

**CHAPTER 34
LOCAL PUBLIC AND PUBLIC SCHOOL
CONTRACTS LAWS**

Authority

N.J.S.A. 18A:18A-49.2, 40A:11-9, and 40A:11-37.1.

Source and Effective Date

R.2013 d.123, effective September 13, 2013.
See: 45 N.J.R. 1205(a), 45 N.J.R. 2203(a).
R.2013 d.124, effective September 13, 2013.
See: 45 N.J.R. 984(a), 45 N.J.R. 2210(a).

Chapter Expiration Date

Subchapters 1, 2, 3, 4, 6, 7, 8, and 9, and Appendices A, B, and C, expire on September 13, 2020. See: 45 N.J.R. 1205(a), 45 N.J.R. 2203(a).

Subchapter 5, Qualified Purchasing Agents, expires on September 13, 2020. See: 45 N.J.R. 984(a), 45 N.J.R. 2210(a).

Chapter Historical Note

Chapter 34, Capital Budget Manual, was adopted as R.1970 d.113, effective September 21, 1970. See: 2 N.J.R. 61(c), 2 N.J.R. 81(b).

Chapter 34, Capital Budget Manual, was repealed by R.1978 d.322, effective September 14, 1978. See: 10 N.J.R. 416(d).

Chapter 34, Local Public Contracts, was adopted as new rules, and Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was recodified from N.J.A.C. 5:30-17 by R.1990 d.595, effective December 3, 1990. See: 22 N.J.R. 724(a), 22 N.J.R. 3639(a).

Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was repealed and Subchapter 7, Cooperative Pricing and Joint Purchasing Systems, was adopted as new rules by R.1992 d.401, effective October 5, 1992. See: 24 N.J.R. 2667(a), 24 N.J.R. 3529(a).

Pursuant to Executive Order No. 66(1978), Chapter 34, Local Public Contracts, was readopted as R.1995 d.633, effective November 8, 1995. See: 27 N.J.R. 3259(a), 27 N.J.R. 4885(b).

Pursuant to Executive Order No. 66(1978), Chapter 34, Local Public and Public School Contracts Laws, was readopted as R.2000 d.485, effective November 6, 2000, and Subchapter 4, Change Orders and Open-End Contracts, was recodified as N.J.A.C. 5:30-11 and Subchapter 5, Certification of Funds and Applicable Accounting Procedures, was recodified as N.J.A.C. 5:30-5 by R.2000 d.485, effective December 4, 2000. See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

Subchapter 4, Administration of Competitive Contracting Process; Subchapter 5, Qualified Purchasing Agents and Increasing the Bid Threshold; Subchapter 8, Contracts Subject to Public Bidding; and Subchapter 9, Special Circumstances, were adopted as new rules by R.2002 d.17, effective January 22, 2002. See: 33 N.J.R. 1994(a), 34 N.J.R. 524(a).

Chapter 34, Local Public and Public School Contracts Laws, was readopted as R.2006 d.179, effective April 19, 2006. See: 37 N.J.R. 4601(a), 38 N.J.R. 2119(b).

Subchapter 5, Qualified Purchasing Agents and Increasing the Bid Threshold, was repealed by special adoption, and Subchapter 5, Qualified Purchasing Agents, was adopted as special new rules by R.2012 d.092, effective April 11, 2012 (to expire April 11, 2013). See: 44 N.J.R. 1564(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 34, Local Public and Public School Contracts Laws, was scheduled to expire on April 19, 2013. See: 43 N.J.R. 1203(a).

Subchapter 1, General Provisions and Definitions; Subchapter 2, Extraordinary Unspecifiable Services; Subchapter 3, Certain Leases of Equipment and Service Agreements Beyond the Fiscal Year; Subchapter

4, Administration of Competitive Contracting Process; Subchapter 6, Emergency Purchases and Contracts; Subchapter 7, Cooperative Purchasing; Subchapter 8, Contracts Subject to Public Bidding; Subchapter 9, Special Circumstances; and Appendices A, B, and C were readopted as R.2013 d.123, effective September 13, 2013; and Subchapter 5, Qualified Purchasing Agents, was readopted as R.2013 d.124, effective September 13, 2013. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

5:34-1.1 Application and compliance

(a) Unless specifically stated to the contrary, the rules in this chapter apply to all local government agencies that are encompassed by the definition of contracting unit in N.J.S.A. 40A:11-2(1), and by all boards of education meeting the definition of board of education in N.J.S.A. 18A:18A-2a by whatever name called.

