

ASSEMBLY, No. 3519

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED NOVEMBER 15, 1999

Sponsored by:

Assemblyman JOSEPH R. MALONE, III
District 30 (Burlington, Monmouth and Ocean)
Assemblywoman ROSE MARIE HECK
District 38 (Bergen)

Co-Sponsored by:

Assemblymen Cottrell, Kelly and Suliga

SYNOPSIS

Revises and strengthens various laws concerning public contracting.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public procurement and amending, supplementing
2 and repealing various parts of the statutory law.

3

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

6

7 1. (New section) Notwithstanding the provisions of any law, rule
8 or regulation to the contrary, competitive contracting may be used by
9 local contracting units in lieu of public bidding for procurement of
10 specialized goods and services the price of which exceeds the bid
11 threshold, for the following purposes:

12 a. The purchase or licensing of proprietary computer software
13 designed for contracting unit purposes, which may include hardware
14 intended for use with the proprietary software. This subsection shall
15 not be utilized for the purpose of acquiring general purpose computer
16 hardware or software;

17 b. The hiring of a for-profit entity or a not-for-profit entity
18 incorporated under Title 15A of the New Jersey Statutes for the
19 purpose of:

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

26 (2) the operation, management or administration of recreation or
27 social service facilities or programs; or

28 (3) the operation, management or administration of data processing
29 services;

30 c. Services performed by an energy services company, including
31 the design, measurement, financing and maintenance of energy savings
32 equipment or renovations, which result in payment derived, in whole
33 or in part, from the sale of verified energy savings over the term of an
34 agreement with a public utility or subsidiary, but not the provision or
35 performance of the physical improvements that result in energy
36 savings, provided that such savings are calculated pursuant to
37 guidelines promulgated by the Board of Public Utilities and further
38 provided that the Local Finance Board shall find that the terms and
39 conditions of any financing agreement are reasonable;

40 d. Homemaker--home health services;

41 e. Laboratory testing services;

42 f. Emergency medical services;

43 g. Contracted food services;

44 h. Performance of patient care services by contracted medical staff

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

Matter underlined thus is new matter.

1 at county hospitals, correctional facilities and long-term care facilities;

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

5 j. Concessions;

6 k. The operation, management or administration of other services,
7 with the approval of the Director of the Division of Local Government
8 Services.

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

13

14 2. (New section) Unless an exception is provided for under section
15 15 of P.L.1971, c.198 (C.40A:11-15) permitting a longer contract
16 duration, contracts awarded pursuant to section 5 of P.L. , c. (C.)
17 (pending before the Legislature as this bill) may be for a term not to
18 exceed five years.

19

20 3. (New section) a. In order to initiate competitive contracting,
21 the governing body shall pass a resolution authorizing the use of
22 competitive contracting each time specialized goods or services
23 enumerated in section 1 of P.L. , c. (C.) (pending before the
24 Legislature as this bill) are desired to be contracted. If the desired
25 goods or services have previously been contracted for using the
26 competitive contracting process then the original resolution of the
27 governing body shall suffice.

28 b. The competitive contracting process shall be administered by a
29 purchasing agent qualified pursuant to subsection b. (pending before
30 the Legislature as section 15 of this bill) of section 9 of P.L.1971,
31 c.198 (C.40A:11-9), or, by legal counsel of the contracting unit, or by
32 an administrator of the contracting unit. Any contracts awarded under
33 this process shall be made by resolution of the governing body of the
34 contracting unit, subject to the provisions of subsection e. of section
35 5 of P.L. , c. (C.)(now before the Legislature as this bill).

36

37 4. (New section) The competitive contracting process shall utilize
38 request for proposals documentation in accordance with the following
39 provisions:

40 a. The purchasing agent or counsel or administrator shall prepare
41 or have prepared request for proposal documentation, which shall
42 include: all requirements deemed appropriate and necessary to allow
43 for full and free competition between vendors; information necessary
44 for potential vendors to submit a proposal; and a methodology by
45 which the contracting unit will evaluate and rank proposals received
46 from vendors.

47 b. The methodology for the awarding of competitive contracts shall

1 be based on an evaluation and ranking, which shall include technical,
2 management, and cost related criteria, and may include a weighting of
3 criteria, all developed in a way that is intended to meet the specific
4 needs of the contracting unit, and where such criteria shall not unfairly
5 or illegally discriminate against or exclude otherwise capable vendors.
6 When an evaluation methodology uses a weighting of criteria, at the
7 option of the contracting unit the weighting to be accorded to each
8 criterion may be disclosed to vendors prior to receipt of the proposals.
9 The methodology for awarding competitive contracts shall comply
10 with such rules and regulations as the director may adopt, after
11 consultation with the Commissioner of Education, pursuant to the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
13 seq.).

14 c. At no time during the proposal solicitation process shall the
15 purchasing agent or counsel or administrator convey information,
16 including price, to any potential vendor which could confer an unfair
17 advantage upon that vendor over any other potential vendor. If a
18 purchasing agent or counsel or administrator desires to change
19 proposal documentation, the purchasing agent or counsel or
20 administrator shall notify only those potential vendors who received
21 the proposal documentation of any and all changes in writing and all
22 existing documentation shall be changed appropriately.

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

28

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

31 a. A notice of the availability of request for proposal
32 documentation shall be published in an official newspaper of the
33 contracting unit at least 20 days prior to the date established for the
34 submission of proposals. The contracting unit shall promptly reply to
35 any request by an interested vendor by providing a copy of the request
36 for proposals. The contracting unit may charge a fee for the proposal
37 documentation that shall not exceed \$50.00 or the cost of reproducing
38 the documentation, whichever is greater.

39 b. Each interested vendor shall submit a proposal which shall
40 include all the information required by the request for proposals.
41 Failure to meet the requirements of the request for proposals may
42 result in the contracting unit disqualifying the vendor from further
43 consideration. Under no circumstances shall the provisions of a
44 proposal be subject to negotiation by the contracting unit.

45 c. If the contracting unit, at the time of solicitation, utilizes its own
46 employees to provide the goods or perform the services, or both,
47 considered for competitive contracting, the governing body shall, at

1 any time prior to, but no later than the time of solicitation for
2 competitive contracting proposals, notify affected employees of the
3 governing body's intention to solicit competitive contracting proposals.
4 Employees or their representatives shall be permitted to submit
5 recommendations and proposals affecting wages, hours, and terms and
6 conditions of employment in such a manner as to meet the goals of the
7 competitive contract. If employees are represented by an organization
8 that has negotiated a contract with the contracting unit, only the
9 bargaining unit shall be authorized to submit such recommendations or
10 proposals. When requested by such employees, the governing body
11 shall provide such information regarding budgets and the costs of
12 performing the services by such employees as may be available.
13 Nothing shall prevent such employees from making recommendations
14 that may include modifications to existing labor agreements in order
15 to reduce such costs in lieu of award of a competitive contract, and
16 agreements implementing such recommendations may be considered
17 as cause for rejecting all other proposals.

18 d. The purchasing agent or counsel or administrator shall evaluate
19 all proposals only in accordance with the methodology described in the
20 request for proposals. After proposals have been evaluated, the
21 purchasing agent or counsel or administrator shall prepare a report
22 evaluating and recommending the award of a contract or contracts.
23 The report shall list the names of all potential vendors who submitted
24 a proposal and shall summarize the proposals of each vendor. The
25 report shall rank vendors in order of evaluation, shall recommend the
26 selection of a vendor or vendors, as appropriate, for a contract, shall
27 be clear in the reasons why the vendor or vendors have been selected
28 among others considered, and shall detail the terms, conditions, scope
29 of services, fees, and other matters to be incorporated into a contract.
30 The report shall be made available to the public at least 48 hours prior
31 to the awarding of the contract, or when made available to the
32 governing body, whichever is sooner. The governing body shall have
33 the right to reject all proposals for any of the reasons set forth in
34 section 21 of P.L. , c. (C.)(now before the Legislature as this bill).

35 e. Award of a contract shall be made by resolution of the governing
36 body of the contracting unit within 60 days of the receipt of the
37 proposals, except that the proposals of any vendors who consent
38 thereto, may, at the request of the contracting unit, be held for
39 consideration for such longer period as may be agreed.

40 f. The report prepared pursuant to subsection d. of this section
41 shall become part of the public record and shall reflect the final action
42 of the governing body. Contracts shall be executed pursuant to
43 section 14 of P.L.1971, c.198 (C.40A:11-14).

44 g. The clerk or secretary of the contracting unit shall publish a
45 notice in the official newspaper of the contracting unit summarizing
46 the award of a contract, which shall include but not be limited to, the
47 nature, duration, and amount of the contract, the name of the vendor

1 and a statement that the resolution and contract are on file and
2 available for public inspection in the office of the clerk or secretary of
3 the municipality, county, local public authority or special district of the
4 governing body.

5 h. All contract awards shall be subject to rules concerning
6 certification of availability of funds adopted pursuant to section 3 of
7 P.L.1971, c.198 (C.40A:11-3) and section 15 of P.L.1971, c.198
8 (C.40A:11-15).

9 i. The director, after consultation with the Commissioner of
10 Education, may adopt additional rules and regulations, in accordance
11 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
12 1 et seq.), as may be necessary to effectuate the provisions of sections
13 1 through 5 of P.L. , c. (C.) (pending before the Legislature as this
14 bill).

15

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

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

20 (1) "Contracting unit" means:

21 (a) Any county; or

22 (b) Any municipality; or

23 (c) Any board, commission, committee, authority or agency, which
24 is not a State board, commission, committee, authority or agency, and
25 which has administrative jurisdiction over any district other than a
26 school district, project, or facility, included or operating in whole or
27 in part, within the territorial boundaries of any county or municipality
28 which exercises functions which are appropriate for the exercise by
29 one or more units of local government, and which has statutory power
30 to make purchases and enter into contracts **【or agreements】** awarded
31 by a contracting agent for the provision or performance of **【any work**
32 **or the furnishing or hiring of any materials or supplies usually**
33 **required, the cost or contract price of which is to be paid with or out**
34 **of public funds】** goods or services.

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

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

42 (2) "Governing body" means:

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

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

1 municipality; or

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

4 (3) "Contracting agent" means the governing body of a contracting
5 unit, or ~~any board, commission, committee, officer, department,~~
6 ~~branch or agency~~ its authorized designee, which has the power to
7 prepare the advertisements, to advertise for and receive bids and, as
8 permitted by this act, to make awards for the contracting unit in
9 connection with contracts.

10 (4) "Purchase" ~~is~~ means a transaction, for a valuable
11 consideration, creating or acquiring an interest in goods, services and
12 property, except real property or any interest therein.

13 (5) ~~["Materials" includes goods and property subject to chapter 2~~
14 ~~of Title 12A of the New Jersey Statutes, apparatus, or any other~~
15 ~~tangible thing, except real property or any interest therein.]~~ ~~(Deleted~~
16 ~~by amendment, P.L. c. .) (Pending before the Legislature as this bill.)~~

17 (6) "Professional services" means services rendered or performed
18 by a person authorized by law to practice a recognized profession,
19 whose practice is regulated by law, and the performance of which
20 services requires knowledge of an advanced type in a field of learning
21 acquired by a prolonged formal course of specialized instruction and
22 study as distinguished from general academic instruction or
23 apprenticeship and training. Professional services may also mean
24 services rendered in the provision or performance of ~~work~~ goods or
25 services that ~~is~~ are original and creative in character in a recognized
26 field of artistic endeavor.

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

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

34 (9) "Work" ~~includes services and any other activity of a tangible~~
35 ~~or intangible nature~~ means any task, program, undertaking, or
36 activity, related to any development, redevelopment, construction or
37 reconstruction performed or ~~assumed~~ provided pursuant to a
38 contract ~~or agreement~~ with a contracting unit.

39 (10) "Homemaker--home health services" means at home personal
40 care and home management provided to an individual or members of
41 ~~his~~ the individual's family who reside with ~~him~~ the individual, or
42 both, necessitated by the individual's illness or incapacity.
43 "Homemaker--home health services" includes, but is not limited to, the
44 services of a trained homemaker.

45 (11) "Recyclable material" means those materials which would
46 otherwise become municipal solid waste, and which may be collected,

1 separated or processed and returned to the economic mainstream in
2 the form of raw materials or products.

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

7 (13) "Marketing" means the **marketing of designated recyclable**
8 **materials source separated in a municipality which entails a marketing**
9 **cost less than the cost of transporting the recyclable materials to solid**
10 **waste facilities and disposing of the materials as municipal solid waste**
11 **at the facility utilized by the municipality** sale, disposition,
12 assignment, or placement of designated recyclable materials with, or
13 the granting of a concession to, a reseller, processor, materials
14 recovery facility, or end-user of recyclable material, in accordance
15 with a district solid waste management plan adopted pursuant to
16 P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection
17 of such recyclable material when collected through a system of routes
18 by local government unit employees or under a contract administered
19 by a local government unit.

20 (14) "Municipal solid waste" means, as appropriate to the
21 circumstances, all residential, commercial and institutional solid waste
22 generated within the boundaries of a municipality; or the formal
23 collection of such solid wastes or recyclable material in any
24 combination thereof when collected through a system of routes by
25 local government unit employees or under a contract administered by
26 a local government unit.

27 (15) "Distribution" (when used in relation to electricity) means the
28 process of conveying electricity from a contracting unit **who** that is
29 a generator of electricity or a wholesale purchaser of electricity to
30 retail customers or other end users of electricity.

31 (16) "Transmission" (when used in relation to electricity) means
32 the conveyance of electricity from its point of generation to a
33 contracting unit **who** that purchases it on a wholesale basis for
34 resale.

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

38 (18) "Cooperative marketing" means the joint marketing by two or
39 more contracting units **within the same county, or adjacent or**
40 **proximate counties,** of the source separated recyclable materials
41 designated in a district recycling plan required pursuant to section 3 of
42 P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative
43 agreement entered into by the participating contracting units thereof.

44 (19) "Aggregate" means the sums expended or to be expended for
45 the provision or performance of any goods or services in connection
46 with the same immediate purpose or task, or the furnishing of similar

1 goods or services, during the same contract year through a contract
2 awarded by a contracting agent.

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

7 (21) "Contract" means any agreement, including but not limited to
8 a purchase order or a formal agreement, which is a legally binding
9 relationship enforceable by law, between a vendor who agrees to
10 provide or perform goods or services and a contracting unit which
11 agrees to compensate a vendor, as defined by and subject to the terms
12 and conditions of the agreement. A contract also may include an
13 arrangement whereby a vendor compensates a contracting unit for the
14 vendor's right to perform a service, such as, but not limited to,
15 operating a concession.

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

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

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

31 (25) "Library and educational goods and services" means
32 textbooks, copyrighted materials, student produced publications and
33 services incidental thereto, including but not limited to books,
34 periodicals, newspapers, documents, pamphlets, photographs,
35 reproductions, microfilms, pictorial or graphic works, musical scores,
36 maps, charts, globes, sound recordings, slides, films, filmstrips, video
37 and magnetic tapes, other printed or published matter and audiovisual
38 and other materials of a similar nature, necessary binding or rebinding
39 of library materials, and specialized computer software used as a
40 supplement or in lieu of textbooks or reference material.

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

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

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

1 (29) "Purchase order" means a document issued by the contracting
2 agent authorizing a purchase transaction with a vendor to provide or
3 perform goods or services to the contracting unit, which, when
4 fulfilled in accordance with the terms and conditions of a request of a
5 contracting agent and other provisions and procedures that may be
6 established by the contracting unit, will result in payment by the
7 contracting unit.

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

13 (31) "Quotation" means the response to a formal or informal
14 request made by a contracting agent by a vendor for provision or
15 performance of goods or services, when the aggregate cost is less than
16 the bid threshold. Quotations may be in writing, or taken verbally if
17 a record is kept by the contracting agent.

18 (32) "Responsible" means able to complete the contract in
19 accordance with its requirements, including but not limited to
20 requirements pertaining to experience, moral integrity, operating
21 capacity, financial capacity, credit, and workforce, equipment, and
22 facilities availability.

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

26 (34) "Public works" means building, altering, repairing, improving
27 or demolishing any public structure or facility constructed or acquired
28 by a contracting unit to house local government functions or provide
29 water, waste disposal, power, transportation, and other public
30 infrastructures.

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

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

42 (37) "Concession" means the granting of a license or right to act
43 for or on behalf of the contracting unit, or to provide a service
44 requiring the approval or endorsement of the contracting unit, and
45 which may or may not involve a payment or exchange, or provision of
46 services by or to the contracting unit.

47 (38) "Index rate" means the rate of annual percentage increase,

1 rounded to the nearest half-percent, in the Implicit Price Deflator for
2 State and Local Government Purchases of Goods and Services,
3 computed and published quarterly by the United States Department of
4 Commerce, Bureau of Economic Analysis.

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

10 (40) "Service or services" means the performance of work, or the
11 furnishing of labor, time, or effort, or any combination thereof, not
12 involving or connected to the delivery or ownership of a specified end
13 product or goods or a manufacturing process. Service or services may
14 also include an arrangement in which a vendor compensates the
15 contracting unit for the vendor's right to operate a concession.

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

17
18 7. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read
19 as follows:

20 3. Bid threshold; period of contracts a. **【Any purchase, contract**
21 **or agreement for the performance of any work or the furnishing or**
22 **hiring of materials or supplies,】.**

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

46 b. Any **【purchase,】** contract **【or agreement】** made pursuant to this

1 section may be awarded for a period of 24 consecutive months
2 **[notwithstanding that such 24-month period does not coincide with**
3 **the fiscal year]**, except that contracts for professional services
4 pursuant to subparagraph (i) of paragraph (a) of subsection (1) of
5 section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a
6 period not exceeding 12 consecutive months. The Division of Local
7 Government Services shall adopt and promulgate rules and regulations
8 concerning the methods of accounting for all contracts that do not
9 coincide with the contracting unit's fiscal year.

10 **[b.] c.** The Governor, in consultation with the Department of the
11 Treasury, shall, no later than March 1 of **[each odd-numbered]** every
12 fifth year beginning in the fifth year after the year in which P.L. , c.
13 (now before the Legislature as this bill) takes effect, adjust the
14 threshold amount and the higher threshold amount which the
15 governing body is permitted to establish, as set forth in subsection a.
16 of this section, or **[subsequent to 1985]** the threshold amount
17 resulting from any adjustment under this subsection **[or section 17 of**
18 **P.L.1985, c.469]**, in direct proportion to the rise or fall of the
19 **[Consumer Price Index for all urban consumers in the New York City**
20 **and the Philadelphia areas as reported by the United States**
21 **Department of Labor]** index rate as that term is defined in section 2
22 of P.L.1971, c.198 (C.40A:11-2) (pending before the Legislature as
23 section 6 of this bill), and shall round the adjustment to the nearest
24 \$1,000. The Governor shall, no later than June 1 of **[each**
25 **odd-numbered]** every fifth year, notify each governing body of the
26 adjustment. The adjustment shall become effective on July 1 of **[each**
27 **odd-numbered year]** the year in which it is made.

28 (cf: P.L.1996, c.113, s.18)

29
30 8. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to read
31 as follows:

32 4. **[Contracts and agreements required to be advertised.] a.** Every
33 contract **[or agreement]** awarded by the contracting agent for the
34 provision or performance of any [work or the furnishing or hiring of
35 any materials or supplies] goods or services, the cost [or the contract
36 price whereof is to be paid with or out of public funds, not included
37 within the terms of section 3 of this act] of which in the aggregate
38 exceeds the bid threshold, shall be [made or] awarded only by
39 resolution of the governing body of the contracting unit to the lowest
40 responsible bidder after public advertising for bids and bidding
41 therefor, except as is provided otherwise in this act or specifically by
42 any other law. **[No work, materials or supplies shall be undertaken,**
43 **acquired or furnished for a sum exceeding in the aggregate the amount**
44 **set forth in, or the amount calculated by the Governor pursuant to,**
45 **section 3 of P.L.1971, c.198 (C.40A:11-3), except by contract or**

1 agreement.】 The governing body of a contracting unit may, by
2 resolution approved by a majority of the governing body and subject
3 to subsections b. and c. of this section, disqualify a bidder who would
4 otherwise be determined to be the lowest responsible bidder, if the
5 governing body finds that it has had prior negative experience with the
6 bidder.

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

9 (1) the bidder has been found, through either court adjudication,
10 arbitration, mediation, or other contractually stipulated alternate
11 dispute resolution mechanism, to have: failed to provide or perform
12 goods or services; or failed to complete the contract in a timely
13 manner; or otherwise performed unsatisfactorily under a prior contract
14 with the contracting unit;

15 (2) the bidder defaulted on a contract, thereby requiring the local
16 unit to utilize the services of another contractor to provide the goods
17 or perform the services or to correct or complete the contract;

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

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

25 c. The following conditions apply if the governing body of a
26 contracting unit is contemplating a disqualification based on prior
27 negative experience:

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

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

36 (3) The bidder shall be furnished by the governing body with a
37 written notice (a)stating that a disqualification is being considered; (b)
38 setting forth the reason for the disqualification; and (c) indicating that
39 the bidder shall be accorded an opportunity for a hearing before the
40 governing body if the bidder so requests within a stated period of time.
41 At the hearing, the bidder shall show good cause why the bidder
42 should not be disqualified by presenting documents and testimony. If
43 the governing body determines that good cause has not been shown by
44 the bidder, it may vote to find the bidder lacking in responsibility and,
45 thus, disqualified.

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

1 (5) A disqualification may be voided or the period thereof may be
2 reduced, in the discretion of the governing body, upon the submission
3 of a good faith application under oath, supported by documentary
4 evidence, setting forth substantial and appropriate grounds for the
5 granting of relief, such as reversal of a judgment, or actual change of
6 ownership, management or control of the bidder.

7 (6) An opportunity for a hearing need not be offered to a bidder
8 whose disqualification is based on its suspension or debarment by an
9 agency or department of the executive branch of the State of New
10 Jersey. The term of such a disqualification shall be concurrent with
11 the term of the suspension or debarment by the State agency or
12 department.

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

14
15 9. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read
16 as follows:

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

23 (1) The subject matter thereof consists of:

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

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

45 (c) The printing of legal briefs, records and appendices to be used
46 in any legal proceeding in which the contracting **[party]** unit may be

- 1 a party;
- 2 (d) The furnishing of a tax map or maps for the contracting **[party]**
3 unit;
- 4 (e) The purchase of perishable foods as a subsistence supply;
- 5 (f) The supplying of any product or the rendering of any service by
6 a public utility, which is subject to the jurisdiction of the Board of
7 Public Utilities or the Federal Energy Regulatory Commission or its
8 successor, in accordance with tariffs and schedules of charges made,
9 charged or exacted, filed with the board or commission;
- 10 (g) The acquisition, subject to prior approval of the Attorney
11 General, of special equipment for confidential investigation;
- 12 (h) The printing of bonds and documents necessary to the issuance
13 and sale thereof by a contracting unit;
- 14 (i) Equipment repair service if in the nature of an extraordinary
15 unspecifiable service and necessary parts furnished in connection with
16 such service, which exception shall be in accordance with the
17 requirements for extraordinary unspecifiable services;
- 18 (j) The publishing of legal notices in newspapers as required by
19 law;
- 20 (k) The acquisition of artifacts or other items of unique intrinsic,
21 artistic or historical character;
- 22 (l) **[Election expenses]** Those goods and services necessary or
23 required to prepare and conduct an election;
- 24 (m) Insurance, including the purchase of insurance coverage and
25 consultant services, which exception shall be in accordance with the
26 requirements for extraordinary unspecifiable services;
- 27 (n) The doing of any work by handicapped persons employed by a
28 sheltered workshop;
- 29 (o) The provision of any **[service or the furnishing of materials]**
30 goods or services including those of a commercial nature, attendant
31 upon the operation of a restaurant by any nonprofit, duly incorporated,
32 historical society at or on any historical preservation site;
- 33 (p) **[Homemaker--home health services performed by voluntary,**
34 **nonprofit agencies;]** (Deleted by amendment, P.L. , c. .) (Pending
35 before the Legislature as this bill.)
- 36 (q) **[The purchase of materials and services for a law library**
37 **established pursuant to R.S.40:33-14, including books, periodicals,**
38 **newspapers, documents, pamphlets, photographs, reproductions,**
39 **microforms, pictorial or graphic works, copyright and patent materials,**
40 **maps, charts, globes, sound recordings, slides, films, filmscripts, video**
41 **and magnetic tapes, and other audiovisual, printed, or published**
42 **material of a similar nature; necessary binding or rebinding of law**
43 **library materials; and specialized library services]** Library and
44 educational goods and services;
- 45 (r) On-site inspections undertaken by private agencies pursuant to
46 the "State Uniform Construction Code Act," P.L.1975, c.217

1 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;

2 (s) **【**The marketing of recyclable materials recovered through a
3 recycling program, or the marketing of any product intentionally
4 produced or derived from solid waste received at a resource recovery
5 facility or recovered through a resource recovery program, including,
6 but not limited to, refuse-derived fuel, compost materials, methane
7 gas, and other similar products;**】** (Deleted by amendment, P.L. c. .)
8 (Pending before the Legislature as this bill.)

