

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Chapter 12, Purchase Bureau, was repealed and Chapter 12, Purchase Bureau, was adopted as new rules by R.1979 d.132, effective March 30, 1979.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 re-adoption 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).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

- 17:12-1.1 General course and method of operation
- 17:12-1.2 Source for public information
- 17:12-1.3 Definitions
- 17:12-1.4 Application of rules

SUBCHAPTER 2. BIDDING AND AWARD PROCEDURES

- 17:12-2.1 Advertising
- 17:12-2.2 Requirements for bidding
- 17:12-2.3 Extension of contracts for local use
- 17:12-2.4 Bid security
- 17:12-2.5 Performance security
- 17:12-2.6 Bid openings
- 17:12-2.7 Evaluation of proposals
- 17:12-2.8 Poor performance as a basis for bypass of low bidder
- 17:12-2.9 Irregularities in bidding
- 17:12-2.10 Tie bids
- 17:12-2.11 Bid errors
- 17:12-2.12 Registration of out-of-State corporations
- 17:12-2.13 Preference laws; out-of-State vendors
- 17:12-2.14 Mutual cancellation of contract

SUBCHAPTER 3. PROTEST

- 17:12-3.1 Informal hearings; subject matter
- 17:12-3.2 Protest procedures; challenges to a specification
- 17:12-3.3 Protest procedures; challenge to a contract award decision
- 17:12-3.4 Discovery procedures

SUBCHAPTER 4. COMPLAINT PROCEDURES

- 17:12-4.1 Purpose and scope of subchapter
- 17:12-4.2 General
- 17:12-4.3 Filing of complaints; subject matter
- 17:12-4.4 Time frames
- 17:12-4.5 Resolution of complaints
- 17:12-4.6 Rejection of goods and/or services
- 17:12-4.7 Emergency situations
- 17:12-4.8 Effect of vendor non-compliance with contract provisions
- 17:12-4.9 Discovery procedures

SUBCHAPTER 5. COOPERATIVE PURCHASING

- 17:12-5.1 Subscription fees
- 17:12-5.2 Participation in State contracts by independent institutions of higher education

SUBCHAPTER 6. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

- 17:12-6.1 Purpose and scope
- 17:12-6.2 Definitions
- 17:12-6.3 Causes for debarment of a person(s)
- 17:12-6.4 Conditions affecting the debarment of a person(s)
- 17:12-6.5 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)
- 17:12-6.6 Causes for suspension of a person(s)
- 17:12-6.7 Conditions for suspension of a person(s)
- 17:12-6.8 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)
- 17:12-6.9 The extent of debarment, suspension or disqualification
- 17:12-6.10 Prior notice by the Director

- 17:12-6.11 List of debarred, suspended or disqualified persons
 17:12-6.12 Director's authority to contract

SUBCHAPTERS 7. AND 8. (RESERVED)

SUBCHAPTER 9. SURPLUS PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM

- 17:12-9.1 Description of organization and program
 17:12-9.2 Purpose and intent
 17:12-9.3 Definitions
 17:12-9.4 Procedures
 17:12-9.5 Notification of availability
 17:12-9.6 Condition of eligible computers and items of surplus peripheral equipment distributed hereunder

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.

(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".

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:

“Bid security” means a guarantee, in the form of a bond or deposit, that the bidder, if selected, will accept the contract as bid; otherwise, the bidder (in the case of a deposit) or the bidder or its guarantor (in the case of a bond) will be liable for the amount of the loss suffered by the State, which loss may be partially or completely recovered by the State in exercising its rights against the deposit or bond.

“Bypass” means a contract award made to other than the lowest responsible bidder(s) submitting a conforming proposal. A bypass occurs when the Director determines that the proposal which is most advantageous to the State is not the lowest priced proposal.

“Contract” means a mutually binding legal relationship obligating the contractor to furnish goods and/or services and the purchaser to pay for them, subject to appropriation where the using agency derives its annual budget by means of appropriation from the State Legislature. The contract consists of the Division’s Standard Terms and Conditions, the RFP, the responsive proposal, the notice of acceptance, any subsequent written document memorializing the agreement, any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing.

