

ii. Are sound environmental practices such as recycling, energy efficiency, and waste reduction used?

2. Management criteria:

i. Project management:

(1) How well does the proposed scheduling timeline meet the contracting unit's needs?

(2) Is there a project management plan?

ii. History and experience in performing the work:

(1) Does the vendor document a record of reliability of timely delivery and on-time and on-budget implementation?

(2) Does the vendor demonstrate a track record of service as evidenced by on-time, on-budget, and contract compliance performance?

(3) Does the vendor document industry or program experience?

(4) Does the vendor have a record of moral integrity?

iii. Availability of personnel, facilities, equipment and other resources:

(1) To what extent does the vendor rely on in-house resources vs. contracted resources?

(2) Are the availability of in-house and contract resources documented?

iv. Qualification and experience of personnel:

(1) Documentation of experience in performing similar work by employees and when appropriate, sub-contractors?

(2) Does the vendor make use of business capabilities or initiatives that involve women, the disadvantaged, small and/or minority owned business establishments?

(3) Does the vendor demonstrate cultural sensitivity in hiring and training staff?

3. Cost criteria:

i. Cost of goods to be provided or services to be performed:

(1) Relative cost: How does the cost compare to other similarly scored proposals?

(2) Full explanation: Is the price and its component charges, fees, etc. adequately explained or documented?

ii. Assurances of performance:

(1) If required, are suitable bonds, warranties, or guarantees provided?

(2) Does the proposal include quality control and assurance programs?

iii. Vendor's financial stability and strength:

(1) Does the vendor have sufficient financial resources to meet its obligations?

5:34-4.3 Opening and evaluating proposals and awarding competitive Contracts

(a) The request for proposals document shall state the time and place for receiving and opening the proposals, and shall specify the criteria that will be used to evaluate proposals.

(b) At the time and place proposals are due, the names of all the vendors and the price of their respective proposals shall be announced in public. Prior to opening such proposals, the authorized agent shall, if not provided as part of the request for proposals document, describe the specific weighting of any evaluation criteria, which may be used for evaluating the proposals.

(c) The evaluation of request of proposals shall be subject to the following requirements:

1. The request for proposals document shall state the criteria for evaluating the proposals.

2. Where not otherwise required to do so by other applicable Federal, State and local regulations, the authorized agent may appoint a committee to assist in the evaluation of the proposals. Committees shall be subject to the following requirements:

i. If a committee is to be used, the names of the individuals who serve as committee members shall not be publicly disclosed until the evaluation report is presented to the governing body. Committee members shall be familiar with the need for the goods to be provided or the services to be performed in the request for proposals.

ii. Committee members may conduct their work separately or together.

iii. While a member of the governing body is not required to be a committee member, no more than one less than the majority of the current membership of the governing body may serve on a committee.

iv. The committee may use advisors, as it deems necessary to give opinions on evaluating proposals, except that the advisors shall be subject to the provisions of (e) below. The names of such advisors shall be included in the report submitted to the governing body.

v. Meetings of the committee are advisory in nature and are not subject to the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

3. At the option of the contracting unit, the request for proposals document may, after proposals are received

and opened, but prior to completing the evaluation of the proposals, provide the opportunity for vendors to provide clarification regarding their submission. The presentation shall address only those matters specified by the contracting unit. The presentation shall not be used for negotiation of a contract contrary to law.

(d) The process of establishing weighting criteria and evaluating proposals shall result in a finding that a specific proposal is the most advantageous, price and other factors considered, or that all proposals should be rejected.

(e) Before reviewing any proposals, each person evaluating a proposal shall assess their own affiliations and financial interest and those of their families that relate to their duties as someone evaluating a proposal to ensure they do not have a conflict of interest. For these purposes, a person has a conflict of interest with a proposal if that person or spouse, parent, or child would be in violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., or the School Ethics Act, N.J.S.A. 18A:12-21 et seq. as appropriate. Any person with a conflict of interest related to the competitive contracting proposal shall not participate in the evaluation process.

(f) Prior to evaluating the proposals, each individual participating in the evaluation of a proposal shall execute a statement in accordance with (e) above certifying they do not have a conflict of interest. Such statement shall reflect the provisions at (e) above, which relate to possible conflict of interest situations. This statement shall be filed with the authorized agent, prior to the beginning of the evaluation process. The certification shall be as follows:

I hereby certify that I have reviewed the conflict of interest standards in the Local Government Ethics Law or the School Ethics Act, as appropriate, and that I do not have a conflict of interest with respect to the evaluation of this proposal. I further certify that I am not engaged in any negotiations or arrangements for prospective employment or association with any of those submitting proposals or their parent or subsidiary organization.

5:34-4.4 Use of competitive contracting for non-listed services

(a) The authorized agent shall apply to the Director for approval to use the provisions of N.J.S.A. 40A:11-4.1k and 18A:18A-4.1k requesting the use of competitive contracting for the operation, management, or administration of services not otherwise listed in N.J.S.A. 40A:11-4.1a through j and 18A:18A-4.1a through j. The application shall be in letter form and shall provide the information reasonably required for the Director to respond to the request. If the Director finds that the subject matter of the application is consistent with the intent of the statutory provisions encouraging competitive contracting, then the Director shall approve the request. The Director may consider the level and characteristics of the service and competition in the market. Prior to submitting an application, an applicant may request to consult with the Director or designee to review issues regarding a potential application.

