

## CHAPTER 12

**DIVISION OF PURCHASE AND PROPERTY: PURCHASE BUREAU AND CONTRACT COMPLIANCE AND ADMINISTRATION UNIT; SURPLUS PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM**

**Authority**

N.J.S.A. 10:5-36(k) and (o), 52:18A-30(d), 52:25, 52:27H-6(f), 52:32-17 et seq., 52:34-6 et seq., 52:34-12(d), 52:34-13; and Executive Orders No. 34(1977) and No. 89(1988).

**Source and Effective Date**

R.1999 d.407, effective October 22, 1999.  
See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

**Executive Order No. 66(1978) Expiration Date**

Chapter 12, Division of Purchase and Property: Purchase Bureau and Contract Compliance and Administration Unit, expires on October 22, 2004.

**Chapter Historical Note**

Chapter 12, Purchase Bureau, was filed and became effective prior to September 1, 1969.

Subchapter 7, Debarment, Suspension and Disqualification of a Person(s), was adopted as R.1976 d.378, effective on December 1, 1976. See: 8 N.J.R. 490(a), 9 N.J.R. 47(b).

Chapter 12, Purchase Bureau, was repealed and Chapter 12, Purchase Bureau, was adopted as new rules by R.1979 d.132, effective March 30, 1979. See: 11 N.J.R. 95(a), 11 N.J.R. 264(a).

Pursuant to Executive Order No. 66(1978), Chapter 12, Purchase Bureau, was readopted as R.1984 d.328, effective August 6, 1984. See: 16 N.J.R. 867(a), 16 N.J.R. 2152(a).

Chapter 12 Purchase Bureau, was readopted as Emergency Rules, former Subchapter 6, Contracts for Small Businesses, Female Businesses and Minority Businesses, was emergency recodified as N.J.A.C. 17:13, and former Subchapter 7, Debarment, Suspension and Disqualification of a Person(s), was emergency recodified as Subchapter 6 by R.1989 d.481, effective August 14, 1989, to expire October 13, 1989. See: 21 N.J.R. 2810(a). The concurrent proposal for the emergency readoption of Chapter 12 and emergency recodifications of former Subchapters 6 and 7 was adopted as R.1989 d.554, October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

The Executive Order No. 66(1978) expiration date of Chapter 12, Purchase Bureau, was extended by gubernatorial directive from October 13, 1994 to February 28, 1995. See: 26 N.J.R. 4421(b).

Pursuant to Executive Order No. 66(1978), Chapter 12, Purchase Bureau, was readopted as R.1995 d.18, effective December 9, 1994. See: 26 N.J.R. 3248(a), 26 N.J.R. 4166(a), 27 N.J.R. 128(b).

Pursuant to Executive Order No. 66(1978), Chapter 12, Purchase Bureau, was readopted as "Division of Purchase and Property: Purchase Bureau and Contract Compliance and Administration Unit" by R.1999 d.407, effective October 22, 1999, and former Subchapter 3, Hearing Procedures, was repealed and Subchapter 3, Protest, was adopted as new rules by R.1999 d.407, effective November 15, 1999. See: Source and Effective Date. See, also, section annotations.

**Law Review and Journal Commentaries**

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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**SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION**

**17:12-1.1 General course and method of operation**

(a) Among its other functions, the Division of Purchase and Property, in and of the New Jersey Department of the Treasury, provides central procurement services to State government. Within its statutory framework, the primary mission of the Division is to procure, in a timely and effective manner, the goods and services necessary for the daily operation of State government. As it relates to procurement, the Division includes the Purchase Bureau and the Contract Compliance and Administration Unit ("CCAU"). Both entities report directly to the Office of the Director of the Division. The Purchase Bureau is primarily responsible for the State's procurement process. CCAU is responsible for ensuring that using agencies comply with State procurement guidelines and that contract vendors fulfill their contractual obligations. This chapter sets forth the rules which apply to the Purchase Bureau, CCAU, public entities and vendors participating in the State's contracting process.

(b) The Director of the Division of Purchase and Property is charged with the responsibility for making purchase contracts and issuing purchase orders, the price of which is to be paid with State funds. If the aggregate amount involved does not exceed the threshold established pursuant to N.J.S.A. 52:34-7, any purchase contract may be made, negotiated or awarded by the Director without advertising in any manner the Director may deem effective and practicable to permit full and free competition.

