

CHAPTER 34

LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS

Authority

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

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).

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Chapter 34, Capital Budget Manual, was repealed by R.1978 d.322, effective September 14, 1978.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Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was repealed and Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was adopted as new rules by R.1992 d.401, effective October 5, 1992.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).

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.

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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.

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 Official certificate issued by the Rutgers Center for Government Services, or is the holder of a Certified County Purchasing Official 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.

Administrative change.
See: 34 N.J.R. 1264(a).

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 accountability 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 website at www.state.nj.us/dca/lgs/lpcl/copur/mstr_2001_form_rl.pdf.

(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.

Amended by R.2006 d.179, effective May 15, 2006
See: 37 N.J.R. 4601(a), 38 N.J.R. 2119(b).

Substituted "website at www.state.nj.us/dca/lgs/lpcl/copur/mstr_2001_form_rl.pdf" for "web site at www.state.nj.us/dca/lgs/pages/dcadlgs/htm" in (d).

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, authority 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.