(b) Services that meet the requirements for procurement through competitive contracting may not be combined or included in a contract with other services which are required to be procured through competitive bidding so as to avoid the statutory obligation for the procurement of such other services through competitive bidding.

5:34-4.5 Use of competitive contracting for energy services

(a) For the purposes of N.J.S.A. 40A:11-4.1c and 18A:18A-4.1c, the "provision or performance of the physical improvements that result in energy services" for which competitive contracting shall not be used, includes the following:

1. The replacement or upgrading of lighting fixtures;
2. The replacement or upgrading of windows;
3. Outside and/or inside doors;
4. The replacement or upgrading of toilets and sinks;
5. The replacement or upgrading of roofs;
6. New boilers;
7. Electrical box upgrades;
8. Cafeteria equipment (that is, freezers and fryers, etc); and
9. Any combination of the above mentioned equipment or work in a single contract.

(b) The work described in (a) above shall be permitted as competitive contracting under the energy services company exemption of N.J.S.A. 40A:11-4.1c and 18A:18A-4.1c only if the goods and services are part of a comprehensive energy services design, plan or specification for which a single contractor will be responsible for the performance of the work.

SUBCHAPTER 5. QUALIFIED PURCHASING AGENTS AND INCREASING THE BID THRESHOLD

Authority

N.J.S.A. 40A:11-37.1 and 18A:18A-49.2.

Source and Effective Date

R.2002 d.17, effective January 22, 2002.
See: 33 N.J.R. 1994(a), 34 N.J.R. 524(a).

5:34-5.1 Qualified purchasing agent

(a) A contracting unit's purchasing agent shall be considered qualified pursuant to N.J.S.A. 40A:11-9b to exercise the supplemental authority as set forth in N.J.S.A. 40A:11-3 and 40A:11-4.3 or N.J.S.A. 18A:18A-3 and 18A:18A-4.3 if the following criteria are met:

1. The individual has served as purchasing agent as defined in N.J.A.C. 5:34-1.2; and

i. Held the power to award contracts as allowed by law; and

ii. Personally performed duties that included, but were not limited to: preparing or reviewing bid specifications, evaluating bids, seeking or authorizing the solicitation of quotations, recommending or awarding contracts, and analyzing procurement needs on a regular basis; and

2. The individual served as a purchasing agent within 15 years immediately preceding the filing of the application to be a qualified purchasing agent and meets at least one of the following standards of qualifications and experience in contracting units under the jurisdiction of the Local Public Contracts Law or Public School Contract Law:

i. Ten years experience as a purchasing agent in New Jersey and has successfully completed Municipal Finance Administration as offered by the Rutgers Center for Government Services;

ii. Seven years experience as a purchasing agent in New Jersey and is the holder of a Certified Municipal Finance Officer or Certified County Finance Officer certificate issued by the Division of Local Government Services, or is the holder of a Registered Public Purchasing Specialist certification issued by the Rutgers Center for Government Services;

iii. Without regard to service as a purchasing agent, is the holder of a Registered Public Purchasing Officer certificate issued by the Rutgers Center for Government Services, or is the holder of a Certified County Purchasing Officer certificate issued by the Division of Local Government Services;

iv. Three years experience as a purchasing agent in New Jersey and:

(1) Holds a certification as a Certified New Jersey School Business Administrator; or

(2) Is a school board manager or school board secretary who is grandfathered, pursuant to N.J.A.C. 6:11-9.7;

v. Without regard to the number of years as a purchasing agent, has successfully completed 30 hours of training in New Jersey procurement law, and has successfully completed Municipal Finance Administration as offered by the Rutgers Center for Government Services and, is either:

(1) Certified as a Certified Public Purchasing Official or a Certified Public Procurement Buyer by the National Institute of Governmental Purchasing; or

(2) Certified by the Federal government as a Purchasing Agent; or

vi. Without regard to the requirement of experience in a contracting unit, has seven years of experience as purchasing agent in the private sector, has successfully completed 50 hours of training in New Jersey procurement law, and has successfully completed Municipal Finance Administration as offered by the Rutgers Center for Government Services.

(b) Applications for qualified purchasing agent shall be on a form prescribed by the Director and shall include proof(s) of meeting the requirement of a qualified purchasing agent described in this section. Applications may be submitted at any time. There shall be no application fee. At the discretion of the Director, additional documentation may be required upon receipt of an application. Upon approval of the application by the Director, the applicant shall be issued a certificate as a qualified purchasing agent.

(c) Where compliance with (a)2 above included the holding of a professional certificate, the certificate must remain in force during the time the individual serves as a qualified purchasing agent.

