

Joint Purchasing Participation Agreement
for the
County College Joint Purchasing Consortium

THIS AGREEMENT is entered into this 19th day of May 1999, among the county colleges of the State of New Jersey listed on Schedule A (referred to individually as a "Member" and collectively as the "Members") which have signed this Agreement agreeing to be bound by its terms.

WITNESSETH:

WHEREAS the Members desire to form a voluntary joint purchasing consortium under the auspices of the New Jersey Council of County Colleges (the "Joint Purchasing Consortium" of "JPC") pursuant to N.J.S.A. 18A:64A-25.10 for the purpose of effecting substantial economies in the purchase of goods and services; and

WHEREAS the Members desire to provide for the JPC's organization and management; and

WHEREAS each Member relies on and is intended to be the beneficiary of the terms of this Agreement and has approved the signing of the Agreement by appropriate Resolution of its Board of Trustees;

NOW, THEREFORE, in consideration of the mutual promises made herein, the Members agree as follows:

1. **Definitions.** As used throughout this Agreement, the following words shall have the meanings set forth herein:
 - a.) "*Lead College*" means the Member designated by the Coordinating Board to act as Purchasing Agent for the JPC by assuming the responsibility of soliciting proposals or advertising for bids, as appropriate, and awarding contracts to be offered to the members for a particular service or good.
 - b.) "*Coordinating Board*" means the body charged with administrative oversight of the JPC, consisting of one representative designated by each Member.
 - c.) "*Base Annual Participation Fee*" means the yearly fee paid by a Member to cover costs associated with the operation of the JPC.
 - d.) "*Additional Assessment*" means the additional fee paid by a Member based on volume of purchases to defray operational expenses.

May 19, 1999

- e.) “*Special Assessment*” means a fee imposed on Members by a three-fourths majority of the Coordinating Board to meet extraordinary fiscal year expenses including the obligation of Members to indemnify against bid solicitation and award claims as set forth in paragraph 8(d)(i) of this Agreement and any other extraordinary expenses which are incurred by the JPC for the benefit of all Members.
2. **Name.** The name of the JPC shall be the “COUNTY COLLEGE JOINT PURCHASING CONSORTIUM.”
3. **Purpose.** The purpose of the JPC shall be to achieve economies for its Members in the purchase of good and services through joint purchasing, including all activities and undertakings reasonably related or incidental to this activity.
4. **Term.** This Agreement shall be for an initial term expiring June 30, 2000, which term shall be self-renewing for successive one year terms beginning on July 1 of each year, provided that any Member may withdraw from participation in the JPC effective as of the end of the fiscal year by providing written notice of withdrawal to the Coordinating Board Secretary at least ninety (90) days prior to the end of the fiscal year as set forth in paragraph 12 below.
5. **Additional Members.** Additional county colleges may become Members of the JPC by executing the Rider Agreement attached to this Agreement and delivering payment of the Base Annual Participation Fee, provided that no Additional Member may participate in any project for which contract proposals or bids have been solicited prior to delivery of the Rider Agreement to the Secretary of the Coordinating Board.
6. **Responsibilities of the Coordinating Board.** The Coordinating Board shall have the authority to make the following decisions on behalf of the JPC:
- a.) *Management of Day-to-Day Business.* By majority vote, the Coordinating Board shall:
- i.) adopt by-laws governing the work of the Coordinating Board;
 - ii.) adopt rules and regulations as needed for the organization and operation of the JPC which shall be consistent with the terms of this Agreement;
 - iii.) approve the yearly administrative budget for the JPC;
 - iv.) determine a formula for the assessment of administrative costs among the Members;
 - v.) maintain the name of the New Jersey County of County Colleges a segregated operating account for the JPC;
 - vi.) determine the goods and services for which contracts should be jointly solicited;

- vii.) designate a Lead College to serve as Purchasing Agent for the JPC for each contract solicited; and
 - viii.) in conjunction with the Purchasing Agent for each contract, prepare, review and approve bid specifications.
- b.) *Extraordinary Decisions.* Notwithstanding any other provision of this agreement, a decision on any of the following matters shall require the approval of three-quarters of the Coordinating Board:
- i.) Amendments of this Agreement;
 - ii.) Discontinuance of the JPC;
 - iii.) Special Assessments.

7. **Responsibilities of the Lead College as Purchasing Agent.** For each contract solicitation approved by the Coordinating Board, the Purchasing Agent designated by the Coordinating Board shall:

- a.) conduct the bidding or RFP process using bid specifications approved by and prepared in conjunction with the Coordinating Board;
- b.) ensure that the contract solicitation and award complies with N.J.S.A. 18A:64A-25.1 *et seq.*
- c.) ensure that all contract solicitation documents, whether for use in the bidding or RFP process, contain the following language regarding bid disputes:

“Bidder acknowledges that this bid and the award of a contract are governed by the County College Contracts Law, N.J.S.A. 18A:64A-25.1 *et seq.*, and that any legal challenges to the bidding process, the award or non-award of a contract, or the rejection of any bids, must be pursued before the Board of Trustees of _____ (Lead College) in accordance with P.L. 1994 Ch. 48, Sec. 6(f). The challenge or objection must be presented by filing a petition with the secretary of the Board of Trustees within ten (10) calendar days of the decision to award or not award a contract. Proceedings on the petition shall be governed by the Rules Governing Hearings Before the Board of Trustees fo the _____ County College, which rules may be obtained at the office of the College President.”

- d.) require the successful bidder/vendor to agree to extend the contract terms to all Members of the JPC.

