

State College Contracts Law (Contracts & Bidding) as of January 17, 2013  
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Title 18A Education

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**18A:64-52. Short title**

This article shall be known and may be cited as the "State College Contracts Law."

L. 1986, c. 43, s. 1, eff. July 9, 1986.

**18A:64-53 Definitions.**

2. As used in this article, unless the context otherwise indicates:

- a. "Board of trustees" means the board of a State college;
- b. "Contracting agent" means the business officer of the State college having the power to prepare advertisements, to advertise for and receive bids, and to make awards for the State college in connection with the purchases, contracts or agreements permitted by this article or the officer, committee or employee to whom the power has been delegated by the State college;
- c. "Contracts" means contracts or agreements for the performance of work or the furnishing or hiring of services, materials or supplies, as distinguished from contracts of employment;
- d. "Legal newspaper" means a newspaper circulating in this State which has been printed and published in the English language at least once a week for at least one year continuously;

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

f. "Extraordinary unspecifiable services" means services or products which cannot be reasonably described by written specifications;

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

h. "Project" means any work, undertaking, construction or alteration;

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

j. "State college" means an institution of higher education established pursuant to chapter 64 of Title 18A of the New Jersey Statutes;

k. "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a State college;

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

L.1986,c.43,s.2; amended 2005, c.369, s.2.

**18A:64-54 Bid threshold.**

3. a. Any purchase, contract or agreement for the performance of any work or the furnishing or hiring of materials or supplies, the cost or price of which, together with any sums expended for the performance of any work or services in connection with the same project or the furnishing of similar materials or supplies during the same fiscal year, paid with or out of college funds, does not exceed the total sum of \$26,200 or, commencing January 1, 2005, the amount determined pursuant to subsection b. of this section, in any fiscal year may be made, negotiated and awarded by a contracting agent, when so authorized by resolution of the board of trustees of the State college without public advertising for bids and bidding therefor.

b. Commencing January 1, 2005 and every two years thereafter, the Governor, in consultation with the Department of the Treasury, shall adjust the threshold amount set

forth in subsection a. of this section in direct proportion to the rise or fall of the Consumer Price Index for all urban consumers in the New York and Northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which it is reported.

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

L.1986,c.43,s.3; amended 1994, c.48, s.110; 1997, c.292, s.1; 2005, c.369, s.3.

**18A:64-55 Public bidding required.**

4. Every contract or agreement for the performance of any work or the furnishing or hiring of any materials or supplies, the cost or the contract price of which is to be paid with or out of college funds, not included within the terms of section 3 of this article, shall be made and awarded only by the State college after public advertising for bids and bidding therefor, except as provided otherwise in this article or specifically by any other law. No work, materials or supplies shall be undertaken, acquired or furnished for a sum exceeding in the aggregate \$26,200 or, commencing January 1, 2005, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), except by written contract or agreement.

L.1986,c.43.s.4; amended 1997, c.292, s.2; 2005, c.369, s.4.

**18A:64-56 Exceptions.**

5. Any purchase, contract or agreement of the character described in section 4 of P.L.1986, c.43 (C.18A:64-55) may be made, negotiated or awarded by the State college by resolution at a public meeting of its board of trustees without public advertising for bids or bidding therefor if:

a. The subject matter thereof consists of:

- (1) Professional services; or
- (2) Extraordinary unspecifiable services and products which cannot reasonably be described by written specifications, subject, however, to procedures consistent with open public bidding whenever possible; or
- (3) Materials or supplies which are not available from more than one potential bidder, including without limitation materials or supplies which are patented or copyrighted; or
- (4) The doing of any work by employees of the State college; or
- (5) The printing of all legal notices and legal briefs, records and appendices to be used in any legal proceeding to which the State college may be a party and the use of electronic data or media services, including the internet, for the printing of these legal notices and

legal briefs, records and appendices; or

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

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

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

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

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

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

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

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

(14) The collection of amounts due on student loans, including without limitation loans guaranteed by or made with funds of the United States of America, and amounts due on other financial obligations to the State college, including but not limited to, the amounts due on tuition and fees and room and board; or