“Contract Compliance and Administration Unit” (CCAU) refers to a unit within the Office of the Director, Division of Purchase and Property. CCAU is responsible for ensuring that using agencies and contract vendors comply with State procurement guidelines and fulfill their respective obligations. To this end, CCAU acts as the initial arbiter of complaints filed pursuant to N.J.A.C. 17:12-4 and conducts audits of the State’s contractors and using agencies.

“Day” means business day, not including Saturday, Sunday or State legal holiday.

“Director” means the Director of the Division of Purchase and Property or the Director’s designee.

“Division” means the Division of Purchase and Property, including the Purchase Bureau and CCAU.

“Filed” means received by the Director.

“Line item contract” means a procurement specified in the RFP for which the bidder is asked to give individual pricing information and which, under the terms of the RFP, is usually susceptible to a separate contract award.

“Multi-source contract” means a commodity or service contract awarded to two or more bidders required to meet the needs of agencies in accordance with the provisions of N.J.S.A. 52:34-12.1. The Director takes into consideration such factors as delivery and pickup locations, quantities, compatibility and cost.

“Performance security” means a guarantee, executed subsequent to award, in the form of a bond or deposit, that the successful bidder will complete the contract as agreed and that the State will be protected from loss in the event the contractor fails to complete the contract as agreed.

“Procurement request” means an RFP issued or initiated by the Director, pursuant to N.J.S.A. 52:34-6, or by a State agency in the event that the procurement is subject to N.J.S.A. 52:34-9 or 10 or Direct Purchase Authorization as set forth in Department of the Treasury Circular PC-23H, as amended or redesignated.

“Protest” means a timely filed challenge to a specification in an advertised RFP or to a contract award decision made by the Director.

“Purchase Bureau” refers to one of the bureaus under the direct authority of the Director. The Purchase Bureau is responsible for the preparation, advertisement and issuance of RFPs, tabulation and evaluation of bid proposals and making contract award recommendations to the Director. The Purchase Bureau has similar responsibilities for contracts which are subject to waiver of advertising pursuant to N.J.S.A. 52:34-9 and 10.

“Request for Proposal (“RFP”)” means all documents, whether attached or incorporated by reference, used for soliciting proposals or offers to provide the goods and/or services specified therein.

“Term contract” means a contract which establishes a source or sources of supply of goods and/or services for a specified period of time, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at predetermined unit prices.

“Vendor performance database” refers to Division records pertaining to contract performance, including formal complaints, CCAU investigation reports, using agency records and/or satisfaction surveys or any other information assembled by CCAU which may be helpful in assessing the past performance of a vendor.

“Waiver of advertising contract” means a contract awarded without public advertisement pursuant to the provisions of N.J.S.A. 52:34-9 and 10.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
See: 21 N.J.R. 2810(a).

Definitions for “Day”, “Multi source contracts”, and “Waiver of advertising” 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.

17:12-1.4 Application of rules

Except as otherwise provided in this chapter, these rules shall apply to all contracts resulting from an RFP, to all waiver of advertising contracts and to all Direct Purchase Authorization contracts as set forth in Department of the Treasury Circular PC-23H, as amended or re-designated.

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

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

SUBCHAPTER 2. BIDDING AND AWARD PROCEDURES

17:12-2.1 Advertising

(a) Advertising is required when the contract amount is expected to exceed the public bidding threshold or is not

subject to the exceptions of N.J.S.A. 52:34-9 or 10. The notice of bid opportunity shall be placed in newspapers or other such media as allowed by law and selected by the State Treasurer as will give best notice thereof to bidders. Advertisements shall be made a minimum of 10 working days in advance of the bid opening to encourage free and open competition.

(b) If, during the course of a purchase advertised pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such amendments shall be advertised a minimum of five working days in advance of the bid opening date and time.

(c) In addition to statutorily mandated public advertising, the Division may also publish notices of bidding opportunities on the Division's website on the Internet. A list of bidders by commodity code is also maintained for the State's convenience in order to facilitate RFP distribution to prospective bidders. However, the mere placement of a vendor's name on a bid list does not grant the vendor an absolute entitlement to receive a bid solicitation. It is the vendor's responsibility to exercise due diligence in reviewing the legal notices and Internet data to assure its participation in State bidding opportunities.

(d) If a vendor does not respond to three consecutive opportunities to bid for the same product or service, the Director may remove the vendor's name from the list of bidders for that product or service.

