

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), 52:25-1 et seq., 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. 189(1988).

Source and Effective Date

R.2005 d.128, effective March 22, 2005.
See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from March 22, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 43 N.J.R. 3308(a).

Chapter Historical Note

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

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

Chapter 12, Purchase Bureau, was repealed and Chapter 12, Purchase Bureau, was adopted as new rules by R.1979 d.132, effective March 30, 1979.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

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

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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 12, Purchase Bureau, was readopted as "Division of Purchase and Property: Purchase Bureau and Contract Compliance and Administration Unit" by R.1999 d.407, effective October 22, 1999, and former Subchapter 3, Hearing Procedures, was repealed and Subchapter 3, Protest, was adopted as new rules by R.1999 d.407, effective November 15, 1999. See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).

Subchapter 1A, Procurement Methodology, was adopted as R.2001 d.101, effective March 19, 2001. As part of this adoption, Subchapter 5, Cooperative Purchasing, was recodified to 17:12-1A.4. See: 33 N.J.R. 20(a), 33 N.J.R. 1014(a). Subchapter 9, Surplus Property Unit, Computer Distribution Program, was adopted as R.2000 d.172, effective April 17, 2000. See: 32 N.J.R. 392(b), 32 N.J.R. 1415(b).

Chapter 12, Division of Purchase and Property: Purchase Bureau and Contract Compliance and Administration Unit; Surplus Property Unit, Computer Distribution Program, was readopted as R.2005 d.128, effective March 22, 2005. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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

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SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

17:12-1.1 General course and method of operation

(a) The Division of Purchase and Property, in and of the New Jersey Department of the Treasury, provides centralized procurement and related services to agencies of the Executive Branch of 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"). 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 Division, 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 establishing contracts and issuing purchase orders, the price of which is to be paid with State funds or funds in the State's custody and control, and occasionally those contracts involving no cost to the State or those generating revenue for the State. If the aggregate amount involved does not exceed the threshold established pursuant to N.J.S.A. 52:34-7, any purchase or 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 or 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 or the circumstances of the procurement are as described in N.J.S.A. 52:34-9 and/or 52:34-10.

(d) The Director may delegate to staff within the Division of Purchase and Property the signing of purchase orders on the Director's behalf for such amounts as the Director may establish from time to time and implement through the issuance of policy memoranda.

(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. Single-source term contract;
3. Multi-source term contract;
4. Waiver of advertising contract;
5. Prequalification contract;
6. Purchasing agreements with another state or other states, political subdivisions or agencies thereof to meet domestic preparedness and homeland security needs of this State; or
7. Purchasing/contracting with vendors having Federal Supply Schedule contracts for products or services needed to meet domestic preparedness and homeland security needs of this State.

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.
 Amended by R.2005 d.128, effective April 18, 2005.
 See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).
 Rewrote the section.

17:12-1.2 Source for public information

(a) The public is encouraged to obtain information concerning the State procurement program and RFPs by accessing the Division's Internet site at www.state.nj.us/treasury/purchase. If the information being sought is not available on the Division's website, the public can request information by writing to the Director of the Division of Purchase and Property, PO Box 039, Trenton, New Jersey 08625-0039, or by visiting the Division's reception area at 33 West State Street, 9th Floor.

(b) Subsequent to bid opening, all information submitted by bidders in response to a bid solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a bidder, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote the section.

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 a form acceptable to the Division, that the bidder, if selected, will accept the contract as bid; otherwise, the bidder or, as applicable, its guarantor 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 instrument of bid security.

"Bypass" means a contract award made to other than the lowest priced proposal from a 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 responsive proposal.

"Compatible" relates to instances when, in the Director's business judgment, it is advantageous to purchase materials, supplies, or services that are, or equipment that is, capable

of performing in conjunction with those previously purchased. This also refers to situations in which the purchase of materials, supplies, services or equipment at variance with those previously purchased has the potential to degrade or impair the performance of those previously purchased and/or negatively impact upon warranties or licenses of those previously purchased.

"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 typically consists of the Division's terms and conditions, the RFP, the responsive proposal, the notice of acceptance or award, any subsequent written document memorializing the agreement, any amendments or modifications to any of these documents and any attachments, addenda or other supporting documents or other writings agreed to by the State and the contractor describing the work to be performed.

"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 monitoring using agencies and contracted vendors to ensure their conformance to State procurement statutes, regulations, and contractual terms, conditions and requirements. 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. CCAU also has oversight responsibility for contracts which are subject to waiver of advertising pursuant to N.J.S.A. 52:34-9 and 10.

"Day" or "business day" means a normal work day and excludes 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.

"Environmental" refers to those products or services adapted for use in, or required for long-term serviceability to, localized natural or man-made environmental conditions.

"Filed" means received by the Director.

"Homeland security," "domestic preparedness" and "emergency condition" refer to circumstances which may be cause for immediate procurement action necessary to meet potential or existing security, safety or other life and safety concerns as deemed essential by the Governor or other authorized State official and sanctioned as such by the State Treasurer.

"Line item contract" refers to a contract for which bid proposals are sought for a specific item or group of items

and which is typically awarded to no more than one of the bidders.

“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, standardization and, if applicable, the use of the State contracts by Cooperative Purchasing participants.

“Performance security” means a guarantee, executed subsequent to award, in a form acceptable to the Division, 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.

“Prequalification contract” means a contract without pre-established quantifiable requirements for goods and/or services where it is in the best interests of the State to establish two or more qualified contractors to compete for work orders for specific requirements.

“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 the bureau under the direct authority of the Director that is responsible for the preparation, advertisement and issuance of RFPs, tabulation and evaluation of bid proposals and making contract award recommendations to the Director.

“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.

“Safety” refers to those products or services required to comply with mandated or accepted State or Federal codes and standards designed to insure against personal harm or injury.

“Sealed bid” means that the contents of the bid proposal cannot be opened or viewed before the date and time of the formal bid opening without leaving evidence that the document has been opened or viewed.

“Signed” means a physical or electronic signature evincing an intent by a bidder to be bound.

“Single-source term contract” means a competitively bid commodity or service contract awarded to one bidder that is deemed able to meet the need(s) of the using agency or agencies in accordance with the provisions of N.J.S.A. 52:34-12.

