permission from the director to reduce the scope of work, amend the  
33 contract or add work or special projects to the contract after contract  
34 award;

35 the State Contract Manager shall be responsible for completion of  
36 a project performance assessment form for submission to the division,  
37 with a copy to the Office of Management and Budget; and

38 the State Contract Manager shall be responsible for submitting the  
39 Contractor final deliverables to the Associate Director of OMB.

40 Any contract user that is unable to resolve disputes with a  
41 contractor shall refer those disputes to the State Contract Manager for  
42 resolution. Any questions related to performance of the work of the  
43 contract by contract users shall be directed to the State Contract  
44 Manager. The contractor may contact the State Contract Manager if  
45 the contractor cannot resolve a dispute with contract users.

1       8. (New section) Contracts awarded for professional services by  
2 a State agency shall be contracts only for services rendered or  
3 performed by a person authorized by law to practice a recognized  
4 profession and whose practice is regulated by law or the performance  
5 of which services requires knowledge of an advanced type in a field of  
6 learning acquired by a prolonged formal course of specialized  
7 instruction and study as distinguished from general academic  
8 instruction or apprenticeship and training. Professional services  
9 contracts shall also include those services rendered in the provision of  
10 goods or performance of services that are original and creative in  
11 character in a recognized field of artistic endeavor. Professional  
12 services contracts shall also include contracts for extraordinary  
13 unspecifiable services if, after evaluation and assessment by the State  
14 Treasurer, such services are determined to be such that they cannot  
15 reasonably be described by written specifications.

16       As used in this section, "State agency" means the principal  
17 departments in the Executive Branch of the State Government, and  
18 any division, board, bureau, office, commission or other  
19 instrumentality within or created by such department; the Legislature  
20 of the State and the Judicial Branch of the State, and any division,  
21 board, bureau, office, commission or other instrumentality within or  
22 created by the Legislative Branch or the Judicial Branch; or any  
23 independent State authority, commission, instrumentality or agency,  
24 but shall not include a county, municipality or school district.

25  
26       9. (New section) A State officer or employee, or special State  
27 officer or employee, of a State agency shall file, in writing, with the  
28 head of the State agency and the Executive Commission on Ethical  
29 Standards, for the period covering five years prior to taking office or  
30 commencing employment to the date of filing, a disclosure statement  
31 detailing any professional relationship with, or interest held in, any  
32 person, firm, association, partnership, corporation or other business  
33 organization, or any subsidiary or related company thereof, or any  
34 personal relationship with a principal officer or director of such entity,  
35 whether by himself or herself or through any partnership, firm or  
36 corporation in which he or she has an interest or through any partner,  
37 officer or employee thereof, if the officer or employee is required or  
38 called upon to conduct any review or investigation, render any ruling,  
39 give any opinion, or work substantially and directly on any cause,  
40 proceeding, application or other matter, at any time during the course  
41 of his or her office or employment, involving a public contract sought  
42 by or awarded to that person, firm, association, partnership,  
43 corporation or other business organization.

44  
45       10. (New section) The Director of the Division of Purchase and  
46 Property shall institute a process whereby vendor challenges to the

1 division's procurement process are investigated and considered by  
2 hearing officers appointed by the director and independent of the  
3 division's procurement process, and are resolved by written final  
4 agency determination of the director. Such challenges shall not be  
5 contested cases subject to the requirements of the "Administrative  
6 Procedure Act," P.L. 1968, C.410 (C.52:14B-1 et seq.), and the  
7 regulations promulgated pursuant to that act. A final agency  
8 determination shall be appealable to the Appellate Division of New  
9 Jersey Superior Court.

10

11 11. Section 1 of P.L.1996, c.16, (C.52:34-6.1) is amended to read  
12 as follows:

13 1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et  
14 seq.) to the contrary, the Director of the Division of Purchase and  
15 Property in the Department of the Treasury shall promulgate the  
16 Federal Supply Schedules of the Federal General Services  
17 Administration or schedules from other federal procurement programs  
18 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
19 (C.52:14B-1 et seq.) as an alternate price guide for the purchase of  
20 goods and services for State agencies and for the entities defined in  
21 section 1 of P.L.1959, c.40 (C.52:27B-56.1), subject to the following  
22 conditions:

23 (1) the price of the goods or services being procured is no greater  
24 than the price offered to federal agencies;

25 (2) [the Federal Supply Schedules may be used only for purchases  
26 of up to \$500,000 per year or for one product unit at any price and  
27 only for reprographic equipment or services, including digital copiers,  
28 used by the State] (~~Deleted by amendment, P.L. , c. (now pending~~  
29 before the Legislature as this bill).);

30 (3) the State receives the benefit of federally mandated price  
31 reductions during the term of the contract [and is protected from price  
32 increases during that time]; and

33 (4) the price of the goods or services being procured is no greater  
34 than the price of the same or equivalent goods or services under the  
35 State contract, unless the State determines that because of factors  
36 other than price, selection of a vendor from the Federal Supply  
37 Schedules or schedules from other federal procurement programs  
38 would be more advantageous to the State.

39 (cf: P.L.1999, c.440, s.106.)

40

41 12. Section 7 of P. L.1996, c.16, (C. 52:34-6.2) is amended to read  
42 as follows:

43 7. a. Notwithstanding the provisions of any other law to the  
44 contrary except the provisions of R.S.30:4-95, and as an alternative to  
45 the procedures concerning the awarding of public contracts provided  
46 in P.L.1954, c.48 (C.52:34-6 et seq.), the Director of the Division of

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1 Purchase and Property in the Department of the Treasury may enter  
2 into cooperative purchasing agreements with one or more other states,  
3 or political subdivisions thereof, for the purchase of goods and  
4 services. A cooperative purchasing agreement shall allow the  
5 jurisdictions which are parties thereto to standardize and combine their  
6 requirements for the purchase of a particular good or service into a  
7 single contract solicitation which shall be competitively bid and  
8 awarded by one of the jurisdictions on behalf of jurisdictions  
9 participating in the contract.

10 b. The director may elect to purchase goods or services through a  
11 contract awarded pursuant to a cooperative purchasing agreement  
12 whenever the director determines this to be the most cost-effective  
13 method of procurement. Prior to entering into any contract to be  
14 awarded or already awarded through a cooperative purchasing  
15 agreement, the director shall review and approve the specifications and  
16 proposed terms and conditions of the contract.

17 c. The director may solicit bids and award contracts on behalf of  
18 this State and other jurisdictions which are parties to a cooperative  
19 purchasing agreement provided that the agreement specifies that each  
20 jurisdiction participating in a contract is solely responsible for the  
21 payment of the purchase price and cost of purchases made by it under  
22 the terms of any contract awarded pursuant to the agreement.

23 d. The director may promulgate rules and regulations pursuant to  
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
25 seq.), which are necessary to effectuate the purposes of this section.  
26 (cf: P.L.1996, c.16, s.7.)  
27

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

30 7. a. Whenever advertising is required: (a) specifications and  
31 invitations for bids shall permit such full and free competition as is  
32 consistent with the procurement of supplies and services necessary to  
33 meet the requirements of the using agency and shall, wherever  
34 practicable, include such factors as life-cycle costs, sliding percentage  
35 preference scales, or other similar analysis as shall be deemed effective  
36 by the Director of the Division of Purchase and Property, hereinafter  
37 referred to as the director, (b) the advertisement for bids shall be in  
38 such newspaper or newspapers or other medium or media selected by  
39 the State Treasurer as will best give notice thereof to bidders and shall  
40 be sufficiently in advance of the purchase or contract to promote  
41 competitive bidding; (c) the advertisement shall designate the time and  
42 [place] secure location when and where [sealed] proposals, which  
43 may be submitted in electronic or other format designated by the  
44 director, shall be received [and publicly], opened and [read,] publicly  
45 announced, the amount of the cash or certified check, if any, which  
46 must accompany each bid, and such other terms as the State Treasurer

1 may deem proper; (d) notice of revisions or addenda to advertisements  
2 or bid documents relating to bids shall be published in a newspaper or  
3 newspapers [as] or other medium or media selected by the State  
4 Treasurer to [best] give notice to bidders [and sent to the prospective  
5 bidder no later than] at least five days, Saturdays, Sundays and  
6 holidays excepted, prior to the bid due date; (e) failure to advertise for  
7 the receipt of bids or to provide proper notification of revisions or  
8 addenda to advertisements or bid documents related to bids as  
9 prescribed by subsection (d) of this section shall prevent the  
10 acceptance of bids and require the readvertisement for bids; (f) for any  
11 procurement, the State Treasurer or the director may negotiate with  
12 bidders[, after bid opening,] the final terms and conditions of any  
13 procurement, including price; such ability to so negotiate must be  
14 expressly set forth in the applicable invitation to bid and such bids shall  
15 not be publicly accessible until after negotiations have been completed  
16 and the notice of intent to award the contract has been issued; (g)  
17 award shall be made with reasonable promptness, after negotiation  
18 with bidders where authorized, by written or electronic notice to that  
19 responsible bidder whose bid, conforming to the invitation for bids,  
20 will be most advantageous to the State, price and other factors  
21 considered. When negotiations occur pursuant to subparagraph f. of  
22 this section, a written record of the nature and content of the  
23 negotiations, as well as the dates and persons involved, shall become  
24 a public record when the notice of intent to award the contract is  
25 issued.

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

32 This section shall apply to all bids received on and after the date of  
33 enactment of P.L.1999, c.440.

34 b. Whenever by law a State independent authority may negotiate  
35 with bidders, after bid opening, the final terms and conditions of any  
36 procurement, including price, and such ability to so negotiate is  
37 expressly set forth in the applicable invitation to bid, a written record  
38 of the nature and content of the negotiations, as well as the dates and  
39 persons involved, shall not be publicly accessible until after the notice  
40 of intent to award the contract is issued.

41 (cf: P.L.1999, c.440, s.96)

42

43 14. Section 1 of P.L.1986, c.26 (C. 52:34-12.1) is amended to  
44 read as follows:

45 1. a. When awarding contracts pursuant to section 7 of P.L.1954,  
46 c.48 (C.52:34-12), the Director of the Division of Purchase and

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10

1 Property may make awards to multiple bidders, to furnish the same or  
2 similar materials, supplies, services or equipment, where multiple  
3 bidders are necessary:

- 4 (1) to furnish the quantities required by using agencies;  
5 (2) to provide expeditious and cost-efficient local deliveries to  
6 using agencies;  
7 (3) to enable using agencies to purchase materials, supplies,  
8 services or equipment which are compatible with those previously  
9 purchased;  
10 (4) to provide for standardization of equipment, interchangeability  
11 of parts or continuation of services; [or]  
12 (5) to provide using agencies or participants in cooperative  
13 purchasing arrangements with a diversity of product choices to meet  
14 the collective safety, environmental or technological needs of such  
15 agencies or cooperative purchasers; or  
16 (6) when the director determines that multiple bidders are  
17 necessary to serve the State's interests.

18 b. The director may determine whether the anticipated use of a  
19 contract by entities authorized by law to participate in cooperative  
20 purchasing arrangements with the State justifies awarding a contract  
21 to multiple bidders on the basis of any one or more of the criteria set  
22 forth in subsection a. of this section.

23 c. Where multiple contracts have been awarded pursuant to  
24 subsection a. of this section, a using agency shall make purchases from  
25 that contractor whose contract terms and conditions are most  
26 advantageous to the agency, price and other factors considered.

27 d. All purchases made by using agencies under subsection c. of this  
28 section shall be reported to the director, in a manner prescribed by the  
29 director. The report shall include the reasons for selecting a particular  
30 contractor under subsection c. of this section.

31 e. [Any multiple award shall be made only to the number of  
32 contractors necessary to serve the needs of using agencies and  
33 cooperative purchasers for the service, item or group of items that is  
34 the subject of the award. This provision, however, does not limit in  
35 any way the director's discretion to structure an invitation to bid to  
36 encompass more than one service, item or group of items and to award  
37 the number of contracts contemplated by the invitation to bid.]

38 (Deleted by amendment, P.L. , c. (now pending before the  
39 Legislature as this bill).)