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

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

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.

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.

17:12-2.2 Requirements for bidding

(a) The following requirements are in addition to those contained in specific RFPs issued by the Division. In order to be eligible for consideration for award of contract, the vendor's proposal shall:

1. Be submitted on or before the due date and time and at the place specified in the RFP;
2. Be signed by a representative of the bidding entity;
3. Have all required forms completed and include all required attachments;
4. Be accompanied by bid security when required;
5. Include pricing information;

6. Be preceded by the bidder's attendance and registration at any pre-bid conference and/or site inspection for which attendance and registration is mandatory. However, the Director reserves the right to allow a vendor to meet a pre-bid conference attendance/registration requirement by listening to the tape recording of the conference. This right may be exercised by the Director upon a vendor's verifiable demonstration of extenuating circumstances which prevented attendance or for other factors deemed, by the Director, to be in the State's best interests;

7. Contain initials adjacent to any price alterations. If a unit price in a bidder's proposal has been altered or appears to be an alteration, the bidder's initials shall appear adjacent to the alteration. However, in the event there is at least one duplicate copy of the bid included in the bidder's proposal at the time of formal opening of bids, and if during the immediately subsequent bid review process it is noted that there is an uninitialed price alteration and that the copy reflects the same alteration, the copy shall be placed with the original and maintained as part of the official record. The uninitialed price change or changes would then be accepted as eligible for further evaluation. Examples of alterations include, but are not limited to, crossouts, erasures, white-outs, writeovers and strikeovers, with re-entered prices. If the alteration has not been initialed, that particular item only shall be automatically rejected, except if the extended price is verifiably correct and does not contain an alteration or if the extended total price is verifiably correct and does not contain an alteration, it shall be considered the bid price. In the event of an automatic rejection of a single line of a proposal responding to a request for multiple prices for multiple items, the remainder of the bid shall be evaluated, unless otherwise stipulated in the RFP;

8. Be prepared in ink or typewritten. If information essential to a bid evaluation, including, but not limited to, price, terms and product description, is submitted in pencil, the proposal shall be rejected unless that same essential information appears elsewhere in the proposal, either typewritten or printed, and provided that the information is entirely consistent with the information submitted in pencil and does not invite any other interpretation;

9. Comply with the MacBride Principles of nondiscrimination in employment as set forth at N.J.S.A. 52:18A-89.5, N.J.S.A. 52:34-12.2, State Affirmative Action rules promulgated pursuant to N.J.S.A. 10:5-31 et seq., Ownership Disclosure requirements pursuant to N.J.S.A. 52:25-24.2, or foreign corporation registration requirements pursuant to N.J.S.A. 14A:13-1 et seq. and at N.J.A.C. 17:12-2.12; and

10. Be sealed. Telephone, telefacsimile or telegraph bids shall not be accepted for publicly advertised bid solicitations requiring the submittal of sealed bids.

(b) Any proposal failing to comply with the provisions of (a) above shall be subject to automatic rejection.

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

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

Former N.J.A.C. 17:12-2.2, Bid Security, recodified to N.J.A.C. 17:12-2.4.

17:12-2.3 Extension of contracts for local use

(a) The Director may invite bidders to extend a contract for local use, that is, local governments, volunteer fire departments and first-aid or rescue squads, school districts, county colleges, State colleges, quasi-State agencies, independent authorities and independent institutions of higher education.

(b) In the event the Director invites bidders to extend a contract for local use, a bidder must affirmatively indicate its consent to such extension in accordance with the provisions of the RFP. A bidder's failure to so indicate shall preclude the extension of the contract for local use in the event such bidder is awarded the contract.

(c) In the event a contract permits extension for local use, such local use shall be limited to the goods and services that are the subject of the contract and shall be subject to the terms and conditions of the contract.

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

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

Former N.J.A.C. 17:12-2.3, Performance security, recodified to N.J.A.C. 17:12-2.5.

17:12-2.4 Bid security

(a) The Director may require bid security when appropriate, based upon a review of market conditions and an evaluation of potential risk to the State.

(b) Bid security, in such amount as the Director deems necessary, shall consist of a certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," an individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit issued by a Federally insured financial institution and naming "Treasurer, State of New Jersey" as beneficiary.