“Standardization” relates to instances when, in the Director’s business judgment, it is advantageous to purchase materials, supplies or equipment consistent and compatible in design, fit, style, composition or manufacture with materials, supplies or equipment currently in use or to purchase services identical or approximate to those previously purchased, notwithstanding that materials, supplies, equipment or services at variance to those previously purchased can be used without negatively impacting the performance of those previously purchased. Standardization is appropriate in instances where cost savings relating to maintenance, technical support, training and/or parts inventory can be reasonably anticipated by purchasing materials, supplies, equipment or services identical or approximate to those previously purchased.

“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.

Amended by R.2001 d.101, effective March 19, 2001.

See: 33 N.J.R. 20(a), 33 N.J.R. 1014(a).

Inserted “Compatible”, “Environmental”, “Safety” and “Standardization”; and in “Multi-source contract”, rewrote the second sentence. Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

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 Delegated Purchasing Authority contracts as set forth in Department of the Treasury Circular 00-13 DPP, 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).

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Substituted "Delegated Purchasing Authority" for "Direct Purchase Authorization" following "all waiver of advertising contracts and to all", "00-13-DPP" for "PC-23H" following "Department of the Treasury Circular".

SUBCHAPTER 1A. PROCUREMENT METHODOLOGY

17:12-1A.1 Formal, advertised, sealed bidding

(a) Except as provided in this subchapter, all purchases shall be through formal, advertised, sealed bidding.

(b) The Director shall structure Requests for Proposals for formal, advertised, sealed bidding to provide for a single contract award to a single bidder, unless contract awards to two or more bidders are permitted as hereinafter provided in this subchapter.

(c) The Director may structure an RFP for formal, advertised, sealed bidding to include multiple lines encompassing more than one commodity, group of commodities, service or group of services, with a separate contract award for each price line.

(d) The Director may structure an RFP for formal, advertised, sealed bidding to be awarded to two or more bidders on the basis of one or more of the following criteria:

1. The anticipated quantities required by State using agencies and, if the State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the anticipated quantities required by cooperative purchasing participants;
2. The needs of State using agencies and, if the State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the anticipated needs of cooperative purchasing participants for maintenance, repair parts and service and the ability of potential bidders to provide such maintenance, repair parts and service;
3. The needs of State using agencies and, if State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the needs of cooperative purchasing participants for cost-efficient, timely local deliveries;
4. The needs of State agencies and, if the State contracts resulting from RFP are to be extended to cooperative purchasing participants, the needs of cooperative purchasing participants to purchase materials, supplies, services or equipment compatible with those previously purchased;
5. The needs of State agencies and, if the State contracts resulting from the RFP are to be extended to

cooperative purchasing participants, the needs of cooperative purchasing participants for standardization of equipment, interchangeability of parts or continuation of services;

6. The collective safety, environmental or technological needs of State using agencies and, if the State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the collective safety, environmental or technological needs of cooperative purchasing participants; and

7. The requirements of any law directing the Division to purchase a particular product or to purchase from a particular source.

(e) Any RFP under (d) above shall be structured to result in the number of contract awards documented as necessary on the basis of the criteria set forth in (d) above. The RFP file for any such procurement shall document the reason(s) for the multiple contract award structure of the RFP.

(f) All proposals received in response to an RFP for formal advertised sealed bids shall be solicited, evaluated and awarded pursuant to the provisions of N.J.A.C. 17:12-3.

17:12-1A.2 Exceptions to formal, advertised, sealed bidding

(a) With the exception of contracts awarded by State agencies via the Division's Delegated Purchasing Authority program and contracts awarded by the Division upon approval by the State Treasurer to waive the public advertisement requirement, that is, waiver of advertising contracts, all contracts issued by the Division shall be formally advertised and competitively bid with requirements for the submittal of sealed bids.

(b) State agency purchasing under Delegated Purchasing Authority procedures shall be done only under the following conditions:

1. Purchases not exceeding the formal advertised bidding threshold established at N.J.S.A. 52:34-7, or the adjusted amount established under the provisions of N.J.S.A. 52:34-7.1, do not require formal, advertised, sealed bidding; and
2. The Director has delegated, to State agencies, authority to make purchases not exceeding the advertised bidding threshold amount set forth in (b)1 above, subject to the following conditions:
 - i. The agency's anticipated fiscal year volume for a qualifying item or service is no greater than the formal advertised bidding threshold amount set forth in (b)1 above;
 - ii. The purchase is one that cannot be made through a State contract, the State Distribution and Support Services Center, the Bureau of State Use

Industries or the Central Non-profit Agency (CNA), ACCSES NJ, Inc.; and

iii. The purchase has not been divided to circumvent the dollar limit imposed.

(c) Delegated Purchasing Authority procedures are set forth in, and are subject to revision through, the Division's Circular on Delegated Purchasing Authority procedures.

(d) Should violations of Delegated Purchasing Authority provisions be verified, the Director may rescind or reduce the level of Delegated Purchasing Authority granted the offending agency.

(e) Records of all Delegated Purchasing Authority purchases shall be maintained by State agencies pursuant to each agency's record retention schedule.

(f) In accordance with the provisions of N.J.S.A. 52:34-8, contracting for goods and/or services at costs in excess of the competitive bidding threshold established at N.J.S.A. 52:34-7, or the adjusted amount established under the provisions of N.J.S.A. 52:34-7.1, without public advertising, requires prior approval by the State Treasurer or the Treasurer's designee. Awards of waiver of advertising contracts shall be made in accordance with the procedures set forth in the Division's Circular on Requests for Waivers of Advertising and may occur when the following conditions have been met:

1. The State agency initiating the Request for Waiver of Advertising procurement is addressing one or more of the following situations:

i. Services to be performed are of a technical and professional nature or are to be performed under the supervision of the Director and paid on a time basis;

ii. The purchase is of perishable foods or subsistence supplies;

iii. The transaction is a lease of office space, machinery, specialized equipment, building or real property, as needed for the State's business;

iv. The purchase is of supplies or services as to which bid prices after advertising therefor were not reasonable or independent, provided that no negotiated purchase, contract or agreement may be entered into unless each responsible bidder is notified, the negotiated price is lower than the lowest rejected price, and the price is the lowest negotiated price offered by any responsible bidder;

v. The purchase is from the Federal or any State government or any political subdivision thereof;

vi. Public exigency, that is, life, health and/or other emergencies, requires the immediate delivery of the articles or performance of the service;

vii. Only one source of supply is available;

viii. More favorable terms can be obtained from a primary source of supply;

ix. The purchase is of styled or seasonal clothing;

x. The product(s) is (are) on a national commodity exchange and market fluctuations require immediate action; and/or

xi. Standardization of equipment and interchangeability of parts is in the public interest;

2. The Request for Waiver of Advertising packet includes documentation which establishes that informal competitive bidding was conducted if the procurement addressing any situation(s) described in (f)1i, ii, iii, iv, vii, viii, ix and/or xi above, and which includes written justification for any bypass of a lower bidder; and

3. The Treasurer has signed the Request for Waiver of Advertising document prepared and submitted by the State agency via the Division, except when oral authorization has been granted by the Treasurer, the Director, or their respective designees to address life, health, and/or other emergencies.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote the section.

