

# ASSEMBLY, No. 4181

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 27, 2011

**Sponsored by:**

**Assemblywoman CAROLINE CASAGRANDE**

**District 12 (Mercer and Monmouth)**

**SYNOPSIS**

Establishes public bidding and contracting procedures for Rutgers, the State University that mirror those in place for the State colleges.

**CURRENT VERSION OF TEXT**

As introduced.



1    **AN ACT** concerning public contracting and supplementing chapter  
2       65 of Title 18A of the New Jersey Statutes.

3  
4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6  
7       1. This act shall be known and may be cited as the "Rutgers the  
8       State University Contracts Law."

9  
10      2. As used in this act, unless the context otherwise indicates:  
11       "Board of governors" means the board of governors of Rutgers,  
12       the State University.

13       "Contracting agent" means the business officer of Rutgers, the  
14       State University having the power to prepare advertisements, to  
15       advertise for and receive bids, and to make awards for the  
16       university in connection with the purchases, contracts or agreements  
17       permitted by this act or the officer, committee or employee to whom  
18       the power has been delegated by the university.

19       "Contracts" means contracts or agreements for the performance  
20       of work or the furnishing or hiring of services, materials or  
21       supplies, as distinguished from contracts of employment.

22       "Legal newspaper" means a newspaper circulating in this State  
23       which has been printed and published in the English language at  
24       least once a week for at least one year continuously.

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

28       "Extraordinary unspecifiable services" means services or  
29       products which cannot be reasonably described by written  
30       specifications.

31       "Professional services" means services rendered or performed by  
32       a person authorized by law to practice a recognized profession and  
33       whose practice is regulated by law and the performance of which  
34       services requires knowledge of an advanced type in a field of  
35       learning acquired by a prolonged formal course of specialized  
36       instruction and study as distinguished from general academic  
37       instruction or apprenticeship and training. Professional services  
38       also means services rendered in the performance of work that is  
39       original and creative in character in a recognized field of artistic  
40       endeavor.

41       "Project" means any work, undertaking, construction or  
42       alteration.

43       "Purchases" are transactions, for a valuable consideration,  
44       creating or acquiring an interest in goods, services and property  
45       except real property or any interest therein.

46       "Work" includes services and any other activity of a tangible or  
47       intangible nature performed or assumed pursuant to a contract or  
48       agreement with the university.

1 "Information technology" means telecommunication goods and  
2 services, including, but not limited to, software, hardware and  
3 systems implementation and support for voice, data and video.  
4

5 3. a. Any purchase, contract or agreement for the performance  
6 of any work or the furnishing or hiring of materials or supplies, the  
7 cost or price of which, together with any sums expended for the  
8 performance of any work or services in connection with the same  
9 project or the furnishing of similar materials or supplies during the  
10 same fiscal year, paid with or out of university funds, does not  
11 exceed the total sum of \$30,100 or, commencing January 1, 2011,  
12 the amount determined pursuant to subsection b. of this section, in  
13 any fiscal year may be made, negotiated and awarded by a  
14 contracting agent, when so authorized by resolution of the board of  
15 governors without public advertising for bids and bidding therefor.

16 b. Commencing January 1, 2011 and every two years  
17 thereafter, the Governor, in consultation with the Department of the  
18 Treasury, shall adjust the threshold amount set forth in subsection a.  
19 of this section in direct proportion to the rise or fall of the  
20 Consumer Price Index for all urban consumers in the New York and  
21 Northeastern New Jersey and the Philadelphia areas, as reported by  
22 the United States Department of Labor. The adjustment shall  
23 become effective on July 1 of the year in which it is reported.