- e.) Receive and hold any bid security required by the bid specifications or RFP;
- f.) Review the bids or proposals received in response to the bid solicitation, determine the qualifications and responsibility of the bidders, reject any bids that do not conform to the specifications, determine any bid disputes, select the successful bidder and arrange for its Board of Trustees to award the contract on behalf of the JPC.
- g.) Notify the successful bidder/vendor and the Members of the award of the contract.
- h.) Submit vouchers for reimbursement for specifically identifiable administrative costs for services rendered to the JPC as Purchasing Agent. The Purchasing Agent shall submit a voucher for payment along with proof of expenses to the Coordinating Board for approval.

8. **Rights and Responsibilities of Members.**

- a.) *Contracting With Vendors.* Each Member in its own name shall have the option to contract directly with the successful vendor within sixty (60) days of the Purchasing Agent's notification to the vendor of the contract award, or such longer period as the vendor may authorize in writing.
- b.) *Contract Administration.* Each Member which enters into a contract with a vendor shall conduct contract administration and payment processing directly with the vendor and not through the JPC. Each Member shall be liable only for goods and services ordered by and received by it and none assumes any additional liability by entering into this Agreement except as set forth in subparagraph (d) below and for JPC fees and assessments as set forth in paragraphs 9, 10 and 11 below.
- c.) *Right to Conduct Individual Solicitations.* The award of a contract by the Lead College acting as Purchasing Agent shall not obligate any Member, including the Purchasing agent, to enter into a contract with the successful bidder or vendor. Nothing in this Agreement shall limit the authority of any Member to award contracts of purchase, with or without advertising, individually and on its own behalf by conducting a contract solicitation independently of that conducted by the JPC.
- d.) *Indemnification.* By entering into this Agreement, each Member agrees to the following indemnification provisions:
 - i.) *Bid Disputes.* Each Member agrees to indemnify and save harmless the New Jersey Council of County Colleges, the Purchasing Agent, and the JPC from claims, liabilities and expenses, including bid

dispute litigation, arising out of the solicitation and award of contracts on behalf of the JPC. A Purchasing Agent will be indemnified in its capacity as Purchasing Agent only and not in its capacity as a Member. The obligation to indemnify under this subparagraph shall be shared and apportioned equally among the institutions who were members of the JPC at the time of the occurrence giving rise to the bid dispute.

ii.) *Institutional Contractual Liability.* Each Member agrees to indemnify and save harmless the New Jersey Council of County Colleges, the Purchasing Agent, and the JPC from claims, liabilities and expenses arising from claims based upon the terms of any contract entered into directly between the Member institution and a vendor solicited by the JPC.

9. **Base Annual Participation Fee.** Each Member shall pay a Base Annual Participation Fee of \$1,000.00 for all or any part of the fiscal year during which it is a member in the JPC. During a Member's initial year of membership, the fee shall be paid simultaneously with delivery of an executed copy of this Agreement or the attached Rider Agreement. Thereafter, the fee shall be paid by July 1.

10. **Additional Assessment.** In order to fully fund the administrative costs of the JPC, in addition to the Base Annual Participation Fee, each Member shall pay an Additional Assessment based on that member's volume of purchases for the prior fiscal year according to a formula determined by the Coordinating Board. The Additional Assessment, shall be paid with the Base Annual Participation Fee.

11. **Special Assessment.** In any fiscal year in which the JPC incurs extraordinary expenses, including, but not limited to the obligation of the Members under paragraph 8(d)(i) to indemnify against bid dispute claims, the Coordinating Board shall determine the amount necessary to meet the extraordinary expenses which shall be apportioned equally among those Member institutions who were members at the time of the event or occurrence upon which the Special Assessment is based without consideration for the volume of purchases of a Member or whether Members participated in contracts during the fiscal year. Special Assessments shall be payable within thirty (30) days from a Member's receipt of notification from the Coordinating Board that a Special Assessment has been set.

12. **Withdrawal of a Member.** A Member may withdraw from the JPC effective at the end of the fiscal year, provided that the Member has given ninety days written notice of its intent to withdraw to the Secretary of the Coordinating Board and has paid all fees due the JPC, including any additional or special assessments as described in paragraphs 10 and 11 above. No withdrawing Member shall be entitled to enter into a JPC awarded contract after the effective date of its withdrawal from the JPC.

13. **Authority to Enforce Agreement.** The Members acknowledge that this Agreement is entered into under the auspices of the New Jersey Council of County Colleges and therefore agree that the New Jersey Council of County Colleges has the

authority on behalf of the Members to take appropriate actions to enforce this Agreement. The enforcement authority of the New Jersey Council of County Colleges is in addition to the authority each Member retains to enforce the Agreement as a beneficiary of the terms of this Agreement.

14. **Miscellaneous.**

- a.) *Notices.* All notices under this Agreement shall be in writing and shall be given to the Members entitled thereto by personal service or by certified or registered mail, return receipt requested at the address in this Agreement or Rider Agreement or at a change of address previously delivered to the Secretary of the Coordinating Board. Notices shall be effective only upon actual receipt.
- b.) *Validity of Agreement.* The invalidity of any portion of this Agreement shall not affect the validity of the remainder hereof.
- c.) *Titles and Captions.* Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.
- d.) *Applicable Law.* The terms and provisions of this Agreement and any dispute arising hereunder shall be governed by the laws of the State of New Jersey.
- e.) *Entire Agreement.* This Agreement is the final integration of the agreement of the parties and supersedes any prior oral or written understanding or agreements with respect to the matters covered by it.

IN WITNESS WHEREOF, the undersigned institution has executed this Agreement, intending to be bound thereby, as of the date first above written.

COUNTY COLLEGE OF MORRIS

By: Edward J. Yaw
President