40 (cf: P.L.2000, c.74, s.1)

41

42 15. R.S.52:25-23 is amended to read as follows:

43 52:25-23. The Director of the Division of Purchase and Property  
44 may, by written order, delegate purchasing authority to the using  
45 agencies for purchases or contracts not in excess of \$25,000.00;  
46 except that:



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

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

8 c. Records of all purchases made or contracts negotiated under this  
9 section shall be maintained by the using agency and made available for  
10 audit by or under the direction of the Director of the Division of  
11 Purchase and Property and shall include proper proof that the purchase  
12 or contract was made or negotiated competitively, where competition  
13 is practicable.

14 The Director of the Division of Purchase and Property may, by  
15 written order, rescind or reduce the level of purchasing authority  
16 delegated to any using agency determined by the director to have  
17 violated the provisions of the delegated authorization.

18 d. The director may, by written order, delegate purchasing  
19 authority to a specific agency for advertisement of purchases or  
20 contracts not in excess of \$250,000, subject to the requirements set  
21 forth in this section, when the director has determined that such  
22 purchases or contracts are for the procurement of goods or services  
23 which are unique to the operations of that particular using agency and  
24 are not common or similar to goods or services used by other State  
25 agencies and, therefore, are not suitable for leveraging with other  
26 State agency procurements.

27 (cf: P.L.1999, c.440, s.93)

28

29 16. This act shall take effect on the first day of the third month  
30 following enactment.

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32

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STATEMENT

34

35 This bill makes various changes to the State contracting process  
36 and requires certain disclosures by State officers and employees  
37 involved in that process. Parts of the bill implement recommendations  
38 made by the State Commission of Investigation (SCI) in its report, "E-  
39 ZPass, The Making of a Procurement Disaster," issued in June 2004.  
40 The remainder of the bill contains initiatives to reform the current  
41 State contracting process.

42 Section 1: The bill requires an officer or employee of a State  
43 agency who communicates with a bidder or potential bidder for a  
44 public contract regarding that contract to keep a written record of  
45 each communication for the term of the contract and at least three  
46 years thereafter.

1 Section 2: The bill permits a State agency that is authorized by law  
2 to engage in the procurement of goods or services, when deemed  
3 appropriate, to issue on the Internet a notice of the agency's intent to  
4 advertise specifications and invitations for bids preliminary to the  
5 awarding of a contract and request information thereto from potential  
6 bidders. The purpose of such notice would be to solicit comments  
7 from potential bidders on the nature and content of the specifications  
8 and to answer such questions as the potential bidders may have prior  
9 to the advertisement for bids. If such a notice is issued, an officer or  
10 employee of the State agency who communicates with a potential  
11 bidder, or any person acting on behalf thereof, must maintain a written  
12 record of each such communication from the date of the issuance of  
13 the notice on the Internet until the date of the advertisement for bids.  
14 It protects certain bid documents from public disclosure until a  
15 contract is awarded.

16 Section 3: The bill requires that when the State, or any board,  
17 commission, committee, authority or agency of the State, is a  
18 contracting agency, the members of any evaluation committee will  
19 have no personal interest, financial or familial, in any of the contract  
20 vendors, or principals thereof, to be evaluated. In addition, the bill  
21 requires one member of any evaluation committee to be a person  
22 proficient in the structuring of the financing of public projects if the  
23 contract includes the structure of the financing of a capital project, or  
24 one member proficient in information technology for public projects  
25 if the contract encompasses a purchase of information technology  
26 goods or services. When the contract is awarded, the names of the  
27 members of any evaluation committee would be made public and the  
28 members names, educational and professional qualifications, and  
29 practical experience, that were the basis for the appointment, would  
30 be reported to the State Treasurer and the Director of Purchase and  
31 Property. In all cases, persons appointed to an evaluation committee  
32 must have the relevant experience necessary to evaluate the project.

33 Section 4: The bill requires the Director of the Division of  
34 Purchase and Property in the Department of Treasury for all contracts  
35 for which the director is responsible, to promulgate regulations  
36 establishing procedures for contract oversight and the monitoring of  
37 contract performance and for complaint resolution process; and to  
38 establish a vendor performance database.

39 Section 5: Under the bill, whenever a governmental entity in this  
40 State is authorized to purchase any goods or services under any  
41 contract or contracts entered into on behalf of the State by the  
42 Division of Purchase and Property in the Department of the Treasury,  
43 the contractor must report periodically to the division the value of the  
44 goods and services purchased by such governmental entities.

45 Section 6: The bill permits the purchase by the State or by a State  
46 agency or local government unit of equipment, goods or services

1 related to homeland security and domestic preparedness, that is paid  
2 for or reimbursed by federal funds awarded by the U.S. Department of  
3 Homeland Security or other federal agency, through the receipt of  
4 public bids or, as an alternative to public bidding and subject to the  
5 provisions of this section, through direct purchase without advertising  
6 for bids or rejecting bids already received but not awarded.

7 The equipment, goods or services purchased by a local government  
8 unit must be referred to in the grant agreement issued by the State  
9 administrative agency administering such funds and must be  
10 authorized by resolution of the governing body of the local  
11 government unit entering into the grant agreement. The resolution  
12 may authorize the contracting agent of the local government unit to  
13 procure the equipment, goods or services, and a copy of the  
14 resolution must be filed with the chief financial officer of the local  
15 government unit, the State administrative agency and the Division of  
16 Local Government Services in the Department of Community Affairs.

17 Purchases made without public bidding must be from vendors that  
18 are either (1) the holders of a current State contract for the equipment,  
19 goods or services sought, or (2) participating in a federal procurement  
20 program established by a federal department or agency, or (3)  
21 approved by the State Treasurer in consultation with the New Jersey  
22 Domestic Security Preparedness Task Force. All homeland security  
23 purchases will continue to be subject to all grant requirements and  
24 conditions approved by the State administrative agency.

25 The Director of the Division of Purchase and Property is authorized  
26 to enter into or participate in purchasing agreements with one or more  
27 other states, or political subdivisions or compact agencies thereof, for  
28 the purchase of such equipment, goods or services to meet the  
29 domestic preparedness and homeland security needs of this State.  
30 Such purchasing agreement may provide for the sharing of costs and  
31 the methods of payments relating to such purchases.

32 Section 7: The bill provides that a State Contract Manager will be  
33 the State employee responsible for the overall management and  
34 administration of a State contract. The State agency using the contract  
35 will designate the State Contract Manager for that contract and inform  
36 the director of its designation, except that the director may designate  
37 the State Contract Manager when the director deems necessary. If the  
38 contract has multiple users, the director may designate the State  
39 Contract Manager for that contract. In general, the State Contract  
40 Manager will be responsible for engaging the contractor, assuring that  
41 purchase orders are issued to the contractor, directing the contractor  
42 to perform the work of the contract, approving the deliverables and  
43 approving payment vouchers. The State Contract Manager will be the  
44 person that the contractor will contact after the contract is executed  
45 for answers to any questions and concerns about any aspect of the  
46 contract. The State Contract Manager will be responsible for

1 coordinating the contract use and resolving minor disputes between  
2 the contractor and the state agency. If the contract has multiple users,  
3 the State Contract Manager will be the central coordinator of the use  
4 of the contract for all using agencies, while other state employees  
5 engage and pay the contractor. All persons and agencies that use the  
6 contract will notify and coordinate the use of the contract with the  
7 State Contract Manager. In addition, the State Contract Manager will:  
8 if he determines that the contractor has failed to perform the  
9 required work and is unable to resolve that failure to perform directly  
10 with the contractor, the State Contract Manager will file a formal  
11 complaint with the contract compliance unit in the Division of  
12 Purchase and Property and request that unit to assist in the resolution  
13 of the contract performance problem with the contractor;  
14 be responsible for arranging for contract extensions and preparing  
15 any re-procurement of the contract with the Purchase Bureau;  
16 be responsible for obtaining permission from the director to reduce  
17 the scope of work, amend the contract or add work or special projects  
18 to the contract after contract award;  
19 be responsible for completion of the project performance  
20 assessment form for submission to the division, with a copy to the  
21 Office of Management and Budget (OMB); and  
22 be responsible for submitting the Contractor final deliverables to the  
23 Associate Director of OMB.

24 Any contract user that is unable to resolve disputes with a  
25 contractor will refer those disputes to the State Contract Manager for  
26 resolution. Any questions related to performance of the work of the  
27 contract by contract users will be directed to the State Contract  
28 Manager. The contractor may contact the State Contract Manager if  
29 the contractor cannot resolve a dispute with contract users.

30 Section 8: This bill defines "professional services" for the purposes  
31 of contracts awarded by the State or any independent State authority,  
32 commission, instrumentality or agency. The term is not now defined  
33 in State law. The definition in this bill for "professional services" is  
34 substantially similar to the one in the Local Public Contracts Law  
35 (N.J.S.A.40A:11-1 et seq.), County College Contracts Law  
36 (N.J.S.A.18A:64A-25.1 et seq.), Public School Contracts Law  
37 (N.J.S.A.18A:18A-1 et seq.), and the State College Contracts Law  
38 (N.J.S.A.18A:64-52 et seq.), but also includes "extraordinary  
39 unspecifiable services" which are services that cannot reasonably be  
40 described by written specifications after assessment and evaluation by  
41 the State Treasurer.

42 The bill provides that contracts for professional services will be  
43 only for services rendered or performed by a person authorized by law  
44 to practice a recognized profession and whose practice is regulated by  
45 law or the performance of which services requires knowledge of an  
46 advanced type in a field of learning acquired by a prolonged formal

1 course of specialized instruction and study as distinguished from  
2 general academic instruction or apprenticeship and training.  
3 Professional services contracts also will include those for services  
4 rendered in the provision of goods or performance of services that are  
5 original and creative in character in a recognized field of artistic  
6 endeavor.

7 Section 9: The bill requires a State officer or employee, or a  
8 special State officer or employee, of a State agency to file, in writing,  
9 with the head of the State agency and the Executive Commission on  
10 Ethical Standards, for the period covering five years prior to taking  
11 office or commencing employment to the date of filing, a disclosure  
12 statement detailing any professional relationship with, or interest held  
13 in, any person, firm, association, partnership, corporation or other  
14 business organization, or any subsidiary or related company thereof,  
15 or any personal relationship with a principal officer or director of such  
16 entity, whether by himself or herself or through any partnership, firm  
17 or corporation in which he or she has an interest or through any  
18 partner, officer or employee thereof, if the officer or employee is  
19 required or called upon to conduct any review or investigation, render  
20 any ruling, give any opinion, or work substantially and directly on any  
21 cause, proceeding, application or other matter, at any time during the  
22 course of his or her office or employment, involving a public contract  
23 sought by or awarded to that person, firm, association, partnership,  
24 corporation or other business organization.

25 Section 10: The bill requires that the Director of the Division of  
26 Purchase and Property institute a process whereby vendor challenges  
27 to the division's procurement process are investigated and considered  
28 by hearing officers appointed by the director and independent of the  
29 division's procurement process, and are resolved by written final  
30 agency determination by the director. A final agency determination  
31 would be appealable to the Appellate Division of New Jersey Superior  
32 Court.

33 Section 11: The bill amends N.J.S.A.52:34-6.1. At present, the  
34 law authorizes the Director of the Division of Purchase and Property  
35 to use federal supply schedules of the federal General Services  
36 Administration as an alternate price guide for the purchase of goods  
37 and services by State agencies and other participating public entities.  
38 The bill would authorize the director to use schedules from other  
39 federal procurement programs. This would give public agencies a  
40 wider choice of vendors and options regarding the purchase goods and  
41 services and should result in lower costs. The bill also eliminates caps  
42 on the value of certain purchases that may be made using federal  
43 supply schedules and an unenforceable provision regarding price  
44 increases during the term of a contract.

45 Section 12: The bill amends N.J.S.A.52:34-6.2. It would authorize  
46 the Director of the Division of Purchase and Property to participate in

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1 contracts already awarded by other states or cooperative purchasing  
2 groups. This will increase the State's range of purchasing options and  
3 enable the State to realize cost savings by eliminating the need for a  
4 separate bidding process for goods and services that have already been  
5 competitively bid by other states with similar interests and fiscal  
6 restraints.