17:12-1A.3 Cooperative purchasing

(a) The Director may enter into cooperative purchasing agreements with one or more other states, or political subdivisions thereof, for the purchase of goods and services.

(b) Any such purchasing agreement shall provide for the combined requirements of the parties to be procured through formal advertised sealed bids.

(c) Prior to entering into any such purchasing agreement, the Director shall review and approve the specifications and proposed terms and conditions of the contract.

(d) The Director may solicit and award such contracts, provided that the purchasing agreement specifies that each party to the purchasing agreement is solely responsible for purchases made by such party under the terms of any resultant contract.

(e) The Director may enter into agreements with purchasing cooperatives comprised of other states, or political subdivisions thereof, or other New Jersey agencies or authorities, to address domestic preparedness or homeland security concerns or emergency conditions encountered by State agencies or other users of State contracts.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Added (e).

17:12-1A.4 Extension of contracts for local use

(a) The Director may invite bidders to extend a State contract for local use, that is, for 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, at the time of contract award, or at any time during the period of performance of 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.

(d) The Director may establish a subscription fee for the dissemination of State contract and specification information to members of its Cooperative Purchasing Program. That fee shall be chargeable on an annual basis, and shall be structured to include State costs of program operation, including website service, personnel, printing and mailing of notices of award and other procurement information to the participating members.

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

(f) 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 shall periodically make a list of selected contracts available to these institutions for their use.

(g) 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.

Recodified from N.J.A.C. 17:12-2.3, 17:12-5.1 and 17:12-5.2 and amended by R.2001 d.101, effective March 19, 2001.

See: 33 N.J.R. 20(a), 33 N.J.R. 1014(a).

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (b), substituted "at the time of contract award, or at any time during the period of performance of the contract" for the last sentence; in (d), inserted "program operation, including website service" following "to include State costs of".

17:12-1A.5 Use of Federal Supply Schedules

(a) Public entities which are statutorily authorized to contract, including State agencies, counties, municipalities, boards, school boards, commissions, independent institutions of higher education, county colleges and State colleges, hereinafter collectively referred to as "public entities," may

procure goods or services using prices, terms and conditions equivalent to those of the Federal Supply Schedules, without advertising for bids, or having rejected all bids obtained pursuant to advertising, subject to the following conditions:

1. Use of the equivalent price, terms and conditions of the Federal Supply Schedule 36, Part IV, or update thereto, to procure goods or services is limited to those goods and services listed in the Item Numbers of Federal Supply Schedule 36, Part IV, or update thereto, that relate to reprographic equipment or services, including digital copiers ("Special Item Numbers");

2. Total procurement by public entities of goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, listed in (a)1 above, shall not exceed \$500,000 in a fiscal year or, in the alternative, one product unit at any price in excess of \$500,000 during a fiscal year;

3. When goods or services are not available under a State contract, the price paid by a public entity for goods and services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, listed in (a)1 above, shall be no greater than the price offered to Federal agencies;

4. A public entity procuring goods or services listed in any of the Special Item Numbers within Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, must receive the benefit of any contract price reductions, whether statutory, regulatory or contractual in nature, during the term of the contract;

5. A public entity procuring goods or services listed in any of the Special Item Numbers within Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, must be protected from price increases during each respective term of the contract;

6. When goods or services are available under a State contract, only goods or services listed in any of the Special Item Numbers within Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, that are no greater in cost than the State contract price for the same or equivalent goods or services can be procured. When goods or services are available under a State contract, a public entity seeking to procure goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, shall verify with the vendor, before procurement, that the cost for the particular goods or services is no greater than the State contract price for the same or equivalent goods or services;

7. When goods or services are available under a State contract, if the cost of the goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, is greater than the State contract price for the same or equivalent goods or services, the public entity is precluded from procuring such goods or services, unless

the public entity determines that, because of factors other than price, the purchase of such goods or services at a price greater than the State contract price is more advantageous to the public entity; and

8. When goods or services are available under a State contract, the vendor selling goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, listed in (a)1 above, shall agree in writing prior to finalization of sale to a public entity that, to the extent the material State contract terms and conditions differ from the material terms and conditions of the vendor's Federal contract, the State contract terms and conditions shall prevail. The public entity's purchasing agent is responsible for determining the materiality or non-materiality of differences in the terms and conditions of the two contracts.

(b) A public entity 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 of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, shall file documentation as set forth in administrative rules promulgated by the Division of Local Government Services, Department of Community Affairs.

(c) If there is a sufficient legal authority to do so for the period in question, to address homeland security or other emergency preparedness or control needs of State agencies, the Director may enter into contracts with vendors having Federal Supply Schedule contracts for the types of equipment, goods and services deemed necessary by a State agency, and accepted as necessary by the Director, to address such needs.

New Rule, R.2001 d.385, effective October 15, 2001.
See: 33 N.J.R. 1343(a), 33 N.J.R. 3671(c).
Amended by R.2005 d.128, effective April 18, 2005.
See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).
Added (c).

SUBCHAPTER 2. FORMAL, ADVERTISED, SEALED BIDDING 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 and other such media, such as the Division of Purchase and Property's website, as permitted by law and selected by the State Treasurer as will give best notice thereof to bidders. Advertisements shall be made a minimum of 10 business 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 business days in advance of the bid opening date and time.

