

CHAPTER 281

AN ACT concerning the awarding of county college contracts and amending P.L.1982, c.189.

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

1. Section 3 of P.L.1982, c.189 (C.18A:64A-25.3) is amended to read as follows:

C.18A:64A-25.3 Purchases, contracts and agreements not requiring advertising.

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 \$25,000 or, commencing January 1, 2003, 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 county college, without public advertising for bids and bidding therefor.

b. Commencing January 1, 2003 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 24 consecutive months, notwithstanding that such 24 -month period does not coincide with the fiscal year.

2. Section 5 of P.L.1982, c.189 (C.18A:64A-25.5) is amended to read as follows:

C.18A:64A-25.5 Exceptions to requirement for advertising.

5. Any purchase, contract or agreement of the character described in section 4 may be made, negotiated or awarded by the county 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 county 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 county college may be a party; 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; 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 said board; or

(9) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such 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; 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; 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, not under the direct control of the college and expended by student organizations; or

(18) Printing, including without limitation catalogs, yearbooks and course announcements; or

(19) Providing goods or services for the use, support or maintenance of proprietary computer hardware, software peripherals and system development for the hardware; 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 county college bookstore, or by a service or management company under contract with a county college to operate a county college book store for resale to college students and employees; or

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

(23) Expenses for travel or conferences; or

(24) 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.

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 county college has advertised for bids pursuant to section 4 of P.L.1982, c.189 (C.18A:64A-25.4) on two occasions and (i) has received no bids on both occasions in response to its advertisement, or (ii) has rejected such bids on two occasions because the county college has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the county 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 such contract or agreement may then be negotiated by a two-thirds affirmative vote of the authorized membership of the board of trustees authorizing such contract or agreement; provided, however, that:

(1) A reasonable effort is 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 from the county in which the county college is located, or any municipality in close proximity to the county 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 P.L.1982, c.189 (C.18A:64A-25.4); and

(3) Any relevant 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.1982, c.189 (C.18A:64A-25.4), shall be stated in the resolution awarding such contract or agreement; provided, further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the county college shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate and afford each such bidder a reasonable

opportunity to negotiate, but the county college shall not award such 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 responsible vendor, and is a reasonable price for such work, materials, supplies or services.

Whenever a county 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 county prosecutor of the county in which the county college is located and 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.

3. Section 6 of P.L.1982, c.189 (C.18A:64A-25.6) is amended to read as follows:

C.18A:64A-25.6 Emergency purchases and contracts.

6. Any purchase, contract, or agreement may be made, negotiated or awarded by a county college without public advertising for bids and bidding therefor, notwithstanding that the cost or contract price will exceed \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3), 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, provided that such purchases, contracts or agreements are awarded or made in the following manner:

a. A written requisition for the performance of such 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 hereby authorized to award a contract for said work, materials or supplies.

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

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

4. Section 10 of P.L.1982, c.189 (C.18A:64A-25.10) is amended to read as follows:

C.18A:64A-25.10 Joint purchases by county colleges, municipalities or counties; authority.

10. The board of trustees of two or more county colleges may provide jointly by agreement for the purchasing of work, materials or supplies for their respective colleges, or one or more county colleges may provide for such purchase by joint agreement with the governing bodies of any municipality or of the county within whose boundaries any such college or colleges is or are wholly or partly located and may enter agreements with other institutions of higher education or with other units of government pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

5. Section 25 of P.L.1982, c.189 (C.18A:64A-25.25) is amended to read as follows:

C.18A:64A-25.25 Cost over threshold level separate plans and specifications; bids; advertisement; award of contract; payment to subcontractor.

25. In the preparation of plans and specifications for the construction, alteration or repair of any building by a county college, when the entire cost of the work and materials will exceed \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3), separate plans and specifications may be prepared for each of the following to include all work and materials related thereto or to be performed or furnished in connection therewith:

(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.

