

SENATE, No. 885

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator JENNIFER BECK

District 11 (Monmouth)

Senator MICHAEL J. DOHERTY

District 23 (Hunterdon, Somerset and Warren)

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

Introduced Pending Technical Review by Legislative Counsel



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.

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

4 "Information technology" means telecommunication goods and
5 services, including, but not limited to, software, hardware and
6 systems implementation and support for voice, data and video.
7

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

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

27 c. Any purchase, contract or agreement made pursuant to this
28 section may be awarded for a period of 36 consecutive months,
29 notwithstanding that the 36-month period does not coincide with the
30 fiscal year.
31

32 4. Every contract or agreement for the performance of any
33 work or the furnishing or hiring of any materials or supplies, the
34 cost or the contract price of which is to be paid with or out of
35 university funds, not included within the terms of section 3 of this
36 act, shall be made and awarded only by the university after public
37 advertising for bids and bidding therefor, except as provided
38 otherwise in this act or specifically by any other law. No work,
39 materials or supplies shall be undertaken, acquired or furnished for
40 a sum exceeding in the aggregate \$30,100 or, commencing January
41 1, 2011, the amount determined pursuant to subsection b. of section
42 3 of this act, except by written contract or agreement.
43

44 5. Any purchase, contract or agreement of the character
45 described in section 4 of this act may be made, negotiated or
46 awarded by the university by resolution at a public meeting of its

1 board of governors without public advertising for bids or bidding
2 therefor if:

3 a. The subject matter thereof consists of:

4 (1) Professional services; or

5 (2) Extraordinary unspecifiable services and products which
6 cannot reasonably be described by written specifications, subject,
7 however, to procedures consistent with open public bidding
8 whenever possible; or

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

12 (4) The doing of any work by employees of the university; or

13 (5) The printing of all legal notices and legal briefs, records and
14 appendices to be used in any legal proceeding to which the
15 university may be a party and the use of electronic data or media
16 services, including the internet, for the printing of these legal
17 notices and legal briefs, records and appendices; or

18 (6) Textbooks, copyrighted materials, student produced
19 publications and services incidental thereto, library materials
20 including without limitation books, periodicals, newspapers,
21 documents, pamphlets, photographs, reproductions, microfilms,
22 pictorial or graphic works, musical scores, maps, charts, globes,
23 sound recordings, slides, films, filmstrips, video and magnetic
24 tapes, other printed or published matter and audiovisual and other
25 materials of a similar nature, necessary binding or rebinding of
26 library materials and specialized library services, including
27 electronic databases and digital formats; or

28 (7) Food supplies and services, including food supplies and
29 management contracts for student centers, dining rooms and
30 cafeterias; or

31 (8) The supplying of any product or the rendering of any service
32 by the public utility which is subject to the jurisdiction of the Board
33 of Public Utilities, in accordance with tariffs and schedules of
34 charges made, charged and exacted, filed with that board; or

35 (9) Equipment repair service if in the nature of an extraordinary
36 unspecifiable service and necessary parts furnished in connection
37 with the services; or

38 (10) Specialized machinery or equipment of a technical nature
39 which will not reasonably permit the drawing of specifications, and
40 the procurement thereof without advertising is in the public interest;
41 or

42 (11) Insurance, including the purchase of insurance coverage
43 and consulting services, which exceptions shall be in accordance
44 with the requirements for extraordinary unspecifiable services; or

45 (12) Publishing of legal notices in newspapers as required by
46 law and the use of electronic data or media services, including the
47 internet, for the publication of the legal notices; or

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

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

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

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

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

43
44 6. Any purchase, contract, or agreement may be made,
45 negotiated or awarded by the university without public advertising
46 for bids and bidding therefor, notwithstanding that the cost or
47 contract price will exceed \$30,100 or, commencing January 1,

1 2011, the amount determined pursuant to subsection b. of section 3
2 of this act, when an emergency affecting the health, safety or
3 welfare of occupants of university property requires the immediate
4 delivery of the materials or supplies or the performance of the work,
5 if the purchases, contracts or agreements are awarded or made in
6 the following manner:

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

15 b. Upon the furnishing of the work, materials or supplies in
16 accordance with the terms of the contract or agreement, the
17 contractor furnishing the work, materials or supplies is entitled to
18 be paid therefor and the university is obligated for the payment.

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

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

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

44
45 9. a. The university, without advertising for bids, or after
46 having rejected all bids obtained pursuant to advertising therefor,
47 may purchase any materials, supplies, goods, services or equipment

1 pursuant to a contract or contracts for those materials, supplies,
2 goods, services or equipment entered into on behalf of the State by
3 the Division of Purchase and Property or any municipality or county
4 in this State.