(15) Professional consulting services; or

(16) Entertainment, including without limitation theatrical presentations, band and other concerts, movies and other audiovisual productions; or

(17) Contracts employing funds created by student activities fees charged to students or

otherwise raised by students and expended by student organizations; or

(18) Printing, including without limitation catalogs, yearbooks and course announcements and the production and reproduction of such material in electronic and digital formats, including compact discs; or

(19) Information technology; or

(20) Personnel recruitment and advertising, including without limitation advertising seeking student enrollment; or

(21) Educational supplies, books, articles of clothing and other miscellaneous articles purchased by a State college for resale to college students and employees; or

(22) Purchase or rental of graduation caps and gowns and award certificates or plaques; or

(23) Items available from vendors at costs below State contract pricing for the same product or service, which meets or exceeds the State contract terms or conditions; or

(24) Management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations; or

(25) Consulting services involving information technology, curricular or programmatic review, fund raising, transportation, safety or security; or

(26) Construction management services for construction, alteration or repair of any building or improvement; or

(27) Purchase or rental of equipment of a technical nature when the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

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

c. The State college has advertised for bids pursuant to section 4 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has received no bids on both occasions in response to its advertisement, or (ii) has rejected the bids on two occasions because the State college has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the State college prior to the advertising therefor, or have not been independently arrived at in open competition, or (iii) on one occasion no bids were received pursuant to (i) and on one occasion all bids were rejected pursuant to (ii), in whatever sequence; any contract or agreement may then be negotiated by a two-thirds affirmative vote of the authorized membership of the board of trustees authorizing the

contract or agreement; provided that:

- (1) A reasonable effort is just made by the contracting agent to determine that the same or equivalent materials or supplies at a cost which is lower than the negotiated price are not available from any agency or authority of the United States, the State of New Jersey or of the county in which the State college is located, or any municipality in close proximity to the State college;
- (2) The terms, conditions, restrictions and specifications set forth in the negotiated contract or agreement are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of this article; and
- (3) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1986, c.43 (C.18A:64-55), shall be stated in the resolution awarding the contract or agreement; except that if on the second occasion the bids received are rejected as unreasonable as to price, the State college shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate and afford each bidder a reasonable opportunity to negotiate, but the State college shall not award the contract or agreement unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any reasonable vendor, and is a reasonable price for the work, materials, supplies or services. Whenever a State college shall determine that a bid was not arrived at independently in open competition pursuant to subsection c. (ii) of this section, it shall thereupon notify the Attorney General of the facts upon which its determination is based and, when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

L.1986,c.43,s.5; amended 1994, c.48, s.111; 2005, c.369, s.5.

**18A:64-57 Emergency procedures.**

6. Any purchase, contract, or agreement may be made, negotiated or awarded by a State college without public advertising for bids and bidding therefor, notwithstanding that the cost or contract price will exceed \$26,200 or, commencing January 1, 2005, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), when an emergency affecting the health, safety or welfare of occupants of college property requires the immediate delivery of the materials or supplies or the performance of the work, if the purchases, contracts or agreements are awarded or made in the following manner:

- a. A written requisition for the performance of the work or the furnishing of materials or supplies, certified by the employee in charge of the building, facility or equipment where the emergency occurred, is filed with the contracting agent or his deputy in charge describing the nature of the emergency, the time of its occurrence, and the need for invoking this section. The contracting agent, or his deputy in charge, being satisfied that

the emergency exists, is authorized to award a contract for the work, materials or supplies.

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

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

L.1986,c.43,s.6; amended 1997, c.292, s.3; 2005, c.369, s.6.

