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P.L. 1999, CHAPTER 440, *approved January 18, 2000*  
Assembly, No. 3519 (*First Reprint*)

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- AN ACT** concerning public procurement and amending, supplementing  
and repealing various parts of the statutory law.
- BE IT ENACTED** *by the Senate and General Assembly of the State  
of New Jersey:*
1. (New section) Notwithstanding the provisions of any law, rule  
or regulation to the contrary, competitive contracting may be used by  
local contracting units in lieu of public bidding for procurement of  
specialized goods and services the price of which exceeds the bid  
threshold, for the following purposes:
- a. The purchase or licensing of proprietary computer software  
designed for contracting unit purposes, which may include hardware  
intended for use with the proprietary software. This subsection shall  
not be utilized for the purpose of acquiring general purpose computer  
hardware or software;

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

Matter underlined thus is new matter.  
Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Assembly floor amendments adopted December 9, 1999.

1       b. The hiring of a for-profit entity or a not-for-profit entity  
2 incorporated under Title 15A of the New Jersey Statutes for the  
3 purpose of:

4       (1) the operation and management of a wastewater treatment  
5 system or a water supply or distribution facility of the type described  
6 in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15) ,  
7 provided that competitive contracting shall not be used as a means of  
8 awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et seq.) and  
9 P.L.1985, c.72 (C.58:27-1 et seq.);

10       (2) the operation, management or administration of recreation or  
11 social service facilities or programs <sup>1</sup>, which shall not include the  
12 administration of benefits under the Work First New Jersey program  
13 established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.), or under  
14 General Assistance<sup>1</sup>; or

15       (3) the operation, management or administration of data processing  
16 services;

17       c. Services performed by an energy services company, including  
18 the design, measurement, financing and maintenance of energy savings  
19 equipment or renovations, which result in payment derived, in whole  
20 or in part, from the sale of verified energy savings over the term of an  
21 agreement with a public utility or subsidiary, but not the provision or  
22 performance of the physical improvements that result in energy  
23 savings, provided that such savings are calculated pursuant to  
24 guidelines promulgated by the Board of Public Utilities and further  
25 provided that the Local Finance Board shall find that the terms and  
26 conditions of any financing agreement are reasonable;

27       d. Homemaker--home health services;

28       e. Laboratory testing services;

29       f. Emergency medical services;

30       g. Contracted food services;

31       h. Performance of patient care services by contracted medical staff  
32 at county hospitals, correctional facilities and long-term care facilities;

33       i. At the option of the governing body of the contracting unit, any  
34 good or service that is exempt from bidding pursuant to section 5 of  
35 P.L.1971, c.198 (C.40A:11-5);

36       j. Concessions;

37       k. The operation, management or administration of other services,  
38 with the approval of the Director of the Division of Local Government  
39 Services.

40       Any purpose included herein shall not be considered by a  
41 contracting unit as an extraordinary unspecifiable service pursuant to  
42 paragraph (a)(ii) of subsection (1) of section 5 of P.L.1971, c.198  
43 (C.40A:11-5).

44  
45       2. (New section) Unless an exception is provided for under section  
46 15 of P.L.1971, c.198 (C.40A:11-15) permitting a longer contract  
47 duration, contracts awarded pursuant to section 5 of P.L. , c. (C. )

1 (pending before the Legislature as this bill) may be for a term not to  
2 exceed five years.

3  
4 3. (New section) a. In order to initiate competitive contracting,  
5 the governing body shall pass a resolution authorizing the use of  
6 competitive contracting each time specialized goods or services  
7 enumerated in section 1 of P.L. , c. (C. ) (pending before the  
8 Legislature as this bill) are desired to be contracted. If the desired  
9 goods or services have previously been contracted for using the  
10 competitive contracting process then the original resolution of the  
11 governing body shall suffice.

12 b. The competitive contracting process shall be administered by a  
13 purchasing agent qualified pursuant to subsection b. (pending before  
14 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
15 c.198 (C.40A:11-9), or, by legal counsel of the contracting unit, or by  
16 an administrator of the contracting unit. Any contracts awarded under  
17 this process shall be made by resolution of the governing body of the  
18 contracting unit, subject to the provisions of subsection e. of section  
19 5 of P.L. , c. (C. )(now before the Legislature as this bill).

20  
21 4. (New section) The competitive contracting process shall utilize  
22 request for proposals documentation in accordance with the following  
23 provisions:

24 a. The purchasing agent or counsel or administrator shall prepare  
25 or have prepared request for proposal documentation, which shall  
26 include: all requirements deemed appropriate and necessary to allow  
27 for full and free competition between vendors; information necessary  
28 for potential vendors to submit a proposal; and a methodology by  
29 which the contracting unit will evaluate and rank proposals received  
30 from vendors.

31 b. The methodology for the awarding of competitive contracts shall  
32 be based on an evaluation and ranking, which shall include technical,  
33 management, and cost related criteria, and may include a weighting of  
34 criteria, all developed in a way that is intended to meet the specific  
35 needs of the contracting unit, and where such criteria shall not unfairly  
36 or illegally discriminate against or exclude otherwise capable vendors.  
37 When an evaluation methodology uses a weighting of criteria, at the  
38 option of the contracting unit the weighting to be accorded to each  
39 criterion may be disclosed to vendors prior to receipt of the proposals.  
40 The methodology for awarding competitive contracts shall comply  
41 with such rules and regulations as the director may adopt, after  
42 consultation with the Commissioner of Education, pursuant to the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.).

45 c. At no time during the proposal solicitation process shall the  
46 purchasing agent or counsel or administrator convey information,  
47 including price, to any potential vendor which could confer an unfair

1 advantage upon that vendor over any other potential vendor. If a  
2 purchasing agent or counsel or administrator desires to change  
3 proposal documentation, the purchasing agent or counsel or  
4 administrator shall notify only those potential vendors who received  
5 the proposal documentation of any and all changes in writing and all  
6 existing documentation shall be changed appropriately.

7 d. All proposals and contracts shall be subject to the provisions of  
8 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
9 statement of corporate ownership and the provisions of P.L.1975,  
10 c.127(C.10:5-31 et seq.) concerning equal employment opportunity  
11 and affirmative action.

12

13 5. (New section) Competitive contracting proposals shall be  
14 solicited in the following manner:

15 a. A notice of the availability of request for proposal  
16 documentation shall be published in an official newspaper of the  
17 contracting unit at least 20 days prior to the date established for the  
18 submission of proposals. The contracting unit shall promptly reply to  
19 any request by an interested vendor by providing a copy of the request  
20 for proposals. The contracting unit may charge a fee for the proposal  
21 documentation that shall not exceed \$50.00 or the cost of reproducing  
22 the documentation, whichever is greater.

23 b. Each interested vendor shall submit a proposal which shall  
24 include all the information required by the request for proposals.  
25 Failure to meet the requirements of the request for proposals may  
26 result in the contracting unit disqualifying the vendor from further  
27 consideration. Under no circumstances shall the provisions of a  
28 proposal be subject to negotiation by the contracting unit.

29 c. If the contracting unit, at the time of solicitation, utilizes its own  
30 employees to provide the goods or perform the services, or both,  
31 considered for competitive contracting, the governing body shall, at  
32 any time prior to, but no later than the time of solicitation for  
33 competitive contracting proposals, notify affected employees of the  
34 governing body's intention to solicit competitive contracting proposals.  
35 Employees or their representatives shall be permitted to submit  
36 recommendations and proposals affecting wages, hours, and terms and  
37 conditions of employment in such a manner as to meet the goals of the  
38 competitive contract. If employees are represented by an organization  
39 that has negotiated a contract with the contracting unit, only the  
40 bargaining unit shall be authorized to submit such recommendations or  
41 proposals. When requested by such employees, the governing body  
42 shall provide such information regarding budgets and the costs of  
43 performing the services by such employees as may be available.  
44 Nothing shall prevent such employees from making recommendations  
45 that may include modifications to existing labor agreements in order  
46 to reduce such costs in lieu of award of a competitive contract, and  
47 agreements implementing such recommendations may be considered

- 1 as cause for rejecting all other proposals.
- 2 d. The purchasing agent or counsel or administrator shall evaluate  
3 all proposals only in accordance with the methodology described in the  
4 request for proposals. After proposals have been evaluated, the  
5 purchasing agent or counsel or administrator shall prepare a report  
6 evaluating and recommending the award of a contract or contracts.  
7 The report shall list the names of all potential vendors who submitted  
8 a proposal and shall summarize the proposals of each vendor. The  
9 report shall rank vendors in order of evaluation, shall recommend the  
10 selection of a vendor or vendors, as appropriate, for a contract, shall  
11 be clear in the reasons why the vendor or vendors have been selected  
12 among others considered, and shall detail the terms, conditions, scope  
13 of services, fees, and other matters to be incorporated into a contract.  
14 The report shall be made available to the public at least 48 hours prior  
15 to the awarding of the contract, or when made available to the  
16 governing body, whichever is sooner. The governing body shall have  
17 the right to reject all proposals for any of the reasons set forth in  
18 section 21 of P.L. , c. (C. )(now before the Legislature as this bill).
- 19 e. Award of a contract shall be made by resolution of the governing  
20 body of the contracting unit within 60 days of the receipt of the  
21 proposals, except that the proposals of any vendors who consent  
22 thereto, may, at the request of the contracting unit, be held for  
23 consideration for such longer period as may be agreed.
- 24 f. The report prepared pursuant to subsection d. of this section  
25 shall become part of the public record and shall reflect the final action  
26 of the governing body. Contracts shall be executed pursuant to  
27 section 14 of P.L.1971, c.198 (C.40A:11-14).
- 28 g. The clerk or secretary of the contracting unit shall publish a  
29 notice in the official newspaper of the contracting unit summarizing  
30 the award of a contract, which shall include but not be limited to, the  
31 nature, duration, and amount of the contract, the name of the vendor  
32 and a statement that the resolution and contract are on file and  
33 available for public inspection in the office of the clerk or secretary of  
34 the municipality, county, local public authority or special district of the  
35 governing body.
- 36 h. All contract awards shall be subject to rules concerning  
37 certification of availability of funds adopted pursuant to section 3 of  
38 P.L.1971, c.198 (C.40A:11-3) and section 15 of P.L.1971, c.198  
39 (C.40A:11-15).
- 40 i. The director, after consultation with the Commissioner of  
41 Education, may adopt additional rules and regulations, in accordance  
42 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
43 1 et seq.), as may be necessary to effectuate the provisions of sections  
44 1 through 5 of P.L. , c. (C. ) (pending before the Legislature as this  
45 bill).

1       6. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read  
2 as follows:

3       2. As used herein the following words have the following  
4 definitions, unless the context otherwise indicates:

5       (1) "Contracting unit" means:

6       (a) Any county; or

7       (b) Any municipality; or

8       (c) Any board, commission, committee, authority or agency, which  
9 is not a State board, commission, committee, authority or agency, and  
10 which has administrative jurisdiction over any district other than a  
11 school district, project, or facility, included or operating in whole or  
12 in part, within the territorial boundaries of any county or municipality  
13 which exercises functions which are appropriate for the exercise by  
14 one or more units of local government, and which has statutory power  
15 to make purchases and enter into contracts [or agreements] awarded  
16 by a contracting agent for the provision or performance of [any work  
17 or the furnishing or hiring of any materials or supplies usually  
18 required, the cost or contract price of which is to be paid with or out  
19 of public funds] goods or services.

20       The term shall not include a private firm that has entered into a  
21 contract with a public entity for the provision of water supply services  
22 pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

23       "Contracting unit" shall not include a private firm or public  
24 authority that has entered into a contract with a public entity for the  
25 provision of wastewater treatment services pursuant to P.L.1995,  
26 c.216 (C.58:27-19 et al.).

27       (2) "Governing body" means:

28       (a) The governing body of the county, when the purchase is to be  
29 made or the contract is to be entered into by, or in behalf of, a county;  
30 or

31       (b) The governing body of the municipality, when the purchase is  
32 to be made or the contract is to be entered into by, or on behalf of, a  
33 municipality; or

34       (c) Any board, commission, committee, authority or agency of the  
35 character described in subsection (1) (c) of this section.

36       (3) "Contracting agent" means the governing body of a contracting  
37 unit, or [any board, commission, committee, officer, department,  
38 branch or agency] its authorized designee, which has the power to  
39 prepare the advertisements, to advertise for and receive bids and, as  
40 permitted by this act, to make awards for the contracting unit in  
41 connection with contracts.

42       (4) "Purchase" [is] means a transaction, for a valuable  
43 consideration, creating or acquiring an interest in goods, services and  
44 property, except real property or any interest therein.

45       (5) ["Materials" includes goods and property subject to chapter 2  
46 of Title 12A of the New Jersey Statutes, apparatus, or any other

1 tangible thing, except real property or any interest therein.] (Deleted  
2 by amendment, P.L. c. .) (Pending before the Legislature as this bill.)

3 (6) "Professional services" means services rendered or performed  
4 by a person authorized by law to practice a recognized profession,  
5 whose practice is regulated by law, and the performance of which  
6 services requires knowledge of an advanced type in a field of learning  
7 acquired by a prolonged formal course of specialized instruction and  
8 study as distinguished from general academic instruction or  
9 apprenticeship and training. Professional services may also mean  
10 services rendered in the provision or performance of [work] goods or  
11 services that [is] are original and creative in character in a recognized  
12 field of artistic endeavor.

13 (7) "Extraordinary unspecifiable services" means services which are  
14 specialized and qualitative in nature requiring expertise, extensive  
15 training and proven reputation in the field of endeavor.

16 (8) ["Project" means any work, undertaking, program, activity,  
17 development, redevelopment, construction or reconstruction of any  
18 area or areas.] (Deleted by amendment, P.L. , c. .) (Pending before  
19 the Legislature as this bill.)

20 (9) "Work" [includes services and any other activity of a tangible  
21 or intangible nature] means any task, program, undertaking, or  
22 activity, related to any development, redevelopment, construction or  
23 reconstruction performed or [assumed] provided pursuant to a  
24 contract [or agreement] with a contracting unit.

25 (10) "Homemaker--home health services" means at home personal  
26 care and home management provided to an individual or members of  
27 [his] the individual's family who reside with [him] the individual, or  
28 both, necessitated by the individual's illness or incapacity.  
29 "Homemaker--home health services" includes, but is not limited to, the  
30 services of a trained homemaker.

31 (11) "Recyclable material" means those materials which would  
32 otherwise become municipal solid waste, and which may be collected,  
33 separated or processed and returned to the economic mainstream in  
34 the form of raw materials or products.

35 (12) "Recycling" means any process by which materials which  
36 would otherwise become solid waste are collected, separated or  
37 processed and returned to the economic mainstream in the form of raw  
38 materials or products.

39 (13) "Marketing" means the [marketing of designated recyclable  
40 materials source separated in a municipality which entails a marketing  
41 cost less than the cost of transporting the recyclable materials to solid  
42 waste facilities and disposing of the materials as municipal solid waste  
43 at the facility utilized by the municipality] sale, disposition,  
44 assignment, or placement of designated recyclable materials with, or  
45 the granting of a concession to, a reseller, processor, materials  
46 recovery facility, or end-user of recyclable material, in accordance

1 with a district solid waste management plan adopted pursuant to  
2 P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection  
3 of such recyclable material when collected through a system of routes  
4 by local government unit employees or under a contract administered  
5 by a local government unit.

6 (14) "Municipal solid waste" means, as appropriate to the  
7 circumstances, all residential, commercial and institutional solid waste  
8 generated within the boundaries of a municipality; or the formal  
9 collection of such solid wastes or recyclable material in any  
10 combination thereof when collected through a system of routes by  
11 local government unit employees or under a contract administered by  
12 a local government unit.

13 (15) "Distribution" (when used in relation to electricity) means the  
14 process of conveying electricity from a contracting unit [who] that is  
15 a generator of electricity or a wholesale purchaser of electricity to  
16 retail customers or other end users of electricity.

17 (16) "Transmission" (when used in relation to electricity) means  
18 the conveyance of electricity from its point of generation to a  
19 contracting unit [who] that purchases it on a wholesale basis for  
20 resale.

21 (17) "Disposition" means the transportation, placement, reuse, sale,  
22 donation, transfer or temporary storage of recyclable materials for all  
23 possible uses except for disposal as municipal solid waste.

24 (18) "Cooperative marketing" means the joint marketing by two or  
25 more contracting units [within the same county, or adjacent or  
26 proximate counties,] of the source separated recyclable materials  
27 designated in a district recycling plan required pursuant to section 3 of  
28 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative  
29 agreement entered into by the participating contracting units thereof.

30 (19) "Aggregate" means the sums expended or to be expended for  
31 the provision or performance of any goods or services in connection  
32 with the same immediate purpose or task, or the furnishing of similar  
33 goods or services, during the same contract year through a contract  
34 awarded by a contracting agent.

35 (20) "Bid threshold" means the dollar amount set in section 3 of  
36 P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall  
37 advertise for and receive sealed bids in accordance with procedures set  
38 forth in P.L. , c. (C. ) (pending before the Legislature as this bill).

39 (21) "Contract" means any agreement, including but not limited to  
40 a purchase order or a formal agreement, which is a legally binding  
41 relationship enforceable by law, between a vendor who agrees to  
42 provide or perform goods or services and a contracting unit which  
43 agrees to compensate a vendor, as defined by and subject to the terms  
44 and conditions of the agreement. A contract also may include an  
45 arrangement whereby a vendor compensates a contracting unit for the  
46 vendor's right to perform a service, such as, but not limited to,  
47 operating a concession.



1     (22) "Contract year" means the period of 12 consecutive months  
2     following the award of a contract.

3     (23) "Competitive contracting" means the method described in  
4     sections 1 through 5 of P.L. , c. (C. ) (pending before the  
5     Legislature as this bill) of contracting for specialized goods and  
6     services in which formal proposals are solicited from vendors; formal  
7     proposals are evaluated by the purchasing agent or counsel or  
8     administrator; and the governing body awards a contract to a vendor  
9     or vendors from among the formal proposals received.

10    (24) "Goods and services" or "goods or services" means any work,  
11    labor, commodities, equipment, materials, or supplies of any tangible  
12    or intangible nature, except real property or any interest therein,  
13    provided or performed through a contract awarded by a contracting  
14    agent, including goods and property subject to N.J.S.12A:2-101 et  
15    seq.

16    (25) "Library and educational goods and services" means  
17    textbooks, copyrighted materials, student produced publications and  
18    services incidental thereto, including but not limited to books,  
19    periodicals, newspapers, documents, pamphlets, photographs,  
20    reproductions, microfilms, pictorial or graphic works, musical scores,  
21    maps, charts, globes, sound recordings, slides, films, filmstrips, video  
22    and magnetic tapes, other printed or published matter and audiovisual  
23    and other materials of a similar nature, necessary binding or rebinding  
24    of library materials, and specialized computer software used as a  
25    supplement or in lieu of textbooks or reference material.

26    (26) "Lowest price" means the least possible amount that meets all  
27    requirements of the request of a contracting agent.

28    (27) "Lowest responsible bidder or vendor" means the bidder or  
29    vendor: (a) whose response to a request for bids offers the lowest  
30    price and is responsive; and (b) who is responsible.

31    (28) "Official newspaper" means any newspaper designated by the  
32    contracting unit pursuant to R.S.35:1-1 et seq.

33    (29) "Purchase order" means a document issued by the contracting  
34    agent authorizing a purchase transaction with a vendor to provide or  
35    perform goods or services to the contracting unit, which, when  
36    fulfilled in accordance with the terms and conditions of a request of a  
37    contracting agent and other provisions and procedures that may be  
38    established by the contracting unit, will result in payment by the  
39    contracting unit.

40    (30) "Purchasing agent" means the individual duly assigned the  
41    authority, responsibility, and accountability for the purchasing activity  
42    of the contracting unit, and who has such duties as are defined by an  
43    authority appropriate to the form and structure of the contracting unit,  
44    and P.L.1971, c.198 (C.40A:11-1 et seq.).

45    (31) "Quotation" means the response to a formal or informal  
46    request made by a contracting agent by a vendor for provision or  
47    performance of goods or services, when the aggregate cost is less than

1 the bid threshold. Quotations may be in writing, or taken verbally if  
2 a record is kept by the contracting agent.

3 (32) "Responsible" means able to complete the contract in  
4 accordance with its requirements, including but not limited to  
5 requirements pertaining to experience, moral integrity, operating  
6 capacity, financial capacity, credit, and workforce, equipment, and  
7 facilities availability.

8 (33) "Responsive" means conforming in all material respects to the  
9 terms and conditions, specifications, legal requirements, and other  
10 provisions of the request.

11 (34) "Public works" means building, altering, repairing, improving  
12 or demolishing any public structure or facility constructed or acquired  
13 by a contracting unit to house local government functions or provide  
14 water, waste disposal, power, transportation, and other public  
15 infrastructures.

16 (35) "Director" means the Director of the Division of Local  
17 Government Services in the Department of Community Affairs.

18 (36) "Administrator" means a municipal administrator appointed  
19 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business  
20 administrator, a municipal manager or a municipal administrator  
21 appointed pursuant to the "Optional Municipal Charter Law,"  
22 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed  
23 pursuant to "the municipal manager form of government law,"  
24 R.S.40:79-1 et seq.; or the person holding responsibility for the overall  
25 operations of an authority that falls under the "Local Authorities Fiscal  
26 Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

27 (37) "Concession" means the granting of a license or right to act  
28 for or on behalf of the contracting unit, or to provide a service  
29 requiring the approval or endorsement of the contracting unit, and  
30 which may or may not involve a payment or exchange, or provision of  
31 services by or to the contracting unit.

32 (38) "Index rate" means the rate of annual percentage increase,  
33 rounded to the nearest half-percent, in the Implicit Price Deflator for  
34 State and Local Government Purchases of Goods and Services,  
35 computed and published quarterly by the United States Department of  
36 Commerce, Bureau of Economic Analysis.

37 (39) "Proprietary" means goods or services of a specialized nature,  
38 that may be made or marketed by a person or persons having the  
39 exclusive right to make or sell them, when the need for such goods or  
40 services has been certified in writing by the governing body of the  
41 contracting unit to be necessary for the conduct of its affairs.

42 (40) "Service or services" means the performance of work, or the  
43 furnishing of labor, time, or effort, or any combination thereof, not  
44 involving or connected to the delivery or ownership of a specified end  
45 product or goods or a manufacturing process. Service or services may  
46 also include an arrangement in which a vendor compensates the

1 contracting unit for the vendor's right to operate a concession.

2 (cf: P.L.1995, c.216, s.10)

3

4 7. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read  
5 as follows:

6 3. Bid threshold; period of contracts a. [Any purchase, contract  
7 or agreement for the performance of any work or the furnishing or  
8 hiring of materials or supplies,].

9 When the cost or price of [which, together with any other sums  
10 expended or to be expended for the performance of any work or  
11 services in connection with the same immediate program, undertaking,  
12 activity or project or the furnishing of similar materials or supplies  
13 during the same fiscal year] any contract [paid with or out of public  
14 funds,] awarded by the contracting agent in the aggregate does not  
15 exceed in [the fiscal] a contract year the total sum of [\$7,500.00 or  
16 the amount determined pursuant to subsection b. of this section]  
17 \$17,500, the contract may be [made, negotiated or] awarded by a  
18 [contracting] purchasing agent when so authorized by ordinance or  
19 resolution, as appropriate to the contracting unit, of the governing  
20 body of the contracting unit without public advertising for bids, except  
21 that the governing body of any contracting unit may adopt an  
22 ordinance or resolution to set a lower threshold for the receipt of  
23 public bids or the solicitation of competitive quotations. If the  
24 purchasing agent is qualified pursuant to subsection b. (pending before  
25 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
26 c.198 (C.40A:11-9), the governing body of the contracting unit may  
27 establish that the bid threshold may be up to \$25,000. Such  
28 authorization may be granted for each [purchase,] contract [or  
29 agreement] or by a general delegation of the power to [make,]  
30 negotiate [or] and award such [purchases,] contracts [or  
31 agreements] pursuant to this section.

32 b. Any [purchase,] contract [or agreement] made pursuant to this  
33 section may be awarded for a period of 24 consecutive months  
34 [notwithstanding that such 24-month period does not coincide with  
35 the fiscal year], except that contracts for professional services  
36 pursuant to subparagraph (i) of paragraph (a) of subsection (1) of  
37 section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a  
38 period not exceeding 12 consecutive months. The Division of Local  
39 Government Services shall adopt and promulgate rules and regulations  
40 concerning the methods of accounting for all contracts that do not  
41 coincide with the contracting unit's fiscal year.

42 [b.] c. The Governor, in consultation with the Department of the  
43 Treasury, shall, no later than March 1 of [each odd-numbered] every  
44 fifth year beginning in the fifth year after the year in which P.L. , c.  
45 (now before the Legislature as this bill) takes effect, adjust the  
46 threshold amount and the higher threshold amount which the

1 governing body is permitted to establish, as set forth in subsection a.  
2 of this section, or [subsequent to 1985] the threshold amount  
3 resulting from any adjustment under this subsection [or section 17 of  
4 P.L.1985, c.469], in direct proportion to the rise or fall of the  
5 [Consumer Price Index for all urban consumers in the New York City  
6 and the Philadelphia areas as reported by the United States  
7 Department of Labor] index rate as that term is defined in section 2  
8 of P.L.1971, c.198 (C.40A:11-2) (pending before the Legislature as  
9 section 6 of this bill), and shall round the adjustment to the nearest  
10 \$1,000. The Governor shall, no later than June 1 of [each  
11 odd-numbered] every fifth year, notify each governing body of the  
12 adjustment. The adjustment shall become effective on July 1 of [each  
13 odd-numbered year] the year in which it is made.  
14 (cf: P.L.1996, c.113, s.18)

15

16 8. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to read  
17 as follows:

18 4. [Contracts and agreements required to be advertised.] a. Every  
19 contract [or agreement] awarded by the contracting agent for the  
20 provision or performance of any [work or the furnishing or hiring of  
21 any materials or supplies] goods or services, the cost [or the contract  
22 price whereof is to be paid with or out of public funds, not included  
23 within the terms of section 3 of this act] of which in the aggregate  
24 exceeds the bid threshold, shall be [made or] awarded only by  
25 resolution of the governing body of the contracting unit to the lowest  
26 responsible bidder after public advertising for bids and bidding  
27 therefor, except as is provided otherwise in this act or specifically by  
28 any other law. [No work, materials or supplies shall be undertaken,  
29 acquired or furnished for a sum exceeding in the aggregate the amount  
30 set forth in, or the amount calculated by the Governor pursuant to,  
31 section 3 of P.L.1971, c.198 (C.40A:11-3), except by contract or  
32 agreement.] The governing body of a contracting unit may, by  
33 resolution approved by a majority of the governing body and subject  
34 to subsections b. and c. of this section, disqualify a bidder who would  
35 otherwise be determined to be the lowest responsible bidder, if the  
36 governing body finds that it has had prior negative experience with the  
37 bidder.

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

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

46 (2) the bidder defaulted on a contract, thereby requiring the local

1 unit to utilize the services of another contractor to provide the goods  
2 or perform the services or to correct or complete the contract;

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

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

10 c. The following conditions apply if the governing body of a  
11 contracting unit is contemplating a disqualification based on prior  
12 negative experience:

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

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

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

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

33 (5) A disqualification<sup>1</sup>, other than a disqualification pursuant to  
34 which a governing body is prohibited by law from entering into a  
35 contract with a bidder,<sup>1</sup> may be voided or the period thereof may be  
36 reduced, in the discretion of the governing body, upon the submission  
37 of a good faith application under oath, supported by documentary  
38 evidence, setting forth substantial and appropriate grounds for the  
39 granting of relief, such as reversal of a judgment, or actual change of  
40 ownership, management or control of the bidder.

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

47 (cf: P.L.1985, c.469, s.7)

1       9. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read  
2 as follows:

3       5. Exceptions. Any **[purchase,]** contract **[or agreement of the**  
4 **character described in section 4 of P.L.1971, c.198 (C.40A:11-4)]** the  
5 amount of which exceeds the bid threshold, may be **[made,]**  
6 negotiated **[or]** and awarded by the governing body without public  
7 advertising for bids and bidding therefor and shall be awarded by  
8 resolution of the governing body if:

9       (1) The subject matter thereof consists of:

10       (a) (i) Professional services. The governing body shall in each  
11 instance state supporting reasons for its action in the resolution  
12 awarding each contract and shall forthwith cause to be printed once,  
13 in **[a]** the official newspaper **[authorized by law to publish its legal**  
14 **advertisements]**, a brief notice stating the nature, duration, service and  
15 amount of the contract, and that the resolution and contract are on file  
16 and available for public inspection in the office of the clerk of the  
17 county or municipality, or, in the case of a contracting unit created by  
18 more than one county or municipality, of the counties or municipalities  
19 creating such contracting unit; or (ii) Extraordinary unspecifiable  
20 services. The application of this exception shall be construed narrowly  
21 in favor of open competitive bidding, where possible, and the Division  
22 of Local Government Services is authorized to adopt and promulgate  
23 rules and regulations after consultation with the Commissioner of  
24 Education limiting the use of this exception in accordance with the  
25 intention herein expressed. The governing body shall in each instance  
26 state supporting reasons for its action in the resolution awarding each  
27 contract and shall forthwith cause to be printed, in the manner set  
28 forth in subsection (1) (a) (i) of this section, a brief notice of the  
29 award of such contract;

30       (b) The doing of any work by employees of the contracting unit;

31       (c) The printing of legal briefs, records and appendices to be used  
32 in any legal proceeding in which the contracting **[party]** unit may be  
33 a party;

34       (d) The furnishing of a tax map or maps for the contracting **[party]**  
35 unit;

36       (e) The purchase of perishable foods as a subsistence supply;

37       (f) The supplying of any product or the rendering of any service by  
38 a public utility, which is subject to the jurisdiction of the Board of  
39 Public Utilities or the Federal Energy Regulatory Commission or its  
40 successor, in accordance with tariffs and schedules of charges made,  
41 charged or exacted, filed with the board or commission;

42       (g) The acquisition, subject to prior approval of the Attorney  
43 General, of special equipment for confidential investigation;

44       (h) The printing of bonds and documents necessary to the issuance  
45 and sale thereof by a contracting unit;

46       (i) Equipment repair service if in the nature of an extraordinary

- 1   unspecifiable service and necessary parts furnished in connection with  
2   such service, which exception shall be in accordance with the  
3   requirements for extraordinary unspecifiable services;
- 4   (j) The publishing of legal notices in newspapers as required by  
5   law;
- 6   (k) The acquisition of artifacts or other items of unique intrinsic,  
7   artistic or historical character;
- 8   (l) **[Election expenses]** Those goods and services necessary or  
9   required to prepare and conduct an election;
- 10   (m) Insurance, including the purchase of insurance coverage and  
11   consultant services, which exception shall be in accordance with the  
12   requirements for extraordinary unspecifiable services;
- 13   (n) The doing of any work by handicapped persons employed by a  
14   sheltered workshop;
- 15   (o) The provision of any **[service or the furnishing of materials]**  
16   goods or services including those of a commercial nature, attendant  
17   upon the operation of a restaurant by any nonprofit, duly incorporated,  
18   historical society at or on any historical preservation site;
- 19   (p) **[Homemaker--home health services performed by voluntary,**  
20   **nonprofit agencies;]** (Deleted by amendment, P.L. , c. .) (Pending  
21   before the Legislature as this bill.)
- 22   (q) **[The purchase of materials and services for a law library**  
23   **established pursuant to R.S.40:33-14, including books, periodicals,**  
24   **newspapers, documents, pamphlets, photographs, reproductions,**  
25   **microforms, pictorial or graphic works, copyright and patent materials,**  
26   **maps, charts, globes, sound recordings, slides, films, filmscripts, video**  
27   **and magnetic tapes, and other audiovisual, printed, or published**  
28   **material of a similar nature; necessary binding or rebinding of law**  
29   **library materials; and specialized library services]** Library and  
30   educational goods and services;
- 31   (r) On-site inspections undertaken by private agencies pursuant to  
32   the "State Uniform Construction Code Act," P.L.1975, c.217  
33   (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- 34   (s) **[The marketing of recyclable materials recovered through a**  
35   **recycling program, or the marketing of any product intentionally**  
36   **produced or derived from solid waste received at a resource recovery**  
37   **facility or recovered through a resource recovery program, including,**  
38   **but not limited to, refuse-derived fuel, compost materials, methane**  
39   **gas, and other similar products;]** <sup>1</sup>(Deleted by amendment, P.L. c.  
40   .) (Pending before the Legislature as this bill.)] The marketing of  
41   recyclable materials recovered through a recycling program, or the  
42   marketing of any product intentionally produced or derived from solid  
43   waste received at a resource recovery facility or recovered through a  
44   resource recovery program, including, but not limited to,  
45   refuse-derived fuel, compost materials, methane gas, and other similar  
46   products;<sup>1</sup>

1 (t) [Emergency medical services provided by a hospital to the  
2 residents of a municipality or county, provided that: (a) such  
3 exception be allowed only after the governing body determines that the  
4 emergency services are available only from one provider; and (b) if  
5 the contract is awarded without advertising for bids or bidding the  
6 governing body shall in each instance state supporting reasons for its  
7 action in a resolution awarding the contract and cause to be printed  
8 once in a newspaper authorized by law to publish its legal  
9 advertisements a brief notice stating the nature, duration, service, and  
10 amount of the contract; and (c) the contract shall be kept on file for  
11 public inspection in the office of the clerk of the municipality;]  
12 (Deleted by amendment, P.L. c. .) (Pending before the Legislature  
13 as this bill.)