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

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

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

37 (w) The purchase of electricity or administrative or dispatching
38 services directly related to the transmission of such purchased
39 electricity by a contracting unit engaged in the generation of
40 electricity;

41 (x) The printing of municipal ordinances or other services
42 necessarily incurred in connection with the revision and codification
43 of municipal ordinances;

44 (y) An agreement for the purchase of an equitable interest in a
45 water supply facility or for the provision of water supply services
46 entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or
47 an agreement entered into pursuant to P.L.1989, c.109

- 1 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no
2 later than six months after the effective date of P.L.1993, c.381;
- 3 (z) A contract for the provision of water supply services entered
4 into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- 5 (aa) **【The cooperative marketing of recyclable materials recovered**
6 **through a recycling program; or】** (Deleted by amendment, P.L. . . ,
7 c. . .) (Pending before the Legislature as this bill.)
- 8 (bb) A contract for the provision of wastewater treatment services
9 entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- 10 (cc) Expenses for travel and conferences;
- 11 (dd) The provision or performance of goods or services for the
12 support or maintenance of proprietary computer hardware and
13 software, except that this provision shall not be utilized to acquire or
14 upgrade non-proprietary hardware or to acquire or update non-
15 proprietary software;
- 16 (ee) The management or operation of an airport owned by the
17 contracting unit pursuant to R.S.40:8-1 et seq.
- 18 (2) It is to be made or entered into with the United States of
19 America, the State of New Jersey, county or municipality or any
20 board, body, officer, agency or authority thereof **【and】** or any other
21 state or subdivision thereof.
- 22 (3) **【The contracting agent has】** Bids have been advertised **【for**
23 **bids】** pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two
24 occasions and (a) **【 has received】** no bids have been received on both
25 occasions in response to **【its】** the advertisement, or (b) the governing
26 body has rejected such bids on two occasions because **【the contracting**
27 **agent】** it has determined that they are not reasonable as to price, on
28 the basis of cost estimates prepared for or by the contracting agent
29 prior to the advertising therefor, or have not been independently
30 arrived at in open competition, or (c) on one occasion no bids were
31 received pursuant to (a) and on one occasion all bids were rejected
32 pursuant to (b), in whatever sequence; any such contract **【or**
33 **agreement】** may then be negotiated and may be awarded upon
34 adoption of a resolution by a two-thirds affirmative vote of the
35 authorized membership of the governing body authorizing such
36 contract **【or agreement】**; provided, however, that:
- 37 (i) A reasonable effort is first made by the contracting agent to
38 determine that the same or equivalent **【materials or supplies】** goods
39 or services, at a cost which is lower than the negotiated price, are not
40 available from an agency or authority of the United States, the State
41 of New Jersey or of the county in which the contracting unit is
42 located, or any municipality in close proximity to the contracting unit;
- 43 (ii) The terms, conditions, restrictions and specifications set forth
44 in the negotiated contract **【or agreement】** are not substantially
45 different from those which were the subject of competitive bidding
46 pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

1 (iii) Any minor amendment or modification of any of the terms,
2 conditions, restrictions and specifications, which were the subject of
3 competitive bidding pursuant to section 4 of P.L.1971, c.198
4 (C.40A:11-4), shall be stated in the resolution awarding such contract
5 **【or agreement】**; provided further, however, that if on the second
6 occasion the bids received are rejected as unreasonable as to price, the
7 contracting agent shall notify each responsible bidder submitting bids
8 on the second occasion of its intention to negotiate, and afford each
9 bidder a reasonable opportunity to negotiate, but the governing body
10 shall not award such contract **【or agreement】** unless the negotiated
11 price is lower than the lowest rejected bid price submitted on the
12 second occasion by a responsible bidder, is the lowest negotiated price
13 offered by any responsible **【supplier】** vendor, and is a reasonable price
14 for such **【work, materials, supplies】** goods or services.

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

23 (4) The contracting unit has solicited and received at least three
24 quotations on materials, supplies or equipment for which a State
25 contract has been issued pursuant to section 12 of P.L.1971, c.198
26 (C.40A:11-12), and the lowest responsible quotation is at least 10%
27 less than the price the contracting unit would be charged for the
28 identical materials, supplies or equipment, in the same quantities,
29 under the State contract. Any such contract entered into pursuant to
30 this subsection may be awarded only upon adoption of a resolution by
31 the affirmative vote of two-thirds of the full membership of the
32 governing body of the contracting unit at a meeting thereof
33 authorizing such a contract.

34 (5) Notwithstanding any provision of law, rule or regulation to the
35 contrary, the subject matter consists of the collection and marketing,
36 or the cooperative collection and marketing of recycled material
37 recovered through a recycling program, or any product intentionally
38 produced or derived from solid waste received at a resource recovery
39 facility or recovered through a resource recovery program including,
40 but not limited to refuse-derived fuel compost materials, compost
41 materials, methane gas, and other similar products, provided that in
42 lieu of engaging in such public advertising for bids and the bidding
43 therefor, the contracting unit shall, prior to commencing the
44 procurement process, submit for approval to the Director of the
45 Division of Local Government Services, a written detailed description
46 of the process to be followed in securing said services. Within 30 days
47 after receipt of the written description the director shall, if the director

1 finds that the process provides for fair competition and integrity in the
2 negotiation process, approve, in writing, the description submitted by
3 the contracting unit. If the director finds that the process does not
4 provide for fair competition and integrity in the negotiation process,
5 the director shall advise the contracting unit of the deficiencies that
6 must be remedied. If the director fails to respond in writing to the
7 contracting unit within 30 days, the procurement process as described
8 shall be deemed approved. As used in this section, "collection" means
9 the physical removal of recyclable materials from curbside or any other
10 location selected by the contracting unit.

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

12

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

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

26 a. **[A written requisition for the performance of such work or**
27 **labor, or the furnishing of materials, supplies or services is filed with**
28 **the contracting agent or his deputy in charge describing the nature of**
29 **the emergency, the time of its occurrence and the need for invoking**
30 **this section, certified by the officer or director in charge of the**
31 **department wherein the emergency occurred, or such other officer or**
32 **employee as may be authorized to act in place of said officer or**
33 **director, and the contracting agent or his deputy in charge, being**
34 **satisfied that the emergency exists, is hereby authorized to award a**
35 **contract for said work or labor, materials, supplies or services.]** The
36 official in charge of the agency wherein the emergency occurred, or
37 such other officer or employee as may be authorized to act in place of
38 that official, shall notify the purchasing agent, a supervisor of the
39 purchasing agent, or a designated representative of the governing
40 body, as may be appropriate to the form of government, of the need
41 for the performance of a contract, the nature of the emergency, the
42 time of its occurrence and the need for invoking this section. If that
43 person is satisfied that an emergency exists, that person shall be
44 authorized to award a contract or contracts for such purposes as may
45 be necessary to respond to the emergent needs. Such notification shall
46 be reduced to writing and filed with the purchasing agent as soon as

1 practicable.

2 b. Upon the furnishing of such [work or labor, materials, supplies]
3 goods or services, in accordance with the terms of the contract [or
4 agreement], the contractor furnishing such [work or labor, materials,
5 supplies] goods or services shall be entitled to be paid therefor and the
6 contracting unit shall be obligated for said payment. The governing
7 body of the contracting unit shall take such action as shall be required
8 to provide for the payment of the contract price.

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

12 d. The governing body of the contracting unit may prescribe
13 additional rules and procedures to implement the requirements of this
14 section.

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

16

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

19 6. All contracts enumerated in this section shall be awarded as
20 follows:

21 [All purchases, contracts or agreements which require public
22 advertisement for bids shall be awarded to the lowest responsible
23 bidder.

24 Prior to the award of any other purchase, contract or agreement,
25 the contracting agent shall, except in the case of the performance of
26 professional services, solicit quotations, whenever practicable, on any
27 such purchase, contract or agreement the estimated cost or price of
28 which is \$1,000.00 or more, and the award thereof shall be made, in
29 accordance with sections 3 (C.40A:11-3) or 4 (C.40A:11-4), as the
30 case may be, of the Local Public Contracts Law, on the basis of the
31 lowest responsible quotation received, which quotation is most
32 advantageous to the contracting unit, price and other factors
33 considered; provided, however, that if the contracting agent deems it
34 impracticable to solicit competitive quotations in the case of
35 extraordinary, unspecifiable service, or, in the case of such or any
36 other purchase, contract or agreement awarded hereunder, having
37 sought such quotations determines that it should not be awarded on
38 the basis of the lowest quotation received, the contracting agent shall
39 file a statement of explanation of the reason or reasons therefor,
40 which shall be placed on file with said purchase, contract or
41 agreement.]

42 a. For all contracts that in the aggregate are less than the bid
43 threshold but 15 percent or more of that amount, and for those
44 contracts that are for subject matter enumerated in subsection (1) of
45 section 5 of P.L.1971, c.198 (C.40A:11-5), except for paragraph (a)
46 of that subsection concerning professional services and paragraph (b)

1 of that subsection concerning work by employees of the contracting
2 unit, the contracting agent shall award the contract after soliciting at
3 least two competitive quotations, if practicable. The award shall be
4 made to a vendor whose response is most advantageous, price and
5 other factors considered. The contracting agent shall retain the record
6 of the quotation solicitation and shall include a copy of the record with
7 the voucher used to pay the vendor.

8 b. When in excess of the bid threshold, and after documented effort
9 by the contracting agent to secure competitive quotations, a contract
10 for extraordinary unspecifiable services may be awarded upon a
11 determination in writing by the contracting agent that the solicitation
12 of competitive quotations is impracticable. Any such contract shall be
13 awarded by resolution of the governing body.

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

18 d. Whenever two or more responses to a request of a contracting
19 agent offer equal prices and are the lowest responsible bids or
20 proposals, the contracting unit may award the contract to the vendor
21 whose response, in the discretion of the contracting unit, is the most
22 advantageous, price and other factors considered. In such a case, the
23 award resolution or purchase order documentation shall explain why
24 the vendor selected is the most advantageous.

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

26

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

29 7. Contracts not to be divided. [No purchase, contract or
30 agreement, which is single in character or which necessarily or by
31 reason of the quantities required to effectuate the purpose of the
32 purchase, contract or agreement includes the furnishing of additional
33 services or buying or hiring of materials or supplies or the doing of
34 additional work, shall be subdivided, so as to bring it or any of the
35 parts thereof under the maximum price or cost limitation of the
36 amount set forth in, or the amount calculated by the Governor
37 pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3) thus
38 dispensing with the requirement of public advertising and bidding
39 therefor, and in purchasing or contracting for, or agreeing for the
40 furnishing of, any services, the doing of any work or the supplying of
41 any materials or the supplying or hiring of any materials or supplies,
42 included in or incident to the performance or completion of any
43 project, program, activity or undertaking which is single in character
44 or inclusive of the furnishing of additional services or buying or hiring
45 of materials or supplies or the doing of additional work, or which
46 requires the furnishing of more than one article of equipment or buying
47 or hiring of materials or supplies, all of the services, materials or

1 property requisite for the completion of such project shall be included
2 in one purchase, contract or agreement]

3 a. No contract in the aggregate which is single in character or
4 which necessarily or by reason of the quantities required to effectuate
5 the purpose of the contract includes the provision or performance of
6 additional goods or services, shall be divided, so as to bring it or any
7 of the parts thereof under the bid threshold, for the purpose of
8 dispensing with the requirement of public advertising and bidding
9 therefor.

10 b. In contracting for the provision or performance of any goods or
11 services included in or incidental to the provision or performance of
12 any work which is single in character or inclusive of the provision or
13 performance of additional goods or services, all of the goods or
14 services requisite for the completion of such contract shall be included
15 in one contract.

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

17

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

30

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

33 8. Every contracting agent shall, at intervals to be fixed by the
34 governing body, solicit by public advertisement the submission of bids
35 for the **[furnishing of all work, materials and supplies]** provision or
36 performance of goods or services which are and which under section
37 4 of **[this act]** P.L.1971, c.198 (C.40A:11-4) can be **[purchased or**
38 **agreed or]** contracted to be **[furnished]** provided or performed only
39 after public advertisement for bids and bidding therefor and all
40 **[purchases, or]** contracts **[or agreements for the furnishing, of such**
41 **work, materials and supplies]** for the provision or performance of such
42 goods or services shall be **[made and]** awarded only in that manner.

43 (cf: P.L.1971, c.198, s.8)

44

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

1 9. Purchasing agent, department or board; establishment; powers
2 a. The governing body of any **[local] contracting** unit may by
3 ordinance, in the case of a municipality, by ordinance or resolution, as
4 the case may be, in the case of a county, or by resolution in all other
5 cases, establish the office of purchasing agent, or a purchasing
6 department or a purchasing board, with the authority, responsibility,
7 and accountability as its contracting agent, for the purchasing activity
8 for the contracting unit, to prepare public advertising for bids and to
9 receive bids for the **[purchase of work, materials and supplies]**
10 provision or performance of goods or services on behalf of the
11 contracting unit and**[, unless otherwise required by the provisions of**
12 **this act,]** to **[make awards of] award** contracts permitted pursuant to
13 subsection a. of section 3 of P.L.1971, c. 198 (C.40A:11-3) in the
14 name of the contracting unit, and conduct any activities as may be
15 necessary or appropriate to the purchasing function of the contracting
16 unit.

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

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

27

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

30 10. Joint agreements for **[purchase of work, materials, supplies]**
31 provision and performance of goods and services; cooperative
32 marketing; authorization

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

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

45 (3) The governing body of two or more contracting units providing
46 electrical distribution services pursuant to and in **[accord] accordance**

1 with R.S.40:62-12 through R.S.40:62-25, may provide by joint
2 agreement for the **【purchase】 provision or performance** of **【work,**
3 **material and supplies】 goods or services** related to the distribution of
4 electricity.

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

8 (b) The governing body of any **【county or municipality】**
9 **contracting unit** may provide by joint agreement with the board of
10 education of any school district **【located wholly or partially within the**
11 **geographic boundaries of the county or municipality】** for the
12 **【purchase of work, materials and supplies】 provision and performance**
13 **of goods and services** for use by their respective jurisdictions.

14 (c) Such agreement shall be entered into by resolution adopted by
15 each of the participating bodies and boards, which shall set forth the
16 categories of **【work, materials and supplies】 goods or services** to be
17 **【purchased】 provided or performed**, the manner of advertising for bids
18 and of awarding of contracts, the method of payment by each
19 participating body and board, and other matters deemed necessary to
20 carry out the purposes of the agreement.

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

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

26

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

29 11. Additional matters regarding **【agreements】 contracts** for the
30 **【purchases of work, materials and supplies】 provision and**
31 **performance of goods and services**

32 (1) The contracting units entering into a joint agreement pursuant
33 to section 10 of **【this act】 P.L.1971, c.198 (C.40A:11-10)** may
34 designate a joint **【purchasing】 contracting agent** **【, department or**
35 **board pursuant to section 9 of this act. Any such agent, board or**
36 **department already designated pursuant to section 9 may serve as the**
37 **joint agent, department or board designated pursuant to this section】.**

38 (2) **【Purchases, contracts or agreements】 Contracts** made pursuant
39 to a joint purchasing agreement shall be subject to all of the terms and
40 conditions of this act.

41 (3) Any **【county or municipality】 contracting unit** serving as a
42 **【purchasing】 joint contracting agent** **【, board or department】**
43 **pursuant to this section 【11】**, may make an appropriation to enable it
44 to perform any such contract and may anticipate as revenue payments
45 to be made and received by it from any other party to the agreement.
46 Any items so included in a local budget shall be subject to the approval

1 of the Director, Division of Local Government Services, who shall
2 consider the matter in conjunction with the requirements of chapter 4
3 of Title 40A of the New Jersey Statutes. The agreement and any
4 subsequent amendment or revisions thereto shall be filed with the
5 Director of the Division of Local Government Services in the
6 Department of Community Affairs.

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

11 (5) The governing bodies of two or more contracting units or
12 boards of education [within the same county, or adjoining counties;]
13 or for purposes related to the distribution of electricity, the governing
14 bodies of two or more contracting units providing electrical
15 distribution services pursuant to R.S.40:62-12 through R.S.40:62-25,
16 may by resolution establish a cooperative pricing system as hereinafter
17 provided. Any such resolution shall establish procedures whereby one
18 participating contracting unit in the cooperative pricing system shall
19 be empowered to advertise and receive bids to provide prices for all
20 other participating contracting units in such system for the [purchase]
21 provision or performance of [work, materials and supplies] goods or
22 services; provided, however, that no [purchase or] contract shall be
23 [made] awarded by any participating contracting unit for a price
24 which exceeds any other price available to the participating contracting
25 unit, or for a purchase of goods or services in deviation from the
26 specifications, price or quality set forth by the participating contracting
27 unit.

28 (6) The governing body of a county government may establish a
29 cooperative pricing system for the voluntary use of contracting units
30 within the county.

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

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

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

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

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

46 (c) Adequacy of procedures to facilitate compliance with all

1 provisions of the "Local Public Contracts Law" and corresponding
2 regulations, and

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

5 Failure of the Director of the Division of Local Government
6 Services to approve or disapprove a properly executed and completed
7 application to establish a cooperative pricing system and agreements
8 entered into pursuant to such system or other joint purchase agreement
9 within 45 days from the date of receipt of said application by the
10 director shall constitute approval of said application, which shall be
11 valid for a period of five years, commencing from the date of receipt
12 of said application by the director.

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

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

20

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

23 12. a. Any contracting unit under this act may without advertising
24 for bids, or having rejected all bids obtained pursuant to advertising
25 therefor, purchase any [materials, supplies,] goods[,] or services [or
26 equipment] under any contract or contracts for such [materials,
27 supplies,] goods[,] or services [or equipment] entered into on behalf
28 of the State by the Division of Purchase and Property in the
29 Department of the Treasury.

30 b. A contracting unit may also use, without advertising for bids, or
31 having rejected all bids obtained pursuant to advertising, the Federal
32 Supply Schedules of the General Services Administration [as
33 permitted by the "Federal Acquisition Streamlining Act of 1994,"
34 Pub.L. 103-355, and federal regulations adopted thereunder.]
35 promulgated by the Director of the Division of Purchase and Property
36 in the Department of the Treasury pursuant to section 1 of P.L.1996,
37 c.16 (C.52:34-6.1), subject to the following conditions:

38 (1) the price of the goods being procured is no greater than the
39 price offered to federal agencies;

40 (2) the Federal Supply Schedules may be used only for purchases
41 of up to \$500,000 per year or for one product unit at any price and
42 only for reprographic equipment or services, including digital copiers,
43 used by the contracting unit; and

44 (3) the contracting unit receives the benefit of federally mandated
45 price reductions during the term of the contract and is protected from
46 price increases during that time.

47 c. Whenever a purchase is made, the contracting unit shall place its

1 order with the vendor offering the lowest price, including delivery
2 charges, that best meets the requirements of the contracting unit.
3 Prior to placing such an order, the contracting unit shall document
4 with specificity that the **[materials, supplies,] goods[,] or services [or**
5 **equipment]** selected best meet the requirements of the contracting
6 unit.

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

8

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

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

16 (a) Require any standard, restriction, condition or limitation not
17 directly related to the purpose, function or activity for which the
18 **[purchase,] contract [or agreement] is [made] awarded**; or

19 (b) Require that any bidder be a resident of, or that **[his] the**
20 **bidder's** place of business be located in, the county or municipality in
21 which the **[purchase] contract** will be **[made] awarded** or **[the**
22 **contract or agreement]** performed, unless the physical proximity of the
23 bidder is requisite to the efficient and economical **[purchase or]**
24 **performance of the contract [or agreement]**; except that no
25 specification for a contract for the collection and disposal of municipal
26 solid waste shall require any bidder to be a resident of, or that **[his]**
27 **the bidder's** place of business be located in, the county or municipality
28 in which the contract will be performed; or

29 (c) Discriminate on the basis of race, religion, sex, national origin ,
30 **creed, color, ancestry, age, marital status, affectional or sexual**
31 **orientation, familial status, liability for service in the Armed Forces of**
32 **the United States, or nationality**; or

33 (d) Require, with regard to any **[purchase,] contract [or**
34 **agreement]**, the furnishing of any "brand name," but may in all cases
35 require "brand name or equivalent," except that if the **[materials]**
36 **goods or services** to be **[supplied or purchased] provided or**
37 **performed** are **[patented or copyrighted] proprietary**, such **[materials**
38 **or supplies] goods or services** may be purchased by **stipulating the**
39 **proprietary goods or services in the bid** specification in any case in
40 which the **[ordinance or] resolution** authorizing the **[purchase,]**
41 **contract[, sale or agreement]** so indicates, and the special need for
42 such **[patented or copyrighted materials or supplies] proprietary**
43 **goods or services** is directly related to the performance, completion or
44 undertaking of the purpose for which the **[purchase,] contract [or**
45 **agreement] is [made] awarded**; or

1 (e) Fail to include any option for renewal, extension, or release
2 which the contracting unit may intend to exercise or require; or any
3 terms and conditions necessary for the performance of any extra work;
4 or fail to disclose any matter necessary to the substantial performance
5 of the contract **[or agreement]**.

6 Any specification **[adopted by the governing body,]** which
7 knowingly excludes prospective bidders by reason of the impossibility
8 of performance, bidding or qualification by any but one bidder, except
9 as provided herein, shall be null and void and of no effect and **[subject**
10 **purchase, contract or agreement]** shall be readvertised for receipt of
11 new bids, and the original **[purchase,]** contract **[or agreement]** shall
12 be set aside by the governing body.

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

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

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

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

28

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

38

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

41 a. The lowest bid substantially exceeds the cost estimates for the
42 goods or services;

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

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

47 d. The contracting unit wants to substantially revise the

1 specifications for the goods or services;

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

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

7

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

10 14. All contracts for the **[performing of work or furnishing**
11 **materials, supplies]** provision or performance of goods or services
12 shall be in writing. The governing body of any contracting unit may,
13 subject to the requirements of law, prescribe the form and manner in
14 which contracts shall be made and executed, and the form and manner
15 of execution and approval of all guarantee, indemnity, fidelity and
16 other bonds.