5 b. The university may also use, without advertising for bids, or
6 having rejected all bids obtained pursuant to advertising, the
7 Federal Supply Schedules of the General Services Administration or
8 schedules from other federal procurement programs subject to the
9 following conditions:

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

12 (2) the university receives the benefit of federally mandated
13 price reductions during the term of the contract and is protected
14 from price increases during that time; and

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

21 c. Whenever a purchase is made pursuant to this section, the
22 university shall place its order with the vendor offering the lowest
23 price, including delivery charges, that best meets the requirements
24 of the university. Prior to placing such an order, the university shall
25 document with specificity that the materials, supplies, goods,
26 services or equipment selected best meet the requirements of the
27 university.

28

29 10. The board of governors may enter into joint purchasing
30 agreements for the purchasing of work, materials, or supplies with
31 other units of State or local government and with State colleges and
32 with other public research universities.

33

34 11. a. Joint agreements shall set forth the categories of work,
35 materials or supplies to be purchased, the manner of advertising for
36 bids and of awarding of contracts, the method of payment by each
37 participant and other matters deemed necessary to carry out the
38 purposes of the agreement.

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

43

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

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

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

8 b. Require that any bidder be a resident of, or that his place of
9 business be located in, the county in which the purchase will be
10 made or the contract or agreement performed, unless the physical
11 proximity of the bidder is requisite to the efficient and economical
12 purchase or performance of the contract or agreement; or

13 c. Discriminate on the basis of race, religion, sex or national
14 origin; or

15 d. Require with regard to any purchase, contract or agreement
16 the furnishing of any "brand name," although specifications may in
17 all cases require "brand name or equivalent," nor shall materials or
18 supplies which are patented or copyrighted be specified unless the
19 resolution authorizing the purchase, contract or agreement sets forth
20 the manner in which the special need for the patented or
21 copyrighted materials or supplies is directly related to the
22 performance or purpose for which the purchase, contract or
23 agreement is made; or

24 e. Fail to include any option for renewal, extension or release
25 which the university may intend to exercise or require; or

26 f. Fail to include any terms and conditions necessary for the
27 performance of any extra work; or

28 g. Fail to disclose any matter necessary to the substantial
29 performance of the contract or agreement.

30 Any specification adopted by the university which knowingly
31 excludes prospective bidders by reason of the impossibility of
32 performance, bidding or qualification by any but one bidder, except
33 as provided herein, shall be null and void and of no effect, and the
34 purchase, contract or agreement shall be readvertised, and the
35 original purchase, contract or agreement shall be set aside by the
36 board of governors.
37

38 14. a. All advertisements for bids shall be published in a legal
39 newspaper sufficiently in advance of the date fixed for receiving the
40 bids to promote competitive bidding but in no event less than 10
41 days prior to that date for any construction projects or any other
42 contract or purchase. In addition to being published in a legal
43 newspaper, advertisements may also be posted using electronic data
44 or media services, including the internet. The advertisement shall
45 designate the manner of submitting and of receiving the bids and
46 the time and place at which the bids will be received. If the
47 published specifications provide for receipt of bids by mail, those

1 bids which are mailed to the university shall be sealed and shall be
2 opened only at such time and place as all bids received are unsealed
3 and announced. At that time and place, the contracting agent of the
4 university shall publicly receive the bids and thereupon
5 immediately proceed to unseal them and publicly announce the
6 contents, which announcement shall be made in the presence of any
7 parties bidding or their agents who are then and there present. A
8 proper record of the prices and terms shall be made. No bids shall
9 be received after the time designated in the advertisement.

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

24 Failure to obtain a receipt when good faith notice is sent or
25 delivered to the address or telephone facsimile number on file with
26 the university shall not be considered failure by the university to
27 provide notice.
28

29 15. No bid shall be accepted which does not conform to the
30 specifications furnished therefor. Nothing contained in this act
31 shall be construed as depriving the university of the right to reject
32 all bids.
33

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

1 section shall not apply and the requirements of the law or regulation
2 of the United States shall govern.

3 The university may require a bid guaranty alone without also
4 requiring a performance bond or other security in the contract.
5

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

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

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

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

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

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

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

1 which rating company or companies shall be determined pursuant to
2 standards promulgated by the Commissioner of Banking and
3 Insurance by regulation adopted pursuant to the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety
5 subject to the provisions of subparagraph (b) of this paragraph
6 which does not hold a certificate of authority issued by the United
7 States Secretary of the Treasury shall be exempt from the
8 requirement to hold such a certificate if the surety meets an
9 equivalent set of standards developed by the Commissioner of
10 Banking and Insurance through regulation which is at least equal,
11 and may exceed, the general criteria required for issuance of a
12 certificate of authority by the United States Secretary of the
13 Treasury pursuant to 31 U.S.C.s.9305.