14 (u) Contracting unit towing and storage contracts, provided that  
15 all such contracts shall be pursuant to reasonable non-exclusionary and  
16 non-discriminatory terms and conditions, which may include the  
17 provision of such services on a rotating basis, at the rates and charges  
18 set by the municipality pursuant to section 1 of P.L.1979, c.101  
19 (C.40:48-2.49). All contracting unit towing and storage contracts for  
20 services to be provided at rates and charges other than those  
21 established pursuant to the terms of this paragraph shall only be  
22 awarded to the lowest responsible bidder in accordance with the  
23 provisions of the "Local Public Contracts Law" and without regard for  
24 the value of the contract therefor;

25 (v) The purchase of steam or electricity from, or the rendering of  
26 services directly related to the purchase of such steam or electricity  
27 from a qualifying small power production facility or a qualifying  
28 cogeneration facility as defined pursuant to 16 U.S.C.796;

29 (w) The purchase of electricity or administrative or dispatching  
30 services directly related to the transmission of such purchased  
31 electricity by a contracting unit engaged in the generation of  
32 electricity;

33 (x) The printing of municipal ordinances or other services  
34 necessarily incurred in connection with the revision and codification  
35 of municipal ordinances;

36 (y) An agreement for the purchase of an equitable interest in a  
37 water supply facility or for the provision of water supply services  
38 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or  
39 an agreement entered into pursuant to P.L.1989, c.109  
40 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no  
41 later than six months after the effective date of P.L.1993, c.381;

42 (z) A contract for the provision of water supply services entered  
43 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);

44 (aa) [The cooperative marketing of recyclable materials recovered  
45 through a recycling program; or] <sup>1</sup>[(Deleted by amendment, P.L. ,  
46 c. .) (Pending before the Legislature as this bill.)] The cooperative  
47 marketing of recyclable materials recovered through a recycling



1 program: <sup>1</sup>

2 (bb) A contract for the provision of wastewater treatment services  
3 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

4 (cc) Expenses for travel and conferences;

5 (dd) The provision or performance of goods or services for the  
6 support or maintenance of proprietary computer hardware and  
7 software, except that this provision shall not be utilized to acquire or  
8 upgrade non-proprietary hardware or to acquire or update non-  
9 proprietary software;

10 (ee) The management or operation of an airport owned by the  
11 contracting unit pursuant to R.S.40:8-1 et seq <sup>1</sup>;

12 (ff) Purchases of goods and services at rates set by the Universal  
13 Service Fund administered by the Federal Communications  
14 Commission<sup>1</sup>.

15 (2) It is to be made or entered into with the United States of  
16 America, the State of New Jersey, county or municipality or any  
17 board, body, officer, agency or authority thereof [and] or any other  
18 state or subdivision thereof.

19 (3) [The contracting agent has] Bids have been advertised [for  
20 bids] pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two  
21 occasions and (a) [ has received] no bids have been received on both  
22 occasions in response to [its] the advertisement, or (b) the governing  
23 body has rejected such bids on two occasions because [the contracting  
24 agent] it has determined that they are not reasonable as to price, on  
25 the basis of cost estimates prepared for or by the contracting agent  
26 prior to the advertising therefor, or have not been independently  
27 arrived at in open competition, or (c) on one occasion no bids were  
28 received pursuant to (a) and on one occasion all bids were rejected  
29 pursuant to (b), in whatever sequence; any such contract [or  
30 agreement] may then be negotiated and may be awarded upon  
31 adoption of a resolution by a two-thirds affirmative vote of the  
32 authorized membership of the governing body authorizing such  
33 contract [or agreement]; provided, however, that:

34 (i) A reasonable effort is first made by the contracting agent to  
35 determine that the same or equivalent [materials or supplies] goods  
36 or services, at a cost which is lower than the negotiated price, are not  
37 available from an agency or authority of the United States, the State  
38 of New Jersey or of the county in which the contracting unit is  
39 located, or any municipality in close proximity to the contracting unit;

40 (ii) The terms, conditions, restrictions and specifications set forth  
41 in the negotiated contract [or agreement] are not substantially  
42 different from those which were the subject of competitive bidding  
43 pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

44 (iii) Any minor amendment or modification of any of the terms,  
45 conditions, restrictions and specifications, which were the subject of  
46 competitive bidding pursuant to section 4 of P.L.1971, c.198

1 (C.40A:11-4), shall be stated in the resolution awarding such contract  
2 [or agreement]; provided further, however, that if on the second  
3 occasion the bids received are rejected as unreasonable as to price, the  
4 contracting agent shall notify each responsible bidder submitting bids  
5 on the second occasion of its intention to negotiate, and afford each  
6 bidder a reasonable opportunity to negotiate, but the governing body  
7 shall not award such contract [or agreement] unless the negotiated  
8 price is lower than the lowest rejected bid price submitted on the  
9 second occasion by a responsible bidder, is the lowest negotiated price  
10 offered by any responsible [supplier] vendor, and is a reasonable price  
11 for such [work, materials, supplies] goods or services.

12 Whenever a contracting unit shall determine that a bid was not  
13 arrived at independently in open competition pursuant to subsection  
14 (3) of this section it shall thereupon notify the county prosecutor of  
15 the county in which the contracting unit is located and the Attorney  
16 General of the facts upon which its determination is based, and when  
17 appropriate, it may institute appropriate proceedings in any State or  
18 federal court of competent jurisdiction for a violation of any State or  
19 federal antitrust law or laws relating to the unlawful restraint of trade.

20 (4) The contracting unit has solicited and received at least three  
21 quotations on materials, supplies or equipment for which a State  
22 contract has been issued pursuant to section 12 of P.L.1971, c.198  
23 (C.40A:11-12), and the lowest responsible quotation is at least 10%  
24 less than the price the contracting unit would be charged for the  
25 identical materials, supplies or equipment, in the same quantities,  
26 under the State contract. Any such contract entered into pursuant to  
27 this subsection may be awarded only upon adoption of a resolution by  
28 the affirmative vote of two-thirds of the full membership of the  
29 governing body of the contracting unit at a meeting thereof  
30 authorizing such a contract. <sup>1</sup> A copy of the purchase order relating to  
31 any such contract, the requisition for purchase order, if applicable, and  
32 documentation identifying the price of the materials, supplies or  
33 equipment under the State contract and the State contract number  
34 shall be filed with the director within five working days of the award  
35 of any such contract by the contracting unit. The director shall notify  
36 the contracting unit of receipt of the material and shall make the  
37 material available to the State Treasurer. The contracting unit shall  
38 make available to the director upon request any other documents  
39 relating to the solicitation and award of the contract, including, but not  
40 limited to, quotations, requests for quotations, and resolutions. The  
41 director periodically shall review material submitted by contracting  
42 units to determine the impact of such contracts on local contracting  
43 and shall consult with the State Treasurer on the impact of such  
44 contracts on the State procurement process. The director may, after  
45 consultation with the State Treasurer, adopt rules in accordance with  
46 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
47 seq.) to limit the use of this subsection, after considering the impact of

1 contracts awarded under this subsection on State and local  
2 contracting, or after considering the extent to which the award of  
3 contracts pursuant to this subsection is consistent with and in  
4 furtherance of the purposes of the public contracting laws.<sup>1</sup>

5 (5) Notwithstanding any provision of law, rule or regulation to the  
6 contrary, the subject matter consists of the <sup>1</sup>combined<sup>1</sup> collection and  
7 marketing, or the cooperative <sup>1</sup>combined<sup>1</sup> collection and marketing  
8 of recycled material recovered through a recycling program, or any  
9 product intentionally produced or derived from solid waste received  
10 at a resource recovery facility or recovered through a resource  
11 recovery program including, but not limited to refuse-derived fuel  
12 <sup>1</sup>[compost materials]<sup>1</sup>, compost materials, methane gas, and other  
13 similar products, provided that in lieu of engaging in such public  
14 advertising for bids and the bidding therefor, the contracting unit shall,  
15 prior to commencing the procurement process, submit for approval to  
16 the Director of the Division of Local Government Services, a written  
17 detailed description of the process to be followed in securing said  
18 services. Within 30 days after receipt of the written description the  
19 director shall, if the director finds that the process provides for fair  
20 competition and integrity in the negotiation process, approve, in  
21 writing, the description submitted by the contracting unit. If the  
22 director finds that the process does not provide for fair competition  
23 and integrity in the negotiation process, the director shall advise the  
24 contracting unit of the deficiencies that must be remedied. If the  
25 director fails to respond in writing to the contracting unit within 30  
26 days, the procurement process as described shall be deemed approved.  
27 As used in this section, "collection" means the physical removal of  
28 recyclable materials from curbside or any other location selected by  
29 the contracting unit.

30 (cf: P.L.1997, c.387, s.2)

31  
32 10. Section 6 of P.L.1971, c.198 (C.40A:11-6) is amended to read  
33 as follows:

34 6. Emergency **[purchases and]** contracts. Any **[purchase,]**  
35 contract **[or agreement]** may be **[made,]** negotiated or awarded for  
36 a contracting unit without public advertising for bids and bidding  
37 therefor, notwithstanding that the **[cost or]** contract price will exceed  
38 the **[amount set forth in, or the amount calculated by the Governor**  
39 **pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3)]** **bid threshold,**  
40 when an emergency affecting the public health, safety or welfare  
41 requires the immediate delivery of **[the articles]** **goods** or the  
42 performance of **[the]** services; provided that the awarding **[or**  
43 **making]** of such **[purchases,]** contracts **[or agreements are]** is made  
44 in the following manner:

45 a. **[A written requisition for the performance of such work or**  
46 **labor, or the furnishing of materials, supplies or services is filed with**

1 the contracting agent or his deputy in charge describing the nature of  
2 the emergency, the time of its occurrence and the need for invoking  
3 this section, certified by the officer or director in charge of the  
4 department wherein the emergency occurred, or such other officer or  
5 employee as may be authorized to act in place of said officer or  
6 director, and the contracting agent or his deputy in charge, being  
7 satisfied that the emergency exists, is hereby authorized to award a  
8 contract for said work or labor, materials, supplies or services.] The  
9 official in charge of the agency wherein the emergency occurred, or  
10 such other officer or employee as may be authorized to act in place of  
11 that official, shall notify the purchasing agent, a supervisor of the  
12 purchasing agent, or a designated representative of the governing  
13 body, as may be appropriate to the form of government, of the need  
14 for the performance of a contract, the nature of the emergency, the  
15 time of its occurrence and the need for invoking this section. If that  
16 person is satisfied that an emergency exists, that person shall be  
17 authorized to award a contract or contracts for such purposes as may  
18 be necessary to respond to the emergent needs. Such notification shall  
19 be reduced to writing and filed with the purchasing agent as soon as  
20 practicable.

21 b. Upon the furnishing of such [work or labor, materials, supplies]  
22 goods or services, in accordance with the terms of the contract [or  
23 agreement], the contractor furnishing such [work or labor, materials,  
24 supplies] goods or services shall be entitled to be paid therefor and the  
25 contracting unit shall be obligated for said payment. The governing  
26 body of the contracting unit shall take such action as shall be required  
27 to provide for the payment of the contract price.

28 c. The Director of the Division of Local Government Services in  
29 the Department of Community Affairs shall prescribe rules and  
30 procedures to implement the requirements of this section.

31 d. The governing body of the contracting unit may prescribe  
32 additional rules and procedures to implement the requirements of this  
33 section.

34 (cf: P.L.1985, c.469, s.8)

35

36 11. Section 6 of P.L.1975, c.353 (C.40A:11-6.1) is amended to  
37 read as follows:

38 6. All contracts enumerated in this section shall be awarded as  
39 follows:

40 [All purchases, contracts or agreements which require public  
41 advertisement for bids shall be awarded to the lowest responsible  
42 bidder.

43 Prior to the award of any other purchase, contract or agreement,  
44 the contracting agent shall, except in the case of the performance of  
45 professional services, solicit quotations, whenever practicable, on any  
46 such purchase, contract or agreement the estimated cost or price of  
47 which is \$1,000.00 or more, and the award thereof shall be made, in

1 accordance with sections 3 (C.40A:11-3) or 4 (C.40A:11-4), as the  
2 case may be, of the Local Public Contracts Law, on the basis of the  
3 lowest responsible quotation received, which quotation is most  
4 advantageous to the contracting unit, price and other factors  
5 considered; provided, however, that if the contracting agent deems it  
6 impracticable to solicit competitive quotations in the case of  
7 extraordinary, unspecifiable service, or, in the case of such or any  
8 other purchase, contract or agreement awarded hereunder, having  
9 sought such quotations determines that it should not be awarded on  
10 the basis of the lowest quotation received, the contracting agent shall  
11 file a statement of explanation of the reason or reasons therefor,  
12 which shall be placed on file with said purchase, contract or  
13 agreement.]

14 a. For all contracts that in the aggregate are less than the bid  
15 threshold but 15 percent or more of that amount, and for those  
16 contracts that are for subject matter enumerated in subsection (1) of  
17 section 5 of P.L.1971, c.198 (C.40A:11-5), except for paragraph (a)  
18 of that subsection concerning professional services and paragraph (b)  
19 of that subsection concerning work by employees of the contracting  
20 unit, the contracting agent shall award the contract after soliciting at  
21 least two competitive quotations, if practicable. The award shall be  
22 made to a vendor whose response is most advantageous, price and  
23 other factors considered. The contracting agent shall retain the record  
24 of the quotation solicitation and shall include a copy of the record with  
25 the voucher used to pay the vendor.

26 b. When in excess of the bid threshold, and after documented effort  
27 by the contracting agent to secure competitive quotations, a contract  
28 for extraordinary unspecifiable services may be awarded upon a  
29 determination in writing by the contracting agent that the solicitation  
30 of competitive quotations is impracticable. Any such contract shall be  
31 awarded by resolution of the governing body.

32 c. If authorized by the governing body by resolution or ordinance,  
33 all contracts that are in the aggregate less than 15 percent of the bid  
34 threshold may be awarded by the contracting agent without soliciting  
35 competitive quotations.

36 d. Whenever two or more responses to a request of a contracting  
37 agent offer equal prices and are the lowest responsible bids or  
38 proposals, the contracting unit may award the contract to the vendor  
39 whose response, in the discretion of the contracting unit, is the most  
40 advantageous, price and other factors considered. In such a case, the  
41 award resolution or purchase order documentation shall explain why  
42 the vendor selected is the most advantageous.

43 (cf: P.L.1983, c.418, s.1)

44

45 12. Section 7 of P.L.1971, c.198 (C.40A:11-7) is amended to read  
46 as follows:

47 7. Contracts not to be divided. [No purchase, contract or

1 agreement, which is single in character or which necessarily or by  
2 reason of the quantities required to effectuate the purpose of the  
3 purchase, contract or agreement includes the furnishing of additional  
4 services or buying or hiring of materials or supplies or the doing of  
5 additional work, shall be subdivided, so as to bring it or any of the  
6 parts thereof under the maximum price or cost limitation of the  
7 amount set forth in, or the amount calculated by the Governor  
8 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3) thus  
9 dispensing with the requirement of public advertising and bidding  
10 therefor, and in purchasing or contracting for, or agreeing for the  
11 furnishing of, any services, the doing of any work or the supplying of  
12 any materials or the supplying or hiring of any materials or supplies,  
13 included in or incident to the performance or completion of any  
14 project, program, activity or undertaking which is single in character  
15 or inclusive of the furnishing of additional services or buying or hiring  
16 of materials or supplies or the doing of additional work, or which  
17 requires the furnishing of more than one article of equipment or buying  
18 or hiring of materials or supplies, all of the services, materials or  
19 property requisite for the completion of such project shall be included  
20 in one purchase, contract or agreement]

21 a. No contract in the aggregate which is single in character or  
22 which necessarily or by reason of the quantities required to effectuate  
23 the purpose of the contract includes the provision or performance of  
24 additional goods or services, shall be divided, so as to bring it or any  
25 of the parts thereof under the bid threshold, for the purpose of  
26 dispensing with the requirement of public advertising and bidding  
27 therefor.

28 b. In contracting for the provision or performance of any goods or  
29 services included in or incidental to the provision or performance of  
30 any work which is single in character or inclusive of the provision or  
31 performance of additional goods or services, all of the goods or  
32 services requisite for the completion of such contract shall be included  
33 in one contract.

34 (cf: P.L.1985, c.469, s.9)

35

36 13. (New section) For the purpose of ensuring consistency  
37 between the "Local Public Contracts Law," P.L.1971, c.198  
38 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
39 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
40 Government Services in the Department of Community Affairs, after  
41 consultation with the Commissioner of Education and pursuant to the  
42 "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et  
43 seq.), shall adopt rules concerning determinations of aggregation for  
44 the purposes of whether a contract is subject to public bidding as set  
45 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
46 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
47 N.J.S.18A:18A-8.

1       14. Section 8 of P.L.1971, c.198 (C.40A:11-8) is amended to read  
2 as follows:

3       8. Every contracting agent shall, at intervals to be fixed by the  
4 governing body, solicit by public advertisement the submission of bids  
5 for the ~~provision or~~ [furnishing of all work, materials and supplies] ~~performance of goods or services~~ which are and which under section  
6 performance of goods or services which are and which under section  
7 4 of ~~this act~~ P.L.1971, c.198 (C.40A:11-4) can be ~~[purchased or~~  
8 ~~agreed or]~~ contracted to be ~~[furnished]~~ provided or performed only  
9 after public advertisement for bids and bidding therefor and all  
10 ~~[purchases, or]~~ contracts ~~[or agreements for the furnishing, of such~~  
11 ~~work, materials and supplies]~~ for the provision or performance of such  
12 goods or services shall be ~~[made and]~~ awarded only in that manner.  
13 (cf: P.L.1971, c.198, s.8)  
14

15       15. Section 9 of P.L.1971, c.198 (C.40A:11-9) is amended to read  
16 as follows:

17       9. Purchasing agent, department or board; establishment; powers

18       a. The governing body of any ~~[local]~~ contracting unit may by  
19 ordinance, in the case of a municipality, by ordinance or resolution, as  
20 the case may be, in the case of a county, or by resolution in all other  
21 cases, establish the office of purchasing agent, or a purchasing  
22 department or a purchasing board, with the authority, responsibility,  
23 and accountability as its contracting agent, for the purchasing activity  
24 for the contracting unit, to prepare public advertising for bids and to  
25 receive bids for the ~~[purchase of work, materials and supplies]~~  
26 provision or performance of goods or services on behalf of the  
27 contracting unit and~~[], unless otherwise required by the provisions of~~  
28 ~~this act,]~~ to ~~[make awards of]~~ award contracts permitted pursuant to  
29 subsection a. of section 3 of P.L.1971, c. 198 (C.40A:11-3) in the  
30 name of the contracting unit, and conduct any activities as may be  
31 necessary or appropriate to the purchasing function of the contracting  
32 unit.

33       b. The Director of the Division of Local Government Services,  
34 after consultation with the Commissioner of Education, shall establish  
35 criteria to qualify individuals who have completed appropriate training  
36 and possess such purchasing experience as deemed necessary to  
37 exercise such supplemental authority as may be set forth in subsection  
38 a. of section 3 of P.L.1971, c.198 (C.40A:11-3). These criteria also  
39 shall authorize county purchasing agents certified pursuant to  
40 P.L.1981, c.380 (C.40A:9-30.1 et seq.) to exercise such supplemental  
41 authority.

42 (cf: P.L.1977, c.53, s.5)  
43

44       16. Section 10 of P.L.1971, c.198 (C.40A:11-10) is amended to  
45 read as follows:

46       10. Joint agreements for ~~[purchase of work, materials, supplies]~~

1 provision and performance of goods and services; cooperative  
2 marketing; authorization

3 (a) (1) The governing bodies of two or more contracting units  
4 **[within the same county, or adjoining counties,]** may provide by joint  
5 agreement for the **[purchase of work, materials and supplies]**  
6 provision and performance of goods and services for use by their  
7 respective jurisdictions.

8 (2) The governing bodies of two or more contracting units  
9 providing sewerage services pursuant to the "sewerage authorities  
10 law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county  
11 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.),  
12 R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint  
13 agreement for the purchase of **[work]** goods and services related to  
14 sewage sludge disposal.

15 (3) The governing body of two or more contracting units providing  
16 electrical distribution services pursuant to and in **[accord]** accordance  
17 with R.S.40:62-12 through R.S.40:62-25, may provide by joint  
18 agreement for the **[purchase]** provision or performance of **[work,**  
19 **material and supplies]** goods or services related to the distribution of  
20 electricity.

21 (4) The governing bodies of two or more contracting units may  
22 provide for the cooperative marketing of recyclable materials  
23 recovered through a recycling program.

24 (b) The governing body of any **[county or municipality]**  
25 contracting unit may provide by joint agreement with the board of  
26 education of any school district **[located wholly or partially within the**  
27 **geographic boundaries of the county or municipality]** for the  
28 **[purchase of work, materials and supplies]** provision and performance  
29 of goods and services for use by their respective jurisdictions.

30 (c) Such agreement shall be entered into by resolution adopted by  
31 each of the participating bodies and boards, which shall set forth the  
32 categories of **[work, materials and supplies]** goods or services to be  
33 **[purchased]** provided or performed, the manner of advertising for bids  
34 and of awarding of contracts, the method of payment by each  
35 participating body and board, and other matters deemed necessary to  
36 carry out the purposes of the agreement.

37 (d) Each participating body's and board's share of expenditures for  
38 purchases under any such agreement shall be appropriated and paid in  
39 the manner set forth in the agreement and in the same manner as for  
40 other expenses of the participating body and board.

41 (cf: P.L.1995, c.356, s.7)

42

43 17. Section 11 of P.L.1971, c.198 (C.40A:11-11) is amended to  
44 read as follows:

45 11. Additional matters regarding **[agreements]** contracts for the  
46 **[purchases of work, materials and supplies]** provision and



1 performance of goods and services

2 (1) The contracting units entering into a joint agreement pursuant  
3 to section 10 of [this act] P.L.1971, c.198 (C.40A:11-10) may  
4 designate a joint [purchasing] contracting agent[, department or  
5 board pursuant to section 9 of this act. Any such agent, board or  
6 department already designated pursuant to section 9 may serve as the  
7 joint agent, department or board designated pursuant to this section].

8 (2) [Purchases, contracts or agreements] Contracts made pursuant  
9 to a joint purchasing agreement shall be subject to all of the terms and  
10 conditions of this act.

11 (3) Any [county or municipality] contracting unit serving as a  
12 [purchasing] joint contracting agent [, board or department]  
13 pursuant to this section [11], may make an appropriation to enable it  
14 to perform any such contract and may anticipate as revenue payments  
15 to be made and received by it from any other party to the agreement.  
16 Any items so included in a local budget shall be subject to the approval  
17 of the Director, Division of Local Government Services, who shall  
18 consider the matter in conjunction with the requirements of chapter 4  
19 of Title 40A of the New Jersey Statutes. The agreement and any  
20 subsequent amendment or revisions thereto shall be filed with the  
21 Director of the Division of Local Government Services in the  
22 Department of Community Affairs.

23 (4) Any joint contracting agent [, department or board] so  
24 designated pursuant to a joint purchasing agreement shall have the sole  
25 responsibility to comply with the provisions of section 23 of [this act]  
26 P.L.1971, c.198 (C.40A:11-23).

27 (5) The governing bodies of two or more contracting units or  
28 boards of education [within the same county, or adjoining counties;]  
29 or for purposes related to the distribution of electricity, the governing  
30 bodies of two or more contracting units providing electrical  
31 distribution services pursuant to R.S.40:62-12 through R.S.40:62-25,  
32 may by resolution establish a cooperative pricing system as hereinafter  
33 provided. Any such resolution shall establish procedures whereby one  
34 participating contracting unit in the cooperative pricing system shall  
35 be empowered to advertise and receive bids to provide prices for all  
36 other participating contracting units in such system for the [purchase]  
37 provision or performance of [work, materials and supplies] goods or  
38 services; provided, however, that no [purchase or] contract shall be  
39 [made] awarded by any participating contracting unit for a price  
40 which exceeds any other price available to the participating contracting  
41 unit, or for a purchase of goods or services in deviation from the  
42 specifications, price or quality set forth by the participating contracting  
43 unit.

44 (6) The governing body of a county government may establish a  
45 cooperative pricing system for the voluntary use of contracting units  
46 within the county.

1 No vendor shall be required or permitted to extend [his] bid prices  
2 to participating contracting units in a cooperative pricing system  
3 unless so specified in the bids.

4 No cooperative pricing system and agreements entered into  
5 pursuant to such system, or joint purchase agreements established  
6 pursuant to this act, the "Interlocal Services Act," P.L.1973, c.208  
7 (C.40:8A-1 et seq.) or any other provision of law, shall become  
8 effective without prior approval of the Director of the Division of  
9 Local Government Services and said approval shall be valid for a  
10 period not to exceed five years.

11 The director's approval shall be based on the following:

12 (a) Provision for maintaining adequate records and orderly  
13 procedures to facilitate audit and efficient administration, and

14 (b) Adequacy of public disclosure of such actions as are taken by  
15 the participants, and

16 (c) Adequacy of procedures to facilitate compliance with all  
17 provisions of the "Local Public Contracts Law" and corresponding  
18 regulations, and

19 (d) Clarity of provisions to assure that the responsibilities of the  
20 respective parties are understood.

21 Failure of the Director of the Division of Local Government  
22 Services to approve or disapprove a properly executed and completed  
23 application to establish a cooperative pricing system and agreements  
24 entered into pursuant to such system or other joint purchase agreement  
25 within 45 days from the date of receipt of said application by the  
26 director shall constitute approval of said application, which shall be  
27 valid for a period of five years, commencing from the date of receipt  
28 of said application by the director.

29 The Director of the Division of Local Government Services is  
30 hereby authorized to promulgate rules and regulations specifying  
31 procedures pertaining to cooperative pricing systems and joint  
32 purchase agreements entered into pursuant to this act, the "Interlocal  
33 Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) and any other  
34 provision of law.

35 (cf: P.L.1995, c.356, s.8)

36

37 18. Section 12 of P.L.1971, c.198 (C.40A:11-12) is amended to  
38 read as follows:

39 12. a. Any contracting unit under this act may without advertising  
40 for bids, or having rejected all bids obtained pursuant to advertising  
41 therefor, purchase any [materials, supplies,] goods[,] or services [or  
42 equipment] under any contract or contracts for such [materials,  
43 supplies,] goods[,] or services [or equipment] entered into on behalf  
44 of the State by the Division of Purchase and Property in the  
45 Department of the Treasury.

46 b. A contracting unit may also use, without advertising for bids, or  
47 having rejected all bids obtained pursuant to advertising, the Federal

Supply Schedules of the General Services Administration [as permitted by the "Federal Acquisition Streamlining Act of 1994," Pub.L. 103-355, and federal regulations adopted thereunder.] promulgated by the Director of the Division of Purchase and Property in the Department of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1), subject to the following conditions:

(1) the price of the goods <sup>1</sup>or services<sup>1</sup> being procured is no greater than the price offered to federal agencies;

(2) the Federal Supply Schedules may be used only for purchases of up to \$500,000 per year or for one product unit at any price and only for reprographic equipment or services, including digital copiers, used by the contracting unit; <sup>1</sup>[ and]<sup>1</sup>

(3) the contracting unit receives the benefit of federally mandated price reductions during the term of the contract and is protected from price increases during that time <sup>1</sup>;

(4) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under the State contract, unless the contracting unit determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules would be more advantageous to the contracting unit;

(5) a copy of the purchase order relating to any such contract, the requisition or request for purchase order, if applicable, and documentation identifying the price of the goods or services under the Federal Supply Schedules shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of the receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract<sup>1</sup> .

c. Whenever a purchase is made, the contracting unit shall place its order with the vendor offering the lowest price, including delivery charges, that best meets the requirements of the contracting unit. Prior to placing such an order, the contracting unit shall document with specificity that the [materials, supplies,] goods[,] or services [or equipment] selected best meet the requirements of the contracting unit.

(cf: P.L.1996, c.16, s.3)

19. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to read as follows:

13. Specifications. Any specifications for [an acquisition] the provision or performance of goods or services under this act[, whether by purchase, contract or agreement,] shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

(a) Require any standard, restriction, condition or limitation not

1 directly related to the purpose, function or activity for which the  
2 ~~[purchase,] contract [or agreement] is [made] awarded~~; or

3 (b) Require that any bidder be a resident of, or that ~~[his] the~~  
4 ~~bidder's~~ place of business be located in, the county or municipality in  
5 which the ~~[purchase] contract~~ will be ~~[made] awarded~~ or ~~[the~~  
6 ~~contract or agreement]~~ performed, unless the physical proximity of the  
7 bidder is requisite to the efficient and economical ~~[purchase or]~~  
8 performance of the contract ~~[or agreement]~~; except that no  
9 specification for a contract for the collection and disposal of municipal  
10 solid waste shall require any bidder to be a resident of, or that ~~[his]~~  
11 ~~the bidder's~~ place of business be located in, the county or municipality  
12 in which the contract will be performed; or

13 (c) Discriminate on the basis of race, religion, sex, national origin ,  
14 ~~creed, color, ancestry, age, marital status, affectional or sexual~~  
15 ~~orientation, familial status, liability for service in the Armed Forces of~~  
16 ~~the United States, or nationality~~; or

17 (d) Require, with regard to any ~~[purchase,] contract [or~~  
18 ~~agreement]~~, the furnishing of any "brand name," but may in all cases  
19 require "brand name or equivalent," except that if the ~~[materials]~~  
20 ~~goods or services~~ to be ~~[supplied or purchased] provided or~~  
21 ~~performed~~ are ~~[patented or copyrighted] proprietary~~, such ~~[materials~~  
22 ~~or supplies] goods or services~~ may be purchased by ~~stipulating the~~  
23 ~~proprietary goods or services in the bid~~ specification in any case in  
24 which the ~~[ordinance or] resolution~~ authorizing the ~~[purchase,]~~  
25 ~~contract[, sale or agreement]~~ so indicates, and the special need for  
26 such ~~[patented or copyrighted materials or supplies] proprietary~~  
27 ~~goods or services~~ is directly related to the performance, completion or  
28 undertaking of the purpose for which the ~~[purchase,] contract [or~~  
29 ~~agreement]~~ is ~~[made] awarded~~; or

30 (e) Fail to include any option for renewal, extension, or release  
31 which the contracting unit may intend to exercise or require; or any  
32 terms and conditions necessary for the performance of any extra work;  
33 or fail to disclose any matter necessary to the substantial performance  
34 of the contract ~~[or agreement]~~.