(c) In addition to statutorily mandated public advertising, the Division shall 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 notice of a specific bidding opportunity and of RFP-accessibility on the Division's website to prospective bidders. However, the placement of a vendor's name on a bid list does not grant the vendor an absolute entitlement to receive notice of a bid solicitation. It is the vendor's responsibility at all times 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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

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 by an entity registered with the Department of the Treasury to do business in the State of New Jersey in accordance with N.J.S.A. 52:32-44.1.b;
2. Be submitted on or before the due date and time and at the place specified in the RFP;
3. Be signed by a representative of the bidding entity;
4. Have all required forms completed and include all required attachments;
5. Be accompanied by bid security when required;
6. Include pricing information;

7. 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 waive this requirement upon terms the Director deems acceptable, if doing so is in the State's best interest;

8. 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;

9. Be prepared in ink or typewritten or, as applicable, in the electronic format specified by the RFP. 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;

10. 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 business organization registration requirements pursuant to N.J.S.A. 52:32-44 et seq. and at N.J.A.C. 17:12-2.12;

11. Be sealed, which for electronic format submissions shall be described in the RFP document. Telephone, telefacsimile or telegraph bids shall not be accepted for publicly advertised bid solicitations requiring the submittal of sealed bids;

12. Include bid security in the amount and form specified, if required by the RFP; and

13. If the bid solicitation is for a contract that has set-aside program provisions for a specified category or specified categories of businesses, be submitted by a business properly approved by and registered with the New Jersey Commerce and Economic Growth Commission at the time of bid opening.

(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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote (a).

17:12-2.3 (Reserved)

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.

Recodified to N.J.A.C. 17:12-1A.4 by R.2001 d.101, effective March 19, 2001.

See: 33 N.J.R. 20(a), 33 N.J.R. 1014(a).

Section was "Extension of contracts for local use".

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 a documentable emergency occurring on the date of the scheduled bid opening, timely delivery is not possible. The vendor must make such request 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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (a), substituted "a documentable" for "an" following "intent to bid but, due to", inserted "occurring on the date of the scheduled bid opening" following "emergency", substituted "must make such request" for "making this request must do so" following "The vendor" in 1.

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 prior to the date of the scheduled bid opening. The Director shall appoint the members of the evaluation committee on the basis of professional resumes supplied by the proposed members. The Director retains the discretion to reject a proposed member, remove a sitting member or add additional member(s) to an evaluation committee. Upon conclusion of its evaluation of the proposals, 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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (a), rewrote 1.

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(g).

(d) Notice of a decision to bypass a bidder's proposal based upon poor performance shall be given at the time the notice of intent to award is issued to all bidders to any bidder whose proposal was bypassed.

(e) After receiving notice of bypass for poor performance, that bidder may, in accordance with the provisions of N.J.A.C. 17:12-3.3, challenge the bypass decision. If in the Director's judgment the bidder has substantiated its ability to perform the contract, or it is otherwise in the public interest, the Director may reverse the decision to bypass.

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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (c), amended N.J.A.C. reference; added (d), (e).

17:12-2.9 (Reserved)

Repealed by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Section was "Irregularities in bidding".

17:12-2.10 Tie bids

(a) In the event that bid proposals submitted by two or more bidders are deemed to be tied, 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. A usable cash-or volume-based discount that renders one bid more favorably priced;
3. Delivery advantage, specifically shorter time frames for delivery and/or closer proximity to the point of delivery;
4. Active registration with New Jersey Commerce and Economic Growth Commission as a small business at the time of bid opening; and
5. In-State location.

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

Recodified from N.J.A.C. 17:12-2.6 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. 17:12-2.10, Out-of-State vendors, recodified to N.J.A.C. 17:12-2.12.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote (a).

17:12-2.11 Bid errors

(a) Prior to bid opening, any bidder may request that its bid be withdrawn. Such requests must be made to the Supervisor, Purchase Bureau, in writing. If the request is granted, the bidder may submit a revised bid as long as the bid is received prior to the announced date and time for bid opening and at the place specified.

(b) If, after bid opening but before contract award, a bidder discovers an error in its proposal, that bidder may make written request to the Director for authorization to withdraw its proposal from consideration for award. Evidence of the bidder's good faith in making this request shall be used by the Director in making the determination. Some of the factors the Director may consider are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder's exercise of reasonable care; and that the State will not be significantly prejudiced by granting the withdrawal of the proposal.

(c) If, during a bid evaluation process, an obvious pricing error made by a potential contract awardee is found, the Director shall issue written notice to the bidder. The bidder will have five days after receipt of the notice to confirm its pricing. If the vendor fails to respond, its bid shall be considered withdrawn, and no further consideration shall be given it.

(d) If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the bidder's intention is not readily discernible from other parts of the bid proposal, the Director may seek clarification from the bidder to ascertain the true intent of the bid.

(e) The Director shall:

1. Terminate any contract without delay upon discovery of an error which occurred during the bid evaluation process and led to an erroneous award. It is not the intent of this provision to reconsider the Director's business judgment in making an award. The Director shall document the error and promptly notify all affected parties.

2. Void those contracts or purchase orders which were signed on the Director's behalf in excess of the amount authorized.

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).

New (e) added and existing (e) redesignated (f).

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. 17:12-2.7 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. 17:12-2.11, Preference laws; out-of-State vendors, recodified to N.J.A.C. 17:12-2.13.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote (d).

17:12-2.12 Registration of corporations and other business entities

(a) All corporations and other business entities seeking to do business with the State of New Jersey must be registered with the New Jersey Department of the Treasury's Division of Revenue and provide evidence thereof with their bid proposals in order to be eligible for award of a State contract.

(b) Subcontractors which are corporations or other business entities must be registered with the New Jersey Department of the Treasury's Division of Revenue and provide evidence thereof to the prime contractor before being permitted by the prime contractor to sign a subcontract under a State contract.

(c) Each prime contractor shall receive and maintain the names and current addresses of all subcontractors performing State contract work for the contractor and shall forward such information to the Division of Purchase and Property.

Recodified from N.J.A.C. 17:12-2.10 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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote the section.

17:12-2.13 Preference laws; out-of-State vendors

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

"In-State preference" means a procedure established by statute, rule, regulation or practice whereby a state or local government procurement agency gives a bidder an advantage in the evaluation of bids based on whether the bidder maintains its principal place of business within the borders of the state or locality, and includes any advantage given to a bidder based on whether the goods or services offered in a bid were produced, manufactured, mined or grown within the borders of the state or locality.

"Out-of-State bidder" means a bidder which does not have a regular place of business in New Jersey.

"Principal place of business" means a bidder's office, factory, warehouse or other space which is recognized by a state or local government as the basis for applying an in-State preference in favor of the bidder.