14 d. The university shall not accept more than one payment and
15 performance bond to cover a single construction contract. The
16 university may accept a single bond executed by more than one
17 surety to cover a single construction contract only if the combined
18 underwriting limitations of all the named sureties, as set forth in the
19 most current annual revision of United States Treasury Circular
20 570, or as determined by the Commissioner of Banking and
21 Insurance pursuant to R.S.17:18-9, meet or exceed the amount of
22 the contract to be performed.

23 e. A board, officer or agent contracting on behalf of the
24 university shall not accept a payment or performance bond unless
25 there is attached thereto a Surety Disclosure Statement and
26 Certification to which each surety executing the bond shall have
27 subscribed. This statement and certification shall be complete in all
28 respects and duly acknowledged according to law, and shall have
29 substantially the following form:

30 SURETY DISCLOSURE STATEMENT AND CERTIFICATION

31 , surety(ies) on the attached bond, hereby
32 certifies(y) the following:

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

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

1
2
3
4 (3) (a) With respect to each surety participating in the issuance
5 of the attached bond that has received from the United States
6 Secretary of the Treasury a certificate of authority pursuant to 31
7 U.S.C.s.9305, the underwriting limitation established therein and
8 the date as of which that limitation was effective is as follows
9 (indicating for each such surety that surety's underwriting limitation
10 and the effective date thereof):
11
12
13
14 .

15 (b) With respect to each surety participating in the issuance of
16 the attached bond that has not received such a certificate of
17 authority from the United States Secretary of the Treasury, the
18 underwriting limitation of that surety as established pursuant to
19 R.S.17:18-9 as of (date on which such limitation was so
20 established) is as follows (indicating for each such surety that
21 surety's underwriting limitation and the date on which that
22 limitation was established):
23
24
25
26 .

27 (4) The amount of the bond to which this statement and
28 certification is attached is \$.

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

34 (a) The name and address of each such reinsurer under that
35 contract and the amount of that reinsurer's participation in the
36 contract is as follows:
37
38
39

40 ; and

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

CERTIFICATE

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

I (name of agent), as (title of agent) for (name of surety), a
corporation/mutual insurance company/other (indicating type of
business organization) (circle one) domiciled in (state of domicile),
DO HEREBY CERTIFY that, to the best of my knowledge, the
foregoing statements made by me are true, and ACKNOWLEDGE
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

1 therefor, which shall be placed on file with the purchase, contract,
2 or agreement.

3
4 20. Any purchase, contract or agreement made pursuant to this
5 act may include liquidated damages for the violation of any of the
6 terms and conditions thereof or the failure to perform the contract
7 or agreement in accordance with its terms, conditions or the terms
8 and conditions of this act.

9
10 21. Purchases, contracts or agreements for the construction of
11 buildings and other improvements shall be subject to all the terms
12 and conditions of this act.

13
14 22. All plans and specifications for the erection, alteration,
15 improvement or repair of university buildings shall be drawn by or
16 under the supervision of an appropriate officer employed by the
17 university to whom these powers shall have been delegated by the
18 board of governors.

19
20 23. a. Whenever the entire cost for the construction, alteration
21 or repair of any building by the university will exceed the amount
22 determined pursuant to subsection b. of section 3 of this act, the
23 contracting agent shall advertise for and receive in the manner
24 provided by law:

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

26 (a) the plumbing and gas fitting work;

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

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

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

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

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

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

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

38 b. Contracts shall be awarded to the lowest responsible bidder
39 whose bid, conforming to the invitation for bids, will be the most
40 advantageous to the university. Whenever two or more bids of
41 equal amounts are the lowest bids submitted by responsible parties,
42 the university may award the contract to any of the parties, as, in its
43 discretion, it may determine.

44
45 24. All specifications for the doing of any construction work for
46 the university shall fix the date before which the work shall be
47 completed, or the number of working days to be allowed for its

1 completion, and every contract shall contain a provision that if the
2 construction work is not completed by the date fixed for completion
3 or in the number of days allowed for completion, as set forth in the
4 specifications, there shall be a deduction from the contract price for
5 any moneys paid by the university to other contractors for the
6 completion of the project. This requirement shall not preclude the
7 university from seeking liquidated damages or other remedies.

8
9 25. The university may, by resolution of its board of governors,
10 authorize the sale in the following manner of its personal property
11 not needed for university purposes:

12 a. If the estimated fair value of the property to be sold exceeds
13 \$30,100 or, commencing January 1, 2011, the amount determined
14 pursuant to subsection b. of section 3 of this act, in any one sale and
15 the property does not consist of perishable goods, it shall be sold at
16 public sale to the highest bidder.