35 Any specification ~~[adopted by the governing body,]~~ which  
36 knowingly excludes prospective bidders by reason of the impossibility  
37 of performance, bidding or qualification by any but one bidder, except  
38 as provided herein, shall be null and void and of no effect and ~~[subject~~  
39 ~~purchase, contract or agreement]~~ shall be readvertised ~~for receipt of~~  
40 ~~new bids~~, and the original ~~[purchase,] contract [or agreement]~~ shall  
41 be set aside by the governing body.

42 Any specification ~~[adopted by the governing body]~~ for a contract  
43 for the collection and disposal of municipal solid waste shall conform  
44 to the uniform bid specifications for municipal solid waste collection  
45 contracts established pursuant to section 22 of P.L.1991, c.381  
46 (C.48:13A-7.22).

1 Any specification [adopted by the governing body] may include an  
2 item for the cost, which shall be paid by the contractor, of creating a  
3 file to maintain the notices of the delivery of labor or materials  
4 required by N.J.S.2A:44-128.

5 Any prospective bidder who wishes to challenge a bid specification  
6 shall file such challenges in writing with the contracting agent no less  
7 than three business days prior to the opening of the bids. Challenges  
8 filed after that time shall be considered void and having no impact on  
9 the contracting unit or the award of a contract.

10 (cf: P.L.1996, c.81, s.7)

11  
12 20. (New section) Goods or services, the payment for which  
13 utilizes only funds received by a contracting unit from a bequest,  
14 legacy or gift, shall be subject to the provisions of P.L.1971, c.198  
15 (C.40A:11-1 et seq.), except that if such bequest, legacy or gift  
16 contains written instructions as to the specifications, manufacturer or  
17 vendor, or source of supply of the goods or services to be provided or  
18 performed, such instructions shall be honored, provided that the  
19 bequest, legacy or gift is used in a manner consistent with  
20 N.J.S.40A:5-29.

21  
22 21. (New section) A contracting unit may reject all bids for any of  
23 the following reasons:

24 a. The lowest bid substantially exceeds the cost estimates for the  
25 goods or services;

26 b. The lowest bid substantially exceeds the contracting unit's  
27 appropriation for the goods or services;

28 c. The governing body of the contracting unit decides to abandon  
29 the project for provision or performance of the goods or services;

30 d. The contracting unit wants to substantially revise the  
31 specifications for the goods or services;

32 e. The purposes or provisions or both of P.L.1971, c.198  
33 (C.40A:11-1 et seq.) are being violated;

34 f. The governing body of the contracting unit decides to use the  
35 State authorized contract pursuant to section 12 of P.L.1971, c.198  
36 (C.40A:11-12).

37  
38 22. Section 14 of P.L.1971, c.198 (C.40A:11-14) is amended to  
39 read as follows:

40 14. All contracts for the [performing of work or furnishing  
41 materials, supplies] provision or performance of goods or services  
42 shall be in writing. The governing body of any contracting unit may,  
43 subject to the requirements of law, prescribe the form and manner in  
44 which contracts shall be made and executed, and the form and manner  
45 of execution and approval of all guarantee, indemnity, fidelity and  
46 other bonds.

47 (cf: P.L.1975, c.353, s.10)

1       23. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to  
2 read as follows:

3       15. All ~~【purchases,】~~ contracts ~~【or agreements】~~ for the  
4 ~~【performing of work or the furnishing of materials, supplies】~~ provision  
5 or performance of goods or services shall be ~~【made】~~ awarded for a  
6 period not to exceed 24 consecutive months, except that contracts for  
7 professional services pursuant to subparagraph (i) of paragraph (a) of  
8 subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be  
9 ~~【made】~~ awarded for a period not to exceed 12 consecutive months.  
10 Contracts ~~【or agreements】~~ may be ~~【entered into】~~ awarded for longer  
11 periods of time as follows:

12       (1) Supplying of:

13       (a) (Deleted by amendment, P.L.1996, c.113.)

14       (b) (Deleted by amendment, P.L.1996, c.113.)

15       (c) Thermal energy produced by a cogeneration facility, for use for  
16 heating or air conditioning or both, for any term not exceeding 40  
17 years, when the contract is approved by the Board of Public Utilities.  
18 For the purposes of this paragraph, "cogeneration" means the  
19 simultaneous production in one facility of electric power and other  
20 forms of useful energy such as heating or process steam;

21       (2) (Deleted by amendment, P.L.1977, c.53.)

22       (3) The collection and disposal of municipal solid waste, the  
23 collection and disposition of recyclable material, or the disposal of  
24 sewage sludge, for any term not exceeding in the aggregate, five years;

25       (4) The collection and recycling of methane gas from a sanitary  
26 landfill facility, for any term not exceeding 25 years, when such  
27 contract is in conformance with a district solid waste management plan  
28 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the  
29 approval of the Division of Local Government Services in the  
30 Department of Community Affairs and the Department of  
31 Environmental Protection. The contracting unit shall award the  
32 contract to the highest responsible bidder, notwithstanding that the  
33 contract price may be in excess of the amount of any necessarily  
34 related administrative expenses; except that if the contract requires the  
35 contracting unit to expend funds only, the contracting unit shall award  
36 the contract to the lowest responsible bidder. The approval by the  
37 Division of Local Government Services of public bidding requirements  
38 shall not be required for those contracts exempted therefrom pursuant  
39 to section 5 of P.L.1971, c.198 (C.40A:11-5);

40       (5) Data processing service, for any term of not more than ~~【three】~~  
41 seven years;

42       (6) Insurance, including the purchase of insurance coverages,  
43 insurance consulting or administrative services, claims administration  
44 services and including participation in a joint self-insurance fund, risk  
45 management program or related services provided by a contracting  
46 unit insurance group, or participation in an insurance fund established  
47 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund

1 ~~established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.)~~, for any  
2 term of not more than three years;

3 (7) Leasing or servicing of automobiles, motor vehicles, machinery  
4 and equipment of every nature and kind, for a period not to exceed  
5 ~~[three]~~ five years; provided, however, such contracts shall be  
6 ~~[entered into]~~ awarded only subject to and in accordance with the  
7 rules and regulations promulgated by the Director of the Division of  
8 Local Government Services of the Department of Community Affairs;

9 (8) The supplying of any product or the rendering of any service  
10 by a ~~[telephone]~~ company ~~[which is subject to the jurisdiction of the~~  
11 ~~Board of Public Utilities]~~ providing voice, data, transmission or  
12 switching services for a term not exceeding five years;

13 (9) Any single project for the construction, reconstruction or  
14 rehabilitation of any public building, structure or facility, or any public  
15 works project, including the retention of the services of any architect  
16 or engineer in connection therewith, for the length of time authorized  
17 and necessary for the completion of the actual construction;

18 (10) The providing of food services for any term not exceeding  
19 three years;

20 (11) On-site inspections and plan review services undertaken by  
21 private agencies pursuant to the "State Uniform Construction Code  
22 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not  
23 more than three years;

24 (12) The provision or performance of ~~[work]~~ goods or services  
25 ~~[or the furnishing of materials or supplies]~~ for the purpose of  
26 conserving energy in buildings owned by, or operations conducted by,  
27 the contracting unit, the entire price of which to be established as a  
28 percentage of the resultant savings in energy costs, for a term not to  
29 exceed ~~[10]~~ 15 years; provided, however, that such contracts shall be  
30 entered into only subject to and in accordance with ~~[rules and~~  
31 ~~regulations]~~ guidelines promulgated by the ~~[Department of~~  
32 ~~Environmental Protection]~~ Board of Public Utilities establishing a  
33 methodology for computing energy cost savings;

34 (13) ~~[The performance of work or services or the furnishing of~~  
35 ~~materials or supplies for the purpose of elevator maintenance for any~~  
36 ~~term not exceeding three years;]~~ ~~(Deleted by amendment, P.L. ,~~  
37 ~~c. .) (Pending before the Legislature as this bill.)~~

38 (14) ~~[Leasing or servicing of electronic communications equipment~~  
39 ~~for a period not to exceed five years; provided, however, such contract~~  
40 ~~shall be entered into only subject to and in accordance with the rules~~  
41 ~~and regulations promulgated by the Director of the Division of Local~~  
42 ~~Government Services of the Department of Community Affairs;]~~  
43 ~~(Deleted by amendment, P.L. , c. .) (Pending before the Legislature~~  
44 ~~as this bill.)~~

45 (15) Leasing of motor vehicles, machinery and other equipment  
46 primarily used to fight fires, for a term not to exceed ten years, when  
47 the contract includes an option to purchase, subject to and in

1 accordance with rules and regulations promulgated by the Director of  
2 the Division of Local Government Services of the Department of  
3 Community Affairs;

4 (16) The provision of water supply services or the designing,  
5 financing, construction, operation, or maintenance, or any combination  
6 thereof, of a water supply facility, or any component part or parts  
7 thereof, including a water filtration system, for a period not to exceed  
8 40 years, when the contract for these services is approved by the  
9 Division of Local Government Services in the Department of  
10 Community Affairs, the Board of Public Utilities, and the Department  
11 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et  
12 al.), except for those contracts otherwise exempted pursuant to  
13 subsection (30), (31), (34) or (35) of this section. For the purposes  
14 of this subsection, "water supply services" means any service provided  
15 by a water supply facility; "water filtration system" means any  
16 equipment, plants, structures, machinery, apparatus, or land, or any  
17 combination thereof, acquired, used, constructed, rehabilitated, or  
18 operated for the collection, impoundment, storage, improvement,  
19 filtration, or other treatment of drinking water for the purposes of  
20 purifying and enhancing water quality and insuring its potability prior  
21 to the distribution of the drinking water to the general public for  
22 human consumption, including plants and works, and other personal  
23 property and appurtenances necessary for their use or operation; and  
24 "water supply facility" means and refers to the real property and the  
25 plants, structures, interconnections between existing water supply  
26 facilities, machinery and equipment and other property, real, personal  
27 and mixed, acquired, constructed or operated, or to be acquired,  
28 constructed or operated, in whole or in part by or on behalf of a  
29 political subdivision of the State or any agency thereof, for the  
30 purpose of augmenting the natural water resources of the State and  
31 making available an increased supply of water for all uses, or of  
32 conserving existing water resources, and any and all appurtenances  
33 necessary, useful or convenient for the collecting, impounding, storing,  
34 improving, treating, filtering, conserving or transmitting of water and  
35 for the preservation and protection of these resources and facilities and  
36 providing for the conservation and development of future water supply  
37 resources;

38 (17) The provision of resource recovery services by a qualified  
39 vendor, the disposal of the solid waste delivered for disposal which  
40 cannot be processed by a resource recovery facility or the residual ash  
41 generated at a resource recovery facility, including hazardous waste  
42 and recovered metals and other materials for reuse, or the design,  
43 financing, construction, operation or maintenance of a resource  
44 recovery facility for a period not to exceed 40 years when the contract  
45 is approved by the Division of Local Government Services in the  
46 Department of Community Affairs, and the Department of  
47 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et  
48 al.); and when the resource recovery facility is in conformance with a



1 district solid waste management plan approved pursuant to P.L.1970,  
2 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,  
3 "resource recovery facility" means a solid waste facility constructed  
4 and operated for the incineration of solid waste for energy production  
5 and the recovery of metals and other materials for reuse; or a  
6 mechanized composting facility, or any other facility constructed or  
7 operated for the collection, separation, recycling, and recovery of  
8 metals, glass, paper, and other materials for reuse or for energy  
9 production; and "residual ash" means the bottom ash, fly ash, or any  
10 combination thereof, resulting from the combustion of solid waste at  
11 a resource recovery facility;

12 (18) The sale of electricity or thermal energy, or both, produced by  
13 a resource recovery facility for a period not to exceed 40 years when  
14 the contract is approved by the Department of Environmental  
15 Protection, and when the resource recovery facility is in conformance  
16 with a district solid waste management plan approved pursuant to  
17 P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this  
18 subsection, "resource recovery facility" means a solid waste facility  
19 constructed and operated for the incineration of solid waste for energy  
20 production and the recovery of metals and other materials for reuse;  
21 or a mechanized composting facility, or any other facility constructed  
22 or operated for the collection, separation, recycling, and recovery of  
23 metals, glass, paper, and other materials for reuse or for energy  
24 production;

25 (19) The provision of wastewater treatment services or the  
26 designing, financing, construction, operation, or maintenance, or any  
27 combination thereof, of a wastewater treatment system, or any  
28 component part or parts thereof, for a period not to exceed 40 years,  
29 when the contract for these services is approved by the Division of  
30 Local Government Services in the Department of Community Affairs  
31 and the Department of Environmental Protection pursuant to  
32 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise  
33 exempted pursuant to subsection (36) of this section. For the  
34 purposes of this subsection, "wastewater treatment services" means  
35 any services provided by a wastewater treatment system, and  
36 "wastewater treatment system" means equipment, plants, structures,  
37 machinery, apparatus, or land, or any combination thereof, acquired,  
38 used, constructed, or operated for the storage, collection, reduction,  
39 recycling, reclamation, disposal, separation, or other treatment of  
40 wastewater or sewage sludge, or for the final disposal of residues  
41 resulting from the treatment of wastewater, including, but not limited  
42 to, pumping and ventilating stations, facilities, plants and works,  
43 connections, outfall sewers, interceptors, trunk lines, and other  
44 personal property and appurtenances necessary for their operation;

45 (20) The supplying of [materials] goods or services for the  
46 purpose of lighting public streets, for a term not to exceed five years  
47 [, provided that the rates, fares, tariffs or charges for the supplying of  
48 electricity for that purpose are approved by the Board of Public

1 Utilities];

2 (21) [In the case of a contracting unit which is a county or  
3 municipality, the] The provision of emergency medical services [by a  
4 hospital to residents of a municipality or county as appropriate] for a  
5 term not to exceed five years;

6 (22) Towing and storage contracts, awarded pursuant to paragraph  
7 u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for  
8 any term not exceeding three years;

9 (23) Fuel for the purpose of generating electricity for a term not to  
10 exceed eight years;

11 (24) The purchase of electricity or administrative or dispatching  
12 services related to the transmission of such electricity, from a public  
13 utility company subject to the jurisdiction of the Board of Public  
14 Utilities, a similar regulatory body of another state, or a federal  
15 regulatory agency, or from a qualifying small power producing facility  
16 or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, by  
17 a contracting unit engaged in the generation of electricity for retail  
18 sale, as of May 24,1991, for a term not to exceed 40 years;

19 (25) Basic life support services, for a period not to exceed five  
20 years. For the purposes of this subsection, "basic life support" means  
21 a basic level of prehospital care, which includes but need not be limited  
22 to patient stabilization, airway clearance, cardiopulmonary  
23 resuscitation, hemorrhage control, initial wound care and fracture  
24 stabilization;

25 (26) [Claims administration services, for any term not to exceed  
26 three years;] (Deleted by amendment, P.L. , c. .) (Pending before  
27 the Legislature as this bill.)

28 (27) The provision of transportation services to elderly, disabled  
29 or indigent persons for any term of not more than three years. For the  
30 purposes of this subsection, "elderly persons" means persons who are  
31 60 years of age or older. "Disabled persons" means persons of any age  
32 who, by reason of illness, injury, age, congenital malfunction, or other  
33 permanent or temporary incapacity or disability, are unable, without  
34 special facilities or special planning or design to utilize mass  
35 transportation facilities and services as effectively as persons who are  
36 not so affected. "Indigent persons" means persons of any age whose  
37 income does not exceed 100 percent of the poverty level, adjusted for  
38 family size, established and adjusted under section 673(2) of subtitle  
39 B, the "Community Services Block Grant Act," Pub.L.97-35 (42  
40 U.S.C. s.9902 (2));

41 (28) The supplying of liquid oxygen or other chemicals, for a term  
42 not to exceed five years, when the contract includes the installation of  
43 tanks or other storage facilities by the supplier, on or near the  
44 premises of the contracting unit;

45 (29) The performance of patient care services by contracted  
46 medical staff at county hospitals, correction facilities and long term  
47 care facilities, for any term of not more than three years;

1 (30) The acquisition of an equitable interest in a water supply  
2 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or [an  
3 agreement] a contract entered into pursuant to the "County and  
4 Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the  
5 [agreement] contract is entered into no later than January 7, 1995, for  
6 any term of not more than forty years;

7 (31) The provision of water supply services or the financing,  
8 construction, operation or maintenance or any combination thereof, of  
9 a water supply facility or any component part or parts thereof, by a  
10 partnership or copartnership established pursuant to a contract  
11 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a  
12 period not to exceed 40 years;

13 (32) Laundry service and the rental, supply and cleaning of  
14 uniforms for any term of not more than three years;

15 (33) The supplying of any product or the rendering of any service,  
16 including consulting services, by a cemetery management company for  
17 the maintenance and preservation of a municipal cemetery operating  
18 pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for  
19 a term not exceeding 15 years;

20 (34) A contract between a public entity and a private firm pursuant  
21 to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water  
22 supply services may be entered into for any term which, when all  
23 optional extension periods are added, may not exceed 40 years;

24 (35) [An agreement] A contract for the purchase of a supply of  
25 water from a public utility company subject to the jurisdiction of the  
26 Board of Public Utilities in accordance with tariffs and schedules of  
27 charges made, charged or exacted or contracts filed with the Board of  
28 Public Utilities, for any term of not more than 40 years;

29 (36) A contract between a public entity and a private firm or public  
30 authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the  
31 provision of wastewater treatment services may be entered into for any  
32 term of not more than 40 years, including all optional extension  
33 periods;[ and]

34 (37) The operation and management of a facility under a license  
35 issued or permit approved by the Department of Environmental  
36 Protection, including a wastewater treatment system or a water supply  
37 or distribution facility, as the case may be, for any term of not more  
38 than [seven] ten years. For the purposes of this subsection,  
39 "wastewater treatment system" refers to facilities operated or  
40 maintained for the storage, collection, reduction, disposal, or other  
41 treatment of wastewater or sewage sludge, remediation of  
42 groundwater contamination, stormwater runoff, or the final disposal  
43 of residues resulting from the treatment of wastewater; and "water  
44 supply or distribution facility" refers to facilities operated or  
45 maintained for augmenting the natural water resources of the State,  
46 increasing the supply of water, conserving existing water resources, or  
47 distributing water to users;

1     (38) Municipal solid waste collection from facilities owned by a  
2     contracting unit, for any term of not more than three years;

3     (39) Fuel for heating purposes, for any term of not more than  
4     three years;

5     (40) Fuel or oil for use in motor vehicles for any term of not more  
6     than three years;

7     (41) Plowing and removal of snow and ice for any term of not  
8     more than three years;

9     (42) Purchases made under a contract awarded by the Director of  
10    the Division of Purchase and Property in the Department of the  
11    Treasury for use by counties, municipalities or other contracting units  
12    pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term  
13    not to exceed the term of that contract.

14    Any contract for services other than professional services, the  
15    statutory length of which contract is for three years or less, may  
16    include provisions for no more than one two-year, or two one-year,  
17    extensions, subject to the following limitations: a. The contract shall  
18    be awarded by resolution of the governing body upon a finding by the  
19    governing body that the services are being performed in an effective  
20    and efficient manner; b. No such contract shall be extended so that it  
21    runs for more than a total of five consecutive years; c. Any price  
22    change included as part of an extension shall be based upon the price  
23    of the original contract as cumulatively adjusted pursuant to any  
24    previous adjustment or extension and shall not exceed the change in  
25    the index rate for the 12 months preceding the most recent quarterly  
26    calculation available at the time the contract is renewed; and d. The  
27    terms and conditions of the contract remain substantially the same.

28    All multiyear leases and contracts entered into pursuant to this  
29    section, including any two-year or one-year extensions, except  
30    [contracts for the leasing or servicing of equipment supplied by a  
31    telephone company which is subject to the jurisdiction of the Board of  
32    Public Utilities,] contracts involving the supplying of electricity for the  
33    purpose of lighting public streets and contracts for thermal energy  
34    authorized pursuant to subsection (1) above, construction contracts  
35    authorized pursuant to subsection (9) above, contracts [and  
36    agreements] for the provision or performance of [work] goods or  
37    services or the supplying of equipment to promote energy conservation  
38    authorized pursuant to subsection (12) above, contracts for water  
39    supply services or for a water supply facility, or any component part  
40    or parts thereof authorized pursuant to subsection (16), (30), (31),  
41    (34), (35) or (37) above, contracts for resource recovery services or  
42    a resource recovery facility authorized pursuant to subsection (17)  
43    above, contracts for the sale of energy produced by a resource  
44    recovery facility authorized pursuant to subsection (18) above,  
45    contracts for wastewater treatment services or for a wastewater  
46    treatment system or any component part or parts thereof authorized  
47    pursuant to subsection (19), (36) or (37) above, and contracts for the

1 purchase of electricity or administrative or dispatching services related  
2 to the transmission of such electricity authorized pursuant to  
3 subsection (24) above, shall contain a clause making them subject to  
4 the availability and appropriation annually of sufficient funds as may  
5 be required to meet the extended obligation, or contain an annual  
6 cancellation clause.

7 The Division of Local Government Services in the Department of  
8 Community Affairs shall adopt and promulgate rules and regulations  
9 concerning the methods of accounting for all contracts that do not  
10 coincide with the fiscal year.

11 All contracts shall cease to have effect at the end of the contracted  
12 period and shall not be extended by any mechanism or provision,  
13 unless in conformance with the "Local Public Contracts Law,"  
14 P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be  
15 extended by mutual agreement of the parties to the contract when a  
16 contracting unit has commenced rebidding prior to the time the  
17 contract expires or when the awarding of a contract is pending at the  
18 time the contract expires.

19 (cf: P.L.1999, c.23, s.64)

20

21 24. Section 16 of P.L.1971, c.198 (C.40A:11-16) is amended to  
22 read as follows:

23 16. Separate plans for various types of work; bids; contracts. In the  
24 preparation of plans and specifications for the [erection] construction,  
25 alteration or repair of any public building by any contracting unit,  
26 when the entire cost of the work will exceed the [amount set forth in,  
27 or the amount calculated by the Governor pursuant to, section 3 of  
28 P.L.1971, c.198 (C.40A:11-3)] bid threshold, the architect, engineer  
29 or other person preparing the plans and specifications may prepare  
30 separate plans and specifications for

31 (1) The plumbing and gas fitting and all kindred work;

32 (2) Steam power plants, steam and hot water heating and  
33 ventilating apparatus and all kindred work;

34 (3) Electrical work;

35 (4) Structural steel and ornamental iron work; and

36 (5) All other work required for the completion of the project.

37 The [contracting unit or its] contracting agent shall advertise for  
38 and receive, in the manner provided by law, either (a) separate bids for  
39 each of said branches of work, or (b) bids for all the work [and  
40 materials] , goods and services required to complete the building to be  
41 included in a single overall contract, or (c) both. In the case of a  
42 single bid under (b) or (c), there [will] shall be set forth in the bid the  
43 name or names of all subcontractors to whom the bidder will  
44 subcontract the furnishing of plumbing and gas fitting, and all kindred  
45 work, and of the steam and hot water heating and ventilating  
46 apparatus, steam power plants and kindred work, and electrical work,  
47 structural steel and ornamental iron work, each of which

1 subcontractors shall be qualified in accordance with [this act]  
2 P.L.1971, c.198 (C.40A:11-1 et seq.). The contracting unit shall  
3 require evidence of performance security to be submitted  
4 simultaneously with the list of the subcontractors. Evidence of  
5 performance security may be supplied by the bidder on behalf of  
6 himself and any or all subcontractors, or by each respective  
7 subcontractor, or by any combination thereof which results in evidence  
8 of performance security [equalling] equaling, but in no event  
9 exceeding, the total amount bid.

10 Whenever a bid sets forth more than one subcontractor for any of  
11 the specialty trade categories (1) through (4) specified hereinabove in  
12 this section, the bidder shall submit to the contracting unit a certificate  
13 signed by the bidder listing each subcontractor named in the bid for  
14 that category. The certificate shall set forth the scope of work, goods  
15 and services for which the subcontractor has submitted a price quote  
16 and which the bidder has agreed to award to each subcontractor  
17 should the bidder be awarded the contract. The certificate shall be  
18 submitted to the contracting unit simultaneously with the list of the  
19 subcontractors. The certificate may take the form of a single  
20 certificate listing all subcontractors or, alternatively, a separate  
21 certificate may be submitted for each subcontractor. If a bidder does  
22 not submit a certificate or certificates to the contracting unit, the  
23 contracting unit shall award the contract to the next lowest responsible  
24 bidder.

25 Contracts shall be awarded to the lowest responsible bidder. In the  
26 event that a contract is advertised in accordance with (c) above said  
27 contract shall be awarded in the following manner: If the sum total of  
28 the amounts bid by the lowest responsible bidder for each branch is  
29 less than the amount bid by the lowest responsible bidder for all the  
30 work [and materials] , goods and services, the contracting unit shall  
31 award separate contracts for each of such branches to the lowest  
32 responsible bidder therefor, but if the sum total of the amounts bid by  
33 the lowest responsible bidder for each branch is not less than the  
34 amount bid by the lowest responsible bidder for all the work [and  
35 materials] , goods and services, the contracting unit shall award a  
36 single overall contract to the lowest responsible bidder for all of such  
37 work [and materials] , goods and services. In every case in which a  
38 contract is awarded under (b) above, all payments required to be made  
39 under such contract for work [and materials] , goods and services  
40 supplied by a subcontractor shall, upon the certification of the  
41 contractor of the amount due to the subcontractor, be paid directly to  
42 the subcontractor.

43 (cf: P.L.1997, c.408, s.1)  
44

45 25. Section 1 of P.L.1979, c.464 (C.40A:11-16.2) is amended to  
46 read as follows:

47 1. Any contract [or agreement], the total price of which exceeds

1 \$100,000.00, entered into by a contracting unit involving the  
2 construction, reconstruction, alteration, repair or maintenance of any  
3 building, structure, facility or other improvement to real property,  
4 shall provide for partial payments to be made at least once each month  
5 as the work progresses, unless the contractor shall agree to deposit  
6 bonds with the contracting unit pursuant to P.L.1979, c.152  
7 (C.40A:11-16.1).

8 (cf: P.L.1979, c.464, s.1)

9

10 26. Section 2 of P.L.1979, c.464, (C.40A:11-16.3) is amended to  
11 read as follows:

12 2. a. With respect to any contract [or agreement] entered into by  
13 a contracting unit pursuant to section 1 of [this act] P.L.1979, c.464  
14 (C.40A:11-16.2) for which the contractor shall agree to the  
15 withholding of payments pursuant to P.L.1979, c.152  
16 (C.40A:11-16.1), 2% of the amount due on each partial payment shall  
17 be withheld by the contracting unit pending completion of the contract  
18 [or agreement].

19 b. Upon acceptance of the work performed pursuant to the  
20 contract [or agreement] for which the contractor has agreed to the  
21 withholding of payments pursuant to subsection a. of this section, all  
22 amounts being withheld by the contracting unit shall be released and  
23 paid in full to the contractor within 45 days of the final acceptance  
24 date agreed upon by the contractor and the contracting unit, without  
25 further withholding of any amounts for any purpose whatsoever,  
26 provided that the contract has been completed as indicated. If the  
27 contracting unit requires maintenance security after acceptance of the  
28 work performed pursuant to the contract [or agreement], such  
29 security shall be obtained in the form of a maintenance bond. The  
30 maintenance bond shall be no longer than two years and shall be no  
31 more than 100% of the project costs.

32 (cf: P.L.1991, c.434, s.2)

33

34 27. Section 3 of P.L.1979, c.464, (C.40A:11-16.4) is amended to  
35 read as follows:

36 3. Any contract [or agreement] entered into by a contracting unit  
37 pursuant to section 1 of [this act] P.L.1979, c.464 (C.40A:11-16.2)  
38 may also provide for partial payments at least once in each month with  
39 respect to all materials placed along or upon the site, or stored at  
40 secured locations, which are suitable for use in the execution of the  
41 contract [or agreement], if the person providing the materials  
42 furnishes releases of liens for the materials at the time each estimate  
43 of work is submitted for payment. The total of all the partial  
44 payments shall not exceed the cost of the materials.

45 (cf: P.L.1979, c.464, s.3)

1       28. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to  
2 read as follows:

3       19. Any contract [or agreement] made pursuant to [this act]  
4 P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages  
5 for the violation of any of the terms and conditions thereof or the  
6 failure to perform said contract [or agreement] in accordance with its  
7 terms and conditions, or the terms and conditions of [this act]  
8 P.L.1971, c.198 (C.40A:11-1 et seq.).  
9 (cf: P.L.1971, c.198, s.19)  
10

11       29. Section 21 of P.L.1971, c.198 (C.40A:11-21) is amended to  
12 read as follows:

13       21. A person bidding on a contract [or agreement] for the  
14 erection, alteration or repair of a public building, structure, facility or  
15 other improvement to real property, the total price of which exceeds  
16 \$100,000, shall furnish a guarantee as provided for herein. A  
17 contracting unit may provide that a person bidding on any other  
18 contract [or agreement], advertised in accordance with law, shall  
19 furnish a guarantee as provided for herein. The guarantee shall be  
20 payable to the contracting unit so that if the contract [or agreement]  
21 is awarded to the bidder, the bidder will enter into a contract therefor  
22 and will furnish any performance bond or other security required as  
23 a guarantee or indemnification. The guarantee shall be in the amount  
24 of 10% of the bid, but not in excess of \$20,000.00, except as  
25 otherwise provided herein, and may be given, at the option of the  
26 bidder, by certified check, cashier's check or bid bond. In the event  
27 that any law or regulation of the United States imposes any condition  
28 upon the awarding of a monetary grant to any contracting unit, which  
29 condition requires the depositing of a guarantee in an amount other  
30 than 10% of the bid or in excess of \$20,000.00 the provisions of this  
31 section shall not apply and the requirements of the law or regulation  
32 of the United States shall govern.  
33 (cf: P.L.1999, c.39, s.3)  
34

35       30. Section 22 of P.L.1971, c.198 (C.40A:11-22) is amended to  
36 read as follows:

37       22. a. A person bidding on a contract [or agreement] for the  
38 erection, alteration or repair of a building, structure, facility or other  
39 improvement to real property, the total price of which exceeds  
40 \$100,000, shall furnish a certificate from a surety company, as  
41 provided for herein. A contracting unit may provide that a person  
42 bidding on any other contract shall furnish a certificate from a surety  
43 company, as provided for herein.

44       b. When a surety company bond is required in the advertisement  
45 or specifications for a contract [or agreement], every contracting unit  
46 shall require from any bidder submitting a bid in accordance with  
47 plans, specifications and advertisements, as provided for by law, a



1 certificate from a surety company stating that it will provide the  
2 contractor with a bond in such sum as is required in the advertisement  
3 or in the specifications.

4 This certificate shall be obtained for a bond--

5 (1) For the faithful performance of all provisions of the  
6 specifications or for all matters which may be contained in the notice  
7 to bidders, relating to the performance of the contract [or  
8 agreement], and

9 (2) If any be required, for a guarantee bond for the faithful  
10 performance of the contract provisions relating to the repair and  
11 maintenance of any work, project or facility and its appurtenances and  
12 keeping the same in good and serviceable condition during the term  
13 of the bond as provided for in the notice to bidders or in the  
14 specifications, or

15 (3) In such other form as may be provided in the notice to bidders  
16 or in the specifications.

17 If a bidder desires to offer the bond of an individual instead of that  
18 of a surety company, the bidder shall submit with the bid a certificate  
19 signed by such individual similar to that required of a surety company.