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

18

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

21 15. All **[purchases,]** contracts **[or agreements]** for the
22 **[performing of work or the furnishing of materials, supplies]** provision
23 or performance of goods or services shall be **[made]** awarded for a
24 period not to exceed 24 consecutive months, except that contracts for
25 professional services pursuant to subparagraph (i) of paragraph (a) of
26 subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be
27 **[made]** awarded for a period not to exceed 12 consecutive months.
28 Contracts **[or agreements]** may be **[entered into]** awarded for longer
29 periods of time as follows:

30 (1) Supplying of:

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

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

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

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

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

43 (4) The collection and recycling of methane gas from a sanitary
44 landfill facility, for any term not exceeding 25 years, when such
45 contract is in conformance with a district solid waste management plan
46 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
47 approval of the Division of Local Government Services in the

1 Department of Community Affairs and the Department of
2 Environmental Protection. The contracting unit shall award the
3 contract to the highest responsible bidder, notwithstanding that the
4 contract price may be in excess of the amount of any necessarily
5 related administrative expenses; except that if the contract requires the
6 contracting unit to expend funds only, the contracting unit shall award
7 the contract to the lowest responsible bidder. The approval by the
8 Division of Local Government Services of public bidding requirements
9 shall not be required for those contracts exempted therefrom pursuant
10 to section 5 of P.L.1971, c.198 (C.40A:11-5);

11 (5) Data processing service, for any term of not more than **[three]**
12 seven years;

13 (6) Insurance, including the purchase of insurance coverages,
14 insurance consulting or administrative services, claims administration
15 services and including participation in a joint self-insurance fund, risk
16 management program or related services provided by a contracting
17 unit insurance group, or participation in an insurance fund established
18 by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund
19 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any
20 term of not more than three years;

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

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

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

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

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

42 (12) The provision or performance of [work] goods or services
43 **[or the furnishing of materials or supplies]** for the purpose of
44 conserving energy in buildings owned by, or operations conducted by,
45 the contracting unit, the entire price of which to be established as a
46 percentage of the resultant savings in energy costs, for a term not to
47 exceed **[10]** 15 years; provided, however, that such contracts shall be

1 entered into only subject to and in accordance with [rules and
2 regulations] guidelines promulgated by the [Department of
3 Environmental Protection] Board of Public Utilities establishing a
4 methodology for computing energy cost savings;

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

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

16 (15) Leasing of motor vehicles, machinery and other equipment
17 primarily used to fight fires, for a term not to exceed ten years, when
18 the contract includes an option to purchase, subject to and in
19 accordance with rules and regulations promulgated by the Director of
20 the Division of Local Government Services of the Department of
21 Community Affairs;

22 (16) The provision of water supply services or the designing,
23 financing, construction, operation, or maintenance, or any combination
24 thereof, of a water supply facility, or any component part or parts
25 thereof, including a water filtration system, for a period not to exceed
26 40 years, when the contract for these services is approved by the
27 Division of Local Government Services in the Department of
28 Community Affairs, the Board of Public Utilities, and the Department
29 of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et
30 al.), except for those contracts otherwise exempted pursuant to
31 subsection (30), (31), (34) or (35) of this section. For the purposes
32 of this subsection, "water supply services" means any service provided
33 by a water supply facility; "water filtration system" means any
34 equipment, plants, structures, machinery, apparatus, or land, or any
35 combination thereof, acquired, used, constructed, rehabilitated, or
36 operated for the collection, impoundment, storage, improvement,
37 filtration, or other treatment of drinking water for the purposes of
38 purifying and enhancing water quality and insuring its potability prior
39 to the distribution of the drinking water to the general public for
40 human consumption, including plants and works, and other personal
41 property and appurtenances necessary for their use or operation; and
42 "water supply facility" means and refers to the real property and the
43 plants, structures, interconnections between existing water supply
44 facilities, machinery and equipment and other property, real, personal
45 and mixed, acquired, constructed or operated, or to be acquired,
46 constructed or operated, in whole or in part by or on behalf of a
47 political subdivision of the State or any agency thereof, for the

1 purpose of augmenting the natural water resources of the State and
2 making available an increased supply of water for all uses, or of
3 conserving existing water resources, and any and all appurtenances
4 necessary, useful or convenient for the collecting, impounding, storing,
5 improving, treating, filtering, conserving or transmitting of water and
6 for the preservation and protection of these resources and facilities and
7 providing for the conservation and development of future water supply
8 resources;

9 (17) The provision of resource recovery services by a qualified
10 vendor, the disposal of the solid waste delivered for disposal which
11 cannot be processed by a resource recovery facility or the residual ash
12 generated at a resource recovery facility, including hazardous waste
13 and recovered metals and other materials for reuse, or the design,
14 financing, construction, operation or maintenance of a resource
15 recovery facility for a period not to exceed 40 years when the contract
16 is approved by the Division of Local Government Services in the
17 Department of Community Affairs, and the Department of
18 Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et
19 al.); and when the resource recovery facility is in conformance with a
20 district solid waste management plan approved pursuant to P.L.1970,
21 c.39 (C.13:1E-1 et seq.). For the purposes of this subsection,
22 "resource recovery facility" means a solid waste facility constructed
23 and operated for the incineration of solid waste for energy production
24 and the recovery of metals and other materials for reuse; or a
25 mechanized composting facility, or any other facility constructed or
26 operated for the collection, separation, recycling, and recovery of
27 metals, glass, paper, and other materials for reuse or for energy
28 production; and "residual ash" means the bottom ash, fly ash, or any
29 combination thereof, resulting from the combustion of solid waste at
30 a resource recovery facility;

31 (18) The sale of electricity or thermal energy, or both, produced by
32 a resource recovery facility for a period not to exceed 40 years when
33 the contract is approved by the Department of Environmental
34 Protection, and when the resource recovery facility is in conformance
35 with a district solid waste management plan approved pursuant to
36 P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this
37 subsection, "resource recovery facility" means a solid waste facility
38 constructed and operated for the incineration of solid waste for energy
39 production and the recovery of metals and other materials for reuse;
40 or a mechanized composting facility, or any other facility constructed
41 or operated for the collection, separation, recycling, and recovery of
42 metals, glass, paper, and other materials for reuse or for energy
43 production;

44 (19) The provision of wastewater treatment services or the
45 designing, financing, construction, operation, or maintenance, or any
46 combination thereof, of a wastewater treatment system, or any
47 component part or parts thereof, for a period not to exceed 40 years,
48 when the contract for these services is approved by the Division of

1 Local Government Services in the Department of Community Affairs
2 and the Department of Environmental Protection pursuant to
3 P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise
4 exempted pursuant to subsection (36) of this section. For the
5 purposes of this subsection, "wastewater treatment services" means
6 any services provided by a wastewater treatment system, and
7 "wastewater treatment system" means equipment, plants, structures,
8 machinery, apparatus, or land, or any combination thereof, acquired,
9 used, constructed, or operated for the storage, collection, reduction,
10 recycling, reclamation, disposal, separation, or other treatment of
11 wastewater or sewage sludge, or for the final disposal of residues
12 resulting from the treatment of wastewater, including, but not limited
13 to, pumping and ventilating stations, facilities, plants and works,
14 connections, outfall sewers, interceptors, trunk lines, and other
15 personal property and appurtenances necessary for their operation;

16 (20) The supplying of **【materials】** goods or services for the
17 purpose of lighting public streets, for a term not to exceed five years
18 **【, provided that the rates, fares, tariffs or charges for the supplying of**
19 **electricity for that purpose are approved by the Board of Public**
20 **Utilities】;**

21 (21) **【In the case of a contracting unit which is a county or**
22 **municipality, the】** The provision of emergency medical services **【by a**
23 **hospital to residents of a municipality or county as appropriate】** for a
24 term not to exceed five years;

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

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

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

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

44 (26) **【Claims administration services, for any term not to exceed**
45 **three years;】** (Deleted by amendment, P.L. , c. .) (Pending before
46 the Legislature as this bill.)

47 (27) The provision of transportation services to elderly, disabled

1 or indigent persons for any term of not more than three years. For the
2 purposes of this subsection, "elderly persons" means persons who are
3 60 years of age or older. "Disabled persons" means persons of any age
4 who, by reason of illness, injury, age, congenital malfunction, or other
5 permanent or temporary incapacity or disability, are unable, without
6 special facilities or special planning or design to utilize mass
7 transportation facilities and services as effectively as persons who are
8 not so affected. "Indigent persons" means persons of any age whose
9 income does not exceed 100 percent of the poverty level, adjusted for
10 family size, established and adjusted under section 673(2) of subtitle
11 B, the "Community Services Block Grant Act," Pub.L.97-35 (42
12 U.S.C. s.9902 (2));

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

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

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

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

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

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

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

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

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

6 (37) The operation and management of a facility under a license
7 issued or permit approved by the Department of Environmental
8 Protection, including a wastewater treatment system or a water supply
9 or distribution facility, as the case may be, for any term of not more
10 than **[seven] ten** years. For the purposes of this subsection,
11 "wastewater treatment system" refers to facilities operated or
12 maintained for the storage, collection, reduction, disposal, or other
13 treatment of wastewater or sewage sludge, remediation of
14 groundwater contamination, stormwater runoff, or the final disposal
15 of residues resulting from the treatment of wastewater; and "water
16 supply or distribution facility" refers to facilities operated or
17 maintained for augmenting the natural water resources of the State,
18 increasing the supply of water, conserving existing water resources, or
19 distributing water to users;

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

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

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

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

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

33 Any contract for services other than professional services, the
34 statutory length of which contract is for three years or less, may
35 include provisions for no more than one two-year, or two one-year,
36 extensions, subject to the following limitations: a. The contract shall
37 be awarded by resolution of the governing body upon a finding by the
38 governing body that the services are being performed in an effective
39 and efficient manner; b. No such contract shall be extended so that it
40 runs for more than a total of five consecutive years; c. Any price
41 change included as part of an extension shall be based upon the price
42 of the original contract as cumulatively adjusted pursuant to any
43 previous adjustment or extension and shall not exceed the change in
44 the index rate for the 12 months preceding the most recent quarterly
45 calculation available at the time the contract is renewed; and d. The
46 terms and conditions of the contract remain substantially the same.

47 All multiyear leases and contracts entered into pursuant to this
48 section, including any two-year or one-year extensions, except

1 **【contracts for the leasing or servicing of equipment supplied by a**
2 **telephone company which is subject to the jurisdiction of the Board of**
3 **Public Utilities,】** contracts involving the supplying of electricity for the
4 purpose of lighting public streets and contracts for thermal energy
5 authorized pursuant to subsection (1) above, construction contracts
6 authorized pursuant to subsection (9) above, contracts **【and**
7 **agreements】** for the provision or performance of **【work】** goods or
8 services or the supplying of equipment to promote energy conservation
9 authorized pursuant to subsection (12) above, contracts for water
10 supply services or for a water supply facility, or any component part
11 or parts thereof authorized pursuant to subsection (16), (30), (31),
12 (34), (35) or (37) above, contracts for resource recovery services or
13 a resource recovery facility authorized pursuant to subsection (17)
14 above, contracts for the sale of energy produced by a resource
15 recovery facility authorized pursuant to subsection (18) above,
16 contracts for wastewater treatment services or for a wastewater
17 treatment system or any component part or parts thereof authorized
18 pursuant to subsection (19), (36) or (37) above, and contracts for the
19 purchase of electricity or administrative or dispatching services related
20 to the transmission of such electricity authorized pursuant to
21 subsection (24) above, shall contain a clause making them subject to
22 the availability and appropriation annually of sufficient funds as may
23 be required to meet the extended obligation, or contain an annual
24 cancellation clause.

25 The Division of Local Government Services in the Department of
26 Community Affairs shall adopt and promulgate rules and regulations
27 concerning the methods of accounting for all contracts that do not
28 coincide with the fiscal year.

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

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

38

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

41 16. Separate plans for various types of work; bids; contracts. In the
42 preparation of plans and specifications for the **【erection】** construction,
43 alteration or repair of any public building by any contracting unit,
44 when the entire cost of the work will exceed the **【amount set forth in,**
45 or the amount calculated by the Governor pursuant to, section 3 of
46 P.L.1971, c.198 (C.40A:11-3)】 bid threshold, the architect, engineer
47 or other person preparing the plans and specifications may prepare

1 separate plans and specifications for

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

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

5 (3) Electrical work;

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

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

8 The [contracting unit or its] contracting agent shall advertise for
9 and receive, in the manner provided by law, either (a) separate bids for
10 each of said branches of work, or (b) bids for all the work [and
11 materials] , goods and services required to complete the building to be
12 included in a single overall contract, or (c) both. In the case of a
13 single bid under (b) or (c), there [will] shall be set forth in the bid the
14 name or names of all subcontractors to whom the bidder will
15 subcontract the furnishing of plumbing and gas fitting, and all kindred
16 work, and of the steam and hot water heating and ventilating
17 apparatus, steam power plants and kindred work, and electrical work,
18 structural steel and ornamental iron work, each of which
19 subcontractors shall be qualified in accordance with [this act]
20 P.L.1971, c.198 (C.40A:11-1 et seq.). The contracting unit shall
21 require evidence of performance security to be submitted
22 simultaneously with the list of the subcontractors. Evidence of
23 performance security may be supplied by the bidder on behalf of
24 himself and any or all subcontractors, or by each respective
25 subcontractor, or by any combination thereof which results in evidence
26 of performance security [equalling] equaling, but in no event
27 exceeding, the total amount bid.

28 Whenever a bid sets forth more than one subcontractor for any of
29 the specialty trade categories (1) through (4) specified hereinabove in
30 this section, the bidder shall submit to the contracting unit a certificate
31 signed by the bidder listing each subcontractor named in the bid for
32 that category. The certificate shall set forth the scope of work, goods
33 and services for which the subcontractor has submitted a price quote
34 and which the bidder has agreed to award to each subcontractor
35 should the bidder be awarded the contract. The certificate shall be
36 submitted to the contracting unit simultaneously with the list of the
37 subcontractors. The certificate may take the form of a single
38 certificate listing all subcontractors or, alternatively, a separate
39 certificate may be submitted for each subcontractor. If a bidder does
40 not submit a certificate or certificates to the contracting unit, the
41 contracting unit shall award the contract to the next lowest responsible
42 bidder.

43 Contracts shall be awarded to the lowest responsible bidder. In the
44 event that a contract is advertised in accordance with (c) above said
45 contract shall be awarded in the following manner: If the sum total of
46 the amounts bid by the lowest responsible bidder for each branch is
47 less than the amount bid by the lowest responsible bidder for all the

1 work **【and materials】**, goods and services, the contracting unit shall
2 award separate contracts for each of such branches to the lowest
3 responsible bidder therefor, but if the sum total of the amounts bid by
4 the lowest responsible bidder for each branch is not less than the
5 amount bid by the lowest responsible bidder for all the work **【and**
6 materials, goods and services, the contracting unit shall award a single
7 overall contract to the lowest responsible bidder for all of such work
8 **【and materials】**, goods and services. In every case in which a contract
9 is awarded under (b) above, all payments required to be made under
10 such contract for work **【and materials】**, goods and services supplied
11 by a subcontractor shall, upon the certification of the contractor of the
12 amount due to the subcontractor, be paid directly to the subcontractor.
13 (cf: P.L.1997, c.408, s.1)

14

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

17 1. Any contract **【or agreement】**, the total price of which exceeds
18 \$100,000.00, entered into by a contracting unit involving the
19 construction, reconstruction, alteration, repair or maintenance of any
20 building, structure, facility or other improvement to real property,
21 shall provide for partial payments to be made at least once each month
22 as the work progresses, unless the contractor shall agree to deposit
23 bonds with the contracting unit pursuant to P.L.1979, c.152
24 (C.40A:11-16.1).

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

26

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

29 2. a. With respect to any contract **【or agreement】** entered into by
30 a contracting unit pursuant to section 1 of **【this act】** P.L.1979, c.464
31 (C.40A:11-16.2) for which the contractor shall agree to the
32 withholding of payments pursuant to P.L.1979, c.152
33 (C.40A:11-16.1), 2% of the amount due on each partial payment shall
34 be withheld by the contracting unit pending completion of the contract
35 **【or agreement】**.

36 b. Upon acceptance of the work performed pursuant to the
37 contract **【or agreement】** for which the contractor has agreed to the
38 withholding of payments pursuant to subsection a. of this section, all
39 amounts being withheld by the contracting unit shall be released and
40 paid in full to the contractor within 45 days of the final acceptance
41 date agreed upon by the contractor and the contracting unit, without
42 further withholding of any amounts for any purpose whatsoever,
43 provided that the contract has been completed as indicated. If the
44 contracting unit requires maintenance security after acceptance of the
45 work performed pursuant to the contract **【or agreement】**, such
46 security shall be obtained in the form of a maintenance bond. The
47 maintenance bond shall be no longer than two years and shall be no

1 more than 100% of the project costs.

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

3

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

6 3. Any contract **【or agreement】** entered into by a contracting unit
7 pursuant to section 1 of **【this act】** P.L.1979, c.464 (C.40A:11-16.2)
8 may also provide for partial payments at least once in each month with
9 respect to all materials placed along or upon the site, or stored at
10 secured locations, which are suitable for use in the execution of the
11 contract **【or agreement】**, if the person providing the materials
12 furnishes releases of liens for the materials at the time each estimate
13 of work is submitted for payment. The total of all the partial
14 payments shall not exceed the cost of the materials.

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

16

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

19 19. Any contract **【or agreement】** made pursuant to **【this act】**
20 P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages
21 for the violation of any of the terms and conditions thereof or the
22 failure to perform said contract **【or agreement】** in accordance with its
23 terms and conditions, or the terms and conditions of **【this act】**
24 P.L.1971, c.198 (C.40A:11-1 et seq.).

25 (cf: P.L.1971, c.198, s.19)

26

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

29 21. A person bidding on a contract **【or agreement】** for the
30 erection, alteration or repair of a public building, structure, facility or
31 other improvement to real property, the total price of which exceeds
32 \$100,000, shall furnish a guarantee as provided for herein. A
33 contracting unit may provide that a person bidding on any other
34 contract **【or agreement】**, advertised in accordance with law, shall
35 furnish a guarantee as provided for herein. The guarantee shall be
36 payable to the contracting unit so that if the contract **【or agreement】**
37 is awarded to the bidder, the bidder will enter into a contract therefor
38 and will furnish any performance bond or other security required as
39 a guarantee or indemnification. The guarantee shall be in the amount
40 of 10% of the bid, but not in excess of \$20,000.00, except as
41 otherwise provided herein, and may be given, at the option of the
42 bidder, by certified check, cashier's check or bid bond. In the event
43 that any law or regulation of the United States imposes any condition
44 upon the awarding of a monetary grant to any contracting unit, which
45 condition requires the depositing of a guarantee in an amount other
46 than 10% of the bid or in excess of \$20,000.00 the provisions of this
47 section shall not apply and the requirements of the law or regulation

1 of the United States shall govern.

2 (cf: P.L.1999, c.39, s.3)

3

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

6 22. a. A person bidding on a contract **【or agreement】** for the
7 erection, alteration or repair of a building, structure, facility or other
8 improvement to real property, the total price of which exceeds
9 \$100,000, shall furnish a certificate from a surety company, as
10 provided for herein. A contracting unit may provide that a person
11 bidding on any other contract shall furnish a certificate from a surety
12 company, as provided for herein.

13 b. When a surety company bond is required in the advertisement
14 or specifications for a contract **【or agreement】**, every contracting unit
15 shall require from any bidder submitting a bid in accordance with
16 plans, specifications and advertisements, as provided for by law, a
17 certificate from a surety company stating that it will provide the
18 contractor with a bond in such sum as is required in the advertisement
19 or in the specifications.

20 This certificate shall be obtained for a bond--

21 (1) For the faithful performance of all provisions of the
22 specifications or for all matters which may be contained in the notice
23 to bidders, relating to the performance of the contract **【or**
24 **agreement】**, and

25 (2) If any be required, for a guarantee bond for the faithful
26 performance of the contract provisions relating to the repair and
27 maintenance of any work, project or facility and its appurtenances and
28 keeping the same in good and serviceable condition during the term
29 of the bond as provided for in the notice to bidders or in the
30 specifications, or

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

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

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

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

39

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

42 23. **【a.】** Advertisements for bids; bids; general requirements. a.
43 All advertisements for bids shall be published in **【a legal】** an official
44 newspaper of the contracting unit sufficiently in advance of the date
45 fixed for receiving the bids to promote competitive bidding, but in no
46 event less than 10 days prior to such date; except that all
47 advertisements for bids on contracts for the collection and disposal of

1 municipal solid waste shall be published in [a legal] an official
2 newspaper of the contracting unit circulating in the county or
3 municipality, and in at least one newspaper of general circulation
4 published in the State, sufficiently in advance of the date fixed for
5 receiving the bids to promote competitive bidding, but not less than 60
6 days prior to that date.

7 b. The advertisement shall designate the manner of submitting and
8 the method of receiving the bids and the time and place at which the
9 bids will be received. If the published specifications provide for
10 receipt of bids by mail, those bids which are mailed to the contracting
11 unit shall be sealed and shall only be opened for examination at such
12 time and place as all bids received are unsealed and announced. At
13 such time and place the contracting agent of the contracting unit shall
14 publicly receive the bids, and thereupon immediately proceed to unseal
15 them and publicly announce the contents, which announcement shall
16 be made in the presence of any parties bidding or their agents, who are
17 then and there present, and shall also make proper record of the prices
18 and terms, upon the minutes of the governing body, if the award is to
19 be made by the governing body of the contracting unit, or in a book
20 kept for that purpose, if the award is to be made by other than the
21 governing body, and in such latter case it shall be reported to the
22 governing body of the contracting unit for its action thereon, when
23 such action thereon is required. No bids shall be received after the time
24 designated in the advertisement.

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

27 1) For all contracts except those for construction work and
28 municipal solid waste collection and disposal service, notice shall be
29 published no later than five days, Saturdays, Sundays, and holidays
30 excepted, prior to the date for acceptance of bids, in an official
31 newspaper of the contracting unit and be provided to any person who
32 has submitted a bid or who has received a bid package, in one of the
33 following ways: i) in writing by certified mail or ii) by certified
34 facsimile transmission, meaning that the sender's facsimile machine
35 produces a receipt showing date and time of transmission and that the
36 transmission was successful or iii) by a delivery service that provides
37 certification of delivery to the sender.

38 2) For all contracts for construction work, notice shall be provided
39 no later than seven days, Saturday, Sundays, or holidays excepted,
40 prior to the date for acceptance of bids, to any person who has
41 submitted a bid or who has received a bid package in any of the
42 following ways: i) in writing by certified mail or ii) by certified
43 facsimile transmission, meaning that the sender's facsimile machine
44 produces a receipt showing date and time of transmission and that the
45 transmission was successful or iii) by a delivery service that provides
46 certification of delivery to the sender.

47 3) For municipal solid waste collection and disposal contracts,
48 notice shall be published in an official newspaper of the contracting

1 unit and in at least one newspaper of general circulation published in
2 the State no later than five days, Saturdays, Sundays, and holidays
3 excepted, prior to the date for acceptance of bids.

4 d. Failure of the contracting unit to advertise for the receipt of bids
5 or to provide proper notification of revisions or addenda to
6 advertisements or bid documents related to bids as prescribed by this
7 section shall prevent the contracting unit from accepting the bids and
8 require the readvertisement for bids pursuant to subsection a. of this
9 section. Failure to obtain a receipt when good faith notice is sent or
10 delivered to the address or telephone facsimile number on file with the
11 contracting unit shall not be considered failure by the contracting unit
12 to provide notice.

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

14

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

17 25. The governing body of any contracting unit may establish
18 reasonable regulations appropriate for controlling the qualifications of
19 prospective bidders upon contracts to be awarded on behalf of the
20 contracting unit, by the class or category of **[work to be performed or**
21 **materials and supplies to be furnished or hired]** goods or services to
22 be provided or performed, which may fix the qualifications required
23 according to the financial ability and experience of the bidders and the
24 capital and equipment available to them pertinent to and reasonably
25 related to the class or category of **[work to be performed or materials**
26 **and supplies to be furnished or hired]** goods or services to be provided
27 or performed in the performance of any such contract, and may require
28 each bidder to furnish a statement thereof; and if such governing body
29 is not satisfied with the qualifications of any bidder as founded upon
30 such statement, it may refuse to furnish **[him]** the bidder with any
31 plans or specifications for any public contract or consider any bid
32 made by **[him]** the bidder for any contract.

33 Prior to the adoption of any such regulations, a contracting unit
34 shall submit them to a public hearing. Notice of the hearing and a
35 general description of the subject matter of the regulations to be
36 adopted shall be published in not less than two newspapers circulating
37 in the county or municipality in which the contracting unit is located.
38 Publication shall precede by at least 20 days the date set in the notice
39 for the hearing. The clerk or secretary of the governing body of the
40 contracting unit shall keep a record of the proceedings and of the
41 testimony of any citizen or prospective bidder. Within 10 days after
42 the completion of the hearings, the proposed regulations and a true
43 copy of the hearings shall be forwarded to the Director of the Division
44 of Local **[Finance]** Government Services for **[his]** the director's
45 approval. This approval shall be indicated by a letter from the director
46 to the governing body of the contracting unit. If the director fails to
47 approve or disapprove the regulations within 30 days of their receipt

1 by **him** the director, they shall take effect without **his** the
2 director's approval. The director may disapprove such proposed
3 regulations only if **he** the director finds that:

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

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

8 (c) They create undue preferences; or

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

10 If the director disapproves such proposed regulations within the
11 30-day period prescribed, they shall be of no force and effect and may
12 not be required as a condition to the acceptance of a bid on any public
13 contract by the contracting unit. Any appeal from a decision of the
14 director to the Local Finance Board shall be subject to the provisions
15 of the Local Government Supervision Act (P.L.1947, c.151,
16 C.52:27BB-1 et seq.).

17 No qualification rating of any bidder shall be influenced by **his** the
18 bidder's race, religion, sex, national origin, nationality or **his** place
19 of residence or business.

20 Nothing contained in this act shall limit the right of any court to
21 review a refusal to furnish any such plans or specifications or **the**
22 consideration or to consider any bid on any contract advertised.

23 Any such governing body may adopt a standard form of statement
24 or questionnaire for bidders on public works **and** contracts, and in
25 such case their action shall be governed as provided herein.

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

27

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

30 26. The governing body of any contracting unit may adopt a
31 standard form of statement or questionnaire for bidders **on public**
32 **works and contracts** and may require from any person proposing to
33 bid upon any such **public work or** contract a statement or answers
34 showing **his** the bidder's financial ability and experience in
35 performing public sector work and describing the equipment available
36 to such bidder in the performance of such **work or** contract, and if
37 not satisfied with the sufficiency of this statement or answers may
38 refuse to furnish plans and specifications to **him** the bidder.

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

40

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

43 27. Such statements and questionnaires shall be standardized for
44 like classes of **work** goods or services to be submitted to
45 prospective bidders who may be required to respond to questions
46 under oath. The statement or answer shall disclose fully the financial
47 ability, adequacy of plant and equipment, organization and prior

1 experience of the prospective bidder, and such other pertinent and
2 material facts as may be required.

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

4

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

7 28. Prospective bidders shall be classified as to the character and
8 amount of **[public work or]** goods or services contracts as to which
9 they shall be qualified to submit bids, and bids shall be accepted only
10 from persons so qualified. The classification shall be made and an
11 immediate notice thereof shall be sent to the prospective bidders by
12 certified or registered mail within 8 days after the date of receipt of
13 the responsive statement or answers.

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

15

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

18 29. If any person, after being notified of **[his]**a classification, shall
19 be dissatisfied therewith or with the classification of other bidders,
20 **[he]** that person may request in writing a hearing before such
21 governing body, and may present such further evidence with respect
22 to the financial responsibility, organization, plant and equipment, or
23 experience of **[himself]** that person or other prospective bidders as
24 might tend to justify a different classification.

