

## CHAPTER 12

**DIVISION OF PURCHASE AND PROPERTY: PURCHASE BUREAU AND CONTRACT COMPLIANCE AND ADMINISTRATION UNIT**

**Authority**

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

**Source and Effective Date**

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

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

Chapter 12, Purchase Bureau, expires on October 22, 2004.

**Chapter Historical Note**

Chapter 12, Division of Purchase and Property: Purchase Bureau and Contract Compliance and Administration Unit, was filed and became effective prior to September 1, 1969.

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

Chapter 12, Purchase Bureau, was repealed and Chapter 12, Purchase Bureau, was adopted as new rules by R.1979 d.132, effective March 30, 1979.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

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

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

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

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

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

**Law Review and Journal Commentaries**

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

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## SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

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

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

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

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

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

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

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

Administrative change.

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

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

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

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

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

### 17:12-1.3 Definitions

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

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

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

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 1ii. 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.