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

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

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

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

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

- 1 26. The university may only enter into a contract exceeding 36
2 consecutive months for the:
- 3 a. Supplying of fuel and oil for heating and other purposes and
4 utilities for any term not exceeding in the aggregate five years; or
- 5 b. Plowing and removal of snow and ice for any term not
6 exceeding in the aggregate five years; or
- 7 c. Collection and disposal of garbage and refuse for any term
8 not exceeding in the aggregate five years; or
- 9 d. Purchase, lease or servicing of information technology for
10 any term of not more than five years; or
- 11 e. Insurance for any term of not more than five years; or
- 12 f. Leasing or service of automobiles, motor vehicles,
13 machinery and equipment of every nature and kind for any term not
14 exceeding in the aggregate five years; or
- 15 g. Providing of food supplies and services, including food
16 supplies and management contracts for student centers, dining
17 rooms, vending operations, and cafeterias, for a term not exceeding
18 30 years; or
- 19 h. Performance of work or services or the furnishing of
20 materials or supplies for the purpose of conserving energy in
21 buildings owned by, or operations conducted by, the contracting
22 unit, the entire price of which is to be established as a percentage of
23 the resultant savings in energy costs, for a term not exceeding 10
24 years; provided that a contract is entered into only subject to and in
25 accordance with rules and regulations adopted and guidelines
26 promulgated by the Board of Public Utilities establishing a
27 methodology for computing energy cost savings; or
- 28 i. Any single project for the construction, reconstruction or
29 rehabilitation of a public building, structure or facility, or a public
30 works project, including the retention of the services of an architect,
31 engineer, construction manager, or other consultant in connection
32 with the project, for the length of time necessary for the completion
33 of the actual construction; or
- 34 j. The management and operation of bookstores, performing
35 arts centers, residence halls, parking facilities and building
36 operations for a term not exceeding 30 years; or
- 37 k. The provision of banking, financial services, and e-
38 commerce services for a term not exceeding five years; or
- 39 l. The provision of services for maintenance and repair of
40 building systems, including, but not limited to, fire alarms, fire
41 suppression systems, security systems, and heating, ventilation, and
42 air conditioning systems for a term not exceeding five years; or
- 43 m. Purchase of alternative energy or the purchase or lease of
44 alternative energy services or equipment for conservation or cost
45 saving purposes for a term not exceeding 30 years.
- 46 All multiyear leases and contracts entered into pursuant to this
47 section, except contracts and agreements for the provision of work

1 or the supplying of equipment to promote energy conservation and
2 authorized pursuant to subsection h. of this section, shall contain a
3 clause making them subject to the availability and appropriation
4 annually of sufficient funds to meet the extended obligation or
5 contain an annual cancellation clause.

6
7 27. No action for damages shall lie against the Commission on
8 Higher Education, the Presidents' Council, any State official, the
9 university or its board of governors or any of its officers because of
10 any action taken by virtue of the provisions of this act.

11
12 28. The university may enter into an agreement indemnifying
13 the New Jersey Educational Facilities Authority or the United States
14 of America, or any board, body, officer or agency thereof, from any
15 liability for loss or damage to the person or property of others
16 resulting from any project financed or to be financed by the New
17 Jersey Educational Facilities Authority for the benefit of the
18 university, any project undertaken or to be undertaken by the
19 federal government for the benefit of the university or any project
20 the cost of which or any part thereof is to be paid out of federal
21 funds.

22
23 29. Any action, purchase, sale, contract or agreement taken,
24 made or entered into prior to the effective date of this act is
25 validated and confirmed; provided that in no event shall multi-year
26 leases or contracts entered into prior to the effective date of this act
27 be renewed or extended except in accordance with the terms and
28 provisions of this act.

29
30 30. Prior to the conclusion of any contract or subcontract for the
31 performance of work substantially similar to that performed by
32 negotiations unit employees, the university shall allow for
33 reasonable consultation with the appropriate bargaining unit
34 representative regarding such action. The negotiations unit's
35 representative shall be entitled to review the supporting
36 documentation concerning the purchase, contract or subcontract and
37 to an assessment of the impact of that purchase, contract or
38 subcontract on the negotiations unit employees of the university.

39
40 31. This act shall take effect immediately.

41
42
43 STATEMENT

44
45 This bill implements a recommendation of the State Comptroller
46 contained in his report entitled "Rutgers, the State University of
47 New Jersey, Contracting and Selected Financial Management

1 Practices,” which was issued January 19, 2011. The bill establishes
2 public bidding and contracting procedures for Rutgers that mirror
3 the requirements currently applicable to the State colleges pursuant
4 to the “State College Contracts Law,” P.L.1986, c.43 (C.18A:64-52
5 et seq.).