25 Where a request is made for the change of classification of another
26 prospective bidder, the applicant therefor shall notify such other bidder
27 by certified or registered mail of the time and place of hearing, as fixed
28 by the governing body, and at the hearing shall present satisfactory
29 evidence that the notice was served as herein required, before any
30 matters pertaining to a change of classification of such other bidder
31 shall be taken up. After hearing such evidence the governing body
32 may, in its discretion, by appropriate action, change or retain the
33 classification of any bidder.

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

38 All requests for change in classification and notice of any action
39 sent by certified or registered mail to the parties directly affected
40 thereby, shall be acted upon by the governing body concerned at least
41 8 days prior to the date fixed for the next opening of bids on any
42 contract or contracts for which such persons might be qualified to bid
43 as a result of the reclassification.

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

45

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

1 31. Any prospective bidder who is dissatisfied with **[his]** an
2 original classification or reclassification may upon receipt of notice
3 thereof, request in writing a hearing of the matter before the board of
4 review. The request shall be filed with the contracting agent and the
5 secretary of the board.

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

8 The board shall review the responsibility of all prospective bidders
9 who have filed statements or answers, considering both the statement,
10 answers and any additional information given at the hearing, and shall
11 certify to the contracting unit concerned, its decision as to the original
12 classifications or reclassifications, if any. The decisions shall be made
13 by a majority vote.

14 In order for any change in classification by the board to be effective
15 for **[public work or]** a contract previously advertised, the request shall
16 be filed not less than 5 days prior to the final day for submission of
17 bids, and the board shall hold a hearing and act upon the request not
18 less than 2 days prior to the date fixed for the next opening of bids on
19 any public **[work or]** works contract for which such prospective
20 bidders might be qualified to bid as a result of the reclassification.
21 (cf: P.L.1971, c.198, s.31)
22

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

25 32. Nothing herein contained shall be construed as depriving any
26 **[contracting agent]** governing body of the right to reject a bid at any
27 time prior to the actual award of a **[public work or]** contract, where
28 the circumstances of the prospective bidder have changed subsequent
29 to the qualification and classification of the **[said]** bidder, which in
30 the opinion of the awarding contracting unit would adversely affect
31 the responsibility of the bidder. Before taking final action on any such
32 bid, the contracting agent concerned shall notify the **[said]** bidder and
33 afford **[him]** the bidder an opportunity to present any additional
34 information which might tend to sustain the existing classification.

35 No person shall be qualified to bid on any **[public work or]**
36 contract unless **[he]** that person shall have submitted a statement or
37 answers as herein required within a period of 6 months preceding the
38 date of opening of bids for the **[public work or]** contract, if the
39 bidders thereon are required to be classified hereunder. In any case
40 where the contracting unit shall require classification of the bidders
41 in compliance with these sections, each bidder on any **[public work**
42 **or]** contract shall be required to submit a statement listing the
43 changes in the statement or answers herein required as part of **[his]**
44 the bidder's bid submission.

45 (cf: P.L.1971, c.198, s.32)
46

47 39. Section 36 of P.L.1971, c.198 (C.40A:11-36) is amended to

1 read as follows:

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

5 (1) If the estimated fair value of the property to be sold exceeds
6 **[\$2,500.00]** 15 percent of the bid threshold in any one sale and it is
7 neither livestock nor perishable goods, it shall be sold at public sale
8 to the highest bidder.

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

14 (3) Notice of the date, time and place of the public sale together
15 with a description of the items to be sold and the conditions of sale
16 shall be published in **[a]** an official newspaper **[circulating in the**
17 **contracting unit]**. Such sale shall be held not less than 7 nor more
18 than 14 days after the latest publication of the notice thereof.

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

28 (5) A contracting unit may reject all bids if it determines such
29 rejection to be in the public interest. In any case in which the
30 contracting unit has rejected all bids, it may readvertise such personal
31 property for a subsequent public sale. If it elects to reject all bids at
32 a second public sale, pursuant to this section, it may then sell such
33 personal property without further publication or notice thereof at
34 private sale, provided that in no event shall the negotiated price at
35 private sale be less than the highest price of any bid rejected at the
36 preceding two public sales and provided further that in no event shall
37 the terms or conditions of sale be changed or amended.

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

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

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

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

3 37. The Division of Local **Finance** Government Services in the
4 Department of Community Affairs is hereby authorized to assist
5 contracting units in all matters affecting the administration of this law.
6 (cf: P.L.1971, c.198, s.37)

7

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

9 40:8-2. The governing body of any municipality may acquire,
10 establish, construct, own, control, lease, equip, improve, maintain,
11 operate and regulate airports or landing fields for the use of airplanes
12 and other aircraft within or without the limits of such municipality and
13 may use for such purpose or purposes any property, owned or
14 controlled by such municipality, suitable therefor, provided that the
15 provision or performance of goods or services in connection with the
16 operation, management or administration of an airport shall be done
17 pursuant to the "Local Public Contracts Law," P.L.1971, c.198
18 (C.40A:11-1 et seq.) and any supplements thereto.

19 (cf: P.L.1947, c.85, s.1)

20

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

22 40:8-3. The governing body of any county may acquire, by lease
23 or purchase, and establish, construct, own, control, lease, equip,
24 improve, maintain, operate and regulate airports or landing fields for
25 the use of airplanes and other aircraft within the limits of such
26 counties, and may use for such purpose or purposes any property,
27 owned or controlled by such county, suitable therefor, provided that
28 the provision or performance of goods or services in connection with
29 the operation, management or administration of an airport shall be
30 done pursuant to the "Local Public Contracts Law," P.L.1971, c.198
31 (C.40A:11-1 et seq.) and any supplements thereto.

32 (cf: R.S.40:8-3)

33

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

35 40:8-6. The governing body of a municipality or county which has
36 established an airport or landing field and acquired, leased or set apart
37 real property for such purpose may construct, improve, equip,
38 maintain and operate the same, or may vest jurisdiction for the
39 construction, improvement, equipment, maintenance and operation
40 thereof, in any suitable officer, board or body of such municipality or
41 county. Provision or performance of goods or services in connection
42 with the operation, management or administration of an airport shall
43 be done pursuant to the "Local Public Contracts Law," P.L.1971,
44 c.198 (C.40A:11-1 et seq.) and any supplements thereto. The
45 expenses of such construction, improvement, equipment, maintenance
46 and operation shall be a municipal or county charge, as the case may
47 be.

48 The governing body of any municipality or county may adopt

1 regulations and establish fees or charges for the use of such airport or
2 landing field, or may authorize an officer, board or body of such
3 municipality or county having jurisdiction to adopt such regulations
4 and establish such fees or charges, subject, however, to the approval
5 of such governing body before they shall take effect.

6 (cf: R.S.40:8-6)

7

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

15

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

21 a. The purchase or licensing of proprietary computer software
22 designed for board of education purposes, which may include
23 hardware intended for use with the proprietary software. This
24 subsection shall not be utilized for the purpose of acquiring general
25 purpose computer hardware or software;

26 b. The hiring of a for-profit entity or a not-for-profit entity
27 incorporated under Title 15A of the New Jersey Statutes for the
28 purpose of:

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

31 (2) the operation, management or administration of data processing
32 services;

33 c. Services performed by an energy services company, including
34 the design, measurement, financing and maintenance of energy savings
35 equipment or renovations, which result in payment derived, in whole
36 or in part, from the sale of verified energy savings over the term of an
37 agreement with a public utility or subsidiary, but not the provision or
38 performance of the physical improvements that result in energy
39 savings, provided that such savings are calculated pursuant to
40 guidelines promulgated by the Board of Public Utilities and further
41 provided that the Local Finance Board, in consultation with the State
42 Board of Education, shall find that the terms and conditions of any
43 financing agreement are reasonable;

44 d. Telecommunications transmission or switching services that are
45 not part of a tariff or schedule of charges filed with the Board of
46 Public Utilities;

47 e. The purchase of specialized machinery or equipment of a
48 technical nature, or servicing thereof, which will not reasonably permit

1 the drawing of specifications;

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

5 g. Driver education courses provided by licensed driver education
6 schools;

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

9 i. Laboratory testing services;

10 j. Concessions;

11 k. The operation, management or administration of other services,
12 with the approval of the Division of Local Government Services in the
13 Department of Community Affairs.

14 Any purpose included herein shall not be considered by a board of
15 education as an extraordinary unspecifiable service pursuant to
16 paragraph (2) of subsection a. of N.J.S.18A:18A-5.

17

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

22

23 47. (New section) a. In order to initiate competitive contracting,
24 the board of education shall pass a resolution authorizing the use of
25 competitive contracting each time specialized goods or services
26 enumerated in section 45 of P.L. , c. (C.) (pending before the
27 Legislature as this bill) are desired to be contracted. If the desired
28 goods or services have previously been contracted for using the
29 competitive contracting process then the original resolution of the
30 board of education shall suffice.

31 b. The competitive contracting process shall be administered by a
32 purchasing agent qualified pursuant to subsection b. (pending before
33 the Legislature as section 15 of this bill) of section 9 of P.L.1971,
34 c.198 (C.40A:11-9) or by legal counsel of the board of education, or
35 by the school business administrator of the board of education. Any
36 contracts awarded under this process shall be made by resolution of
37 the board of education subject to the provisions of subsection e. of
38 section 49 of P.L. , c. (C.)(now before the Legislature as this bill).

39

40 48. (New section) The competitive contracting process shall utilize
41 request for proposals documentation in accordance with the following
42 provisions:

43 a. The purchasing agent or counsel or school business
44 administrator shall prepare or have prepared request for proposal
45 documentation, which shall include: all requirements deemed
46 appropriate and necessary to allow for full and free competition
47 between vendors; information necessary for potential vendors to
48 submit a proposal; and a methodology by which the board of education

1 will evaluate and rank proposals received from vendors.

2 b. The methodology for the awarding of competitive contracts shall
3 be based on an evaluation and ranking, which shall include technical,
4 management, and cost related criteria, and may include a weighting of
5 criteria, all developed in a way that is intended to meet the specific
6 needs of the contracting unit, and where such criteria shall not unfairly
7 or illegally discriminate against or exclude otherwise capable vendors.
8 When an evaluation methodology uses a weighting of criteria, at the
9 option of the board of education the weighting to be accorded to each
10 criterion may be disclosed to vendors prior to receipt of the proposals.
11 The methodology for awarding competitive contracts shall comply
12 with such rules and regulations as the Director of the Division of Local
13 Government Services in the Department of Community Affairs, after
14 consultation with the Commissioner of Education may adopt pursuant
15 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
16 et seq.).

17 c. At no time during the proposal solicitation process shall the
18 purchasing agent or counsel or school business administrator convey
19 information, including price, to any potential vendor which could
20 confer an unfair advantage upon that vendor over any other potential
21 vendor. If a purchasing agent or counsel or school business
22 administrator desires to change proposal documentation, the
23 purchasing agent or counsel or school business administrator shall
24 notify only those potential vendors who received the proposal
25 documentation of any and all changes in writing and all existing
26 documentation shall be changed appropriately .

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

32

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

35 a. A notice of the availability of request for proposal
36 documentation shall be published in an official newspaper of the board
37 of education at least 20 days prior to the date established for the
38 submission of proposals. The board of education shall promptly reply
39 to any request by an interested vendor by providing a copy of the
40 request for proposals. The board of education may charge a fee for
41 the proposal documentation that shall not exceed \$50.00 or the cost
42 of reproducing the documentation, whichever is greater.

43 b. Each interested vendor shall submit a proposal which shall
44 include all the information required by the request for proposals.
45 Failure to meet the requirements of the request for proposals may
46 result in the board of education disqualifying the vendor from further
47 consideration. Under no circumstances shall the provisions of a
48 proposal be subject to negotiation by the board of education.

1 c. If the board of education, at the time of solicitation, utilizes its
2 own employees to provide the goods or perform the services, or both
3 considered for competitive contracting, the board of education shall,
4 at any time prior to, but no later than the time of solicitation for
5 competitive contracting proposals, notify affected employees of the
6 board of education's intention to solicit competitive contracting
7 proposals. Employees or their representatives shall be permitted to
8 submit recommendations and proposals affecting wages, hours, and
9 terms and conditions of employment in such a manner as to meet the
10 goals of the competitive contract. If employees are represented by an
11 organization that has negotiated a contract with the board of
12 education, only the bargaining unit shall be authorized to submit such
13 recommendations or proposals. When requested by such employees,
14 the board of education shall provide such information regarding
15 budgets and the costs of performing the services by such employees as
16 may be available. Nothing shall prevent such employees from making
17 recommendations that may include modifications to existing labor
18 agreements in order to reduce such costs in lieu of award of a
19 competitive contract, and agreements implementing such
20 recommendations may be considered as cause for rejecting all other
21 proposals.

22 d. The purchasing agent or counsel or school business
23 administrator shall evaluate all proposals only in accordance with the
24 methodology described in the request for proposals. After proposals
25 have been evaluated, the purchasing agent or counsel or school
26 business administrator shall prepare a report evaluating and
27 recommending the award of a contract or contracts. The report shall
28 list the names of all potential vendors who submitted a proposal and
29 shall summarize the proposals of each vendor. The report shall rank
30 vendors in order of evaluation, shall recommend the selection of a
31 vendor or vendors, as appropriate, for a contract, shall be clear in the
32 reasons why the vendor or vendors have been selected among others
33 considered, and shall detail the terms, conditions, scope of services,
34 fees, and other matters to be incorporated into a contract. The report
35 shall be made available to the public at least 48 hours prior to the
36 awarding of the contract, or when made available to the board of
37 education, whichever is sooner. The board of education shall have the
38 right to reject all proposals for any of the reasons set forth in
39 N.J.S.18A:18A-22.

40 e. Award of a contract shall be made by resolution of the board of
41 education within 60 days of the receipt of the proposals, except that
42 the proposals of any vendors who consent thereto, may, at the request
43 of the board of education, be held for consideration for such longer
44 period as may be agreed.

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

1 g. The secretary of the board of education shall publish a notice in
2 the official newspaper of the board of education summarizing the
3 award of a contract, which shall include but not be limited to, the
4 nature, duration, and amount of the contract, the name of the vendor
5 and a statement that the resolution and contract are on file and
6 available for public inspection in the office of the secretary of the
7 board of education.

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

15

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

17 18A:18A-2. As used in this chapter, unless the context otherwise
18 indicates:

19 a. "Board of education" means and includes the board of education
20 of any local school district, consolidated school district, regional
21 school district, county vocational school and any other board of
22 education or other similar body other than the State Board of
23 Education, the Commission on Higher Education or the Presidents'
24 Council, established and operating under the provisions of Title 18A
25 of the New Jersey Statutes and having authority to make purchases
26 and to enter into contracts[, agreements or leases] for the provision
27 or performance of [any work or the furnishing or hiring of any
28 materials, supplies, equipment or services usually required, the cost or
29 contract price is to be paid with or out of board funds] goods or
30 services. The term "board of education" also shall include the board
31 of trustees of a charter school established under P.L.1995, c.426
32 (C.18A:36A-1 et seq.).

33 b. "[Contracting] Purchasing agent" means the secretary, business
34 administrator or the business manager of the board of education duly
35 assigned the authority, responsibility and accountability for the
36 purchasing activity of the board of education and having the power to
37 prepare advertisements, to advertise for and receive bids and to [make
38 awards for the board of education in connection with purchases,]
39 award contracts [or agreements] as permitted by this chapter, but if
40 there be no secretary, business administrator or business manager,
41 such officer, committees or employees to whom such power has been
42 delegated by the board of education.

43 c. ["Contracts" for the purpose of this chapter means contracts
44 or agreements for the performance of work or the furnishing or hiring
45 of services, materials, or supplies as distinguished from contracts of
46 employment.] (Deleted by amendment, P.L. , c. .) (Pending before
47 the Legislature as this bill.)

- 1 d. "District" means and includes any local school district,
2 consolidated school district, regional school district, county vocational
3 school and any other board of education or other similar body other
4 than the State board, established under the provisions of Title 18A of
5 the New Jersey Statutes.
- 6 e. ~~["Legal newspaper" means a newspaper circulating in the
7 district, printed and published in the English language at least once a
8 week for at least one year continuously.] (Deleted by amendment,
9 P.L. , c. .) (Pending before the Legislature as this bill.)~~
- 10 f. ~~["Materials" includes goods and property subject to Article 2 of
11 Title 12A of the New Jersey Statutes, apparatus, or any other tangible
12 thing, except real property or any interest therein .] (Deleted by
13 amendment, P.L. , c. .) (Pending before the Legislature as this bill.)~~
- 14 g. "Extraordinary unspecifiable services" means services which are
15 specialized and qualitative in nature requiring expertise, extensive
16 training and proven reputation in the field of endeavor.
- 17 h. "Professional services" means services rendered or performed
18 by a person authorized by law to practice a recognized profession and
19 whose practice is regulated by law and the performance of which
20 services requires knowledge of an advanced type in a field of learning
21 acquired by a prolonged formal course of specialized instruction and
22 study as distinguished from general academic instruction or
23 apprenticeship and training. Professional services may also ~~["means"]~~
24 mean services rendered in the provision or performance of [work]
25 goods or services that ~~["is"]~~ are original and creative in character in a
26 recognized field of artistic endeavor.
- 27 i. ~~["Project" means any work, undertaking, construction or
28 alteration.] (Deleted by amendment, P.L. , c. .) (Pending before the
29 Legislature as this bill.)~~
- 30 j. "Purchases" ~~["are"]~~ means transactions, for a valuable
31 consideration, creating or acquiring an interest in goods, services and
32 property, except real property or any interest therein.
- 33 k. "Work" ~~["includes services and any other activity of a tangible
34 or intangible nature"]~~ means any task, program, undertaking, or
35 activity, related to any development, redevelopment, construction or
36 reconstruction performed or ["assumed"] provided pursuant to a
37 contract [or agreement] with a board of education.
- 38 l. "Aggregate" means the sums expended or to be expended for the
39 provision or performance of any goods or services in connection with
40 the same immediate purpose or task, or the furnishing of similar goods
41 or services, during the same contract year through a contract awarded
42 by a purchasing agent.
- 43 m. "Bid threshold" means the dollar amount set in N.J.S.18A:18A-
44 3, above which a board of education shall advertise for and receive
45 sealed bids in accordance with procedures set forth in N.J.S.18A:18A-
46 1 et seq.
- 47 n. "Contract" means any agreement, including but not limited to a

1 purchase order or a formal agreement, which is a legally binding
2 relationship enforceable by law, between a vendor who agrees to
3 provide or perform goods or services and a board of education which
4 agrees to compensate a vendor, as defined by and subject to the terms
5 and conditions of the agreement. A contract also may include an
6 arrangement whereby a vendor compensates a board of education for
7 the vendor's right to perform a service, such as, but not limited to,
8 operating a concession.

9 o. "Contract year" means the period of 12 consecutive months
10 following the award of a contract.

11 p. "Competitive contracting" means the method described in
12 sections 45 through 49 of P.L. , c. (C.) (pending before the
13 Legislature as this bill) of contracting for specialized goods and
14 services in which formal proposals are solicited from vendors; formal
15 proposals are evaluated by the purchasing agent or counsel or school
16 business administrator; and the board of education awards a contract
17 to a vendor or vendors from among the formal proposals received.

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

24 r. "Library and educational goods and services" means textbooks,
25 copyrighted materials, student produced publications and services
26 incidental thereto, including but not limited to books, periodicals,
27 newspapers, documents, pamphlets, photographs, reproductions,
28 microfilms, pictorial or graphic works, musical scores, maps, charts,
29 globes, sound recordings, slides, films, filmstrips, video and magnetic
30 tapes, other printed or published matter and audiovisual and other
31 materials of a similar nature, necessary binding or rebinding of library
32 materials, and specialized computer software used as a supplement or
33 in lieu of textbooks or reference material.

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

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

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

41 v. "Purchase order" means a document issued by the purchasing
42 agent authorizing a purchase transaction with a vendor to provide or
43 perform goods or services to the board of education, which, when
44 fulfilled in accordance with the terms and conditions of a request of a
45 purchasing agent and other provisions and procedures that may be
46 established by the board of education, will result in payment by the
47 board of education.

48 w. "Quotation" means the response to a formal or informal request

1 made by a purchasing agent to a vendor for provision or performance
2 of goods or services, when the aggregate cost is less than the bid
3 threshold. Quotations may be in writing, or taken verbally if a record
4 is kept by the purchasing agent.

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

10 y. "Responsive" means conforming in all material respects to the
11 terms and conditions, specifications, legal requirements, and other
12 provisions of the request.

13 z. "Public works" means building, altering, repairing, improving or
14 demolishing any public structure or facility constructed or acquired by
15 a board of education to house school district functions or provide
16 water, waste disposal, power, transportation and other public
17 infrastructures.

18 aa. "Concession" means the granting of a license or right to act for
19 or on behalf of the board of education, or to provide a service
20 requiring the approval or endorsement of the board of education, and
21 which may or may not involve a payment or exchange, or provision of
22 services by or to the board of education, provided that the term
23 concession shall not include vending machines.

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

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

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

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

41
42 51. N.J.S.18A:18A-3 is amended to read as follows:

43 18A:18A-3. **[a. Any purchase, contract or agreement for the**
44 **performance of any work or the furnishing or hiring of materials or**
45 **supplies,]**

46 **a. When** the cost or price of **[**which, together with any other sums
47 expended or foreseeably to be expended for the performance of any
48 work or services in connection with the same project or the furnishing

1 of similar materials or supplies during the same fiscal year paid with or
2 out of school funds] any contract awarded by the purchasing agent in
3 the aggregate, does not exceed in a contract year the total sum of
4 [\$7,500.00 or the amount determined pursuant to subsection b. of this
5 section, in the fiscal year or, in the case of purchases that are not
6 annually recurring, in a period of one year] \$17,500, the contract may
7 be [made, negotiated and] awarded by a [contracting] purchasing
8 agent when so authorized by resolution of the board of education
9 without public advertising for bids and bidding therefor, except that
10 the board of education may adopt a resolution to set a lower threshold
11 for the receipt of public bids or the solicitation of competitive
12 quotations. If the purchasing agent is qualified pursuant to subsection
13 b. (pending before the Legislature as section 15 of this bill) of section
14 9 of P.L.1971, c.198 (C.40A:11-9) the board of education may
15 establish that the bid threshold may be up to \$25,000. Such
16 authorization may be granted for each contract or by a general
17 delegation of the power to negotiate and award such contracts
18 pursuant to this section.

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

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

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

41

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

43 18A:18A-4. a. Every contract [or agreement] for the provision or
44 performance of any [work or the furnishing or hiring of any materials
45 or supplies] goods or services, the cost [or the contract price whereof
46 is to be paid with or out of school funds, not included within the terms
47 of N.J.S.18A:18A-3] of which in the aggregate exceeds the bid

1 threshold, shall be ~~made and~~ awarded only by resolution of the
2 board of education to the lowest responsible bidder after public
3 advertising for bids and bidding therefor, except as is provided
4 otherwise in this chapter or specifically by any other law.

5 ~~【No work, materials or supplies shall be undertaken, acquired or~~
6 ~~furnished for a sum exceeding in the aggregate the amount set forth in,~~
7 ~~or calculated by the Governor pursuant to, N.J.S. 18A:18A-3, except~~
8 ~~by contract or agreement.】~~The board of education may, by resolution
9 approved by a majority of the board of education and subject to
10 subsections b. and c. of this section, disqualify a bidder who would
11 otherwise be determined to be the lowest responsible bidder, if the
12 board of education finds that it has had prior negative experience with
13 the bidder.

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

16 (1) the bidder has been found, through either court adjudication,
17 arbitration, mediation, or other contractually stipulated alternate
18 dispute resolution mechanism, to have: failed to provide or perform
19 goods or services; or failed to complete the contract in a timely
20 manner; or otherwise performed unsatisfactorily under a prior contract
21 with the board of education;

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

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

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

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

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

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

42 (3) The bidder shall be furnished by the board of education with a
43 written notice (a)stating that a disqualification is being considered; (b)
44 setting forth the reason for the disqualification; and (c) indicating that
45 the bidder shall be accorded an opportunity for a hearing before the
46 board of education if the bidder so requests within a stated period of
47 time. At the hearing, the bidder shall show good cause why the bidder
48 should not be disqualified by presenting documents and testimony. If

1 the board of education determines that good cause has not been shown
2 by the bidder, it may vote to find the bidder lacking in responsibility
3 and, thus, disqualified.

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

6 (5) A disqualification may be voided or the period thereof may be
7 reduced, in the discretion of the board of education, upon the
8 submission of a good faith application under oath, supported by
9 documentary evidence, setting forth substantial and appropriate
10 grounds for the granting of relief, such as reversal of a judgment, or
11 actual change of ownership, management or control of the bidder.

12 (6) An opportunity for a hearing need not be offered to a bidder
13 whose disqualification is based on its suspension or debarment by an
14 agency or department of the executive branch of the State of New
15 Jersey. The term of such a disqualification shall be concurrent with
16 the term of the suspension or debarment by the State agency or
17 department.