"Regular place of business" means a bona fide office, factory, warehouse or other space which is regularly maintained by the bidder, occupied by one or more of the bidder's employees and used in carrying on the bidder's business. The maintenance of a temporary job site or field office in New Jersey, the storage of goods in New Jersey, and the employment of an independent agent or subcontractor in New Jersey do not, individually or combined, constitute regular place of business.

(b) Pursuant to the provisions of N.J.S.A. 52:32-1.4 et seq., the Director shall apply on a reciprocal basis against an out-of-State bidder any in-State preference which is applied in favor of that bidder by the state or locality in which the bidder maintains its principal place of business.

(c) The Director shall provide notice of the State's intent as to in-State preference through appropriate language in the terms, conditions and/or specifications of the bid solicitation.

(d) For purposes of implementing these provisions, the Director shall make available for public inspection a list of states having statutes, rules and/or regulations which grant in-State preferences in the competitive bidding for goods and services. Such list may be based on surveys conducted by the Division and/or by research conducted by national organizations of state and local governments, procurement agencies, government officials and purchasing agents, such as the National Association of State Purchasing Officials, the National Institute of Governmental Purchasing, and the Council of State Governments. In addition, the Director may receive and review information from prospective bidders which indicates that any state or local government agency outside of New Jersey applies an in-State preference in its procurement statutes, rules, regulations, ordinances, charters or practices.

(e) The Director shall also apply in-State preference in the evaluation of bids whenever a bid is received from an out-of-State bidder where residential preference statutes, rules, regulations, or practices exist in political sub-divisions of a state. It shall be the responsibility of the bidder or bidders for a specific procurement to provide written evidence to the Director of the existence of such local government preference rules, regulations, ordinances, charters, or practices either with the bidder's proposal or within five business days of the public bid opening. Written evidence that is not provided to the Director within five business days of the public bid opening may not be considered in the evaluation of that procurement, but may be retained and considered in the evaluation of subsequent procurements.

(f) Consistent with the procedures and practices of the Division of Purchase and Property, the Director shall reasonably apply any reciprocal in-State preference in a similar manner and to similar effect as the other state or locality. Where an in-state preference is applied by another state or locality in the form of a percentage which is added to or subtracted from bidders' prices, markups or discounts, the Director shall similarly apply the same percentage against an affected out-of-State bidder. Where an in-state preference is applied by another state or a locality in the form of a categorical rejection of certain bids, the Director shall apply a similar categorical rejection against an affected out-of-State bidder.

(g) The bidder or bidders which would benefit by the imposition of in-State preference must otherwise be eligible for an award as a responsive and responsible bidder.

(h) The Director may waive a reciprocal in-State preference on a specific procurement where such waiver would be in the best interests of the State, including where the resulting prices for goods and services would exceed the reasonable estimate of the using agency or would otherwise be unreasonably high, or where the State is entering into a long-term contract or a contract for large quantities of goods or services.

(i) The Director shall, as necessary, waive a reciprocal in-State preference on procurements supported by Federal funds where Federal rules prohibit the use of residential preference.

(j) The Director may waive reciprocal in-State preference when the action would result in an award to a vendor which has a poor record of complaints or contract terminations pursuant to N.J.A.C. 17:12-4.

(k) The Director may waive reciprocal in-State preference when a public exigency requires the immediate delivery of articles or performance of the service.

(l) Nothing in this section shall be deemed to modify or restrict the authority of the Director, pursuant to N.J.S.A. 52:34-12, to award any contract to the bidder the Director determines has offered the proposal that is "most advantageous to the State, price and other factors considered."

(m) The Director shall annually prepare, following the close of the State's fiscal year, a report for the State Treasurer on the cost consequences to the State of applying the reciprocal in-State preference described in this section.

New Rule R.1986 d.132, effective April 21, 1986.

See: 18 N.J.R. 264(b), 18 N.J.R. 848(a).

Repeal and New Rule by R.1991 d.502, effective October 7, 1991.

See: 23 N.J.R. 2225(a), 23 N.J.R. 3038(c).

Recodified from N.J.A.C. 17:12-2.11 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), inserted " , individually or combined," in the last sentence of "Regular place of business"; in (c), deleted 'to prospective bidders'

following "provide"; in (i), inserted " , as necessary," following "shall"; in (j) and (k), substituted "shall" for "may" following "Director"; and in (l) and (m), substituted references to this section for references to these rules.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote the section.

17:12-2.14 Mutual cancellation of contract

After contract award and upon receipt of a request from a contractor, the Director may, under extraordinary circumstances, agree to a mutual cancellation of the contract. In cases where the contractor is seeking contract cancellation, the Director may require the contractor to pay for any administrative expenses incurred as a result of contract cancellation and subsequent re-award.

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

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

SUBCHAPTER 3. PROTEST

17:12-3.1 Informal hearings; subject matter

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

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

(b) Protests of the type described in this subchapter, for the purpose of this chapter, are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Final agency determinations by the Director on matters of protest are appealable to the Appellate Division of the Superior Court of New Jersey.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (b), added the last sentence.

Law Reviews 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.L.J. 17 (1996).

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

(a) A vendor intending to submit a proposal in response to an advertised RFP, pursuant to N.J.S.A. 52:34-6 et seq., that objects to a specification contained within the RFP,

may submit a written protest to the Director, setting forth, in detail, the grounds for such protest.

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

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

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

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

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

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

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

2. The Director, or the Director's designee from within or outside the Division, may perform a review of the written record or conduct an oral presentation directly. In the case of a review or oral presentation being handled by a hearing officer designee from outside the Division, the determination of such designee shall be in the form of a report to the Director, which shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the Director. Subsequent to the 10-business-day period for comments/exceptions, the Director shall make a final written decision on the matter. In the case of a review or oral presentation being handled by a designee from within the Division, the determination shall be issued by the Director, or the Director's designee, and such determination shall be a final agency decision pursuant to N.J.A.C. 17:12-3.1(b).

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (a), substituted "that objects" for "and objecting"; in (b), rewrote ii in 1; in (c), rewrote 2.

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

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

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

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

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

- i. Identification of the Division's solicitation number for the particular procurement;
- ii. The specific grounds for challenging the intended contract award, including all arguments, materials and/or other documentation that may support the protester's position that the contract award should be overturned; and
- iii. A statement as to whether the protester requests an opportunity for oral presentation and the reason(s) for the request.