7 Section 13: The bill amends N.J.S.A.52:34-12 to allow bid  
8 advertisements to be disseminated in any media or medium, in addition  
9 to newspapers, and to provide that bid information shall not become  
10 public until after a notice of intent is issued.

11 Section 14: The bill amends N.J.S.A.52:34-12.1. It clarifies the  
12 director's authority to award contracts to multiple bidders when  
13 necessary to serve the State's interest and eliminates certain  
14 restrictions on that authority.

15 Section 15: The bill amends N.J.S.A.52:25-23. It authorizes the  
16 director to delegate purchasing authority to an agency for a specific  
17 contract not in excess of \$250,000 under certain circumstances. This  
18 will remove small, inefficient procurements from the centralized  
19 procurement function and places responsibility at the agency level.

20 Section 16: This section provides that the bill will take effect on  
21 the first day of the third month after enactment.

# ASSEMBLY STATE GOVERNMENT COMMITTEE

## STATEMENT TO

[First Reprint]

### **SENATE, No. 2194**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 19, 2005

The Assembly State Government Committee reports favorably and with committee amendments Senate, No. 2194 (1R).

This bill makes various changes to the State contracting process and requires certain disclosures by State officers and employees involved in that process. Parts of the bill implement recommendations made by the State Commission of Investigation (SCI) in its report, "E-ZPass, The Making of a Procurement Disaster," issued in June 2004. The remainder of the bill contains initiatives to reform the current State contracting process.

As amended, the bill:

- C Requires an officer or employee of a State agency who communicates with a bidder or potential bidder for a public contract regarding that contract to keep a written record of each communication for the term of the contract and at least three years thereafter.
- C Permits a State agency that is authorized by law to engage in the procurement of goods or services, when deemed appropriate, to issue on the Internet a notice of the agency's intent to advertise specifications and invitations for bids preliminary to the awarding of a contract and request information thereto from potential bidders. If such a notice is issued, an officer or employee of the State agency who communicates with a potential bidder, or any person acting on behalf thereof, must maintain a written record of each such communication from the date of the issuance of the notice on the Internet until the date of the advertisement for bids. Certain bid documents are protected from public disclosure until a contract is awarded.
- C Requires that when a State is a contracting agency, the members of any evaluation committee will have no personal interest, financial or familial, in any of the contract vendors, or principals thereof, to be evaluated. One member of any evaluation committee will be a person proficient in the structuring of the financing of public projects if the contract includes the structure of

the financing of a capital project, or one member proficient in information technology for public projects if the contract encompasses a purchase of information technology goods or services. When the contract is awarded, the names of the members of any evaluation committee would be made public and the members names, qualifications, and practical experience will be reported to the State Treasurer and the Director of Purchase and Property. In all cases, persons appointed to an evaluation committee must have the relevant experience necessary to evaluate the project.

- C Requires the Director of the Division of Purchase and Property in the Department of Treasury for all contracts for which the director is responsible, to promulgate regulations establishing procedures for contract oversight and the monitoring of contract performance and for complaint resolution process; and to establish a vendor performance database.
- C Requires that whenever a governmental entity in this State is authorized to purchase any goods or services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property, the contractor must report periodically to the division the value of the goods and services purchased by such governmental entities.
- C Permits the purchase by the State or by a State agency or local government unit of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, through the receipt of public bids or, as an alternative to public bidding and subject to the provisions of this section, through direct purchase without advertising for bids or rejecting bids already received but not awarded. The equipment, goods or services purchased by a local government unit must be referred to in the grant agreement issued by the State administrative agency administering such funds and must be authorized by resolution of the governing body of the local government unit entering into the grant agreement. The resolution may authorize the contracting agent of the local government unit to procure the equipment, goods or services, and a copy of the resolution must be filed with the chief financial officer of the local government unit, the State administrative agency and the Division of Local Government Services in the Department of Community Affairs. Purchases made without public bidding must be from vendors that are either (1) the holders of a current State contract for the equipment, goods or services sought, or (2) participating in a federal procurement program established by a federal department or agency, or (3) approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All homeland security purchases will continue to be subject to all grant requirements and conditions



approved by the State administrative agency.

- C Authorizes the Director of the Division of Purchase and Property to enter into or participate in purchasing agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services to meet the domestic preparedness and homeland security needs of this State. Provides that a State Contract Manager will be the State employee responsible for the overall management and administration of a State contract. The State agency using the contract will designate the State Contract Manager for that contract and inform the director of its designation, except that the director may designate the State Contract Manager when the director deems necessary. If the contract has multiple users, the director may designate the State Contract Manager for that contract. In general, the State Contract Manager will be responsible for engaging the contractor, assuring that purchase orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager will be the person that the contractor will contact after the contract is executed for answers to any questions and concerns about any aspect of the contract. The State Contract Manager will be responsible for coordinating the contract use and resolving minor disputes between the contractor and the state agency. If the contract has multiple users, the State Contract Manager will be the central coordinator of the use of the contract for all using agencies, while other state employees engage and pay the contractor.
- C Defines "professional services" for the purposes of contracts awarded by the State or any independent State authority, commission, instrumentality or agency. The term is not now defined in State law. The definition in this bill for "professional services" is substantially similar to the one in the Local Public Contracts Law, the County College Contracts Law, the Public School Contracts Law, and the State College Contracts Law, but also includes "extraordinary unspecifiable services" which are services that cannot reasonably be described by written specifications after assessment and evaluation by the State Treasurer.
- C Provides that contracts for professional services will be only for services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services contracts also will include those for services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of

artistic endeavor.

- C Requires a State officer or employee, or a special State officer or employee of a State agency to file with the head of the State agency and the Executive Commission on Ethical Standards, for the period covering five years prior to taking office or commencing employment to the date of filing, a disclosure statement in a form to be determined by the Executive Commission on Ethical Standards.
- C Requires that the Director of the Division of Purchase and Property institute a process whereby vendor challenges to the division's procurement process are investigated and considered by hearing officers appointed by the director and independent of the division's procurement process, and are resolved by written final agency determination by the director. A final agency determination would be appealable to the Appellate Division of New Jersey Superior Court.
- C Authorizes the Director of the Division of Purchase and Property to use federal supply schedules from federal procurement programs other than the federal General Services Administration as an alternate price guide for the purchase of goods and services by State agencies and other participating public entities. Caps on the value of certain purchases that may be made using federal supply schedules are eliminated.
- C Authorizes the Director of the Division of Purchase and Property to participate in contracts already awarded by other states or cooperative purchasing groups.
- C Allows bid advertisements to be disseminated in a newspaper or newspapers or any other medium or media and provides that bid information would not become public until after a notice of intent is issued.
- C Clarifies the director's authority to award contracts to multiple bidders when necessary to serve the State's interest and eliminates certain restrictions on that authority.
- C Authorizes the director to delegate purchasing authority to an agency for a specific contract not in excess of \$250,000 under certain circumstances, removing small, inefficient procurements from the centralized procurement function and places responsibility at the agency level.
- C Provides that each Contract Manager will compare all of the bidders, subbidders and related businesses with all of the businesses related directly or indirectly to the employees who may be involved in the procurement process. The State Treasurer or designee will identify the legal names, trade style names, physical address, and mailing address for each business on each State employee's disclosure form and also identify the legal names, trade style names, physical address, and mailing address for all businesses in the same legal family tree as each business on each employees form. The State Treasurer or designee will identify the

legal names, trade style names, physical address, and mailing address of : (1) each prime bidder; (2) all businesses in the same legal family tree as the prime bidder; (3) each subbidder; and (4) all businesses in the same legal family tree as the subbidder.

- C Requires that each prime bidder and subbidder will provide a report on the bidding and subbidding companies, which the contract manager will use in the evaluation of the bidders. The Director of the Division of Purchase and Property will identify, at the director's sole discretion, in the bid instructions the company or companies which the director has designated as being able to provide standardized, comprehensive information in the form of a report for this evaluation process and the method for delivery of such reports from independent third-party providers of such reports.

The bill will take effect on the first day of the third month after enactment.

Senate, No. 2194 (2R) is the same as Assembly, No. 3821 (1R).

#### COMMITTEE AMENDMENTS

The committee amended the bill to (1) exclude proprietary information from required contractor reports on the value of goods and services purchased; (2) permit the purchase of goods or services through a contract awarded pursuant to a nationally recognized and accepted cooperative purchasing agreement; (3) provide for a limitation of liability of the value of an information technology contract determined by the Director of the Division of Purchase and Property; (4) provide that advertisements for bids and revisions or addenda thereto will be published in newspapers or other media, as opposed to requiring publication in newspapers; (5) delete specifics of information to be filed by State officers and employees and provide that filing will be in a form determined by the Executive Commission on Ethical Standards; and (6) provide for detailed identification information on bidders and subbidders.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[Second Reprint]

### **SENATE, No. 2194**

with Assembly committee amendments.

# STATE OF NEW JERSEY

DATED: JUNE 29, 2005

The Assembly Budget Committee reports favorably Senate Bill No. 2194 (2R), with committee amendments.

Senate Bill No. 2194 (2R), as amended, makes various changes to the State contracting process and requires certain disclosures by State officers and employees involved in that process. Parts of the bill implement recommendations made by the State Commission of Investigation in its report, "E-ZPass, The Making of a Procurement Disaster," issued in June 2004. The remainder of the bill contains initiatives to reform the current State contracting process.

As amended, the bill:

- C Requires an officer or employee of a State agency who communicates with a bidder or potential bidder for a public contract regarding that contract to keep a written record of each communication for the term of the contract and at least three years thereafter.
- C Permits a State agency that is authorized by law to engage in the procurement of goods or services, when deemed appropriate, to issue on the Internet a notice of the agency's intent to advertise specifications and invitations for bids preliminary to the awarding of a contract and request information thereto from potential bidders. If such a notice is issued, an officer or employee of the State agency who communicates with a potential bidder, or any person acting on behalf thereof, must maintain a written record of each such communication from the date of the issuance of the notice on the Internet until the date of the advertisement for bids. Certain bid documents are protected from public disclosure until a contract is awarded.
- C Requires that when a State is a contracting agency, the members of any evaluation committee will have no personal interest, financial or familial, in any of the contract vendors, or principals thereof, to be evaluated. One member of any evaluation committee will be a person proficient in the structuring of the financing of public projects if the contract includes the structure of

the financing of a capital project, or one member proficient in information technology for public projects if the contract encompasses a purchase of information technology goods or services. When the contract is awarded, the names of the members of any evaluation committee would be made public and the members names, qualifications, and practical experience will be reported to the State Treasurer and the Director of Purchase and Property. In all cases, persons appointed to an evaluation committee must have the relevant experience necessary to evaluate the project.

- C Requires the Director of the Division of Purchase and Property in the Department of Treasury for all contracts for which the director is responsible, to promulgate regulations establishing procedures for contract oversight and the monitoring of contract performance and for complaint resolution process; and to establish a vendor performance database.
- C Requires that whenever a governmental entity in this State is authorized to purchase any goods or services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property, the contractor must report periodically to the division the value of the goods and services purchased by such governmental entities.
- C Permits the purchase by the State or by a State agency or local government unit of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, through the receipt of public bids or, as an alternative to public bidding and subject to the provisions of this section, through direct purchase without advertising for bids or rejecting bids already received but not awarded. The equipment, goods or services purchased by a local government unit must be referred to in the grant agreement issued by the State administrative agency administering such funds and must be authorized by resolution of the governing body of the local government unit entering into the grant agreement. The resolution may authorize the contracting agent of the local government unit to procure the equipment, goods or services, and a copy of the resolution must be filed with the chief financial officer of the local government unit, the State administrative agency and the Division of Local Government Services in the Department of Community Affairs. Purchases made without public bidding must be from vendors that are either (1) the holders of a current State contract for the equipment, goods or services sought, or (2) participating in a federal procurement program established by a federal department or agency, or (3) approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All homeland security purchases will

continue to be subject to all grant requirements and conditions approved by the State administrative agency.