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

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

23

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

25 18A:18A-5. Exceptions to requirement for advertising. Any
26 **[purchase,]** contract **[or agreement of the character described in**
27 **N.J.S.18A:18A-4 may],** the amount of which exceeds the bid
28 threshold, shall be [made,] negotiated [or] and awarded by the board
29 of education by resolution at a public meeting without public
30 advertising for bids and bidding therefor if

31 a. The subject matter thereof consists of:

32 (1) Professional services. The board of education shall in each
33 instance state supporting reasons for its action in the resolution
34 awarding each contract and shall forthwith cause to be printed once,
35 in an official newspaper, a brief notice stating the nature, duration,
36 service and amount of the contract, and that the resolution and
37 contract are on file and available for public inspection in the office of
38 the board of education;

39 (2) Extraordinary unspecifiable services which cannot reasonably
40 be described by written specifications[, which]. The application of
41 this exception as to extraordinary unspecifiable services shall be
42 construed narrowly in favor of open competitive bidding where
43 possible and the [State Board of Education] Director of the Division
44 of Local Government Services in the Department of Community
45 Affairs is authorized to establish rules and regulations after
46 consultation with the Commissioner of Education limiting its use in
47 accordance with the intention herein expressed; and the board of

1 education shall in each instance state supporting reasons for its action
2 in the resolution awarding the contract for extraordinary unspecifiable
3 services and shall forthwith cause to be printed, in the manner set forth
4 in paragraph (1) of this subsection, a brief notice of the award of such
5 contract;

6 (3) The doing of any work by employees of the **【contracting unit】**
7 **board of education;**

8 (4) The printing of all legal notices; and legal briefs, records and
9 appendices to be used in any legal proceeding in which the
10 **【contracting party】 board of education** may be a party;

11 (5) **【Textbooks, copyrighted materials, kindergarten supplies, and**
12 **student produced publications and services incidental thereto】 Library**
13 **and educational goods and services;**

14 (6) Food **【services and】** supplies, including food supplies for home
15 economics classes, when purchased pursuant to rules and regulations
16 of the State board and in accordance with the provisions of
17 N.J.S.18A:18A-6;

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

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

24 (9) Equipment repair service if in the nature of an extraordinary
25 unspecifiable service and necessary parts furnished in connection with
26 such services, which exception shall be in accordance with the
27 requirements for extraordinary unspecifiable services;

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

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

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

34 (13) **【Election expenses, including advertising expenses incidental**
35 **thereto】 Those goods and services necessary or required to prepare**
36 **and conduct an election;**

37 (14) **【Electronic data processing service obtained from another**
38 **board of education;】 (Deleted by amendment, P.L. .c. .) (Pending**
39 **before the Legislature as this bill.)**

40 (15) **【Driver education courses provided by licensed driver**
41 **education schools;】 (Deleted by amendment, P.L. .c. .) (Pending**
42 **before the Legislature as this bill.)**

43 (16) **【Performance of work or services or the furnishing of**
44 **materials, supplies or equipment for the purpose of conserving energy**
45 **in buildings owned by any local board of education, the entire price of**
46 **which shall be established as a percentage of the resultant savings in**
47 **energy costs;】 (Deleted by amendment, P.L. .c. .) (Pending before**

1 the Legislature as this bill.)

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

4 (18) Expenses for travel and conferences;

5 (19) 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 acquire or update non-
9 proprietary software;

10 (20) Purchases of goods and services at rates set by the Universal
11 Service Fund administered by the Federal Communications
12 Commission;

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

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

21 (23) Vending machines providing food or drink.

22 b. It is to be made or entered into with the United States of
23 America, the State of New Jersey, county or municipality or any
24 board, body, officer, agency **[or]**, authority or board of education or
25 any other state or subdivision thereof.

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

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

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

11 (c) Any minor amendment or modification of any of the terms,
12 conditions, restrictions and specifications which were the subject of
13 **[the]** competitive bidding pursuant to N.J.S.18A:18A-4 shall be stated
14 in the resolution awarding the contract; provided further, however,
15 that if on the second occasion the bids received are rejected as
16 unreasonable as to price, the board of education shall notify each
17 responsible bidder submitting bids on the second occasion of its
18 intention to negotiate, and afford each bidder a reasonable opportunity
19 to negotiate, but the board of education shall not award such contract
20 unless the negotiated price is lower than the lowest rejected bid price
21 submitted on the second occasion by a responsible bidder, is the
22 lowest negotiated price offered by any responsible vendor, and is a
23 reasonable price for such goods or services.

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

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

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

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

43 (4) The negotiated price is lower than the price of the same or
44 equivalent materials or supplies available from the State, county or
45 municipality in which the board of education is located. **]**

46 Whenever a board of education shall determine that a bid was not
47 arrived at independently in open competition pursuant to **[this]**

1 subsection **[d.] c.(2)** of N.J.S.18A:18A-5, it shall thereupon notify the
2 county prosecutor of the county in which the board of education is
3 located and the Attorney General of the facts upon which its
4 determination is based, and when appropriate, it may institute
5 appropriate proceedings in any State or federal court of competent
6 jurisdiction for a violation of any State or federal antitrust law or laws
7 relating to the unlawful restraint of trade.

8 e. The board of education has solicited and received at least three
9 quotations on materials, supplies or equipment for which a State
10 contract has been issued pursuant to N.J.S.18A:18A-10, and the
11 lowest responsible quotation is at least 10% less than the price the
12 board would be charged for the identical materials, supplies or
13 equipment, in the same quantities, under the State contract. Any such
14 contract or agreement entered into pursuant to subsection d. or
15 subsection e. may be made, negotiated or awarded only upon adoption
16 of a resolution by the affirmative vote of two-thirds of the full
17 membership of the board of education at a meeting thereof authorizing
18 such a contract or agreement.

19 (cf: P.L.1995, c.265, s.1)

20
21 54. N.J.S.18A:18A-7 is amended to read as follows:

22 18A:18A-7. Emergency **[purchases and]** contracts. Any
23 **[purchase,]** contract **[or agreement]** may be **[made,]** negotiated or
24 awarded for a board of education without public advertising for bids
25 and bidding therefor, notwithstanding that the **[cost or]** contract
26 price will exceed the **[amount set forth in, or calculated by the]**
27 **Governor pursuant to, N.J.S.18A:18A-3]** bid threshold when an
28 emergency affecting the health or safety of occupants of school
29 property requires the immediate delivery of **[the articles]** goods or
30 the performance of **[the service]** services, provided that the
31 **[awarding or making of such purchases,]** contracts **[or agreements]**
32 **are made]** are awarded in the following manner:

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

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

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

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

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

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

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

19

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

21 18A:18A-8. Contracts not to be divided. **【 No purchase, contract**
22 or agreement, which is single in character or which necessarily or by
23 reason of the quantities required to effectuate the purpose of the
24 purchase, contract or agreement, includes the furnishing of additional
25 services or equipment or buying materials or supplies or the doing of
26 additional work, shall be subdivided, so as to bring it or any of the
27 parts thereof under the maximum price or cost limitation of the
28 amount set forth in, or calculated by the Governor pursuant to, N.J.S.
29 18A:18A-3, thus dispensing with the requirement of public advertising
30 and bidding therefor. In purchasing or contracting for, or agreeing
31 for the furnishing of, any services, equipment, materials or supplies,
32 the doing of any work included in or incident to the performance or
33 completion of any project, which is single in character or inclusive of
34 the furnishing of additional services or equipment or buying materials
35 or supplies or the doing of additional work, or which requires the
36 furnishing of more than one article of equipment or buying materials
37 or supplies, all of the services, materials or supplies requisite for the
38 completion of such project shall be included in one purchase, contract
39 or agreement.】 a. No contract in the aggregate which is single in
40 character or which necessarily or by reason of the quantities required
41 to effectuate the purpose of the contract includes the provision or
42 performance of additional goods or services, shall be divided, so as to
43 bring it or any of the parts thereof under the bid threshold, for the
44 purpose of dispensing with the requirement of public advertising and
45 bidding therefor.

46 b. In contracting for the provision or performance of any goods or
47 services included in or incidental to the provision or performance of

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

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

6
7 56. (New section) For the purpose of ensuring consistency
8 between the "Local Public Contracts Law, " P.L.1971, c.198
9 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"
10 N.J.S.18A:18A-1 et seq., the Director of the Division of Local
11 Government Services in the Department of Community Affairs, after
12 consultation with the Commissioner of Education, and pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.), shall adopt rules concerning determinations of aggregation for
15 the purposes of whether a contract is subject to public bidding as set
16 forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4
17 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and
18 N.J.S.18A:18A-8.

19

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

21 18A:18A-9. Periodic solicitation of bids. Every board of education
22 shall, on an annual basis or at such lesser intervals to be fixed by it,
23 solicit by public advertisement the submission of bids for the
24 **[furnishing of all work, materials and supplies]** provision or
25 performance of goods or services which are and which under
26 N.J.S.18A:18A-4 can be **[purchased or agreed or]** contracted to be
27 **[furnished]** provided or performed only after public advertisement for
28 bids and bidding therefor and all **[purchases, or]** contracts **[or**
29 **agreements for the furnishing, of such work, materials and supplies]**
30 for the provision or performance of such goods or services shall be
31 **[made and]** awarded only in that manner.

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

33

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

35 18A:18A-10. Board of education purchases through State agency;
36 procedure. a. A board of education, without advertising for bids, or
37 after having rejected all bids obtained pursuant to advertising therefor,
38 by resolution may purchase any **[materials, supplies,]** goods~~[,]~~ or
39 services **[or equipment]** pursuant to a contract or contracts for such
40 **[materials, supplies ,]** goods~~[,]~~ or services **[or equipment]** entered
41 into on behalf of the State by the Division of Purchase and Property.

42 b. A board of education may also use, without advertising for bids,
43 or having rejected all bids obtained pursuant to advertising, the
44 Federal Supply Schedules of the General Services Administration **[as**
45 **permitted by the "Federal Acquisition Streamlining Act of 1994,"**
46 **Pub.L.103-355, and federal regulations adopted thereunder.]**
47 promulgated by the Director of the Division of Purchase and Property

1 in the Department of the Treasury pursuant to section 1 of P.L.1996,
2 c.16 (C.52:34-6.1), subject to the following conditions:

3 (1) the price of the goods being procured is no greater than the
4 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 board of education; and

9 (3) the board of education receives the benefit of federally
10 mandated price reductions during the term of the contract and is
11 protected from price increases during that time.

12 c. Whenever a purchase is made, the board of education shall place
13 its order with the vendor offering the lowest price, including delivery
14 charges, that best meets the requirements of the board of education.
15 Prior to placing such an order, the board of education shall document
16 with specificity that the **[materials, supplies,] goods[,] or services [or**
17 **equipment]** selected best meet the requirements of the board of
18 education.

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

20

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

22 18A:18A-11. Joint purchases by districts, municipalities, counties;
23 authority. The boards of education of two or more districts may
24 provide jointly by agreement for the **[purchasing of supplies, materials**
25 **or work]** provision and performance of goods and services for their
26 respective districts, or one or more boards of education may provide
27 for such **[purchases]** provision or performance of goods or services
28 by joint agreement with the governing body of **[the] any** municipality
29 or county **[within whose boundaries any such district is wholly or**
30 **partly located]**.

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

32

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

34 18A:18A-12. Contents of agreement. a. Such agreements shall be
35 entered into by resolution adopted by each participating board of
36 education, municipality or county and shall set forth the categories of
37 **[work, materials and supplies]** goods or services to be **[purchased]**
38 provided or performed, the manner of advertising for bids and of
39 awarding of contracts, the method of payment by each participating
40 board of education, municipality or county, and other matters deemed
41 necessary to carry out the purposes of the agreement.

42 b. Each participant's share of expenditures for purchases under any
43 such agreement shall be appropriated and paid in the manner set forth
44 in the agreement and in the same manner as for other expenses of the
45 participant.

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

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

2 18A:18A-13. Purchases and agreements subject to law and rules
3 and regulations. Such purchases and all **【agreements】** contracts
4 pertaining thereto shall be subject to all provisions of law and the
5 applicable rules and regulations of the State board.

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

7

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

9 18A:18A-14. Controversies or disputes; determination; appeal.
10 In the event that any controversy or dispute shall arise among the
11 parties (except a municipality or county) to any such **【agreement】**
12 contract, the same shall be referred to the county superintendent of the
13 county in which the districts are situate for determination and his
14 determination thereon shall be binding, subject to appeal to the
15 commissioner and the State board pursuant to law. In the event that
16 the districts are in more than one county, the controversy or dispute
17 shall be referred to the county superintendents of the counties for joint
18 determination, and if they shall be unable to agree upon a joint
19 determination within 30 days, the controversy or dispute shall be
20 referred to the commissioner for determination.

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

22

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

24 18A:18A-15. Specifications generally. Any specifications for **【an**
25 acquisition】 the provision or performance of goods or services under
26 this chapter**【, whether by purchase, contract or agreement,】** shall be
27 drafted in a manner to encourage free, open and competitive bidding.
28 In particular, no specifications under this chapter may:

29 a. Require any standard, restriction, condition or limitation not
30 directly related to the purpose, function or activity for which the
31 **【purchase,】** contract **【or agreement】** is **【made】** awarded; or

32 b. Require that any bidder be a resident of, or that **【his】** the
33 bidder's place of business be located in, the county or school district
34 in which the **【purchase】** contract will be**【made】** awarded or **【the**
35 contract or agreement】 performed, unless the physical proximity of the
36 bidder is requisite to the efficient and economical **【purchase or】**
37 performance of the contract **【or agreement】**; or

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

42 d. Require, with regard to any **【purchase,】** contract **【or**
43 agreement】, the furnishing of any "brand name," but may in all cases
44 require "brand name or equivalent," except that if the **【materials】**
45 goods or services to be **【supplied or purchased】** provided or
46 performed are **【patented or copyrighted】** proprietary, such **【materials**
47 or supplies】 goods or services may be purchased by stipulating the

1 proprietary goods or services in the bid specification in any case in
2 which the resolution authorizing the [purchase,] contract[, sale or
3 agreement] so indicates, and the special need for such [patented or
4 copyrighted [materials or supplies] proprietary goods or services is
5 directly related to the performance, completion or undertaking of the
6 purpose for which the [purchase,] contract [or agreement] is [made]
7 awarded; or

8 e. Fail to include any option for renewal, extension, or release
9 which the board of education may intend to exercise or require; or any
10 terms and conditions necessary for the performance of any extra work;
11 or fail to disclose any matter necessary to the substantial performance
12 of the contract [or agreement].

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

19 Any specification [adopted by the board of education] which
20 knowingly excludes prospective bidders by reason of the impossibility
21 of performance, bidding or qualification by any but one bidder, except
22 as provided herein, shall be null and void and of no effect and [such
23 purchase, contract or agreement] shall be readvertised for receipt of
24 new bids, and the original [purchase,] contract [or agreement] shall
25 be set aside by the board of education.

26 No provision in this section shall be construed to prevent a board
27 of education from designating that a contract[, subcontract or other
28 means of procurement of] for goods[,] or services[, equipment or
29 construction] shall be awarded to a small business enterprise, a
30 minority business enterprise or a women's business enterprise pursuant
31 to P.L.1985, c.490 (C.18A:18A-51 et seq.).

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

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

38

39 64. (New section) Goods or services, the payment for which
40 utilizes only funds received by a board of education from a bequest,
41 legacy or gift, shall be subject to the provisions of N.J.S.18A:18A-1
42 et seq., except that if such bequest, legacy or gift contains written
43 instructions as to the specifications, manufacturer or vendor, or source
44 of supply of the goods or services to be provided or performed, such
45 instructions shall be honored.

46

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

1 18A:18A-18. Separate plans for various types of work; bids;
2 contracts. In the preparation of plans and specifications for the
3 construction, alteration or repair of any building by a board of
4 education, when the entire cost of the work **【and materials】** will
5 exceed the **【amount set forth in, or calculated by the Governor**
6 **pursuant to, N.J.S.18A:18A-3】** bid threshold, separate plans and
7 specifications shall be prepared for each of the following, and all work
8 **【and materials】** kindred thereto to be performed or furnished in
9 connection therewith:

- 10 a. The plumbing and gas fitting work;
11 b. The heating and ventilating systems and equipment;
12 c. The electrical work, including any electrical power plant;
13 d. The structural steel and ornamental iron work;
14 e. All other work **【and materials】** required for the completion of
15 the project.

16 The board of education or its **【contracting】** purchasing agent shall
17 advertise for and receive, in the manner provided by law, (1) separate
18 bids for each of said branches of work, and (2) bids for all the work
19 **【and materials】** , goods and services required to complete the building
20 to be included in a single overall contract. There will be set forth in the
21 bid the name or names of **【**, and evidence of performance security
22 from,**】** all subcontractors to whom the bidder will subcontract the
23 furnishing of plumbing and gas fitting, and all kindred work, and of the
24 heating and ventilating systems and equipment, and electrical work,
25 structural steel and ornamental iron work, each of which
26 subcontractors shall be qualified in accordance with **【this chapter】**
27 N.J.S.18A:18A-1 et seq. The school district shall require evidence of
28 performance security to be submitted simultaneously with the list of
29 the subcontractors. Evidence of performance security may be supplied
30 by the bidder on behalf of himself and any or all subcontractors, or by
31 each respective subcontractor, or by any combination thereof which
32 results in evidence of performance security equaling, but in no event
33 exceeding, the total amount bid.

34 Contracts shall be awarded to the lowest responsible bidder. The
35 contract shall be awarded in the following manner: If the sum total of
36 the amounts bid by the lowest responsible bidder for each branch is
37 less than the amount bid by the lowest responsible bidder for all the
38 work **【and materials】**, goods and services, the board of education shall
39 award separate contracts for each of such branches to the lowest
40 responsible bidder therefor, but if the sum total of the amount bid by
41 the lowest responsible bidder for each branch is not less than the
42 amount bid by the lowest responsible bidder for all the work **【and**
43 **materials】** , goods and services, the board of education shall award a
44 single overall contract to the lowest responsible bidder for all of such
45 work **【and materials】** , goods and services. In every case in which a
46 contract is awarded under (2) above, all payments required to be made
47 under such contract for work **【and materials】** , goods and services

1 supplied by a subcontractor shall, upon the certification of the
2 contractor of the amount due to the subcontractor, be paid directly to
3 the subcontractor.

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

5

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

7 18A:18A-20. American goods and products to be used where
8 possible. Each board of education shall provide, in the specifications
9 for all contracts for work for which it will pay any part of the cost or
10 work which by contract it will ultimately own and maintain, that only
11 manufactured and farm products of the United States, wherever
12 available, be used in such work.

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

14

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

16 18A:18A-21. Advertisements for bids; bids; general requirements.

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

22 b. The advertisement shall designate the manner of submitting and
23 of receiving the bids and the time and place at which the bids will be
24 received. If the published specifications provide for receipt of bids by
25 mail, those bids which are mailed to the board of education shall be
26 sealed and shall be opened only for examination at such time and place
27 as all bids received are unsealed and announced. At such time and
28 place the purchasing agent of the board of education shall publicly
29 receive the bids and thereupon immediately proceed to unseal them
30 and publicly announce the contents, which announcement shall be
31 made in the presence of any parties bidding or their agents who are
32 then and there present. A proper record of the prices and terms shall
33 be made in the minutes of the board. No bids shall be received after
34 the time designated in the advertisement.

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

37 (1) For all contracts except those for construction work, notice
38 shall be published no later than five days, Saturdays, Sundays, and
39 holidays excepted, prior to the date for acceptance of bids, in an
40 official newspaper of the board of education and be provided to any
41 person who has submitted a bid or who has received a bid package, in
42 one of the following ways: (a) in writing by certified mail or (b) by
43 certified facsimile transmission, meaning that the sender's facsimile
44 machine produces a receipt showing date and time of transmission and
45 that the transmission was successful or (c) by a delivery service that
46 provides certification of delivery to the sender.

47 (2) For all contracts for construction work, notice shall be
48 provided no later than seven days, Saturday, Sundays, or holidays

1 excepted, prior to the date for acceptance of bids, to any person who
2 has submitted a bid or who has received a bid package in any of the
3 following ways: i) in writing by certified mail or ii) by certified
4 facsimile transmission, meaning that the sender's facsimile machine
5 produces a receipt showing date and time of transmission and that the
6 transmission was successful or iii) by a delivery service that provides
7 certification of delivery to the sender.

8 d. Failure of the board of education to advertise for the receipt of
9 bids or to provide proper notification of revisions or addenda to
10 advertisements or bid documents related to bids as prescribed by this
11 section shall prevent the board of education from accepting the bids
12 and require the readvertisement for bids pursuant to subsection a. of
13 this section. Failure to obtain a receipt when good faith notice is sent
14 or delivered to the address or telephone facsimile number on file with
15 the board of education shall not be considered failure by the board of
16 education to provide notice.

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

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

20 18A:18A-22. **【Bids to conform to specifications; rejection】**
21 **Rejection** of bids. **【No bid shall be accepted which does not conform**
22 **to the specifications furnished therefor. Nothing contained in this**
23 **chapter shall be construed as depriving any】 A board of education 【of**
24 **the right to】 may reject all bids for any of the following reasons:**

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

27 b. The lowest bid substantially exceeds the board of education's
28 appropriation for the goods or services;

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

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

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

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

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

38
39 69. N.J.S.18A:18A-24 is amended to read as follows:

40 18A:18A-24. Security to accompany bid; amount. There may be
41 required from any person bidding on any contract **【or agreement】**,
42 advertised in accordance with law, that the bid be accompanied by a
43 guarantee payable to the board of education that, if the contract **【or**
44 **agreement】** is awarded to **【him, he】 the bidder, the bidder** will enter
45 into a contract therefor and will furnish any performance bond or
46 other security required as a guarantee or indemnification. The
47 guarantee shall be in the amount of 10% of the bid, but not in excess

1 of \$20,000.00, except as otherwise provided herein, and may be
2 given, at the option of the bidder, by certified check, cashier's check
3 or bid bond. In the event that any law or regulation of the United
4 States imposes any condition upon the awarding of a monetary grant
5 to any board of education, which condition requires the depositing of
6 a guarantee in an amount other than 10% of the bid or in excess of
7 \$20,000.00, the provisions of this section shall not apply and the
8 requirements of the law or regulation of the United States shall
9 govern.

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

11

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

13 18A:18A-25. Guarantee certificate. When a surety company bond
14 is required in the advertisement or specifications for a contract [or
15 agreement], every board of education shall require from any bidder
16 submitting a bid in accordance with plans, specifications and
17 advertisements, as provided for by law, a certificate from a surety
18 company stating that it will provide the contractor with a bond in such
19 sum as is required in the advertisement or in the specifications.

20 This certificate shall be obtained for a bond--

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

26 b. If any be required, for a guarantee bond for the faithful
27 performance of the contract provisions relating to the repair and
28 maintenance of any work, project or facility and its appurtenances and
29 keeping the same in good and serviceable condition during the term
30 of the bond as provided for in the notice to bidders or in the
31 specifications; or

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

34 If a bidder desires to offer the bond of an individual instead of that
35 of a surety company, [he] the bidder shall submit with [his] the bid
36 a certificate signed by such individual similar to that required of a
37 surety company.

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

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

41

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

43 18A:18A-27. [Authority of State Board of Education to adopt
44 regulations providing for qualification of bidders. The State Board of
45 Education] The State Treasurer may establish reasonable regulations
46 appropriate for controlling the qualifications of prospective bidders
47 upon contracts for public [work] works, the entire cost whereof will

1 exceed **[\$20,000.00]** the bid threshold, by the amount, class or
2 category of **[work to be performed or materials and supplies to be**
3 **furnished or hired]** goods or services to be provided or performed
4 which may fix the qualifications required according to the financial
5 ability and experience of the bidders and the capital and equipment
6 available to them pertinent to and reasonably related to the class or
7 category of **[work to be performed or materials and supplies to be**
8 **furnished or hired]** goods or services to be provided or performed in
9 the performance of any such contract, and may require each bidder to
10 furnish a statement thereof.

11 Such regulations shall be written in a manner:

- 12 a. Which will not unnecessarily discourage full, free and open
13 competition; or
14 b. Which will not unnecessarily restrict the participation of small
15 business in the public bidding process; or
16 c. Which will not create undue preferences; or
17 d. Which will not violate any other provision of this chapter, or any
18 other law.

19 No qualification rating of any bidder shall be influenced by **[his]** the
20 bidder's race, religion, sex, national origin, nationality or **[his]** place
21 of residence.

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

26 "Department," as used in this article, shall mean the Department of
27 Education, Department of the Treasury or other State agency to which
28 the authority to qualify bidders has been delegated by the State
29 Board.]

30 Such regulations shall not be effective unless they have been
31 adopted as provided in the "Administrative Procedure Act" ,
32 P.L.1968, c.410 (C.52:14B-1 et seq.).

33 (cf: P.L.1983, c.266, s.3)

34

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

36 18A:18A-36. Time for making awards, deposits returned. a. The
37 board of education shall award the contract or reject all bids within
38 such time as may be specified in the invitation to bid, but in no case
39 more than 60 days, except that the bids of any bidders who consent
40 thereto may, at the request of the board of education, be held for
41 consideration for such longer period as may be agreed. All bid
42 security except the security of the three apparent lowest responsible
43 bidders shall, if requested, be returned after 10 days from the opening
44 of the bids, Sundays and holidays excepted and the bids of such
45 bidders shall be considered as withdrawn. Within 3 days after the
46 awarding of the contract and the approval of the contractor's
47 performance bond the bid security of the remaining unsuccessful

1 bidders shall be returned to them forthwith, Sundays and holidays
2 excepted.