**18A:64-58. Contract subdivision prohibited**

7. No purchase, contract or agreement which is single in character or which necessarily or by reason of the quantities required to effectuate the purpose of the purchase, contract or agreement includes the furnishing of additional services or equipment or buying materials or supplies or the doing of additional work, shall be subdivided so as to bring it or any of the parts thereof under the maximum price or cost limitation set forth in P.L.1986, c.43 (C.18A:64-52 et seq.), thus dispensing with the requirement of public advertising and bidding therefor. Where the doing of any work is included in or incident to the performance or completion of any project which is single in character or inclusive of the furnishing of additional work, materials or supplies or which requires the furnishing of more than one article of materials or supplies, all of the work, materials or supplies requisite for the completion of the project shall be included in one purchase, contract or agreement.

L.1986,c.43,s.7; amended 1994,c.48,s.112.

**18A:64-59. Annual solicitation**

Except as provided in this article, every State college shall, on an annual basis or at such lesser intervals as may be fixed by it, solicit by public advertisement the submission of bids for the furnishing of all work, materials and supplies which can be purchased or agreed or contracted to be furnished only after public advertising for bids and bidding therefor.

L. 1986, c. 43, s. 8, eff. July 9, 1986.

**18A:64-60 State college purchases through State agency; procedure.**

9. a. Any State college, without advertising for bids, or after having rejected all bids obtained pursuant to advertising therefor, may purchase any materials, supplies, goods, services or equipment pursuant to a contract or contracts for those materials, supplies, goods, services or equipment entered into on behalf of the State by the Division of Purchase and Property or any municipality or county in this State.

b. A State college may also use, without advertising for bids, or having rejected all bids



obtained pursuant to advertising, the Federal Supply Schedules of the General Services Administration or schedules from other federal procurement programs subject to the following conditions:

- (1) the price of the goods or services being procured is no greater than the price offered to federal agencies;
- (2) the State college receives the benefit of federally mandated price reductions during the term of the contract and is protected from price increases during that time; and
- (3) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under any State contract, unless the State college determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules would be more advantageous to the State college.

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

L.1986,c.43,s.9; amended 1996,c.16,s.5; 2005,c.369,s.7; 2006,c.10,s.2.

**18A:64-61. Joint action authorized**

10. The board of trustees of two or more State colleges may provide jointly by agreement for the purchasing of work, materials, or supplies for their respective colleges, and also may enter into a joint purchasing agreement with other units of State or local government.

L.1986,c.43,s.10; amended 1994,c.48,s.113.

**18A:64-62. Contents of agreements**

a. Joint agreements shall set forth the categories of work, materials or supplies to be purchased, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating State college or other governmental unit and other matters deemed necessary to carry out the purposes of the agreement.

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

L. 1986, c. 43, s. 11, eff. July 9, 1986.

**18A:64-63. Subject to laws**

12. Joint purchases and all agreements pertaining thereto shall be subject to all

provisions of law.

L.1986,c.43,s.12; amended 1994,c.48,s.114.

**18A:64-64. Specification**

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

- a. Require a standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the purchase, contract or agreement is made; or
- b. Require that any bidder be a resident of, or that his place of business be located in, the county in which the purchase will be made or the contract or agreement performed, unless the physical proximity of the bidder is requisite to the efficient and economical purchase or performance of the contract or agreement; or
- c. Discriminate on the basis of race, religion, sex or national origin; or
- d. Require with regard to any purchase, contract or agreement the furnishing of any "brand name," although specifications may in all cases require "brand name or equivalent," nor shall materials or supplies which are patented or copyrighted be specified unless the resolution authorizing the purchase, contract or agreement sets forth the manner in which the special need for the patented or copyrighted materials or supplies is directly related to the performance or purpose for which the purchase, contract or agreement is made; or
- e. Fail to include any option for renewal, extension or release which the State college may intend to exercise or require; or
- f. Fail to include any terms and conditions necessary for the performance of any extra work; or
- g. Fail to disclose any matter necessary to the substantial performance of the contract or agreement.

Any specification adopted by the State college which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect, and the purchase, contract or agreement shall be readvertised, and the original purchase, contract or agreement shall be set aside by the board of trustees of the State college.