- C Authorizes the Director of the Division of Purchase and Property to enter into or participate in purchasing agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services to meet the domestic preparedness and homeland security needs of this State. Provides that a State Contract Manager will be the State employee responsible for the overall management and administration of a State contract. The State agency using the contract will designate the State Contract Manager for that contract and inform the director of its designation, except that the director may designate the State Contract Manager when the director deems necessary. If the contract has multiple users, the director may designate the State Contract Manager for that contract. In general, the State Contract Manager will be responsible for engaging the contractor, assuring that purchase orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager will be the person that the contractor will contact after the contract is executed for answers to any questions and concerns about any aspect of the contract. The State Contract Manager will be responsible for coordinating the contract use and resolving minor disputes between the contractor and the state agency. If the contract has multiple users, the State Contract Manager will be the central coordinator of the use of the contract for all using agencies, while other state employees engage and pay the contractor.
- C Defines "professional services" for the purposes of contracts awarded by the State or any independent State authority, commission, instrumentality or agency. The term is not now defined in State law. The definition in this bill for "professional services" is substantially similar to the one in the Local Public Contracts Law, the County College Contracts Law, the Public School Contracts Law, and the State College Contracts Law, but also includes "extraordinary unspecifiable services" which are services that cannot reasonably be described by written specifications after assessment and evaluation by the State Treasurer.
- C Provides that contracts for professional services will be only for services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services contracts also will include those for services rendered in the provision of goods or performance of services that

are original and creative in character in a recognized field of artistic endeavor.

- C Requires a State officer or employee, or a special State officer or employee of a State agency to file with the head of the State agency and the Executive Commission on Ethical Standards, for the period covering five years prior to taking office or commencing employment to the date of filing, a disclosure statement in a form to be determined by the Executive Commission on Ethical Standards.
- C Requires that the Director of the Division of Purchase and Property institute a process whereby vendor challenges to the division's procurement process are investigated and considered by hearing officers appointed by the director and independent of the division's procurement process, and are resolved by written final agency determination by the director. A final agency determination would be appealable to the Appellate Division of New Jersey Superior Court.
- C Authorizes the Director of the Division of Purchase and Property to use federal supply schedules from federal procurement programs other than the federal General Services Administration as an alternate price guide for the purchase of goods and services by State agencies and other participating public entities. Caps on the value of certain purchases that may be made using federal supply schedules are eliminated.
- C Authorizes the Director of the Division of Purchase and Property to participate in contracts already awarded by other states or cooperative purchasing groups.
- C Allows bid advertisements to be disseminated in a newspaper or newspapers or any other medium or media and provides that bid information would not become public until after a notice of intent is issued.
- C Clarifies the director's authority to award contracts to multiple bidders when necessary to serve the State's interest and eliminates certain restrictions on that authority.
- C Authorizes the director to delegate purchasing authority to an agency for a specific contract not in excess of \$250,000 under certain circumstances, removing small, inefficient procurements from the centralized procurement function and places responsibility at the agency level.

The bill will take effect on the first day of the third month after enactment.

As amended and reported by the committee, this bill is identical to Assembly, No. 3821 (1R) as also amended and reported by the committee.

**FISCAL IMPACT:**

This bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS

The amendments eliminate provisions in the bill that would have: limited a vendor's liability in connection with an information technology contract to the value of the contract; required bidders to disclose certain business information; and imposed certain requirements in regard to State employees involved in the procurement process.



# SENATE STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### SENATE, No. 2194

# STATE OF NEW JERSEY

DATED: JANUARY 31, 2005

The Senate State Government Committee reports favorably Senate, No. 2194.

This bill makes various changes to the State contracting process and requires certain disclosures by State officers and employees involved in that process. Parts of the bill implement recommendations made by the State Commission of Investigation (SCI) in its report, "E-ZPass, The Making of a Procurement Disaster," issued in June 2004. The remainder of the bill contains initiatives to reform the current State contracting process.

Section 1 requires an officer or employee of a State agency who communicates with a bidder or potential bidder for a public contract regarding that contract to keep a written record of each communication for the term of the contract and at least three years thereafter.

Section 2 permits a State agency that is authorized by law to engage in the procurement of goods or services, when deemed appropriate, to issue on the Internet a notice of the agency's intent to advertise specifications and invitations for bids preliminary to the awarding of a contract and request information thereto from potential bidders. The purpose of such notice would be to solicit comments from potential bidders on the nature and content of the specifications and to answer such questions as the potential bidders may have prior to the advertisement for bids. If such a notice is issued, an officer or employee of the State agency who communicates with a potential bidder, or any person acting on behalf thereof, must maintain a written record of each such communication from the date of the issuance of the notice on the Internet until the date of the advertisement for bids. It protects certain bid documents from public disclosure until a contract is awarded.

Section 3 requires that when the State, or any board, commission, committee, authority or agency of the State, is a contracting agency, the members of any evaluation committee will have no personal interest, financial or familial, in any of the contract vendors, or principals thereof, to be evaluated. In addition, the bill requires one member of any evaluation committee to be a person proficient in the structuring of the financing of public projects if the contract includes the structure of the financing of a capital project, or one member

proficient in information technology for public projects if the contract encompasses a purchase of information technology goods or services. When the contract is awarded, the names of the members of any evaluation committee would be made public and the members names, qualifications, and practical experience would be reported to the State Treasurer and the Director of Purchase and Property. In all cases, persons appointed to an evaluation committee must have the relevant experience necessary to evaluate the project.

Section 4 requires the Director of the Division of Purchase and Property in the Department of Treasury for all contracts for which the director is responsible, to promulgate regulations establishing procedures for contract oversight and the monitoring of contract performance and for complaint resolution process; and to establish a vendor performance database.

Under section 5 of the bill, whenever a governmental entity in this State is authorized to purchase any goods or services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury, the contractor must report periodically to the division the value of the goods and services purchased by such governmental entities.

Section 6 permits the purchase by the State or by a State agency or local government unit of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, through the receipt of public bids or, as an alternative to public bidding and subject to the provisions of this section, through direct purchase without advertising for bids or rejecting bids already received but not awarded.

The equipment, goods or services purchased by a local government unit must be referred to in the grant agreement issued by the State administrative agency administering such funds and must be authorized by resolution of the governing body of the local government unit entering into the grant agreement. The resolution may authorize the contracting agent of the local government unit to procure the equipment, goods or services, and a copy of the resolution must be filed with the chief financial officer of the local government unit, the State administrative agency and the Division of Local Government Services in the Department of Community Affairs.

Purchases made without public bidding must be from vendors that are either (1) the holders of a current State contract for the equipment, goods or services sought, or (2) participating in a federal procurement program established by a federal department or agency, or (3) approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All homeland security purchases will continue to be subject to all grant requirements and conditions approved by the State administrative agency.

The Director of the Division of Purchase and Property is authorized to enter into or participate in purchasing agreements with

one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services to meet the domestic preparedness and homeland security needs of this State. Such purchasing agreement may provide for the sharing of costs and the methods of payments relating to such purchases.

Section 7 provides that a State Contract Manager will be the State employee responsible for the overall management and administration of a State contract. The State agency using the contract will designate the State Contract Manager for that contract and inform the director of its designation, except that the director may designate the State Contract Manager when the director deems necessary. If the contract has multiple users, the director may designate the State Contract Manager for that contract. In general, the State Contract Manager will be responsible for engaging the contractor, assuring that purchase orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager will be the person that the contractor will contact after the contract is executed for answers to any questions and concerns about any aspect of the contract. The State Contract Manager will be responsible for coordinating the contract use and resolving minor disputes between the contractor and the state agency. If the contract has multiple users, the State Contract Manager will be the central coordinator of the use of the contract for all using agencies, while other state employees engage and pay the contractor. All persons and agencies that use the contract will notify and coordinate the use of the contract with the State Contract Manager.

Any contract user that is unable to resolve disputes with a contractor will refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users will be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor cannot resolve a dispute with contract users.

Section 8 defines "professional services" for the purposes of contracts awarded by the State or any independent State authority, commission, instrumentality or agency. The term is not now defined in State law. The definition in this bill for "professional services" is substantially similar to the one in the Local Public Contracts Law (N.J.S.A.40A:11-1 et seq.), County College Contracts Law (N.J.S.A.18A:64A-25.1 et seq.), Public School Contracts Law (N.J.S.A.18A:18A-1 et seq.), and the State College Contracts Law (N.J.S.A.18A:64-52 et seq.), but also includes "extraordinary unspecifiable services" which are services that cannot reasonably be described by written specifications after assessment and evaluation by the State Treasurer.

The bill provides that contracts for professional services will be only for services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by

law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services contracts also will include those for services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor.

Section 9 requires a State officer or employee, or a special State officer or employee of a State agency to file with the head of the State agency and the Executive Commission on Ethical Standards, for the period covering five years prior to taking office or commencing employment to the date of filing, a disclosure statement detailing any professional relationship with, or interest held in, any person, firm, association, partnership, corporation or other business organization, or any subsidiary or related company thereof, or any personal relationship with a principal officer or director of such entity, whether by himself or herself or through any partnership, firm or corporation in which he or she has an interest or through any partner, officer or employee thereof, if the officer or employee is required or called upon to conduct any review or investigation, render any ruling, give any opinion, or work substantially and directly on any cause, proceeding, application or other matter, at any time during the course of his or her office or employment, involving a public contract sought by or awarded to that person, firm, association, partnership, corporation or other business organization.

Section 10 requires that the Director of the Division of Purchase and Property institute a process whereby vendor challenges to the division's procurement process are investigated and considered by hearing officers appointed by the director and independent of the division's procurement process, and are resolved by written final agency determination by the director. A final agency determination would be appealable to the Appellate Division of New Jersey Superior Court.

Section 11 amends N.J.S.A.52:34-6.1. At present, the law authorizes the Director of the Division of Purchase and Property to use federal supply schedules of the federal General Services Administration as an alternate price guide for the purchase of goods and services by State agencies and other participating public entities. The bill would authorize the director to use schedules from other federal procurement programs. This would give public agencies a wider choice of vendors and options regarding the purchase goods and services. The bill also eliminates caps on the value of certain purchases that may be made using federal supply schedules and an unenforceable provision regarding price increases during the term of a contract.

Section 12, as amended, would authorize the Director of the Division of Purchase and Property to participate in contracts already

awarded by other states or cooperative purchasing groups. This will increase the State's range of purchasing options and enable the State to realize cost savings by eliminating the need for a separate bidding process for goods and services that have already been competitively bid by other states with similar interests and fiscal restraints.

Section 13, as amended, would allow bid advertisements to be disseminated in any media or medium, in addition to newspapers, and to provide that bid information would not become public until after a notice of intent is issued.

Section 14, as amended, clarifies the director's authority to award contracts to multiple bidders when necessary to serve the State's interest and eliminates certain restrictions on that authority.

Section 15, as amended, authorizes the director to delegate purchasing authority to an agency for a specific contract not in excess of \$250,000 under certain circumstances. This will remove small, inefficient procurements from the centralized procurement function and places responsibility at the agency level.

STATEMENT TO  
**SENATE, No. 2194**

with Senate Floor Amendments  
(Proposed By Senator KARCHER)

ADOPTED: MARCH 14, 2005

These Senate amendments clarify application of the bill's provisions to the various agencies of State government.

**ASSEMBLY, No. 3821**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED FEBRUARY 14, 2005

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**SYNOPSIS**

Makes various changes to State contracting process; imposes certain disclosure on State officers and employees involved in contracting.

**CURRENT VERSION OF TEXT**

As introduced.



A3821 WISNIEWSKI

2

1 AN ACT concerning the State contracting process and the public  
2 officers and employees involved in the process, amending and  
3 supplementing various parts of the statutory law.

4

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

7

8 1. (New section) A communication relative to any State agency  
9 advertised procurement shall be limited to the individual or entity  
10 designated by the agency as responsible for the procurement. An  
11 officer or employee of a State agency who communicates with a  
12 bidder, or potential bidder, or any person acting on behalf thereof, for  
13 a public contract regarding that contract shall maintain a written  
14 record of each communication from the date of the advertisement for  
15 bids to the date the contract is awarded. The State agency shall retain  
16 the record of each communication for the term of the contract and at  
17 least three years thereafter, or such longer period as may be  
18 established in the agency's record retention schedule.