(c) When the aggregate amount exceeds the threshold established pursuant to N.J.S.A. 52:34-7, the request for proposal ("RFP") shall permit such full and free competition as is consistent with the procurement of goods and services necessary to meet the requirements of the using agency or agencies. Any such purchase contract where the cost or contract price exceeds the threshold referenced above may, with the written approval of the State Treasurer, be made, negotiated or awarded by the Director without advertising when the subject matter thereon is that described in N.J.S.A. 52:34-9 and 52:34-10.

(d) The Director may delegate or authorize the signing of purchase orders on the Director's behalf for such amounts as the Director may establish from time to time.

(e) When deemed to be in the best interest of the State, the Director may authorize the award of contracts on the following bases:

1. Line item contract;
2. Term contract;
3. Multi-source contract; or
4. Waiver of advertising contract.

As amended, R.1980 d.142, effective April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (b) and (c), aggregate amount of \$2,500 changed to threshold established by N.J.S.A. 52:34-7. Subsection (e) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Amended by R.1999 d.407, effective November 15, 1999.

See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

Rewrote the section.

**17:12-1.2 Source for public information**

(a) The public may obtain information concerning the State procurement program and RFPs by writing to the Director of the Division of Purchase and Property, PO Box 039, Trenton, New Jersey 08625-0039, by visiting the Division's reception area at 33 West State Street, 9th Floor, or by accessing the Division's Internet site at [www.state.nj.us/treasury/purchase](http://www.state.nj.us/treasury/purchase).

(b) Subsequent to bid opening, all bid documents are considered public information, notwithstanding any disclaimers to the contrary submitted by a bidder.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), address changed. Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Administrative change.

See: 29 N.J.R. 2183(b).

In (a), substituted "obtain information" for "receive information", "procurement" for "purchase", "writing to" for "contacting" and added ", by visiting the Division's . . . [www.state.nj.us/treasury/purchase](http://www.state.nj.us/treasury/purchase)".

Amended by R.1999 d.407, effective November 15, 1999.

See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

In (a), substituted a reference to RFPs for a reference to invitations to bid.

**17:12-1.3 Definitions**

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

See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

## SUBCHAPTER 3. PROTEST

### 17:12-3.1 Informal hearings; subject matter

(a) The purpose of this subchapter is to provide the procedures that govern the challenge of an action of the Director in the issuance of an advertised RFP or the award of a contract or contracts resulting from an advertised RFP as described at N.J.A.C. 17:12-2. A protest is defined as follows:

1. A timely filed challenge to a term, condition or requirement of a specification contained within an advertised RFP; or
2. A timely filed challenge to a contract award decision made by the Director.

(b) Protests of the type described in this subchapter, for the purpose of this chapter, are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

### 17:12-3.2 Protest procedures; challenges to a specification

(a) A vendor intending to submit a proposal in response to an advertised RFP, pursuant to N.J.S.A. 52:34-6 et seq., and objecting to a specification contained within the RFP, may submit a written protest to the Director, setting forth, in detail, the grounds for such protest.

(b) The written protest shall be submitted to the Director in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled date and time of bid opening.

1. A protest of a specification of any bid solicitation document issued by the Director shall contain the following items:

- i. Identification of the Division's solicitation number for the particular procurement;
- ii. All arguments, materials or other documentation that may support the protester's position that the specification should be changed; and
- iii. A statement as to whether the protester requests an opportunity for oral presentation and the reason(s) for the request.

2. The Director may disregard a protest not containing all of the items set forth in (b)1 above.

3. The Director may disregard any protest of specifications filed less than 72 hours before the scheduled bid opening.

(c) The Director shall, upon receipt of a timely protest of a specification contained in an advertised RFP, issue a final written decision on the protest prior to the public opening and reading of bids received in response to that RFP.

1. The Director has sole discretion to determine if an oral presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. Oral presentations are fact-finding for the benefit of the Director. The Director has the discretion to limit attendance at an oral presentation to those bidders likely to be affected by the outcome of the protest.

2. The Director may perform a review of the written record or conduct an oral presentation directly, or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10 day period for comments/exceptions, the Director shall make a final written decision on the matter.