L. 1986, c. 43, s. 13, eff. July 9, 1986.

**18A:64-65 Advertisement for bids; notice of revisions.**

14. a. All advertisements for bids shall be published in a legal newspaper sufficiently in

advance of the date fixed for receiving the bids to promote competitive bidding but in no event less than 10 days prior to that date for any construction projects or any other contract or purchase. In addition to being published in a legal newspaper, advertisements may also be posted using electronic data or media services, including the internet. The advertisement shall designate the manner of submitting and of receiving the bids and the time and place at which the bids will be received. If the published specifications provide for receipt of bids by mail, those bids which are mailed to the State college shall be sealed and shall be opened only at such time and place as all bids received are unsealed and announced. At that time and place, the contracting agent of the State college shall publicly receive the bids and thereupon immediately proceed to unseal them and publicly announce the contents, which announcement shall be made in the presence of any parties bidding or their agents who are then and there present. A proper record of the prices and terms shall be made. No bids shall be received after the time designated in the advertisement.

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

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

L.1986,c.43,s.14; amended 1992, c.61, s.3; 1993, c.60; 1994, c.48, s.115; 2005, c.191, s.2; 2005, c.369, s.8.

**18A:64-66. Conformance to specifications**

No bid shall be accepted which does not conform to the specifications furnished therefor. Nothing contained in this article shall be construed as depriving any State college of the right to reject all bids.

L. 1986, c. 43, s. 15, eff. July 9, 1986.

**18A:64-67 Guaranty.**

16. There may be required from any person bidding on any purchase, contract or agreement, advertised in accordance with law, that the bid be accompanied by a guaranty payable to the State college that, if the purchase, contract or agreement is awarded to him,

he will enter into a contract therefor. The guaranty shall be in the amount of 10% of the bid but not in excess of \$20,000.00, except as otherwise provided herein, and may be given, at the option of the bidder, by certified check, cashier's check or bid bond. For a construction contract the guaranty shall be in the amount of 10% of the bid. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any State college, which condition requires a guaranty in an amount other than 10% of the bid or in excess of \$20,000.00, the provisions of this section shall not apply and the requirements of the law or regulation of the United States shall govern.

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

L.1986,c.43,s.16; amended 2005, c.369, s.9.

**18A:64-68 Provision of surety company bond, other security.**

17. a. In addition to or independently of the guaranty which may be required pursuant to this article, the State college may require that the successful bidder provide a surety company bond or other security acceptable to the State college:

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

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

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

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

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

(2) With respect to all payment and performance bonds in the amount of \$850,000 or more, (a) if the amount of the bond is at least \$850,000 but not more than \$3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.s.9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating

company or companies shall be determined pursuant to standards promulgated by the Commissioner of Banking and Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (b) if the amount of the bond is more than \$3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.s.9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Banking and Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the provisions of subparagraph (b) of this paragraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Banking and Insurance through regulation which is at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C.s.9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L.1995, c.384 (N.J.S.2A:44-143 et al.), certify to the appropriate State college that it meets that equivalent set of standards set forth by the commissioner as promulgated.

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

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

#### SURETY DISCLOSURE STATEMENT AND CERTIFICATION

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

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

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

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

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

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

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

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

; and

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

#### CERTIFICATE

(to be completed by an authorized certifying agent

for each surety on the bond)

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

(Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)

L.1986,c.43,s.17; amended 1995, c.384, s.4; 2005, c.369, s.10.

**18A:64-69 Time limit, return of bid guaranty.**

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

L.1986,c.43,s.18; amended 2005, c.369, s.11.

**18A:64-70 Awards to responsible bidder whose bid is most advantageous.**

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

Prior to the award of any contract or agreement which does not require public advertisement, the estimated cost of which is 20% or more of the amount set forth in this act or, commencing January 1, 1985, 20% of the amount determined by the Governor pursuant to subsection b. of section 3 of this act, the contracting agent shall, except in the case of professional services, solicit quotations therefor whenever practicable, and the award thereof shall be made, in accordance with section 3 of this article, on the basis of the quotation, conforming to the request for proposals, which is most advantageous to the State college, price and other factors considered; however, if the contracting agent deems it impractical to solicit competitive quotations or having sought the quotations determines that the award should not be made on that basis, the contracting agent shall file a statement of explanation of the reason or reasons therefor, which shall be placed on file with the purchase, contract, or agreement.