19 As used in this section, "State agency" means the principal  
20 departments in the Executive Branch of the State Government, and  
21 any division, board, bureau, office, commission or other  
22 instrumentality within or created by such department; the Legislature  
23 of the State and the Judicial Branch of the State, and any division,  
24 board, bureau, office, commission or other instrumentality within or  
25 created by the Legislative Branch or the Judicial Branch; or any  
26 independent State authority, commission, instrumentality or agency,  
27 but shall not include a county, municipality or school district.

28

29 2. (New section) A State agency, as defined in section 1 of  
30 P.L. (C. ) (now pending before the Legislature as this bill) that  
31 is authorized by law to engage in the procurement of goods or services  
32 may, when deemed appropriate, issue on the Internet a notice of the  
33 agency's intent to advertise specifications and invitations for bids  
34 preliminary to the awarding of a contract and request information  
35 thereto from potential bidders. The purpose of such notice shall be to  
36 solicit comments from potential bidders on the nature and content of  
37 the specifications and to answer such questions as the potential  
38 bidders may have prior to the advertisement for bids. If such a notice  
39 is issued, an officer or employee of the State agency who  
40 communicates with a potential bidder, or any person acting on behalf  
41 thereof, shall maintain a written record of each such communication  
42 from the date of the issuance of the notice on the Internet until the  
43 date of the advertisement for bids.

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

**Matter underlined thus is new matter.**



1       3. (New section) a. When the State, or any board, commission,  
2 committee, authority or agency of the State, is a contracting agency,  
3 the members of any evaluation committee shall have no personal  
4 interest, financial or familial, in any of the contract vendors, or  
5 principals thereof, to be evaluated. This provision shall apply whether  
6 the members of such committee are appointed by the Director of the  
7 Division of Purchase and Property or pursuant to any other procedure  
8 as appropriate to the contracting agency.

9       b. When the State, or any board, commission, committee, authority  
10 or agency of the State, is a contracting agency for a contract that  
11 includes, but is not limited to, the financing of a capital project, one  
12 member of any evaluation committee, whether appointed by the  
13 Director of the Division of Purchase and Property or pursuant to any  
14 other procedure as appropriate to the contracting agency, shall be a  
15 person proficient in the financing of public projects. When a contract  
16 encompasses a purchase of information technology goods or services,  
17 including the creation or modification of such technology, one member  
18 of any evaluation committee shall be a person proficient in such  
19 technology for public projects.

20       c. In all cases, persons appointed to an evaluation committee shall  
21 have the relevant experience necessary to evaluate the project. When  
22 the contract is awarded, the names of the members of any evaluation  
23 committee shall be made public and the members names, educational  
24 and professional qualifications, and practical experience, that were the  
25 basis for the appointment, shall be reported to the State Treasurer and  
26 the Director of Purchase and Property.

27  
28       4. (New section) The Director of the Division of Purchase and  
29 Property in the Department of Treasury shall promulgate regulations,  
30 applicable to all contracts for which the director is responsible, that  
31 establish procedures for (1) contract oversight and the monitoring of  
32 contract performance; and (2) complaint resolution. The director shall  
33 establish a vendor performance database.

34  
35       5. (New section) Whenever a governmental entity in this State is  
36 authorized to purchase any goods or services under any contract or  
37 contracts entered into on behalf of the State by the Division of  
38 Purchase and Property in the Department of the Treasury, the  
39 contractor shall report periodically to the division the value of the  
40 goods and services purchased by such governmental entities. The  
41 division shall by regulation provide for the content of such reports,  
42 how often they are to be made, and the form to be used for the making  
43 of such reports.

44  
45       6. (New section) a. Notwithstanding the provisions of any law to  
46 the contrary, any purchase by the State or by a State agency or local

1 government unit of equipment, goods or services related to homeland  
2 security and domestic preparedness, that is paid for or reimbursed by  
3 federal funds awarded by the U.S. Department of Homeland Security  
4 or other federal agency, may be made through the receipt of public  
5 bids or as an alternative to public bidding and subject to the provisions  
6 of this section, through direct purchase without advertising for bids or  
7 rejecting bids already received but not awarded.

8 b. The equipment, goods or services purchased by a local  
9 government unit shall be referred to in the grant agreement issued by  
10 the State administrative agency administering such funds and shall be  
11 authorized by resolution of the governing body of the local  
12 government unit entering into the grant agreement. Such resolution  
13 may, without subsequent action of the local governing body, authorize  
14 the contracting agent of the local government unit to procure the  
15 equipment, goods or services. A copy of such resolution shall be filed  
16 with the chief financial officer of the local government unit, the State  
17 administrative agency and the Division of Local Government Services  
18 in the Department of Community Affairs.

19 c. Purchases made without public bidding shall be from vendors  
20 that shall either (1) be holders of a current State contract for the  
21 equipment, goods or services sought, or (2) be participating in a  
22 federal procurement program established by a federal department or  
23 agency, or (3) have been approved by the State Treasurer in  
24 consultation with the New Jersey Domestic Security Preparedness  
25 Task Force. All homeland security purchases herein shall continue to  
26 be subject to all grant requirements and conditions approved by the  
27 State administrative agency.

28 d. The Director of the Division of Purchase and Property may enter  
29 into or participate in purchasing agreements with one or more other  
30 states, or political subdivisions or compact agencies thereof, for the  
31 purchase of such equipment, goods or services to meet the domestic  
32 preparedness and homeland security needs of this State. Such  
33 purchasing agreement may provide for the sharing of costs and the  
34 methods of payments relating to such purchases.

35  
36 7. (New section) The State Contract Manager shall be the State  
37 employee who shall be responsible for the overall management and  
38 administration of a State contract. The State agency using the  
39 contract shall designate the State Contract Manager for that contract  
40 and inform the director of its designation, except that the director may  
41 designate the State Contract Manager when the director deems  
42 necessary.

43 The State Contract Manager for each contract shall be identified at  
44 the time of execution of the contract. At that time, the contractor  
45 shall be provided with the State Contract Manager's name, department,

1 division, agency, address, telephone number, fax phone number, and  
2 E-mail address.

3 For a contract where only one State agency uses the contract, the  
4 State Contract Manager shall be responsible for engaging the  
5 contractor, assuring that purchase orders are issued to the contractor,  
6 directing the contractor to perform the work of the contract,  
7 approving the deliverables and approving payment vouchers. The  
8 State Contract Manager shall be the person that the contractor  
9 contacts after the contract is executed for answers to any questions  
10 and concerns about any aspect of the contract. The State Contract  
11 Manager shall be responsible for coordinating the use and resolving  
12 minor disputes between the contractor and the State agency.

13 If the contract has multiple users, the director may designate the  
14 State Contract Manager for that contract. The State Contract  
15 Manager shall be the central coordinator of the use of the contract for  
16 all using agencies, while other state employees engage and pay the  
17 contractor. All persons and agencies that use the contract shall notify  
18 and coordinate the use of the contract with the State Contract  
19 Manager.

20 The State Contract Manager shall have the following additional  
21 duties:

22 if the State Contract Manager determines that the contractor has  
23 failed to perform the required work and is unable to resolve that  
24 failure to perform directly with the contractor, the State Contract  
25 Manager shall file a formal complaint with the contract compliance  
26 unit in the Division of Purchase and Property and request that office  
27 to assist in the resolution of the contract performance problem with  
28 the contractor;

29 the State Contract Manager shall be responsible for arranging for  
30 contract extensions and preparing any re-procurement of the contract  
31 with the Purchase Bureau;

32 the State Contract Manager shall be responsible for obtaining  
33 permission from the director to reduce the scope of work, amend the  
34 contract or add work or special projects to the contract after contract  
35 award;

36 the State Contract Manager shall be responsible for completion of  
37 a project performance assessment form for submission to the division,  
38 with a copy to the Office of Management and Budget; and

39 the State Contract Manager shall be responsible for submitting the  
40 Contractor final deliverables to the Associate Director of OMB.

41 Any contract user that is unable to resolve disputes with a  
42 contractor shall refer those disputes to the State Contract Manager for  
43 resolution. Any questions related to performance of the work of the  
44 contract by contract users shall be directed to the State Contract  
45 Manager. The contractor may contact the State Contract Manager if  
46 the contractor cannot resolve a dispute with contract users.

1       8. (New section) Contracts awarded for professional services by  
2 a State agency shall be contracts only for services rendered or  
3 performed by a person authorized by law to practice a recognized  
4 profession and whose practice is regulated by law or the performance  
5 of which services requires knowledge of an advanced type in a field of  
6 learning acquired by a prolonged formal course of specialized  
7 instruction and study as distinguished from general academic  
8 instruction or apprenticeship and training. Professional services  
9 contracts shall also include those services rendered in the provision of  
10 goods or performance of services that are original and creative in  
11 character in a recognized field of artistic endeavor. Professional  
12 services contracts shall also include contracts for extraordinary  
13 unspecifiable services if, after evaluation and assessment by the State  
14 Treasurer, such services are determined to be such that they cannot  
15 reasonably be described by written specifications.

16       As used in this section, "State agency" means the principal  
17 departments in the Executive Branch of the State Government, and  
18 any division, board, bureau, office, commission or other  
19 instrumentality within or created by such department; the Legislature  
20 of the State and the Judicial Branch of the State, and any division,  
21 board, bureau, office, commission or other instrumentality within or  
22 created by the Legislative Branch or the Judicial Branch; or any  
23 independent State authority, commission, instrumentality or agency,  
24 but shall not include a county, municipality or school district.

25  
26       9. (New section) A State officer or employee, or special State  
27 officer or employee, of a State agency shall file, in writing, with the  
28 head of the State agency and the Executive Commission on Ethical  
29 Standards, for the period covering five years prior to taking office or  
30 commencing employment to the date of filing, a disclosure statement  
31 detailing any professional relationship with, or interest held in, any  
32 person, firm, association, partnership, corporation or other business  
33 organization, or any subsidiary or related company thereof, or any  
34 personal relationship with a principal officer or director of such entity,  
35 whether by himself or herself or through any partnership, firm or  
36 corporation in which he or she has an interest or through any partner,  
37 officer or employee thereof, if the officer or employee is required or  
38 called upon to conduct any review or investigation, render any ruling,  
39 give any opinion, or work substantially and directly on any cause,  
40 proceeding, application or other matter, at any time during the course  
41 of his or her office or employment, involving a public contract sought  
42 by or awarded to that person, firm, association, partnership,  
43 corporation or other business organization.

44  
45       10. (New section) The Director of the Division of Purchase and  
46 Property shall institute a process whereby vendor challenges to the

1 division's procurement process are investigated and considered by  
2 hearing officers appointed by the director and independent of the  
3 division's procurement process, and are resolved by written final  
4 agency determination of the director. Such challenges shall not be  
5 contested cases subject to the requirements of the "Administrative  
6 Procedure Act," P.L.1968, C.410 (C.52:14B-1 et seq.), and the  
7 regulations promulgated pursuant to that act. A final agency  
8 determination shall be appealable to the Appellate Division of New  
9 Jersey Superior Court.

10

11 11. Section 1 of P.L.1996, c.16, (C.52:34-6.1) is amended to read  
12 as follows:

13 1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et  
14 seq.) to the contrary, the Director of the Division of Purchase and  
15 Property in the Department of the Treasury shall promulgate the  
16 Federal Supply Schedules of the Federal General Services  
17 Administration or schedules from other federal procurement programs  
18 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
19 (C.52:14B-1 et seq.) as an alternate price guide for the purchase of  
20 goods and services for State agencies and for the entities defined in  
21 section 1 of P.L.1959, c.40 (C.52:27B-56.1), subject to the following  
22 conditions:

23 (1) the price of the goods or services being procured is no greater  
24 than the price offered to federal agencies;

25 (2) [the Federal Supply Schedules may be used only for purchases  
26 of up to \$500,000 per year or for one product unit at any price and  
27 only for reprographic equipment or services, including digital copiers,  
28 used by the State] (~~Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_ (now~~  
29 pending before the Legislature as this bill.);

30 (3) the State receives the benefit of federally mandated price  
31 reductions during the term of the contract [and is protected from price  
32 increases during that time]; and

33 (4) the price of the goods or services being procured is no greater  
34 than the price of the same or equivalent goods or services under the  
35 State contract, unless the State determines that because of factors  
36 other than price, selection of a vendor from the Federal Supply  
37 Schedules or schedules from other federal procurement programs  
38 would be more advantageous to the State.