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

29 4. Every contract or agreement for the performance of any  
30 work or the furnishing or hiring of any materials or supplies, the  
31 cost or the contract price of which is to be paid with or out of  
32 university funds, not included within the terms of section 3 of this  
33 act, shall be made and awarded only by the university after public  
34 advertising for bids and bidding therefor, except as provided  
35 otherwise in this act or specifically by any other law. No work,  
36 materials or supplies shall be undertaken, acquired or furnished for  
37 a sum exceeding in the aggregate \$30,100 or, commencing January  
38 1, 2011, the amount determined pursuant to subsection b. of section  
39 3 of this act, except by written contract or agreement.  
40

41 5. Any purchase, contract or agreement of the character  
42 described in section 4 of this act may be made, negotiated or  
43 awarded by the university by resolution at a public meeting of its  
44 board of governors without public advertising for bids or bidding  
45 therefor if:

46 a. The subject matter thereof consists of:

47 (1) Professional services; or

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

- 1 obligations to the university, including but not limited to, the  
2 amounts due on tuition and fees and room and board; or  
3 (15) Professional consulting services; or  
4 (16) Entertainment, including without limitation theatrical  
5 presentations, band and other concerts, movies and other  
6 audiovisual productions; or  
7 (17) Contracts employing funds created by student activities  
8 fees charged to students or otherwise raised by students and  
9 expended by student organizations; or  
10 (18) Printing, including without limitation catalogs, yearbooks  
11 and course announcements and the production and reproduction of  
12 such material in electronic and digital formats, including compact  
13 discs; or  
14 (19) Information technology; or  
15 (20) Personnel recruitment and advertising, including without  
16 limitation advertising seeking student enrollment; or  
17 (21) Educational supplies, books, articles of clothing and other  
18 miscellaneous articles purchased by the university for resale to  
19 university students and employees; or  
20 (22) Purchase or rental of graduation caps and gowns and award  
21 certificates or plaques; or  
22 (23) Items available from vendors at costs below State contract  
23 pricing for the same product or service, which meets or exceeds the  
24 State contract terms or conditions; or  
25 (24) Management contracts for bookstores, performing arts  
26 centers, residence halls, parking facilities and building operations;  
27 or  
28 (25) Consulting services involving information technology,  
29 curricular or programmatic review, fund raising, transportation,  
30 safety or security; or  
31 (26) Construction management services for construction,  
32 alteration or repair of any building or improvement; or  
33 (27) Purchase or rental of equipment of a technical nature when  
34 the procurement thereof without advertising is necessary in order to  
35 assure standardization of equipment and interchangeability of parts  
36 in the public interest.
- 37 b. It is to be made or entered into with the United States of  
38 America, the State of New Jersey, a county or municipality or any  
39 board, body, or officer, agency or authority or any other state or  
40 subdivision thereof.
- 41 c. The university has advertised for bids pursuant to section 4  
42 of this act on two occasions and (i) has received no bids on both  
43 occasions in response to its advertisement, or (ii) has rejected the  
44 bids on two occasions because the university has determined that  
45 they are not reasonable as to price, on the basis of cost estimates  
46 prepared for or by the university prior to the advertising therefor, or  
47 have not been independently arrived at in open competition, or (iii)  
48 on one occasion no bids were received pursuant to (i) and on one

1 occasion all bids were rejected pursuant to (ii), in whatever  
2 sequence; any contract or agreement may then be negotiated by a  
3 two-thirds affirmative vote of the authorized membership of the  
4 board of governors authorizing the contract or agreement; provided  
5 that:

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

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

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

37  
38 6. Any purchase, contract, or agreement may be made,  
39 negotiated or awarded by the university without public advertising  
40 for bids and bidding therefor, notwithstanding that the cost or  
41 contract price will exceed \$30,100 or, commencing January 1,  
42 2011, the amount determined pursuant to subsection b. of section 3  
43 of this act, when an emergency affecting the health, safety or  
44 welfare of occupants of university property requires the immediate  
45 delivery of the materials or supplies or the performance of the work,  
46 if the purchases, contracts or agreements are awarded or made in  
47 the following manner:

1       a. A written requisition for the performance of the work or the  
2       furnishing of materials or supplies, certified by the employee in  
3       charge of the building, facility or equipment where the emergency  
4       occurred, is filed with the contracting agent or his deputy in charge  
5       describing the nature of the emergency, the time of its occurrence,  
6       and the need for invoking this section. The contracting agent, or his  
7       deputy in charge, being satisfied that the emergency exists, is  
8       authorized to award a contract for the work, materials or supplies.