L.1986,c.43,s.19; amended 2005, c.369, s.12.

**18A:64-73. Liquidated damages**

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



the terms and conditions of this article.

L. 1986, c. 43, s. 22, eff. July 9, 1986.

**18A:64-74. Building construction**

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

L. 1986, c. 43, s. 23, eff. July 9, 1986.

**18A:64-75. Plans, specifications**

24. All plans and specifications for the erection, alteration, improvement or repair of college buildings shall be drawn by or under the supervision of an appropriate officer employed by the college to whom these powers shall have been delegated by the Board of Trustees.

L.1986,c.43,s.24; amended 1994,c.48,s.116.

**18A:64-76.1 Advertisements by contracting agent for bids; award of contracts.**

2. a. Whenever the entire cost for the construction, alteration or repair of any building by a State college will exceed the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), the contracting agent shall advertise for and receive in the manner provided by law:

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

(a) the plumbing and gas fitting work;

(b) the heating and ventilating systems and equipment;

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

(d) the structural steel and ornamental iron work;

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

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

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

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

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

L.1992, c.61, s.2; amended 2005, c.369, s.13.

**18A:64-77 Deduction for costs of completion.**

26. All specifications for the doing of any construction work for a State college shall fix the date before which the work shall be completed, or the number of working days to be allowed for its completion, and every contract shall contain a provision that if the construction work is not completed by the date fixed for completion or in the number of days allowed for completion, as set forth in the specifications, there shall be a deduction from the contract price for any moneys paid by the college to other contractors for the completion of the project. This requirement shall not preclude the State college from seeking liquidated damages or other remedies.

L.1986,c.43,s.26; amended 2005, c.369, s.14.

**18A:64-78 Sale of surplus personal property.**

27. Any college may, by resolution of its board of trustees, authorize the sale in the following manner of its personal property not needed for college purposes:

a. If the estimated fair value of the property to be sold exceeds \$26,200 or, commencing January 1,2005, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), in any one sale and the property does not consist of perishable goods, it shall be sold at public sale to the highest bidder.

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

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

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

e. A State college may reject all bids if it determines a rejection to be in the public interest. In any case in which the college has rejected all bids, it may readvertise the personal property for a subsequent public sale. If it elects to reject all bids at a second

public sale pursuant to this section, it may then sell the personal property without further publication or notice thereof at private sale, but in no event shall the negotiated price at the private sale be less than the amount of the highest bid rejected at the preceding two public sales, nor shall the terms or conditions of sale be changed or amended.

f. If the estimated fair value of the property to be sold does not exceed \$26,200 or, commencing January 1, 2005, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), in any one sale or the property consists of perishable goods, it may be sold at private sale without advertising for bids.

L.1986,c.43,s.27;amended 1997, c.292, s.4; 2005, c.369, s.15.

**18A:64-79 Multi-year contracts.**

28. A State college may only enter into a contract exceeding 36 consecutive months for the:

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

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

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

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

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

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

g. (Deleted by amendment, P.L.2005, c.369).

h. Providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms, vending operations, and cafeterias, for a term not exceeding 30 years; or

i. Performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not exceeding 10 years; provided that a contract is entered into only subject to and in accordance with rules and regulations adopted and guidelines promulgated by the Board of Public Utilities establishing a

methodology for computing energy cost savings; or

j. Any single project for the construction, reconstruction or rehabilitation of a public building, structure or facility, or a public works project, including the retention of the services of an architect, engineer, construction manager, or other consultant in connection with the project, for the length of time necessary for the completion of the actual construction; or

k. The management and operation of bookstores, performing arts centers, residence halls, parking facilities and building operations for a term not exceeding 30 years; or

l. The provision of banking, financial services, and e-commerce services for a term not exceeding five years; or

m. The provision of services for maintenance and repair of building systems, including, but not limited to, fire alarms, fire suppression systems, security systems, and heating, ventilation, and air conditioning systems for a term not exceeding five years; or

n. Purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes for a term not exceeding 30 years.