39 (cf: P.L.1999, c.440, s.106.)

40

41 12. Section 7 of P. L.1996, c.16, (C. 52:34-6.2) is amended to read  
42 as follows:

43 7. a. Notwithstanding the provisions of any other law to the  
44 contrary except the provisions of R.S.30:4-95, and as an alternative to  
45 the procedures concerning the awarding of public contracts provided  
46 in P.L.1954, c.48 (C.52:34-6 et seq.), the Director of the Division of

1 Purchase and Property in the Department of the Treasury may enter  
2 into cooperative purchasing agreements with one or more other states,  
3 or political subdivisions thereof, for the purchase of goods and  
4 services. A cooperative purchasing agreement shall allow the  
5 jurisdictions which are parties thereto to standardize and combine their  
6 requirements for the purchase of a particular good or service into a  
7 single contract solicitation which shall be competitively bid and  
8 awarded by one of the jurisdictions on behalf of jurisdictions  
9 participating in the contract.

10 b. The director may elect to purchase goods or services through a  
11 contract awarded pursuant to a cooperative purchasing agreement  
12 whenever the director determines this to be the most cost-effective  
13 method of procurement. Prior to entering into any contract to be  
14 awarded or already awarded through a cooperative purchasing  
15 agreement, the director shall review and approve the specifications and  
16 proposed terms and conditions of the contract.

17 c. The director may solicit bids and award contracts on behalf of  
18 this State and other jurisdictions which are parties to a cooperative  
19 purchasing agreement provided that the agreement specifies that each  
20 jurisdiction participating in a contract is solely responsible for the  
21 payment of the purchase price and cost of purchases made by it under  
22 the terms of any contract awarded pursuant to the agreement.

23 d. The director may promulgate rules and regulations pursuant to  
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
25 seq.), which are necessary to effectuate the purposes of this section.  
26 (cf: P.L.1996, c.16, s.7.)  
27

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

30 7. a. Whenever advertising is required: (a) specifications and  
31 invitations for bids shall permit such full and free competition as is  
32 consistent with the procurement of supplies and services necessary to  
33 meet the requirements of the using agency and shall, wherever  
34 practicable, include such factors as life-cycle costs, sliding percentage  
35 preference scales, or other similar analysis as shall be deemed effective  
36 by the Director of the Division of Purchase and Property, hereinafter  
37 referred to as the director, (b) the advertisement for bids shall be in  
38 such newspaper or newspapers or other medium or media selected by  
39 the State Treasurer as will best give notice thereof to bidders and shall  
40 be sufficiently in advance of the purchase or contract to promote  
41 competitive bidding; (c) the advertisement shall designate the time and  
42 [place] secure location when and where [sealed] proposals, which  
43 may be submitted in electronic or other format designated by the  
44 director, shall be received [and publicly], opened and [read,] publicly  
45 announced, the amount of the cash or certified check, if any, which  
46 must accompany each bid, and such other terms as the State Treasurer

1 may deem proper; (d) notice of revisions or addenda to advertisements  
2 or bid documents relating to bids shall be published in a newspaper or  
3 newspapers [as] or other medium or media selected by the State  
4 Treasurer to [best] give notice to bidders [and sent to the prospective  
5 bidder no later than] at least five days, Saturdays, Sundays and  
6 holidays excepted, prior to the bid due date; (e) failure to advertise for  
7 the receipt of bids or to provide proper notification of revisions or  
8 addenda to advertisements or bid documents related to bids as  
9 prescribed by subsection (d) of this section shall prevent the  
10 acceptance of bids and require the readvertisement for bids; (f) for any  
11 procurement, the State Treasurer or the director may negotiate with  
12 bidders[, after bid opening,] the final terms and conditions of any  
13 procurement, including price; such ability to so negotiate must be  
14 expressly set forth in the applicable invitation to bid and such bids shall  
15 not be publicly accessible until after negotiations have been completed  
16 and the notice of intent to award the contract has been issued; (g)  
17 award shall be made with reasonable promptness, after negotiation  
18 with bidders where authorized, by written or electronic notice to that  
19 responsible bidder whose bid, conforming to the invitation for bids,  
20 will be most advantageous to the State, price and other factors  
21 considered. When negotiations occur pursuant to subparagraph f. of  
22 this section, a written record of the nature and content of the  
23 negotiations, as well as the dates and persons involved, shall become  
24 a public record when the notice of intent to award the contract is  
25 issued.

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

32 This section shall apply to all bids received on and after the date of  
33 enactment of P.L.1999, c.440.

34 b. Whenever by law a State independent authority may negotiate  
35 with bidders, after bid opening, the final terms and conditions of any  
36 procurement, including price, and such ability to so negotiate is  
37 expressly set forth in the applicable invitation to bid, a written record  
38 of the nature and content of the negotiations, as well as the dates and  
39 persons involved, shall not be publicly accessible until after the notice  
40 of intent to award the contract is issued.

41 (cf: P.L.1999, c.440, s.96)

42

43 14. Section 1 of P.L.1986, c.26 (C. 52:34-12.1) is amended to  
44 read as follows:

45 1. a. When awarding contracts pursuant to section 7 of P.L.1954,  
46 c.48 (C.52:34-12), the Director of the Division of Purchase and

1 Property may make awards to multiple bidders, to furnish the same or  
2 similar materials, supplies, services or equipment, where multiple  
3 bidders are necessary:

- 4 (1) to furnish the quantities required by using agencies;  
5 (2) to provide expeditious and cost-efficient local deliveries to  
6 using agencies;  
7 (3) to enable using agencies to purchase materials, supplies,  
8 services or equipment which are compatible with those previously  
9 purchased;  
10 (4) to provide for standardization of equipment, interchangeability  
11 of parts or continuation of services; [or]  
12 (5) to provide using agencies or participants in cooperative  
13 purchasing arrangements with a diversity of product choices to meet  
14 the collective safety, environmental or technological needs of such  
15 agencies or cooperative purchasers; or  
16 (6) when the director determines that multiple bidders are  
17 necessary to serve the State's interests.

18 b. The director may determine whether the anticipated use of a  
19 contract by entities authorized by law to participate in cooperative  
20 purchasing arrangements with the State justifies awarding a contract  
21 to multiple bidders on the basis of any one or more of the criteria set  
22 forth in subsection a. of this section.

23 c. Where multiple contracts have been awarded pursuant to  
24 subsection a. of this section, a using agency shall make purchases from  
25 that contractor whose contract terms and conditions are most  
26 advantageous to the agency, price and other factors considered.

27 d. All purchases made by using agencies under subsection c. of this  
28 section shall be reported to the director, in a manner prescribed by the  
29 director. The report shall include the reasons for selecting a particular  
30 contractor under subsection c. of this section.

31 e. [Any multiple award shall be made only to the number of  
32 contractors necessary to serve the needs of using agencies and  
33 cooperative purchasers for the service, item or group of items that is  
34 the subject of the award. This provision, however, does not limit in  
35 any way the director's discretion to structure an invitation to bid to  
36 encompass more than one service, item or group of items and to award  
37 the number of contracts contemplated by the invitation to bid.]

38 (Deleted by amendment, P.L. , c. (now pending before the  
39 Legislature as this bill).)

40 (cf: P.L.2000, c.74, s.1)

41

42 15. R.S.52:25-23 is amended to read as follows:

43 52:25-23. The Director of the Division of Purchase and Property  
44 may, by written order, delegate purchasing authority to the using  
45 agencies for purchases or contracts not in excess of \$25,000.00;  
46 except that:



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

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

8 c. Records of all purchases made or contracts negotiated under this  
9 section shall be maintained by the using agency and made available for  
10 audit by or under the direction of the Director of the Division of  
11 Purchase and Property and shall include proper proof that the purchase  
12 or contract was made or negotiated competitively, where competition  
13 is practicable.

14 The Director of the Division of Purchase and Property may, by  
15 written order, rescind or reduce the level of purchasing authority  
16 delegated to any using agency determined by the director to have  
17 violated the provisions of the delegated authorization.

18 d. The director may, by written order, delegate purchasing  
19 authority to a specific agency for advertisement of purchases or  
20 contracts not in excess of \$250,000, subject to the requirements set  
21 forth in this section, when the director has determined that such  
22 purchases or contracts are for the procurement of goods or services  
23 which are unique to the operations of that particular using agency and  
24 are not common or similar to goods or services used by other State  
25 agencies and, therefore, are not suitable for leveraging with other  
26 State agency procurements.

27 (cf: P.L.1999, c.440, s.93)

28

29 16. This act shall take effect on the first day of the third month  
30 following enactment.

31

32

33

STATEMENT

34

35 This bill makes various changes to the State contracting process  
36 and requires certain disclosures by State officers and employees  
37 involved in that process. Parts of the bill implement recommendations  
38 made by the State Commission of Investigation (SCI) in its report, "E-  
39 ZPass, The Making of a Procurement Disaster," issued in June 2004.  
40 The remainder of the bill contains initiatives to reform the current  
41 State contracting process.

42 Section 1: The bill requires an officer or employee of a State  
43 agency who communicates with a bidder or potential bidder for a  
44 public contract regarding that contract to keep a written record of  
45 each communication for the term of the contract and at least three  
46 years thereafter.

1 Section 2: The bill permits a State agency that is authorized by law  
2 to engage in the procurement of goods or services, when deemed  
3 appropriate, to issue on the Internet a notice of the agency's intent to  
4 advertise specifications and invitations for bids preliminary to the  
5 awarding of a contract and request information thereto from potential  
6 bidders. The purpose of such notice would be to solicit comments  
7 from potential bidders on the nature and content of the specifications  
8 and to answer such questions as the potential bidders may have prior  
9 to the advertisement for bids. If such a notice is issued, an officer or  
10 employee of the State agency who communicates with a potential  
11 bidder, or any person acting on behalf thereof, must maintain a written  
12 record of each such communication from the date of the issuance of  
13 the notice on the Internet until the date of the advertisement for bids.  
14 It protects certain bid documents from public disclosure until a  
15 contract is awarded.

16 Section 3: The bill requires that when the State, or any board,  
17 commission, committee, authority or agency of the State, is a  
18 contracting agency, the members of any evaluation committee will  
19 have no personal interest, financial or familial, in any of the contract  
20 vendors, or principals thereof, to be evaluated. In addition, the bill  
21 requires one member of any evaluation committee to be a person  
22 proficient in the structuring of the financing of public projects if the  
23 contract includes the structure of the financing of a capital project, or  
24 one member proficient in information technology for public projects  
25 if the contract encompasses a purchase of information technology  
26 goods or services. When the contract is awarded, the names of the  
27 members of any evaluation committee would be made public and the  
28 members names, educational and professional qualifications, and  
29 practical experience, that were the basis for the appointment, would  
30 be reported to the State Treasurer and the Director of Purchase and  
31 Property. In all cases, persons appointed to an evaluation committee  
32 must have the relevant experience necessary to evaluate the project.

33 Section 4: The bill requires the Director of the Division of  
34 Purchase and Property in the Department of Treasury for all contracts  
35 for which the director is responsible, to promulgate regulations  
36 establishing procedures for contract oversight and the monitoring of  
37 contract performance and for complaint resolution process; and to  
38 establish a vendor performance database.

39 Section 5: Under the bill, whenever a governmental entity in this  
40 State is authorized to purchase any goods or services under any  
41 contract or contracts entered into on behalf of the State by the  
42 Division of Purchase and Property in the Department of the Treasury,  
43 the contractor must report periodically to the division the value of the  
44 goods and services purchased by such governmental entities.

45 Section 6: The bill permits the purchase by the State or by a State  
46 agency or local government unit of equipment, goods or services

1 related to homeland security and domestic preparedness, that is paid  
2 for or reimbursed by federal funds awarded by the U.S. Department of  
3 Homeland Security or other federal agency, through the receipt of  
4 public bids or, as an alternative to public bidding and subject to the  
5 provisions of this section, through direct purchase without advertising  
6 for bids or rejecting bids already received but not awarded.