(b) Every governing body, chief executive officer, or chief school administrator shall take reasonable steps to provide training so that all officials and employees responsible for the administration of public contracts are aware of and are able to comply with the requirements of the law and these rules.

(c) These rules are adopted by the Director of the Division of Local Government Services after consultation with the Commissioner of Education pursuant to N.J.S.A. 40A:11-37.1 and 18A:18A-49.2.

(d) Public housing authorities that operate subject to the authority of the U.S. Department of Housing and Urban Development will adhere to procurement procedures which reflect N.J.S.A. 40A:11-1 et seq. and related rules, provided that procurements conform to applicable Federal law and the standards required therein and to 24 CFR 85.36(b) that requires where both State and Federal law encompass the same procurement, the stricter or more limiting procedure which encourages competition shall be used.

Amended by R.2000 d.485, effective December 4, 2000.
See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).
Rewrote the section.

5:34-1.2 Definitions

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

"Aggregate" or "aggregation" means the sums expended or to be expended for the provision or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the term of the contract awarded by a contracting agency.

"Bid threshold" means the dollar amount set in N.J.S.A. 40A:11-3, and in N.J.S.A. 18A:18A-3, above which a contracting unit shall advertise for and receive sealed bids.

"Board of education" means and includes the board of education of any local school district, consolidated school district, regional school district, educational services commission, county special services school district, county vocational school and any other board of education or other similar body other than the State Board of Education, the Commission on Higher Education or the Presidents' Council, established and operating under the provisions of Title 18A of the New Jersey Statutes and having authority to make purchases and to enter into contracts for the provision or performance of goods or services. The term "board of education" also shall include the board of trustees of a charter school established under P.L. 1995, c.426 (N.J.S.A. 18A:36A-1 et seq.).

"Competitive contracting" means the method described in N.J.S.A. 40A:11-4.1 et seq. and 18A:18A-4.1 et seq. of contracting for specialized goods and services in which formal proposals are solicited from vendors.

- (1) Does the vendor's proposal demonstrate a clear understanding of the scope of work and related objectives?
 - (2) Is the vendor's proposal complete and responsive to the specific RFP requirements?
 - (3) Has the past performance of the vendor's proposed methodology been documented?
 - (4) Does the vendor's proposal use innovative technology and techniques?
- ii. Are sound environmental practices such as recycling, energy efficiency, and waste reduction used?

2. Management criteria:

i. Project management:

- (1) How well does the proposed scheduling timeline meet the contracting unit's needs?
- (2) Is there a project management plan?

ii. History and experience in performing the work:

- (1) Does the vendor document a record of reliability of timely delivery and on-time and on-budget implementation?
- (2) Does the vendor demonstrate a track record of service as evidenced by on-time, on-budget, and contract compliance performance?
- (3) Does the vendor document industry or program experience?
- (4) Does the vendor have a record of moral integrity?

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

- (1) To what extent does the vendor rely on in-house resources vs. contracted resources?
- (2) Are the availability of in-house and contract resources documented?

iv. Qualification and experience of personnel:

- (1) Documentation of experience in performing similar work by employees and when appropriate, sub-contractors?
- (2) Does the vendor make use of business capabilities or initiatives that involve women, the disadvantaged, small and/or minority owned business establishments?
- (3) Does the vendor demonstrate cultural sensitivity in hiring and training staff?

3. Cost criteria:

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

- (1) Relative cost: How does the cost compare to other similarly scored proposals?
- (2) Full explanation: Is the price and its component charges, fees, etc. adequately explained or documented?

ii. Assurances of performance:

- (1) If required, are suitable bonds, warranties, or guarantees provided?
- (2) Does the proposal include quality control and assurance programs?

iii. Vendor's financial stability and strength:

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

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

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

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

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

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

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

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

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

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

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

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

3. At the option of the contracting unit, the request for proposals document may, after proposals are received and opened, but prior to completing the evaluation of the proposals, provide the opportunity for vendors to provide clarification regarding their submission. The presentation shall address only those matters specified by the contracting unit. The presentation shall not be used for negotiation of a contract contrary to law.

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

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

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

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

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

(a) The authorized agent shall apply to the Director for approval to use the provisions of N.J.S.A. 40A:11-4.1k and 18A:18A-4.1k requesting the use of competitive contracting

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

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

5:34-4.5 (Reserved)

Repealed by R.2006 d.179, effective May 15, 2006.

See: 37 N.J.R. 4601(a), 38 N.J.R. 2119(b).

Section was "Use of competitive contracting for energy services".

