

SENATE, No. 2877

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MAY 19, 2011

Sponsored by:

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

Senator MICHAEL J. DOHERTY

District 23 (Warren and Hunterdon)

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 immediately
43 proceed to unseal them and publicly announce the contents, which
44 announcement shall be made in the presence of any parties bidding
45 or their agents who are then and there present. A proper record of
46 the prices and terms shall be made. No bids shall be received after
47 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

1 and the effective date thereof):

2

3

4

5

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

14

15

16

17

18 (4) The amount of the bond to which this statement and
19 certification is attached is \$

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

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

28

29

30

31 ; and

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

39

CERTIFICATE

40 (to be completed by an authorized certifying agent

41 for each surety on the bond)

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

(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.

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

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

10

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

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

17 (a) the plumbing and gas fitting work;

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

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

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

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

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

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

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

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

35

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

1 25. The university may, by resolution of its board of governors,
2 authorize the sale in the following manner of its personal property
3 not needed for university purposes:

4 a. If the estimated fair value of the property to be sold exceeds
5 \$30,100 or, commencing January 1, 2011, the amount determined
6 pursuant to subsection b. of section 3 of this act, in any one sale and
7 the property does not consist of perishable goods, it shall be sold at
8 public sale to the highest bidder.

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

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

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

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

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

39

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

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

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

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

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

1 university or its board of governors or any of its officers because of
2 any action taken by virtue of the provisions of this act.

3
4 28. The university may enter into an agreement indemnifying
5 the New Jersey Educational Facilities Authority or the United States
6 of America, or any board, body, officer or agency thereof, from any
7 liability for loss or damage to the person or property of others
8 resulting from any project financed or to be financed by the New
9 Jersey Educational Facilities Authority for the benefit of the
10 university, any project undertaken or to be undertaken by the
11 federal government for the benefit of the university or any project
12 the cost of which or any part thereof is to be paid out of federal
13 funds.

14
15 29. Any action, purchase, sale, contract or agreement taken,
16 made or entered into prior to the effective date of this act is
17 validated and confirmed; provided that in no event shall multi-year
18 leases or contracts entered into prior to the effective date of this act
19 be renewed or extended except in accordance with the terms and
20 provisions of this act.

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

31
32 31. This act shall take effect immediately.

33
34
35 STATEMENT

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