20 The contracting unit may reject any such bid if it is not satisfied  
21 with the sufficiency of the individual surety offered.

22 (cf: P.L.1999, c.39, s.4)

23

24 31. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to  
25 read as follows:

26 23. [a.] Advertisements for bids; bids; general requirements. a.  
27 All advertisements for bids shall be published in [a legal] an official  
28 newspaper of the contracting unit sufficiently in advance of the date  
29 fixed for receiving the bids to promote competitive bidding, but in no  
30 event less than 10 days prior to such date; except that all  
31 advertisements for bids on contracts for the collection and disposal of  
32 municipal solid waste shall be published in [a legal] an official  
33 newspaper of the contracting unit circulating in the county or  
34 municipality, and in at least one newspaper of general circulation  
35 published in the State, sufficiently in advance of the date fixed for  
36 receiving the bids to promote competitive bidding, but not less than 60  
37 days prior to that date.

38 b. The advertisement shall designate the manner of submitting and  
39 the method of receiving the bids and the time and place at which the  
40 bids will be received. If the published specifications provide for  
41 receipt of bids by mail, those bids which are mailed to the contracting  
42 unit shall be sealed and shall only be opened for examination at such  
43 time and place as all bids received are unsealed and announced. At  
44 such time and place the contracting agent of the contracting unit shall  
45 publicly receive the bids, and thereupon immediately proceed to unseal  
46 them and publicly announce the contents, which announcement shall  
47 be made in the presence of any parties bidding or their agents, who are

1 then and there present, and shall also make proper record of the prices  
2 and terms, upon the minutes of the governing body, if the award is to  
3 be made by the governing body of the contracting unit, or in a book  
4 kept for that purpose, if the award is to be made by other than the  
5 governing body, and in such latter case it shall be reported to the  
6 governing body of the contracting unit for its action thereon, when  
7 such action thereon is required. No bids shall be received after the time  
8 designated in the advertisement.

9 c. Notice of revisions or addenda to advertisements or bid  
10 documents shall be provided as follows:

11 1) For all contracts except those for construction work and  
12 municipal solid waste collection and disposal service, notice shall be  
13 published no later than five days, Saturdays, Sundays, and holidays  
14 excepted, prior to the date for acceptance of bids, in an official  
15 newspaper of the contracting unit and be provided to any person who  
16 has submitted a bid or who has received a bid package, in one of the  
17 following ways: i) in writing by certified mail or ii) by certified  
18 facsimile transmission, meaning that the sender's facsimile machine  
19 produces a receipt showing date and time of transmission and that the  
20 transmission was successful or iii) by a delivery service that provides  
21 certification of delivery to the sender.

22 2) For all contracts for construction work, notice shall be provided  
23 no later than seven days, Saturday, Sundays, or holidays excepted,  
24 prior to the date for acceptance of bids, to any person who has  
25 submitted a bid or who has received a bid package in any of the  
26 following ways: i) in writing by certified mail or ii) by certified  
27 facsimile transmission, meaning that the sender's facsimile machine  
28 produces a receipt showing date and time of transmission and that the  
29 transmission was successful or iii) by a delivery service that provides  
30 certification of delivery to the sender.

31 3) For municipal solid waste collection and disposal contracts,  
32 notice shall be published in an official newspaper of the contracting  
33 unit and in at least one newspaper of general circulation published in  
34 the State no later than five days, Saturdays, Sundays, and holidays  
35 excepted, prior to the date for acceptance of bids.

36 d. Failure of the contracting unit to advertise for the receipt of bids  
37 or to provide proper notification of revisions or addenda to  
38 advertisements or bid documents related to bids as prescribed by this  
39 section shall prevent the contracting unit from accepting the bids and  
40 require the readvertisement for bids pursuant to subsection a. of this  
41 section. Failure to obtain a receipt when good faith notice is sent or  
42 delivered to the address or telephone facsimile number on file with the  
43 contracting unit shall not be considered failure by the contracting unit  
44 to provide notice.

45 (cf: P.L.1997, c.243, s.1)

46  
47 32. Section 25 of P.L.1971, c.198 (C.40A:11-25) is amended to  
48 read as follows:

1       25. The governing body of any contracting unit may establish  
2 reasonable regulations appropriate for controlling the qualifications of  
3 prospective bidders upon contracts to be awarded on behalf of the  
4 contracting unit, by the class or category of [work to be performed or  
5 materials and supplies to be furnished or hired] goods or services to  
6 be provided or performed, which may fix the qualifications required  
7 according to the financial ability and experience of the bidders and the  
8 capital and equipment available to them pertinent to and reasonably  
9 related to the class or category of [work to be performed or materials  
10 and supplies to be furnished or hired] goods or services to be provided  
11 or performed in the performance of any such contract, and may require  
12 each bidder to furnish a statement thereof; and if such governing body  
13 is not satisfied with the qualifications of any bidder as founded upon  
14 such statement, it may refuse to furnish [him] the bidder with any  
15 plans or specifications for any public contract or consider any bid  
16 made by [him] the bidder for any contract.

17       Prior to the adoption of any such regulations, a contracting unit  
18 shall submit them to a public hearing. Notice of the hearing and a  
19 general description of the subject matter of the regulations to be  
20 adopted shall be published in not less than two newspapers circulating  
21 in the county or municipality in which the contracting unit is located.  
22 Publication shall precede by at least 20 days the date set in the notice  
23 for the hearing. The clerk or secretary of the governing body of the  
24 contracting unit shall keep a record of the proceedings and of the  
25 testimony of any citizen or prospective bidder. Within 10 days after  
26 the completion of the hearings, the proposed regulations and a true  
27 copy of the hearings shall be forwarded to the Director of the Division  
28 of Local [Finance] Government Services for [his] the director's  
29 approval. This approval shall be indicated by a letter from the director  
30 to the governing body of the contracting unit. If the director fails to  
31 approve or disapprove the regulations within 30 days of their receipt  
32 by [him] the director, they shall take effect without [his] the  
33 director's approval. The director may disapprove such proposed  
34 regulations only if [he] the director finds that:

35       (a) They are written in a manner which will unnecessarily  
36 discourage full, free and open competition; or

37       (b) They unnecessarily restrict the participation of small businesses  
38 in the public bidding process; or

39       (c) They create undue preferences; or

40       (d) They violate any other provision of this act, or any other law.

41       If the director disapproves such proposed regulations within the  
42 30-day period prescribed, they shall be of no force and effect and may  
43 not be required as a condition to the acceptance of a bid on any public  
44 contract by the contracting unit. Any appeal from a decision of the  
45 director to the Local Finance Board shall be subject to the provisions  
46 of the Local Government Supervision Act (P.L.1947, c.151,  
47 C.52:27BB-1 et seq.).

1 No qualification rating of any bidder shall be influenced by [his] the  
2 bidder's race, religion, sex, national origin, nationality or [his] place  
3 of residence or business.

4 Nothing contained in this act shall limit the right of any court to  
5 review a refusal to furnish any such plans or specifications or [the  
6 consideration or] to consider any bid on any contract advertised.

7 Any such governing body may adopt a standard form of statement  
8 or questionnaire for bidders on public works [and] contracts, and in  
9 such case their action shall be governed as provided herein.

10 (cf: P.L.1971, c.198, s.25)

11  
12 33. Section 26 of P.L.1971, c.198 (C.40A:11-26) is amended to  
13 read as follows:

14 26. The governing body of any contracting unit may adopt a  
15 standard form of statement or questionnaire for bidders [on public  
16 works and contracts] and may require from any person proposing to  
17 bid upon any such [public work or] contract a statement or answers  
18 showing [his]the bidder's financial ability and experience in  
19 performing public sector work and describing the equipment available  
20 to such bidder in the performance of such [work or] contract, and if  
21 not satisfied with the sufficiency of this statement or answers may  
22 refuse to furnish plans and specifications to [him]the bidder.

23 (cf: P.L.1971, c.198, s.26)

24  
25 34. Section 27 of P.L.1971, c.198 (C.40A:11-27) is amended to  
26 read as follows:

27 27. Such statements and questionnaires shall be standardized for  
28 like classes of [work] goods or services to be submitted to  
29 prospective bidders who may be required to respond to questions  
30 under oath. The statement or answer shall disclose fully the financial  
31 ability, adequacy of plant and equipment, organization and prior  
32 experience of the prospective bidder, and such other pertinent and  
33 material facts as may be required.

34 (cf: P.L.1971, c.198, s.27)

35  
36 35. Section 28 of P.L.1971, c.198 (C.40A:11-28) is amended to  
37 read as follows:

38 28. Prospective bidders shall be classified as to the character and  
39 amount of [public work or] goods or services contracts as to which  
40 they shall be qualified to submit bids, and bids shall be accepted only  
41 from persons so qualified. The classification shall be made and an  
42 immediate notice thereof shall be sent to the prospective bidders by  
43 certified or registered mail within 8 days after the date of receipt of  
44 the responsive statement or answers.

45 (cf: P.L.1971, c.198, s.28)

1     36. Section 29 of P.L.1971, c.198 (C. 40A:11-29) is amended to  
2 read as follows:

3     29. If any person, after being notified of **[his]**~~a~~ classification, shall  
4 be dissatisfied therewith or with the classification of other bidders,  
5 **[he]** ~~that person~~ may request in writing a hearing before such  
6 governing body, and may present such further evidence with respect  
7 to the financial responsibility, organization, plant and equipment, or  
8 experience of **[himself]** ~~that person~~ or other prospective bidders as  
9 might tend to justify a different classification.

10     Where a request is made for the change of classification of another  
11 prospective bidder, the applicant therefor shall notify such other bidder  
12 by certified or registered mail of the time and place of hearing, as fixed  
13 by the governing body, and at the hearing shall present satisfactory  
14 evidence that the notice was served as herein required, before any  
15 matters pertaining to a change of classification of such other bidder  
16 shall be taken up. After hearing such evidence the governing body  
17 may, in its discretion, by appropriate action, change or retain the  
18 classification of any bidder.

19     No change in classification to be effective for any **[public work or]**  
20 contract where bidding therefor has been duly advertised, shall be  
21 made unless the written request therefor shall have been received at  
22 least 20 days before the final day for submission of bids.

23     All requests for change in classification and notice of any action  
24 sent by certified or registered mail to the parties directly affected  
25 thereby, shall be acted upon by the governing body concerned at least  
26 8 days prior to the date fixed for the next opening of bids on any  
27 contract or contracts for which such persons might be qualified to bid  
28 as a result of the reclassification.

29 (cf: P.L.1971, c.198, s.29)

30

31     37. Section 31 of P.L.1971, c.198 (C.40A:11-31) is amended to  
32 read as follows:

33     31. Any prospective bidder who is dissatisfied with **[his]** ~~an~~  
34 original classification or reclassification may upon receipt of notice  
35 thereof, request in writing a hearing of the matter before the board of  
36 review. The request shall be filed with the contracting agent and the  
37 secretary of the board.

38     The board shall hold a hearing at which the prospective bidder shall  
39 be entitled to be heard and to submit additional information.

40     The board shall review the responsibility of all prospective bidders  
41 who have filed statements or answers, considering both the statement,  
42 answers and any additional information given at the hearing, and shall  
43 certify to the contracting unit concerned, its decision as to the original  
44 classifications or reclassifications, if any. The decisions shall be made  
45 by a majority vote.

46     In order for any change in classification by the board to be effective  
47 for **[public work or]** ~~a~~ contract previously advertised, the request shall

1 be filed not less than 5 days prior to the final day for submission of  
2 bids, and the board shall hold a hearing and act upon the request not  
3 less than 2 days prior to the date fixed for the next opening of bids on  
4 any public [work or] works contract for which such prospective  
5 bidders might be qualified to bid as a result of the reclassification.  
6 (cf: P.L.1971, c.198, s.31)

7  
8 38. Section 32 of P.L.1971, c.198 (C.40A:11-32) is amended to  
9 read as follows:

10 32. Nothing herein contained shall be construed as depriving any  
11 [contracting agent] governing body of the right to reject a bid at any  
12 time prior to the actual award of a [public work or] contract, where  
13 the circumstances of the prospective bidder have changed subsequent  
14 to the qualification and classification of the [said] bidder, which in  
15 the opinion of the awarding contracting unit would adversely affect  
16 the responsibility of the bidder. Before taking final action on any such  
17 bid, the contracting agent concerned shall notify the [said] bidder and  
18 afford [him] the bidder an opportunity to present any additional  
19 information which might tend to sustain the existing classification.

20 No person shall be qualified to bid on any [public work or]  
21 contract unless [he] that person shall have submitted a statement or  
22 answers as herein required within a period of 6 months preceding the  
23 date of opening of bids for the [public work or] contract, if the  
24 bidders thereon are required to be classified hereunder. In any case  
25 where the contracting unit shall require classification of the bidders  
26 in compliance with these sections, each bidder on any [public work  
27 or] contract shall be required to submit a statement listing the  
28 changes in the statement or answers herein required as part of [his]  
29 the bidder's bid submission.

30 (cf: P.L.1971, c.198, s.32)

31  
32 39. Section 36 of P.L.1971, c.198 (C.40A:11-36) is amended to  
33 read as follows:

34 36. Any contracting unit by resolution of its governing body may  
35 authorize by sealed bid or public auction the sale of its personal  
36 property not needed for public use.

37 (1) If the estimated fair value of the property to be sold exceeds  
38 [\$2,500.00] 15 percent of the bid threshold in any one sale and it is  
39 neither livestock nor perishable goods, it shall be sold at public sale  
40 to the highest bidder.

41 (2) The contracting unit need not advertise for bids when it makes  
42 any such sale to the United States, the State of New Jersey, another  
43 contracting unit [or to] , any body politic to which it contributes tax  
44 raised funds, any foreign nation which has diplomatic relations with  
45 the United States, or any governmental unit in the United States.

46 (3) Notice of the date, time and place of the public sale together  
47 with a description of the items to be sold and the conditions of sale

1 shall be published in [a] an official newspaper [circulating in the  
2 contracting unit]. Such sale shall be held not less than 7 nor more  
3 than 14 days after the latest publication of the notice thereof.

4 (4) If no bids are received the property may then be sold at private  
5 sale without further publication or notice thereof, but in no event at  
6 less than the estimated fair value; or the contracting unit may if it so  
7 [elect] elects reoffer the property at public sale. As used herein,  
8 "estimated fair value" means the market value of the property  
9 between a willing seller and a willing buyer less the cost to the  
10 [municipality] contracting unit to continue storage or maintenance of  
11 any personal property not needed for public use to be sold pursuant  
12 to this section.

13 (5) A contracting unit may reject all bids if it determines such  
14 rejection to be in the public interest. In any case in which the  
15 contracting unit has rejected all bids, it may readvertise such personal  
16 property for a subsequent public sale. If it elects to reject all bids at  
17 a second public sale, pursuant to this section, it may then sell such  
18 personal property without further publication or notice thereof at  
19 private sale, provided that in no event shall the negotiated price at  
20 private sale be less than the highest price of any bid rejected at the  
21 preceding two public sales and provided further that in no event shall  
22 the terms or conditions of sale be changed or amended.

23 (6) If the estimated fair value of the property to be sold does not  
24 exceed the applicable bid threshold in any one sale or is either  
25 livestock or perishable goods, it may be sold at private sale without  
26 advertising for bids.

27 (7) Notwithstanding the provisions of this section, by resolution of  
28 the governing body, a contracting agent may include the sale of  
29 personal property no longer needed for public use as part of  
30 specifications to offset the price of a new purchase.

31 (cf: P.L.1971, c.198, s.36)

32  
33 40. Section 37 of P.L.1971, c.198 (C.40A:11-37) is amended to  
34 read as follows:

35 37. The Division of Local [Finance] Government Services in the  
36 Department of Community Affairs is hereby authorized to assist  
37 contracting units in all matters affecting the administration of this law.  
38 (cf: P.L.1971, c.198, s.37)

39  
40 41. R.S.40:8-2 is amended to read as follows:

41 40:8-2. The governing body of any municipality may acquire,  
42 establish, construct, own, control, lease, equip, improve, maintain,  
43 operate and regulate airports or landing fields for the use of airplanes  
44 and other aircraft within or without the limits of such municipality and  
45 may use for such purpose or purposes any property, owned or  
46 controlled by such municipality, suitable therefor, provided that the  
47 provision or performance of goods or services in connection with the

1 operation, management or administration of an airport shall be done  
2 pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
3 (C.40A:11-1 et seq.) and any supplements thereto.  
4 (cf: P.L.1947, c.85, s.1)

5  
6 42. R.S.40:8-3 is amended to read as follows:

7 40:8-3. The governing body of any county may acquire, by lease  
8 or purchase, and establish, construct, own, control, lease, equip,  
9 improve, maintain, operate and regulate airports or landing fields for  
10 the use of airplanes and other aircraft within the limits of such  
11 counties, and may use for such purpose or purposes any property,  
12 owned or controlled by such county, suitable therefor, provided that  
13 the provision or performance of goods or services in connection with  
14 the operation, management or administration of an airport shall be  
15 done pursuant to the "Local Public Contracts Law," P.L.1971, c.198  
16 (C.40A:11-1 et seq.) and any supplements thereto.  
17 (cf: R.S.40:8-3)

18  
19 43. R.S.40:8-6 is amended to read as follows:

20 40:8-6. The governing body of a municipality or county which has  
21 established an airport or landing field and acquired, leased or set apart  
22 real property for such purpose may construct, improve, equip,  
23 maintain and operate the same, or may vest jurisdiction for the  
24 construction, improvement, equipment, maintenance and operation  
25 thereof, in any suitable officer, board or body of such municipality or  
26 county. Provision or performance of goods or services in connection  
27 with the operation, management or administration of an airport shall  
28 be done pursuant to the "Local Public Contracts Law," P.L.1971,  
29 c.198 (C.40A:11-1 et seq.) and any supplements thereto. The  
30 expenses of such construction, improvement, equipment, maintenance  
31 and operation shall be a municipal or county charge, as the case may  
32 be.

33 The governing body of any municipality or county may adopt  
34 regulations and establish fees or charges for the use of such airport or  
35 landing field, or may authorize an officer, board or body of such  
36 municipality or county having jurisdiction to adopt such regulations  
37 and establish such fees or charges, subject, however, to the approval  
38 of such governing body before they shall take effect.  
39 (cf: R.S.40:8-6)

40  
41 44. (New section) Pursuant to the "Administrative Procedure  
42 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
43 Division of Local Government Services after consultation with the  
44 Commissioner of Education may adopt rules implementing the  
45 provisions of the "Local Public Contracts Law," P.L.1971, c.198  
46 (C.40A:11-1 et seq.) and the "Public Schools Contracts Law,"  
47 N.J.S.18A:18A-1 et seq..



1       45. (New section) Notwithstanding the provisions of any law, rule  
2 or regulation to the contrary, competitive contracting may be used by  
3 boards of education in lieu of public bidding for procurement of  
4 specialized goods and services the price of which exceeds the bid  
5 threshold, for the following purposes:

6       a. The purchase or licensing of proprietary computer software  
7 designed for board of education purposes, which may include  
8 hardware intended for use with the proprietary software. This  
9 subsection shall not be utilized for the purpose of acquiring general  
10 purpose computer hardware or software;

11       b. The hiring of a for-profit entity or a not-for-profit entity  
12 incorporated under Title 15A of the New Jersey Statutes for the  
13 purpose of:

14       (1) the operation, management or administration of recreation or  
15 social service facilities or programs; or

16       (2) the operation, management or administration of data processing  
17 services;

18       c. Services performed by an energy services company, including  
19 the design, measurement, financing and maintenance of energy savings  
20 equipment or renovations, which result in payment derived, in whole  
21 or in part, from the sale of verified energy savings over the term of an  
22 agreement with a public utility or subsidiary, but not the provision or  
23 performance of the physical improvements that result in energy  
24 savings, provided that such savings are calculated pursuant to  
25 guidelines promulgated by the Board of Public Utilities and further  
26 provided that the Local Finance Board, in consultation with the State  
27 Board of Education, shall find that the terms and conditions of any  
28 financing agreement are reasonable;

29       d. Telecommunications transmission or switching services that are  
30 not part of a tariff or schedule of charges filed with the Board of  
31 Public Utilities;

32       e. The purchase of specialized machinery or equipment of a  
33 technical nature, or servicing thereof, which will not reasonably permit  
34 the drawing of specifications;

35       f. Food services provided by food service management companies  
36 when not part of programs administered by the New Jersey  
37 Department of Agriculture, Bureau of Child Nutrition Programs;

38       g. Driver education courses provided by licensed driver education  
39 schools;

40       h. At the option of the board of education, any good or service that  
41 is exempt from bidding pursuant to N.J.S.18A:18A-5;

42       i. Laboratory testing services;

43       j. Concessions;

44       k. The operation, management or administration of other services,  
45 with the approval of the Division of Local Government Services in the  
46 Department of Community Affairs.

47       Any purpose included herein shall not be considered by a board of  
48 education as an extraordinary unspecifiable service pursuant to

1 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

2

3 46. (New section) Unless an exception is provided for under  
4 N.J.S.18A:18A-42 permitting a longer contract duration, contracts  
5 awarded pursuant to section 49 of P.L. , c. (C. ) (pending before  
6 the Legislature as this bill) may be for a term not to exceed five years.

7

8 47. (New section) a. In order to initiate competitive contracting,  
9 the board of education shall pass a resolution authorizing the use of  
10 competitive contracting each time specialized goods or services  
11 enumerated in section 45 of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill) are desired to be contracted. If the desired  
13 goods or services have previously been contracted for using the  
14 competitive contracting process then the original resolution of the  
15 board of education shall suffice.

16 b. The competitive contracting process shall be administered by a  
17 purchasing agent qualified pursuant to subsection b. (pending before  
18 the Legislature as section 15 of this bill) of section 9 of P.L.1971,  
19 c.198 (C.40A:11-9) or by legal counsel of the board of education, or  
20 by the school business administrator of the board of education. Any  
21 contracts awarded under this process shall be made by resolution of  
22 the board of education subject to the provisions of subsection e. of  
23 section 49 of P.L. , c. (C. )(now before the Legislature as this bill).

24

25 48. (New section) The competitive contracting process shall utilize  
26 request for proposals documentation in accordance with the following  
27 provisions:

28 a. The purchasing agent or counsel or school business  
29 administrator shall prepare or have prepared request for proposal  
30 documentation, which shall include: all requirements deemed  
31 appropriate and necessary to allow for full and free competition  
32 between vendors; information necessary for potential vendors to  
33 submit a proposal; and a methodology by which the board of education  
34 will evaluate and rank proposals received from vendors.

35 b. The methodology for the awarding of competitive contracts shall  
36 be based on an evaluation and ranking, which shall include technical,  
37 management, and cost related criteria, and may include a weighting of  
38 criteria, all developed in a way that is intended to meet the specific  
39 needs of the contracting unit, and where such criteria shall not unfairly  
40 or illegally discriminate against or exclude otherwise capable vendors.  
41 When an evaluation methodology uses a weighting of criteria, at the  
42 option of the board of education the weighting to be accorded to each  
43 criterion may be disclosed to vendors prior to receipt of the proposals.  
44 The methodology for awarding competitive contracts shall comply  
45 with such rules and regulations as the Director of the Division of Local  
46 Government Services in the Department of Community Affairs, after  
47 consultation with the Commissioner of Education may adopt pursuant

1 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
2 et seq.).

3 c. At no time during the proposal solicitation process shall the  
4 purchasing agent or counsel or school business administrator convey  
5 information, including price, to any potential vendor which could  
6 confer an unfair advantage upon that vendor over any other potential  
7 vendor. If a purchasing agent or counsel or school business  
8 administrator desires to change proposal documentation, the  
9 purchasing agent or counsel or school business administrator shall  
10 notify only those potential vendors who received the proposal  
11 documentation of any and all changes in writing and all existing  
12 documentation shall be changed appropriately .

13 d. All proposals and contracts shall be subject to the provisions of  
14 section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a  
15 statement of corporate ownership and the provisions of P.L.1975,  
16 c.127 (C.10:5-31 et seq.) concerning equal employment opportunity  
17 and affirmative action.  
18

19 49. (New section) Competitive contracting proposals shall be  
20 solicited in the following manner:

21 a. A notice of the availability of request for proposal  
22 documentation shall be published in an official newspaper of the board  
23 of education at least 20 days prior to the date established for the  
24 submission of proposals. The board of education shall promptly reply  
25 to any request by an interested vendor by providing a copy of the  
26 request for proposals. The board of education may charge a fee for  
27 the proposal documentation that shall not exceed \$50.00 or the cost  
28 of reproducing the documentation, whichever is greater.

29 b. Each interested vendor shall submit a proposal which shall  
30 include all the information required by the request for proposals.  
31 Failure to meet the requirements of the request for proposals may  
32 result in the board of education disqualifying the vendor from further  
33 consideration. Under no circumstances shall the provisions of a  
34 proposal be subject to negotiation by the board of education.

35 c. If the board of education, at the time of solicitation, utilizes its  
36 own employees to provide the goods or perform the services, or both  
37 considered for competitive contracting, the board of education shall,  
38 at any time prior to, but no later than the time of solicitation for  
39 competitive contracting proposals, notify affected employees of the  
40 board of education's intention to solicit competitive contracting  
41 proposals. Employees or their representatives shall be permitted to  
42 submit recommendations and proposals affecting wages, hours, and  
43 terms and conditions of employment in such a manner as to meet the  
44 goals of the competitive contract. If employees are represented by an  
45 organization that has negotiated a contract with the board of  
46 education, only the bargaining unit shall be authorized to submit such  
47 recommendations or proposals. When requested by such employees,  
48 the board of education shall provide such information regarding

1 budgets and the costs of performing the services by such employees as  
2 may be available. Nothing shall prevent such employees from making  
3 recommendations that may include modifications to existing labor  
4 agreements in order to reduce such costs in lieu of award of a  
5 competitive contract, and agreements implementing such  
6 recommendations may be considered as cause for rejecting all other  
7 proposals.

8 d. The purchasing agent or counsel or school business  
9 administrator shall evaluate all proposals only in accordance with the  
10 methodology described in the request for proposals. After proposals  
11 have been evaluated, the purchasing agent or counsel or school  
12 business administrator shall prepare a report evaluating and  
13 recommending the award of a contract or contracts. The report shall  
14 list the names of all potential vendors who submitted a proposal and  
15 shall summarize the proposals of each vendor. The report shall rank  
16 vendors in order of evaluation, shall recommend the selection of a  
17 vendor or vendors, as appropriate, for a contract, shall be clear in the  
18 reasons why the vendor or vendors have been selected among others  
19 considered, and shall detail the terms, conditions, scope of services,  
20 fees, and other matters to be incorporated into a contract. The report  
21 shall be made available to the public at least 48 hours prior to the  
22 awarding of the contract, or when made available to the board of  
23 education, whichever is sooner. The board of education shall have the  
24 right to reject all proposals for any of the reasons set forth in  
25 N.J.S.18A:18A-22.

26 e. Award of a contract shall be made by resolution of the board of  
27 education within 60 days of the receipt of the proposals, except that  
28 the proposals of any vendors who consent thereto, may, at the request  
29 of the board of education, be held for consideration for such longer  
30 period as may be agreed.

31 f. The report prepared pursuant to subsection d. of this section  
32 shall become part of the public record and shall reflect the final action  
33 of the board of education. Contracts shall be executed pursuant to  
34 N.J.S.18A:18A-40.

35 g. The secretary of the board of education shall publish a notice in  
36 the official newspaper of the board of education summarizing the  
37 award of a contract, which shall include but not be limited to, the  
38 nature, duration, and amount of the contract, the name of the vendor  
39 and a statement that the resolution and contract are on file and  
40 available for public inspection in the office of the secretary of the  
41 board of education.

42 h. The Director of the Division of Local Government Services in  
43 the Department of Community Affairs, after consultation with the  
44 Commissioner of Education, may adopt additional rules and  
45 regulations, in accordance with the "Administrative Procedure Act,"  
46 P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to  
47 effectuate the provisions of sections 45 through 49 of P.L. , c. (C. )  
48 (pending before the Legislature as this bill).

1       50. N.J.S.18A:18A-2 is amended to read as follows:

2       18A:18A-2. As used in this chapter, unless the context otherwise  
3 indicates:

4       a. "Board of education" means and includes the board of education  
5 of any local school district, consolidated school district, regional  
6 school district, county vocational school and any other board of  
7 education or other similar body other than the State Board of  
8 Education, the Commission on Higher Education or the Presidents'  
9 Council, established and operating under the provisions of Title 18A  
10 of the New Jersey Statutes and having authority to make purchases  
11 and to enter into contracts[, agreements or leases] for the provision  
12 or performance of [any work or the furnishing or hiring of any  
13 materials, supplies, equipment or services usually required, the cost or  
14 contract price is to be paid with or out of board funds] goods or  
15 services. The term "board of education" also shall include the board  
16 of trustees of a charter school established under P.L.1995, c.426  
17 (C.18A:36A-1 et seq.).

18       b. "[Contracting] Purchasing agent" means the secretary, business  
19 administrator or the business manager of the board of education duly  
20 assigned the authority, responsibility and accountability for the  
21 purchasing activity of the board of education and having the power to  
22 prepare advertisements, to advertise for and receive bids and to [make  
23 awards for the board of education in connection with purchases,]  
24 award contracts [or agreements] as permitted by this chapter, but if  
25 there be no secretary, business administrator or business manager,  
26 such officer, committees or employees to whom such power has been  
27 delegated by the board of education.

28       c. ["Contracts" for the purpose of this chapter means contracts  
29 or agreements for the performance of work or the furnishing or hiring  
30 of services, materials, or supplies as distinguished from contracts of  
31 employment.] (Deleted by amendment, P.L. , c. .) (Pending before  
32 the Legislature as this bill.)

33       d. "District" means and includes any local school district,  
34 consolidated school district, regional school district, county vocational  
35 school and any other board of education or other similar body other  
36 than the State board, established under the provisions of Title 18A of  
37 the New Jersey Statutes.

38       e. ["Legal newspaper" means a newspaper circulating in the  
39 district, printed and published in the English language at least once a  
40 week for at least one year continuously.] (Deleted by amendment,  
41 P.L. , c. .) (Pending before the Legislature as this bill.)

42       f. ["Materials" includes goods and property subject to Article 2 of  
43 Title 12A of the New Jersey Statutes, apparatus, or any other tangible  
44 thing, except real property or any interest therein .] (Deleted by  
45 amendment, P.L. , c. .) (Pending before the Legislature as this bill.)

46       g. "Extraordinary unspecifiable services" means services which are  
47 specialized and qualitative in nature requiring expertise, extensive

- 1 training and proven reputation in the field of endeavor.
- 2 h. "Professional services" means services rendered or performed  
3 by a person authorized by law to practice a recognized profession and  
4 whose practice is regulated by law and the performance of which  
5 services requires knowledge of an advanced type in a field of learning  
6 acquired by a prolonged formal course of specialized instruction and  
7 study as distinguished from general academic instruction or  
8 apprenticeship and training. Professional services may also [means]  
9 mean services rendered in the provision or performance of [work]  
10 goods or services that [is] are original and creative in character in a  
11 recognized field of artistic endeavor.
- 12 i. ["Project" means any work, undertaking, construction or  
13 alteration.] (Deleted by amendment, P.L. , c. .) (Pending before the  
14 Legislature as this bill.)
- 15 j. "Purchases" [are] means transactions, for a valuable  
16 consideration, creating or acquiring an interest in goods, services and  
17 property, except real property or any interest therein.
- 18 k. "Work" [includes services and any other activity of a tangible  
19 or intangible nature] means any task, program, undertaking, or  
20 activity, related to any development, redevelopment, construction or  
21 reconstruction performed or [assumed] provided pursuant to a  
22 contract [or agreement] with a board of education.
- 23 l. "Aggregate" means the sums expended or to be expended for the  
24 provision or performance of any goods or services in connection with  
25 the same immediate purpose or task, or the furnishing of similar goods  
26 or services, during the same contract year through a contract awarded  
27 by a purchasing agent.
- 28 m. "Bid threshold" means the dollar amount set in N.J.S.18A:18A-  
29 3, above which a board of education shall advertise for and receive  
30 sealed bids in accordance with procedures set forth in N.J.S.18A:18A-  
31 1 et seq.
- 32 n. "Contract" means any agreement, including but not limited to a  
33 purchase order or a formal agreement, which is a legally binding  
34 relationship enforceable by law, between a vendor who agrees to  
35 provide or perform goods or services and a board of education which  
36 agrees to compensate a vendor, as defined by and subject to the terms  
37 and conditions of the agreement. A contract also may include an  
38 arrangement whereby a vendor compensates a board of education for  
39 the vendor's right to perform a service, such as, but not limited to,  
40 operating a concession.
- 41 o. "Contract year" means the period of 12 consecutive months  
42 following the award of a contract.
- 43 p. "Competitive contracting" means the method described in  
44 sections 45 through 49 of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) of contracting for specialized goods and  
46 services in which formal proposals are solicited from vendors; formal  
47 proposals are evaluated by the purchasing agent or counsel or school

1 business administrator; and the board of education awards a contract  
2 to a vendor or vendors from among the formal proposals received.

