

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Public and Public School Contracts Laws

Proposed Readoption with Amendments: N.J.A.C. 5:34-1, 2, 3, 4, 6, 7, 8, and 9 and 5:34 Appendices A, B, and C

Authorized By: Thomas H. Neff, Director, Division of Local Government Services.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-084.

Submit written comments by July 19, 2013 to:

Jason R. Martucci, Esq.
Division of Local Government Services
PO Box 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.b, the rules regulating public contracting and procurement for local governments and school districts, N.J.A.C. 5:34-1, 2, 3, 4, 6, 7, 8, and 9, and 5:34 Appendices A, B, and C, are scheduled to expire on April 19, 2013. The expiration date for these rules is extended by 180 days to October 16, 2013 by filing this notice of proposal with the Office of Administrative Law prior to the expiration date pursuant to N.J.S.A. 52:14B-5.1.c(2). N.J.A.C. 5:34-5 is not included as part of the notice of re-adoption with amendments, as it has been filed for re-adoption separately as a notice of proposed re-adoption with amendments of special adopted repeals and new rules in the May 6, 2013 edition of the New Jersey Register at 45 N.J.R. 984(a).

The Division of Local Government Services has reviewed the rules proposed for re-adoption with amendments and has determined them to be necessary, reasonable, and proper for purposes for which they were originally promulgated. The rules clarify the administrative and procedural requirements set forth in the Local Public and Public School Contracts Law, N.J.S.A. 40A:11-1 et seq. and 18A:18A-1 et seq., respectively.

In its review, the Division has determined that amendments to N.J.A.C. 5:34-7.1(d), 9.6(c), and 9.7(d) and 5:34 Appendix A are necessary. The proposed amendment at N.J.A.C. 5:34-7.1(d) is necessary due to a change in the website address for the cooperative purchasing forms. The forms were previously accessible at www.state.nj.us/dca/lgs/lpcl/copur/mstr_2001_form_r1.pdf, but are now located at <http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html>.

The proposed amendments at N.J.A.C. 5:34-9.6(c) and 9.7(d) update the website address referenced in those subsections, changing the reference from www.state.nj.us/dca/lgs to <http://www.nj.gov/dca/divisions/dlgs/>.

The proposed amendment to N.J.A.C. 5:34 Appendix A is due to a change in the bid threshold. The appendix provides various hypothetical situations and interpretative models that serve to demonstrate the applicability of the rules at N.J.A.C. 5:34-8.3. The models are based on a bid threshold of \$21,000, which was in effect on April 19, 2006, the effective date of the last re-adoption of this chapter (see 37 N.J.R. 4601(a); 38 N.J.R. 2119(b)). Since then, the bid threshold has been reduced from \$21,000 to \$17,500, thus necessitating an update of the figures in the appendix.

The rules at N.J.A.C. 5:34 were originally adopted in 1990, having been amended and supplemented over the years pursuant to statutory changes and new developments in public sector procurement. The re-adoption of N.J.A.C. 5:34 with amendments is essential to ensuring fairness and integrity in the realm of public procurement along with the most efficient use of public funds.

A summary of the rules proposed for re-adoption with amendments at N.J.A.C. 5:34 follows:

N.J.A.C. 5:34-1 defines this chapter's scope of application and provides definitions for the key words and terms used therein.

N.J.A.C. 5:34-2 limits use of the "extraordinary unspecifiable services" exception to public bidding and sets forth procedures for implementing the exception.

N.J.A.C. 5:34-3 provides guidelines on the duration of equipment leases and service agreements along with the application of bidding requirements. The subchapter also sets forth requirements for lease-purchase arrangements, assignment of lease payments, and multi-year lease agreements. Lastly, the subchapter features limitations on equipment changes for such contracts.

N.J.A.C. 5:34-4 establishes procedures for competitive contracting.

N.J.A.C. 5:34-6 sets forth the requirements for emergency purchases and contracts pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7.

N.J.A.C. 5:34-7 contains regulatory requirements governing the creation, administration, and procurement practices of cooperative purchasing systems, joint purchasing systems, county cooperative contract purchasing systems, cooperative pricing systems, and regional cooperative pricing systems. The subchapter details the procedures for registering and operating commodity resale systems, as well as establishes requirements for energy aggregation and the cooperative purchasing of energy by local governments and school districts. In addition, the subchapter contains provisions that must be followed when making purchases under the State Cooperative Purchasing Program and conditions by which contracting units may avail themselves of purchases at least 10 percent less than the State contract price.

N.J.A.C. 5:34-8 sets forth when goods and services should be aggregated for purposes of determining whether competitive bidding is required. The subchapter establishes that multi-year contracts whose

amount exceeds the bid threshold during the contract term must be competitively bid, and bars intentional miscalculations to avoid public bidding.

N.J.A.C. 5:34-9 applies to several miscellaneous procurement issues. These include the purchase of proprietary goods and services; requirements for using "brand name or equivalent" specifications; cancellation, or postponement of receipt of bids or proposals; procedures for procuring concessions; special circumstances surrounding solid waste collection; purchase of goods and services valued at less than 15 percent of the bid threshold; publication requirements for contract awards; use of mediation to reach a finding of prior negative experience; and the appointment of a duly authorized designee to act on behalf of a purchasing agent under the Public School Contracts Law. In addition, the subchapter sets forth procedures that a local government or school district must follow when utilizing either of the following competitive bidding exceptions: use of a price quote at least 10 percent less than the State cooperative contract price, and use of the General Service Administration's Federal Supply Schedule for reprographic equipment or services.