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

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

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

(d) The protest accepted by the Director shall be resolved by written decision on the basis of the Director's review of the written record including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, the proposals submitted in response to the RFP, the evaluation committee report and/or the award recommendation document, pertinent administrative rules, statutes and case law, and any associated documentation the Director deems appropriate. In cases where no oral presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.

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

2. The Director, or the Director's designee from within or outside the Division, may perform a review of the written record or conduct an oral presentation directly. In the case of a review or oral presentation being handled by a hearing officer designee from outside the Division, the determination of such designee shall be in the form of a report to the Director, which shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the Director. Subsequent to the 10-business-day period for comments/exceptions, the Director shall make a final written decision on the matter. In the case of a review or oral presentation being handled by a designee from within the Division, the determination shall be issued by the Director, or the Director's designee, and such determination shall be a final agency decision pursuant to N.J.A.C. 17:12-3.1(b).

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

Amended by R.2005 d.128, effective April 18, 2005.
See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (b), substituted "business" for "working" following "within 10" in the introductory paragraph, rewrote ii in 1; rewrote (d).

17:12-3.4 Discovery procedures

Notwithstanding the provisions set forth in N.J.A.C. 17:12-3.2(b)1 and 3.3(b)1, the Director is entitled to request, receive and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the protest. Upon receipt of the Director's request, the protesting vendor shall promptly provide the requested records and documents free of charge in the time, place and manner specified by the Director. Failure of the protesting vendor to comply with this section

may, at the reasonable discretion of the Director, constitute sufficient basis to resolve the protest against the vendor submitting the protest. The Director may also consider relevant information requested and received from other parties deemed appropriate by the Director.

SUBCHAPTER 4. COMPLAINT PROCEDURES

17:12-4.1 Purpose and scope of subchapter

The purpose of this subchapter is to set forth the procedure that governs complaints related to contracts arising as a result of procurements conducted under the provisions of N.J.S.A. 52:34-6 et seq.

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

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

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

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote the section.

17:12-4.2 General

The provisions of this subchapter deal specifically with means of assuring prompt action in cases where performance fails to meet contract requirements. The Director may, pursuant to N.J.A.C. 17:12-2.8, bypass a proposal submitted by any vendor which, on prior or ongoing State contracts, has performed poorly under circumstances within its control, without resorting to debarment or suspension action under N.J.A.C. 17:12-6. Each contractor is specifically responsible for the acts of its employees and subcontractors. The Director may also refrain from doing business with any vendor for repeated or excessive breaches of contract terms, including, but not limited to, those listed in N.J.A.C. 17:12-4.3(b), as necessary to protect the State's best interests.

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

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

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

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote the second sentence, and inserted N.J.A.C. reference in the last sentence.

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 may 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 or contractual 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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (b), inserted "or contractual" preceding "requirement" in 8.

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. However, such a cure or corrective action plan shall not serve as cause for automatic invalidation of a meritorious complaint.

(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 determination to the contractor and complainant regarding the merits of the complaint. The contractor or complainant may file an appeal to the Director within 10 days of receipt of CCAU's initial determination.

(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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (b), added the last sentence; rewrote (d).

17:12-4.5 Resolution of complaints

(a) A CCAU-adjudicated complaint appealed to the Director shall be resolved by written decision on the basis of the Director's review of the written record including, but not limited to, the 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, or the Director's designee from within or outside the Division, may perform a review of the written record or conduct an oral presentation directly. In the case of a review or oral presentation being handled by a hearing officer designee from outside the Division, the determination of such designee shall be in the form of a report to the Director, which shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the Director. Subsequent to the 10-business-day period for comments/exceptions, the Director shall make a final written decision on the matter. In the case of a review or oral presentation being handled by a designee from within the Division, the determination shall be issued by the Director, or the Director's designee, and such determination shall be a final agency decision, which shall be appealable to the Law Division of the Superior Court.

(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. The period during which a complaint is being handled administratively shall not stop the running of any limitations period in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

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.

Amended by R.2005 d.128, effective April 18, 2005.
See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (a), inserted "CCAUI-adjudicated" preceding "complaint", "appealed to the Director" preceding "shall be resolved by written decision"; rewrote (c); in (d), added the last sentence.

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 the State 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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (a), substituted "the State" for "its"

17:12-4.9 Discovery procedures

CCAUI is entitled to request, receive, review and audit copies of any and all records and documents at any time. Upon receipt of the CCAUI request, the vendor shall promptly provide the requested records and documents free of charge in the time, place and manner specified by CCAUI. 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) against the non-compliant vendor. CCAUI 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).

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Substituted "against" for "in disfavor of".

SUBCHAPTER 5. (RESERVED)

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 awarded pursuant to N.J.S.A. 52:34-6 et seq. 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.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote the section.

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.

2. The existence of any of the causes set forth in N.J.A.C. 17:12-6.3 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, unless otherwise required by law, and shall be rendered in the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 17:12-6.3(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 17:12-6.3(a)9 through 12 shall be established by evidence which the Director determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 17:12-6.3(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:12-6.3(a)1 through 12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

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

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

Recodified from 17:12-7.3.

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. 17:12-6.3 and amended by R.1999 d.407, effective November 15, 1999.

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

In (a), changed N.J.A.C. references throughout, and substituted a reference to the Director for a reference to P and P in 5. Former N.J.A.C. 17:12-6.4, Procedures, period of debarment and scope of debarment affecting the debarment of a person(s), recodified to N.J.A.C. 17:12-6.5.

17:12-6.5 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)

(a) The procedures, the period of debarment, and the scope of debarment to be followed by the Director are explained below:

1. The Director, seeking to debar a person or his or her affiliates, shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment, and indicating

that such party will be afforded an opportunity for a hearing if he or she so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedures Act. However, where another department or agency has imposed debarment upon a party, the Director may also impose a similar debarment without affording an opportunity for a hearing, provided that the Director furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

2. Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his or her behalf to explain why the additional period of debarment should not be imposed.

3. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Director upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership management or control, or the elimination of the causes for which the debarment was imposed.

4. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of such person.

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

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

Recodified from 17:12-7.4.

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. 17:12-6.4 and amended by R.1999 d.407, effective November 15, 1999.

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

In (a), substituted references to the Director for references to P and P and neutralized gender references throughout. Former N.J.A.C. 17:12-6.5. Causes for suspension of a person(s), recodified to N.J.A.C. 17:12-6.6.