3 q. "Goods and services" or "goods or services" means any work,  
4 labor, commodities, equipment, materials, or supplies of any tangible  
5 or intangible nature, except real property or any interest therein,  
6 provided or performed through a contract awarded by a purchasing  
7 agent , including goods and property subject to N.J.S.12A:2-101 et  
8 seq.

9 r. "Library and educational goods and services" means textbooks,  
10 copyrighted materials, student produced publications and services  
11 incidental thereto, including but not limited to books, periodicals,  
12 newspapers, documents, pamphlets, photographs, reproductions,  
13 microfilms, pictorial or graphic works, musical scores, maps, charts,  
14 globes, sound recordings, slides, films, filmstrips, video and magnetic  
15 tapes, other printed or published matter and audiovisual and other  
16 materials of a similar nature, necessary binding or rebinding of library  
17 materials, and specialized computer software used as a supplement or  
18 in lieu of textbooks or reference material.

19 s. "Lowest price" means the least possible amount that meets all  
20 requirements of the request of a purchasing agent.

21 t. "Lowest responsible bidder or vendor" means the bidder or  
22 vendor: (1) whose response to a request for bids offers the lowest  
23 price and is responsive; and (2) who is responsible.

24 u. "Official newspaper" means any newspaper designated by the  
25 board of education pursuant to R.S.35:1-1 et seq.

26 v. "Purchase order" means a document issued by the purchasing  
27 agent authorizing a purchase transaction with a vendor to provide or  
28 perform goods or services to the board of education, which, when  
29 fulfilled in accordance with the terms and conditions of a request of a  
30 purchasing agent and other provisions and procedures that may be  
31 established by the board of education, will result in payment by the  
32 board of education.

33 w. "Quotation" means the response to a formal or informal request  
34 made by a purchasing agent to a vendor for provision or performance  
35 of goods or services, when the aggregate cost is less than the bid  
36 threshold. Quotations may be in writing, or taken verbally if a record  
37 is kept by the purchasing agent.

38 x. "Responsible" means able to complete the contract in  
39 accordance with its requirements, including but not limited to  
40 requirements pertaining to experience, moral integrity, operating  
41 capacity, financial capacity, credit, and workforce, equipment, and  
42 facilities availability.

43 y. "Responsive" means conforming in all material respects to the  
44 terms and conditions, specifications, legal requirements, and other  
45 provisions of the request.

46 z. "Public works" means building, altering, repairing, improving or  
47 demolishing any public structure or facility constructed or acquired by  
48 a board of education to house school district functions or provide

1 water, waste disposal, power, transportation and other public  
2 infrastructures.

3 aa. "Concession" means the granting of a license or right to act for  
4 or on behalf of the board of education, or to provide a service  
5 requiring the approval or endorsement of the board of education, and  
6 which may or may not involve a payment or exchange, or provision of  
7 services by or to the board of education, provided that the term  
8 concession shall not include vending machines.

9 bb. "Index rate" means the rate of annual percentage increase,  
10 rounded to the nearest half-percent, in the Implicit Price Deflator for  
11 State and Local Government Purchases of Goods and Services,  
12 computed and published quarterly by the United States Department of  
13 Commerce, Bureau of Economic Analysis.

14 cc. "Proprietary" means goods or services of a specialized nature,  
15 that may be made or marketed by a person or persons having the  
16 exclusive right to make or sell them, when the need for such goods or  
17 services has been certified in writing by the board of education to be  
18 necessary for the conduct of its affairs.

19 dd. "Service or services" means the performance of work, or the  
20 furnishing of labor, time, or effort, or any combination thereof, not  
21 involving or connected to the delivery or ownership of a specified end  
22 product or goods or a manufacturing process. Service or services may  
23 also include an arrangement in which a vendor compensates the board  
24 of education for the vendor's right to operate a concession.

25 (cf: P.L.1994, c.48, s.59)

26

27 51. N.J.S.18A:18A-3 is amended to read as follows:

28 18A:18A-3. [a. Any purchase, contract or agreement for the  
29 performance of any work or the furnishing or hiring of materials or  
30 supplies,]

31 a. When the cost or price of [which, together with any other sums  
32 expended or foreseeably to be expended for the performance of any  
33 work or services in connection with the same project or the furnishing  
34 of similar materials or supplies during the same fiscal year paid with or  
35 out of school funds] any contract awarded by the purchasing agent in  
36 the aggregate, does not exceed in a contract year the total sum of  
37 [\$7,500.00 or the amount determined pursuant to subsection b. of this  
38 section, in the fiscal year or, in the case of purchases that are not  
39 annually recurring, in a period of one year] \$17,500, the contract may  
40 be [made, negotiated and] awarded by a [contracting] purchasing  
41 agent when so authorized by resolution of the board of education  
42 without public advertising for bids and bidding therefor, except that  
43 the board of education may adopt a resolution to set a lower threshold  
44 for the receipt of public bids or the solicitation of competitive  
45 quotations. If the purchasing agent is qualified pursuant to subsection  
46 b. (pending before the Legislature as section 15 of this bill) of section  
47 9 of P.L.1971, c.198 (C.40A:11-9) the board of education may



1 establish that the bid threshold may be up to \$25,000. Such  
2 authorization may be granted for each contract or by a general  
3 delegation of the power to negotiate and award such contracts  
4 pursuant to this section.

5 b. Commencing [January 1, 1983 and every two] in the fifth year  
6 after the year in which P.L. , c. (now before the Legislature as this  
7 bill) takes effect, and every five years thereafter, the Governor, in  
8 consultation with the Department of Treasury, shall adjust the  
9 threshold amount and the higher threshold amount which the board of  
10 education is permitted to establish as set forth in subsection a. of this  
11 section or the threshold amount resulting from any adjustment under  
12 this subsection, in direct proportion to the rise or fall of the  
13 [consumer price index for all urban consumers in the New York City  
14 and the Philadelphia areas as reported by the United States  
15 Department of Labor] index rate as that term is defined in  
16 N.J.S.18A:18A-2 (pending before the Legislature as section 50 of this  
17 bill), and shall round the adjustment to the nearest \$1,000. The  
18 Governor shall notify all local school districts of the adjustment no  
19 later than June 1 of every fifth year. The adjustment shall become  
20 effective on July 1 of the year in which it is [reported] made.

21 Any contract made pursuant to this section may be awarded for a  
22 period of 24 consecutive months, except that contracts for  
23 professional services pursuant to paragraph (1) of subsection a. of  
24 N.J.S.18A:18A-5 may be awarded for a period not exceeding 12  
25 consecutive months.

26 (cf: P.L.1983, c.171, s.1)

27

28 52. N.J.S.18A:18A-4 is amended to read as follows:

29 18A:18A-4. a. Every contract [or agreement] for the provision or  
30 performance of any [work or the furnishing or hiring of any materials  
31 or supplies] goods or services, the cost [or the contract price whereof  
32 is to be paid with or out of school funds, not included within the terms  
33 of N.J.S.18A:18A-3] of which in the aggregate exceeds the bid  
34 threshold, shall be [made and] awarded only by resolution of the  
35 board of education to the lowest responsible bidder after public  
36 advertising for bids and bidding therefor, except as is provided  
37 otherwise in this chapter or specifically by any other law.

38 [No work, materials or supplies shall be undertaken, acquired or  
39 furnished for a sum exceeding in the aggregate the amount set forth in,  
40 or calculated by the Governor pursuant to, N.J.S. 18A:18A-3, except  
41 by contract or agreement.] The board of education may, by resolution  
42 approved by a majority of the board of education and subject to  
43 subsections b. and c. of this section, disqualify a bidder who would  
44 otherwise be determined to be the lowest responsible bidder, if the  
45 board of education finds that it has had prior negative experience with  
46 the bidder.

47 b. As used in this section, "prior negative experience" means any

1 of the following:

2 (1) the bidder has been found, through either court adjudication,  
3 arbitration, mediation, or other contractually stipulated alternate  
4 dispute resolution mechanism, to have: failed to provide or perform  
5 goods or services; or failed to complete the contract in a timely  
6 manner; or otherwise performed unsatisfactorily under a prior contract  
7 with the board of education;

8 (2) the bidder defaulted on a contract, thereby requiring the board  
9 of education to utilize the services of another contractor to provide the  
10 goods or perform the services or to correct or complete the contract;

11 (3) the bidder defaulted on a contract, thereby requiring the board  
12 of education to look to the bidder's surety for completion of the  
13 contract or tender of the costs of completion; or

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

18 c. The following conditions apply if the board of education is  
19 contemplating a disqualification based on prior negative experience:

20 (1) The existence of any of the indicators of prior negative  
21 experience set forth in this section shall not require that a bidder be  
22 disqualified. In each instance, the decision to disqualify shall be made  
23 within the discretion of the board of education and shall be rendered  
24 in the best interests of the board of education.

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

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

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

40 (5) A disqualification<sup>1</sup>, other than a disqualification pursuant to  
41 which a board of education is prohibited by law from entering into a  
42 contract with a bidder,<sup>1</sup> may be voided or the period thereof may be  
43 reduced, in the discretion of the board of education, upon the  
44 submission of a good faith application under oath, supported by  
45 documentary evidence, setting forth substantial and appropriate  
46 grounds for the granting of relief, such as reversal of a judgment, or  
47 actual change of ownership, management or control of the bidder.

48 (6) An opportunity for a hearing need not be offered to a bidder

1 whose disqualification is based on its suspension or debarment by an  
2 agency or department of the executive branch of the State of New  
3 Jersey. The term of such a disqualification shall be concurrent with  
4 the term of the suspension or debarment by the State agency or  
5 department.

6 d. The purchase of text books and materials that exceed the bid  
7 threshold and are approved by a board of education pursuant to  
8 N.J.S.18A-34-1 shall not require the further adoption of a resolution  
9 for purchase.

10 (cf: P.L.1983, c.171, s.2)

11  
12 53. N.J.S.18A:18A-5 is amended to read as follows:

13 18A:18A-5. Exceptions to requirement for advertising. Any  
14 [purchase,] contract [or agreement of the character described in  
15 N.J.S.18A:18A-4 may], the amount of which exceeds the bid  
16 threshold, shall be [made,] negotiated [or] and awarded by the board  
17 of education by resolution at a public meeting without public  
18 advertising for bids and bidding therefor if

19 a. The subject matter thereof consists of:

20 (1) Professional services. The board of education shall in each  
21 instance state supporting reasons for its action in the resolution  
22 awarding each contract and shall forthwith cause to be printed once,  
23 in an official newspaper, a brief notice stating the nature, duration,  
24 service and amount of the contract, and that the resolution and  
25 contract are on file and available for public inspection in the office of  
26 the board of education;

27 (2) Extraordinary unspecifiable services which cannot reasonably  
28 be described by written specifications[, which]. The application of  
29 this exception as to extraordinary unspecifiable services shall be  
30 construed narrowly in favor of open competitive bidding where  
31 possible and the [State Board of Education] Director of the Division  
32 of Local Government Services in the Department of Community  
33 Affairs is authorized to establish rules and regulations after  
34 consultation with the Commissioner of Education limiting its use in  
35 accordance with the intention herein expressed; and the board of  
36 education shall in each instance state supporting reasons for its action  
37 in the resolution awarding the contract for extraordinary unspecifiable  
38 services and shall forthwith cause to be printed, in the manner set forth  
39 in paragraph (1) of this subsection, a brief notice of the award of such  
40 contract;

41 (3) The doing of any work by employees of the [contracting unit]  
42 board of education;

43 (4) The printing of all legal notices; and legal briefs, records and  
44 appendices to be used in any legal proceeding in which the  
45 [contracting party] board of education may be a party;

46 (5) [Textbooks, copyrighted materials, kindergarten supplies, and  
47 student produced publications and services incidental thereto] Library

1 and educational goods and services;

2 (6) Food [services and] supplies, including food supplies for home  
3 economics classes, when purchased pursuant to rules and regulations  
4 of the State board and in accordance with the provisions of  
5 N.J.S.18A:18A-6;

6 (7) The supplying of any product or the rendering of any service  
7 by a public utility, which is subject to the jurisdiction of the Board of  
8 Public Utilities, in accordance with the tariffs and schedules of charges  
9 made, charged and exacted, filed with said board;

10 (8) The printing of bonds and documents necessary to the issuance  
11 and sale thereof by a board of education;

12 (9) Equipment repair service if in the nature of an extraordinary  
13 unspecifiable service and necessary parts furnished in connection with  
14 such services, which exception shall be in accordance with the  
15 requirements for extraordinary unspecifiable services;

16 (10) Insurance, including the purchase of insurance coverage and  
17 consultant services, which exception shall be in accordance with the  
18 requirements for extraordinary unspecifiable services;

19 (11) Publishing of legal notices in newspapers as required by law;

20 (12) The acquisition of artifacts or other items of unique intrinsic,  
21 artistic or historic character;

22 (13) [Election expenses, including advertising expenses incidental  
23 thereto] Those goods and services necessary or required to prepare  
24 and conduct an election;

25 (14) [Electronic data processing service obtained from another  
26 board of education;] (Deleted by amendment, P.L. .c. .) (Pending  
27 before the Legislature as this bill.)

28 (15) [Driver education courses provided by licensed driver  
29 education schools;] <sup>1</sup>[(Deleted by amendment, P.L. .c. .) (Pending  
30 before the Legislature as this bill.)] (Deleted by amendment, P.L.1999,  
31 c.270).<sup>1</sup>

32 (16) [Performance of work or services or the furnishing of  
33 materials, supplies or equipment for the purpose of conserving energy  
34 in buildings owned by any local board of education, the entire price of  
35 which shall be established as a percentage of the resultant savings in  
36 energy costs;] (Deleted by amendment, P.L. .c. .) (Pending before  
37 the Legislature as this bill.)

38 (17) The doing of any work by persons with disabilities employed  
39 by a sheltered workshop [.] ;

40 (18) Expenses for travel and conferences;

41 (19) The provision or performance of goods or services for the  
42 support or maintenance of proprietary computer hardware and  
43 software, except that this provision shall not be utilized to acquire or  
44 upgrade non-proprietary hardware or acquire or update non-  
45 proprietary software;

46 (20) Purchases of goods and services at rates set by the Universal  
47 Service Fund administered by the Federal Communications

1 Commission:

2 (21) Goods and services paid with funds that: are raised by or  
3 collected from students to support the purchase of student oriented  
4 items or materials, such as yearbooks, class rings, and a class gift; and  
5 are deposited in school or student activity accounts; and require no  
6 budget appropriation from the board of education;

7 (22) Food services provided by food service management  
8 companies pursuant to procedures established by the New Jersey  
9 Department of Agriculture, Bureau of Child Nutrition Programs;

10 (23) Vending machines providing food or drink.

11 b. It is to be made or entered into with the United States of  
12 America, the State of New Jersey, county or municipality or any  
13 board, body, officer, agency [or], authority or board of education or  
14 any other state or subdivision thereof.

15 c. [The board of education has] Bids have been advertised [for  
16 bids] pursuant to N.J.S.18A:18A-4 on two occasions and [has  
17 received] (1) no bids have been received on both occasions in  
18 response to [its] the advertisement [and, after reasonable inquiry, it  
19 is determined that no board, body, officer, agency or authority of the  
20 United States, or of the State of New Jersey or of any county or  
21 municipality in which the board of education is located is willing and  
22 able to perform any work or furnish or hire any materials or supplies  
23 in conformity with the specifications of the board of education. Any],  
24 or (2) the board of education has rejected such bids on two occasions  
25 because it has determined that they are not reasonable as to price, on  
26 the basis of cost estimates prepared for or by the board of education  
27 prior to the advertising therefor, or have not been independently  
28 arrived at in open competition, or (3) on one occasion no bids were  
29 received pursuant to (1) and on one occasion all bids were rejected  
30 pursuant to (2), in whatever sequence; any such contract [or  
31 agreement entered into pursuant to this subsection c.] may then be  
32 [made,] negotiated [or] and may be awarded [only] upon adoption  
33 of a resolution by [the] a two-thirds affirmative vote of [two-thirds  
34 of] the [full] authorized membership of the board of education [at a  
35 meeting thereof] authorizing such a contract [or agreement.];  
36 provided, however, that:

37 (a) A reasonable effort is first made by the board of education to  
38 determine that the same or equivalent goods or services, at a cost  
39 which is lower than the negotiated price, are not available from an  
40 agency or authority of the United States, the State of New Jersey or  
41 of the county in which the board of education is located, or any  
42 municipality in close proximity to the board of education;

43 (b) The terms, conditions, restrictions and specifications set forth  
44 in the negotiated contract are not substantially different from those  
45 which were the subject of competitive bidding pursuant to  
46 N.J.S.18A:18A-4; and

47 (c) Any minor amendment or modification of any of the terms,

1 conditions, restrictions and specifications which were the subject of  
2 ~~the~~ competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated  
3 in the resolution awarding the contract; provided further, however,  
4 that if on the second occasion the bids received are rejected as  
5 unreasonable as to price, the board of education shall notify each  
6 responsible bidder submitting bids on the second occasion of its  
7 intention to negotiate, and afford each bidder a reasonable opportunity  
8 to negotiate, but the board of education shall not award such contract  
9 unless the negotiated price is lower than the lowest rejected bid price  
10 submitted on the second occasion by a responsible bidder, is the  
11 lowest negotiated price offered by any responsible vendor, and is a  
12 reasonable price for such goods or services.

13 d. [The board of education has advertised for bids pursuant to  
14 N.J.S.18A:18A-4 on two occasions and has rejected such bids on each  
15 occasion because the board of education has determined that they are  
16 not reasonable as to price on the basis of cost estimates prepared for  
17 the board of education prior to the advertising therefor or have not  
18 been independently arrived at in open competition, but no such  
19 contract or agreement may be entered into after such rejection of bids,  
20 unless:

21 (1) Notification of the intention to negotiate and a reasonable  
22 opportunity to negotiate shall have been given by the board of  
23 education to each responsible bidder;

24 (2) The negotiated price is lower than the lowest rejected bid price  
25 of a responsible bidder who bid thereon and is the lowest negotiated  
26 price offered by any responsible supplier and is a reasonable price for  
27 such work, materials, supplies or services;

28 (3) Any amendment or modification of the terms, conditions,  
29 restrictions and specifications which were the subject of competitive  
30 bidding pursuant to N.J.S.18A:18A-4 shall be stated in the resolution  
31 awarding the contract; and

32 (4) The negotiated price is lower than the price of the same or  
33 equivalent materials or supplies available from the State, county or  
34 municipality in which the board of education is located.】

35 Whenever a board of education shall determine that a bid was not  
36 arrived at independently in open competition pursuant to ~~this~~  
37 subsection ~~d.~~ c.(2) of N.J.S.18A:18A-5, it shall thereupon notify the  
38 county prosecutor of the county in which the board of education is  
39 located and the Attorney General of the facts upon which its  
40 determination is based, and when appropriate, it may institute  
41 appropriate proceedings in any State or federal court of competent  
42 jurisdiction for a violation of any State or federal antitrust law or laws  
43 relating to the unlawful restraint of trade.

44 e. The board of education has solicited and received at least three  
45 quotations on materials, supplies or equipment for which a State  
46 contract has been issued pursuant to N.J.S.18A:18A-10, and the  
47 lowest responsible quotation is at least 10% less than the price the

1 board would be charged for the identical materials, supplies or  
2 equipment, in the same quantities, under the State contract. Any such  
3 contract or agreement entered into pursuant to subsection d. or  
4 subsection e. may be made, negotiated or awarded only upon adoption  
5 of a resolution by the affirmative vote of two-thirds of the full  
6 membership of the board of education at a meeting thereof authorizing  
7 such a contract or agreement.<sup>1</sup>A copy of the purchase order relating  
8 to any such contract, the requisition for purchase order, if applicable,  
9 and documentation identifying the price of the materials, supplies or  
10 equipment under the State contract and the State contract number  
11 shall be filed with the Director of the Division of Local Government  
12 Services in the Department of Community Affairs within five working  
13 days of the award of any such contract by the board of education. The  
14 director shall notify the board of education of receipt of the material  
15 and shall make the material available to the State Treasurer. The  
16 board of education shall make available to the director upon request  
17 any other documents relating to the solicitation and award of the  
18 contract, including, but not limited to, quotations, requests for  
19 quotations, and resolutions.<sup>1</sup>  
20 (cf: P.L.1999, c.270, s.1)

21

22 54. N.J.S.18A:18A-7 is amended to read as follows:

23 18A:18A-7. Emergency [purchases and] contracts. Any  
24 [purchase,] contract [or agreement] may be [made,] negotiated or  
25 awarded for a board of education without public advertising for bids  
26 and bidding therefor, notwithstanding that the [cost or] contract  
27 price will exceed the [amount set forth in, or calculated by the  
28 Governor pursuant to, N.J.S.18A:18A-3] bid threshold when an  
29 emergency affecting the health or safety of occupants of school  
30 property requires the immediate delivery of [the articles] goods or  
31 the performance of [the service] services, provided that the  
32 [awarding or making of such purchases,] contracts [or agreements  
33 are made] are awarded in the following manner:

34 a. [ A written requisition for the performance of such work or  
35 labor, or the furnishing of materials, supplies or services is filed with  
36 the contracting agent or his deputy in charge describing the nature of  
37 the emergency, the time of its occurrence and the need for invoking  
38 this section, certified by the employee in charge of the building,  
39 facility or equipment wherein the emergency occurred.

40 The contracting agent, or his deputy in charge, being satisfied that  
41 the emergency exists, is hereby authorized to award a contract for said  
42 work or labor, materials, supplies or services.] The official in charge  
43 of the building, facility or equipment wherein the emergency occurred  
44 or such other officer or employee as may be authorized to act in place  
45 of that official, shall notify the purchasing agent or a supervisor of the  
46 purchasing agent of the need for the performance of a contract, the  
47 nature of the emergency, the time of its occurrence and the need for

1 invoking this section. If that person is satisfied that an emergency  
2 exists, that person shall be authorized to award a contract or contracts  
3 for such purposes as may be necessary to respond to the emergent  
4 needs. Such notification shall be reduced to writing and filed with the  
5 purchasing agent as soon as practicable.

6 b. Upon the furnishing of such [work or labor, materials, supplies]  
7 goods or services, in accordance with the terms of the contract [or  
8 agreement], the contractor furnishing such [work or labor, materials,  
9 supplies] goods or services, shall be entitled to be paid therefor and  
10 the board of education shall be obligated for said payment. The board  
11 of education shall take such action as shall be required to provide for  
12 the payment of the contract price.

13 c. The [State Board of Education] Division of Local Government  
14 Services in the Department of Community Affairs, after consultation  
15 with the Commissioner of Education, shall prescribe rules and  
16 procedures to implement the requirements of this section.

17 d. The board of education may prescribe additional rules and  
18 procedures to implement the requirements of this section.

19 (cf: P.L.1983, c.171, s.3)

20  
21 55. N.J.S.18A:18A-8 is amended to read as follows:

22 18A:18A-8. Contracts not to be divided. [ No purchase, contract  
23 or agreement, which is single in character or which necessarily or by  
24 reason of the quantities required to effectuate the purpose of the  
25 purchase, contract or agreement, includes the furnishing of additional  
26 services or equipment or buying materials or supplies or the doing of  
27 additional work, shall be subdivided, so as to bring it or any of the  
28 parts thereof under the maximum price or cost limitation of the  
29 amount set forth in, or calculated by the Governor pursuant to, N.J.S.  
30 18A:18A-3, thus dispensing with the requirement of public advertising  
31 and bidding therefor. In purchasing or contracting for, or agreeing  
32 for the furnishing of, any services, equipment, materials or supplies,  
33 the doing of any work included in or incident to the performance or  
34 completion of any project, which is single in character or inclusive of  
35 the furnishing of additional services or equipment or buying materials  
36 or supplies or the doing of additional work, or which requires the  
37 furnishing of more than one article of equipment or buying materials  
38 or supplies, all of the services, materials or supplies requisite for the  
39 completion of such project shall be included in one purchase, contract  
40 or agreement.] a. No contract in the aggregate which is single in  
41 character or which necessarily or by reason of the quantities required  
42 to effectuate the purpose of the contract includes the provision or  
43 performance of additional goods or services, shall be divided, so as to  
44 bring it or any of the parts thereof under the bid threshold, for the  
45 purpose of dispensing with the requirement of public advertising and  
46 bidding therefor.

47 b. In contracting for the provision or performance of any goods or



1 services included in or incidental to the provision or performance of  
2 any work which is single in character or inclusive of the provision or  
3 performance of additional goods or services, all of the goods or  
4 services requisite for the completion of such contract shall be included  
5 in one contract.

6 (cf: P.L.1983, c.171, s.4)

7  
8 56. (New section) For the purpose of ensuring consistency  
9 between the "Local Public Contracts Law, " P.L.1971, c.198  
10 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
11 N.J.S.18A:18A-1 et seq., the Director of the Division of Local  
12 Government Services in the Department of Community Affairs, after  
13 consultation with the Commissioner of Education, and pursuant to the  
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
15 seq.), shall adopt rules concerning determinations of aggregation for  
16 the purposes of whether a contract is subject to public bidding as set  
17 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4  
18 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and  
19 N.J.S.18A:18A-8.

20  
21 57. N.J.S.18A:18A-9 is amended to read as follows:

22 18A:18A-9. Periodic solicitation of bids. Every board of education  
23 shall, on an annual basis or at such lesser intervals to be fixed by it,  
24 solicit by public advertisement the submission of bids for the  
25 **[furnishing of all work, materials and supplies]** provision or  
26 performance of goods or services which are and which under  
27 N.J.S.18A:18A-4 can be **[purchased or agreed or]** contracted to be  
28 **[furnished]** provided or performed only after public advertisement for  
29 bids and bidding therefor and all **[purchases, or]** contracts **[or**  
30 **agreements for the furnishing, of such work, materials and supplies]**  
31 for the provision or performance of such goods or services shall be  
32 **[made and]** awarded only in that manner.

33 (cf: N.J.S.18A:18A-9)

34  
35 58. N.J.S.18A:18A-10 is amended to read as follows:

36 18A:18A-10. Board of education purchases through State agency;  
37 procedure. a. A board of education, without advertising for bids, or  
38 after having rejected all bids obtained pursuant to advertising therefor,  
39 by resolution may purchase any **[materials, supplies,]** goods~~[,]~~ or  
40 services **[or equipment]** pursuant to a contract or contracts for such  
41 **[materials, supplies ,]** goods~~[,]~~ or services **[or equipment]** entered  
42 into on behalf of the State by the Division of Purchase and Property.  
43 b. A board of education may also use, without advertising for bids,  
44 or having rejected all bids obtained pursuant to advertising, the  
45 Federal Supply Schedules of the General Services Administration **[as**  
46 **permitted by the "Federal Acquisition Streamlining Act of 1994,"**  
47 **Pub.L.103-355, and federal regulations adopted thereunder.]**

1 promulgated by the Director of the Division of Purchase and Property  
 2 in the Department of the Treasury pursuant to section 1 of P.L.1996,  
 3 c.16 (C.52:34-6.1), subject to the following conditions:

4 (1) the price of the goods <sup>1</sup>or services<sup>1</sup> being procured is no  
 5 greater than the price offered to federal agencies;

6 (2) the Federal Supply Schedules may be used only for purchases  
 7 of up to \$500,000 per year or for one product unit at any price and  
 8 only for reprographic equipment or services, including digital copiers,  
 9 used by the board of education; <sup>1</sup>[and]<sup>1</sup>

10 (3) the board of education receives the benefit of federally  
 11 mandated price reductions during the term of the contract and is  
 12 protected from price increases during that time<sup>1</sup>;

13 (4) the price of the goods or services being procured is no greater  
 14 than the price of the same or equivalent goods or services under the  
 15 State contract, unless the board of education determines that because  
 16 of factors other than price, selection of a vendor from the Federal  
 17 Supply Schedules would be more advantageous to the board of  
 18 education;

19 (5) a copy of the purchase order relating to any such contract, the  
 20 requisition or request for purchase order, if applicable, and  
 21 documentation identifying the price of the goods or services under the  
 22 Federal Supply Schedules shall be filed with the Director of the  
 23 Division of Local Government Services in the Department of  
 24 Community Affairs within five working days of the award of any such  
 25 contract by the board of education. The director shall notify the board  
 26 of education of the receipt of the material and shall make the material  
 27 available to the State Treasurer. The board of education shall make  
 28 available to the director upon request any other documents relating to  
 29 the solicitation and award of the contract<sup>1</sup> .

30 c. Whenever a purchase is made, the board of education shall place  
 31 its order with the vendor offering the lowest price, including delivery  
 32 charges, that best meets the requirements of the board of education.  
 33 Prior to placing such an order, the board of education shall document  
 34 with specificity that the [materials, supplies,] goods[, ] or services [or  
 35 equipment] selected best meet the requirements of the board of  
 36 education.

37 (cf: P.L.1996, c.16, s.4)

38  
 39 59. N.J.S.18A:18A-11 is amended to read as follows:

40 18A:18A-11. Joint purchases by districts, municipalities, counties;  
 41 authority. The boards of education of two or more districts may  
 42 provide jointly by agreement for the [purchasing of supplies, materials  
 43 or work] provision and performance of goods and services for their  
 44 respective districts, or one or more boards of education may provide  
 45 for such [purchases] provision or performance of goods or services  
 46 by joint agreement with the governing body of [the] any municipality  
 47 or county [within whose boundaries any such district is wholly or

1 partly located].

2 (cf: N.J.S.18A:18A-11)

3

4 60. N.J.S.18A:18A-12 is amended to read as follows:

5 18A:18A-12. Contents of agreement. a. Such agreements shall be  
6 entered into by resolution adopted by each participating board of  
7 education, municipality or county and shall set forth the categories of  
8 [work, materials and supplies] goods or services to be [purchased]  
9 provided or performed, the manner of advertising for bids and of  
10 awarding of contracts, the method of payment by each participating  
11 board of education, municipality or county, and other matters deemed  
12 necessary to carry out the purposes of the agreement.

13 b. Each participant's share of expenditures for purchases under any  
14 such agreement shall be appropriated and paid in the manner set forth  
15 in the agreement and in the same manner as for other expenses of the  
16 participant.

17 (cf: N.J.S.18A:18A-12)

18

19 61. N.J.S.18A:18A-13 is amended to read as follows:

20 18A:18A-13. Purchases and agreements subject to law and rules  
21 and regulations. Such purchases and all [agreements] contracts  
22 pertaining thereto shall be subject to all provisions of law and the  
23 applicable rules and regulations of the State board.