All multiyear leases and contracts entered into pursuant to this section, except contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation and authorized pursuant to subsection i. of this section, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds to meet the extended obligation or contain an annual cancellation clause.

L.1986, c.43, s.28; amended 1994, c.48, s.117; 2005, c.369, s.16; 2009, c.90, s.44.

**18A:64-81. Immunity**

30. No action for damages shall lie against the Board of Higher Education, the Commission on Higher Education, the Presidents' Council, any State official, any State college or its board of trustees or any of its officers because of any action taken by virtue of the provisions of this article.

L.1986,c.43,s.30; amended 1994,c.48,s.118.

**18A:64-82 Indemnification agreement.**

31. Any State college may enter into an agreement indemnifying the New Jersey Educational Facilities Authority or the United States of America, or any board, body, officer or agency thereof, from any liability for loss or damage to the person or property of others resulting from any project financed or to be financed by the New Jersey Educational Facilities Authority for the benefit of the State college, any project

undertaken or to be undertaken by the federal government for the benefit of the State college or any project the cost of which or any part thereof is to be paid out of federal funds.

L.1986,c.43,s.31; amended 1999, c.217, s.10.

**18A:64-83. Validation**

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

L. 1986, c. 43, s. 32, eff. July 9, 1986.

**18A:64-84. Consultation with employee representatives**

Prior to the conclusion of any contract or subcontract for the performance of work substantially similar to that performed by negotiations unit employees, a State college shall allow for reasonable consultation with the appropriate bargaining unit representative regarding such action. The negotiations unit's representative shall be entitled to review the supporting documentation concerning the purchase, contract or subcontract and to an assessment of the impact of that purchase, contract or subcontract on the negotiations unit employees of the college.

L. 1986, c. 43, s. 33, eff. July 9, 1986.

**18A:64-85 State, county college may enter into certain contracts with a private entity.**

43. a. (1) A State college or county college may enter into a contract with a private entity, subject to subsection f. of this section, to be referred to as a public-private partnership agreement, that permits the private entity to assume full financial and administrative responsibility for the on-campus construction, reconstruction, repair, alteration, improvement, extension, management, or operation of a building, structure, or facility of, or for the benefit of, the institution, provided that the project is financed in whole by the private entity and that the State or institution of higher education, as applicable, retains full ownership of the land upon which the project is completed.

(2) A public-private partnership agreement may include an agreement under which a State or county college leases to a private entity the operation of a dormitory or other revenue-producing facility to which the college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic buildings. Under the lease agreement, the college shall continue to hold title to the facility, and the private entity shall be responsible for the management, operation, and maintenance of the facility. The private entity shall receive some or all, as per the agreement, of the revenue generated by the facility and shall operate the facility in accordance with college standards. A lease agreement shall not

affect the status or employment rights of college employees who are assigned to, or provide services to, the leased facility. At the end of the lease term, subsequent revenue generated by the facility, along with management, operation, and maintenance responsibility, shall revert to the college.

b. (1) A private entity that assumes financial and administrative responsibility for a project pursuant to subsection a. of this section shall not be subject to the procurement and contracting requirements of all statutes applicable to the institution of higher education at which the project is completed, including, but not limited to, the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.). For the purposes of facilitating the financing of a project pursuant to subsection a. of this section, a public entity may become the owner or lessee of the project or the lessee of the land, or both, may become the lessee of a dormitory or other revenue-producing facility to which the college holds title, may issue indebtedness in accordance with the public entity's enabling legislation and, notwithstanding any provision of law to the contrary, shall be empowered to enter into contracts with a private entity and its affiliates without being subject to the procurement and contracting requirements of any statute applicable to the public entity provided that the private entity has been selected by the institution of higher education pursuant to a solicitation of proposals or qualifications. For the purposes of this section, a public entity shall include the New Jersey Economic Development Authority, and any project undertaken pursuant to subsection a. of this section of which the authority becomes the owner or lessee, or which is situated on land of which the authority becomes the lessee, shall be deemed a "project" under the "New Jersey Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