The contracting agent shall advertise for and receive in the manner provided by law (1) separate bids for each of the foregoing categories (a) through (e), or (2) bids for all work and materials required to complete the entire project, if awarded as a single contract, or (3) both. All bids submitted shall set forth the name or names of, and evidence of performance security from, all subcontractors to whom the bidder will subcontract the work described in the foregoing categories (a) through (e).

Contracts shall be awarded to the lowest responsible bidder. In the event that a contract is advertised in accordance with (3) above, the contract shall be awarded in the following manner: if the sum total of the amounts bid by the lowest responsible bidder for each category (a) through (e) is less than the amount bid by the lowest responsible bidder for all the work and materials, the county college shall award separate contracts for each of such categories to the lowest responsible bidder therefor, but if the sum total of the amount bid by the lowest responsible bidder for each category is not less than the amount bid by the lowest responsible bidder for all the work and materials, the county college shall award a single contract to the lowest responsible bidder for all of such work and materials. In every case in which a contract is awarded under (2) above, all payments required to be made under the contract for work and materials supplied by a subcontractor shall, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor.

6. Section 27 of P.L.1982, c.189 (C.18A:64A-25.27) is amended to read as follows:

C.18A:64A-25.27 Authorization; resolution; method.

27. Any county 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 \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c. 189 (C. 18A:64A-25.3) 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. Such 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 county 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 county 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 such property.

e. A county college may reject all bids if it determines such rejection to be in the public interest. In any case in which the college has rejected all bids, it may readvertise such 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 such personal property without further publication or notice thereof at private sale, provided that 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, and provided further that in no event 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 \$25,000 or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3) in any one sale or the property consists of perishable goods, it may be sold at private sale without advertising for bids.

g. Notwithstanding the provisions of this section, by resolution of the board of trustees, a

purchasing agent may include a sale of personal property no longer needed for county college purposes as part of specifications to offset the price of a new purchase.

7. Section 28 of P.L.1982, c.189 (C.18A:64A-25.28) is amended to read as follows:

28. Duration of certain contracts. A county college may only enter into a contract exceeding 24 consecutive months for the:

- a. Supplying of:
 - (1) Fuel for heating purposes for any term not exceeding in the aggregate three years; or
 - (2) Fuel or oil for use in automobiles, autobuses, motor vehicles or equipment for any term not exceeding in the aggregate three years; or
- b. Plowing and removal of snow and ice for any term not exceeding in the aggregate three years; or
- c. Collection and disposal of garbage and refuse for any term not exceeding in the aggregate three years; or
- d. Providing goods or services for the use, support or maintenance of proprietary computer hardware, software peripherals and system development for the hardware for any term of not more than five years; or
- e. Insurance, including the purchase of insurance coverages, insurance consultant or administrative services, and including participation in a joint self-insurance fund, risk management programs or related services provided by a county college insurance group, or participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6, for any term of not more than three years; or
- f. Leasing or service of automobiles, motor vehicles, electronic communications equipment, machinery and equipment of every nature and kind for any term not exceeding in the aggregate five years; or
- g. Supplying of any product or rendering of any service by a company providing voice, data, transmission or switching services, for a term not exceeding five years; or
- h. The providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms and cafeterias, for a term not exceeding three years; or
- i. The 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 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 or engineer 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 for a term not exceeding five years; or
- l. Custodial or janitorial services for any term not exceeding in the aggregate three years; or
- m. Child care services for a term not exceeding three years; or
- n. Security services for a term not exceeding three years; or
- o. Ground maintenance services for a term not exceeding three years; or
- p. Laundering, dry-cleaning or rental of uniforms for a term not exceeding three years.

All multi-year 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, and except contracts for insurance coverages, insurance consultant or administrative services, participation or membership in a joint self-insurance fund, risk management programs or related services of a county college insurance group, and participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6 or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), 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.

8. This act shall take effect on the first day of the third month after enactment and shall be applicable to purchases, contracts or agreements for which public advertising for bids commenced on or after the effective date of this act.

Approved December 27, 2001.