24 (cf: N.J.S.18A:18A-13)

25

26 62. N.J.S.18A:18A-14 is amended to read as follows:

27 18A:18A-14. Controversies or disputes; determination; appeal.  
28 In the event that any controversy or dispute shall arise among the  
29 parties (except a municipality or county) to any such [agreement]  
30 contract, the same shall be referred to the county superintendent of the  
31 county in which the districts are situate for determination and his  
32 determination thereon shall be binding, subject to appeal to the  
33 commissioner and the State board pursuant to law. In the event that  
34 the districts are in more than one county, the controversy or dispute  
35 shall be referred to the county superintendents of the counties for joint  
36 determination, and if they shall be unable to agree upon a joint  
37 determination within 30 days, the controversy or dispute shall be  
38 referred to the commissioner for determination.

39 (cf: N.J.S.18A:18A-14)

40

41 63. N.J.S.18A:18A-15 is amended to read as follows:

42 18A:18A-15. Specifications generally. Any specifications for [an  
43 acquisition] the provision or performance of goods or services under  
44 this chapter[, whether by purchase, contract or agreement,] shall be  
45 drafted in a manner to encourage free, open and competitive bidding.  
46 In particular, no specifications under this chapter may:

47 a. Require any standard, restriction, condition or limitation not

1 directly related to the purpose, function or activity for which the  
2 ~~purchase,~~ contract ~~or agreement~~ is ~~made~~ awarded; or

3 b. Require that any bidder be a resident of, or that ~~his~~ the  
4 bidder's place of business be located in, the county or school district  
5 in which the ~~purchase~~ contract will be~~made~~ awarded or ~~the~~  
6 ~~contract or agreement~~ performed, unless the physical proximity of the  
7 bidder is requisite to the efficient and economical ~~purchase or~~  
8 performance of the contract ~~or agreement~~; or

9 c. Discriminate on the basis of race, religion, sex, national origin  
10 creed, color, ancestry, age, marital status, affectional or sexual  
11 orientation, familial status, liability for service in the Armed Forces of  
12 the United States, or nationality; or

13 d. Require, with regard to any ~~purchase,~~ contract ~~or~~  
14 ~~agreement~~, the furnishing of any "brand name," but may in all cases  
15 require "brand name or equivalent," except that if the ~~materials~~  
16 goods or services to be ~~supplied or purchased~~ provided or  
17 performed are ~~patented or copyrighted~~ proprietary, such ~~materials~~  
18 ~~or supplies~~ goods or services may be purchased by stipulating the  
19 proprietary goods or services in the bid specification in any case in  
20 which the resolution authorizing the ~~purchase,~~ contract[, sale or  
21 ~~agreement~~] so indicates, and the special need for such ~~patented or~~  
22 ~~copyrighted materials or supplies~~ proprietary goods or services is  
23 directly related to the performance, completion or undertaking of the  
24 purpose for which the ~~purchase,~~ contract ~~or agreement~~ is ~~made~~  
25 awarded; or

26 e. Fail to include any option for renewal, extension, or release  
27 which the board of education may intend to exercise or require; or any  
28 terms and conditions necessary for the performance of any extra work;  
29 or fail to disclose any matter necessary to the substantial performance  
30 of the contract ~~or agreement~~.

31 The specifications for every contract for public work, the entire  
32 cost whereof will exceed \$20,000.00, shall provide that the board of  
33 education, through its authorized agent, shall upon completion of the  
34 contract report to the department as to the contractor's performance,  
35 and shall also furnish such report from time to time during  
36 performance if the contractor is then in default.

37 Any specification ~~adopted by the board of education~~ which  
38 knowingly excludes prospective bidders by reason of the impossibility  
39 of performance, bidding or qualification by any but one bidder, except  
40 as provided herein, shall be null and void and of no effect and ~~such~~  
41 ~~purchase, contract or agreement~~ shall be readvertised for receipt of  
42 new bids, and the original ~~purchase,~~ contract ~~or agreement~~ shall  
43 be set aside by the board of education.

44 No provision in this section shall be construed to prevent a board  
45 of education from designating that a contract[, subcontract or other  
46 means of procurement of] for goods[, or services[, equipment or

1 construction] shall be awarded to a small business enterprise, a  
2 minority business enterprise or a women's business enterprise pursuant  
3 to P.L.1985, c.490 (C.18A:18A-51 et seq.).

4 Any prospective bidder who wishes to challenge a bid specification  
5 shall file such challenges in writing with the purchasing agent no less  
6 than three business days prior to the opening of the bids. Challenges  
7 filed after that time shall be considered void and having no impact on  
8 the board of education or the award of a contract.

9 (cf: P.L.1988, c.37, s.10)

10  
11 64. (New section) Goods or services, the payment for which  
12 utilizes only funds received by a board of education from a bequest,  
13 legacy or gift, shall be subject to the provisions of N.J.S.18A:18A-1  
14 et seq., except that if such bequest, legacy or gift contains written  
15 instructions as to the specifications, manufacturer or vendor, or source  
16 of supply of the goods or services to be provided or performed, such  
17 instructions shall be honored.

18  
19 65. N.J.S.18A:18A-18 is amended to read as follows:

20 18A:18A-18. Separate plans for various types of work; bids;  
21 contracts. In the preparation of plans and specifications for the  
22 construction, alteration or repair of any building by a board of  
23 education, when the entire cost of the work [and materials] will  
24 exceed the [amount set forth in, or calculated by the Governor  
25 pursuant to, N.J.S.18A:18A-3] bid threshold, separate plans and  
26 specifications shall be prepared for each of the following, and all work  
27 [and materials] kindred thereto to be performed or furnished in  
28 connection therewith:

- 29 a. The plumbing and gas fitting work;  
30 b. The heating and ventilating systems and equipment;  
31 c. The electrical work, including any electrical power plant;  
32 d. The structural steel and ornamental iron work;  
33 e. All other work [and materials] required for the completion of  
34 the project.

35 The board of education or its [contracting] purchasing agent shall  
36 advertise for and receive, in the manner provided by law, (1) separate  
37 bids for each of said branches of work, and (2) bids for all the work  
38 [and materials] , goods and services required to complete the building  
39 to be included in a single overall contract. There will be set forth in the  
40 bid the name or names of [, and evidence of performance security  
41 from,] all subcontractors to whom the bidder will subcontract the  
42 furnishing of plumbing and gas fitting, and all kindred work, and of the  
43 heating and ventilating systems and equipment, and electrical work,  
44 structural steel and ornamental iron work, each of which  
45 subcontractors shall be qualified in accordance with [this chapter]  
46 N.J.S.18A:18A-1 et seq. The school district shall require evidence of  
47 performance security to be submitted simultaneously with the list of

1 the subcontractors. Evidence of performance security may be supplied  
2 by the bidder on behalf of himself and any or all subcontractors, or by  
3 each respective subcontractor, or by any combination thereof which  
4 results in evidence of performance security equaling, but in no event  
5 exceeding, the total amount bid.

6 Contracts shall be awarded to the lowest responsible bidder. The  
7 contract shall be awarded in the following manner: If the sum total of  
8 the amounts bid by the lowest responsible bidder for each branch is  
9 less than the amount bid by the lowest responsible bidder for all the  
10 work [and materials], goods and services, the board of education shall  
11 award separate contracts for each of such branches to the lowest  
12 responsible bidder therefor, but if the sum total of the amount bid by  
13 the lowest responsible bidder for each branch is not less than the  
14 amount bid by the lowest responsible bidder for all the work [and  
15 materials] goods and services, the board of education shall award a  
16 single overall contract to the lowest responsible bidder for all of such  
17 work [and materials] goods and services. In every case in which a  
18 contract is awarded under (2) above, all payments required to be made  
19 under such contract for work [and materials] goods and services  
20 supplied by a subcontractor shall, upon the certification of the  
21 contractor of the amount due to the subcontractor, be paid directly to  
22 the subcontractor.

23 (cf: P.L.1983, c.171, s.5)

24  
25 66. N.J.S.18A:18A-20 is amended to read as follows:

26 18A:18A-20. American goods and products to be used where  
27 possible. Each board of education shall provide, in the specifications  
28 for all contracts for work for which it will pay any part of the cost or  
29 work which by contract it will ultimately own and maintain, that only  
30 manufactured and farm products of the United States, wherever  
31 available, be used in such work.

32 (cf: N.J.S.18A:18A-20)

33  
34 67. N.J.S.18A:18A-21 is amended to read as follows:

35 18A:18A-21. Advertisements for bids; bids; general requirements.

36 a. Except as provided in section 5 of P.L.1985, c.490  
37 (C.18A:18A-55), all advertisements for bids shall be published in [a  
38 legal] an official newspaper sufficiently in advance of the date fixed  
39 for receiving the bids to promote competitive bidding, but in no event  
40 less than 10 days prior to such date.

41 b. The advertisement shall designate the manner of submitting and  
42 of receiving the bids and the time and place at which the bids will be  
43 received. If the published specifications provide for receipt of bids by  
44 mail, those bids which are mailed to the board of education shall be  
45 sealed and shall be opened only for examination at such time and place  
46 as all bids received are unsealed and announced. At such time and  
47 place the purchasing agent of the board of education shall publicly

1 receive the bids and thereupon immediately proceed to unseal them  
2 and publicly announce the contents, which announcement shall be  
3 made in the presence of any parties bidding or their agents who are  
4 then and there present. A proper record of the prices and terms shall  
5 be made in the minutes of the board. No bids shall be received after  
6 the time designated in the advertisement.

7 c. Notice of revisions or addenda to advertisements or bid  
8 documents shall be provided as follows:

9 (1) For all contracts except those for construction work, notice  
10 shall be published no later than five days, Saturdays, Sundays, and  
11 holidays excepted, prior to the date for acceptance of bids, in an  
12 official newspaper of the board of education and be provided to any  
13 person who has submitted a bid or who has received a bid package, in  
14 one of the following ways: (a) in writing by certified mail or (b) by  
15 certified facsimile transmission, meaning that the sender's facsimile  
16 machine produces a receipt showing date and time of transmission and  
17 that the transmission was successful or (c) by a delivery service that  
18 provides certification of delivery to the sender.

19 (2) For all contracts for construction work, notice shall be  
20 provided no later than seven days, Saturday, Sundays, or holidays  
21 excepted, prior to the date for acceptance of bids, to any person who  
22 has submitted a bid or who has received a bid package in any of the  
23 following ways: i) in writing by certified mail or ii) by certified  
24 facsimile transmission, meaning that the sender's facsimile machine  
25 produces a receipt showing date and time of transmission and that the  
26 transmission was successful or iii) by a delivery service that provides  
27 certification of delivery to the sender.

28 d. Failure of the board of education to advertise for the receipt of  
29 bids or to provide proper notification of revisions or addenda to  
30 advertisements or bid documents related to bids as prescribed by this  
31 section shall prevent the board of education from accepting the bids  
32 and require the readvertisement for bids pursuant to subsection a. of  
33 this section. Failure to obtain a receipt when good faith notice is sent  
34 or delivered to the address or telephone facsimile number on file with  
35 the board of education shall not be considered failure by the board of  
36 education to provide notice.

37 (cf: P.L.1985, c.490, s.12)

38  
39 68. N.J.S.18A:18A-22 is amended to read as follows:

40 18A:18A-22. **[Bids to conform to specifications; rejection]**  
41 **Rejection of bids.** **[No bid shall be accepted which does not conform**  
42 **to the specifications furnished therefor. Nothing contained in this**  
43 **chapter shall be construed as depriving any] A board of education [of**  
44 **the right to] may reject all bids for any of the following reasons:**

45 **a. The lowest bid substantially exceeds the cost estimates for the**  
46 **goods or services;**

47 **b. The lowest bid substantially exceeds the board of education's**

1 appropriation for the goods or services;

2 c. The board of education decides to abandon the project for  
3 provision or performance of the goods or services;

4 d. The board of education wants to substantially revise the  
5 specifications for the goods or services;

6 e. The purposes or provisions or both of N.J.S.18A:18A-1 et seq.  
7 are being violated; and

8 f. The board of education decides to use the State authorized  
9 contract pursuant to N.J.S.18A:18A-10 .

10 (cf: N.J.S.18A:18A-22)

11

12 69. N.J.S.18A:18A-24 is amended to read as follows:

13 18A:18A-24. Security to accompany bid; amount. There may be  
14 required from any person bidding on any contract [or agreement],  
15 advertised in accordance with law, that the bid be accompanied by a  
16 guarantee payable to the board of education that, if the contract [or  
17 agreement] is awarded to [him, he] the bidder, the bidder will enter  
18 into a contract therefor and will furnish any performance bond or  
19 other security required as a guarantee or indemnification. The  
20 guarantee shall be in the amount of 10% of the bid, but not in excess  
21 of \$20,000.00, except as otherwise provided herein, and may be  
22 given, at the option of the bidder, by certified check, cashier's check  
23 or bid bond. In the event that any law or regulation of the United  
24 States imposes any condition upon the awarding of a monetary grant  
25 to any board of education, which condition requires the depositing of  
26 a guarantee in an amount other than 10% of the bid or in excess of  
27 \$20,000.00, the provisions of this section shall not apply and the  
28 requirements of the law or regulation of the United States shall  
29 govern.

30 (cf: N.J.S.18A:18A-24)

31

32 70. N.J.S.18A:18A-25 is amended to read as follows:

33 18A:18A-25. Guarantee certificate. When a surety company bond  
34 is required in the advertisement or specifications for a contract [or  
35 agreement], every board of education shall require from any bidder  
36 submitting a bid in accordance with plans, specifications and  
37 advertisements, as provided for by law, a certificate from a surety  
38 company stating that it will provide the contractor with a bond in such  
39 sum as is required in the advertisement or in the specifications.

40 This certificate shall be obtained for a bond--

41 a. For the faithful performance of all provisions of the  
42 specifications or for all matters which may be contained in the notice  
43 to bidders, relating to the performance of the contract [or  
44 agreement]; including the guarantees required under article 12 of  
45 chapter 44 of Title 2A of the New Jersey Statutes; and

46 b. If any be required, for a guarantee bond for the faithful  
47 performance of the contract provisions relating to the repair and



1 maintenance of any work, project or facility and its appurtenances and  
2 keeping the same in good and serviceable condition during the term  
3 of the bond as provided for in the notice to bidders or in the  
4 specifications; or

5 c. In such other form as may be provided in the notice to bidders  
6 or in the specifications.

7 If a bidder desires to offer the bond of an individual instead of that  
8 of a surety company, [he] the bidder shall submit with [his] the bid  
9 a certificate signed by such individual similar to that required of a  
10 surety company.

11 The board of education may reject any such bid if it is not satisfied  
12 with the sufficiency of the individual surety offered.

13 (cf: N.J.S.18A:18A-25)

14

15 71. N.J.S.18A:18A-27 is amended to read as follows:

16 18A:18A-27. [Authority of State Board of Education to adopt  
17 regulations providing for qualification of bidders. The State Board of  
18 Education] The State Treasurer may establish reasonable regulations  
19 appropriate for controlling the qualifications of prospective bidders  
20 upon contracts for public [work] works, the entire cost whereof will  
21 exceed [\$20,000.00] the bid threshold, by the amount, class or  
22 category of [work to be performed or materials and supplies to be  
23 furnished or hired] goods or services to be provided or performed  
24 which may fix the qualifications required according to the financial  
25 ability and experience of the bidders and the capital and equipment  
26 available to them pertinent to and reasonably related to the class or  
27 category of [work to be performed or materials and supplies to be  
28 furnished or hired] goods or services to be provided or performed in  
29 the performance of any such contract, and may require each bidder to  
30 furnish a statement thereof.

31 Such regulations shall be written in a manner:

32 a. Which will not unnecessarily discourage full, free and open  
33 competition; or

34 b. Which will not unnecessarily restrict the participation of small  
35 business in the public bidding process; or

36 c. Which will not create undue preferences; or

37 d. Which will not violate any other provision of this chapter, or any  
38 other law.

39 No qualification rating of any bidder shall be influenced by [his] the  
40 bidder's race, religion, sex, national origin, nationality or [his] place  
41 of residence.

42 [In lieu of adopting any qualification regulation under this section,  
43 the State Board may, in whole or in part, delegate by regulation to the  
44 Department of the Treasury or other appropriate State agency with its  
45 consent, the authority to qualify bidders subject to this article.

46 "Department," as used in this article, shall mean the Department of  
47 Education, Department of the Treasury or other State agency to which

1 the authority to qualify bidders has been delegated by the State  
2 Board.]

3 Such regulations shall not be effective unless they have been  
4 adopted as provided in the "Administrative Procedure Act" ,  
5 P.L.1968, c.410 (C.52:14B-1 et seq.).  
6 (cf: P.L.1983, c.266, s.3)

7

8 72. N.J.S.18A:18A-36 is amended to read as follows:

9 18A:18A-36. Time for making awards, deposits returned. a. The  
10 board of education shall award the contract or reject all bids within  
11 such time as may be specified in the invitation to bid, but in no case  
12 more than 60 days, except that the bids of any bidders who consent  
13 thereto may, at the request of the board of education, be held for  
14 consideration for such longer period as may be agreed. All bid  
15 security except the security of the three apparent lowest responsible  
16 bidders shall, if requested, be returned after 10 days from the opening  
17 of the bids, Sundays and holidays excepted and the bids of such  
18 bidders shall be considered as withdrawn. Within 3 days after the  
19 awarding of the contract and the approval of the contractor's  
20 performance bond the bid security of the remaining unsuccessful  
21 bidders shall be returned to them forthwith, Sundays and holidays  
22 excepted.

23 b. The contract shall be signed by all parties within the time limit  
24 set forth in the specifications, which shall not exceed 21 days, Sundays  
25 and holidays excepted, after the making of the award; provided,  
26 however, that all parties to the contract may agree to extend the limit  
27 set forth in the specifications beyond the 21 day limit required in this  
28 subsection. The contractor, upon written request to the board of  
29 education, is entitled to receive, within seven days of the request, an  
30 authorization to proceed pursuant to the terms of the contract on the  
31 date set forth in the contract for work to commence, or, if no date is  
32 set forth in the contract, upon receipt of authorization. If for any  
33 reason the contract is not awarded and the bidders have paid for or  
34 paid a deposit for the plans and specifications to the board of  
35 education, the payment or deposit shall immediately be returned to the  
36 bidders when the plans and specifications are returned in reasonable  
37 condition within 90 days of notice that the contract has not been  
38 awarded.

39 (cf: N.J.S.18A:18A-36)

40

41 73. N.J.S.18A:18A-37 is amended to read as follows:

42 18A:18A-37. Award of purchases, contracts or agreements. All  
43 contracts enumerated in this section shall be awarded as follows:

44 [All purchases, contracts or agreements which require public  
45 advertisement for bids shall be awarded to the lowest responsible  
46 bidder.

47 Prior to the award of any other purchase, contract or agreement,  
48 the contracting agent shall, except in the case of the performance of

1 professional services, solicit quotations, whenever practicable, on any  
2 such purchase, contract or agreement the estimated cost or price of  
3 which is 20% or more of the amount set forth in, or calculated by the  
4 Governor pursuant to, N.J.S.18A:18A-3 and the award thereof shall  
5 be made, in accordance with N.J.S.18A:18A-3 or N.J.S.18A:18A-4,  
6 as the case may be, on the basis of the lowest responsible quotation  
7 received, which quotation is most advantageous to the board of  
8 education, price and other factors considered; provided, however, that  
9 if the contracting agent deems it impractical to solicit competitive  
10 quotations in the case of extraordinary unspecifiable service, or, in the  
11 case of such or any other purchase, contract or agreement awarded  
12 hereunder, having sought such quotations determines that it should not  
13 be awarded on the basis of the lowest quotation received, the  
14 contracting agent shall file a statement of explanation of the reason or  
15 reasons therefor, which shall be placed on file with said purchase,  
16 contract or agreement.]

17 a. For all contracts that in the aggregate are less than the bid  
18 threshold but 15 percent or more of that amount, and for those  
19 contracts that are for subject matter enumerated in subsection a. of  
20 N.J.S.18A:18A-5, except for paragraph (1) of that subsection  
21 concerning professional services and paragraph (3) of that subsection  
22 concerning work by employees of the board of education, the  
23 purchasing agent shall award the contract after soliciting at least two  
24 competitive quotations , if practicable . The award shall be made to  
25 a vendor whose response is most advantageous, price and other  
26 factors considered. The purchasing agent shall retain the record of the  
27 quotation solicitation and shall include a copy of the record with the  
28 voucher used to pay the vendor.

29 b. When in excess of the bid threshold, and after documented effort  
30 by the purchasing agent to secure competitive quotations, a contract  
31 for extraordinary unspecifiable services may be awarded when the  
32 purchasing agent has determined in writing that solicitation of  
33 competitive quotations is impracticable. Any such contract shall be  
34 awarded by resolution of the board of education.

35 c. If authorized by the board of education by resolution, all  
36 contracts that are in the aggregate less than 15 percent of the bid  
37 threshold may be awarded by the purchasing agent without soliciting  
38 competitive quotations.

39 d. Whenever two or more responses to a request of a purchasing  
40 agent offer equal prices and are the lowest responsible bids or  
41 proposals, the board of education may award the contract to the  
42 vendor whose response, in the discretion of the board of education, is  
43 the most advantageous, price and other factors considered. In such a  
44 case, the award resolution or purchase order documentation shall  
45 explain why the vendor selected is the most advantageous.

46 (cf: P.L.1983, c.171, s.6)

47

48 74. N.J.S.18A:18A-40 is amended to read as follows:

1 18A:18A-40. Form and execution of contracts and bonds. All  
2 contracts for the [performing of work or furnishing materials,  
3 supplies] provision or performance of goods or services shall be in  
4 writing. The State Board of Education may, subject to the  
5 requirements of law, prescribe the forms and manner in which  
6 contracts shall be made and executed, and the form and manner of  
7 execution and approval of all guarantee, indemnity, fidelity and other  
8 bonds.

9 (cf: N.J.S.18A:18A-40)

10  
11 75. Section 1 of P.L.1987, c.343 (C.18A:18A-40.1) is amended to  
12 read as follows:

13 1. Any contract [or agreement], the total price of which exceeds  
14 \$100,000.00, entered into by a board of education involving the  
15 construction, reconstruction, alteration, repair or maintenance of any  
16 building, structure, facility or other improvement to real property, shall  
17 provide for partial payments to be made at least once each month as  
18 the work progresses, unless the contractor shall agree to deposit bonds  
19 with the board of education pursuant to section 2 of [this act]  
20 P.L.1987, c.343 (C.18A:18A-40.2).

21 (cf: P.L.1987, c.343, s.1)

22  
23 76. Section 3 of P.L.1987, c.343 (C.18A:18A-40.3) is amended to  
24 read as follows:

25 3. With respect to any contract [or agreement] entered into by a  
26 board of education pursuant to section 1 of P.L.1987, c.343  
27 (C.18A:18A-40.1) for which the contractor shall agree to the  
28 withholding of payments pursuant to section 2 of P.L.1987, c.343  
29 (C.18A:18A-40.2), 5% of the amount due on each partial payment  
30 shall be withheld by the board of education pending completion of the  
31 contract [or agreement] if the contractor does not have a performance  
32 bond. If the contractor does have a performance bond, 2% of the  
33 amount due on each partial payment shall be withheld by the board of  
34 education when the outstanding balance of the contract exceeds  
35 \$500,000, and 5% of the amount due on each partial payment shall be  
36 withheld by the board of education when the outstanding balance of  
37 the contract is \$500,000 or less.

38 (cf: P.L.1993, c.18, s.1)

39  
40 77. N.J.S.18A:18A-41 is amended to read as follows:

41 18A:18A-41. Liquidated damages. Any contract [or agreement]  
42 made pursuant to [this] chapter 18A of Title 18A of the New Jersey  
43 Statutes may include liquidated damages for the violation of any of the  
44 terms and conditions thereof or the failure to perform said contract  
45 [or agreement] in accordance with its terms and conditions, or the  
46 terms and conditions of [this] chapter 18A of Title 18A of the New

1 Jersey Statutes.

2 (cf: N.J.S.18A:18A-41)

3

4 78. N.J.S.18A:18A-42 is amended to read as follows:

5 18A:18A-42. Multiyear contracts. All contracts for the provision  
6 or performance of goods or services shall be awarded for a period not  
7 to exceed 24 consecutive months, except that contracts for  
8 professional services pursuant to paragraph (1) of subsection a. of  
9 N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12  
10 consecutive months. Any board of education may [enter into] award  
11 a contract [exceeding the fiscal year for the] for longer periods of  
12 time as follows:

13 a. Supplying of:

14 (1) Fuel for heating purposes, for any term not exceeding in the  
15 aggregate, three years;

16 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles  
17 or equipment, for any term not exceeding in the aggregate, three years;

18 (3) Thermal energy produced by a cogeneration facility, for use for  
19 heating or air conditioning or both, for any term not exceeding [20]  
20 40 years, when the contract is approved by the Board of Public  
21 Utilities. For the purposes of this paragraph, "cogeneration" means  
22 the simultaneous production in one facility of electric power and other  
23 forms of useful energy such as heating or process steam; or

24 b. Plowing and removal of snow and ice, for any term not  
25 exceeding in the aggregate, three years; or

26 c. Collection and disposal of garbage and refuse, for any term not  
27 exceeding in the aggregate, three years; or

28 d. Data processing service, for any term of not more than [five]  
29 seven years; or

30 e. Insurance, including the purchase of insurance coverages,  
31 insurance consultant or administrative services, and including  
32 participation in a joint self-insurance fund, risk management program  
33 or related services provided by a school board insurance group, or  
34 participation in an insurance fund established by a county pursuant to  
35 N.J.S.40A:10-6, or a joint insurance fund established pursuant to  
36 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than  
37 three years; or

38 f. Leasing or servicing of automobiles, motor vehicles, electronic  
39 communications equipment, machinery and equipment of every nature  
40 and kind and textbooks and non-consumable instructional materials,  
41 for any term not exceeding in the aggregate, five years; provided,  
42 however, such contracts shall be [entered into] awarded only subject  
43 to and in accordance with rules and regulations promulgated by the  
44 State Board of Education; or

45 g. Supplying of any product or the rendering of any service by a  
46 [telephone] company [which is subject to the jurisdiction of the

1 Board of Public Utilities] providing voice, data, transmission or  
2 switching services, for a term not exceeding five years; or

3 h. [ Materials, supplies or services that are required on a recurring  
4 basis from year to year, for any term not exceeding in the aggregate,  
5 two years; however, such contract may be renewed yearly for a period  
6 not exceeding three additional years without any further solicitation  
7 for bids or bidding upon a finding by the board that the services are  
8 being performed in an effective and efficient manner, or that the  
9 materials and supplies continue to meet the original specifications. If  
10 a board of education elects to renew an existing contract, the terms  
11 and conditions of the existing contract shall remain substantially  
12 unchanged and any increase in the contract cost over the three year  
13 period shall be no greater than a total of 20% over the initial cost; or]  
14 (Deleted by amendment, P.L. , c. .) (Pending before the Legislature  
15 as this bill.)

16 i. Driver education instruction conducted by private, licensed  
17 driver education schools, for any term not exceeding in the aggregate,  
18 three years ; [or]

19 j. [Performance of work or services or the furnishing of materials,  
20 supplies or equipment] Provision or performance of goods or services  
21 for the purpose of conserving energy in the buildings owned by any  
22 local board of education, the entire price of which shall be established  
23 as a percentage of the resultant savings in energy costs, for a term not  
24 to exceed [10] 15 years; except that these contracts shall be entered  
25 into only subject to and in accordance with [rules and regulations]  
26 guidelines promulgated by the [New Jersey Commerce and Economic  
27 Growth pursuant to the "Administrative Procedure Act," P.L.1968,  
28 c.410 (C.52:14B-1 et seq.),] Board of Public Utilities establishing a  
29 methodology for computing energy costs;

30 k. Any single project for the construction, reconstruction or  
31 rehabilitation of any public building, structure or facility, or any public  
32 works project, including the retention of the services of any architect  
33 or engineer in connection therewith, for the length of time authorized  
34 and necessary for the completion of the actual construction;

35 l. Laundry service and the rental, supply and cleaning of uniforms  
36 for any term of not more than three years;

37 m. Food supplies and food services for any term of not more than  
38 three years;

39 n. Purchases made under a contract awarded by the Director of the  
40 Division of Purchase and Property in the Department of the Treasury  
41 for use by counties, municipalities or other contracting units pursuant  
42 to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to  
43 exceed the term of that contract.

44 Any contract for services other than professional services, the  
45 statutory length of which contract is for three years or less, may  
46 include provisions for no more than one two-year, or two one-year,

1 extensions, subject to the following limitations: a. the contract shall  
2 be awarded by resolution of the board of education upon a finding by  
3 the board of education that the services are being performed in an  
4 effective and efficient manner; b. no such contract shall be extended  
5 so that it runs for more than a total of five consecutive years; c. any  
6 price change included as part of an extension shall be based upon the  
7 price of the original contract as cumulatively adjusted pursuant to any  
8 previous adjustment or extension and shall not exceed the change in the  
9 index rate for the 12 months preceding the most recent quarterly  
10 calculation available at the time the contract is renewed; and d. the  
11 terms and conditions of the contract remain substantially the same.

12 . All multiyear leases and contracts entered into pursuant to this  
13 section 18A:18A-42, including any two-year or one-year extensions,  
14 except [contracts for the leasing or servicing of equipment supplied by  
15 a telephone company which is subject to the jurisdiction of the Board  
16 of Public Utilities,] contracts for insurance coverages, insurance  
17 consultant or administrative services, participation or membership in  
18 a joint self-insurance fund, risk management programs or related  
19 services of a school board insurance group, participation in an  
20 insurance fund established by a county pursuant to N.J.S.40A:10-6 or  
21 contracts for thermal energy authorized pursuant to subsection a.  
22 above, and contracts for the provision or performance of [work or  
23 services or the furnishing of materials, supplies or equipment] goods  
24 or services to promote energy conservation authorized pursuant to  
25 subsection j. of this section, shall contain a clause making them  
26 subject to the availability and appropriation annually of sufficient funds  
27 as may be required to meet the extended obligation, or contain an  
28 annual cancellation clause. All contracts shall cease to have effect at  
29 the end of the contracted period and shall not be extended by any  
30 mechanism or provision, unless in conformance with the "Public  
31 School Contracts Law," N.J.S.18A:18A-1 et seq., except that a  
32 contract may be extended by mutual agreement of the parties to the  
33 contract when a board of education has commenced rebidding prior to  
34 the time the contract expires or when the awarding of a contract is  
35 pending at the time the contract expires.

36 (cf: P.L.1998, c.55, s.2)

37

38 79. N.J.S.18A:18A-44 is amended to read as follows:

39 18A:18A-44. Inspection, condemnation and rejection of work and  
40 materials. All [work done and materials or supplies furnished] goods  
41 and services provided or performed under contract shall be inspected  
42 by the [business manager] purchasing agent of the district, if there be  
43 a [business manager] purchasing agent of the district, but if there be  
44 no [business manager] purchasing agent of the district, they may be  
45 inspected by an appropriate officer employed by the board to whom  
46 such power shall have been delegated by the board, and subject to the

1 approval of the board the [business manager] purchasing agent or  
2 such officer, as the case may be, shall condemn any [work and reject  
3 any material or supplies,] goods or services which in his judgment do  
4 not conform to the specifications of the contract therefor.

5 (cf: N.J.S.18A:18A-44)

6  
7 80. N.J.S.18A:18A-45 is amended to read as follows:

8 18A:18A-45. Manner and method of sale. Any board of education  
9 may, by resolution and by sealed bid or public auction, authorize the  
10 sale of its personal property not needed for school purposes.

11 a. If the estimated fair value of the property to be sold exceeds [  
12 the amount set forth in, or calculated by the Governor pursuant to,  
13 N.J.S.18A:18A-3,] 15 percent of the bid threshold in any one sale and  
14 it is neither livestock nor perishable goods, it shall be sold at public  
15 sale to the highest bidder.