3 b. The contract shall be signed by all parties within the time limit
4 set forth in the specifications, which shall not exceed 21 days, Sundays
5 and holidays excepted, after the making of the award; provided,
6 however, that all parties to the contract may agree to extend the limit
7 set forth in the specifications beyond the 21 day limit required in this
8 subsection. The contractor, upon written request to the board of
9 education, is entitled to receive, within seven days of the request, an
10 authorization to proceed pursuant to the terms of the contract on the
11 date set forth in the contract for work to commence, or, if no date is
12 set forth in the contract, upon receipt of authorization. If for any
13 reason the contract is not awarded and the bidders have paid for or
14 paid a deposit for the plans and specifications to the board of
15 education, the payment or deposit shall immediately be returned to the
16 bidders when the plans and specifications are returned in reasonable
17 condition within 90 days of notice that the contract has not been
18 awarded.

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

20

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

22 18A:18A-37. Award of purchases, contracts or agreements. All
23 contracts enumerated in this section shall be awarded as follows:

24 【All purchases, contracts or agreements which require public
25 advertisement for bids shall be awarded to the lowest responsible
26 bidder.

27 Prior to the award of any other purchase, contract or agreement,
28 the contracting agent shall, except in the case of the performance of
29 professional services, solicit quotations, whenever practicable, on any
30 such purchase, contract or agreement the estimated cost or price of
31 which is 20% or more of the amount set forth in, or calculated by the
32 Governor pursuant to, N.J.S.18A:18A-3 and the award thereof shall
33 be made, in accordance with N.J.S.18A:18A-3 or N.J.S.18A:18A-4,
34 as the case may be, on the basis of the lowest responsible quotation
35 received, which quotation is most advantageous to the board of
36 education, price and other factors considered; provided, however, that
37 if the contracting agent deems it impractical to solicit competitive
38 quotations in the case of extraordinary unspecifiable service, or, in the
39 case of such or any other purchase, contract or agreement awarded
40 hereunder, having sought such quotations determines that it should not
41 be awarded on the basis of the lowest quotation received, the
42 contracting agent shall file a statement of explanation of the reason or
43 reasons therefor, which shall be placed on file with said purchase,
44 contract or agreement. **】**

45 a. For all contracts that in the aggregate are less than the bid
46 threshold but 15 percent or more of that amount, and for those
47 contracts that are for subject matter enumerated in subsection a. of
48 N.J.S.18A:18A-5, except for paragraph (1) of that subsection

1 concerning professional services and paragraph (3) of that subsection
2 concerning work by employees of the board of education, the
3 purchasing agent shall award the contract after soliciting at least two
4 competitive quotations , if practicable . The award shall be made to
5 a vendor whose response is most advantageous, price and other
6 factors considered. The purchasing agent shall retain the record of the
7 quotation solicitation and shall include a copy of the record with the
8 voucher used to pay the vendor.

9 b. When in excess of the bid threshold, and after documented effort
10 by the purchasing agent to secure competitive quotations, a contract
11 for extraordinary unspecifiable services may be awarded when the
12 purchasing agent has determined in writing that solicitation of
13 competitive quotations is impracticable. Any such contract shall be
14 awarded by resolution of the board of education.

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

19 d. Whenever two or more responses to a request of a purchasing
20 agent offer equal prices and are the lowest responsible bids or
21 proposals, the board of education may award the contract to the
22 vendor whose response, in the discretion of the board of education, is
23 the most advantageous, price and other factors considered. In such a
24 case, the award resolution or purchase order documentation shall
25 explain why the vendor selected is the most advantageous.

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

27

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

29 18A:18A-40. Form and execution of contracts and bonds. All
30 contracts for the **performing of work or furnishing materials,**
31 **supplies** provision or performance of goods or services shall be in
32 writing. The State Board of Education may, subject to the
33 requirements of law, prescribe the forms and manner in which
34 contracts shall be made and executed, and the form and manner of
35 execution and approval of all guarantee, indemnity, fidelity and other
36 bonds.

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

38

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

41 1. Any contract **or agreement**, the total price of which exceeds
42 \$100,000.00, entered into by a board of education involving the
43 construction, reconstruction, alteration, repair or maintenance of any
44 building, structure, facility or other improvement to real property, shall
45 provide for partial payments to be made at least once each month as
46 the work progresses, unless the contractor shall agree to deposit bonds
47 with the board of education pursuant to section 2 of **this act**

1 P.L.1987, c.343 (C.18A:18A-40.2).

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

3

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

6 3. With respect to any contract **[or agreement]** entered into by a
7 board of education pursuant to section 1 of P.L.1987, c.343
8 (C.18A:18A-40.1) for which the contractor shall agree to the
9 withholding of payments pursuant to section 2 of P.L.1987, c.343
10 (C.18A:18A-40.2), 5% of the amount due on each partial payment
11 shall be withheld by the board of education pending completion of the
12 contract **[or agreement]** if the contractor does not have a performance
13 bond. If the contractor does have a performance bond, 2% of the
14 amount due on each partial payment shall be withheld by the board of
15 education when the outstanding balance of the contract exceeds
16 \$500,000, and 5% of the amount due on each partial payment shall be
17 withheld by the board of education when the outstanding balance of
18 the contract is \$500,000 or less.

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

20

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

22 18A:18A-41. Liquidated damages. Any contract **[or agreement]**
23 made pursuant to **[this]** chapter 18A of Title 18A of the New Jersey
24 Statutes may include liquidated damages for the violation of any of the
25 terms and conditions thereof or the failure to perform said contract
26 **[or agreement]** in accordance with its terms and conditions, or the
27 terms and conditions of **[this]** chapter 18A of Title 18A of the New
28 Jersey Statutes.

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

30

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

32 18A:18A-42. Multiyear contracts. All contracts for the provision
33 or performance of goods or services shall be awarded for a period not
34 to exceed 24 consecutive months, except that contracts for
35 professional services pursuant to paragraph (1) of subsection a. of
36 N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12
37 consecutive months. Any board of education may **[enter into]** award
38 a contract **[exceeding the fiscal year for the]** for longer periods of
39 time as follows:

40 a. Supplying of:

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

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

45 (3) Thermal energy produced by a cogeneration facility, for use for
46 heating or air conditioning or both, for any term not exceeding **[20]**

- 1 40 years, when the contract is approved by the Board of Public
2 Utilities. For the purposes of this paragraph, "cogeneration" means
3 the simultaneous production in one facility of electric power and other
4 forms of useful energy such as heating or process steam; or
- 5 b. Plowing and removal of snow and ice, for any term not
6 exceeding in the aggregate, three years; or
- 7 c. Collection and disposal of garbage and refuse, for any term not
8 exceeding in the aggregate, three years; or
- 9 d. Data processing service, for any term of not more than **[five]**
10 seven years; or
- 11 e. Insurance, including the purchase of insurance coverages,
12 insurance consultant or administrative services, and including
13 participation in a joint self-insurance fund, risk management program
14 or related services provided by a school board insurance group, or
15 participation in an insurance fund established by a county pursuant to
16 N.J.S.40A:10-6, or a joint insurance fund established pursuant to
17 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than
18 three years; or
- 19 f. Leasing or servicing of automobiles, motor vehicles, electronic
20 communications equipment, machinery and equipment of every nature
21 and kind and textbooks and non-consumable instructional materials,
22 for any term not exceeding in the aggregate, five years; provided,
23 however, such contracts shall be **[entered into]** awarded only subject
24 to and in accordance with rules and regulations promulgated by the
25 State Board of Education; or
- 26 g. Supplying of any product or the rendering of any service by a
27 **[telephone]** company **[which is subject to the jurisdiction of the**
28 **Board of Public Utilities]** providing voice, data, transmission or
29 switching services, for a term not exceeding five years; or
- 30 h. **[Materials, supplies or services that are required on a recurring**
31 **basis from year to year, for any term not exceeding in the aggregate,**
32 **two years; however, such contract may be renewed yearly for a period**
33 **not exceeding three additional years without any further solicitation**
34 **for bids or bidding upon a finding by the board that the services are**
35 **being performed in an effective and efficient manner, or that the**
36 **materials and supplies continue to meet the original specifications. If**
37 **a board of education elects to renew an existing contract, the terms**
38 **and conditions of the existing contract shall remain substantially**
39 **unchanged and any increase in the contract cost over the three year**
40 **period shall be no greater than a total of 20% over the initial cost; or]**
41 (Deleted by amendment, P.L. , c.) (Pending before the Legislature
42 as this bill.)
- 43 i. Driver education instruction conducted by private, licensed
44 driver education schools, for any term not exceeding in the aggregate,
45 three years ; **[or]**
- 46 j. **[Performance of work or services or the furnishing of materials,**

1 supplies or equipment] Provision or performance of goods or services
2 for the purpose of conserving energy in the buildings owned by any
3 local board of education, the entire price of which shall be established
4 as a percentage of the resultant savings in energy costs, for a term not
5 to exceed [10] 15 years; except that these contracts shall be entered
6 into only subject to and in accordance with [rules and regulations]
7 guidelines promulgated by the [New Jersey Commerce and Economic
8 Growth pursuant to the "Administrative Procedure Act," P.L.1968,
9 c.410 (C.52:14B-1 et seq.),] Board of Public Utilities establishing a
10 methodology for computing energy costs;

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

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

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

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

25 Any contract for services other than professional services, the
26 statutory length of which contract is for three years or less, may
27 include provisions for no more than one two-year, or two one-year,
28 extensions, subject to the following limitations: a. the contract shall
29 be awarded by resolution of the board of education upon a finding by
30 the board of education that the services are being performed in an
31 effective and efficient manner; b. no such contract shall be extended
32 so that it runs for more than a total of five consecutive years; c. any
33 price change included as part of an extension shall be based upon the
34 price of the original contract as cumulatively adjusted pursuant to any
35 revious adjustment or extension and shall not exceed the change in the
36 index rate for the 12 months preceding the most recent quarterly
37 calculation available at the time the contract is renewed; and d. the
38 terms and conditions of the contract remain substantially the same.

39 All multiyear leases and contracts entered into pursuant to this
40 section 18A:18A-42, including any two-year or one-year extensions,
41 except [contracts for the leasing or servicing of equipment supplied by
42 a telephone company which is subject to the jurisdiction of the Board
43 of Public Utilities,] contracts for insurance coverages, insurance
44 consultant or administrative services, participation or membership in
45 a joint self-insurance fund, risk management programs or related
46 services of a school board insurance group, participation in an

1 insurance fund established by a county pursuant to N.J.S.40A:10-6 or
2 contracts for thermal energy authorized pursuant to subsection a.
3 above, and contracts for the provision or performance of [work or
4 services or the furnishing of materials, supplies or equipment] goods
5 or services to promote energy conservation authorized pursuant to
6 subsection j. of this section, shall contain a clause making them
7 subject to the availability and appropriation annually of sufficient funds
8 as may be required to meet the extended obligation, or contain an
9 annual cancellation clause. All contracts shall cease to have effect at
10 the end of the contracted period and shall not be extended by any
11 mechanism or provision, unless in conformance with the "Public
12 School Contracts Law," N.J.S.18A:18A-1 et seq., except that a
13 contract may be extended by mutual agreement of the parties to the
14 contract when a board of education has commenced rebidding prior to
15 the time the contract expires or when the awarding of a contract is
16 pending at the time the contract expires.

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

18

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

20 18A:18A-44. Inspection, condemnation and rejection of work and
21 materials. All [work done and materials or supplies furnished] goods
22 and services provided or performed under contract shall be inspected
23 by the [business manager] purchasing agent of the district, if there be
24 a [business manager] purchasing agent of the district, but if there be
25 no [business manager] purchasing agent of the district, they may be
26 inspected by an appropriate officer employed by the board to whom
27 such power shall have been delegated by the board, and subject to the
28 approval of the board the [business manager] purchasing agent or
29 such officer, as the case may be, shall condemn any [work and reject
30 any material or supplies,] goods or services which in his judgment do
31 not conform to the specifications of the contract therefor.

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

33

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

35 18A:18A-45. Manner and method of sale. Any board of education
36 may, by resolution and by sealed bid or public auction, authorize the
37 sale of its personal property not needed for school purposes.

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

43 b. Notice of the date, time and place of the public sale, together
44 with a description of the items to be sold and the conditions of sale,
45 shall be published once in [a legal] an official newspaper. Such sale
46 shall be held not less than seven nor more than 14 days after the

1 publication of the notice thereof.

2 c. Personal property may be sold to the United States, the State of
3 New Jersey, another board of education **[or to]** , any body politic, any
4 foreign nation which has diplomatic relations with the United States,
5 or any governmental unit in these United States by private sale without
6 advertising for bids.

7 d. If no bids are received the property may then be sold at private
8 sale without further publication or notice thereof, but in no event at
9 less than the estimated fair value; or the board of education may if it
10 so elect, reoffer the property at public sale. As used herein,
11 "estimated fair value" means the market value of the property between
12 a willing seller and a willing buyer less the cost to the board of
13 education to continue storage or maintenance of any personal
14 property not needed for school purposes to be sold pursuant to this
15 section.

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

26 f. If the estimated fair value of the property to be sold does not
27 exceed **[the amount set forth in, or calculated by the Governor**
28 **pursuant to, N.J.S.18A:18A-3,]** the applicable bid threshold
29 established pursuant to subsection a. of this section in any one sale or
30 is either livestock or perishable goods, it may be sold at private sale
31 without advertising for bids.

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

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

37

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

44

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

47 1. a. All purchases, contracts, or agreements where the cost or

1 contract price exceeds the sum of **[\$7,500.00]** \$25,000 or, after
2 **[June 30, 1985]** the effective date of P.L. , c. (now before the
3 Legislature as this bill , the amount determined pursuant to subsection
4 b. of this section shall, except as otherwise provided in this act, be
5 made, negotiated, or awarded only after public advertisement for bids
6 therefor and shall be awarded to that responsible bidder whose bid,
7 conforming to the invitation for bids, is most advantageous to the
8 authority, in its judgment, upon consideration of price and other
9 factors. Any bid may be rejected when the authority determines that
10 it is in the public interest to do so.

11 Any purchase, contract, or agreement where the cost or contract
12 price is less than or equal to **[\$7,500.00]** \$25,000 or, after **[June 30,**
13 **1985]** the effective date of P.L. , c. (now before the Legislature as
14 this bill) , the amount determined pursuant to subsection b. of this
15 section may be made, negotiated, or awarded by the authority without
16 advertising and in any manner which the authority, in its judgment,
17 deems necessary to serve its unique interests and purposes and which
18 promotes, whenever practicable, full and free competition by the
19 acceptance of quotations or proposals or by the use of other suitable
20 methods.

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

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

39

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

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

45 a. Standardization of equipment and interchangeability of parts is
46 in the public interest;

- 1 b. Only one source of supply or service is available;
- 2 c. The safety or protection of the authority's or other public
3 property requires;
- 4 d. The exigency of the authority's service will not admit of
5 advertisement;
- 6 e. More favorable terms can be obtained from a primary source of
7 supply of an item or service;
- 8 f. Bid prices, after advertising, are not reasonable or have not been
9 independently arrived at in open competition; but no negotiated
10 purchase, contract, or agreement may be entered into under this
11 subsection after the rejection of all bids received unless (1) notification
12 of the intention to negotiate and reasonable opportunity to negotiate
13 is given to each responsible bidder; (2) the negotiated price is lower
14 than the lowest rejected bid price of a responsible bidder; and (3) the
15 negotiated price is the lowest negotiated price offered by any
16 responsible contractor;
- 17 g. The purchase is to be made from, or the contract is to be made
18 with, the federal or any state government or agency or political
19 subdivision thereof; or
- 20 h. Purchases are to be made through or by the Director of the
21 Division of Purchase and Property pursuant to section 1 of P.L.1959,
22 c.40 (C.52:27B-56.1) , or through a contract made by any of the
23 following: the Hackensack Meadowlands Development Commission
24 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New
25 Jersey Highway Authority established under section 4 of P.L.1952,
26 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established
27 under section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water
28 Supply Authority established under section 4 of P.L.1981, c.293
29 (C.58:1B-4); the South Jersey Transportation Authority established
30 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority
31 of New York and New Jersey established under R.S.32:1-4; the
32 Delaware River Port Authority established under R.S.32:3-2; the
33 Higher Education Student Assistance Authority established under
34 N.J.S.18A:71A-3 .
35 (cf: P.L.1981, c.447, s.4)

36
37 84. Section 6 of P.L.1984, c.128 (C.13:17-6.1) is amended to read
38 as follows:

- 39 6. a. All purchases, contracts, or agreements where the cost or
40 contract price exceeds the sum of **[\$7,500.00]** \$25,000 or, after
41 **[June 30, 1985]** the effective date of P.L. , c. (now before the
42 Legislature as this bill) , the amount determined pursuant to
43 subsection b. of this section shall be made, negotiated, or awarded
44 only after public advertisement for bids therefor and shall be awarded
45 to that responsible bidder whose bid, conforming to the invitation for
46 bids, is most advantageous to the Hackensack Meadowlands
47 Development Commission, in its judgment, upon consideration of

1 price and other factors; provided, however, that such advertising shall
2 not be required when the contract to be entered into is one for the
3 furnishing or performing of services of a professional nature, or when
4 the purchase is to be made through or by the Director of the Division
5 of Purchase and Property pursuant to section 1 of P.L.1959, c.40
6 (C.52:27B-56.1), or through a contract made by any of the following:
7 the New Jersey Sports and Exposition Authority established under
8 section 4 of P.L.1971, c.137 (C.5:10-4), the New Jersey Highway
9 Authority established under section 4 of P.L.1952, c.16 (C.27:12B-4);
10 the New Jersey Turnpike Authority established under section 3 of
11 P.L.1948, c.454 (C.27:23-3); the New Jersey Water Supply Authority
12 established under section 4 of P.L.1981, c.293 (C.58:1B-4); the South
13 Jersey Transportation Authority established under section 4 of
14 P.L.1991, c.252 (C.27:25A-4); the Port Authority of New York and
15 New Jersey established under R.S.32:1-4; the Delaware River Port
16 Authority established under R.S.32:3-2; the Higher Education Student
17 Assistance Authority established under N.J.S.18A:71A-3. Any bid
18 may be rejected when the commission determines that it is in the
19 public interest to do so.

20 Any purchase, contract, or agreement where the cost or contract
21 price is less than or equal to ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30,~~
22 ~~1985]~~ the effective date of P.L. , c. (now before the Legislature as
23 this bill) , the amount determined pursuant to subsection b. of this
24 section may be made, negotiated, or awarded by the commission
25 without advertising and in any manner which the commission, in its
26 judgment, deems necessary to serve its unique interests and purposes
27 and which promotes, whenever practicable, full and free competition
28 by the acceptance of quotations or proposals or by the use of other
29 suitable methods.

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

47 (cf: P.L.1984, c.128, s.6)

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

3 1. a. The New Jersey Highway Authority, in the exercise of its
4 authority to make and enter into contracts and agreements necessary
5 or incidental to the performance of its duties and the execution of its
6 powers, shall adopt standing operating rules and procedures providing
7 that, except as hereinafter provided, no contract on behalf of the
8 authority shall be entered into for the doing of any work, or for the
9 hiring of equipment or vehicles, where the sum to be expended
10 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30, 1985]~~
11 the effective date of P.L. , c. (now before the Legislature as this
12 bill), the amount determined pursuant to subsection b. of this section
13 unless the authority shall first publicly advertise for bids therefor, and
14 shall award the contract to the lowest responsible bidder; provided,
15 however, that such advertising shall not be required where the
16 contract to be entered into is one for the furnishing or performing of
17 services of a professional nature, or for the supplying of any product
18 or the rendering of any service by a public utility subject to the
19 jurisdiction of the Board of Public Utilities of this State and tariffs and
20 schedules of the charges, made, charged, or exacted by the public
21 utility for any such products to be supplied or services to be rendered
22 are filed with the said board, or when the purchase is to be made
23 through or by the Director of the Division of Purchase and Property
24 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through
25 a contract made by any of the following: the New Jersey Sports and
26 Exposition Authority established under section 4 of P.L.1971, c.137
27 (C.5:10-4); the Hackensack Meadowlands Development Commission
28 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New
29 Jersey Turnpike Authority established under section 3 of P.L.1948,
30 c.454 (C.27:23-3); the New Jersey Water Supply Authority established
31 under section 4 of P.L.1981, c.293 (C.58:1B-4); the South Jersey
32 Transportation Authority established under section 4 of P.L.1991,
33 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey
34 established under R.S.32:1-4; the Delaware River Port Authority
35 established under R.S.32:3-2; the Higher Education Student
36 Assistance Authority established under N.J.S.18A:71A-3. Contracts
37 for towing and storage services shall be advertised and awarded
38 pursuant to subsection c. of this section.

39 This subsection shall not prevent the authority from having any
40 work done by its own employees, nor shall it apply to repairs, or to
41 the furnishing of materials, supplies or labor, or the hiring of
42 equipment or vehicles, when the safety or protection of its or other
43 public property or the public convenience require, or the exigency of
44 the authority's service will not admit of such advertisement. In such
45 case the authority shall, by resolution, passed by the affirmative vote
46 of a majority of its members, declare the exigency or emergency to
47 exist, and set forth in the resolution the nature thereof and the

1 approximate amount to be so expended.

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

19 c. The authority shall adopt regulations, pursuant to the
20 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
21 seq.), to provide open and competitive procedures for awarding
22 contracts for towing and storage services. Towing and storage
23 services on a highway project may be provided on a rotating basis,
24 provided that the authority determines that there would be no
25 additional cost to the authority, excepting administrative costs, as a
26 result of those services being provided on a rotating basis. The
27 regulations shall fix maximum towing and storage fees, and establish
28 objective criteria to be considered in awarding a contract for towing
29 and storage services which shall include, but shall not be limited to,
30 reliability, experience, response time, acceptance of credit cards and
31 prepaid towing contracts, adequate equipment to safely handle a
32 sufficient volume of common vehicle types under a variety of traffic
33 and weather conditions, location of storage and repair facilities,
34 security of vehicles towed or stored, financial return to the authority,
35 maintenance of adequate liability insurance and appropriate safeguards
36 to protect the personal safety of customers, including considerations
37 related to the criminal background of employees. The Division of
38 Consumer Affairs in the Department of Law and Public Safety shall
39 provide, at the authority's request, a report to the authority on any
40 prospective contractor for which the division has information relevant
41 to the prospective contractor's service record, subject to the provisions
42 of the New Jersey consumer fraud act, P.L.1960, c.39 (C. 56:8-1 et
43 seq.). The Division of Insurance Fraud Prevention in the Department
44 of Banking and Insurance also shall provide, at the authority's request,
45 a report to the authority on any prospective contractor for which the
46 division has information relevant to the prospective contractor's

1 service record, subject to the "New Jersey Insurance Fraud Prevention
2 Act," P.L.1983, c.320 (C.17:33A-1 et seq.).
3 (cf: P.L.1997, c.390, s.1)

4

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

7 1. a. The New Jersey Turnpike Authority, in the exercise of its
8 authority to make and enter into contracts and agreements necessary
9 or incidental to the performance of its duties and the execution of its
10 powers, shall adopt standing operating rules and procedures providing
11 that, except as hereinafter provided, no contract on behalf of the
12 authority shall be entered into for the doing of any work, or for the
13 hiring of equipment or vehicles, where the sum to be expended
14 exceeds the sum of ~~[\$7,500.00]~~ \$25,000 or, after ~~[June 30, 1985]~~ the
15 effective date of P.L. .c. (now before the Legislature as this bill , the
16 amount determined pursuant to subsection b. of this section unless the
17 authority shall first publicly advertise for bids therefor, and shall
18 award the contract to the lowest responsible bidder; provided,
19 however, that such advertising shall not be required where the
20 contract to be entered into is one for the furnishing or performing
21 services of a professional nature, or for the supplying of any product
22 or the rendering of any service by a public utility subject to the
23 jurisdiction of the Board of Public Utility Commissioners of this State
24 and tariffs and schedules of the charges, made, charged, or exacted by
25 the public utility for any such products to be supplied or services to
26 be rendered are filed with the said board, or when the purchase is to
27 be made through or by the Director of the Division of Purchase and
28 Property pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or
29 through a contract made by any of the following: the New Jersey
30 Sports and Exposition Authority established under section 4 of
31 P.L.1971, c.137 (C.5:10-4); the Hackensack Meadowlands
32 Development Commission established under section 5 of P.L.1968,
33 c.404 (C.13:17-5); the New Jersey Highway Authority established
34 under section 4 of P.L.1952, c.16 (C.27:12B-4); the New Jersey Water
35 Supply Authority established under section 4 of P.L.1981, c.293
36 (C.58:1B-4); the South Jersey Transportation Authority established
37 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority
38 of New York and New Jersey established under R.S.32:1-4; the
39 Delaware River Port Authority established under R.S.32:3-2; the
40 Higher Education Student Assistance Authority established under
41 N.J.S.18A:71A-3.

