

**CHAPTER 34**

**LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS**

**Authority**

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

**Source and Effective Date**

R.2000 d.485, effective November 6, 2000.  
See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 34, Local Public and Public School Contracts Laws, expires on May 5, 2006. See: 37 N.J.R. 4601(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Chapter 34, Capital Budget Manual, was repealed by R.1978 d.322, effective September 14, 1978.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Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was repealed and Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was adopted as new rules by R.1992 d.401, effective October 5, 1992.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: Source and Effective Date. See, also, section annotations.

**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 Use of competitive contracting for energy services

**SUBCHAPTER 5. QUALIFIED PURCHASING AGENTS AND INCREASING THE BID THRESHOLD**

- 5:34-5.1 Qualified purchasing agent
- 5:34-5.2 Procedures for increasing the bid threshold
- 5:34-5.3 Absence of qualified 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.

ii. Are sound environmental practices such as recycling, energy efficiency, and waste reduction used?

2. Management criteria:

i. Project management:

(1) How well does the proposed scheduling timeline meet the contracting unit's needs?

(2) Is there a project management plan?

ii. History and experience in performing the work:

(1) Does the vendor document a record of reliability of timely delivery and on-time and on-budget implementation?

(2) Does the vendor demonstrate a track record of service as evidenced by on-time, on-budget, and contract compliance performance?

(3) Does the vendor document industry or program experience?

(4) Does the vendor have a record of moral integrity?

iii. Availability of personnel, facilities, equipment and other resources:

(1) To what extent does the vendor rely on in-house resources vs. contracted resources?

(2) Are the availability of in-house and contract resources documented?

iv. Qualification and experience of personnel:

(1) Documentation of experience in performing similar work by employees and when appropriate, sub-contractors?

(2) Does the vendor make use of business capabilities or initiatives that involve women, the disadvantaged, small and/or minority owned business establishments?

(3) Does the vendor demonstrate cultural sensitivity in hiring and training staff?

3. Cost criteria:

i. Cost of goods to be provided or services to be performed:

(1) Relative cost: How does the cost compare to other similarly scored proposals?

(2) Full explanation: Is the price and its component charges, fees, etc. adequately explained or documented?

ii. Assurances of performance:

(1) If required, are suitable bonds, warranties, or guarantees provided?

(2) Does the proposal include quality control and assurance programs?

iii. Vendor's financial stability and strength:

(1) Does the vendor have sufficient financial resources to meet its obligations?

**5:34-4.3 Opening and evaluating proposals and awarding competitive Contracts**

(a) The request for proposals document shall state the time and place for receiving and opening the proposals, and shall specify the criteria that will be used to evaluate proposals.

(b) At the time and place proposals are due, the names of all the vendors and the price of their respective proposals shall be announced in public. Prior to opening such proposals, the authorized agent shall, if not provided as part of the request for proposals document, describe the specific weighting of any evaluation criteria, which may be used for evaluating the proposals.

(c) The evaluation of request of proposals shall be subject to the following requirements:

1. The request for proposals document shall state the criteria for evaluating the proposals.

2. Where not otherwise required to do so by other applicable Federal, State and local regulations, the authorized agent may appoint a committee to assist in the evaluation of the proposals. Committees shall be subject to the following requirements:

i. If a committee is to be used, the names of the individuals who serve as committee members shall not be publicly disclosed until the evaluation report is presented to the governing body. Committee members shall be familiar with the need for the goods to be provided or the services to be performed in the request for proposals.

ii. Committee members may conduct their work separately or together.

iii. While a member of the governing body is not required to be a committee member, no more than one less than the majority of the current membership of the governing body may serve on a committee.

iv. The committee may use advisors, as it deems necessary to give opinions on evaluating proposals, except that the advisors shall be subject to the provisions of (e) below. The names of such advisors shall be included in the report submitted to the governing body.

v. Meetings of the committee are advisory in nature and are not subject to the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

3. At the option of the contracting unit, the request for proposals document may, after proposals are received and

opened, but prior to completing the evaluation of the proposals, provide the opportunity for vendors to provide clarification regarding their submission. The presentation shall address only those matters specified by the contracting unit. The presentation shall not be used for negotiation of a contract contrary to law.

(d) The process of establishing weighting criteria and evaluating proposals shall result in a finding that a specific proposal is the most advantageous, price and other factors considered, or that all proposals should be rejected.

