

(b) The Director shall prepare such guidelines as determined necessary to assist contracting units in the creation and administration of cooperative purchasing systems.

Recodified from 5:34-7.17 by R.1995 d.633, effective December 4, 1995.

See: 27 N.J.R. 3259(a), 27 N.J.R. 4885(b).

Recodified from 5:34-7.20 by R.2000 d.485, effective December 4, 2000.

See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

In (a), substituted "accordance with" for "light of" following "systems in"; and in (b), deleted "local" following "assist".

### 5:34-7.32 Enforcement

(a) All cooperative purchasing systems shall comply with the provisions of these rules at all times. The lead agency of any cooperative purchasing system deemed by the Director to be in noncompliance shall be notified by certified mail. The lead agency shall explain in writing within 10 working days the steps being taken to correct the noncompliance. Failure of the lead agency to respond within the time provided shall result in the notification to the lead agency by the Director by certified mail to appear before the Director, or his or her designee. Notice shall be given at least 10 working days prior to the date of appearance and shall detail the nature of the alleged noncompliance. Failure to appear may result in the suspension or termination of the registration of the system.

(b) No later than five days after an appearance required herein, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the lead agency.

(c) A determination of noncompliance shall result in the immediate commencement of a 15 day grace period. During this time, the lead agency shall rectify all items of noncompliance, to the satisfaction of the Director.

(d) Failure of the lead agency to undertake such action as required by the Director to resolve the issue of noncompliance may result in the suspension or termination of the registration of the system.

Recodified from 5:34-7.18 by R.1995 d.633, effective December 4, 1995.

See: 27 N.J.R. 3259(a), 27 N.J.R. 4885(b).

Recodified from N.J.A.C. 5:34-7.21 by R.2000 d.485, effective December 4, 2000.

See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

## SUBCHAPTER 8. CONTRACTS SUBJECT TO PUBLIC BIDDING

### 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).

### 5:34-8.1 Multi-year contracts

(a) All multi-year contracts, including all multi-year leases and multi-year leases with option to purchase which are authorized under N.J.S.A. 40A:11-15(7), 40A:11-15(15) or 18A:18A-42(f), and other multi-year contracts subject to N.J.S.A. 40A:11-15 and 18A:18A-42 for the procurement of goods or services shall be subject to competitive bidding if the cumulative amount to be expended during the duration of the multi-year lease or contract exceeds the threshold for competitive bidding for the contracting unit.

(b) Pursuant to the provisions of N.J.S.A. 40A:11-15 or 18A:18A-42, a contract award that was based upon receipt of quotations shall not be extended if the total value of the contract exceeds the bid threshold, which includes the original award plus any extension.

### 5:34-8.2 Determinations of aggregation

(a) This section shall affect determinations of aggregation for purposes of whether a contract is subject to public bidding as set forth in N.J.S.A. 40A:11-3, 40A:11-4 and 40A:11-7, and as set forth in N.J.S.A. 18A:18A-3, 18A:18A-4, and 18A:18A-8, and is adopted pursuant to N.J.S.A. 40A:11-7.1 and 18A:18A-8.1. The provisions of this section shall not apply to those goods or services where the work is single in character and for those goods or services that are necessary for the completion of such a contract.

(b) To determine if goods or services that are expected to be used will reach the bid threshold during the contract year, the contracting agent or purchasing agent, as defined at N.J.A.C. 5:34-1.2, shall use professional judgment based on prior experience of the contracting unit, estimates and plans for the upcoming contract year based on information such as the contracting unit's budget and purchasing history, and the amount purchased in the previous contract year. When calculating the amount purchased in the previous contract year, the calculation shall be based on the period of 12 consecutive months following the award of a contract.

(c) To determine if goods or services that are expected to be used during a contract year should be combined with other similar goods or services in a single bid, the contracting agent or purchasing agent shall use the following methods or techniques as may be appropriate:

1. The contracting agent or purchasing agent shall request the various organizational components of the contracting unit to estimate and provide the contracting agent or purchasing agent with their needs.