(c) A bidder's failure to submit the required bid security with its proposal shall be cause for automatic rejection.

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

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

In (a), "bid security" replaced bid deposit and bond requirement; in (b), "irrevocable letter of credit" option 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.

Recodified from N.J.A.C. 17:12-2.2 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 N.J.A.C. 17:12-2.4, Information in bidding, recodified to N.J.A.C. 17:12-2.9.

17:12-2.5 Performance security

(a) The Director may determine performance security is warranted for a particular contract and, if so, shall set the amount of security necessary to protect the State's interests.

(b) Performance security, in such amount as the Director deems necessary, shall consist of a certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," an individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit issued by a Federally insured financial institution and naming "Treasurer, State of New Jersey" as beneficiary.

(c) A contractor's failure to submit the required performance security is sufficient cause for the Director to cancel the contract and assess the contractor for any costs incurred by the State.

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

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

In (a), Director's "designee" and "irrevocable letter of credit" option added. 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.

Recodified from N.J.A.C. 17:12-2.3 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 N.J.A.C. 17:12-2.5, Cause for automatic rejection of bids, repealed.

17:12-2.6 Bid openings

(a) Bids must be received prior to or at the time and at the place designated for bid openings. All other bids shall be rejected. The Director may extend the time for bid opening when a vendor notifies the Purchase Bureau of the vendor's intent to bid but, due to an emergency, timely delivery is not possible. The vendor making this request must do so prior to the time of the scheduled bid opening. If the Director determines that a delayed opening is in the State's best interest, the Director shall designate a revised bid opening time. All bids will be held and remain sealed until the revised bid opening time.

(b) A bid is "read" at the formal opening when the bidder's name and price(s) are announced. Each individual price need not be announced.

(c) If a bid is received by the Purchase Bureau prior to the specified time and date of the bid opening, but has not been opened and read publicly, the Director shall notify all bidders and schedule a bid opening date, time and place for that bid.

As amended, R.1980 d.142, eff. 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).

Subsection (c) 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.

Recodified from N.J.A.C. 17:12-2.8 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 N.J.A.C. 17:12-2.6, Tie bids, recodified to N.J.A.C. 17:12-2.10.

17:12-2.7 Evaluation of proposals

(a) Proposals shall be evaluated in either of two ways:

1. By an evaluation committee appointed by the Director. The committee shall prepare a written report with a recommendation for award based on its evaluation of the proposals against the evaluation criteria set forth in the RFP. If applicable, the committee shall establish weights for the evaluation criteria prior to the bid opening date, and those weights shall not be made public until after the bids are opened; or

2. By a Purchase Bureau buyer of record. The assigned buyer shall prepare a written report or an award recommendation, which shall be based on the assessment of the proposals in accordance with the evaluation process defined in the RFP.

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

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

Former N.J.A.C. 17:12-2.7, Bid errors, recodified to N.J.A.C. 17:12-2.11.

17:12-2.8 Poor performance as a basis for bypass of low bidder

(a) Poor performance by a vendor submitting a lower priced bid is sufficient basis for bypassing its proposal. In determining whether a vendor's poor performance warrants the bypass of that vendor's proposal, the Director shall take into consideration the frequency and seriousness of the vendor's poor performance. Poor performance is evidenced by:

1. Complaints filed pursuant to N.J.A.C. 17:12-4.3, which are resolved against rather than in favor of the contractor; or

2. Other information contained in the Division's vendor performance database or obtained from investigations of the vendor's prior work experience, its licensure, registration or certification status, or its status or rating with established business/financial reporting services, as applicable.

(b) The Director may, in those instances where there is evidence of a record of poor performance by a vendor with customers other than the State, solicit information regarding the vendor's present capability to perform adequately under the terms of the contract in question. If the vendor fails to demonstrate its current ability to perform, the Director may bypass that vendor.

(c) Subsections (a) and (b) above shall not be construed to otherwise limit the Director's authority to bypass low bidders in accordance with the statutory authority established at N.J.S.A. 52:34-12(f).

Recodified from N.J.A.C. 17:12-4.8 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 (a) and (c). Former N.J.A.C. 17:12-2.8, Bid openings, recodified to N.J.A.C. 17:12-2.6.