7 The equipment, goods or services purchased by a local government  
8 unit must be referred to in the grant agreement issued by the State  
9 administrative agency administering such funds and must be  
10 authorized by resolution of the governing body of the local  
11 government unit entering into the grant agreement. The resolution  
12 may authorize the contracting agent of the local government unit to  
13 procure the equipment, goods or services, and a copy of the  
14 resolution must be filed with the chief financial officer of the local  
15 government unit, the State administrative agency and the Division of  
16 Local Government Services in the Department of Community Affairs.

17 Purchases made without public bidding must be from vendors that  
18 are either (1) the holders of a current State contract for the equipment,  
19 goods or services sought, or (2) participating in a federal procurement  
20 program established by a federal department or agency, or (3)  
21 approved by the State Treasurer in consultation with the New Jersey  
22 Domestic Security Preparedness Task Force. All homeland security  
23 purchases will continue to be subject to all grant requirements and  
24 conditions approved by the State administrative agency.

25 The Director of the Division of Purchase and Property is authorized  
26 to enter into or participate in purchasing agreements with one or more  
27 other states, or political subdivisions or compact agencies thereof, for  
28 the purchase of such equipment, goods or services to meet the  
29 domestic preparedness and homeland security needs of this State.  
30 Such purchasing agreement may provide for the sharing of costs and  
31 the methods of payments relating to such purchases.

32 Section 7: The bill provides that a State Contract Manager will be  
33 the State employee responsible for the overall management and  
34 administration of a State contract. The State agency using the contract  
35 will designate the State Contract Manager for that contract and inform  
36 the director of its designation, except that the director may designate  
37 the State Contract Manager when the director deems necessary. If the  
38 contract has multiple users, the director may designate the State  
39 Contract Manager for that contract. In general, the State Contract  
40 Manager will be responsible for engaging the contractor, assuring that  
41 purchase orders are issued to the contractor, directing the contractor  
42 to perform the work of the contract, approving the deliverables and  
43 approving payment vouchers. The State Contract Manager will be the  
44 person that the contractor will contact after the contract is executed  
45 for answers to any questions and concerns about any aspect of the  
46 contract. The State Contract Manager will be responsible for

1 coordinating the contract use and resolving minor disputes between  
2 the contractor and the state agency. If the contract has multiple users,  
3 the State Contract Manager will be the central coordinator of the use  
4 of the contract for all using agencies, while other state employees  
5 engage and pay the contractor. All persons and agencies that use the  
6 contract will notify and coordinate the use of the contract with the  
7 State Contract Manager. In addition, the State Contract Manager will:  
8 if he determines that the contractor has failed to perform the  
9 required work and is unable to resolve that failure to perform directly  
10 with the contractor, the State Contract Manager will file a formal  
11 complaint with the contract compliance unit in the Division of  
12 Purchase and Property and request that unit to assist in the resolution  
13 of the contract performance problem with the contractor;  
14 be responsible for arranging for contract extensions and preparing  
15 any re-procurement of the contract with the Purchase Bureau;  
16 be responsible for obtaining permission from the director to reduce  
17 the scope of work, amend the contract or add work or special projects  
18 to the contract after contract award;  
19 be responsible for completion of the project performance  
20 assessment form for submission to the division, with a copy to the  
21 Office of Management and Budget (OMB); and  
22 be responsible for submitting the Contractor final deliverables to the  
23 Associate Director of OMB.

24 Any contract user that is unable to resolve disputes with a  
25 contractor will refer those disputes to the State Contract Manager for  
26 resolution. Any questions related to performance of the work of the  
27 contract by contract users will be directed to the State Contract  
28 Manager. The contractor may contact the State Contract Manager if  
29 the contractor cannot resolve a dispute with contract users.

30 Section 8: This bill defines "professional services" for the purposes  
31 of contracts awarded by the State or any independent State authority,  
32 commission, instrumentality or agency. The term is not now defined  
33 in State law. The definition in this bill for "professional services" is  
34 substantially similar to the one in the Local Public Contracts Law  
35 (N.J.S.A.40A:11-1 et seq.), County College Contracts Law  
36 (N.J.S.A.18A:64A-25.1 et seq.), Public School Contracts Law  
37 (N.J.S.A.18A:18A-1 et seq.), and the State College Contracts Law  
38 (N.J.S.A.18A:64-52 et seq.), but also includes "extraordinary  
39 unspecifiable services" which are services that cannot reasonably be  
40 described by written specifications after assessment and evaluation by  
41 the State Treasurer.

42 The bill provides that contracts for professional services will be  
43 only for services rendered or performed by a person authorized by law  
44 to practice a recognized profession and whose practice is regulated by  
45 law or the performance of which services requires knowledge of an  
46 advanced type in a field of learning acquired by a prolonged formal

1 course of specialized instruction and study as distinguished from  
2 general academic instruction or apprenticeship and training.  
3 Professional services contracts also will include those for services  
4 rendered in the provision of goods or performance of services that are  
5 original and creative in character in a recognized field of artistic  
6 endeavor.

7 Section 9: The bill requires a State officer or employee, or a  
8 special State officer or employee, of a State agency to file, in writing,  
9 with the head of the State agency and the Executive Commission on  
10 Ethical Standards, for the period covering five years prior to taking  
11 office or commencing employment to the date of filing, a disclosure  
12 statement detailing any professional relationship with, or interest held  
13 in, any person, firm, association, partnership, corporation or other  
14 business organization, or any subsidiary or related company thereof,  
15 or any personal relationship with a principal officer or director of such  
16 entity, whether by himself or herself or through any partnership, firm  
17 or corporation in which he or she has an interest or through any  
18 partner, officer or employee thereof, if the officer or employee is  
19 required or called upon to conduct any review or investigation, render  
20 any ruling, give any opinion, or work substantially and directly on any  
21 cause, proceeding, application or other matter, at any time during the  
22 course of his or her office or employment, involving a public contract  
23 sought by or awarded to that person, firm, association, partnership,  
24 corporation or other business organization.

25 Section 10: The bill requires that the Director of the Division of  
26 Purchase and Property institute a process whereby vendor challenges  
27 to the division's procurement process are investigated and considered  
28 by hearing officers appointed by the director and independent of the  
29 division's procurement process, and are resolved by written final  
30 agency determination by the director. A final agency determination  
31 would be appealable to the Appellate Division of New Jersey Superior  
32 Court.

33 Section 11: The bill amends N.J.S.A.52:34-6.1. At present, the  
34 law authorizes the Director of the Division of Purchase and Property  
35 to use federal supply schedules of the federal General Services  
36 Administration as an alternate price guide for the purchase of goods  
37 and services by State agencies and other participating public entities.  
38 The bill would authorize the director to use schedules from other  
39 federal procurement programs. This would give public agencies a  
40 wider choice of vendors and options regarding the purchase goods and  
41 services and should result in lower costs. The bill also eliminates caps  
42 on the value of certain purchases that may be made using federal  
43 supply schedules and an unenforceable provision regarding price  
44 increases during the term of a contract.

45 Section 12: The bill amends N.J.S.A.52:34-6.2. It would authorize  
46 the Director of the Division of Purchase and Property to participate in

1 contracts already awarded by other states or cooperative purchasing  
2 groups. This will increase the State's range of purchasing options and  
3 enable the State to realize cost savings by eliminating the need for a  
4 separate bidding process for goods and services that have already been  
5 competitively bid by other states with similar interests and fiscal  
6 restraints.

7 Section 13: The bill amends N.J.S.A.52:34-12 to allow bid  
8 advertisements to be disseminated in any media or medium, in addition  
9 to newspapers, and to provide that bid information shall not become  
10 public until after a notice of intent is issued.

11 Section 14: The bill amends N.J.S.A.52:34-12.1. It clarifies the  
12 director's authority to award contracts to multiple bidders when  
13 necessary to serve the State's interest and eliminates certain  
14 restrictions on that authority.

15 Section 15: The bill amends N.J.S.A.52:25-23. It authorizes the  
16 director to delegate purchasing authority to an agency for a specific  
17 contract not in excess of \$250,000 under certain circumstances. This  
18 will remove small, inefficient procurements from the centralized  
19 procurement function and places responsibility at the agency level.

20 Section 16: This section provides that the bill will take effect on  
21 the first day of the third month after enactment.

# ASSEMBLY STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3821**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 19, 2005

The Assembly State Government Committee reports favorably and with committee amendments Assembly, No. 3821.

This bill makes various changes to the State contracting process and requires certain disclosures by State officers and employees involved in that process. Parts of the bill implement recommendations made by the State Commission of Investigation (SCI) in its report, "E-ZPass, The Making of a Procurement Disaster," issued in June 2004. The remainder of the bill contains initiatives to reform the current State contracting process.

As amended, the bill:

- C Requires an officer or employee of a State agency who communicates with a bidder or potential bidder for a public contract regarding that contract to keep a written record of each communication for the term of the contract and at least three years thereafter.
- C Permits a State agency that is authorized by law to engage in the procurement of goods or services, when deemed appropriate, to issue on the Internet a notice of the agency's intent to advertise specifications and invitations for bids preliminary to the awarding of a contract and request information thereto from potential bidders. If such a notice is issued, an officer or employee of the State agency who communicates with a potential bidder, or any person acting on behalf thereof, must maintain a written record of each such communication from the date of the issuance of the notice on the Internet until the date of the advertisement for bids. Certain bid documents are protected from public disclosure until a contract is awarded.
- C Requires that when a State is a contracting agency, the members of any evaluation committee will have no personal interest, financial or familial, in any of the contract vendors, or principals thereof, to be evaluated. One member of any evaluation committee will be a person proficient in the structuring of the financing of public projects if the contract includes the structure of the financing of a capital project, or one member proficient in

information technology for public projects if the contract encompasses a purchase of information technology goods or services. When the contract is awarded, the names of the members of any evaluation committee would be made public and the members names, qualifications, and practical experience will be reported to the State Treasurer and the Director of Purchase and Property. In all cases, persons appointed to an evaluation committee must have the relevant experience necessary to evaluate the project.

- C Requires the Director of the Division of Purchase and Property in the Department of Treasury for all contracts for which the director is responsible, to promulgate regulations establishing procedures for contract oversight and the monitoring of contract performance and for complaint resolution process; and to establish a vendor performance database.
- C Requires that whenever a governmental entity in this State is authorized to purchase any goods or services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property, the contractor must report periodically to the division the value of the goods and services purchased by such governmental entities.
- C Permits the purchase by the State or by a State agency or local government unit of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, through the receipt of public bids or, as an alternative to public bidding and subject to the provisions of this section, through direct purchase without advertising for bids or rejecting bids already received but not awarded. The equipment, goods or services purchased by a local government unit must be referred to in the grant agreement issued by the State administrative agency administering such funds and must be authorized by resolution of the governing body of the local government unit entering into the grant agreement. The resolution may authorize the contracting agent of the local government unit to procure the equipment, goods or services, and a copy of the resolution must be filed with the chief financial officer of the local government unit, the State administrative agency and the Division of Local Government Services in the Department of Community Affairs. Purchases made without public bidding must be from vendors that are either (1) the holders of a current State contract for the equipment, goods or services sought, or (2) participating in a federal procurement program established by a federal department or agency, or (3) approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All homeland security purchases will continue to be subject to all grant requirements and conditions approved by the State administrative agency.



- C Authorizes the Director of the Division of Purchase and Property to enter into or participate in purchasing agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services to meet the domestic preparedness and homeland security needs of this State. Provides that a State Contract Manager will be the State employee responsible for the overall management and administration of a State contract. The State agency using the contract will designate the State Contract Manager for that contract and inform the director of its designation, except that the director may designate the State Contract Manager when the director deems necessary. If the contract has multiple users, the director may designate the State Contract Manager for that contract. In general, the State Contract Manager will be responsible for engaging the contractor, assuring that purchase orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager will be the person that the contractor will contact after the contract is executed for answers to any questions and concerns about any aspect of the contract. The State Contract Manager will be responsible for coordinating the contract use and resolving minor disputes between the contractor and the state agency. If the contract has multiple users, the State Contract Manager will be the central coordinator of the use of the contract for all using agencies, while other state employees engage and pay the contractor.
- C Defines "professional services" for the purposes of contracts awarded by the State or any independent State authority, commission, instrumentality or agency. The term is not now defined in State law. The definition in this bill for "professional services" is substantially similar to the one in the Local Public Contracts Law, the County College Contracts Law, the Public School Contracts Law, and the State College Contracts Law, but also includes "extraordinary unspecifiable services" which are services that cannot reasonably be described by written specifications after assessment and evaluation by the State Treasurer.
- C Provides that contracts for professional services will be only for services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services contracts also will include those for services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor.