42 This subsection shall not prevent the authority from having any
43 work done by its own employees, nor shall it apply to repairs, or to
44 the furnishing of materials, supplies or labor, or the hiring of
45 equipment or vehicles, when the safety or protection of its or other
46 public property or the public convenience require, or the exigency of
47 the authority's service will not admit of such advertisement. In such

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

5 b. Commencing 【January 1, 1985】 in the fifth year after the year
6 in which P.L. , c. (now before the Legislature as this bill) takes
7 effect, and every five years thereafter , the Governor, in consultation
8 with the Department of the Treasury, shall 【, no later than March 1 of
9 each 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, in direct proportion to the rise and fall of the 【consumer
14 price index for all urban consumers in the New York City and the
15 Philadelphia areas as reported by the United States Department of
16 Labor】 index rate as that term is defined in section 2 of P.L.1971,
17 c.198 (C.40A:11-2), and shall round the adjustment to the nearest
18 \$1,000. The Governor shall, no later than June 1 of 【each
19 odd-numbered】 every fifth year, notify the authority of the adjustment.
20 The adjustment shall become effective on July 1 of 【each
21 odd-numbered year】 the year in which it is made.

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

23

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

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

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

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

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

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

42 (4) When the contract to be entered into is for the furnishing or
43 performing services of a professional or technical nature or for the
44 supplying of any product or the rendering of any service by a public
45 utility;

46 (5) When the authority deems it appropriate to have any work

1 performed by its own employees;

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

10 (7) When a piece of equipment or part thereof requires diagnostic
11 repairs;

12 (8) The printing of bonds and documents necessary to the issuance
13 and sale thereof; **[and]**

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

16 (10) When a purchase is to be made through or by the Director of
17 the Division of Purchase and Property pursuant to section 1 of
18 P.L.1959, c.40 (C.52:27B-56.1), or through a contract made by any
19 of the following: the New Jersey Sports and Exposition Authority
20 established under section 4 of P.L.1971, c.137 (C.5:10-4); the
21 Hackensack Meadowlands Development Commission established
22 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey
23 Highway Authority established under section 4 of P.L.1952, c.16
24 (C.27:12B-4); the New Jersey Turnpike Authority established under
25 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water
26 Supply Authority established under section 4 of P.L.1981, c.293
27 (C.58:1B-4); the Port Authority of New York and New Jersey
28 established under R.S.32:1-4; the Delaware River Port Authority
29 established under R.S.32:3-2; the Higher Education Student
30 Assistance Authority established under N.J.S.18A:71A-3.

31 (cf: P.L.1991, c.252, s.8)

32

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

35 22. a. The authority is hereby authorized to make and enter into
36 contracts and agreements necessary or incidental to the performance
37 of its duties and the execution of its powers. No contract on behalf of
38 the authority shall be entered into for the doing of any work, or for the
39 hiring of equipment or vehicles, where the sum to be expended
40 exceeds the sum of **[\$7,500.00]** \$25,000 or , after the effective date
41 of P.L. , c. (now before the Legislature as this bill), the amount
42 determined pursuant to subsection b. of this section, unless the
43 authority shall first publicly advertise for bids therefor, and shall award
44 the contract to the lowest responsible bidder; but advertising shall not
45 be required where the contract to be entered into is one for the
46 furnishing or performing services of a professional nature, or for the
47 supplying of any product or the rendering of any service by a public

1 utility subject to the jurisdiction of the Board of Public Utilities, and
2 tariffs and schedules of the charges made, charged, or exacted by the
3 public utility for any such products to be supplied or services to be
4 rendered are filed with the board, or when the purchase is to be made
5 through or by the Director of the Division of Purchase and Property
6 pursuant to section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through
7 a contract made by any of the following: the New Jersey Sports and
8 Exposition Authority established under section 4 of P.L.1971, c.137
9 (C.5:10-4); the Hackensack Meadowlands Development Commission
10 established under section 5 of P.L.1968, c.404 (C.13:17-5); the New
11 Jersey Highway Authority established under section 4 of P.L.1952,
12 c.16 (C.27:12B-4); the New Jersey Turnpike Authority established
13 under section 3 of P.L.1948, c.454 (C.27:23-3); the South Jersey
14 Transportation Authority established under section 4 of P.L.1991,
15 c.252 (C.27:25A-4); the Port Authority of New York and New Jersey
16 established under R.S.32:1-4; the Delaware River Port Authority
17 established under R.S.32:3-2; the Higher Education Student
18 Assistance Authority established under N.J.S.18A:71A-3. This
19 subsection shall not prevent the authority from having any work done
20 by its own employees, nor shall it apply to repairs, or to the furnishing
21 of materials, supplies or labor, or the hiring of equipment or vehicles,
22 when the safety or protection of its or other public property or the
23 public convenience requires, or the exigency of the authority service
24 will not admit of such advertisement. In such case the authority shall,
25 by resolution, passed by the affirmative vote of a majority of its
26 members, declare the exigency or emergency to exist, and set forth in
27 the resolution the nature thereof and the approximate amount to be
28 expended.

29 b. **【The】** Commencing in the fifth year after the year in which
30 P.L. , c. (now before the Legislature as this bill) takes effect, and
31 every five years thereafter, the Governor, in consultation with the
32 Department of the Treasury, shall【, no later than March 1 of each
33 odd-numbered year,】 adjust the threshold amount set forth in
34 subsection a. of this section, or 【subsequent to 1985】 after the
35 effective date of P.L. , c. (now before the Legislature as this bill),
36 the threshold amount resulting from any adjustment under this
37 subsection 【or section 17 of P.L. 1985, c. 469,】 in direct proportion
38 to the rise or fall of the 【Consumer Price Index for all urban
39 consumers in the New York City and the Philadelphia areas as
40 reported by the United States Department of Labor】 index rate as that
41 term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall
42 round the adjustment to the nearest \$1,000 . The Governor shall, no
43 later than June 1 of 【each odd-numbered】 every fifth year, notify the
44 authority of the adjustment. The adjustment shall become effective on
45 July 1 of 【each odd-numbered year】 the year in which it is made.
46 (cf: P.L.1985, c.469, s.14)

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

3 1. The Director of the Division of Purchase and Property may, by
4 joint action, purchase any articles used or needed by the State and the
5 Palisades Interstate Park Commission, the New Jersey Highway
6 Authority, the New Jersey Turnpike Authority, the Delaware River
7 Joint Toll Bridge Commission, the Port Authority of New York and
8 New Jersey, the South Jersey Port Corporation, the Passaic Valley
9 Sewerage Commission, the Delaware River Port Authority, Rutgers,
10 The State University, the University of Medicine and Dentistry of
11 New Jersey, the New Jersey Sports and Exposition Authority, the
12 New Jersey Housing Finance Agency, the New Jersey Mortgage
13 Finance Authority, the New Jersey Health Care Facilities Financing
14 Authority, the New Jersey Education Facilities Authority, the New
15 Jersey Economic Development Authority, the **【New Jersey**
16 **Expressway】** South Jersey Transportation Authority, the Hackensack
17 Meadowlands Development Commission, the New Jersey Water
18 Supply Authority; the Higher Education Student Assistance Authority
19 or any other agency, commission, board, authority or other such
20 governmental entity which is established and is allocated to a State
21 department or any bi-state governmental entity of which the State of
22 New Jersey is a member.

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

24

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

27 30. The State Treasurer, in addition to the functions, powers and
28 duties specifically conferred and imposed upon **【him】**the position,
29 shall:

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

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

35 (c) Supervise the organization of the department and changes in
36 the organization thereof, except that the divisions, boards,
37 commissions and offices, herein specifically provided shall be
38 maintained;

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

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

46 The State Treasurer shall designate as Deputy State Treasurer any
47 officer or employee in the department. Such designation shall be in

1 writing and shall be filed with the Secretary of State. Such
2 designation shall continue in effect until the State Treasurer shall, in
3 the manner herein provided, designate another officer or employee in
4 the department as such Deputy State Treasurer.

5 The Deputy State Treasurer shall have and exercise the powers and
6 perform the functions and duties of the State Treasurer during the
7 absence or disability of the State Treasurer. The Deputy State
8 Treasurer shall also have and exercise such of the powers and perform
9 such of the functions and duties of the State Treasurer as he shall be
10 authorized and directed by the State Treasurer. Any such
11 authorization and direction shall be in writing, signed by the State
12 Treasurer and filed with the Secretary of State, and shall include a
13 designation of the period during which it shall be and remain in force.
14 No such authorization and direction shall be deemed to preclude the
15 State Treasurer from himself exercising the powers and the
16 performance of the duties included in said authorization and direction.
17 In the event that the State Treasurer shall die, resign or be removed
18 from office, or become disqualified to execute the duties of his office,
19 or a vacancy shall occur in the office of State Treasurer for any cause
20 whatsoever, the person then holding the office of Deputy State
21 Treasurer shall continue to hold such office and shall have and
22 exercise the powers and perform the functions and duties of the State
23 Treasurer until the successor of the State Treasurer shall be appointed
24 and shall qualify.

25 Notwithstanding any other provision in existing law, the State
26 Treasurer may designate, authorize and direct the Deputy State
27 Treasurer or any other officer or specially designated expert assistant
28 in the department to exercise the power and perform the functions and
29 duties of the State Treasurer as a member of the board of trustees,
30 commission or council vested with the general administration of and
31 responsibility for any employee benefit system, trust, fund, program
32 or plan. Any such authorization and direction shall be in writing,
33 signed by the State Treasurer and filed with the Secretary of State,
34 and shall include a designation of the period during which it shall be
35 and remain in force. No such authorization and direction shall be
36 deemed to preclude the State Treasurer from himself exercising the
37 powers and the performance of the duties included in said
38 authorization and direction.

39 (cf: P.L.1974, c.34, s.1)

40

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

43 3. The Director of the Division of Purchase and Property may, at
44 the director's discretion, include, in any such contract or contracts on
45 behalf of the State, a provision for the purchase of such materials,
46 supplies **[or]**, equipment or services by any **[county, municipality or**
47 **school district]** local contracting unit from such contractor or

1 contractors. Such purchase may be effectuated either as an outright
2 purchase or by installment, lease or rental, so long as the vendor offers
3 financing at an interest rate that is equal to or lower than the State line
4 of credit. The **【county, municipality or school district】**local
5 contracting unit shall have sole responsibility for any payment due the
6 vendor for any such purchase. All purchases shall be subject to audit
7 and inspection by the **【county, municipality or school district】**local
8 contracting unit for which made. The local contracting unit shall file
9 such reports as the Director of the Division of Purchase and Property
10 may require setting forth the expenditure on such contracts. For the
11 purposes of this section, "local contracting unit" means any public
12 agency subject to the provisions of the "Local Public Contracts Law,"
13 P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts
14 Law," N.J.S.18A:18A-1 et seq., the "State College Contracts Law,"
15 P.L.1986, c.43 (C.18A:64-52 et seq.), or the "County College
16 Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.).
17 (cf: P.L.1969, c.104, s.3)

18

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

21 2. a. An independent institution of higher education may, at the
22 director's discretion, purchase materials, supplies **【and】**, equipment or
23 services under any contract **【negotiated】**awarded on behalf of the
24 State by the Director of the Division of Purchase and Property,
25 subject to such rules as the director may establish.

26 b. The director may establish limitations with respect to
27 **【commodities】**materials, supplies, equipment and services available
28 for purchase and impose other appropriate conditions upon purchasing
29 as deemed necessary to protect the State's own purchasing interests.

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

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

34

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

36 52:25-23. The Director of the Division of Purchase and Property
37 may, by written order, delegate purchasing authority to the using
38 agencies for purchases or contracts not in excess of **【\$7,500.00】**
39 \$25,000.00; except that:

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

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

1 c. ~~【All】~~ Records of all purchases made or contracts negotiated
2 under this section shall be ~~【reported to】~~ maintained by the using
3 agency and made available for audit by or under the direction of the
4 Director of the Division of Purchase and Property ~~【by the using~~
5 agency, in a manner prescribed by the Director of the Division of
6 Purchase and Property, which report ~~】~~ and shall include proper proof
7 that the purchase or contract was made or negotiated competitively,
8 where competition is practicable.

9 The Director of the Division of Purchase and Property may, by
10 written order, rescind or reduce the level of purchasing authority
11 delegated to any using agency determined by the director to have
12 violated the provisions of the delegated authorization.

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

14

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

17 4. The director is hereby vested with the powers, duties, and
18 responsibilities involved in the efficient operation of a centralized
19 State purchasing service, and with the custody, operation and
20 maintenance of all State property not chargeable to a particular
21 department. ~~【He】~~ The director shall have authority, subject to the
22 ~~【commissioner's】~~ State Treasurer's approval, to organize the division
23 for the effective performance of its functions and purposes herein set
24 forth, and to establish and assess fees to cover administrative costs.
25 The director or the director's designee shall have the authority to
26 conduct investigations and informal hearings regarding any bid protest
27 or vendor performance issues. The director shall also have the
28 authority to issue final agency decisions regarding any bid protest or
29 vendor performance issues. Except as otherwise provided by statute
30 and subject to the State Treasurer's approval, the director shall have
31 final approval of all State contracts including, but not limited to, those
32 entered into pursuant to P.L.1964, c.290 (C.30:6-17 et seq.).

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

34

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

37 2. a. Any such purchase, contract or agreement may be made,
38 negotiated, or awarded by the Director of the Division of Purchase and
39 Property or the Director of the Division of Building and Construction,
40 as the case may be, without advertising, in any manner which ~~【he】~~ the
41 director may deem effective to promote full and free competition
42 whenever competition is practicable, if: (1) the aggregate amount
43 involved does not exceed ~~【\$7,500.00】~~ \$25,000.00 or the amount
44 determined pursuant to subsection b. of this section; or (2) (Deleted
45 by amendment, P.L.1985, c.107) or (3) the aggregate amount involved
46 including labor and construction materials does not exceed \$25,000.00

1 or the amount determined pursuant to subsection b. of this section in
2 the case of contracts or agreements for the erection, construction,
3 alteration, or repair of any public building or facility.

4 When the aggregate amount involved does not exceed \$25,000.00
5 or the amount determined pursuant to subsection b. of this section in
6 the case of contracts or agreements for the erection, construction,
7 alteration, or repair of any public building or facility, the Director of
8 the Division of Purchase and Property or the Director of the Division
9 of Building and Construction may, at **[his]** the director's discretion,
10 delegate to the appropriate State department or using agency **[his]** the
11 director's authority to make, negotiate, or award a contract or
12 agreement without advertising.

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

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

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

39

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

42 7. Whenever advertising is required: (a) specifications and
43 invitations for bids shall permit such full and free competition as is
44 consistent with the procurement of supplies and services necessary to
45 meet the requirements of the using agency and shall, wherever
46 practicable, include such factors as life-cycle costs, sliding percentage
47 preference scales, or other similar analysis as shall be deemed effective

1 by the Director of the Division of Purchase and Property hereinafter
2 referred to as the director, (b) the advertisement for bids shall be in
3 such newspaper or newspapers selected by the State Treasurer as will
4 best give notice thereof to bidders and shall be sufficiently in advance
5 of the purchase or contract to promote competitive bidding; (c) the
6 advertisement shall designate the time and place when and where
7 sealed proposals shall be received and publicly opened and read, the
8 amount of the cash or certified check, if any, which must accompany
9 each bid, and such other terms as the State Treasurer may deem
10 proper; (d) notice of revisions or addenda to advertisements or bid
11 documents relating to bids shall be published in a newspaper or
12 newspapers as selected by the State Treasurer to best give notice to
13 bidders and sent to the prospective bidder no later than five days,
14 Saturdays, Sundays and holidays excepted, prior to the bid due date;
15 (e) failure to advertise for the receipt of bids or to provide proper
16 notification of revisions or addenda to advertisements or bid
17 documents related to bids as prescribed by subsection (d) of this
18 section shall prevent the acceptance of bids and require the
19 readvertisement for bids; (f) for any procurement, the State Treasurer
20 or the director may negotiate with bidders, after bid opening, the final
21 terms and conditions of any procurement, including price; such ability
22 to so negotiate must be expressly set forth in the applicable invitation
23 to bid; (g) award shall be made with reasonable promptness, after
24 negotiation with bidders where authorized, by written notice to that
25 responsible bidder whose bid, conforming to the invitation for bids,
26 will be most advantageous to the State, price and other factors
27 considered. Any or all bids may be rejected when the State Treasurer
28 or the Director of the Division of Purchase and Property determines
29 that it is in the public interest so to do. The State Treasurer or
30 designee may adopt, pursuant to the "Administrative Procedure Act,"
31 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as
32 may be necessary to implement the provisions of this section.

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

36
37 97. (New section) a. A person commits a crime if the person
38 knowingly submits to the government any claim for payment for
39 performance of a government contract knowing such claim to be false,
40 fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or
41 above, the offender is guilty of a crime of the second degree. If the
42 claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is
43 guilty of a crime of the third degree. If the claim is for \$2,500.00 or
44 less, the offender is guilty of a crime of the fourth degree.

45 b. A person commits a crime if the person knowingly makes a
46 material representation that is false in connection with the negotiation,
47 award or performance of a government contract. If the contract

1 amount is for \$25,000.00 or above, the offender is guilty of a crime of
2 the second degree. If the contract amount exceeds \$2,500.00, but is
3 less than \$25,000.00, the offender is guilty of a crime of the third
4 degree. If the contract amount is for \$2,500.00 or less, the offender
5 is guilty of a crime of the fourth degree.

6
7 98. N.J.S.2C:27-4 is amended to read as follows:

8 2C:27-4. a. A person commits a crime if **[he,]** the person, as a
9 public servant:

10 (1) directly or indirectly, knowingly solicits, accepts or agrees to
11 accept any benefit **[as compensation for having, as public servant,**
12 given a decision, opinion, recommendation or vote favorable to
13 another, or for having otherwise exercised a discretion in his favor,]
14 from another for or because of any official act performed or to be
15 performed by the person or for **[having violated his]** or because of a
16 violation of official duty **[or for the performance of his official**
17 **duties.] ;**

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

22 (3) directly or indirectly, knowingly receives any benefit from or
23 by reason of a contract or agreement for goods, property or services
24 if the contract or agreement is awarded, made or paid by the agency
25 that employs the person or if the goods, property or services are
26 provided to the government agency that employs the public servant.

27 b. A person commits a crime if **[he]** the person offers, confers or
28 agrees to confer **[compensation]** a benefit, acceptance of which is
29 prohibited by this section.

30 c. Any offense proscribed by this section is a crime of the second
31 degree. If the benefit solicited, accepted, agreed to be accepted,
32 offered, conferred or agreed to be conferred is of a value of \$200.00
33 or less, any offense proscribed by this section is a crime of the third
34 degree.

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

36
37 99. N.J.S.2C:27-6 is amended to read as follows:

38 2C:27-6. a. **[A]** Except as provided in subsection d.of this
39 section, a public servant commits a crime if **[he]** the person,
40 knowingly and under color of **[his]** office, directly or indirectly
41 solicits, accepts or agrees to accept any benefit for that person or
42 another not allowed by law **[to influence the performance of his**
43 **official duties].**

44 b. **[A]** Except as provided in subsection d.of this section, a person
45 commits a crime if **[he]** the person, directly or indirectly, confers or
46 agrees to confer any benefit not allowed by law to a public servant **[to**

1 influence the performance of his official duties].

2 c. [In any prosecution under this section, the capacity to influence
3 a public servant in the performance of his official duties may be
4 presumed when the value of the benefit involved, the interests of the
5 person who offers, confers or agrees to confer such benefit, and the
6 duties of the public servant are such as to create a reasonable
7 likelihood that the public servant would perform his official duties in
8 a biased or partial manner.] (Deleted by amendment; P.L. , c. .)
9 (Pending before the Legislature as this bill.)

10 d. This section shall not apply to:

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

14 (2) Gifts or other benefits conferred on account of kinship or other
15 personal, professional or business relationship independent of the
16 official status of the recipient; or

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

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

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

24

25 100. (New Section) A public servant commits a crime of the
26 fourth degree if, while performing his official functions on behalf of a
27 governmental entity, the public servant knowingly transacts any
28 business with himself, a member of his immediate family, or a business
29 organization in which the public servant or an immediate family
30 member has an interest. For purposes of this section, an interest in a
31 business organization shall not include aggregate familial ownership or
32 control of one percent or less of an interest in the capital or equity of
33 the business organization. A public servant shall not be guilty of an
34 offense under this section if the public servant's performance of official
35 functions would not affect the public servant, family member or
36 business organization differently than such performance would affect
37 the public generally, or would not affect the public servant, family
38 member or business organization, as a member of a business,
39 profession, occupation or group, differently than such performance
40 would affect any other member of such business, profession,
41 occupation or group.

42

43 101. Section 10 of P.L.1991, c.29 (C.40A:9-22.10) is amended to
44 read as follows:

45 10. a. An appointed local government officer or employee found
46 guilty by the Local Finance Board or a county or municipal ethics

1 board of the violation of any provision of **[this act]** P.L.1991, c.29
2 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to
3 **[this act]** P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less
4 than \$100.00 nor more than \$500.00, which penalty may be collected
5 in a summary proceeding pursuant to "the penalty enforcement law"
6 (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics
7 board shall report its findings to the office or agency having the power
8 of removal or discipline of the appointed local government officer or
9 employee and may recommend that further disciplinary action be
10 taken.

11 b. An elected local government officer or employee found guilty
12 by the Local Finance Board or a county or municipal ethics board of
13 the violation of any provision of **[this act]** P.L.1991, c.29 (C.40A:9-
14 22.1 et seq.) or of any code of ethics in effect pursuant to **[this act]**
15 P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less than
16 \$100.00 nor more than \$500.00, which penalty may be collected in a
17 summary proceeding pursuant to "the penalty enforcement law"
18 (N.J.S.2A:58-1 et seq.).

19 c. The remedies provided herein are in addition to all other criminal
20 and civil remedies provided under the law.

21 (cf: P.L.1991, c.29, s.10)

22

23 102. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to
24 read as follows:

25 10. (a) The Executive Commission on Ethical Standards created
26 pursuant to P.L.1967, chapter 229 is continued and established in the
27 Department of Law and Public Safety and shall constitute the first
28 commission under **[this act]** P.L.1971, c.182 (C.52:13D-12 et al.).

29 (b) The commission shall be composed of seven members appointed
30 by the Governor from among State officers and employees serving in
31 the Executive Branch. Each member shall serve at the pleasure of the
32 Governor during the term of office of the Governor appointing **[him]**
33 the member and until **[his]** the member's successor is appointed and
34 qualified. The Governor shall designate one member to serve as
35 chairman and one member to serve as vice-chairman of the
36 commission.

37 (c) Each member of the said commission shall serve without
38 compensation but shall be entitled to be reimbursed for all actual and
39 necessary expenses incurred in the performance of **[his]** the member's
40 duties.

41 (d) The Attorney General shall act as legal adviser and counsel to
42 the said commission. **[He]** The Attorney General shall upon request
43 advise the commission in the rendering of advisory opinions by the
44 commission, in the approval and review of codes of ethics adopted by
45 State agencies in the Executive Branch and in the recommendation of
46 revisions in codes of ethics or legislation relating to the conduct of

1 State officers and employees in the Executive Branch.

2 (e) The said commission may, within the limits of funds
3 appropriated or otherwise made available to it for the purpose, employ
4 such other professional, technical, clerical or other assistants,
5 excepting legal counsel, and incur such expenses as may be necessary
6 for the performance of its duties.

7 (f) The said commission, in order to perform its duties pursuant to
8 the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)**, shall
9 have the power to conduct investigations, hold hearings, compel the
10 attendance of witnesses and the production before it of such books and
11 papers as it may deem necessary, proper and relevant to the matter
12 under investigation. The members of the said commission and the
13 persons appointed by the commission for such purpose are hereby
14 empowered to administer oaths and examine witnesses under oath.

15 (g) The said commission is authorized to render advisory opinions
16 as to whether a given set of facts and circumstances would, in its
17 opinion, constitute a violation of the provisions of **[this act] P.L.1971,**
18 **c.182 (C.52:13D-12 et al.)** or of a code of ethics promulgated
19 pursuant to the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12**
20 **et al.)**.

21 (h) The said commission shall have jurisdiction to initiate, receive,
22 hear and review complaints regarding violations, by any State officer
23 or employee or special State officer or employee in the Executive
24 Branch, of the provisions of **[this act] P.L.1971, c.182 (C.52:13D-12**
25 **et al.)** or of any code of ethics promulgated pursuant to the provisions
26 of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)**. Any complaint
27 regarding a violation of a code of ethics may be referred by the
28 commission for disposition in accordance with subsection **[12(d) of**
29 **this act] (d) of section 12 of P.L.1971, c.182 (C.52:13D-23)**.