Case Notes

Debarment and suspension rules held explicitly to confirm Director's ability to refuse to award a contract where such an award would create an adverse public impression of the awarding agency. Keyes Martin &

Co. v. Director, Div. of Purchase and Property, 99 N.J. 244, 491 A.2d 1236 (1985).

Director's debarment decision reversed due to failure of the State to carry the burden of proving charges by clear and convincing evidence and the Director's reference in his decision to petitioner's settlement of a lawsuit, a matter not part of the record of the debarment proceeding (citing former N.J.A.C. 17:13-8, 8.2 and 8.3). In re Debarment of Triangle, PWC, Inc., 182 N.J.Super. 400, 442 A.2d 606 (App.Div.1981).

17:12-6.6 Causes for suspension of a person(s)

In the public interest, the Director shall suspend a person for any cause specified in N.J.A.C. 17:12-6.3 or upon adequate evidence that such cause exists.

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

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

Recodified from 17:12-7.5.

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. 17:12-6.5 and amended by R.1999 d.407, effective November 15, 1999.

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

Substituted a reference to the Director for a reference to P and P, and changed N.J.A.C. reference. Former N.J.A.C. 17:12-6.6. Conditions for suspension of a person(s), recodified to N.J.A.C. 17:12-6.7.

17:12-6.7 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. Suspension shall be imposed only upon approval of the Director and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Director and of the Attorney General and shall be rendered in the best interests of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 17:12-6.3(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 17:12-6.3 may be the basis for the imposition of a concurrent suspension by the Director, who may impose such suspension without the approval of the Attorney General.

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

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

Recodified from 17:12-7.6.

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. 17:12-6.6 and amended by R.1999 d.407, effective November 15, 1999.

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

In (a), deleted references to designees of the Attorney General throughout, changed N.J.A.C. references in 5 and 6, and substituted a reference to the Director for a reference to P and P in 6. Former N.J.A.C. 17:12-6.7, Procedures, period of suspension and scope of suspension affecting the suspension of a person(s), recodified to N.J.A.C. 17:12-6.8.

Case Notes

"Reasonable suspicion" that contractor had engaged in prohibited activities; due process in connection with alleged denial of opportunity for suspension hearing. Waste Conversion, Inc. v. Sims, D.N.J.1994, 868 F.Supp. 643.

17:12-6.8 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Director:

1. The Director may suspend a person or his or her affiliates, provided that within 10 days after the effective date of the suspension, the Director provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he or she so requests, or a statement declining to give such reasons and setting forth the Director's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Director, the Director shall note the fact as a reason for suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of such person.

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

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

Recodified from 17:12-7.7.

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. 17:12-6.7 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 references to the Director for references to P and P and neutralized gender references throughout, and deleted a reference to designees of the Attorney General in iii. Former N.J.A.C. 17:12-6.8. The extent of debarment, suspension or disqualification, recodified to N.J.A.C. 17:12-6.9.

Case Notes

Hazardous waste disposal contractor waived right to hearing regarding suspension of right to contract. *Waste Conversion, Inc. v. Sims*, D.N.J.1994, 868 F.Supp. 643.

"Reasonable suspicion" that contractor had engaged in prohibited activities; due process in connection with alleged denial of opportunity for suspension hearing. *Waste Conversion, Inc. v. Sims*, D.N.J.1994, 868 F.Supp. 643.

Section 1983 defendants had qualified immunity for alleged failure to inform hazardous waste contractor for right to hearing. *Waste Conversion, Inc. v. Sims*, D.N.J.1994, 868 F.Supp. 643.

17:12-6.9 The extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension, or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Director including any contracts which utilize State funds. When it is determined by the Director to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract. A copy of said exception shall be filed with the Attorney General.

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

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

Recodified from 17:12-7.8.

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. 17:12-6.8 and amended by R.1999 d.407, effective November 15, 1999.

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

Substituted a reference to the Director for a reference to P and P, and deleted a reference to designees of the Attorney General. Former N.J.A.C. 17:12-6.9, Prior notice by P and P, recodified to N.J.A.C. 17:12-6.10.

17:12-6.10 Prior notice by the Director

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Director to the Attorney General and the State Treasurer.

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

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

Recodified from 17:12-7.9.

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. 17:12-6.9 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 "by the Director" following "given", and deleted a reference to designees of the Attorney General. Former N.J.A.C. 17:12-6.10, List of debarred, suspended or disqualified persons, recodified to N.J.A.C. 17:12-6.11.

17:12-6.11 List of debarred, suspended or disqualified persons

The Director shall supply to the State Treasurer a monthly list of all persons having been debarred, suspended, or disqualified in accordance with the procedures prescribed herein. Such list shall at all times be available for public inspection.

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

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

Recodified from 17:12-7.10.

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. 17:12-6.10 and amended by R.1999 d.407, effective November 15, 1999.

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

Substituted a reference to the Director for a reference to P and P. Former N.J.A.C. 17:12-6.11, Director's authority to contract, recodified to N.J.A.C. 17:12-6.12.

17:12-6.12 Director's authority to contract

Nothing contained herein shall be construed to limit the authority of the Director to refrain from contracting within the discretion allowed by law.

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

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

Recodified from 17:12-7.11.

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. 17:12-6.11 and amended by R.1999 d.407, effective November 15, 1999.
 See: 31 N.J.R. 2301(a), 31 N.J.R. 3742(b).
 Substituted a reference to the Director for a reference to P and P.

SUBCHAPTERS 7. AND 8. (RESERVED)

SUBCHAPTER 9. SURPLUS PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM

17:12-9.1 Description of organization and program

The Division of Purchase and Property, as the centralized procurement agency for State government, is responsible for the disposal of State government's surplus personal property. The surplus property programs are administered by the Division's Surplus Property Unit, which through public bidding and auctioning, sells or otherwise disposes of the State's surplus personal property. This subchapter sets forth the rules whereby surplus computer-related equipment is made available for use by local governmental entities, boards of education, nonpublic schools and nonprofit charitable corporations at no cost.

Amended by R.2005 d.128, effective April 18, 2005.
 See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Substituted "State government's" for "its" following "is responsible for the disposal of".