2. Based upon appropriate study and evaluation of the competitive marketplace, the contracting agent or purchasing agent shall determine the range of goods and

services that are best suited for aggregation to maximize potential cost savings and to maximize vendor participation. This can be accomplished by:

- i. Determining whether there are vendors capable of submitting bids on a range of goods or services that are sufficiently similar; or
  - ii. Determining that commercial business practices related to the provision or performance of the goods or services will result in a price advantage to the contracting unit if the goods or services were made part of a separate contract.
3. In considering if a particular good or service is subject to public bidding, the amount of money spent with a given vendor shall not in itself be a determining factor of reaching the threshold.
  4. In determining if various expenditures are part of the same work or are similar goods or services, the emphasis shall be placed on the purpose of the goods and services rather than from whom they are purchased.
  5. Where portions of any goods or services can be purchased through provision of law that do not require the contracting unit to publicly bid, such as a State, county, or cooperative purchasing contract, any remaining portions may be counted as separate from the portion that is not required to be bid. Such purchases may be considered as a separate aggregation calculation for the purpose of reaching the bid threshold.

**5:34-8.3 When determinations of aggregation are found to be incorrect**

(a) In each instance of (a)1 and 2 below, the amount required to be procured, is hereinafter defined to be the "remaining amount." This section shall affect determinations of aggregation pursuant to N.J.S.A. 40A:11-3, 40A:11-4 and 40A:11-7, and as set forth in N.J.S.A. 18A:18A-3, 18A:18A-4, and 18A:18A-8, and is adopted pursuant to N.J.S.A. 40A:11-7.1 and 18A:18A-8.1 when:

1. Initial estimates of goods or services needed during the contract year are incorrectly anticipated to be less than the bid threshold; or
2. Initial estimates of goods or services needed during the contract year that had been exempt from public bidding are later found to be incorrect.

(b) When either of the conditions in (a)1 or 2 above exist, the provisions of this section shall apply.

(c) If the remaining amount exceeds the bid threshold, public bidding for the remaining amount should take place as soon as practicable after the purchasing agent or contracting agent becomes aware of the change in needs. (See chapter Appendix.)

(d) Subject to the provisions of (d)1 and 2 below, the contracting agent or purchasing agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount. If the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, then:

1. The governing body may designate in advance an elected official to determine whether public bidding or the solicitation of quotations would be most advantageous in these circumstances; or
2. If the governing body fails to designate an elected official, it retains the responsibility to make the determination by resolution. (See chapter Appendix.)

(e) If the remaining amount to be procured by the contracting unit is less than 15 percent of its bid threshold, the contracting agent or purchasing agent may solicit quotations for the remaining amount.

(f) In seeking the governing body's or its designee's authorization to solicit quotations under (d) and (e) above, the contracting agent or purchasing agent shall:

1. Certify to the governing body or its designee, as appropriate, the need for additional goods and services;
2. Provide a description of how similar goods or services have been procured during the contract year to date;
3. Obtain a resolution from the governing body or written approval from its designee, as appropriate, approving the purchase; and
4. Provide a report of all procurements made under this section to the full governing body.

(g) No additional goods or services shall be procured through the solicitation of quotations under (d) above until the resolution or written approval approving the purchase has been passed by the governing body or in the case of a designated elected official, other required form of written approval has been obtained. (See chapter Appendix.)

(h) If the actual need for goods or services that are publicly bid are found during the course of the contract to be greater than the amount bid, the change order procedures set forth in N.J.A.C. 5:34-4 or 6A:23-7.1 shall be used, as appropriate.

(i) Contracts issued pursuant to this section shall include a reference to the subsection under which the purchase is authorized.

**5:34-8.4 Intentional miscalculations to avoid public bidding**

Under no circumstance shall a contracting unit avoid bidding by knowingly miscalculating estimates, taking advantage of differences between contract year and fiscal year, or using another mechanism or artifice intended to intentionally avoid public bidding.