### 17:12-3.3 Protest procedures; challenge to a contract award decision

(a) A vendor, after submitting a proposal in response to an advertised RFP administered pursuant to N.J.S.A. 52:34-6 et seq., may submit a written protest to the Director concerning the following:

1. Rejection of its proposal when such rejection arises under the provisions of N.J.A.C. 17:12-2.2, Requirements for bidding. Such protests may only dispute whether the facts of a particular case are sufficient to meet the requirements of that section; and/or

2. Notice of award of contract(s) or of intent to award contract(s) pertaining to the subject procurement.

(b) A vendor, after submitting a proposal in response to an advertised RFP and finding cause to protest the award decision pursuant to (a)1 or 2 above, shall make written request to the Director, setting forth, in detail, the specific grounds for challenging the award. The protest shall be filed within 10 working days following the vendor's receipt of written notification that its bid has not been accepted or of notice of the award decision.

1. A protest regarding the Director's decision to award a contract shall contain the following items:

- i. Identification of the Division's solicitation number for the particular procurement;

ii. All arguments, materials and/or other documentation that may support the protester's position that the contract award should be overturned; and

iii. A statement as to whether the protester requests an opportunity for oral presentation and the reason(s) for the request.

2. The Director may disregard a protest not containing all of the items set forth in (b)1 above.

3. The Director may disregard any protest of award filed after the 10 day protest period and proceed with the award of contract(s).

(c) The Division shall, except as set forth in (e) below, hold all contract awards involving the nonacceptance of a lower cost proposal for 10 days, pending potential protests from bidders. In situations where the award is the result of the nonacceptance of a lower cost proposal, all bidders shall be notified of the award decision. If the contract award is protested pursuant to (a)2 above, the Division shall not award the contract in question until a final decision is rendered by the Director on the merits of the protest. The Director may award the contract, notwithstanding the receipt of a protest pursuant to the above provisions, if the failure to award the contract shall result in substantial cost to the State or if public exigency so requires. In such event, the Director shall notify all interested parties.

(d) The protest accepted by the Director shall be resolved by written decision on the basis of the Director's review of the written record including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, the proposals submitted in response to the RFP, pertinent administrative rules, statutes and case law, and any associated documentation the Director deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

1. The Director has sole discretion to determine if an oral presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. Oral presentations are fact-finding for the benefit of the Director. The Director has the discretion to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the protest.

2. The Director may perform a review of the written record or conduct an oral presentation directly, or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10-day period for comments or exceptions, the Director shall make a final written decision on the matter.

(e) The Director may, in instances where public exigency exists or where there is potential for substantial cost benefit or other such advantage to the State, modify or amend the time periods noted in this subchapter. In these instances, the Director shall give adequate notice to the parties involved.

#### 17:12-3.4 Discovery procedures

Notwithstanding the provisions set forth in N.J.A.C. 17:12-3.2(b)1 and 3.3(b)1, the Director is entitled to request, receive and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the protest. Upon receipt of the Director's request, the protesting vendor shall promptly provide the requested records and documents free of charge in the time, place and manner specified by the Director. Failure of the protesting vendor to comply with this section may, at the reasonable discretion of the Director, constitute sufficient basis to resolve the protest against the vendor submitting the protest. The Director may also consider relevant information requested and received from other parties deemed appropriate by the Director.

### SUBCHAPTER 4. COMPLAINT PROCEDURES

#### 17:12-4.1 Purpose and scope of subchapter

The purpose of this subchapter is to set forth the procedure that governs complaints related to contracts arising as a result of the bidding procedures set forth in N.J.A.C. 17:12-2, N.J.S.A. 52:34-9 or 10 and Direct Purchase Authorization as set forth in Department of the Treasury Circular PC-23H, as amended or redesignated.

New Rule, R.1999 d.407, effective November 15, 1999.

See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

Former 17:12-4.1, General, recodified to N.J.A.C. 17:12-4.2.

#### 17:12-4.2 General

The provisions of this subchapter deal specifically with means of assuring prompt action in cases where performance fails to meet contract requirements. The Director may refrain from doing business with any vendor which has performed poorly, if its poor performance is due to circumstances within its control and is not due to the act of a third party or event beyond the control of the contractor, without resorting to debarment or suspension action under N.J.A.C. 17:12-6. Each contractor is specifically responsible for the acts of its employees and subcontractors. The Director may also refrain from doing business with any vendor for repeated or excessive breaches of contract terms, including, but not limited to, those listed in (b) below, as necessary to protect the State's best interests.

Recodified from N.J.A.C. 17:12-4.1 and amended by R.1999 d.407, effective November 15, 1999.

See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

Rewrote the section. Former 17:12-4.2, Complaints procedure, recodified to N.J.A.C. 17:12-4.3(a).