9       b. Upon the furnishing of the work, materials or supplies in  
10      accordance with the terms of the contract or agreement, the  
11      contractor furnishing the work, materials or supplies is entitled to  
12      be paid therefor and the university is obligated for the payment.

13      c. The board of governors may prescribe rules and procedures  
14      to implement the requirements of this section.

15  
16      7. No purchase, contract or agreement which is single in  
17      character or which necessarily or by reason of the quantities  
18      required to effectuate the purpose of the purchase, contract or  
19      agreement includes the furnishing of additional services or  
20      equipment or buying materials or supplies or the doing of additional  
21      work, shall be subdivided so as to bring it or any of the parts thereof  
22      under the maximum price or cost limitation set forth in this act, thus  
23      dispensing with the requirement of public advertising and bidding  
24      therefor. Where the doing of any work is included in or incident to  
25      the performance or completion of any project which is single in  
26      character or inclusive of the furnishing of additional work, materials  
27      or supplies or which requires the furnishing of more than one article  
28      of materials or supplies, all of the work, materials or supplies  
29      requisite for the completion of the project shall be included in one  
30      purchase, contract or agreement.

31  
32      8. Except as provided in this act, the university shall, on an  
33      annual basis or at such lesser intervals as may be fixed by it, solicit  
34      by public advertisement the submission of bids for the furnishing of  
35      all work, materials and supplies which can be purchased or agreed  
36      or contracted to be furnished only after public advertising for bids  
37      and bidding therefor.

38  
39      9. a. The university, without advertising for bids, or after  
40      having rejected all bids obtained pursuant to advertising therefor,  
41      may purchase any materials, supplies, goods, services or equipment  
42      pursuant to a contract or contracts for those materials, supplies,  
43      goods, services or equipment entered into on behalf of the State by  
44      the Division of Purchase and Property or any municipality or county  
45      in this State.

46      b. The university may also use, without advertising for bids, or  
47      having rejected all bids obtained pursuant to advertising, the  
48      Federal Supply Schedules of the General Services Administration or

1 schedules from other federal procurement programs subject to the  
2 following conditions:

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

5 (2) the university receives the benefit of federally mandated  
6 price reductions during the term of the contract and is protected  
7 from price increases during that time; and

8 (3) the price of the goods or services being procured is no  
9 greater than the price of the same or equivalent goods or services  
10 under any State contract, unless the university determines that  
11 because of factors other than price, selection of a vendor from the  
12 Federal Supply Schedules would be more advantageous to the  
13 university.

14 c. Whenever a purchase is made pursuant to this section, the  
15 university shall place its order with the vendor offering the lowest  
16 price, including delivery charges, that best meets the requirements  
17 of the university. Prior to placing such an order, the university shall  
18 document with specificity that the materials, supplies, goods,  
19 services or equipment selected best meet the requirements of the  
20 university.

21

22 10. The board of governors may enter into joint purchasing  
23 agreements for the purchasing of work, materials, or supplies with  
24 other units of State or local government and with State colleges and  
25 with other public research universities.

26

27 11. a. Joint agreements shall set forth the categories of work,  
28 materials or supplies to be purchased, the manner of advertising for  
29 bids and of awarding of contracts, the method of payment by each  
30 participant and other matters deemed necessary to carry out the  
31 purposes of the agreement.

32 b. Funds for each participant's share of expenditures for  
33 purchases under any joint agreement shall be appropriated and paid  
34 in the manner set forth in the agreement and in the same manner as  
35 appropriations are made for other expenses of the participant.

36

37 12. Joint purchases and all agreements pertaining thereto shall  
38 be subject to all provisions of law.