(e) Before reviewing any proposals, each person evaluating a proposal shall assess their own affiliations and financial interest and those of their families that relate to their duties as someone evaluating a proposal to ensure they do not have a conflict of interest. For these purposes, a person has a conflict of interest with a proposal if that person or spouse, parent, or child would be in violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., or the School Ethics Act, N.J.S.A. 18A:12-21 et seq. as appropriate. Any person with a conflict of interest related to the competitive contracting proposal shall not participate in the evaluation process.

(f) Prior to evaluating the proposals, each individual participating in the evaluation of a proposal shall execute a statement in accordance with (e) above certifying they do not have a conflict of interest. Such statement shall reflect the provisions at (e) above, which relate to possible conflict of interest situations. This statement shall be filed with the authorized agent, prior to the beginning of the evaluation process. The certification shall be as follows:

I hereby certify that I have reviewed the conflict of interest standards in the Local Government Ethics Law or the School Ethics Act, as appropriate, and that I do not have a conflict of interest with respect to the evaluation of this proposal. I further certify that I am not engaged in any negotiations or arrangements for prospective employment or association with any of those submitting proposals or their parent or subsidiary organization.

#### **5:34-4.4 Use of competitive contracting for non-listed services**

(a) The authorized agent shall apply to the Director for approval to use the provisions of N.J.S.A. 40A:11-4.1k and 18A:18A-4.1k requesting the use of competitive contracting for the operation, management, or administration of services not otherwise listed in N.J.S.A. 40A:11-4.1a through j and 18A:18A-4.1a through j. The application shall be in letter form and shall provide the information reasonably required for the Director to respond to the request. If the Director finds that the subject matter of the application is consistent with the intent of the statutory provisions encouraging competitive contracting, then the Director shall approve the request. The Director may consider the level and characteristics of the service and competition in the market. Prior to submitting an application, an applicant may request to consult with the

Director or designee to review issues regarding a potential application.

(b) Services that meet the requirements for procurement through competitive contracting may not be combined or included in a contract with other services which are required to be procured through competitive bidding so as to avoid the statutory obligation for the procurement of such other services through competitive bidding.

#### **5:34-4.5 Use of competitive contracting for energy services**

(a) For the purposes of N.J.S.A. 40A:11-4.1c and 18A:18A-4.1c, the "provision or performance of the physical improvements that result in energy services" for which competitive contracting shall not be used, includes the following:

1. The replacement or upgrading of lighting fixtures;
2. The replacement or upgrading of windows;
3. Outside and/or inside doors;
4. The replacement or upgrading of toilets and sinks;
5. The replacement or upgrading of roofs;
6. New boilers;
7. Electrical box upgrades;
8. Cafeteria equipment (that is, freezers and fryers, etc); and
9. Any combination of the above mentioned equipment or work in a single contract.

(b) The work described in (a) above shall be permitted as competitive contracting under the energy services company exemption of N.J.S.A. 40A:11-4.1c and 18A:18A-4.1c only if the goods and services are part of a comprehensive energy services design, plan or specification for which a single contractor will be responsible for the performance of the work.

Petition for Rulemaking.  
See: 37 N.J.R. 533(a), 1233(a), 3457(a).

### **SUBCHAPTER 5. QUALIFIED PURCHASING AGENTS AND INCREASING THE BID THRESHOLD**

#### **Authority**

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

#### **Source and Effective Date**

R.2002 d.17, effective January 22, 2002.  
See: 33 N.J.R. 1994(a), 34 N.J.R. 524(a).

#### **Law Reviews and Journal Commentaries**

Bidding on Public Construction Contracts. Michael S. Simon, 217 N.J.L.J. 30 (2002).

**5:34-5.1 Qualified purchasing agent**

(a) A contracting unit's purchasing agent shall be considered qualified pursuant to N.J.S.A. 40A:11-9b to exercise

the supplemental authority as set forth in 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 if the following criteria are met:

1. The individual has served as purchasing agent as defined in N.J.A.C. 5:34-1.2; and

i. Held the power to award contracts as allowed by law; and

ii. Personally performed duties that included, but were not limited to: preparing or reviewing bid specifications, evaluating bids, seeking or authorizing the solicitation of quotations, recommending or awarding contracts, and analyzing procurement needs on a regular basis; and

2. The individual served as a purchasing agent within 15 years immediately preceding the filing of the application to be a qualified purchasing agent and meets at least one of the following standards of qualifications and experience in contracting units under the jurisdiction of the Local Public Contracts Law or Public School Contract Law:

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 web site at [www.state.nj.us/dca/lgs/pages/dcadlgs/htm](http://www.state.nj.us/dca/lgs/pages/dcadlgs/htm).

(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.

