

CHAPTER 12

DIVISION OF PURCHASE AND PROPERTY: PURCHASE BUREAU AND CONTRACT COMPLIANCE AND ADMINISTRATION UNIT; SURPLUS PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

Chapter 12, Division of Purchase and Property: Purchase Bureau and Contract Compliance and Administration Unit, expires on October 22, 2004.

Chapter Historical Note

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

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

Chapter 12, Purchase Bureau, was repealed and Chapter 12, Purchase Bureau, was adopted as new rules by R.1979 d.132, effective March 30, 1979.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

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

Chapter 12 Purchase Bureau, was readopted as Emergency Rules, former Subchapter 6, Contracts for Small Businesses, Female Businesses and Minority Businesses, was emergency recodified as N.J.A.C. 17:13, and former Subchapter 7, Debarment, Suspension and Disqualification of a Person(s), was emergency recodified as Subchapter 6 by R.1989 d.481, effective August 14, 1989, to expire October 13, 1989. See: 21 N.J.R. 2810(a). The concurrent proposal for the emergency 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 ("CCAU"). Both entities report directly to the Office of the Director of the Division. The Purchase Bureau is primarily responsible for the State's procurement process. CCAU is responsible for ensuring that using agencies comply with State procurement guidelines and that contract vendors fulfill their contractual obligations. This chapter sets forth the rules which apply to the Purchase Bureau, CCAU, public entities and vendors participating in the State's contracting process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

17:12-1.2 Source for public information

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

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

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

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

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

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

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

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

Administrative change.

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

In (a), substituted "obtain information" for "receive information", "procurement" for "purchase", "writing to" for "contacting" and added ", by visiting the Division's . . . www.state.nj.us/treasury/purchase".

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

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

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

17:12-1.3 Definitions

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

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 exceptions of contracts awarded via the Division's Direct Purchase Authority program and contracts awarded upon approval by the State Treasurer to waive the public advertisement requirement, that is, waiver of advertising contracts, all contracts issued by State agencies directly, or by the Division on behalf of such agency or agencies, shall be formally advertised and competitively bid with requirements for the submittal of sealed bids.

(b) State agency purchasing under Direct 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 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 a non-recurring one-time purchase transaction that cannot be procured 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) Direct Purchase Authority procedures are set forth in, and are subject to revision through, the Division's Circular on Direct Purchasing Authorization.

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

(e) Records of all Direct 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 Treasurer has signed the Request for Waiver of Advertising document prepared and submitted by the State agency via the Division, except when verbal authorization is granted by the Treasurer, the Director, or their respective designees to address life, health, and/or other emergencies;

2. 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; and

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

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.

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. A bidder's failure to so indicate shall preclude the extension of the contract for local use in the event such bidder is awarded the contract.

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

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

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 or other such media as allowed by law and selected by the State Treasurer as will give best notice thereof to bidders. Advertisements shall be made a minimum of 10 working days in advance of the bid opening to encourage free and open competition.

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

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