39

40 13. All specifications for any purchase, contract or agreement  
41 governed by this act shall be drafted in a manner to encourage free,  
42 open and competitive bidding. In particular, no specifications  
43 under this act may:

44 a. Require a standard, restriction, condition or limitation not  
45 directly related to the purpose, function or activity for which the  
46 purchase, contract or agreement is made; or

47 b. Require that any bidder be a resident of, or that his place of  
48 business be located in, the county in which the purchase will be



- 1 made or the contract or agreement performed, unless the physical  
2 proximity of the bidder is requisite to the efficient and economical  
3 purchase or performance of the contract or agreement; or  
4 c. Discriminate on the basis of race, religion, sex or national  
5 origin; or  
6 d. Require with regard to any purchase, contract or agreement  
7 the furnishing of any "brand name," although specifications may in  
8 all cases require "brand name or equivalent," nor shall materials or  
9 supplies which are patented or copyrighted be specified unless the  
10 resolution authorizing the purchase, contract or agreement sets forth  
11 the manner in which the special need for the patented or  
12 copyrighted materials or supplies is directly related to the  
13 performance or purpose for which the purchase, contract or  
14 agreement is made; or  
15 e. Fail to include any option for renewal, extension or release  
16 which the university may intend to exercise or require; or  
17 f. Fail to include any terms and conditions necessary for the  
18 performance of any extra work; or  
19 g. Fail to disclose any matter necessary to the substantial  
20 performance of the contract or agreement.  
21 Any specification adopted by the university which knowingly  
22 excludes prospective bidders by reason of the impossibility of  
23 performance, bidding or qualification by any but one bidder, except  
24 as provided herein, shall be null and void and of no effect, and the  
25 purchase, contract or agreement shall be readvertised, and the  
26 original purchase, contract or agreement shall be set aside by the  
27 board of governors.  
28  
29 14. a. All advertisements for bids shall be published in a legal  
30 newspaper sufficiently in advance of the date fixed for receiving the  
31 bids to promote competitive bidding but in no event less than 10  
32 days prior to that date for any construction projects or any other  
33 contract or purchase. In addition to being published in a legal  
34 newspaper, advertisements may also be posted using electronic data  
35 or media services, including the internet. The advertisement shall  
36 designate the manner of submitting and of receiving the bids and  
37 the time and place at which the bids will be received. If the  
38 published specifications provide for receipt of bids by mail, those  
39 bids which are mailed to the university shall be sealed and shall be  
40 opened only at such time and place as all bids received are unsealed  
41 and announced. At that time and place, the contracting agent of the  
42 university shall publicly receive the bids and thereupon  
43 immediately proceed to unseal them and publicly announce the  
44 contents, which announcement shall be made in the presence of any  
45 parties bidding or their agents who are then and there present. A  
46 proper record of the prices and terms shall be made. No bids shall  
47 be received after the time designated in the advertisement.

1       b. Notice of revisions or addenda to advertisements or bid  
2 documents relating to bids shall be published in a legal newspaper  
3 or newspapers no later than seven days, Saturdays, Sundays and  
4 holidays excepted, prior to the bid due date. The notice shall be  
5 provided to any person who has submitted a bid or who has  
6 received a bid package, in one of the following ways: (a) in writing  
7 by certified mail or (b) by certified facsimile transmission, meaning  
8 that the sender's facsimile machine produces a receipt showing date  
9 and time of transmission and that the transmission was successful or  
10 (c) by a delivery service that provides certification of delivery to the  
11 sender. Failure to advertise or provide proper notification of  
12 revisions or addenda to advertisements or bid documents related to  
13 bids as prescribed by this section shall prevent the acceptance of  
14 bids and require the readvertisement for bids.

15       Failure to obtain a receipt when good faith notice is sent or  
16 delivered to the address or telephone facsimile number on file with  
17 the university shall not be considered failure by the university to  
18 provide notice.

19

20       15. No bid shall be accepted which does not conform to the  
21 specifications furnished therefor. Nothing contained in this act  
22 shall be construed as depriving the university of the right to reject  
23 all bids.

24

25       16. There may be required from any person bidding on any  
26 purchase, contract or agreement, advertised in accordance with law,  
27 that the bid be accompanied by a guaranty payable to the university  
28 that, if the purchase, contract or agreement is awarded to him, he  
29 will enter into a contract therefor. The guaranty shall be in the  
30 amount of 10% of the bid but not in excess of \$20,000, except as  
31 otherwise provided herein, and may be given, at the option of the  
32 bidder, by certified check, cashier's check or bid bond. For a  
33 construction contract the guaranty shall be in the amount of 10% of  
34 the bid. In the event that any law or regulation of the United States  
35 imposes any condition upon the awarding of a monetary grant to the  
36 university, which condition requires a guaranty in an amount other  
37 than 10% of the bid or in excess of \$20,000, the provisions of this  
38 section shall not apply and the requirements of the law or regulation  
39 of the United States shall govern.