**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.

(b) All purchase orders or contract documents shall include the identifier "N.J.A.C. 5:34-9.7" and if available, the State contract number issued by the Division of Purchase and Property in order to validate the legal basis under which the purchase was made, and to assist in the conduct of audits and other reviews for statutory compliance.

(c) Contracting units statutorily authorized to contract under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. or the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq. and procuring goods or services listed in any Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, shall comply with administrative rule promulgated by the Department of the Treasury

Purchase Bureau at N.J.A.C. 17:12-1A.5, Use of Federal Supply Schedules.

(d) The Division has provided an optional submission checklist in chapter Appendix C, "Use of the General Services Administration's Federal Supply Schedules N.J.S.A. 40A:11-12b and N.J.S.A. 18A:18A-10b." The checklist is intended to help contracting units comply with the provisions of this section. The checklist is available in the public contracts law section of the Division's website [www.state.nj.us/dca/lgs](http://www.state.nj.us/dca/lgs).

New Rule. R.2002 d.118, effective April 15, 2002.  
See: 34 N.J.R. 632(a), 34 N.J.R. 1544(a).

## APPENDIX A

### APPENDIX A

The examples that follow relate to N.J.A.C. 5:34-8.3, which identifies practices that should be used in instances where the initial estimates of goods or services needed during the current contract year were anticipated to be less than the bid threshold, or had been exempt from public bidding, but are later found to be incorrect. The rule sets forth practices to follow in determining if the remaining amount should be publicly bid, or if quotations should be solicited. The following situations repeat each rule and provide an interpretative model.

In the following situations, the remaining amount (as previously defined) means: the value of similar goods and services that are needed for the remainder of the current contract year, plus the value of similar goods and services needed in the subsequent contract year.

#### SITUATION 1

**N.J.A.C. 5:34-8.3(c):** If the remaining amount exceeds the bid threshold, public bidding should take place as soon as possible.

**Example:** Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director advises the purchasing agent that one field and a parking area were excluded from the initial solicitation and that an additional \$10,000 worth of chain link fence needs to be purchased for the remainder of the year. The Recreation Director further advises that an additional \$21,000 worth of chain link fence is required for anticipated projects in the next year.

**Solution:** The purchasing agent or contracting agent would have to immediately initiate public bidding procedures to procure the remaining chain link fence, because the additional need this year, plus the need next year, exceeds the bid threshold.

#### SITUATION 2

**N.J.A.C. 5:34-8.3(d):** If the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, and the contracting unit has previously designated an elected official to determine whether public bidding or the solicitation of quotations is most advantageous to the contracting unit, then the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

**Example:** The following example relates to situations where similar goods or services will not be required in the subsequent contract year, and the contracting agent or purchasing agent has the option to either publicly bid the remaining amount, or seek authorization from the governing body or its designee to solicit quotations.

Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that one field was excluded from the initial solicitation, resulting in an additional current year purchase of \$10,000. The Recreation Director further advises that no purchases of chain link fence are required for the subsequent year.

**Solution:** The purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount because it is between 15 percent and 100 percent of the contracting unit's bid threshold.

#### SITUATION 3

**N.J.A.C. 5:34-8.3(d):** If the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, and the contracting unit has previously designated an elected official to determine whether public bidding or the solicitation of quotations is most advantageous to the

contracting unit, then the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

**Example:** The following example relates to situations where the remaining amount equals the value of similar goods or services to be purchased for the current contract year plus the value of similar goods or services for the subsequent contract year and is equal to between 15 percent and 100 percent of the contracting unit's bid threshold.

Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget. To date, they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that one field was excluded from the initial solicitation resulting in an additional need for \$5,000 worth of chain link fence for the remainder of the current contract year. The Recreation Director advises further that \$10,000 worth of additional chain link fence needs to be purchased during the subsequent year. The additional \$15,000 of new chain link fence (\$5,000 for the remainder of the current contract year, and \$10,000 for the subsequent contract year) is less than the bid threshold of \$17,500.

**Solution:** Since the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

SITUATION 4

**N.J.A.C. 5:34-8.3(e):** If the remaining amount is less than 15 percent of the contracting unit's bid threshold, the contracting agent or purchasing agent is authorized to solicit quotations for the purchase of the remaining amount.

**Example:** Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that the engineer miscalculated the area, and that an additional 40 linear feet of chain link fence needs to be purchased. The cost for the additional chain link fence is \$2,600.

**Solution:** The purchasing agent or contracting agent would be able to solicit quotations for the remaining chain link fence, because \$2,600 (the remaining amount of goods to be purchased) is less than 15 percent of the contracting unit's bid threshold.