5:34-5.2 Procedures for increasing the bid threshold

(a) A contracting unit with a qualified purchasing agent desiring to take advantage of the supplemental authority of N.J.S.A. 40A:11-3 and 40A:11-4.3 or N.J.S.A. 18A:18A-3 and 18A:18A-4.3 shall have its governing body pass a resolution authorizing the amount of a higher bid threshold for the contracting unit, the amount of which shall not exceed the statutory maximum bid threshold.

(b) A contracting unit that increases the bid threshold pursuant to (a) above shall either:

1. In a contracting unit subject to the Local Public Contracts Law, a certified resolution increasing the bid threshold shall be filed with the Director and shall be accompanied by:

i. A certification from the chief executive officer of the contracting unit that the purchasing agent of the contracting unit exercises the duties of a purchasing agent pursuant to N.J.S.A. 40A:11-2(30), with specific relevance to the authority, responsibility, and accountability of the purchasing activity of the contracting unit; and

ii. A copy of the contracting unit's purchasing agent's qualified purchasing agent certification; or

2. In a contracting unit subject to the Public School Contracts Law, a certified resolution increasing the bid threshold shall be filed with the Director and shall be accompanied by a copy of the contracting unit's purchasing agent's qualified purchasing agent certification.

5:34-5.3 Absence of qualified purchasing agent

If at any point in time the qualified purchasing agent is unable to exercise the authority, responsibility and accounta-

bility of the contracting unit's purchasing function the bid threshold shall revert to the lower statutory bid threshold level not requiring qualified purchasing agent status, pursuant to N.J.S.A. 40A:11-3 and 18A:18A-3, until a qualified purchasing agent is able to assume the purchasing functions.

SUBCHAPTER 6. EMERGENCY PURCHASES AND CONTRACTS

5:34-6.1 General requirements

(a) The use of emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 shall be subject to the following requirements:

1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service;
2. As soon as reasonably possible, but within three days of declaring the emergency, the chief school administrator of a board of education shall notify the superintendent of education for the county of the nature of the emergency and the estimated needs for goods and services necessary to respond to it;
3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;
4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and
5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

(b) The governing body of each contracting unit shall adopt rules or regulations as appropriate to the contracting unit to ensure that there is a procedure for determining and confirming the existence of an emergency and that the provisions for emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 may be implemented. Such rules or regulations shall include such provisions that ensure that if initially designated individuals are not available, there is a designated chain of command to ensure that there are always appropriate individuals available to make such decisions.

Amended by R.2000 d.485, effective December 4, 2000.
See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).
Rewrote the section.

5:34-6.2 (Reserved)

Repealed by R.2000 d.485, effective December 4, 2000.

See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).
Section was "Procedure for emergency purchases and contracts".

5:34-6.3 (Reserved)

Emergency New Rule, R.1997 d.403, effective September 2, 1997 (to expire November 1, 1997).
See: 29 N.J.R. 4169(a).
Adopted concurrent proposal, R.1997 d.509, effective October 31, 1997.
See: 29 N.J.R. 4169(a), 29 N.J.R. 5062(b).
Repealed by R.2000 d.485, effective December 4, 2000.
See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).
Section was "Procedures for emergency solid waste contracts".

SUBCHAPTER 7. COOPERATIVE PURCHASING

5:34-7.1 Applicability and authority

- (a) The rules in this subchapter shall be known as the Cooperative Purchasing Rules.
- (b) These rules shall apply to all contracting units.
- (c) This subchapter is adopted under the authority of P.L. 1999, c. 440 (N.J.S.A. 40A:11-11).
- (d) Copies of all cooperative purchasing forms are available from the Division of Local Government Services at PO Box 803, Trenton, New Jersey 08625-0803 or at the Division's web site at www.state.nj.us/dca/lgs/pages/dcadlgs/htm.
- (e) When the lead agency of a cooperative pricing system, joint purchasing system or regional cooperative pricing system established and properly registered with the Division is a board of education or educational service commission the provision and performance of goods and services shall be conducted pursuant to the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.). All other lead agencies shall follow the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.).

(f) Boards of education as defined in N.J.S.A. 18A:18A-2 that pursue joint purchasing as described in N.J.S.A. 18A:18A-11 shall be subject to the rules set forth in this subchapter.

Amended by R.1995 d.633, effective December 4, 1995.
See: 27 N.J.R. 3259(a), 27 N.J.R. 4885(b).
Amended by R.2000 d.485, effective December 4, 2000.
See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).
Rewrote the section.

5:34-7.2 Definitions

The following words and terms used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Application" means the forms and all supporting documents for creation, amendment or renewal of a cooperative purchasing system.

“Commodity resale system” means a purchasing system in which a local contracting unit purchases either gasoline, diesel fuel, snow removal chemicals, public works materials and supplies, including road and roadway construction materials, or any other such materials as may be approved by the Director for its own consumption and then sells all or a portion thereof to another local contracting unit.

“Contracting unit” means any county; municipality; board of education; or any board, commission, committee, authori-

ty or agency, which is not a State board, commission or committee, authority or agency, and which has administrative jurisdiction over any district, project, or facility, included or operating in whole or in part within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government or board of education and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services.