

**CHAPTER 34**

**LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS**

**Authority**

N.J.S.A. 18A:18A-49.2 and 40A:11-9 and 37.1.

**Source and Effective Date**

R.2006 d.179, effective April 19, 2006.  
See: 37 N.J.R. 4601(a), 38 N.J.R. 2119(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 34, Local Public and Public School Contracts Laws, expires on April 19, 2013. See: 43 N.J.R. 1203(a).

In accordance with N.J.S.A. 52:14B-5.1c, Subchapter 5, Qualified Purchasing Agents, expires on October 8, 2013. See: 45 N.J.R. 984(a).

**Chapter Historical Note**

Chapter 34, Capital Budget Manual, was adopted as R.1970 d.113, effective September 21, 1970. See: 2 N.J.R. 61(c), 2 N.J.R. 81(b).

Chapter 34, Capital Budget Manual, was repealed by R.1978 d.322, effective September 14, 1978. See: 10 N.J.R. 416(d).

Chapter 34, Local Public Contracts, was adopted as new rules, and Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was recodified from N.J.A.C. 5:30-17 by R.1990 d.595, effective December 3, 1990. See: 22 N.J.R. 724(a), 22 N.J.R. 3639(a).

Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was repealed and Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was adopted as new rules by R.1992 d.401, effective October 5, 1992. See: 24 N.J.R. 2667(a), 24 N.J.R. 3529(a).

Pursuant to Executive Order No. 66(1978), Chapter 34, Local Public Contracts, was readopted as R.1995 d.633, effective November 8, 1995. See: 27 N.J.R. 3259(a), 27 N.J.R. 4885(b).

Pursuant to Executive Order No. 66(1978), Chapter 34, Local Public and Public School Contracts Laws, was readopted as R.2000 d.485, effective November 6, 2000, and Subchapter 4, Change Orders and Open-End Contracts, was recodified as N.J.A.C. 5:30-11 and Subchapter 5, Certification of Funds and Applicable Accounting Procedures, was recodified as N.J.A.C. 5:30-5 by R.2000 d.485, effective December 4, 2000. See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

Subchapter 5, Qualified Purchasing Agents and Increasing the Bid Threshold, was adopted as new rules by R.2002 d.17, effective January 22, 2002. See: 33 N.J.R. 1994(a), 34 N.J.R. 524(a).

Chapter 34, Local Public and Public School Contracts Laws, was readopted as R.2006 d.179, effective April 19, 2006. See: Source and Effective Date. See, also, section annotations.

Subchapter 5, Qualified Purchasing Agents and Increasing the Bid Threshold, was repealed by special adoption, and Subchapter 5, Qualified Purchasing Agents, was adopted as special new rules by R.2012 d.092, effective April 11, 2012 (to expire April 11, 2013). See: 44 N.J.R. 1564(a).

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**

- 5:34-1.1 Application and compliance
- 5:34-1.2 Definitions

**SUBCHAPTER 2. EXTRAORDINARY UNSPECIFIABLE SERVICES**

- 5:34-2.1 Use of extraordinary unspecifiable services
- 5:34-2.2 General requirements limiting the use of the exception
- 5:34-2.3 Procedures for implementation of the exception
- 5:34-2.4 (Reserved)

**SUBCHAPTER 3. CERTAIN LEASES OF EQUIPMENT AND SERVICE AGREEMENTS BEYOND THE FISCAL YEAR**

- 5:34-3.1 Duration of contract
- 5:34-3.2 Application of bidding requirements
- 5:34-3.3 Option to purchase, prohibitions, cancellation clause
- 5:34-3.4 Equipment changes

**SUBCHAPTER 4. ADMINISTRATION OF COMPETITIVE CONTRACTING PROCESS**

- 5:34-4.1 Definitions
- 5:34-4.2 Model evaluation criteria
- 5:34-4.3 Opening and evaluating proposals and awarding competitive Contracts
- 5:34-4.4 Use of competitive contracting for non-listed services
- 5:34-4.5 (Reserved)

**SUBCHAPTER 5. QUALIFIED PURCHASING AGENTS**

- 5:34-5.1 Qualified purchasing agent
- 5:34-5.2 Continuing education requirements
- 5:34-5.3 "Green Purchasing" course
- 5:34-5.4 Procedures for increasing the bid threshold
- 5:34-5.5 Vacancy in the office of purchasing agent

**SUBCHAPTER 6. EMERGENCY PURCHASES AND CONTRACTS**

- 5:34-6.1 General requirements
- 5:34-6.2 through 5:34-6.3 (Reserved)