40       The university may require a bid guaranty alone without also  
41 requiring a performance bond or other security in the contract.

42

43       17. a. In addition to or independently of the guaranty which  
44 may be required pursuant to this act, the university may require  
45 that the successful bidder provide a surety company bond or other  
46 security acceptable to the university:

1 (1) For the faithful performance of all provisions of the  
2 advertisement for bids, the specifications and any other documents  
3 issued to bidders or a repair or maintenance bond; and

4 (2) In a form which may be required in the specifications or  
5 other documents issued to bidders.

6 b. In every case in which a performance bond is required, the  
7 requirement shall be set forth in the specifications or other  
8 documents issued to all bidders.

9 c. The university shall require that all performance bonds be  
10 issued by a surety which meets the following standards:

11 (1) The surety shall have the minimum surplus and capital stock  
12 or net cash assets required by R.S.17:17-6 or R.S.17:17-7,  
13 whichever is appropriate, at the time the invitation to bid is issued;  
14 and

15 (2) With respect to all payment and performance bonds in the  
16 amount of \$850,000 or more, (a) if the amount of the bond is at  
17 least \$850,000 but not more than \$3.5 million, the surety shall hold  
18 a current certificate of authority, issued by the United States  
19 Secretary of the Treasury pursuant to 31 U.S.C.s.9305, that is valid  
20 in the State of New Jersey as listed annually in the United States  
21 Treasury Circular 570, except that if the surety has been operational  
22 for a period in excess of five years, the surety shall be deemed to  
23 meet the requirements of this subparagraph if it is rated in one of  
24 the three highest categories by an independent, nationally  
25 recognized United States rating company that determines the  
26 financial stability of insurance companies, which rating company or  
27 companies shall be determined pursuant to standards promulgated  
28 by the Commissioner of Banking and Insurance by regulation  
29 adopted pursuant to the "Administrative Procedure Act," P.L.1968,  
30 c.410 (C.52:14B-1 et seq.), and (b) if the amount of the bond is  
31 more than \$3.5 million, then the surety shall hold a current  
32 certificate of authority, issued by the United States Secretary of the  
33 Treasury pursuant to 31 U.S.C.s.9305, that is valid in the State of  
34 New Jersey as listed annually in the United States Treasury Circular  
35 570 and, if the surety has been operational for a period in excess of  
36 five years, shall be rated in one of the three highest categories by an  
37 independent, nationally recognized United States rating company  
38 that determines the financial stability of insurance companies,  
39 which rating company or companies shall be determined pursuant to  
40 standards promulgated by the Commissioner of Banking and  
41 Insurance by regulation adopted pursuant to the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety  
43 subject to the provisions of subparagraph (b) of this paragraph  
44 which does not hold a certificate of authority issued by the United  
45 States Secretary of the Treasury shall be exempt from the  
46 requirement to hold such a certificate if the surety meets an  
47 equivalent set of standards developed by the Commissioner of  
48 Banking and Insurance through regulation which is at least equal,

1 and may exceed, the general criteria required for issuance of a  
2 certificate of authority by the United States Secretary of the  
3 Treasury pursuant to 31 U.S.C.s.9305.

4 d. The university shall not accept more than one payment and  
5 performance bond to cover a single construction contract. The  
6 university may accept a single bond executed by more than one  
7 surety to cover a single construction contract only if the combined  
8 underwriting limitations of all the named sureties, as set forth in the  
9 most current annual revision of United States Treasury Circular  
10 570, or as determined by the Commissioner of Banking and  
11 Insurance pursuant to R.S.17:18-9, meet or exceed the amount of  
12 the contract to be performed.

