

## 5:34-1

# LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS - 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.

### **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.

"Concession" means the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit.

"Contract" means any agreement, including, but not limited to, a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.

"Contracting agent" means the governing body of a contracting unit or its authorized designee that has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by law, to make awards for the contracting unit in connection with contracts.

"Contracting unit" means: any county; municipality; board of education; or any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority or agency, and which has administrative jurisdiction over any district project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services.

"Contract year" means the period of 12 consecutive months following the award of a contract.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Division" means the Division of Local Government Services in the Department of Community Affairs.

"Extraordinary unspecifiable services" or "EUS" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

"Goods and services" or "goods or services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real

property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to N.J.S.A. 12A:2-101 et seq.

"Governing body" means: the governing body of the county, when the purchase is to be made or the contract is to be entered into by, or in behalf of, a county; the governing body of the municipality, when the purchase is to be made or the contract is to be entered into by, or on behalf of, a municipality; a board of education, when the purchase is to be made or the contract is to be entered into by, or on behalf of, a school district; or any board, commission, committee, authority or agency of the character described in definition of contracting unit.

"Lowest price" means the least possible amount that meets all requirements of the request of a contracting agent.

"Lowest responsible bidder or vendor" means the bidder or vendor:

1. Whose response to a request for bids offers the lowest price and is responsive; and
2. Who is responsible.

"Multi-year contract" means a contract or other agreement operating in excess of 12 consecutive months.

"Official newspaper" means any newspaper designated by the contracting unit pursuant to N.J.S.A. 35:1-1 et seq.

"Purchase" means a transaction, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.

"Purchase order" means a document issued by the contracting agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the contracting unit, which, when fulfilled in accordance with the terms and conditions of a request of a contracting agent and other provisions and procedures that may be established by the contracting unit, will result in payment by the contracting unit.

"Purchasing agent" means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity of the contracting unit, and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit; or in the case of a board of education, the secretary, business administrator or the business manager of the board of education duly assigned the authority, responsibility and accountability for the purchasing activity of the board of education and having the power to prepare advertisements, to advertise for and receive bids and to award contracts as permitted by N.J.S.A. 18A:18A-1 et seq., but if there be no secretary, business administrator or business manager, such officer, committees or employees to whom such power has been delegated by the board of education.

"Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of

goods or services that are original and creative in character in a recognized field of artistic endeavor.

"Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a contracting unit to house local government or school district functions or provide water, waste disposal, power, transportation (but not the contracting for transportation services), and other public infrastructures.

"Remaining amount" means the value of similar goods and services that are needed for the remainder of the current contract year, plus those similar goods and services to be needed in the subsequent contract year.

"Responsible" means able to complete the contract in accordance with its requirements, including, but not limited to, requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

"Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.

"Service or services" means the performance of work, or the furnishing of labor, time, or effort, or any combination thereof, not involving or connected to the delivery or ownership of a specified end product or goods or a manufacturing process. Service or services may also include an arrangement in which a vendor compensates the contracting unit for the vendor's right to operate a concession.

Repeal and New Rule, R.2000 d.485, effective December 4, 2000. Amended by R.2002 d.17, effective January 22, 2002. Amended by R.2013 d.123, effective September 13, 2013.