SUBCHAPTER 5. QUALIFIED PURCHASING AGENTS

Law Reviews and Journal Commentaries

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

5:34-5.1 Qualified purchasing agent

(a) An individual shall be considered a qualified purchasing agent pursuant to N.J.S.A. 40A:11-9.b to exercise the supplemental authority as set forth in N.J.S.A. 40A:11-3 and 40A:11-4.3 or N.J.S.A. 18A:18A-3 and 18A:18A-4.3 upon meeting the criteria relevant to the individual as set forth in N.J.S.A. 40A:11-9.

(b) To meet the criteria of required training courses set forth in N.J.S.A. 40A:11-9.b(5), an applicant shall successfully complete the following courses, provided by the Center for Government Services at Rutgers, the State University, by the Division of Local Government Services, or, with the approval of the director, an alternative State University or county college:

1. Principles of Public Purchasing I;
2. Principles of Public Purchasing II;
3. Principles of Public Purchasing III;
4. Municipal Finance Administration, or either of the following courses: Municipal Finance Administration for Municipal Clerks, or Municipal Finance Administration for Purchasing Agents; and

5. For individuals applying for a qualified purchasing agent certificate after June 30, 2014, Environmentally Preferable Procurement.

(c) Applicants for a qualified purchasing agent examination and certification shall submit an application form available under the Professional Certification section on the Division website (www.nj.gov/dca/divisions/dlgs) to the Director. The application submission shall include proof(s) of meeting the requirements in N.J.S.A. 40A:11-9 and as described as part of the application form. Applications may be submitted at any time. At the discretion of the Director, additional documentation may be required upon receipt of an application. Upon meeting the requirements of law the applicant shall be issued a certificate as a qualified purchasing agent.

Amended by R.2013 d.124, effective September 13, 2013.
See: 45 N.J.R. 984(a), 45 N.J.R. 2210(a).
In (b)5, substituted "2014" for "2013".

5:34-5.2 Continuing education requirements

(a) Renewal of a qualified purchasing agent certificate shall be required every three years, subject to the applicant's fulfillment of continuing education requirements and the submission of an application for renewal.

1. Applicants shall obtain 20 continuing education contact hours in subject areas of procurement procedures, office administrative/general duties, ethics, and information technology.

2. Qualified purchasing agent certificates shall expire and be due for renewal according to the following schedule:

i. All qualified purchasing agent certificates issued prior to January 1, 2005, shall first expire and be due for renewal as of June 30, 2015, and every three years thereafter.

ii. All qualified purchasing agent certificates issued on or after January 1, 2005, but prior to January 1, 2010, shall first expire and be due for renewal as of January 1, 2016, and every three years thereafter.

iii. All qualified purchasing agent certificates issued between January 1, 2010 and April 11, 2012 shall first expire and be due for renewal as of June 30, 2016, and every three years thereafter. All qualified purchasing agent certificates issued after April 11, 2012 shall first expire and be due for renewal either on June 30 or December 31, whichever is sooner, at least three years from when they are first issued, and every three years thereafter, except that no qualified purchasing agent certificate issued after April 11, 2012 shall expire sooner than June 30, 2016.

3. Renewal of qualified purchasing agent certificates shall be requested on the renewal form available under the Professional Certification section on the Division website

www.nj.gov/dca/divisions/dlgs, or an approved copy thereof. The form shall be submitted to the Director.

4. An individual who holds a qualified purchasing agent certificate and allows such certificate to lapse by failing to renew shall be required to apply to take the qualifying examination required pursuant to N.J.A.C. 5:34-5.1(c), and pay the requisite fee for such application in order to obtain a new qualified purchasing agent certification, except that, when an individual applies within six months of the expiration of the certificate, the application may be made in the same manner as a renewal.

Amended by R.2013 d.124, effective September 13, 2013.
See: 45 N.J.R. 984(a), 45 N.J.R. 2210(a).

In (a)4, deleted "or later with the written approval of the Director for good cause" following "expiration of the certificate".

5:34-5.3 "Green Purchasing" course

(a) Commencing June 30, 2014, all applicants who are otherwise qualified to apply for the examination for a qualified purchasing agent pursuant to N.J.S.A. 40A:11-9.b must complete the course Environmentally Preferable Procurement, as provided by the Division of Local Government Services, or, with the approval of the Director, the Center for Government Services at Rutgers, the State University; an alternate State University, or a county college.

(b) Within four years from the date the course Environmentally Preferable Procurement is established, individuals who have been issued a qualified purchasing agent certificate either before, on, or after April 11, 2012 are required to complete the course, in order to continue to be qualified. The course will be completed in addition to the continuing education requirements pursuant to N.J.A.C. 5:34-5.2.