13 e. A board, officer or agent contracting on behalf of the  
14 university shall not accept a payment or performance bond unless  
15 there is attached thereto a Surety Disclosure Statement and  
16 Certification to which each surety executing the bond shall have  
17 subscribed. This statement and certification shall be complete in all  
18 respects and duly acknowledged according to law, and shall have  
19 substantially the following form:

20 SURETY DISCLOSURE STATEMENT AND  
21 CERTIFICATION

22 , surety(ies) on the attached bond, hereby  
23 certifies(y) the following:

24 (1) The surety meets the applicable capital and surplus  
25 requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most  
26 current annual filing with the New Jersey Department of Banking  
27 and Insurance.

28 (2) The capital (where applicable) and surplus, as determined in  
29 accordance with the applicable laws of this State, of the surety(ies)  
30 participating in the issuance of the attached bond is (are) in the  
31 following amount(s) as of the calendar year ended December 31,  
32 (most recent calendar year for which capital and surplus amounts  
33 are available), which amounts have been certified as indicated by  
34 certified public accountants (indicating separately for each surety  
35 that surety's capital and surplus amounts, together with the name  
36 and address of the firm of certified public accounts that shall have  
37 certified those amounts):  
38  
39  
40  
41 .

42 (3) (a) With respect to each surety participating in the issuance  
43 of the attached bond that has received from the United States  
44 Secretary of the Treasury a certificate of authority pursuant to 31  
45 U.S.C.s.9305, the underwriting limitation established therein and  
46 the date as of which that limitation was effective is as follows  
47 (indicating for each such surety that surety's underwriting limitation  
48 and the effective date thereof):

1  
2  
3  
4  
5 (b) With respect to each surety participating in the issuance of  
6 the attached bond that has not received such a certificate of  
7 authority from the United States Secretary of the Treasury, the  
8 underwriting limitation of that surety as established pursuant to  
9 R.S.17:18-9 as of (date on which such limitation was so  
10 established) is as follows (indicating for each such surety that  
11 surety's underwriting limitation and the date on which that  
12 limitation was established):

13  
14  
15  
16  
17 (4) The amount of the bond to which this statement and  
18 certification is attached is \$ .

19 (5) If, by virtue of one or more contracts of reinsurance, the  
20 amount of the bond indicated under item (4) above exceeds the total  
21 underwriting limitation of all sureties on the bond as set forth in  
22 item (3)(a) or (3)(b) above, or both, then for each such contract of  
23 reinsurance:

24 (a) The name and address of each such reinsurer under that  
25 contract and the amount of that reinsurer's participation in the  
26 contract is as follows:

27  
28  
29  
30 ; and

31 (b) Each surety that is party to any such contract of reinsurance  
32 certifies that each reinsurer listed under item (5)(a) satisfies the  
33 credit for the reinsurance requirement established under P.L.1993,  
34 c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect  
35 as of the date on which the bond to which this statement and  
36 certification is attached shall have been filed with the appropriate  
37 public agency.

38 CERTIFICATE

39 (to be completed by an authorized certifying agent  
40 for each surety on the bond)

41 I (name of agent), as (title of agent) for (name of surety), a  
42 corporation/mutual insurance company/other (indicating type of  
43 business organization) (circle one) domiciled in (state of domicile),  
44 DO HEREBY CERTIFY that, to the best of my knowledge, the  
45 foregoing statements made by me are true, and ACKNOWLEDGE  
46 that, if any of those statements are false, this bond is VOID.

47  
48 (Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)

18. The university shall award the contract or reject all bids within such time as may be specified in the specifications or other documents issued to all bidders, but in no case more than 60 days, except the bids of any bidders who consent thereto, either before or after the 60-day period, may, at the request of the university, be held for consideration for such longer period of time as may be agreed. Within three days, Sundays and holidays excepted, after the awarding of the contract and the approval of the successful bidder's performance bond, if any, the bid guaranty of the remaining bidders shall be returned to them.

19. All contracts or agreements for the purchase of goods and services, as distinct from contracts or agreements for the construction of buildings and other improvements, which require public advertisement for bids shall be awarded by the board of governors to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the university, price and other factors considered.