17:12-2.9 Irregularities in bidding

The Director may make a stipulated award to a bidder when deemed to be in the best interests of the State, considering price and other factors such as terms, conditions and specifications. However, in no case shall the stipulated award be used to correct a non-responsive proposal.

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).

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.

Recodified from N.J.A.C. 17:12-2.4 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 N.J.A.C. 17:12-2.9, Response to bid invitation; result of failure, repealed.

Case Notes

Bid was nonconforming and there was no discretion to award contract. Matter of Protest of Award of On-Line Games Production and Operation Services Contract, Bid No. 95-X-20175, 279 N.J.Super. 566, 653 A.2d 1145 (A.D.1995).

Evidence; relevancy; inquiry whether deviation from request for proposals was material. Matter of Protest of Award of On-Line Games Production and Operation Services Contract, Bid No. 95-X-20175, 279 N.J.Super. 566, 653 A.2d 1145 (A.D.1995).

On-line gaming system; deviation in proposal which failed to include required display screens visible from 15 feet not immaterial. Matter of Protest of Award of On-Line Games Production and Operation Services Contract, Bid No. 95-X-20175, 279 N.J.Super. 566, 653 A.2d 1145 (A.D.1995).

17:12-2.10 Tie bids

(a) In the event that prices submitted by two or more bidders are identical, the Director shall award the contract based on a review of the following factors listed in order of priority:

1. History of vendor performance, as evidenced by the Division's vendor performance database;
2. Delivery advantage; and
3. In State location.

(b) When none of the above distinguishable characteristics are available, the Director shall, if practicable, make multiple awards.

17:12-4.3 Filing of complaints; subject matter

(a) All using agencies shall promptly notify CCAU of any failure by a contractor to comply with the terms and conditions of a State contract. Notification shall be in writing and on Form PB-36 or the equivalent. A complaint shall be considered time barred if it is not filed within 10 days following the occurrence or discovery of the action or inaction that is the subject of the complaint, unless otherwise determined by the Director to be acceptable in consideration of the nature, criticality and/or extent of the complaint and/or its significance to the performance of the contract.

(b) The following alleged breaches in contract terms will be made known to the CCAU pursuant to (a) above:

1. Failure by the contractor to deliver goods or services at the time and place or in the manner, quantity or quality specified;
2. Demand for prices other than those specified in the contract;
3. Delivery of unauthorized substitutes or ungraded material where grading is required;
4. Sale of goods which are not authorized by the contract;
5. Failure to install goods; improper installation;
6. Any other failure to comply with contract specifications or failure to achieve a satisfactory rating for the service provided under the contract if quality assurance surveys are performed;
7. Conflict of interest; and
8. Failure to comply with any relevant legal requirement.

Recodified from N.J.A.C. 17:12-4.2 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.

17:12-4.4 Time frames

(a) As soon as possible after receipt of the complaint, CCAU will inform the contractor against which the complaint was filed of the complaint in writing.

(b) The contractor against which the complaint was filed must reply to the complaint within 10 days of its receipt thereof. The contractor may cure or submit a corrective action plan for any defects during that period. A cure or corrective action plan may be taken into consideration by CCAU in determining whether a complaint is to be resolved against the contractor. The contractor shall notify CCAU of any cure or corrective action plan effected by the contractor.

(c) The using agency may file a response to the submission of the respondent within five days of receipt thereof and provide a copy of its response to the contractor.

(d) As soon as practicable after receipt of the response provided in (c) above, CCAU shall issue an initial recommendation to the Director. Any party may file exceptions or comments to the initial recommendation within 10 days.

(e) If the Director finds that a complaint against a contractor is valid, the contractor shall be notified of the time by which corrections are to be made.

(f) Any time frame specified in this subchapter may be shortened or extended by the Director or CCAU for good cause. In such instances, the Director shall give adequate notice to the parties involved.

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.

17:12-4.5 Resolution of complaints

(a) A complaint shall be resolved by written decision on the basis of the Director's review of the written record including, but not limited to, the complaint and any attachments, the terms, conditions and requirements of the contract which includes the proposal submitted by the contractor, 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.