(2) As the carrying out of any project described pursuant to this section constitutes the performance of an essential public function, all projects predominantly used in furtherance of the educational purposes of the institution undertaken pursuant to this section, provided it is owned by or leased to a public entity, non-profit business entity, foreign or domestic, or a business entity wholly owned by such non-profit business entity, shall at all times be exempt from property taxation and special assessments of the State, or any municipality, or other political subdivision of the State and, notwithstanding the provisions of section 15 of P.L.1974, c.80 (C.34:1B-15) or section 2 of P.L.1977, c.272 (C.54:4-2.2b) or any other section of law to the contrary, shall not be required to make payments in lieu of taxes. The land upon which the project is located shall also at all times be exempt from property taxation. Further, the project and land upon which the project is located shall not be subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax liability of private parties conducting for profit activities on tax exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in exempt property that are held by nonexempt parties.

c. Each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State or county college pursuant to subsection a. of this

section shall be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

d. (1) All construction projects under a public-private partnership agreement entered into pursuant to this section shall contain a project labor agreement. The project labor agreement shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest extent possible enhances employment opportunities for individuals residing in the county of the project's location. Further, the general contractor, construction manager, design-build team, or subcontractor for a construction project proposed in accordance with this paragraph shall be registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by the Division of Property Management and Construction to perform work on a public-private partnership higher education project. All construction projects proposed in accordance with this paragraph shall be submitted to the New Jersey Economic Development Authority for its review and approval and, when practicable, are encouraged to adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council.

(2) Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.

e. A general contractor, construction manager, design-build team, or subcontractor shall be registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by the Division of Property Management and Construction to perform work on a public-private partnership higher education project.

f. (1) On or before August 1, 2013, all projects proposed in accordance with this section shall be submitted to the New Jersey Economic Development Authority for its review and approval; except that in the case of projects proposed in accordance with paragraph (2) of subsection a. of this section, all projects shall be submitted on or before August 1, 2014. The projects are encouraged, when practicable, to adhere to the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any application that is deemed to be incomplete on August 2, 2013, or on August 2, 2014 in the case of an application submitted pursuant to paragraph (2) of subsection a. of this section, shall not be eligible for consideration.

(2) (a) In order for an application to be complete and considered by the authority it shall include, but not be limited to: (i) a public-private partnership agreement between the State or county college and the private developer; (ii) a full description of the project, including a description of any agreement for the lease of a revenue-producing facility

related to the project; (iii) the estimated costs and financial documentation for the project; (iv) a timetable for completion of the project extending no more than five years after consideration and approval; and (v) any other requirements that the authority deems appropriate or necessary.

(b) As part of the estimated costs and financial documentation for the project the application shall contain a long-range maintenance plan and shall specify the expenditures that qualify as an appropriate investment in maintenance. This long-range maintenance plan shall be approved by the authority pursuant to regulations promulgated by the authority that reflect national building maintenance standards and other appropriate building maintenance benchmarks. All contracts to implement a long-range maintenance plan pursuant to this paragraph shall contain a project labor agreement. The project labor agreement shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest extent possible enhances employment opportunities for individuals residing in the county of the project's location.

(3) The authority shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. No project shall be undertaken until final approval has been granted by the authority; provided, however, that the authority shall retain the right to revoke approval if it determines that the project has deviated from the plan submitted pursuant to paragraph (2) of this subsection.

(4) The authority may promulgate any rules and regulations necessary to implement this subsection, including provisions for fees to cover administrative costs.

Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.

g. The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall not apply to any project carried out pursuant to this section.

L.2009, c.90, s.43; amended 2010, c.10, s.1; 2012, c.10; 2012, c.42, s.1.