Prior to the award of any contract or agreement which does not require public advertisement, the estimated cost of which is 20% or more of the amount determined by the Governor pursuant to subsection b. of section 3 of this act, the contracting agent shall, except in the case of professional services, solicit quotations therefor whenever practicable, and the award thereof shall be made, in accordance with section 3 of this act, on the basis of the quotation, conforming to the request for proposals, which is most advantageous to the university, price and other factors considered; however, if the contracting agent deems it impractical to solicit competitive quotations or having sought the quotations determines that the award should not be made on that basis, the contracting agent shall file a statement of explanation of the reason or reasons therefor, which shall be placed on file with the purchase, contract, or agreement.

20. Any purchase, contract or agreement made pursuant to this act may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform the contract or agreement in accordance with its terms, conditions or the terms and conditions of this act.

21. Purchases, contracts or agreements for the construction of buildings and other improvements shall be subject to all the terms and conditions of this act.

1       22. All plans and specifications for the erection, alteration,  
2 improvement or repair of university buildings shall be drawn by or  
3 under the supervision of an appropriate officer employed by the  
4 university to whom these powers shall have been delegated by the  
5 board of governors.

6  
7       23. a. Whenever the entire cost for the construction, alteration  
8 or repair of any building by the university will exceed the amount  
9 determined pursuant to subsection b. of section 3 of this act, the  
10 contracting agent shall advertise for and receive in the manner  
11 provided by law:

12       (1) separate bids for the following categories of work:

13       (a) the plumbing and gas fitting work;

14       (b) the heating and ventilating systems and equipment;

15       (c) the electrical work, including any electrical power plants;

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

17       (e) all other work and materials required for the completion of  
18 the project, or

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

21       (3) both (1) and (2) above.

22       All bids submitted shall set forth the names and license numbers  
23 of all subcontractors to whom the bidder will subcontract the work  
24 described in the foregoing categories (a) through (e).

25       b. Contracts shall be awarded to the lowest responsible bidder  
26 whose bid, conforming to the invitation for bids, will be the most  
27 advantageous to the university. Whenever two or more bids of  
28 equal amounts are the lowest bids submitted by responsible parties,  
29 the university may award the contract to any of the parties, as, in its  
30 discretion, it may determine.

31  
32       24. All specifications for the doing of any construction work for  
33 the university shall fix the date before which the work shall be  
34 completed, or the number of working days to be allowed for its  
35 completion, and every contract shall contain a provision that if the  
36 construction work is not completed by the date fixed for completion  
37 or in the number of days allowed for completion, as set forth in the  
38 specifications, there shall be a deduction from the contract price for  
39 any moneys paid by the university to other contractors for the  
40 completion of the project. This requirement shall not preclude the  
41 university from seeking liquidated damages or other remedies.

42  
43       25. The university may, by resolution of its board of governors,  
44 authorize the sale in the following manner of its personal property  
45 not needed for university purposes:

46       a. If the estimated fair value of the property to be sold exceeds  
47 \$30,100 or, commencing January 1, 2011, the amount determined  
48 pursuant to subsection b. of section 3 of this act, in any one sale and

1 the property does not consist of perishable goods, it shall be sold at  
2 public sale to the highest bidder.

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

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

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

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

28 f. If the estimated fair value of the property to be sold does not  
29 exceed \$30,100 or, commencing January 1, 2011, the amount  
30 determined pursuant to subsection b. of section 3 of this act, in any  
31 one sale or the property consists of perishable goods, it may be sold  
32 at private sale without advertising for bids.

33

34 26. The university may only enter into a contract exceeding 36  
35 consecutive months for the:

36 a. Supplying of fuel and oil for heating and other purposes and  
37 utilities for any term not exceeding in the aggregate five years; or

38 b. Plowing and removal of snow and ice for any term not  
39 exceeding in the aggregate five years; or

40 c. Collection and disposal of garbage and refuse for any term  
41 not exceeding in the aggregate five years; or

42 d. Purchase, lease or servicing of information technology for  
43 any term of not more than five years; or

44 e. Insurance for any term of not more than five years; or

45 f. Leasing or service of automobiles, motor vehicles,  
46 machinery and equipment of every nature and kind for any term not  
47 exceeding in the aggregate five years; or