(b) At the discretion of the Director, the complainant and/or respondent may be required to make an oral presentation, which may include an opportunity to submit additional documentation relevant to the issues set forth in the original complaint. Oral presentations as convened under these rules are fact-finding for the benefit of the Director. At such oral presentations, the State shall be represented by pertinent members of the Division and by the Office of the Attorney General, if required. The Director has the discretion to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the complaint process.

(c) The Director may perform a review of the written record or may elect to conduct an oral presentation, 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 involved 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.

(d) Hearings arising under this subchapter 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.

New Rule, R.1999 d.407, effective November 15, 1999.
See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

Former N.J.A.C. 17:12-4.5, Rejection of goods, recodified to N.J.A.C. 17:12-4.6.

17:12-4.6 Rejection of goods and/or services

Nothing in the rules set forth in this subchapter shall preclude a using agency from rejecting the goods or services in question if, upon delivery, defects are substantial and not curable by the contractor within a reasonable time. If goods or services are rejected, the agency shall notify the Division immediately.

Recodified from N.J.A.C. 17:12-4.5 and amended by R.1999 d.407, effective November 15, 1999.

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

Inserted references to services throughout, substituted a reference to the rules set forth in this subchapter for a reference to the above noted provisions, and substituted a reference to contractors for a reference to vendors. Former N.J.A.C. 17:12-4.6, Effect of vendor non-compliance with contract provisions, recodified to N.J.A.C. 17:12-4.8.

17:12-4.7 Emergency situations

When, in the discretion of the Director, the non-compliance by the contractor affects or may affect the health, safety or welfare of the State or its citizenry, the Director shall immediately contact the contractor and attempt to obtain full compliance. If no resolution is immediately forthcoming, the Director may, without delay, engage a substitute vendor and charge the non-complying contractor any additional costs the State incurs as a result of the substitution.

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.

17:12-4.8 Effect of vendor non-compliance with contract provisions

(a) The Director may, in the following circumstances, rescind its contract with a non-complying contractor and immediately purchase or direct the using agency to purchase goods or obtain services from another source and charge the defaulting contractor the difference in price, if any:

1. Refusal of a non-complying contractor to bring goods or services into compliance in the time or manner specified by the Director or CCAU;
2. Refusal of a contractor to answer inquiries by the Division or failure of a contractor to respond to a formal complaint within 10 days of receipt, as mandated in N.J.A.C. 17:12-4.4(b);
3. Rejection of goods under N.J.A.C. 17:12-4.6.

(b) The Director may, upon continued or willful failure to perform, suspend or debar the contractor pursuant to N.J.A.C. 17:12-6.

Recodified from N.J.A.C. 17:12-4.6 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 N.J.A.C. 17:12-4.8, Causes for by-pass of low bidder, recodified to N.J.A.C. 17:12-2.8.

17:12-4.9 Discovery procedures

CCAU is entitled to request, receive, review and audit copies of any and all records and documents at any time. Upon receipt of the CCAU request, the vendor shall promptly provide the requested records and documents free of charge in the time, place and manner specified by CCAU. Failure of the vendor to comply with the requirements of this section may, at the reasonable discretion of the Director, constitute sufficient basis to resolve the issue(s) in disfavor of the non-compliant vendor. CCAU may also consider relevant information requested and received from other parties deemed appropriate by the Director.

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

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

SUBCHAPTER 5. COOPERATIVE PURCHASING

17:12-5.1 Subscription fees

(a) The Director may establish a subscription fee for the dissemination of State contract and specification information to members of its Cooperative Purchasing Program: the local governments, volunteer fire departments and volunteer first aid or rescue squads, school districts, county colleges, State colleges, quasi-State agencies and independent authorities and independent institutions of higher education of this State participating in the program. That fee shall be chargeable on an annual basis, and shall be structured to include direct State costs of personnel, printing and mailing of notices of award and other procurement information to the participating local governments, volunteer fire departments and volunteer first aid or rescue squads, school districts, county colleges, State colleges, quasi-State agencies and independent authorities and independent institutions of higher education.

(b) At the end of each fiscal year the Director will review expenditures under the program, certify as to their accuracy, and adjust subscription rates accordingly.

R.1982 d.481, eff. January 17, 1983.

See: 14 N.J.R. 1085(b), 15 N.J.R. 96(b).