**SUBCHAPTER 7. COOPERATIVE PURCHASING**

- 5:34-7.1 Applicability and authority
- 5:34-7.2 Definitions
- 5:34-7.3 Cooperative pricing system or joint purchasing system creation
- 5:34-7.4 Cooperative pricing system or joint purchasing system formal agreement
- 5:34-7.5 Cooperative pricing system or joint purchasing system registration
- 5:34-7.6 Cooperative pricing system or joint purchasing system membership registration
- 5:34-7.7 Cooperative pricing system or joint purchasing system identifier
- 5:34-7.8 Cooperative pricing system or joint purchasing system renewal
- 5:34-7.9 Cooperative pricing system or joint purchasing system administrative responsibilities
- 5:34-7.10 Cooperative purchasing system requirement for bids
- 5:34-7.11 Cooperative pricing system financial and contractual details
- 5:34-7.12 Cooperative pricing system use of pre-existing contracts
- 5:34-7.13 Regional cooperative pricing system
- 5:34-7.14 Joint purchasing systems financial and contractual details, exclusive of boards of education
- 5:34-7.15 Commodity resale system registration
- 5:34-7.16 Commodity resale system renewal
- 5:34-7.17 Accounting requirements for commodity resale systems
- 5:34-7.18 Energy aggregation
- 5:34-7.19 Cooperative purchasing of energy
- 5:34-7.20 Binding estimate option
- 5:34-7.21 County cooperative contract purchasing system creation
- 5:34-7.22 County cooperative contract purchasing system registration
- 5:34-7.23 County cooperative contract purchasing system identifier

- 5:34-7.24 County cooperative contract purchasing system administrative responsibilities
- 5:34-7.25 County cooperative contract purchasing system county requirement for bids
- 5:34-7.26 County cooperative contract purchasing system renewal
- 5:34-7.27 Member reports
- 5:34-7.28 Time for review-all systems
- 5:34-7.29 The State of New Jersey's cooperative purchasing program
- 5:34-7.30 Application of N.J.S.A. 40A:11-5(4) or 18A:18A-5e: purchases at 10 percent less than State contract price
- 5:34-7.31 Authority of Director
- 5:34-7.32 Enforcement

**SUBCHAPTER 8. CONTRACTS SUBJECT TO PUBLIC BIDDING**

- 5:34-8.1 Multi-year contracts
- 5:34-8.2 Determinations of aggregation
- 5:34-8.3 When determinations of aggregation are found to be incorrect
- 5:34-8.4 Intentional miscalculations to avoid public bidding

**SUBCHAPTER 9. SPECIAL CIRCUMSTANCES**

- 5:34-9.1 Purchase of proprietary goods or services
- 5:34-9.2 Use of "brand name or equivalent" pursuant to N.J.S.A. 40A:11-13 and 18A:18A-15
- 5:34-9.3 Cancellation or postponement of receipt of bids or proposals
- 5:34-9.4 Concessions
- 5:34-9.5 Miscellaneous circumstances
- 5:34-9.6 Purchasing at 10 percent less than a State cooperative contract price
- 5:34-9.7 Use of the General Services Administration's Federal Supply Schedules

- APPENDIX A
- APPENDIX B
- APPENDIX C

**SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**

**5:34-1.1 Application and compliance**

(a) Unless specifically stated to the contrary, the rules in this chapter apply to all local government agencies that are encompassed by the definition of contracting unit in N.J.S.A. 40A:11-2(1), and by all boards of education meeting the definition of board of education in N.J.S.A. 18A:18A-2a by whatever name called.

(b) Every governing body, chief executive officer, or chief school administrator shall take reasonable steps to provide training so that all officials and employees responsible for the administration of public contracts are aware of and are able to comply with the requirements of the law and these rules.

(c) These rules are adopted by the Director of the Division of Local Government Services after consultation with the Commissioner of Education pursuant to N.J.S.A. 40A:11-37.1 and 18A:18A-49.2.

(d) Public housing authorities that operate subject to the authority of the U.S. Department of Housing and Urban Development will adhere to procurement procedures which reflect N.J.S.A. 40A:11-1 et seq. and related rules, provided

that procurements conform to applicable Federal law and the standards required therein and to 24 CFR 85.36(b) that requires where both State and Federal law encompass the same procurement, the stricter or more limiting procedure which encourages competition shall be used.

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.

**5:34-1.2 Definitions**

The following words and terms, as used in this chapter, shall have the following meanings, unless the context indicates otherwise:

"Aggregate" or "aggregation" means the sums expended or to be expended for the provisions or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the same contract year through a contract awarded by a contracting agency.

"Bid threshold" means the dollar amount set in N.J.S.A. 40A:11-3, and in N.J.S.A. 18A:18A-3, above which a contracting unit shall advertise for and receive sealed bids.

"Board of education" means and includes the board of education of any local school district, consolidated school district, regional school district, educational services commission, county special services school district, county vocational school and any other board of education or other similar body other than the State Board of Education, the Commission on Higher Education or the Presidents' Council, established and operating under the provisions of Title 18A of the New Jersey Statutes and having authority to make purchases and to enter into contracts for the provision or performance of goods or services. The term "board of education" also shall include the board of trustees of a charter school established under P.L. 1995, c.426 (N.J.S.A. 18A:36A-1 et seq.).

"Competitive contracting" means the method described in N.J.S.A. 40A:11-4.1 et seq. and 18A:18A-4.1 et seq. of contracting for specialized goods and services in which formal proposals are solicited from vendors.

"Concession" means the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit.

"Contract" means any agreement, including, but not limited to, a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.