

CHAPTER 369

AN ACT concerning the awarding of State college and university contracts, amending N.J.S.18A:64-6, P.L.1986, c.43 and P.L.1992, c.61 and repealing section 20 of P.L.1986, c.43.

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

1. N.J.S.18A:64-6 is amended to read as follows:

Powers, duties of boards.

18A:64-6. The board of trustees of a State college shall have general supervision over and shall be vested with the conduct of the college. It shall have the power and duty to:

- a. Adopt and use a corporate seal;
- b. Determine the educational curriculum and program of the college consistent with the programmatic mission of the institution or approved by the Commission on Higher Education;
- c. Determine policies for the organization, administration and development of the college;
- d. Study the educational and financial needs of the college; annually acquaint the Governor and Legislature with the condition of the college; and prepare and present the annual budget to the Governor, the Division of Budget and Accounting in the Department of the Treasury and the Legislature in accordance with law;
- e. Disburse all moneys appropriated to the college by the Legislature and all moneys received from tuition, fees, auxiliary services and other sources;
- f. Direct and control expenditures and transfers of funds appropriated to the college and tuition received by the college, in accordance with the provisions of the State budget and appropriation acts of the Legislature, reporting changes and additions thereto and transfers thereof to the Director of the Division of Budget and Accounting in the State Department of the Treasury and as to funds received from other sources, direct and control expenditures and transfers in accordance with the terms of any applicable trusts, gifts, bequests, or other special provisions. All accounts of the college shall be subject to audit by the State at any time;
- g. In accordance with the provisions of the State budget and appropriation acts of the Legislature, appoint and fix the compensation of a president of the college, who shall be the executive officer of the college and an ex officio member of the board of trustees, without vote, and shall serve at the pleasure of the board of trustees;
- h. Notwithstanding the provisions of Title 11, Civil Service, of the Revised Statutes, upon nomination by the president appoint a treasurer and such deans and other professional members of the academic, administrative and teaching staffs as defined in section 13 of P.L.1986, c.42 (C.18A:64-21.2) as shall be required and fix their compensation and terms of employment in accordance with salary ranges and policies which shall prescribe qualifications for various classifications and shall limit the percentage of the educational staff that may be in any given classification;
- i. Upon nomination by the president, appoint, remove, promote and transfer such other officers, agents or employees as may be required for carrying out the purposes of the college and assign their duties, determine their salaries and prescribe qualifications for all positions, all in accordance with the provisions of Title 11, Civil Service, of the Revised Statutes;
- j. Grant diplomas, certificates and degrees;
- k. Pursuant to the provisions of the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and agreements for the purchase of lands, buildings, equipment, materials, supplies and services; enter into contracts and agreements with the State or any of its political subdivisions or with the United States, or with any public body, department or other agency of the State or the United States or with any individual, firm, or corporation, which are deemed necessary or advisable by the board for carrying out the purposes of the college;
- l. If necessary, take and condemn land and other property in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), whenever authorized by law to purchase land or other property;
- m. Adopt, after consultation with the president and faculty, bylaws and make and promulgate such rules, regulations and orders, not inconsistent with the provisions of this article, that are necessary and proper for the administration and operation of the college and the carrying out of

its purposes;

n. Establish fees for room and board sufficient for the operation, maintenance, and rental of student housing and food service facilities;

o. Fix and determine tuition rates and other fees to be paid by students;

p. Accept from any government or governmental department, agency or other public or private body or from any other source grants or contributions of money or property, which the board may use for or in aid of any of its purposes;

q. Acquire by gift, purchase, condemnation or otherwise, own, lease, dispose of, use and operate property, whether real, personal or mixed, or any interest therein, which is necessary or desirable for college purposes;

r. Employ architects to plan buildings; secure bids for the construction of buildings and for the equipment thereof; make contracts for the construction of buildings and for equipment; and supervise the construction of buildings;

s. Manage and maintain, and provide for the payment of all charges and expenses in respect to all properties utilized by the college;

t. Borrow money for the needs of the college, as deemed requisite by the board, in such amounts, and for such time and upon such terms as may be determined by the board, provided that this borrowing shall not be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, or be payable out of property or funds, other than moneys appropriated for that purpose, of the State;

u. Authorize any new program, educational department or school consistent with the institution's programmatic mission or approved by the commission;

v. (Deleted by amendment, P.L.1994, c.48);

w. Pursuant to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), award contracts and agreements for the purchase of goods and services, as distinct from contracts or agreements for the construction of buildings and other improvements, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State college, price and other factors considered; and

x. Pursuant to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), award contracts and agreements for the construction of buildings and other improvements to the lowest responsible bidder, whose bid, conforming to the invitation for bids, will be the most advantageous to the State college.

2. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to read as follows:

C.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.

3. Section 3 of P.L.1986, c.43 (C.18A:64-54) is amended to read as follows:

C.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.

4. Section 4 of P.L.1986, c.43 (C.18A:64-55) is amended to read as follows:

C.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.

5. Section 5 of P.L.1986, c.43 (C.18A:64-56) is amended to read as follows:

C.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.

6. Section 6 of P.L.1986, c.43 (C.18A:64-57) is amended to read as follows:

C.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.

7. Section 9 of P.L.1986, c.43 (C.18A:64-60) is amended to read as follows:

C.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 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.

8. Section 14 of P.L.1986, c.43 (C.18A:64-65) is amended to read as follows:

C.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.

9. Section 16 of P.L.1986, c.43 (C.18A:64-67) is amended to read as follows:

C.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.

10. Section 17 of P.L.1986, c.43 (C.18A:64-68) is amended to read as follows:

C.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:

_____;

(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)

11. Section 18 of P.L.1986, c.43 (C.18A:64-69) is amended to read as follows:

C.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.

12. Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to read as follows:

C.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.

13. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to read as follows:

C.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.

14. Section 26 of P.L.1986, c.43 (C.18A:64-77) is amended to read as follows:

C.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.

15. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to read as follows:

C.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.

16. Section 28 of P.L.1986, c.43 (C.18A:64-79) is amended to read as follows:

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

28. A State college may only enter 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 five 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 five 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 10 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.

Repealer.

17. Section 20 of P.L.1986, c.43 (C.18A:64-71) is repealed.

18. This act shall take effect on the 60th day after enactment and apply to contracts for which bids are solicited on and after the effective date

Approved January 12, 2006.