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

21 c. Personal property may be sold to the United States, the State of  
22 New Jersey, another board of education [or to] , any body politic, any  
23 foreign nation which has diplomatic relations with the United States,  
24 or any governmental unit in these United States by private sale without  
25 advertising for bids.

26 d. If no bids are received the property may then be sold at private  
27 sale without further publication or notice thereof, but in no event at  
28 less than the estimated fair value; or the board of education may if it  
29 so elect, reoffer the property at public sale. As used herein,  
30 "estimated fair value" means the market value of the property between  
31 a willing seller and a willing buyer less the cost to the board of  
32 education to continue storage or maintenance of any personal  
33 property not needed for school purposes to be sold pursuant to this  
34 section.

35 e. A board of education may reject all bids if it determines such  
36 rejection to be in the public interest. In any case in which the board  
37 of education has rejected all bids, it may readvertise such personal  
38 property for a subsequent public sale. If it elects to reject all bids at  
39 a second public sale, pursuant to this section, it may then sell such  
40 personal property without further publication or notice thereof at  
41 private sale, provided that in no event shall the negotiated price at  
42 private sale be less than the highest price of any bid rejected at the  
43 preceding two public sales and provided further that in no event shall  
44 the terms or conditions of sale be changed or amended.

45 f. If the estimated fair value of the property to be sold does not  
46 exceed [the amount set forth in, or calculated by the Governor



1 pursuant to, N.J.S.18A:18A-3,] the applicable bid threshold  
 2 established pursuant to subsection a. of this section in any one sale or  
 3 is either livestock or perishable goods, it may be sold at private sale  
 4 without advertising for bids.

5 g. Notwithstanding the provisions of this section, by resolution of  
 6 the board of education, a purchasing agent may include the sale of  
 7 personal property no longer needed for school purposes as part of  
 8 specifications to offset the price of a new purchase.

9 (cf: P.L.1983, c.171, s.7)

10

11 81. (New section) Pursuant to the "Administrative Procedure  
 12 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the  
 13 Division of Local Government Services in the Department of  
 14 Community Affairs, after consultation with the Commissioner of  
 15 Education, may adopt rules implementing the provisions of the "Public  
 16 School Contracts Law," N.J.S.18A:18A-1 et seq.

17

18 82. Section 1 of P.L.1981, c.447 (C.5:10-21.1) is amended to read  
 19 as follows:

20 1. a. All purchases, contracts, or agreements where the cost or  
 21 contract price exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after  
 22 ~~[June 30, 1985]~~ the effective date of P.L. , c. (now before the  
 23 Legislature as this bill , the amount determined pursuant to subsection  
 24 b. of this section shall, except as otherwise provided in this act, be  
 25 made, negotiated, or awarded only after public advertisement for bids  
 26 therefor and shall be awarded to that responsible bidder whose bid,  
 27 conforming to the invitation for bids, is most advantageous to the  
 28 authority, in its judgment, upon consideration of price and other  
 29 factors. Any bid may be rejected when the authority determines that  
 30 it is in the public interest to do so.

31 Any purchase, contract, or agreement where the cost or contract  
 32 price is less than or equal to ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30,~~  
 33 ~~1985]~~ the effective date of P.L. , c. (now before the Legislature as  
 34 this bill) , the amount determined pursuant to subsection b. of this  
 35 section may be made, negotiated, or awarded by the authority without  
 36 advertising and in any manner which the authority, in its judgment,  
 37 deems necessary to serve its unique interests and purposes and which  
 38 promotes, whenever practicable, full and free competition by the  
 39 acceptance of quotations or proposals or by the use of other suitable  
 40 methods.

41 b. Commencing ~~[January 1, 1985]~~ in the fifth year after the year  
 42 in which P.L. , c. (now before the Legislature as this bill) takes  
 43 effect, and every five years thereafter , the Governor, in consultation  
 44 with the Department of the Treasury, shall[, no later than March 1 of  
 45 each odd-numbered year,] adjust the threshold amount set forth in  
 46 subsection a. of this section, or ~~[subsequent to 1985]~~ after the

1 effective date of P.L. , c. (now before the Legislature as this bill, the  
2 threshold amount resulting from any adjustment under this subsection,  
3 in direct proportion to the rise or fall of the [consumer price index for  
4 all urban consumers in the New York City and the Philadelphia areas  
5 as reported by the United States Department of Labor] index rate as  
6 that term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and  
7 shall round the adjustment to the nearest \$1,000. The Governor shall,  
8 no later than June 1 of [each odd-numbered] every fifth year, notify  
9 the authority of the adjustment. The adjustment shall become  
10 effective on July 1 of [each odd-numbered year] the year in which it  
11 is made.

12 (cf: P.L.1984, c.128, s.1)

13

14 83. Section 4 of P.L.1981, c.447 (C.5:10-21.4) is amended to read  
15 as follows:

16 4. Any purchase, contract, or agreement may be made, negotiated,  
17 or awarded pursuant to section 2 of [this act] P.L.1981, c.447  
18 (C.5:10-21.2) when:

19 a. Standardization of equipment and interchangeability of parts is  
20 in the public interest;

21 b. Only one source of supply or service is available;

22 c. The safety or protection of the authority's or other public  
23 property requires;

24 d. The exigency of the authority's service will not admit of  
25 advertisement;

26 e. More favorable terms can be obtained from a primary source of  
27 supply of an item or service;

28 f. Bid prices, after advertising, are not reasonable or have not been  
29 independently arrived at in open competition; but no negotiated  
30 purchase, contract, or agreement may be entered into under this  
31 subsection after the rejection of all bids received unless (1) notification  
32 of the intention to negotiate and reasonable opportunity to negotiate  
33 is given to each responsible bidder; (2) the negotiated price is lower  
34 than the lowest rejected bid price of a responsible bidder; and (3) the  
35 negotiated price is the lowest negotiated price offered by any  
36 responsible contractor;

37 g. The purchase is to be made from, or the contract is to be made  
38 with, the federal or any state government or agency or political  
39 subdivision thereof; or

40 h. Purchases are to be made through or by the Director of the  
41 Division of Purchase and Property pursuant to section 1 of P.L.1959,  
42 c.40 (C.52:27B-56.1) , or through a contract made by any of the  
43 following: the Hackensack Meadowlands Development Commission  
44 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
45 Jersey Highway Authority established under section 4 of P.L.1952,  
46 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
47 under section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water

1 Supply Authority established under section 4 of P.L.1981, c.293  
2 (C.58:1B-4); the South Jersey Transportation Authority established  
3 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
4 of New York and New Jersey established under R.S.32:1-4; the  
5 Delaware River Port Authority established under R.S.32:3-2; the  
6 Higher Education Student Assistance Authority established under  
7 N.J.S.18A:71A-3 .

8 (cf: P.L.1981, c.447, s.4)

9  
10 84. Section 6 of P.L.1984, c.128 (C.13:17-6.1) is amended to read  
11 as follows:

12 6. a. All purchases, contracts, or agreements where the cost or  
13 contract price exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after  
14 [June 30, 1985] the effective date of P.L. , c. (now before the  
15 Legislature as this bill) , the amount determined pursuant to  
16 subsection b. of this section shall be made, negotiated, or awarded  
17 only after public advertisement for bids therefor and shall be awarded  
18 to that responsible bidder whose bid, conforming to the invitation for  
19 bids, is most advantageous to the Hackensack Meadowlands  
20 Development Commission, in its judgment, upon consideration of  
21 price and other factors; provided, however, that such advertising shall  
22 not be required when the contract to be entered into is one for the  
23 furnishing or performing of services of a professional nature, or when  
24 the purchase is to be made through or by the Director of the Division  
25 of Purchase and Property pursuant to section 1 of P.L.1959, c.40  
26 (C.52:27B-56.1), or through a contract made by any of the following:  
27 the New Jersey Sports and Exposition Authority established under  
28 section 4 of P.L.1971, c.137 (C.5:10-4), the New Jersey Highway  
29 Authority established under section 4 of P.L.1952, c.16 (C.27:12B-4);  
30 the New Jersey Turnpike Authority established under section 3 of  
31 P.L.1948, c.454 (C.27:23-3); the New Jersey Water Supply Authority  
32 established under section 4 of P.L.1981, c.293 (C.58:1B-4); the South  
33 Jersey Transportation Authority established under section 4 of  
34 P.L.1991, c.252 (C.27:25A-4); the Port Authority of New York and  
35 New Jersey established under R.S.32:1-4; the Delaware River Port  
36 Authority established under R.S.32:3-2; the Higher Education Student  
37 Assistance Authority established under N.J.S.18A:71A-3. Any bid  
38 may be rejected when the commission determines that it is in the  
39 public interest to do so.

40 Any purchase, contract, or agreement where the cost or contract  
41 price is less than or equal to ~~[\$7,500.00]~~ \$25,000 or, after [June 30,  
42 1985] the effective date of P.L. , c. (now before the Legislature as  
43 this bill) , the amount determined pursuant to subsection b. of this  
44 section may be made, negotiated, or awarded by the commission  
45 without advertising and in any manner which the commission, in its  
46 judgment, deems necessary to serve its unique interests and purposes  
47 and which promotes, whenever practicable, full and free competition

1 by the acceptance of quotations or proposals or by the use of other  
2 suitable methods.

3 b. Commencing [January 1, 1985] in the fifth year after the year  
4 in which P.L. , c. (now before the Legislature as this bill) takes  
5 effect, and every five years thereafter, the Governor, in consultation  
6 with the Department of the Treasury, shall[, no later than March 1 of  
7 each odd-numbered year,] adjust the threshold amount set forth in  
8 subsection a. of this section, or [subsequent to 1985] after the  
9 effective date of P.L. , c. (now before the Legislature as this bill),  
10 the threshold amount resulting from any adjustment under this  
11 subsection, in direct proportion to the rise or fall of the [consumer  
12 price index for all urban consumers in the New York City and the  
13 Philadelphia areas as reported by the United States Department of  
14 Labor] index rate as that term is defined in section 2 of P.L.1971,  
15 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
16 \$1,000. The Governor shall, no later than June 1 of [each  
17 odd-numbered] every fifth year, notify the commission of the  
18 adjustment. The adjustment shall become effective on July 1 of [each  
19 odd-numbered year] the year in which it is made.  
20 (cf: P.L.1984, c.128, s.6)

21

22 85. Section 1 of P.L.1968, c.459 (C.27:12B-5.2) is amended to  
23 read as follows:

24 1. a. The New Jersey Highway Authority, in the exercise of its  
25 authority to make and enter into contracts and agreements necessary  
26 or incidental to the performance of its duties and the execution of its  
27 powers, shall adopt standing operating rules and procedures providing  
28 that, except as hereinafter provided, no contract on behalf of the  
29 authority shall be entered into for the doing of any work, or for the  
30 hiring of equipment or vehicles, where the sum to be expended  
31 exceeds the sum of [\$7,500.00] \$25,000 or, after[ June 30, 1985]  
32 the effective date of P.L. , c. (now before the Legislature as this  
33 bill) ,the amount determined pursuant to subsection b. of this section  
34 unless the authority shall first publicly advertise for bids therefor, and  
35 shall award the contract to the lowest responsible bidder; provided,  
36 however, that such advertising shall not be required where the  
37 contract to be entered into is one for the furnishing or performing of  
38 services of a professional nature, or for the supplying of any product  
39 or the rendering of any service by a public utility subject to the  
40 jurisdiction of the Board of Public Utilities of this State and tariffs and  
41 schedules of the charges, made, charged, or exacted by the public  
42 utility for any such products to be supplied or services to be rendered  
43 are filed with the said board, or when the purchase is to be made  
44 through or by the Director of the Division of Purchase and Property  
45 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
46 a contract made by any of the following: the New Jersey Sports and

1 Exposition Authority established under section 4 of P.L.1971, c.137  
2 (C.5:10-4); the Hackensack Meadowlands Development Commission  
3 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
4 Jersey Turnpike Authority established under section 3 of P.L.1948,  
5 c.454 (C.27:23-3); the New Jersey Water Supply Authority established  
6 under section 4 of P.L.1981, c.293 (C.58:1B-4); the South Jersey  
7 Transportation Authority established under section 4 of P.L.1991,  
8 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
9 established under R.S.32:1-4; the Delaware River Port Authority  
10 established under R.S.32:3-2; the Higher Education Student  
11 Assistance Authority established under N.J.S.18A:71A-3. Contracts  
12 for towing and storage services shall be advertised and awarded  
13 pursuant to subsection c. of this section.

14 This subsection shall not prevent the authority from having any  
15 work done by its own employees, nor shall it apply to repairs, or to  
16 the furnishing of materials, supplies or labor, or the hiring of  
17 equipment or vehicles, when the safety or protection of its or other  
18 public property or the public convenience require, or the exigency of  
19 the authority's service will not admit of such advertisement. In such  
20 case the authority shall, by resolution, passed by the affirmative vote  
21 of a majority of its members, declare the exigency or emergency to  
22 exist, and set forth in the resolution the nature thereof and the  
23 approximate amount to be so expended.

24 b. Commencing [January 1, 1985] in the fifth year after the year  
25 in which P.L. , c. (now before the Legislature as this bill) takes  
26 effect, and every five years thereafter , the Governor, in consultation  
27 with the Department of the Treasury, shall[, no later than March 1 of  
28 each odd-numbered year,] adjust the threshold amount set forth in  
29 subsection a. of this section, or [subsequent to 1985] after the  
30 effective date of P.L. , c. (now before the Legislature as this bill).  
31 the threshold amount resulting from any adjustment under this  
32 subsection, in direct proportion to the rise or fall of the [consumer  
33 price index for all urban consumers in the New York City and the  
34 Philadelphia areas as reported by the United States Department of  
35 Labor] index rate as that term is defined in section 2 of P.L.1971,  
36 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
37 \$1,000. The Governor shall, no later than June 1 of [each  
38 odd-numbered] every fifth year, notify the authority of the adjustment.  
39 The adjustment shall become effective on July 1 of [each  
40 odd-numbered year] the year in which it is made.

41 c. The authority shall adopt regulations, pursuant to the  
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
43 seq.), to provide open and competitive procedures for awarding  
44 contracts for towing and storage services. Towing and storage  
45 services on a highway project may be provided on a rotating basis,  
46 provided that the authority determines that there would be no

1 additional cost to the authority, excepting administrative costs, as a  
2 result of those services being provided on a rotating basis. The  
3 regulations shall fix maximum towing and storage fees, and establish  
4 objective criteria to be considered in awarding a contract for towing  
5 and storage services which shall include, but shall not be limited to,  
6 reliability, experience, response time, acceptance of credit cards and  
7 prepaid towing contracts, adequate equipment to safely handle a  
8 sufficient volume of common vehicle types under a variety of traffic  
9 and weather conditions, location of storage and repair facilities,  
10 security of vehicles towed or stored, financial return to the authority,  
11 maintenance of adequate liability insurance and appropriate safeguards  
12 to protect the personal safety of customers, including considerations  
13 related to the criminal background of employees. The Division of  
14 Consumer Affairs in the Department of Law and Public Safety shall  
15 provide, at the authority's request, a report to the authority on any  
16 prospective contractor for which the division has information relevant  
17 to the prospective contractor's service record, subject to the provisions  
18 of the New Jersey consumer fraud act, P.L.1960, c.39 (C. 56:8-1 et  
19 seq.). The Division of Insurance Fraud Prevention in the Department  
20 of Banking and Insurance also shall provide, at the authority's request,  
21 a report to the authority on any prospective contractor for which the  
22 division has information relevant to the prospective contractor's  
23 service record, subject to the "New Jersey Insurance Fraud Prevention  
24 Act," P.L.1983, c.320 (C.17:33A-1 et seq.).  
25 (cf: P.L.1997, c.390, s.1)

26

27 86. Section 1 of P.L.1968, c.461 (C.27:23-6.1) is amended to read  
28 as follows:

29 1. a. The New Jersey Turnpike Authority, in the exercise of its  
30 authority to make and enter into contracts and agreements necessary  
31 or incidental to the performance of its duties and the execution of its  
32 powers, shall adopt standing operating rules and procedures providing  
33 that, except as hereinafter provided, no contract on behalf of the  
34 authority shall be entered into for the doing of any work, or for the  
35 hiring of equipment or vehicles, where the sum to be expended  
36 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30, 1985]~~ the  
37 effective date of P.L. .c. (now before the Legislature as this bill , the  
38 amount determined pursuant to subsection b. of this section unless the  
39 authority shall first publicly advertise for bids therefor, and shall  
40 award the contract to the lowest responsible bidder; provided,  
41 however, that such advertising shall not be required where the  
42 contract to be entered into is one for the furnishing or performing  
43 services of a professional nature, or for the supplying of any product  
44 or the rendering of any service by a public utility subject to the  
45 jurisdiction of the Board of Public Utility Commissioners of this State  
46 and tariffs and schedules of the charges, made, charged, or exacted by  
47 the public utility for any such products to be supplied or services to

1 be rendered are filed with the said board, or when the purchase is to  
2 be made through or by the Director of the Division of Purchase and  
3 Property pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or  
4 through a contract made by any of the following: the New Jersey  
5 Sports and Exposition Authority established under section 4 of  
6 P.L.1971, c.137 (C.5:10-4); the Hackensack Meadowlands  
7 Development Commission established under section 5 of P.L.1968,  
8 c.404 (C.13:17-5); the New Jersey Highway Authority established  
9 under section 4 of P.L.1952, c.16 (C.27:12B-4); the New Jersey Water  
10 Supply Authority established under section 4 of P.L.1981, c.293  
11 (C.58:1B-4); the South Jersey Transportation Authority established  
12 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
13 of New York and New Jersey established under R.S.32:1-4; the  
14 Delaware River Port Authority established under R.S.32:3-2; the  
15 Higher Education Student Assistance Authority established under  
16 N.J.S.18A:71A-3.

17 This subsection shall not prevent the authority from having any  
18 work done by its own employees, nor shall it apply to repairs, or to  
19 the furnishing of materials, supplies or labor, or the hiring of  
20 equipment or vehicles, when the safety or protection of its or other  
21 public property or the public convenience require, or the exigency of  
22 the authority's service will not admit of such advertisement. In such  
23 case the authority shall, by resolution, passed by the affirmative vote  
24 of a majority of its members, declare the exigency or emergency to  
25 exist, and set forth in the resolution the nature thereof and the  
26 approximate amount to be so expended.

27 b. Commencing [January 1, 1985] in the fifth year after the year  
28 in which P.L. , c. (now before the Legislature as this bill) takes  
29 effect, and every five years thereafter , the Governor, in consultation  
30 with the Department of the Treasury, shall[, no later than March 1 of  
31 each odd-numbered year,] adjust the threshold amount set forth in  
32 subsection a. of this section, or [subsequent to 1985] after the  
33 effective date of P.L. , c. (now before the Legislature as this bill,  
34 the threshold amount resulting from any adjustment under this  
35 subsection, in direct proportion to the rise and fall of the [consumer  
36 price index for all urban consumers in the New York City and the  
37 Philadelphia areas as reported by the United States Department of  
38 Labor] index rate as that term is defined in section 2 of P.L.1971,  
39 c.198 (C.40A:11-2), and shall round the adjustment to the nearest  
40 \$1,000. The Governor shall, no later than June 1 of [each  
41 odd-numbered] every fifth year, notify the authority of the adjustment.  
42 The adjustment shall become effective on July 1 of [each  
43 odd-numbered year] the year in which it is made.

44 (cf: P.L.1984, c.128, s.5)

1       87. Section 8 of P.L.1991, c.252 (C.27:25A-8) is amended to read  
2 as follows:

3       8. a. All purchases, contracts or agreements made pursuant to this  
4 act shall be made or awarded directly by the authority, except as  
5 otherwise provided in this act, only after public advertisement for bids  
6 therefor in the manner provided by the authority and notwithstanding  
7 the provisions of any other laws to the contrary.

8       b. Any purchase, contract or agreement may be made, negotiated  
9 or awarded by the authority without public bid or advertising under  
10 the following circumstances:

11       (1) When the aggregate amount involved does not exceed the  
12 amount set forth in, or the amount calculated by the Governor  
13 pursuant to, section 2 of P.L.1954, c.48 (C.52:34-7);

14       (2) To acquire subject matter which is described in section 4 of  
15 P.L.1954, c.48 (C.52:34-9);

16       (3) To make a purchase or award or make a contract or agreement  
17 under the circumstances described in section 5 of P.L.1954, c.48  
18 (C.52:34-10);

19       (4) When the contract to be entered into is for the furnishing or  
20 performing services of a professional or technical nature or for the  
21 supplying of any product or the rendering of any service by a public  
22 utility;

23       (5) When the authority deems it appropriate to have any work  
24 performed by its own employees;

25       (6) When the authority has advertised for bids on two occasions  
26 and has received no bids on both occasions in response to its  
27 advertisement, or received no responsive bids. Any purchase, contract  
28 or agreement may then be negotiated and may be awarded to any  
29 contractor or supplier determined to be responsible except that the  
30 terms, conditions, restrictions and specifications set forth in the  
31 negotiated contract or agreement are not substantially different from  
32 those which were the subject of competitive bidding;

33       (7) When a piece of equipment or part thereof requires diagnostic  
34 repairs;

35       (8) The printing of bonds and documents necessary to the issuance  
36 and sale thereof; [and]

37       (9) To contract pursuant to subsection w. of section 7 of this act;  
38 or

39       (10) When a purchase is to be made through or by the Director of  
40 the Division of Purchase and Property pursuant to section 1 of  
41 P.L.1959, c.40 (C.52:27B-56.1), or through a contract made by any  
42 of the following: the New Jersey Sports and Exposition Authority  
43 established under section 4 of P.L.1971, c.137 (C.5:10-4); the  
44 Hackensack Meadowlands Development Commission established  
45 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
46 Highway Authority established under section 4 of P.L.1952, c.16  
47 (C.27:12B-4); the New Jersey Turnpike Authority established under



1 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
2 Supply Authority established under section 4 of P.L.1981, c.293  
3 (C.58:1B-4); the Port Authority of New York and New Jersey  
4 established under R.S.32:1-4; the Delaware River Port Authority  
5 established under R.S.32:3-2; the Higher Education Student  
6 Assistance Authority established under N.J.S.18A:71A-3.  
7 (cf: P.L.1991, c.252, s.8)

8  
9 88. Section 22 of P.L.1981, c.293 (C.58:1B-22) is amended to  
10 read as follows:

11 22. a. The authority is hereby authorized to make and enter into  
12 contracts and agreements necessary or incidental to the performance  
13 of its duties and the execution of its powers. No contract on behalf of  
14 the authority shall be entered into for the doing of any work, or for the  
15 hiring of equipment or vehicles, where the sum to be expended  
16 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or ~~, after the effective date~~  
17 of P.L. , c. (now before the Legislature as this bill), the amount  
18 determined pursuant to subsection b. of this section, unless the  
19 authority shall first publicly advertise for bids therefor, and shall award  
20 the contract to the lowest responsible bidder; but advertising shall not  
21 be required where the contract to be entered into is one for the  
22 furnishing or performing services of a professional nature, or for the  
23 supplying of any product or the rendering of any service by a public  
24 utility subject to the jurisdiction of the Board of Public Utilities, and  
25 tariffs and schedules of the charges made, charged, or exacted by the  
26 public utility for any such products to be supplied or services to be  
27 rendered are filed with the board ~~, or when the purchase is to be made~~  
28 through or by the Director of the Division of Purchase and Property  
29 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through  
30 a contract made by any of the following: the New Jersey Sports and  
31 Exposition Authority established under section 4 of P.L.1971, c.137  
32 (C.5:10-4); the Hackensack Meadowlands Development Commission  
33 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New  
34 Jersey Highway Authority established under section 4 of P.L.1952,  
35 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established  
36 under section 3 of P.L.1948, c.454 (C.27:23-3); the South Jersey  
37 Transportation Authority established under section 4 of P.L.1991,  
38 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey  
39 established under R.S.32:1-4; the Delaware River Port Authority  
40 established under R.S.32:3-2; the Higher Education Student  
41 Assistance Authority established under N.J.S.18A:71A-3. This  
42 subsection shall not prevent the authority from having any work done  
43 by its own employees, nor shall it apply to repairs, or to the furnishing  
44 of materials, supplies or labor, or the hiring of equipment or vehicles,  
45 when the safety or protection of its or other public property or the  
46 public convenience requires, or the exigency of the authority service  
47 will not admit of such advertisement. In such case the authority shall,

1 by resolution, passed by the affirmative vote of a majority of its  
 2 members, declare the exigency or emergency to exist, and set forth in  
 3 the resolution the nature thereof and the approximate amount to be  
 4 expended.

5 b. 【The】 Commencing in the fifth year after the year in which  
 6 P.L. , c. (now before the Legislature as this bill) takes effect, and  
 7 every five years thereafter, the Governor, in consultation with the  
 8 Department of the Treasury, shall[, no later than March 1 of each  
 9 odd-numbered year,] adjust the threshold amount set forth in  
 10 subsection a. of this section, or 【subsequent to 1985】 after the  
 11 effective date of P.L. , c. (now before the Legislature as this bill),  
 12 the threshold amount resulting from any adjustment under this  
 13 subsection 【or section 17 of P.L. 1985, c. 469,】 in direct proportion  
 14 to the rise or fall of the 【Consumer Price Index for all urban  
 15 consumers in the New York City and the Philadelphia areas as  
 16 reported by the United States Department of Labor】 index rate as that  
 17 term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall  
 18 round the adjustment to the nearest \$1,000 . The Governor shall, no  
 19 later than June 1 of 【each odd-numbered】 every fifth year, notify the  
 20 authority of the adjustment. The adjustment shall become effective on  
 21 July 1 of 【each odd-numbered year】 the year in which it is made.  
 22 (cf: P.L.1985, c.469, s.14)

23  
 24 89. Section 1 of P.L.1959, c.40 (C.52:27B-56.1) is amended to  
 25 read as follows:

26 1. The Director of the Division of Purchase and Property may, by  
 27 joint action, purchase any articles used or needed by the State and the  
 28 Palisades Interstate Park Commission, the New Jersey Highway  
 29 Authority, the New Jersey Turnpike Authority, the Delaware River  
 30 Joint Toll Bridge Commission, the Port Authority of New York and  
 31 New Jersey, the South Jersey Port Corporation, the Passaic Valley  
 32 Sewerage Commission, the Delaware River Port Authority, Rutgers,  
 33 The State University, the University of Medicine and Dentistry of  
 34 New Jersey, the New Jersey Sports and Exposition Authority, the  
 35 New Jersey Housing Finance Agency, the New Jersey Mortgage  
 36 Finance Authority, the New Jersey Health Care Facilities Financing  
 37 Authority, the New Jersey Education Facilities Authority, the New  
 38 Jersey Economic Development Authority, the 【New Jersey  
 39 Expressway】 South Jersey Transportation Authority , the Hackensack  
 40 Meadowlands Development Commission, the New Jersey Water  
 41 Supply Authority; the Higher Education Student Assistance Authority  
 42 or any other agency, commission, board, authority or other such  
 43 governmental entity which is established and is allocated to a State  
 44 department or any bi-state governmental entity of which the State of  
 45 New Jersey is a member.

46 (cf: P.L.1981, c.325, s.18)

1       90. Section 30 of P.L.1948, c.92 (C.52:18A-30) is amended to  
2 read as follows:

3       30. The State Treasurer, in addition to the functions, powers and  
4 duties specifically conferred and imposed upon ~~him~~the position,  
5 shall:

6       (a) Maintain suitable headquarters for the department and such  
7 other quarters within the State as he may deem necessary to the  
8 department's proper functioning;

9       (b) Have general responsibility for all of the department's  
10 operations under this act;

11       (c) Supervise the organization of the department and changes in  
12 the organization thereof, except that the divisions, boards,  
13 commissions and offices, herein specifically provided shall be  
14 maintained;

15       (d) Formulate and adopt rules and regulations for the efficient  
16 conduct of the work and general administration of the department, its  
17 officers and employees and as may be necessary for the Department of  
18 the Treasury to carry out its duties as set forth by law; and

19       (e) Make an annual report to the Governor and to the Legislature  
20 of the department's operations, and render such other reports as the  
21 Governor shall from time to time request.

22       The State Treasurer shall designate as Deputy State Treasurer any  
23 officer or employee in the department. Such designation shall be in  
24 writing and shall be filed with the Secretary of State. Such  
25 designation shall continue in effect until the State Treasurer shall, in  
26 the manner herein provided, designate another officer or employee in  
27 the department as such Deputy State Treasurer.

28       The Deputy State Treasurer shall have and exercise the powers and  
29 perform the functions and duties of the State Treasurer during the  
30 absence or disability of the State Treasurer. The Deputy State  
31 Treasurer shall also have and exercise such of the powers and perform  
32 such of the functions and duties of the State Treasurer as he shall be  
33 authorized and directed by the State Treasurer. Any such  
34 authorization and direction shall be in writing, signed by the State  
35 Treasurer and filed with the Secretary of State, and shall include a  
36 designation of the period during which it shall be and remain in force.  
37 No such authorization and direction shall be deemed to preclude the  
38 State Treasurer from himself exercising the powers and the  
39 performance of the duties included in said authorization and direction.  
40 In the event that the State Treasurer shall die, resign or be removed  
41 from office, or become disqualified to execute the duties of his office,  
42 or a vacancy shall occur in the office of State Treasurer for any cause  
43 whatsoever, the person then holding the office of Deputy State  
44 Treasurer shall continue to hold such office and shall have and  
45 exercise the powers and perform the functions and duties of the State  
46 Treasurer until the successor of the State Treasurer shall be appointed  
47 and shall qualify.

1       Notwithstanding any other provision in existing law, the State  
2       Treasurer may designate, authorize and direct the Deputy State  
3       Treasurer or any other officer or specially designated expert assistant  
4       in the department to exercise the power and perform the functions and  
5       duties of the State Treasurer as a member of the board of trustees,  
6       commission or council vested with the general administration of and  
7       responsibility for any employee benefit system, trust, fund, program  
8       or plan. Any such authorization and direction shall be in writing,  
9       signed by the State Treasurer and filed with the Secretary of State,  
10      and shall include a designation of the period during which it shall be  
11      and remain in force. No such authorization and direction shall be  
12      deemed to preclude the State Treasurer from himself exercising the  
13      powers and the performance of the duties included in said  
14      authorization and direction.

15      (cf: P.L.1974, c.34, s.1)

16

17      91. Section 3 of P.L.1969, c.104 (C.52:25-16.1) is amended to  
18      read as follows:

19      3. The Director of the Division of Purchase and Property may, at  
20      the director's discretion, include, in any such contract or contracts on  
21      behalf of the State, a provision for the purchase of such materials,  
22      supplies [or], equipment or services by any [county, municipality or  
23      school district]local contracting unit from such contractor or  
24      contractors. Such purchase may be effectuated either as an outright  
25      purchase or by installment, lease or rental, so long as the vendor offers  
26      financing at an interest rate that is equal to or lower than the State line  
27      of credit. The [county, municipality or school district]local  
28      contracting unit shall have sole responsibility for any payment due the  
29      vendor for any such purchase. All purchases shall be subject to audit  
30      and inspection by the [county, municipality or school district]local  
31      contracting unit for which made. The local contracting unit shall file  
32      such reports as the Director of the Division of Purchase and Property  
33      may require setting forth the expenditure on such contracts. For the  
34      purposes of this section, "local contracting unit" means any public  
35      agency subject to the provisions of the "Local Public Contracts Law,"  
36      P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts  
37      Law," N.J.S.18A:18A-1 et seq., the "State College Contracts Law,"  
38      P.L.1986, c.43 (C.18A:64-52 et seq.), or the "County College  
39      Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

40      (cf: P.L.1969, c.104, s.3)

41

42      92. Section 2 of P.L.1985, c.263 (C.52:25-16.6) is amended to  
43      read as follows:

44      2. a. An independent institution of higher education may, at the  
45      director's discretion, purchase materials, supplies [and], equipment or  
46      services under any contract [negotiated]awarded on behalf of the  
47      State by the Director of the Division of Purchase and Property,

1 subject to such rules as the director may establish.