17:12-9.2 Purpose and intent

The Division has been authorized, pursuant to P.L. 1999, c. 194 (supplementing P.L. 1944, c.112 (N.J.S.A. 52:27B-1 et seq.)), to distribute State surplus computer equipment to local governmental units, boards of education, nonpublic schools and nonprofit charitable corporations. The purpose of these regulations is to establish procedures identifying surplus computer equipment eligible for distribution and governing the distribution of such surplus computer equipment to eligible recipients.

17:12-9.3 Definitions

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

"Date of availability" means the date that eligible computers and/or peripheral equipment are available for pick up.

"Department" means any Department of the Executive Branch of State government.

"Director" means the Director of the Division of Purchase and Property or the Director's designee.

"Division" means the Division of Purchase and Property.

"Eligible computer" means a surplus working computer or central processing unit (CPU), which may include peripherals such as a mouse, keyboard, monitor, and power cables, that is a Pentium-based or equivalent system of recent or current technology, and purged of all user data and software. If transferable under applicable licensing agreements with the manufacturer, an operating system and/or application software may be included or loaded on the CPU.

"Eligible recipient" means local governmental units, boards of education, nonpublic schools and nonprofit charitable corporations, organized pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq.

"Surplus peripheral equipment" means surplus computer accessories not configured in a working computer system and may include printers, monitors, keyboards, mice and/or cables/wires.

"Surplus Property Unit" means the Surplus Property Unit within the Division of Purchase and Property having responsibility for the State's surplus personal property.

Amended by R.2005 d.128, effective April 18, 2005.

See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

Rewrote "Eligible computer".

17:12-9.4 Procedures

(a) The Director shall make eligible computers and surplus peripheral equipment available to eligible recipients through an initial mailing to all eligible recipients and as provided in this section.

(b) The Surplus Property Unit shall be responsible for receipt of eligible computers and surplus peripheral equipment from State Departments and distribution thereof to eligible recipients.

(c) The Surplus Property Unit shall advise eligible recipients of the availability/non-availability of eligible computers and/or surplus peripheral equipment on a quarterly basis through a dedicated telephone line and internet posting at www.state.nj.us/treasury/surpluspc. Such internet posting shall include a description of the eligible computer(s) and/or item(s) of surplus peripheral equipment to be available to eligible recipients and the date of availability. Such internet posting shall be made 60 days prior to the date of availability, which shall be considered a "timely" request.

(d) Eligible recipients having a need for an eligible computer(s) and/or any item(s) of surplus peripheral equipment posted on the internet must advise the Surplus Property Unit in writing on their respective letterhead of such interest no later than 30 days prior to the date of availability.

(e) All timely written requests received for an eligible computer(s) and/or any item(s) of surplus peripheral equipment shall be time and date stamped upon receipt by the Surplus Property Unit.

(f) Upon the request of the Surplus Property Unit, an entity expressing interest in an eligible computer(s) and/or any item(s) of surplus peripheral equipment must provide satisfactory evidence of its status as an eligible recipient. In the case of nonprofit charitable corporations, such evidence shall be proof of organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A 1-1 et seq.

(g) In the event two or more eligible recipients express timely written interest in the same eligible computer(s) and/or item(s) of surplus peripheral equipment, the eligible computer(s) and/or item(s) of surplus peripheral equipment shall be distributed by the Surplus Property Unit as follows:

1. If adequate numbers of eligible computer(s) and/or item(s) of surplus peripheral equipment are available, timely written requests from eligible recipients shall be satisfied in their entirety by the Surplus Property Unit.

2. If the number of eligible computer(s) and/or item(s) of surplus peripheral equipment available are inadequate to distribute to all eligible recipients, eligible computer(s) and/or item(s) of surplus peripheral equipment shall be distributed on the basis of the order in which timely written requests were first received by the Surplus Property Unit, one per eligible recipient.

3. If the number of eligible computers and/or items of surplus peripheral equipment available is greater than the number of eligible recipients providing timely written requests, but fewer than the number necessary to fully respond to each timely written request, one eligible computer and/or one item of surplus peripheral equipment shall be distributed per eligible recipient. Any eligible computer(s) and/or item(s) of surplus peripheral equipment remaining thereafter shall be distributed one per eligible recipient on the basis of the order in which timely written requests were first received by the Surplus Property Unit. This procedure shall continue until all eligible computers and/or items of surplus peripheral equipment are distributed.

Amended by R.2005 d.128, effective April 18, 2005.
See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

In (c), inserted "which shall be considered a "timely" request" at the end of third sentence; in (g), inserted "to distribute to all eligible

recipients" following "equipment available are inadequate" in 2, substituted "providing" for "expressing" following "greater than the number of eligible recipients", "requests" for "interest" following "timely written", "fewer" for "less" preceding "than the number necessary to fully respond to each timely written request" in 3.

17:12-9.5 Notification of availability

(a) The Surplus Property Unit shall notice an eligible recipient of a determination that an eligible computer(s) and/or item(s) of peripheral equipment are available for pick-up two weeks prior to the date of availability. Such eligible recipient shall advise the Surplus Property Unit at the time of such notice of its continued interest in the eligible computer(s) and/or item(s) of surplus peripheral equipment proposed to be distributed to it. An eligible recipient expressing continued interest shall be responsible for picking up the eligible computer(s) and/or item(s) of surplus peripheral equipment at the time and place designated by the Surplus Property Unit.

(b) Eligible computer or peripheral equipment not picked up by the eligible recipient at the specified time and place shall be offered to the next eligible recipient in line.

(c) Failure by an eligible recipient expressing continued interest at the time of notice to pick up the eligible computer(s) and/or item(s) of surplus peripheral equipment at the time and place advised shall preclude such eligible recipient from participating in the next quarterly posting of available computer(s) and/or item(s) of surplus peripheral equipment.

Amended by R.2005 d.128, effective April 18, 2005.
See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).

17:12-9.6 Condition of eligible computers and items of surplus peripheral equipment distributed hereunder

While the State will make reasonable efforts to ensure that each eligible computer is working, that is, capable of running software, the State makes no express or implied warranty with respect to any eligible computer or peripheral equipment. All eligible computers and/or items of surplus peripheral equipment shall be offered on an "as is, where is, and with all faults" basis. The State will not be liable for any damages that may result from the use or operation of any transferred computer, peripheral equipment or software.

Amended by R.2005 d.128, effective April 18, 2005.
See: 36 N.J.R. 5230(a), 37 N.J.R. 1218(a).
Rewrote the section.