Amended by R.2002 d.118, effective April 15, 2002.  
See: 34 N.J.R. 632(a), 34 N.J.R. 1544(a).  
Added Appendix designation "A".

APPENDIX B

APPENDIX B

N.J. DIVISION OF LOCAL GOVERNMENT SERVICES SUBMISSION CHECKLIST  
Purchase At 10 Percent Less Than The State Cooperative Contract Price  
N.J.S.A. 40A:11-5(4) and N.J.S.A. 18A:18A-5(e)

CONTRACTING UNIT'S NAME: \_\_\_\_\_ COUNTY: \_\_\_\_\_  
ITEM PURCHASED: \_\_\_\_\_ DATE: \_\_\_\_\_

The Local Public Contracts Law at N.J.S.A. 40A:11-5(4) and the Public School Contracts Law at N.J.S.A. 18A:18A-5(e) require information on this particular type of purchasing transaction(s) to be filed with the Director of the Division of Local Government Services. The rule, N.J.A.C. 5:34-9.6, codifies and supplements the requirements of the provisions of law. The rule requires documentation to be submitted to the Director within five (5) working days of the award of any such contract. The following documentation is submitted:

DOCUMENTATION

1. Copy of the purchase order with the reference N.J.A.C. 5:34-9.6 included;
2. Copy of the requisition or request for purchase order (if applicable);
3. Written certification by the purchasing agent stating that the purchase price of the materials, supplies or equipment is at least 10 percent less than the State contract price.
4. Documentation verifying that the materials, supplies or equipment purchased by the contracting unit are identical to the materials, supplies or equipment on State contract.
5. Copy of each request for quotation issued by the purchasing agent; and,
6. Copy of each of the three (3) quotations received by the purchasing agent, which shall include the vendor's name and address and identification of items offered, prices quoted, and percent discount (if applicable); and,
7. Copy of the adopted resolution approved by two-thirds affirmative vote of the full membership of the governing body or, in the case of boards of education, copy of the motion made, carried and recorded in the written minutes of the meeting.

INCLUDED WITH SUBMISSION

- |         |        |
|---------|--------|
| YES ( ) | NO ( ) |
| YES ( ) | NO ( ) |
| YES ( ) | NO ( ) |
| YES ( ) | NO ( ) |
| YES ( ) | NO ( ) |
| YES ( ) | NO ( ) |
| YES ( ) | NO ( ) |

OTHER COMMENTS: Please use a separate sheet of paper and attach to Checklist.  
FORM SUBMITTED BY:

(Please Print Name) (Title)

(Telephone or E-mail) (Date)

Please return this form with all the required documentation to the Bureau of Local Management Services at the Division of Local Government Services, at PO Box 803, Trenton, NJ 08625-0803.

New Rule, R.2002 d.118, effective April 15, 2002. See: 34 N.J.R. 632(a), 34 N.J.R. 1544(a).

APPENDIX C

APPENDIX C
N.J. DIVISION OF LOCAL GOVERNMENT SERVICES SUBMISSION CHECKLIST
Use Of The General Services Administration's Federal Supply Schedules
N.J.S.A. 40A:11-12b and N.J.S.A. 18A:18A-10b

CONTRACTING UNIT'S NAME: COUNTY:
ITEM PURCHASED: DATE:

The Local Public Contracts Law at N.J.S.A. 40A:11-12b and the Public School Contracts Law at N.J.S.A. 18A:18A-10b require information on this particular type of purchasing transaction(s) to be filed with the Director of the Division of Local Government Services. The rule, N.J.A.C. 5:34-9.7, codifies and supplements the requirements of the provisions of law. The rule requires documentation to be submitted to the Director within five (5) working days of the award of any such contract for reprographic equipment or services, including digital copiers, listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto. The following documentation is submitted:

Table with 2 columns: DOCUMENTATION and INCLUDED WITH SUBMISSION. Rows 1-6 list documentation items like 'Copy of the purchase order', 'Copy of the requisition', etc., with YES/NO checkboxes.

OTHER COMMENTS: Please use a separate sheet of paper and attach to Checklist.

FORM SUBMITTED BY:

(Please Print Name) (Title)

(Telephone or E-mail) (Date)

Please return this form with all the required documentation to the Bureau of Local Management Services at the Division of Local Government Services, at PO Box 803, Trenton, NJ 08625-0803.

New Rule, R.2002 d.118, effective April 15, 2002. See: 34 N.J.R. 632(a), 34 N.J.R. 1544(a).