2 b. The director may establish limitations with respect to  
3 ~~[commodities]~~materials, supplies, equipment and services available  
4 for purchase and impose other appropriate conditions upon purchasing  
5 as deemed necessary to protect the State's own purchasing interests.

6 c. The independent institution of higher education shall file such  
7 reports as the Director of the Division of Purchase and Property may  
8 require setting forth the expenditures on such contracts.

9 (cf: P.L. 1985, c.263, s.2)

10

11 93. R.S.52:25-23 is amended to read as follows:

12 52:25-23. The Director of the Division of Purchase and Property  
13 may, by written order, delegate purchasing authority to the using  
14 agencies for purchases or contracts not in excess of ~~[\$7,500.00]~~  
15 \$25,000.00; except that:

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

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

23 c. ~~[All]~~ Records of all purchases made or contracts negotiated  
24 under this section shall be ~~[reported to]~~ maintained by the using  
25 agency and made available for audit by or under the direction of the  
26 Director of the Division of Purchase and Property ~~[by the using~~  
27 ~~agency, in a manner prescribed by the Director of the Division of~~  
28 ~~Purchase and Property, which report]~~ and shall include proper proof  
29 that the purchase or contract was made or negotiated competitively,  
30 where competition is practicable.

31 The Director of the Division of Purchase and Property may, by  
32 written order, rescind or reduce the level of purchasing authority  
33 delegated to any using agency determined by the director to have  
34 violated the provisions of the delegated authorization.

35 (cf: P.L.1985, c.107, s.1)

36

37 94. Section 4 of article 6 of P.L.1944, c.112 (C.52:27B-56) is  
38 amended to read as follows:

39 4. The director is hereby vested with the powers, duties, and  
40 responsibilities involved in the efficient operation of a centralized  
41 State purchasing service, and with the custody, operation and  
42 maintenance of all State property not chargeable to a particular  
43 department. ~~[He]~~ The director shall have authority, subject to the  
44 ~~[commissioner's]~~ State Treasurer's approval, to organize the division  
45 for the effective performance of its functions and purposes herein set  
46 forth, and to establish and assess fees to cover administrative costs.

1 The director or the director's designee shall have the authority to  
2 conduct investigations and informal hearings regarding any bid protest  
3 or vendor performance issues. The director shall also have the  
4 authority to issue final agency decisions regarding any bid protest or  
5 vendor performance issues. Except as otherwise provided by statute  
6 and subject to the State Treasurer's approval, the director shall have  
7 final approval of all State contracts including, but not limited to, those  
8 entered into pursuant to P.L.1964, c.290 (C.30:6-17 et seq.).

9 (cf: P.L.1944, c.112, art.6, s.4)

10  
11 95. Section 2 of P.L.1954, c.48 (C.52:34-7) is amended to read as  
12 follows:

13 2. a. Any such purchase, contract or agreement may be made,  
14 negotiated, or awarded by the Director of the Division of Purchase and  
15 Property or the Director of the Division of Building and Construction,  
16 as the case may be, without advertising, in any manner which [he] the  
17 director may deem effective to promote full and free competition  
18 whenever competition is practicable, if: (1) the aggregate amount  
19 involved does not exceed ~~[\$7,500.00]~~ \$25,000.00 or the amount  
20 determined pursuant to subsection b. of this section; or (2) (Deleted  
21 by amendment, P.L.1985, c.107) or (3) the aggregate amount involved  
22 including labor and construction materials does not exceed \$25,000.00  
23 or the amount determined pursuant to subsection b. of this section in  
24 the case of contracts or agreements for the erection, construction,  
25 alteration, or repair of any public building or facility.

26 When the aggregate amount involved does not exceed \$25,000.00  
27 or the amount determined pursuant to subsection b. of this section in  
28 the case of contracts or agreements for the erection, construction,  
29 alteration, or repair of any public building or facility, the Director of  
30 the Division of Purchase and Property or the Director of the Division  
31 of Building and Construction may, at [his] the director's discretion,  
32 delegate to the appropriate State department or using agency [his] the  
33 director's authority to make, negotiate, or award a contract or  
34 agreement without advertising.

35 The ~~[Administrator of the General Services Administration]~~  
36 Director of the Division of Purchase and Property or the Director of  
37 the Division of Building and Construction, as the case may be, shall  
38 establish, in accordance with the "Administrative Procedure Act"  
39 (P.L.1968, c.410; C.52:14B-1 et seq.), rules and regulations  
40 concerning procedural requirements for the making, negotiating or  
41 awarding of purchases, contracts or agreements pursuant to this  
42 section, at the director's discretion.

43 b. The Governor, in consultation with the Department of the  
44 Treasury, shall, no later than March 1 of [each odd-numbered] every  
45 fifth year beginning in the fifth year after the year in which P.L. , c.  
46 (now before the Legislature as this bill) takes effect , adjust the  
47 threshold amount set forth in subsection a. of this section, or  
48 [subsequent to 1985] the threshold amount resulting from any

1 adjustment under this subsection, in direct proportion to the rise or fall  
2 of the [Consumer Price Index for all urban consumers in the New  
3 York City and the Philadelphia areas as reported by the United States  
4 Department of Labor] index rate as that term is defined in section 2  
5 of P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to  
6 the nearest \$1,000. The Governor shall, no later than June 1 of [each  
7 odd-numbered] every fifth year, notify the Director of the Division of  
8 Purchase and Property and the Director of the Division of Building  
9 and Construction of the adjustment. The adjustment shall become  
10 effective on July 1 of [each odd-numbered year] the year in which it  
11 is made.

12 (cf: P.L.1985, c.349, s.1)

13

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

16 7. Whenever advertising is required: (a) specifications and  
17 invitations for bids shall permit such full and free competition as is  
18 consistent with the procurement of supplies and services necessary to  
19 meet the requirements of the using agency and shall, wherever  
20 practicable, include such factors as life-cycle costs, sliding percentage  
21 preference scales, or other similar analysis as shall be deemed effective  
22 by the Director of the Division of Purchase and Property , hereinafter  
23 referred to as the director, (b) the advertisement for bids shall be in  
24 such newspaper or newspapers selected by the State Treasurer as will  
25 best give notice thereof to bidders and shall be sufficiently in advance  
26 of the purchase or contract to promote competitive bidding; (c) the  
27 advertisement shall designate the time and place when and where  
28 sealed proposals shall be received and publicly opened and read, the  
29 amount of the cash or certified check, if any, which must accompany  
30 each bid, and such other terms as the State Treasurer may deem  
31 proper; (d) notice of revisions or addenda to advertisements or bid  
32 documents relating to bids shall be published in a newspaper or  
33 newspapers as selected by the State Treasurer to best give notice to  
34 bidders and sent to the prospective bidder no later than five days,  
35 Saturdays, Sundays and holidays excepted, prior to the bid due date;  
36 (e) failure to advertise for the receipt of bids or to provide proper  
37 notification of revisions or addenda to advertisements or bid  
38 documents related to bids as prescribed by subsection (d) of this  
39 section shall prevent the acceptance of bids and require the  
40 readvertisement for bids; (f) for any procurement, the State Treasurer  
41 or the director may negotiate with bidders, after bid opening, the final  
42 terms and conditions of any procurement, including price; such ability  
43 to so negotiate must be expressly set forth in the applicable invitation  
44 to bid; (g) award shall be made with reasonable promptness, after  
45 negotiation with bidders where authorized, by written notice to that  
46 responsible bidder whose bid, conforming to the invitation for bids,  
47 will be most advantageous to the State, price and other factors

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

7 This section shall apply to all bids received on and after the date of  
8 enactment of P.L. , c. (now before the Legislature as this bill).  
9 (cf: P.L.1986, c.72, s.1)

10  
11 97. (New section) a. A person commits a crime if the person  
12 knowingly submits to the government any claim for payment for  
13 performance of a government contract knowing such claim to be false,  
14 fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or  
15 above, the offender is guilty of a crime of the second degree. If the  
16 claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is  
17 guilty of a crime of the third degree. If the claim is for \$2,500.00 or  
18 less, the offender is guilty of a crime of the fourth degree.

19 b. A person commits a crime if the person knowingly makes a  
20 material representation that is false in connection with the negotiation,  
21 award or performance of a government contract. If the contract  
22 amount is for \$25,000.00 or above, the offender is guilty of a crime of  
23 the second degree. If the contract amount exceeds \$2,500.00, but is  
24 less than \$25,000.00, the offender is guilty of a crime of the third  
25 degree. If the contract amount is for \$2,500.00 or less, the offender  
26 is guilty of a crime of the fourth degree.

27  
28 98. N.J.S.2C:27-4 is amended to read as follows:

29 2C:27-4. a. A person commits a crime if [he,] the person, as a  
30 public servant:

31 (1) directly or indirectly, knowingly solicits, accepts or agrees to  
32 accept any benefit [as compensation for having, as public servant,  
33 given a decision, opinion, recommendation or vote favorable to  
34 another, or for having otherwise exercised a discretion in his favor,]  
35 from another for or because of any official act performed or to be  
36 performed by the person or for [having violated his] or because of a  
37 violation of official duty [or for the performance of his official  
38 duties.] ;

39 (2) directly or indirectly, knowingly receives any benefit from  
40 another who is or was in a position, different from that of a member  
41 of the general public, to benefit, directly or indirectly, from a violation  
42 of official duty or the performance of official duties; or

43 (3) directly or indirectly, knowingly receives any benefit from or  
44 by reason of a contract or agreement for goods, property or services  
45 if the contract or agreement is awarded, made or paid by the agency  
46 that employs the person or if the goods, property or services are  
47 provided to the government agency that employs the public servant.



1     ~~b.~~ A person commits a crime if ~~[he]~~ the person offers, confers or  
2 agrees to confer ~~[compensation]~~ a benefit, acceptance of which is  
3 prohibited by this section.

4     ~~c.~~ Any offense proscribed by this section is a crime of the second  
5 degree. If the benefit solicited, accepted, agreed to be accepted,  
6 offered, conferred or agreed to be conferred is of a value of \$200.00  
7 or less, any offense proscribed by this section is a crime of the third  
8 degree.

9 (cf: P.L.1979, c.178, s.50)

10  
11     99. N.J.S.2C:27-6 is amended to read as follows:

12     2C:27-6. a. ~~[A]~~ Except as provided in subsection d.of this  
13 section, a public servant commits a crime if ~~[he]~~ the person,  
14 knowingly and under color of ~~[his]~~ office, directly or indirectly  
15 solicits, accepts or agrees to accept any benefit for that person or  
16 another not allowed by law ~~[to influence the performance of his~~  
17 ~~official duties]~~.

18     b. ~~[A]~~ Except as provided in subsection d.of this section, a person  
19 commits a crime if ~~[he]~~ the person, directly or indirectly, confers or  
20 agrees to confer any benefit not allowed by law to a public servant ~~[to~~  
21 ~~influence the performance of his official duties]~~.

22     c. ~~[In any prosecution under this section, the capacity to influence~~  
23 ~~a public servant in the performance of his official duties may be~~  
24 ~~presumed when the value of the benefit involved, the interests of the~~  
25 ~~person who offers, confers or agrees to confer such benefit, and the~~  
26 ~~duties of the public servant are such as to create a reasonable~~  
27 ~~likelihood that the public servant would perform his official duties in~~  
28 ~~a biased or partial manner.]~~ (Deleted by amendment; P.L. \_\_, c. \_\_.)  
29 (Pending before the Legislature as this bill.)

30     d. This section shall not apply to:

31     (1) Fees prescribed by law to be received by a public servant, or any  
32 other benefit to which ~~[he]~~ the public servant is otherwise legally  
33 entitled; or

34     (2) Gifts or other benefits conferred on account of kinship or other  
35 personal, professional or business relationship independent of the  
36 official status of the recipient; or

37     (3) Trivial benefits the receipt of which involve no risk that the  
38 public servant would perform ~~[his]~~ official duties in a biased or partial  
39 manner.

40     e. An offense under this section is a crime of the third degree. If  
41 the gift or other benefit is of a value of \$200.00 or less, any offense  
42 proscribed by this section is a crime of the fourth degree.

43 (cf: P.L.1979, c.178, s.51)

44  
45     100. (New Section) A public servant commits a crime of the  
46 fourth degree if, while performing his official functions on behalf of a

1 governmental entity, the public servant knowingly transacts any  
2 business with himself, a member of his immediate family, or a business  
3 organization in which the public servant or an immediate family  
4 member has an interest. For purposes of this section, an interest in a  
5 business organization shall not include aggregate familial ownership or  
6 control of one percent or less of an interest in the capital or equity of  
7 the business organization. A public servant shall not be guilty of an  
8 offense under this section if the public servant's performance of official  
9 functions would not affect the public servant, family member or  
10 business organization differently than such performance would affect  
11 the public generally, or would not affect the public servant, family  
12 member or business organization, as a member of a business,  
13 profession, occupation or group, differently than such performance  
14 would affect any other member of such business, profession,  
15 occupation or group.

16

17 101. Section 10 of P.L.1991, c.29 (C.40A:9-22.10) is amended to  
18 read as follows:

19 10. a. An appointed local government officer or employee found  
20 guilty by the Local Finance Board or a county or municipal ethics  
21 board of the violation of any provision of [this act] P.L.1991, c.29  
22 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to  
23 [this act] P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less  
24 than \$100.00 nor more than \$500.00, which penalty may be collected  
25 in a summary proceeding pursuant to "the penalty enforcement law"  
26 (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics  
27 board shall report its findings to the office or agency having the power  
28 of removal or discipline of the appointed local government officer or  
29 employee and may recommend that further disciplinary action be  
30 taken.

31 b. An elected local government officer or employee found guilty  
32 by the Local Finance Board or a county or municipal ethics board of  
33 the violation of any provision of [this act] P.L.1991, c.29 (C.40A:9-  
34 22.1 et seq.) or of any code of ethics in effect pursuant to [this act]  
35 P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less than  
36 \$100.00 nor more than \$500.00, which penalty may be collected in a  
37 summary proceeding pursuant to "the penalty enforcement law"  
38 (N.J.S.2A:58-1 et seq.).

39 c. The remedies provided herein are in addition to all other criminal  
40 and civil remedies provided under the law.

41 (cf: P.L.1991, c.29, s.10)

42

43 102. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to  
44 read as follows:

45 10. (a) The Executive Commission on Ethical Standards created  
46 pursuant to P.L.1967, chapter 229 is continued and established in the  
47 Department of Law and Public Safety and shall constitute the first

1 commission under [this act] P.L.1971, c.182 (C.52:13D-12 et al.).

2 (b) The commission shall be composed of seven members appointed  
3 by the Governor from among State officers and employees serving in  
4 the Executive Branch. Each member shall serve at the pleasure of the  
5 Governor during the term of office of the Governor appointing [him]  
6 the member and until [his] the member's successor is appointed and  
7 qualified. The Governor shall designate one member to serve as  
8 chairman and one member to serve as vice-chairman of the  
9 commission.

10 (c) Each member of the said commission shall serve without  
11 compensation but shall be entitled to be reimbursed for all actual and  
12 necessary expenses incurred in the performance of [his] the member's  
13 duties.

14 (d) The Attorney General shall act as legal adviser and counsel to  
15 the said commission. [He] The Attorney General shall upon request  
16 advise the commission in the rendering of advisory opinions by the  
17 commission, in the approval and review of codes of ethics adopted by  
18 State agencies in the Executive Branch and in the recommendation of  
19 revisions in codes of ethics or legislation relating to the conduct of  
20 State officers and employees in the Executive Branch.

21 (e) The said commission may, within the limits of funds  
22 appropriated or otherwise made available to it for the purpose, employ  
23 such other professional, technical, clerical or other assistants,  
24 excepting legal counsel, and incur such expenses as may be necessary  
25 for the performance of its duties.

26 (f) The said commission, in order to perform its duties pursuant to  
27 the provisions of [this act] P.L.1971, c.182 (C.52:13D-12 et al.), shall  
28 have the power to conduct investigations, hold hearings, compel the  
29 attendance of witnesses and the production before it of such books and  
30 papers as it may deem necessary, proper and relevant to the matter  
31 under investigation. The members of the said commission and the  
32 persons appointed by the commission for such purpose are hereby  
33 empowered to administer oaths and examine witnesses under oath.

34 (g) The said commission is authorized to render advisory opinions  
35 as to whether a given set of facts and circumstances would, in its  
36 opinion, constitute a violation of the provisions of [this act] P.L.1971,  
37 c.182 (C.52:13D-12 et al.) or of a code of ethics promulgated  
38 pursuant to the provisions of [this act] P.L.1971, c.182 (C.52:13D-12  
39 et al.).

40 (h) The said commission shall have jurisdiction to initiate, receive,  
41 hear and review complaints regarding violations, by any State officer  
42 or employee or special State officer or employee in the Executive  
43 Branch, of the provisions of [this act] P.L.1971, c.182 (C.52:13D-12  
44 et al.) or of any code of ethics promulgated pursuant to the provisions  
45 of [this act] P.L.1971, c.182 (C.52:13D-12 et al.). Any complaint  
46 regarding a violation of a code of ethics may be referred by the

1 commission for disposition in accordance with subsection [12(d) of  
2 this act] (d) of section 12 of P.L.1971, c.182 (C.52:13D-23).

3 (i) Any State officer or employee or special State officer or  
4 employee found guilty by the commission of violating any provision  
5 of [this act] P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of  
6 ethics promulgated pursuant to the provisions of [this act] P.L.1971,  
7 c.182 (C.52:13D-12 et al.) shall be fined not less than \$100.00 nor  
8 more than \$500.00, which penalty may be collected in a summary  
9 proceeding pursuant to the Penalty Enforcement Law (N.J.S.  
10 2A:58-1), and may be suspended from his office or employment by  
11 order of the commission for a period of not in excess of 1 year. If the  
12 commission finds that the conduct of such officer or employee  
13 constitutes a willful and continuous disregard of the provisions of  
14 [this act] P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of ethics  
15 promulgated pursuant to the provisions of [this act] P.L.1971, c.182  
16 (C.52:13D-12 et al.), it may order such person removed from his  
17 office or employment and may further bar such person from holding  
18 any public office or employment in this State in any capacity  
19 whatsoever for a period of not exceeding 5 years from the date on  
20 which [he] the person was found guilty by the commission.

21 (j) The remedies provided herein are in addition to all other criminal  
22 and civil remedies provided under the law.

23 (cf: P.L.1971, c.182, s.10)

24  
25 103. Section 13 of P.L.1954, c.48 (C.52:34-18) is amended to read  
26 as follows:

27 13. Any person [willfully] knowingly authorizing, consenting to,  
28 making or procuring to be made any purchase, contract or agreement  
29 in violation of any of the provisions of [this act] P.L.1954, c.48,  
30 (C.52:34-6 et seq.) or [willfully] knowingly making or procuring to  
31 be made payment of State funds for or on account of any purchase,  
32 contract or agreement known to him to have been made or entered  
33 into in violation of any of the provisions of [this act] P.L.1954, c.48  
34 (C.52:34-6 et seq.) shall be guilty of a [misdemeanor] crime of the  
35 fourth degree.

36 (cf: P.L.1954, c.48, s.13)

37  
38 104. Section 11 of P.L.1970, c.73 (C.56:9-11) is amended to read  
39 as follows:

40 11. a. Any person [or corporation, or any officer or agent  
41 thereof,] who shall knowingly violate any of the provisions of [this  
42 act] P.L.1970, c.73 (C.56:9-1 et seq.) or knowingly aid or advise in  
43 such violation[, or who, as principal, manager, director, stockholder  
44 owning 10% or more of the aggregate outstanding capital stock of all  
45 classes of the corporation, agent, servant or employee, knowingly does  
46 any act comprising a part of such violation,] is guilty of a

1 [misdemeanor and shall be punished by imprisonment for not more  
2 than 3 years or by a fine of not more than \$50,000.00 or both; and if  
3 a corporation by a fine of not more than \$100,000.00] crime <sup>1</sup> [of the  
4 fourth degree]<sup>1</sup>.

5 b. Any person convicted pursuant to the provisions of subsection  
6 a. of this section [is hereby denied the right and is hereby prohibited  
7 from managing or owning any business organization within this State,  
8 and from serving as an officer, director, trustee, member of any  
9 executive board or similar governing body, principal, manager,  
10 stockholder owning 10% or more of the aggregate outstanding capital  
11 stock of all classes of any corporation doing business in this State,  
12 and all persons within this State, are hereby denied the right to handle  
13 the goods of or in any manner deal with, directly or indirectly, those  
14 persons, companies or corporations under the interdict specified  
15 herein. All persons knowingly violating any of the provisions of this  
16 section, either directly or indirectly, or aiding or abetting directly or  
17 indirectly in any violation of any provisions of this section, shall be  
18 deemed guilty of a misdemeanor and shall be fined not less than  
19 \$100.00 nor more than \$1,000.00 and shall be punished by  
20 imprisonment for not less than 30 days nor more than 6 months, and  
21 shall forfeit not less than \$1,000.00 for each and every day such  
22 violation may continue, to be collected by a summary proceeding in a  
23 court of competent jurisdiction] of a violation involving or affecting  
24 trade or commerce of a value less than \$1,000,000.00 shall be guilty  
25 of a crime of the third degree. Any person convicted pursuant to the  
26 provisions of subsection a. of this section of a violation involving or  
27 affecting trade or commerce of a value equal to or greater than  
28 \$1,000,000.00 shall be guilty of a crime of the second degree. Any  
29 person convicted pursuant to the provisions of subsection a. of this  
30 section of a violation involving bid rigging on public contracts,  
31 regardless of the value of trade or commerce involved or affected,  
32 shall be guilty of a crime of the second degree.

33 c. Notwithstanding the provisions of subsections a. and b. of  
34 N.J.S.2C:43-3, a person convicted of a crime of the second degree  
35 under this section shall be subject to a fine of not less than \$50,000.00  
36 nor more than \$300,000.00, or, in the case of a corporation,  
37 partnership, or other business entity, be subject to a fine of not less  
38 than \$250,000.00 nor more than \$1,000,000.00, or imprisonment, or  
39 both, and a person convicted of a crime of the third degree under this  
40 section shall be subject to a fine of not less than \$25,000.00 nor more  
41 than \$150,000.00, or, in the case of a corporation, partnership, or  
42 other business entity, be subject to a fine of not less than \$100,000.00  
43 nor more than \$300,000.00, or imprisonment, or both.

44 (cf: P.L.1970, c.73, s.11)

45  
46 105. N.J.S.18A:71A-10 is amended to read as follows:

47 18A:71A-10. Contracts, Purchases, Records, Travel.

1       a. The authority, in the exercise of its power to make and enter  
2 into contracts and agreements necessary or incidental to the  
3 performance of its duties and the execution of its powers, shall adopt  
4 standing operating rules and procedures providing that, except as  
5 hereinafter provided, no contract on behalf of the authority shall be  
6 entered into for the doing of any work, or for the hiring of equipment  
7 or vehicles, when the sum to be expended exceeds the sum of  
8 ~~[\$12,300]~~ \$25,000 or, after ~~[June 30, 1998]~~ the effective date of  
9 P.L. , c. (now before the Legislature as this bill , the amount  
10 determined pursuant to subsection b. of this section, unless the  
11 authority shall first publicly advertise for bids therefor, and shall award  
12 the contract to the lowest responsible bidder; provided, however, that  
13 such advertising shall not be required when the contract to be entered  
14 into is one for the furnishing or performing of services of a  
15 professional nature, or when the purchase is to be made through or by  
16 the Director of the Division of Purchase and Property pursuant to  
17 section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through a contract  
18 made by any of the following: the New Jersey Sports and Exposition  
19 Authority established under section 4 of P.L.1971, c.137 (C.5:10-4);  
20 the Hackensack Meadowlands Development Commission established  
21 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey  
22 Highway Authority established under section 4 of P.L.1952, c.16  
23 (C.27:12B-4); the New Jersey Turnpike Authority established under  
24 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water  
25 Supply Authority established under section 4 of P.L.1981, c.293  
26 (C.58:1B-4); the South Jersey Transportation Authority established  
27 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority  
28 of New York and New Jersey established under R.S.32:1-4; and the  
29 Delaware River Port Authority established under R.S.32:3-2. Waiver  
30 of bid advertising and of actual bidding shall be made by resolution of  
31 the authority for those goods, services, and contracts described in  
32 sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 52:34-10).  
33 [Special rules shall apply to the procurement of professional services  
34 when the authority shall consider a variety of factors associated with  
35 rendering the professional services, including price, in awarding of a  
36 contract.]

37       This subsection shall not prevent the authority from having any  
38 work done by its own employees, nor shall it apply when the safety or  
39 protection of its or other public property requires. In the case of  
40 exigency or emergency, the authority shall, by resolution passed by the  
41 affirmative vote of a majority of its members, declare the exigency or  
42 emergency to exist, and set forth in the resolution the nature thereof  
43 and the approximate amount to be so expended.

44       b. [The] Commencing in the fifth year after the year in which  
45 P.L. , c. (now before the Legislature as this bill) takes effect, and  
46 every five years thereafter, the Governor, in consultation with the  
47 Department of the Treasury, shall [, not later than March 1 of each

1 odd-numbered year,] adjust the threshold amount set forth in  
2 subsection a. of this section, or the threshold amount resulting from  
3 any adjustment under this subsection, in direct proportion to the rise  
4 or fall of the [consumer price index for all urban consumers in the  
5 New York City and the Philadelphia areas as reported by the United  
6 States Department of Labor] index rate as that term is defined in  
7 section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the  
8 adjustment to the nearest \$1,000. The Governor shall, no later than  
9 June 1 of [each odd-numbered] every fifth year, notify the authority  
10 of the adjustment. The adjustment shall become effective July 1 of  
11 [each odd-numbered year] the year in which it is made.

12 c. The authority, in the exercise of its power to make purchases  
13 and enter into contracts, leases and agreements necessary or incidental  
14 to the performance of its duties and the execution of its powers, shall  
15 adopt standing operating rules and procedures providing that, subject  
16 to subsections a. and b. of this section, for purchases, contracts, leases  
17 and agreements payable exclusively with or out of funds transferred  
18 from the Higher Education Student Assistance Fund, the purchases,  
19 contracts, leases and agreements shall be subject to the authority's sole  
20 approval. Approval of the purchases, contracts, leases, and  
21 agreements shall not be required by any other department, division,  
22 board, bureau, agency, office or officer of the State.

23 d. The authority, without advertising for bids, or after having  
24 rejected all bids obtained pursuant to advertising therefor, may  
25 purchase any materials, supplies or equipment pursuant to a contract  
26 or contracts for the materials, supplies or equipment entered into on  
27 behalf of the State. Any department, division, commission, board,  
28 bureau, agency, office or officer of the State may, by joint action with  
29 the authority, purchase any articles used or needed by the State and  
30 the authority.

31 e. Records subject to the record retention requirements set forth  
32 under 20 U.S.C.s.1071 et seq., 20 U.S.C.s.1070c et seq., and 20  
33 U.S.C.s.1104 et seq. and implementing regulations and rules shall not  
34 be "public records" for purposes of the "Destruction of Public Records  
35 Law (1953)," P.L.1953, c.410 (C.47: 3-15 et seq.), notwithstanding  
36 the provisions of any law to the contrary.

37 f. The executive director shall have the power to approve of travel  
38 consistent with Office of Management and Budget travel regulations,  
39 except that for travel that is payable exclusively with or out of funds  
40 transferred from the Higher Education Student Assistance Fund, no  
41 approval shall be required by the Director of the Office of  
42 Management and Budget.

43 (cf: N.J.S.18A:71A-10)

44

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

47 1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et

1 seq.) to the contrary, [and as an alternative to the procedures  
2 concerning the awarding of public contracts pursuant to that act,] the  
3 Director of the Division of Purchase and Property in the Department  
4 of the Treasury [may purchase goods and services, for State agencies  
5 and for the entities defined in section 1 of P.L.1959, c.40  
6 (C.52:27B-56.1), from] shall promulgate the Federal Supply  
7 Schedules of the Federal General Services Administration [as  
8 permitted by the "Federal Acquisition Streamlining Act of 1994,"  
9 Pub.L.103-355, and regulations adopted pursuant to that law and by  
10 the rules and regulations which the director may promulgate] pursuant  
11 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
12 et seq.) as an alternate price guide for the purchase of goods and  
13 services for State agencies and for the entities defined in section 1 of  
14 P.L.1959, c.40 (C.52:27B-56.1), subject to the following conditions:

15 (1) the price of the goods <sup>1</sup>or services<sup>1</sup> being procured is no  
16 greater than the price offered to federal agencies;

17 (2) the Federal Supply Schedules may be used only for purchases  
18 of up to \$500,000 per year or for one product unit at any price and  
19 only for reprographic equipment or services, including digital copiers,  
20 used by the State: <sup>1</sup>[and]<sup>1</sup>

21 (3) the State receives the benefit of federally mandated price  
22 reductions during the term of the contract and is protected from price  
23 increases during that time<sup>1</sup>; and

24 (4) the price of the goods or services being procured is no greater  
25 than the price of the same or equivalent goods or services under the  
26 State contract, unless the State determines that because of factors  
27 other than price, selection of a vendor from the Federal Supply  
28 Schedules would be more advantageous to the State <sup>1</sup>.

29 (cf: P.L.1996, c.16, s.1)

30

31 107. Section 2 of P.L.1996, c.16 (C.52:34-6.3) is amended to read  
32 as follows:

33 2. Notwithstanding the provisions of any other law to the contrary,  
34 [and as an alternative to the procedures concerning the awarding of  
35 public contracts pursuant to the applicable statutes,] the State  
36 authorities authorized to contract independently under various  
37 provisions of State law may[, without advertising for bids, or having  
38 rejected all bids obtained pursuant to advertising, purchase goods and  
39 services from the Federal Supply Schedules of the Federal General  
40 Services Administration as permitted by the "Federal Acquisition  
41 Streamlining Act of 1994," Pub.L.103-355, and regulations adopted  
42 pursuant to that law and by the rules and regulations which the  
43 authority may adopt] also use, without advertising for bids, or having  
44 rejected all bids obtained pursuant to advertising, the Federal Supply  
45 Schedules of the General Services Administration, promulgated by the  
46 Director of the Division of Purchase and Property in the Department



1 of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1),  
2 subject to the following conditions:

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

5 (2) the Federal Supply Schedules may be used only for purchases  
6 of up to \$500,000 per year or for one product unit at any price and  
7 only for reprographic equipment or services, including digital copiers,  
8 used by the authority: <sup>1</sup>[and]<sup>1</sup>

9 (3) the authority receives the benefit of federally mandated price  
10 reductions during the term of the contract and is protected from price  
11 increases during that time<sup>1</sup>:

12 (4) the price of the goods or services being procured is no greater  
13 than the price of the same or equivalent goods or services under the  
14 State contract, unless the authority determines that because of factors  
15 other than price, selection of a vendor from the Federal Supply  
16 Schedules would be more advantageous to the authority;

17 (5) a copy of the purchase order relating to any such contract, the  
18 requisition or request for purchase order, if applicable, and  
19 documentation identifying the price of the goods or services under the  
20 Federal Supply Schedules shall be filed with the State Treasurer within  
21 five working days of the award of any such contract by the authority.  
22 The authority shall make available to the State Treasurer upon request  
23 any other documents relating to the solicitation and award of the  
24 contract<sup>1</sup> .

25 (cf: P.L.1996, c.16, s.2)

26

27 108. The following are repealed:

28 N.J.S.2C:27-7

29 P.L.1972, c.112 (C.40A:11-12.1 to 40A:11-12.6)

30 N.J.S.18A:18A-38

31 N.J.S.18A:18A-39

32 Section 1 of P.L.1981, c.186 (C.18A:18A-42.1)

33

34 109. This act shall take effect 90 days after enactment.

35

36

37

38

39 Revises and strengthens various laws concerning public contracting.