30 (i) Any State officer or employee or special State officer or
31 employee found guilty by the commission of violating any provision
32 of **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)** or of a code of
33 ethics promulgated pursuant to the provisions of **[this act] P.L.1971,**
34 **c.182 (C.52:13D-12 et al.)** shall be fined not less than \$100.00 nor
35 more than \$500.00, which penalty may be collected in a summary
36 proceeding pursuant to the Penalty Enforcement Law (N.J.S.
37 2A:58-1), and may be suspended from his office or employment by
38 order of the commission for a period of not in excess of 1 year. If the
39 commission finds that the conduct of such officer or employee
40 constitutes a willful and continuous disregard of the provisions of
41 **[this act] P.L.1971, c.182 (C.52:13D-12 et al.)** or of a code of ethics
42 promulgated pursuant to the provisions of **[this act] P.L.1971, c.182**
43 **(C.52:13D-12 et al.)**, it may order such person removed from his
44 office or employment and may further bar such person from holding
45 any public office or employment in this State in any capacity
46 whatsoever for a period of not exceeding 5 years from the date on

1 which **[he]** the person was found guilty by the commission.

2 (j) The remedies provided herein are in addition to all other criminal
3 and civil remedies provided under the law.

4 (cf: P.L.1971, c.182, s.10)

5

6 103. Section 13 of P.L.1954, c.48 (C.52:34-18) is amended to read
7 as follows:

8 13. Any person **[willfully]** knowingly authorizing, consenting to,
9 making or procuring to be made any purchase, contract or agreement
10 in violation of any of the provisions of **[this act]** P.L.1954, c.48,
11 (C.52:34-6 et seq.) or **[willfully]** knowingly making or procuring to
12 be made payment of State funds for or on account of any purchase,
13 contract or agreement known to him to have been made or entered
14 into in violation of any of the provisions of **[this act]** P.L.1954, c.48
15 (C.52:34-6 et seq.) shall be guilty of a **[misdemeanor]** crime of the
16 fourth degree.

17 (cf: P.L.1954, c.48, s.13)

18

19 104. Section 11 of P.L.1970, c.73 (C.56:9-11) is amended to read
20 as follows:

21 11. a. Any person **[or corporation, or any officer or agent**
22 **thereof,]** who shall knowingly violate any of the provisions of **[this**
23 **act]** P.L.1970, c.73 (C.56:9-1 et seq.) or knowingly aid or advise in
24 such violation**[, or who, as principal, manager, director, stockholder**
25 **owning 10% or more of the aggregate outstanding capital stock of all**
26 **classes of the corporation, agent, servant or employee, knowingly does**
27 **any act comprising a part of such violation,]** is guilty of a
28 **[misdemeanor and shall be punished by imprisonment for not more**
29 **than 3 years or by a fine of not more than \$50,000.00 or both; and if**
30 **a corporation by a fine of not more than \$100,000.00]** crime of the
31 fourth degree.

32 b. Any person convicted pursuant to the provisions of subsection
33 a. of this section **[is hereby denied the right and is hereby prohibited**
34 **from managing or owning any business organization within this State,**
35 **and from serving as an officer, director, trustee, member of any**
36 **executive board or similar governing body, principal, manager,**
37 **stockholder owning 10% or more of the aggregate outstanding capital**
38 **stock of all classes of any corporation doing business in this State,**
39 **and all persons within this State, are hereby denied the right to handle**
40 **the goods of or in any manner deal with, directly or indirectly, those**
41 **persons, companies or corporations under the interdict specified**
42 **herein. All persons knowingly violating any of the provisions of this**
43 **section, either directly or indirectly, or aiding or abetting directly or**
44 **indirectly in any violation of any provisions of this section, shall be**
45 **deemed guilty of a misdemeanor and shall be fined not less than**
46 **\$100.00 nor more than \$1,000.00 and shall be punished by**

1 imprisonment for not less than 30 days nor more than 6 months, and
2 shall forfeit not less than \$1,000.00 for each and every day such
3 violation may continue, to be collected by a summary proceeding in a
4 court of competent jurisdiction] of a violation involving or affecting
5 trade or commerce of a value less than \$1,000,000.00 shall be guilty
6 of a crime of the third degree. Any person convicted pursuant to the
7 provisions of subsection a. of this section of a violation involving or
8 affecting trade or commerce of a value equal to or greater than
9 \$1,000,000.00 shall be guilty of a crime of the second degree. Any
10 person convicted pursuant to the provisions of subsection a. of this
11 section of a violation involving bid rigging on public contracts,
12 regardless of the value of trade or commerce involved or affected,
13 shall be guilty of a crime of the second degree.

14 c. Notwithstanding the provisions of subsections a. and b. of
15 N.J.S.2C:43-3, a person convicted of a crime of the second degree
16 under this section shall be subject to a fine of not less than \$50,000.00
17 nor more than \$300,000.00, or, in the case of a corporation,
18 partnership, or other business entity, be subject to a fine of not less
19 than \$250,000.00 nor more than \$1,000,000.00, or imprisonment, or
20 both, and a person convicted of a crime of the third degree under this
21 section shall be subject to a fine of not less than \$25,000.00 nor more
22 than \$150,000.00, or, in the case of a corporation, partnership, or
23 other business entity, be subject to a fine of not less than \$100,000.00
24 nor more than \$300,000.00, or imprisonment, or both.

25 (cf: P.L.1970, c.73, s.11)

26

27 105. N.J.S.18A:71A-10 is amended to read as follows:

28 18A:71A-10. Contracts, Purchases, Records, Travel.

29 a. The authority, in the exercise of its power to make and enter
30 into contracts and agreements necessary or incidental to the
31 performance of its duties and the execution of its powers, shall adopt
32 standing operating rules and procedures providing that, except as
33 hereinafter provided, no contract on behalf of the authority shall be
34 entered into for the doing of any work, or for the hiring of equipment
35 or vehicles, when the sum to be expended exceeds the sum of
36 [\$12,300] \$25,000 or, after [June 30, 1998] the effective date of
37 P.L. , c. (now before the Legislature as this bill , the amount
38 determined pursuant to subsection b. of this section, unless the
39 authority shall first publicly advertise for bids therefor, and shall award
40 the contract to the lowest responsible bidder; provided, however, that
41 such advertising shall not be required when the contract to be entered
42 into is one for the furnishing or performing of services of a
43 professional nature, or when the purchase is to be made through or by
44 the Director of the Division of Purchase and Property pursuant to
45 section 1 of P.L.1959, c.40 (C.52:27B-56.1), or through a contract
46 made by any of the following: the New Jersey Sports and Exposition
47 Authority established under section 4 of P.L.1971, c.137 (C.5:10-4);

1 the Hackensack Meadowlands Development Commission established
2 under section 5 of P.L.1968, c.404 (C.13:17-5); the New Jersey
3 Highway Authority established under section 4 of P.L.1952, c.16
4 (C.27:12B-4); the New Jersey Turnpike Authority established under
5 section 3 of P.L.1948, c.454 (C.27:23-3); the New Jersey Water
6 Supply Authority established under section 4 of P.L.1981, c.293
7 (C.58:1B-4); the South Jersey Transportation Authority established
8 under section 4 of P.L.1991, c.252 (C.27:25A-4); the Port Authority
9 of New York and New Jersey established under R.S.32:1-4; and the
10 Delaware River Port Authority established under R.S.32:3-2. Waiver
11 of bid advertising and of actual bidding shall be made by resolution of
12 the authority for those goods, services, and contracts described in
13 sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 52:34-10).
14 **[Special rules shall apply to the procurement of professional services**
15 **when the authority shall consider a variety of factors associated with**
16 **rendering the professional services, including price, in awarding of a**
17 **contract.]**

18 This subsection shall not prevent the authority from having any
19 work done by its own employees, nor shall it apply when the safety or
20 protection of its or other public property requires. In the case of
21 exigency or emergency, the authority shall, by resolution passed by the
22 affirmative vote of a majority of its members, declare the exigency or
23 emergency to exist, and set forth in the resolution the nature thereof
24 and the approximate amount to be so expended.

25 b. **[The]** Commencing in the fifth year after the year in which
26 P.L. , c. (now before the Legislature as this bill) takes effect, and
27 every five years thereafter, the Governor, in consultation with the
28 Department of the Treasury, shall [, not later than March 1 of each
29 odd-numbered year,] adjust the threshold amount set forth in
30 subsection a. of this section, or the threshold amount resulting from
31 any adjustment under this subsection, in direct proportion to the rise
32 or fall of the **[consumer price index for all urban consumers in the**
33 **New York City and the Philadelphia areas as reported by the United**
34 **States Department of Labor]** index rate as that term is defined in
35 section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the
36 adjustment to the nearest \$1,000. The Governor shall, no later than
37 June 1 of [each odd-numbered] every fifth year, notify the authority
38 of the adjustment. The adjustment shall become effective July 1 of
39 **[each odd-numbered year] the year in which it is made.**

40 c. The authority, in the exercise of its power to make purchases
41 and enter into contracts, leases and agreements necessary or incidental
42 to the performance of its duties and the execution of its powers, shall
43 adopt standing operating rules and procedures providing that, subject
44 to subsections a. and b. of this section, for purchases, contracts, leases
45 and agreements payable exclusively with or out of funds transferred
46 from the Higher Education Student Assistance Fund, the purchases,

1 contracts, leases and agreements shall be subject to the authority's sole
2 approval. Approval of the purchases, contracts, leases, and
3 agreements shall not be required by any other department, division,
4 board, bureau, agency, office or officer of the State.

5 d. The authority, without advertising for bids, or after having
6 rejected all bids obtained pursuant to advertising therefor, may
7 purchase any materials, supplies or equipment pursuant to a contract
8 or contracts for the materials, supplies or equipment entered into on
9 behalf of the State. Any department, division, commission, board,
10 bureau, agency, office or officer of the State may, by joint action with
11 the authority, purchase any articles used or needed by the State and
12 the authority.

13 e. Records subject to the record retention requirements set forth
14 under 20 U.S.C.s.1071 et seq., 20 U.S.C.s.1070c et seq., and 20
15 U.S.C.s.1104 et seq. and implementing regulations and rules shall not
16 be "public records" for purposes of the "Destruction of Public Records
17 Law (1953)," P.L.1953, c.410 (C.47: 3-15 et seq.), notwithstanding
18 the provisions of any law to the contrary.

19 f. The executive director shall have the power to approve of travel
20 consistent with Office of Management and Budget travel regulations,
21 except that for travel that is payable exclusively with or out of funds
22 transferred from the Higher Education Student Assistance Fund, no
23 approval shall be required by the Director of the Office of
24 Management and Budget.

25 (cf: N.J.S.18A:71A-10)

26

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

29 1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et
30 seq.) to the contrary, [and as an alternative to the procedures
31 concerning the awarding of public contracts pursuant to that act,] the
32 Director of the Division of Purchase and Property in the Department
33 of the Treasury [may purchase goods and services, for State agencies
34 and for the entities defined in section 1 of P.L.1959, c.40
35 (C.52:27B-56.1), from] shall promulgate the Federal Supply
36 Schedules of the Federal General Services Administration [as
37 permitted by the "Federal Acquisition Streamlining Act of 1994,"
38 Pub.L.103-355, and regulations adopted pursuant to that law and by
39 the rules and regulations which the director may promulgate] pursuant
40 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
41 et seq.) as an alternate price guide for the purchase of goods and
42 services for State agencies and for the entities defined in section 1 of
43 P.L.1959, c.40 (C.52:27B-56.1), subject to the following conditions:

44 (1) the price of the goods being procured is no greater than the
45 price offered to federal agencies;

46 (2) the Federal Supply Schedules may be used only for purchases

1 of up to \$500,000 per year or for one product unit at any price and
2 only for reprographic equipment or services, including digital copiers,
3 used by the State; and

4 (3) the State receives the benefit of federally mandated price
5 reductions during the term of the contract and is protected from price
6 increases during that time.

7 (cf: P.L.1996, c.16, s.1)

8

9 107. Section 2 of P.L.1996, c.16 (C.52:34-6.3) is amended to read
10 as follows:

11 2. Notwithstanding the provisions of any other law to the contrary,
12 **【and as an alternative to the procedures concerning the awarding of**
13 **public contracts pursuant to the applicable statutes,】** the State
14 authorities authorized to contract independently under various
15 provisions of State law may**【, without advertising for bids, or having**
16 **rejected all bids obtained pursuant to advertising, purchase goods and**
17 **services from the Federal Supply Schedules of the Federal General**
18 **Services Administration as permitted by the "Federal Acquisition**
19 **Streamlining Act of 1994," Pub.L.103-355, and regulations adopted**
20 **pursuant to that law and by the rules and regulations which the**
21 **authority may adopt】** also use, without advertising for bids, or having
22 rejected all bids obtained pursuant to advertising, the Federal Supply
23 Schedules of the General Services Administration, promulgated by the
24 Director of the Division of Purchase and Property in the Department
25 of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1),
26 subject to the following conditions:

27 (1) the price of the goods being procured is no greater than the
28 price offered to federal agencies;

29 (2) the Federal Supply Schedules may be used only for purchases
30 of up to \$500,000 per year or for one product unit at any price and
31 only for reprographic equipment or services, including digital copiers,
32 used by the authority; and

33 (3) the authority receives the benefit of federally mandated price
34 reductions during the term of the contract and is protected from price
35 increases during that time.

36 (cf: P.L.1996, c.16, s.2)

37

38 108. The following are repealed:

39 N.J.S.2C:27-7

40 P.L.1972, c.112 (C.40A:11-12.1 to 40A:11-12.6)

41 N.J.S.18A:18A-38

42 N.J.S.18A:18A-39

43 Section 1 of P.L.1981, c.186 (C.18A:18A-42.1)

44

45 109. This act shall take effect 90 days after enactment.

STATEMENT

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This bill revises the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., and the laws governing State procurement. The bill also revises the criminal laws that deal with procurement procedures and the laws concerning the procurement procedures of certain independent authorities.

In revising the "Local Public Contracts Law" (LPCL) and the "Public School Contracts Law" (PSCL), the bill makes the laws more consistent with each other. Whenever possible, the bill eliminates variation among the laws to make public contracting procedures similar for all local and public school entities.

The bill establishes a competitive contracting procedure under the LPCL and the PSCL. The competitive contracting procedure will be used in lieu of public bidding for certain specified types of goods and services when the price of the goods and services being contracted for in the aggregate exceeds the bid threshold. The competitive contracting procedure requires proposals for competitive contracting to be awarded through a request for proposals process. The proposals will be evaluated by the purchasing agent according to the methodology described in the request for proposals. After evaluating the proposals, the purchasing agent will prepare a report evaluating and recommending the award of a contract or contracts. The report will list all vendors who submitted a proposal, rank them, recommend the vendor or vendors to be selected, explain the reasons for the selection, and detail the terms, conditions, scope of services, fees, and other matters to be incorporated into the contract. The awarding of the contract will be publicized in the official newspaper of the contracting unit.

The purpose of the competitive contracting procedure is to provide contracting units and boards of education with greater discretion in entering into contracts with qualified vendors than is permitted under the normal requirements of public bidding but to provide greater public oversight of the contracting process than is available under the current exceptions to public bidding for professional or extraordinary unspecifiable services.

In addition to establishing a competitive contracting procedure, the bill makes various changes and additions to existing law under the LPCL and the PSCL.

The bill adds, modifies and deletes certain definitions of terms used in the LPCL and PSCL.

The bill raises to \$17,500 the threshold above which a contract must be publicly advertised and publicly bid under the LPCL and the PSCL. It also permits a governing body or board of education to set a threshold lower than \$17,500 or to set a higher threshold of \$25,000 if the purchasing agent is qualified pursuant to subsection b. of section

1 9 of P.L.1971, c.198 (C.40A:11-9), as proposed under section 15 of
2 the bill. The bill authorizes the Governor to adjust the bid threshold
3 every five years in proportion to the rise or fall of the "index rate,"
4 which is the rate of annual percentage increase, rounded to the nearest
5 half-percent, in the Implicit Price Deflator for State and Local
6 Government Purchases of Goods and Services, computed and
7 published quarterly by the United States Department of Commerce,
8 Bureau of Economic Analysis. Under current law, the Governor is
9 authorized to adjust the bid threshold every two years according to the
10 Consumer Price Index.

11 The bill specifies that contracts required to be publicly advertised
12 and bid are to be awarded to the lowest responsible bidder by
13 resolution of the governing body or board of education, as the case
14 may be. The bill permits a governing body or board of education to
15 disqualify a bidder who would otherwise be qualified if the governing
16 body or board of education finds that it has had prior negative
17 experience with the bidder. The bill specifies the meaning of "prior
18 negative experience" and the responsibilities of the governing body or
19 board of education if it contemplates a disqualification based on prior
20 negative experience.

21 The bill makes certain changes to the sections of both laws that
22 enumerate exemptions to the requirement for public advertising and
23 bidding. For the LPCL it adds a provision currently in the PSCL
24 allowing contracts to be awarded without public advertising and
25 bidding, by a resolution approved by two-thirds of the full membership
26 of the governing body of the contracting unit, if the contracting unit
27 has solicited and received at least three quotations on materials,
28 supplies or equipment for which a State contract has been issued and
29 the lowest responsible quotation is at least 10% less than the price the
30 contracting unit would be charged for the identical items in the same
31 quantities under the State contract.

32 Procedures to be followed for contracts that are not required to be
33 publicly advertised and bid are specified in the bill. For contracts that
34 in the aggregate are less than the bid threshold but 15 percent or more
35 of that amount, and for contracts for certain items that are exempt
36 from public bidding, the contract will be awarded after the solicitation
37 of at least two competitive quotations, if practicable. A contract for
38 extraordinary unspecifiable services, when in excess of the bid
39 threshold and after documented effort by the contracting agent or
40 purchasing agent to secure competitive quotations, can be awarded by
41 resolution upon a determination in writing that the solicitation of
42 competitive quotations is impracticable. Contracts that in the
43 aggregate are less than 15 percent of the bid threshold can be awarded
44 without soliciting competitive quotations.

45 Whenever two or more responses to a request of a contracting unit
46 offer equal prices, and are the lowest responsible bids or proposals, the
47 contract may be awarded to the vendor whose response is the most

1 advantageous, price and other factors considered.

2 The bill clarifies the language of existing law prohibiting the
3 division of contracts in order to bring a contract or any of its parts
4 under the bid threshold for the purpose of dispensing with the
5 requirement of public advertising and bidding.

6 The bill permits the governing body of a contracting unit under the
7 LPCL to establish the office of purchasing agent or a purchasing
8 department or purchasing board with authority, responsibility and
9 accountability as its contracting agent for the purchasing activity for
10 the contracting unit, to prepare public advertising for bids, to receive
11 bids on behalf of the contracting unit, to award contracts in the name
12 of the contracting unit, and to conduct activities necessary or
13 appropriate to the purchasing function of the contracting unit. The bill
14 also requires the Director of the Division of Local Government
15 Services in the Department of Community Affairs, after consultation
16 with the Commissioner of Education, to establish criteria to qualify
17 county purchasing agents and other individuals who have completed
18 appropriate training and possess the necessary experience to exercise
19 any supplemental authority set forth in the LPCL and PSCL. The bill
20 also changes the term "contracting agent" to "purchasing agent" under
21 the PSCL.

22 The bill permits joint agreements for the provision or performance
23 of goods or services among any two or more contracting units under
24 the LPCL and among one or more school districts and any
25 municipality or county under the PSCL.

26 The bill permits local contracting units, boards of education, and
27 the State authorities authorized to contract independently under
28 various provisions of State law, without advertising for bids or having
29 rejected all bids obtained pursuant to advertising, to use the Federal
30 Supply Schedules of the General Services Administration promulgated
31 by the Director of the Division of Purchase and Property in the
32 Department of the Treasury pursuant to section 1 of P.L.1996, c.16
33 (C.52:34-6.1), subject to certain conditions. The bill also requires the
34 Director of the Division of Purchase and Property in the Department
35 of the Treasury to promulgate the Federal Supply Schedules as an
36 alternate price guide for the purchase of goods and services for State
37 agencies and for the entities defined in section 1 of P.L.1959, c.40
38 (C.52:27B-56.1), subject to the same conditions.

39 The bill adds a new provision to both the LPCL and the PSCL
40 requiring that when goods or services are to be paid for by funds
41 received from a bequest, legacy or gift containing written instructions
42 as to specifications, manufacturer or vendor, or source of supply, the
43 instructions must be honored.

44 The bill requires any prospective bidder who wishes to challenge a
45 bid specification under the LPCL or the PSCL to file the challenge in
46 writing with the contracting agent or purchasing agent not less than
47 three business days prior to the opening of the bids.

1 The bill enumerates the reasons why all bids can be rejected under
2 the LPCL and the PSCL.

3 For the PSCL, the bill permits contracts to be made for a period of
4 24 months instead of 12 months as in current law. The LPCL already
5 permits contracts to be made for 24 months. For both laws, the bill
6 makes changes to the list of exceptions to the provision governing the
7 maximum length of contracts.

8 The bill adds to both laws a provision permitting contracts for
9 services other than professional services whose statutory length is
10 three years or less to include provisions for no more than one two-year
11 or two one-year extensions, subject to certain limitations.

12 The bill amends the sections under both the LPCL and the PSCL
13 that permit separate plans for various types of work. The changes
14 made by the bill would make the laws the same.

15 The bill requires that under the LPCL and the PSCL, personal
16 property not needed for public use, the value of which exceeds 15
17 percent of the bid threshold in any one sale, shall be sold at public sale
18 to the highest bidder. Under current law the thresholds for public sale
19 to the highest bidder differ between the two laws. The bill also
20 permits the local contracting unit or board of education to authorize
21 a public auction procedure or sealed bids and to make such a sale to
22 any foreign nation that has diplomatic relations with the United States
23 or any governmental unit in the United States without advertising for
24 bids.

25 The bill makes various other amendments to provisions of the
26 LPCL and PSCL in order to rephrase language in those provisions to
27 comport with new terminology used in the bill.

28 The bill requires that the provision or performance of goods or
29 services by a municipality or a county in connection with the
30 operation, management or administration of an airport must be done
31 according to the LPCL. It also exempts from the requirements of
32 public advertising and bidding the management or operation of an
33 airport owned by the contracting unit.

34 The bill raises to \$25,000 the bid thresholds of the following
35 independent authorities: The New Jersey Sports and Exposition
36 Authority, the Hackensack Meadowlands Development Commission,
37 the New Jersey Highway Authority, the New Jersey Turnpike
38 Authority, the New Jersey Water Supply Authority, the South Jersey
39 Transportation Authority and the Higher Education Student Assistance
40 Authority. For each of these authorities, the bill gives the Governor
41 the authority to adjust the bid threshold every five years, according to
42 the index rate. Each of these authorities is permitted to use the
43 contracts of the other authorities as well as the contracts of the Port
44 Authority of New York and New Jersey and the Delaware River Port
45 Authority.

46 The bill permits the Director of the Division of Local Government
47 Services, after consultation with the Commissioner of Education, to

1 adopt rules implementing the LPCL and the PSCL.

2 The bill raises the bid threshold for State agencies to \$25,000, to be
3 adjusted by the Governor every five years according to the index rate.
4 It also permits the Director of the Division of Purchase and Property
5 to delegate purchasing authority to using agencies for purchases or
6 contracts not in excess of \$25,000, subject to certain limitations. The
7 bill gives the Director of the Division of Purchase and Property the
8 power to establish and assess fees to cover the administrative costs of
9 the operation and functioning of the division and the authority to
10 conduct investigations and informal hearings and to issue final agency
11 decisions regarding any bid protest or vendor performance issues.
12 With certain exceptions, the bill gives the director final approval of all
13 State contracts.

14 The bill allows the State Treasurer or the director to negotiate with
15 bidders, after bid opening, the final terms and conditions of any
16 contract, including price. This provision will apply to all bids received
17 on and after the date of enactment of the bill.

18 The bill makes certain revisions to the criminal laws to clarify
19 standards of conduct and enhance deterrence of criminal activity with
20 respect to procurement procedures.

21 The bill permits purchases made under the State contract by local
22 contracting units, boards of education, State colleges, or county
23 colleges to be effectuated either as an outright purchase or by
24 installment, lease or rental, so long as the vendor offers financing at an
25 interest rate that is equal to or lower than the State line of credit.

26 The bill repeals N.J.S.2C:27-7, which concerns the crime of
27 compensating a public servant for assisting private interests in relation
28 to matters before the public servant. It also repeals P.L.1972, c.112
29 (C.40A:11-12.1 through 12.6), which authorizes the governing body
30 of any local unit to provide electronic data processing services for
31 another governing body or bodies of other local units or to undertake
32 joint operation of electronic data processing of official records and
33 information. The bill also repeals N.J.S.18A:18A-38, which concerns
34 the awarding of contracts under the PSCL when bids are equal; section
35 1 of P.L.1981, c.186 (C.18A:18A-42.1), which concerns contracts for
36 the services of a food management company under the PSCL; and
37 N.J.S.18A:18A-39, which requires that a copy of contracts of more
38 than \$10,000 for the construction, alteration, or repair of any building
39 be filed with the State Board of Education within 10 days after being
40 signed.

41 The bill takes effect 90 days after enactment.