- C Requires a State officer or employee, or a special State officer or employee of a State agency to file with the head of the State agency and the Executive Commission on Ethical Standards, for the period covering five years prior to taking office or commencing employment to the date of filing, a disclosure statement in a form to be determined by the Executive Commission on Ethical Standards.
- C Requires that the Director of the Division of Purchase and Property institute a process whereby vendor challenges to the division's procurement process are investigated and considered by hearing officers appointed by the director and independent of the division's procurement process, and are resolved by written final agency determination by the director. A final agency determination would be appealable to the Appellate Division of New Jersey Superior Court.
- C Authorizes the Director of the Division of Purchase and Property to use federal supply schedules from federal procurement programs other than the federal General Services Administration as an alternate price guide for the purchase of goods and services by State agencies and other participating public entities. Caps on the value of certain purchases that may be made using federal supply schedules are eliminated.
- C Authorizes the Director of the Division of Purchase and Property to participate in contracts already awarded by other states or cooperative purchasing groups.
- C Allows bid advertisements to be disseminated in a newspaper or newspapers or any other medium or media, and provides that bid information would not become public until after a notice of intent is issued.
- C Clarifies the director's authority to award contracts to multiple bidders when necessary to serve the State's interest and eliminates certain restrictions on that authority.
- C Authorizes the director to delegate purchasing authority to an agency for a specific contract not in excess of \$250,000 under certain circumstances, removing small, inefficient procurements from the centralized procurement function and places responsibility at the agency level.
- C Provides that each Contract Manager will compare all of the bidders, subbidders and related businesses with all of the businesses related directly or indirectly to the employees who may be involved in the procurement process. The State Treasurer or designee will identify the legal names, trade style names, physical address, and mailing address for each business on each State employee's disclosure form and also identify the legal names, trade style names, physical address, and mailing address for all businesses in the same legal family tree as each business on each employees form. The State Treasurer or designee will identify the legal names, trade style names, physical address, and mailing

address of : (1) each prime bidder; (2) all businesses in the same legal family tree as the prime bidder; (3) each subbidder; and (4) all businesses in the same legal family tree as the subbidder.

- C Requires that each prime bidder and subbidder will provide a report on the bidding and subbidding companies, which the contract manager will use in the evaluation of the bidders. The Director of the Division of Purchase and Property will identify, at the director's sole discretion, in the bid instructions the company or companies which the director has designated as being able to provide standardized, comprehensive information in the form of a report for this evaluation process and the method for delivery of such reports from independent third-party providers of such reports.

The bill will take effect on the first day of the third month after enactment.

Assembly, No. 3821 (1R) is the same as Senate, No. 2194 (2R).

#### COMMITTEE AMENDMENTS

The committee amended the bill to (1) clarify application of the bill's provisions to the various agencies of State government; (2) exclude proprietary information from required contractor reports on value of goods and services purchased; (3) permit the purchase of goods or services through a contract awarded pursuant to a nationally recognized and accepted cooperative purchasing agreement; (4) provide for a limitation of liability of the value of an information technology contract determined by the Director of the Division of Purchase and Property; (5) delete specifics of information to be filed by State officers and employees and provide that filing will be in a form determined by the Executive Commission on Ethical Standards; and (6) provide for detailed identification information on bidders and subbidders.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 3821**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 29, 2005

The Assembly Budget Committee reports favorably Assembly Bill No. 3821 (1R), with committee amendments.

Assembly Bill No. 3821 (1R), as amended, makes various changes to the State contracting process and requires certain disclosures by State officers and employees involved in that process. Parts of the bill implement recommendations made by the State Commission of Investigation in its report, "E-ZPass, The Making of a Procurement Disaster," issued in June 2004. The remainder of the bill contains initiatives to reform the current State contracting process.

As amended, the bill:

- C Requires an officer or employee of a State agency who communicates with a bidder or potential bidder for a public contract regarding that contract to keep a written record of each communication for the term of the contract and at least three years thereafter.
- C Permits a State agency that is authorized by law to engage in the procurement of goods or services, when deemed appropriate, to issue on the Internet a notice of the agency's intent to advertise specifications and invitations for bids preliminary to the awarding of a contract and request information thereto from potential bidders. If such a notice is issued, an officer or employee of the State agency who communicates with a potential bidder, or any person acting on behalf thereof, must maintain a written record of each such communication from the date of the issuance of the notice on the Internet until the date of the advertisement for bids. Certain bid documents are protected from public disclosure until a contract is awarded.
- C Requires that when a State is a contracting agency, the members of any evaluation committee will have no personal interest, financial or familial, in any of the contract vendors, or principals thereof, to be evaluated. One member of any evaluation committee will be a person proficient in the structuring of the financing of public projects if the contract includes the structure of

the financing of a capital project, or one member proficient in information technology for public projects if the contract encompasses a purchase of information technology goods or services. When the contract is awarded, the names of the members of any evaluation committee would be made public and the members names, qualifications, and practical experience will be reported to the State Treasurer and the Director of Purchase and Property. In all cases, persons appointed to an evaluation committee must have the relevant experience necessary to evaluate the project.

- C Requires the Director of the Division of Purchase and Property in the Department of Treasury for all contracts for which the director is responsible, to promulgate regulations establishing procedures for contract oversight and the monitoring of contract performance and for complaint resolution process; and to establish a vendor performance database.
- C Requires that whenever a governmental entity in this State is authorized to purchase any goods or services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property, the contractor must report periodically to the division the value of the goods and services purchased by such governmental entities.
- C Permits the purchase by the State or by a State agency or local government unit of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, through the receipt of public bids or, as an alternative to public bidding and subject to the provisions of this section, through direct purchase without advertising for bids or rejecting bids already received but not awarded. The equipment, goods or services purchased by a local government unit must be referred to in the grant agreement issued by the State administrative agency administering such funds and must be authorized by resolution of the governing body of the local government unit entering into the grant agreement. The resolution may authorize the contracting agent of the local government unit to procure the equipment, goods or services, and a copy of the resolution must be filed with the chief financial officer of the local government unit, the State administrative agency and the Division of Local Government Services in the Department of Community Affairs. Purchases made without public bidding must be from vendors that are either (1) the holders of a current State contract for the equipment, goods or services sought, or (2) participating in a federal procurement program established by a federal department or agency, or (3) approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All homeland security purchases will continue to be subject to all grant requirements and conditions

approved by the State administrative agency.

- C Authorizes the Director of the Division of Purchase and Property to enter into or participate in purchasing agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services to meet the domestic preparedness and homeland security needs of this State. Provides that a State Contract Manager will be the State employee responsible for the overall management and administration of a State contract. The State agency using the contract will designate the State Contract Manager for that contract and inform the director of its designation, except that the director may designate the State Contract Manager when the director deems necessary. If the contract has multiple users, the director may designate the State Contract Manager for that contract. In general, the State Contract Manager will be responsible for engaging the contractor, assuring that purchase orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager will be the person that the contractor will contact after the contract is executed for answers to any questions and concerns about any aspect of the contract. The State Contract Manager will be responsible for coordinating the contract use and resolving minor disputes between the contractor and the state agency. If the contract has multiple users, the State Contract Manager will be the central coordinator of the use of the contract for all using agencies, while other state employees engage and pay the contractor.
- C Defines "professional services" for the purposes of contracts awarded by the State or any independent State authority, commission, instrumentality or agency. The term is not now defined in State law. The definition in this bill for "professional services" is substantially similar to the one in the Local Public Contracts Law, the County College Contracts Law, the Public School Contracts Law, and the State College Contracts Law, but also includes "extraordinary unspecifiable services" which are services that cannot reasonably be described by written specifications after assessment and evaluation by the State Treasurer.
- C Provides that contracts for professional services will be only for services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services contracts also will include those for services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of

artistic endeavor.

- C Requires a State officer or employee, or a special State officer or employee of a State agency to file with the head of the State agency and the Executive Commission on Ethical Standards, for the period covering five years prior to taking office or commencing employment to the date of filing, a disclosure statement in a form to be determined by the Executive Commission on Ethical Standards.
- C Requires that the Director of the Division of Purchase and Property institute a process whereby vendor challenges to the division's procurement process are investigated and considered by hearing officers appointed by the director and independent of the division's procurement process, and are resolved by written final agency determination by the director. A final agency determination would be appealable to the Appellate Division of New Jersey Superior Court.
- C Authorizes the Director of the Division of Purchase and Property to use federal supply schedules from federal procurement programs other than the federal General Services Administration as an alternate price guide for the purchase of goods and services by State agencies and other participating public entities. Caps on the value of certain purchases that may be made using federal supply schedules are eliminated.
- C Authorizes the Director of the Division of Purchase and Property to participate in contracts already awarded by other states or cooperative purchasing groups.
- C Allows bid advertisements to be disseminated in a newspaper or newspapers or any other medium or media, and provides that bid information would not become public until after a notice of intent is issued.
- C Clarifies the director's authority to award contracts to multiple bidders when necessary to serve the State's interest and eliminates certain restrictions on that authority.
- C Authorizes the director to delegate purchasing authority to an agency for a specific contract not in excess of \$250,000 under certain circumstances, removing small, inefficient procurements from the centralized procurement function and places responsibility at the agency level.

The bill will take effect on the first day of the third month after enactment.

As amended and reported by the committee, this bill is identical to Senate, No. 2194 (2R) as also amended and reported by the committee.

**FISCAL IMPACT:**

This bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments eliminate provisions in the bill that would have: limited a vendor's liability in connection with an information technology contract to the value of the contract; required bidders to disclose certain business information; and imposed certain requirements in regard to State employees involved in the procurement process.



**SENATE BILL NO. 2194**  
**(Third Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2194 (Third Reprint) with my recommendations for reconsideration.

**A. Summary of Bill**

This bill would make various changes to the statutes that govern the State contracting process, and would require certain disclosures by State officers and employees involved in that process. These changes respond, in substantial part, to recommendations made by the State Commission of Investigation in its report, "E-ZPass, The Making of a Procurement Disaster," issued in June 2004. The bill also includes other initiatives to reform the current State contracting process in order to maximize transparency, efficiency and accountability.

For example, the bill provides for the designation of a contract manager for each State contract who will be responsible for the overall management and administration of that contract, requires the maintenance of certain records concerning communications between bidders and potential bidders for public contracts and officers or employees of the State, requires the Division of Purchase and Property in the Department of the Treasury to institute a process whereby vendor challenges to the division's procurement process are investigated and considered by independent hearing officers, authorizes the use of federal supply schedules from federal procurement programs other than the federal General Services Administration as an alternate price guide for the purchase of goods and services by State agencies and other participating public agencies, and clarifies the authority of the director of the Division of Purchase and Property to award contracts to multiple bidders when necessary to serve the State's interests.

**B. Recommended Action**

I commend the sponsors of this bill for their efforts intended to update and enhance the laws governing the State contracting process. This bill represents an important step forward that will help to restore public confidence in the State contracting process and ensure that procurement debacles such as E-ZPass never occur again. I am concerned, however, about the provisions of this bill that would eliminate the current requirements that bid advertisements be disseminated in a newspaper or newspapers. Newspaper publication represents an accepted and effective means of communicating advertisements for bids to a broad spectrum of the public at large. While advertising in alternate media such as the Internet is an important tool that should be utilized by the State Treasurer, such advertising should be a supplement, not a replacement, for traditional newspaper advertising.

As a result of the above considerations, I recommend that the bill be amended to require that advertisements for bids shall be in such newspaper or newspapers, and other medium or media, selected by the State Treasurer as will best give notice to potential bidders. Accordingly, I herewith return Senate Bill No. 2194 (Third Reprint) and recommend that it be amended as follows:

Page 9, Section 14, Line 39: After "newspapers" delete "or" and insert "and"

Page 10, Section 14, Line 4: After "newspapers" delete "or" and insert "and"

Respectfully,

/s/ Richard J. Codey

Acting Governor

[seal]

Attest:

/s/ Paul T. Fader  
Chief Counsel to the Governor