

Make College More Affordable: Modernize Contracts Laws for NJ State Colleges & Universities

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The ideal college, according to President James Garfield, was having Mark Hopkins, the president of Williams College from 1836 to 1872, “[on one end of a log and a student on the other.](#)” Times have changed a bit since Garfield graduated from Williams in 1856. To be sure, professors and their classrooms are important, but so too are libraries, laboratories, computers, and high-speed connections to the internet. All colleges need these types of facilities and equipment, and they try to get the best price from the most responsible vendor or contractor. But in New Jersey, the rules that public four-year colleges and universities follow to purchase goods and services, or construct a building, depend on how the institution is categorized under the law. This differentiation no longer makes sense. It is time to abolish the State College Contracts Law – which applies to seven institutions – and replace it with the same rules followed by public research universities.

New Jersey divides public four-year institutions of higher education into two categories: (1) state colleges and universities, which include The College of New Jersey, Kean University, New Jersey City University, Ramapo College, Stockton University, Thomas Edison State University, and William Paterson University; and (2) public research universities, which include Rutgers University, the New Jersey Institute of Technology, Rowan University, and Montclair State University.

A [law](#) signed by Gov. Christie on July 21, 2017 re-designated Montclair State from a state university to a public research university. In addition to recognizing the growth in Montclair State’s doctoral-level education and research, the law provided the university with the same rules for construction and procurement as NJIT and Rowan (Rutgers has a distinctive status under the Rutgers Compact of 1956 that gives it greater autonomy and authority).

Seven institutions are left straining against the State College Contracts Law, which was enacted in 1986 and was last amended in 2006. Even though the public research universities and the state colleges and universities buy and build the same things, the rules they follow for procurement and construction differ in the following significant ways.

Bidding Procedures for Construction Projects: Lowest Price

Under the law, public research universities award contracts to a “responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the university, price and other factors considered.” Those “other factors” are the key. They can include past performance of construction projects at the institution. If a contractor puts in leaky windows on one project and

then submits the lowest bid on another project, a public research institution does not need to hire that contractor again.

Not so for the state colleges and universities. For construction projects, they must award contracts “to the lowest responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the State college.” The law does not allow colleges to consider “other factors” beyond price. So the contractor who installs leaky windows can win the bid for the next project by submitting the lowest price. The price will increase, of course, when new windows must be installed.

Bidding Procedures for Construction Projects: General Contractor and Subcontracts

The state colleges and universities have only three options when it comes to construction: hiring a single contractor; getting bids on five specific subcontracts (plumbing and gas fitting; refrigeration, heating and ventilation; electrical work; structural steel and ornamental iron work; and general construction); or combining the single contractor with the five specific subcontracts.

Public research universities can enter more creative and cost-effective types of construction contracts that meet the needs of the project. Examples include design-build contracts, under which a single entity performs both architectural/engineering services and construction under one contract; and construction-manager-at-risk contracts, under which a construction firm is selected as construction manager and general contractor at the beginning of the design phase.

The design-build method allows institutions to have one point of contact for the entire project, saving time and money; and streamline and save costs on specialized projects, such as science labs and cogeneration facilities. Benefits from construction-manager-at-risk contracts include working closely with the project’s architect to examine alternate materials, systems, and equipment for cost, quality and availability; and coordinating subcontractor bids and determining a guaranteed maximum price for construction.

Equally important, design-build and construction-manager-at-risk contracts afford the same accountability as the state colleges’ more stringent approaches. The public research institutions still adhere to public bidding and transparency.

Procurement of Goods and Services

The basic economic principal of supply and demand explains that buyers can get a lower price for goods or services if they enter a long-term contract. The public research universities have no limits on the length of contracts they enter, allowing them to negotiate the best deal possible.

The state colleges and universities, however, can generally enter a contract for no longer than three years. They can enter longer terms for items such as utilities, information technology, insurance, and leases for vehicles and equipment (five-year maximums), energy conservation services (up to 10 years), and management and operation of bookstores, performing arts centers, residence halls, parking facilities and building operations (up to 30 years). Putting a limit on the length of a contract puts a limit on the ability of the state colleges to negotiate the best price.

Need to Change an Anachronistic Law

The last significant changes to the State College Contracts Law were enacted in January 2006, when Gov. Richard Codey signed legislation we worked on for two years with the legislature. Those amendments included increasing the bid threshold for contracts that do not require board approval (the bill increased the threshold from \$17,700 to \$26,200, which has risen under an inflation-adjustment escalator clause to \$33,000 today); replacing the phrase “data processing software programs, systems and service” with “information technology;” lengthening the maximum term for contracts for services such as fuel, snow removal, garbage collection, and food service from three years to five years; and allowing multiyear contracts for banking services and building maintenance (five-year maximums).

During that legislative effort in 2004-2005, the state colleges and universities almost got the authority to enter design-build and construction-manager-at-risk contracts. The Assembly approved those provisions, but the Senate deleted them from the bill.

Continuing to tweak the State College Contracts Law is one possible option for the state colleges and universities. Seeking amendments to allow design-build and construction-manager-at-risk, and increasing the bid threshold to a reasonable level like \$50,000 (which is the threshold above which Rutgers University [“will seek formal competition between multiple suppliers”](#)), would provide greater cost-efficiency and effectiveness.

A better route would be eliminating the 31-year-old State College Contracts Law and implementing the same contracting standards among New Jersey’s 11 public four-year colleges and universities. The State College Contracts Law pertains only to the seven state colleges and universities, while the public research universities follow more flexible and reasonable requirements that maintain transparency and accountability. It makes no sense to have different procurement and construction standards for “public research universities” and “state colleges and universities” when all 11 institutions are buying the same types of goods and services, and constructing the same types of buildings.

If you were sitting at the opposite end of a log from Williams College President Mark Hopkins sometime in the 1800s, he no doubt would have told you so.