Amended by R.1986 d.133, effective April 21, 1986.

See: 18 N.J.R. 265(a), 18 N.J.R. 848(b).

Added text in (a) "and independent institutions of higher education." Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

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

In (a), volunteer entities, colleges, quasi-agencies, and authorities included in subscription category.

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).

In (a), inserted "members of its Cooperative Purchasing Program:" following "information to" and inserted "participating in the program" at the end of the first sentence, and inserted "participating" preceding "local" in the second sentence.

17:12-5.2 Participation in State contracts by independent institutions of higher education

(a) Pursuant to N.J.S.A. 52:25-16.5 et seq., the Director may permit the use of selected State contracts for commodities and services by independent institutions of higher education. The Director will periodically make a list of selected contracts available to these institutions for their use.

(b) The independent institutions of higher education shall be responsible for issuance of purchase orders, certification of accepted commodities, payment of invoices, and resolution of complaints relative to procurement transactions with State contract vendors.

New Rule R.1986 d.133, effective April 21, 1986.
See: 18 N.J.R. 265(a), 18 N.J.R. 848(b).
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 N.J.S.A. 52:25-16.5 et seq. for a reference to the Public Laws of 1985, Chapter 263.

SUBCHAPTER 6. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:12-6.1 Purpose and scope

The purpose of this subchapter is to set forth the procedures that apply to debarment, suspension and disqualification of a person or persons from public contracting. This subchapter shall apply to all 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 the Department of the Treasury Circular PC-23 H, as amended or re-designated. Hearings arising as a result of this subchapter are contested cases subject to the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1999 d.407, effective November 15, 1999.
See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

Former N.J.A.C. 17:12-6.1, Definitions, recodified to N.J.A.C. 17:12-6.2.

17:12-6.2 Definitions

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

"Attorney General" means the Attorney General of the State of New Jersey or the Attorney General's designee.

"Debarment" means an exclusion from Division of Purchase and Property (Division) contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Disqualification" means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in Division contracting which has been granted or applied for pursuant to statute, or rules and regulations.

"Division contracting" means any arrangement giving rise to an obligation to supply anything or perform any service via a contract issued by the Division of Purchase and Property, other than by virtue of State employment, or to supply anything to or perform any service for a private or public person where the Division provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or services or the persons who may supply or perform the same.

"Person" means any natural person, company, firm, association, corporation, or other entity.

"Suspension" means an exclusion from Division contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

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

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

Recodified from 17:12-7.1.

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.

Recodified from N.J.A.C. 17:12-6.1 and amended by R.1999 d.407, effective November 15, 1999.

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

Changed references to the Division of Purchase and Property throughout; inserted "Attorney General"; and in "Division contracting", substituted "via a contract issued by the Division of Purchase and Property" for "P and P" following "service". Former N.J.A.C. 17:12-6.2, Causes for debarment of a person(s), recodified to N.J.A.C. 17:12-6.3.

17:12-6.3 Causes for debarment of a person(s)

(a) In the public interest, the Director shall debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violation of any laws governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivision;

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (c.114, L. 1942, N.J.S.A. 10:1-10 et seq.);

6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any laws governing the conduct of occupations or professions or regulated industries;

8. Violation of any laws which may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits, including, but not limited to, failure to accept purchase orders and maintain prices or any terms and conditions as bid;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by purchase and property to warrant debarment, including but not limited to, making a material false representation in a bid, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment by some other department or agency in the Executive Branch;

14. Any offer or agreement to pay or to make payment either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to report in writing forthwith or failure to obtain a waiver from the Executive Commission on Ethical Standards, who may undertake, directly or indirectly, any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g;

17. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Cause or influence or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

As amended, R.1980 d.141, effective April 7, 1980.

See: 12 N.J.R. 159(a), 12 N.J.R. 292(a).

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

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

Recodified from 17:12-7.2; (a)14 through 18 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.

Recodified from N.J.A.C. 17:12-6.2 and 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 the Director for a reference to P and P in the introductory paragraph, and neutralized gender references in 16 and 18. Former N.J.A.C. 17:12-6.3, Conditions affecting the debarment of a person(s), recodified to N.J.A.C. 17:12-6.4.

17:12-6.4 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Director, except as otherwise provided by law.