- 1       g. Providing of food supplies and services, including food
- 2 supplies and management contracts for student centers, dining
- 3 rooms, vending operations, and cafeterias, for a term not exceeding
- 4 30 years; or
- 5       h. Performance of work or services or the furnishing of
- 6 materials or supplies for the purpose of conserving energy in
- 7 buildings owned by, or operations conducted by, the contracting
- 8 unit, the entire price of which is to be established as a percentage of
- 9 the resultant savings in energy costs, for a term not exceeding 10
- 10 years; provided that a contract is entered into only subject to and in
- 11 accordance with rules and regulations adopted and guidelines
- 12 promulgated by the Board of Public Utilities establishing a
- 13 methodology for computing energy cost savings; or
- 14       i. Any single project for the construction, reconstruction or
- 15 rehabilitation of a public building, structure or facility, or a public
- 16 works project, including the retention of the services of an architect,
- 17 engineer, construction manager, or other consultant in connection
- 18 with the project, for the length of time necessary for the completion
- 19 of the actual construction; or
- 20       j. The management and operation of bookstores, performing
- 21 arts centers, residence halls, parking facilities and building
- 22 operations for a term not exceeding 30 years; or
- 23       k. The provision of banking, financial services, and e-
- 24 commerce services for a term not exceeding five years; or
- 25       l. The provision of services for maintenance and repair of
- 26 building systems, including, but not limited to, fire alarms, fire
- 27 suppression systems, security systems, and heating, ventilation, and
- 28 air conditioning systems for a term not exceeding five years; or
- 29       m. Purchase of alternative energy or the purchase or lease of
- 30 alternative energy services or equipment for conservation or cost
- 31 saving purposes for a term not exceeding 30 years.
- 32       All multiyear leases and contracts entered into pursuant to this
- 33 section, except contracts and agreements for the provision of work
- 34 or the supplying of equipment to promote energy conservation and
- 35 authorized pursuant to subsection h. of this section, shall contain a
- 36 clause making them subject to the availability and appropriation
- 37 annually of sufficient funds to meet the extended obligation or
- 38 contain an annual cancellation clause.
- 39
- 40       27. No action for damages shall lie against the Commission on
- 41 Higher Education, the Presidents' Council, any State official, the
- 42 university or its board of governors or any of its officers because of
- 43 any action taken by virtue of the provisions of this act.
- 44
- 45       28. The university may enter into an agreement indemnifying
- 46 the New Jersey Educational Facilities Authority or the United States
- 47 of America, or any board, body, officer or agency thereof, from any
- 48 liability for loss or damage to the person or property of others

1 resulting from any project financed or to be financed by the New  
2 Jersey Educational Facilities Authority for the benefit of the  
3 university, any project undertaken or to be undertaken by the  
4 federal government for the benefit of the university or any project  
5 the cost of which or any part thereof is to be paid out of federal  
6 funds.

7  
8 29. Any action, purchase, sale, contract or agreement taken,  
9 made or entered into prior to the effective date of this act is  
10 validated and confirmed; provided that in no event shall multi-year  
11 leases or contracts entered into prior to the effective date of this act  
12 be renewed or extended except in accordance with the terms and  
13 provisions of this act.

14  
15 30. Prior to the conclusion of any contract or subcontract for the  
16 performance of work substantially similar to that performed by  
17 negotiations unit employees, the university shall allow for  
18 reasonable consultation with the appropriate bargaining unit  
19 representative regarding such action. The negotiations unit's  
20 representative shall be entitled to review the supporting  
21 documentation concerning the purchase, contract or subcontract and  
22 to an assessment of the impact of that purchase, contract or  
23 subcontract on the negotiations unit employees of the university.

24  
25 31. This act shall take effect immediately.

26  
27  
28 STATEMENT

29  
30 This bill implements a recommendation of the State Comptroller  
31 contained in his report entitled "Rutgers, the State University of  
32 New Jersey, Contracting and Selected Financial Management  
33 Practices," which was issued January 19, 2011. The bill establishes  
34 public bidding and contracting procedures for Rutgers that mirror  
35 the requirements currently applicable to the State colleges pursuant  
36 to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52  
37 et seq.).