(c) Individuals who apply for the qualified purchasing agent examination after June 30, 2014, pursuant to N.J.A.C. 5:34-5.1, are not required to complete the Environmentally Preferable Procurement course a second time.

Amended by R.2013 d.124, effective September 13, 2013.
See: 45 N.J.R. 984(a), 45 N.J.R. 2210(a).

In (a) and (c), substituted "2014" for "2013".

5:34-5.4 Procedures for increasing the bid threshold

A contracting unit with a purchasing agent who possesses a qualified purchasing agent certificate pursuant to N.J.S.A. 40A:11-9 desiring to take advantage of the supplemental authority of N.J.S.A. 40A:11-3 and 40A:11-4.3 or N.J.S.A. 18A:18-3 and 18A:18A-4.3 shall have its governing body pass a resolution authorizing the amount of a higher bid threshold for the contracting unit, the amount of which shall not exceed the statutory maximum bid threshold.

Amended by R.2013 d.124, effective September 13, 2013.
See: 45 N.J.R. 984(a), 45 N.J.R. 2210(a).

Deleted designation (a); and deleted (b).

5:34-5.5 Vacancy in the office of purchasing agent

(a) Following the appointment of a purchasing agent for a contracting unit, if the person appointed no longer performs such duties, the governing body or chief executive officer, as appropriate to the form of government, may appoint, for a period not to exceed one year commencing from the date of the vacancy, a person who does not possess a qualified purchasing agent certificate to serve as a temporary purchasing agent. Any person so appointed may, with the approval of the Director, be reappointed as a temporary purchasing agent for a maximum of one additional year following the end of the first temporary appointment. No contracting unit shall employ a temporary purchasing agent for more than two consecutive years.

1. Prior to the end of the first year appointment of a temporary purchasing agent, the governing body, or chief executive officer, as appropriate, shall request, in writing, permission from the director to appoint a temporary purchasing agent for a second year.

2. During the term of appointment of a temporary purchasing agent, a contracting unit's bid threshold may remain at the maximum amount allowed, as long as the governing body has passed a resolution authorizing such amount.

Amended by R.2013 d.124, effective September 13, 2013.
See: 45 N.J.R. 984(a), 45 N.J.R. 2210(a).

In (a), deleted "pursuant to N.J.S.A. 40A:11-9.g," following "unit."

SUBCHAPTER 6. EMERGENCY PURCHASES AND CONTRACTS
5:34-6.1 General requirements

(a) The use of emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 shall be subject to the following requirements:

1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service;

2. As soon as reasonably possible, but within three days of declaring the emergency, the chief school administrator of a board of education shall notify the superintendent of education for the county of the nature of the emergency and the estimated needs for goods and services necessary to respond to it;

3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;

4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and

5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

(b) The governing body of each contracting unit shall adopt rules or regulations as appropriate to the contracting unit to ensure that there is a procedure for determining and confirming the existence of an emergency and that the provisions for emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 may be implemented. Such rules or regulations shall include such provisions that ensure that if initially designated individuals are not available, there is a designated chain of command to ensure that there are always appropriate individuals available to make such decisions.

Amended by R.2000 d.485, effective December 4, 2000.
See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

Rewrote the section.

5:34-6.2 (Reserved)

Repealed by R.2000 d.485, effective December 4, 2000.
See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

Section was "Procedure for emergency purchases and contracts".

5:34-6.3 (Reserved)

Emergency New Rule, R.1997 d.403, effective September 2, 1997 (to expire November 1, 1997).

See: 29 N.J.R. 4169(a).

Adopted concurrent proposal, R.1997 d.509, effective October 31, 1997.

See: 29 N.J.R. 4169(a), 29 N.J.R. 5062(b).

Repealed by R.2000 d.485, effective December 4, 2000.

See: 32 N.J.R. 3237(a), 32 N.J.R. 4300(a).

Section was "Procedures for emergency solid waste contracts".

SUBCHAPTER 7. COOPERATIVE PURCHASING
5:34-7.1 Applicability and authority

(a) The rules in this subchapter shall be known as the Cooperative Purchasing Rules.

(b) These rules shall apply to all contracting units.

(c) This subchapter is adopted under the authority of P.L. 1999, c. 440 (N.J.S.A. 40A:11-11).

(d) Copies of all cooperative purchasing forms are available from the Division of Local Government Services at PO Box 803, Trenton, New Jersey 08625-0803 or at the Division's website at <http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html>.

(e) When the lead agency of a cooperative pricing system, joint purchasing system or regional cooperative pricing system established and properly registered with the Division is a board of education or educational service commission the