The chapter also contains three appendices. N.J.A.C. 5:34 Appendix A identifies practices that should be used in instances where initial estimates of goods and services needed during the current contract year were anticipated to be less than the bid threshold, or were otherwise exempt from public bidding, but are later found to be incorrect. The rule sets forth practices to follow in determining if the remaining amount should be publicly bid, or if quotations should be solicited. N.J.A.C. 5:34 Appendices B and C contain checklists that must be submitted to the Director of the Division of Local Government Services when utilizing the exceptions to competitive bidding in N.J.A.C. 5:34-9.6 and 9.7.

The rules proposed for readoption with amendments provide for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, are excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments protect the public interest by continuing to ensure that local governments and school districts procure goods and services in a fair, efficient, and cost-effective manner. These rules promote contract awards that are based on the quality and comparative value of the goods and services being contracted for, and discourage fraud, corruption, and favoritism.

The rules continue the practice of promoting competition in the award of public contracts, thereby enabling contracting units to obtain the most advantageous contract at the least cost to taxpayers. In instances where contracts are not subject to open competitive bid, the rules establish criteria for ensuring that the fiscal integrity of the contracting unit is upheld.

The rules proposed for readoption at N.J.A.C. 5:34-2 require that the award of extraordinary unspecifiable service contracts cannot be made on the presumption that the service is so specialized that specifications cannot be developed. It limits the circumstances under which contracting units might use this procedure in lieu of competitive bidding. This helps to minimize procurement costs and reduces the potential for favoritism in awarding public contracts. These effects have a positive bearing on the general public.

The rules proposed for readoption at N.J.A.C. 5:34-3.2 allow local contracting units to enter into multi-year agreements for the procurement of goods and services. If the cumulative amount of the goods or services to be purchased exceeds the bid threshold, local units are required to follow competitive bidding. Competitive bidding requires the contracting unit to procure essential goods and services at the least cost. The savings that accrue to the contracting unit are beneficial to taxpayers as well, because it is their tax dollars that are used to support the operational needs of the unit. When the local unit saves money, that taxpayer saves money. In this respect, the rules proposed for readoption at N.J.A.C. 5:34-3.2 have a positive social impact.

The proposed readoption of the rules on competitive contracting at N.J.A.C. 5:34-4 will continue to provide guidance to contracting units in evaluating proposals for procuring goods and services, pursuant to the competitive contracting process. The rules provide model evaluation

criteria which are helpful to contracting units in assessing various proposals. The criteria are broad-based, so that they are applicable to various procurement needs. They are structured to assist local contracting units in their efforts to achieve the most optimal deal, price, and other factors considered. As such, they help to uphold the integrity of the competitive contracting process and the interest of the general public.

The rules proposed for readoption at N.J.A.C. 5:34-4.3(e) set forth conflict of interest provisions that also serve to uphold the integrity of competitive contracting. The provisions require that any person involved in evaluating a proposal must certify, beforehand, that they do not have a conflict of interest with respect to the proposal, due to any possible ties or affiliations with a vendor.

Readoption of the rules on cooperative purchasing at N.J.A.C. 5:34-7 also benefits the general public. Purchasing is an integral part of all government operations. Cooperative purchasing allows contracting units to join together in an organized manner to collectively purchase goods and services. This arrangement usually leads to a cost savings and a more efficient use of taxpayer dollars.

The proposed amendment at N.J.A.C. 5:34-7.1(d) changes the Division's website address from which copies of the various cooperative purchasing forms can be downloaded. This rule continues to benefit contracting units by providing them with easy access to application forms and other relevant information about cooperative purchasing.

The rule proposed for readoption at N.J.A.C. 5:34-7.13 sets forth the criteria for establishing and operating a regional cooperative pricing system. Cooperative pricing provides a simple method of aggregating the demand for goods and services and usually results in lower per unit costs for the participating members of the system. This is beneficial to the taxpayers whose tax dollars support the operations of local government.

The rules proposed for readoption at N.J.A.C. 5:34-7.18 and 7.19 provide for the cooperative purchasing of energy. The aggregation of energy requirements among contracting units promotes economies of scale which often result in lower costs and reduced spending. Whenever local government entities are able to cut costs and save money, the general public benefits.

The rules proposed for readoption at N.J.A.C. 5:34-7.21 through 7.26 govern the creation and operation of a county cooperative contract purchasing system. This system allows contracting units located within a county's geographic borders to purchase goods and services for their own individual needs, subject to the specifications, terms, and conditions set forth in contracts between the county and its vendors. This enables contracting units within the county to purchase goods and services instantaneously, without having to seek estimates and weigh other factors that may influence purchasing decisions. The savings that accrue to contracting units are realized in terms of time and cost, and are advantageous to contracting units, vendors, and the general public.

The proposed readoption of the rule at N.J.A.C. 5:34-7.29, which relates to contracting units purchasing under the State of New Jersey Cooperative Purchasing Program, also has a positive social impact. The rule clarifies the terms, conditions, and limitations applicable to purchasing under such contracts, thereby reducing confusion and mitigating the possibility of improper or incorrect action by the contracting unit.

The rule proposed for readoption at N.J.A.C. 5:34-7.30 provides a formal mechanism through which a contracting unit may purchase goods or services at less than 10 percent of the State contract price. This provides another alternative by which a contracting unit may save taxpayer dollars.

The rules proposed for readoption at N.J.A.C. 5:34-8 and 9 facilitate the actions of contracting units in several respects. N.J.A.C. 5:34-8.2 and 8.3 establish procedures for contracting units in determining if a contract to procure goods or services is subject to public bidding. These rules also provide flexibility to avoid circumstances that may result in higher costs. The rules at N.J.A.C. 5:34-9 apply to special circumstance affecting various aspects of the procurement process. N.J.A.C. 5:34-9.1 provides guidelines for purchasing proprietary goods and services. N.J.A.C. 5:34-9.2 provides guidelines for using "brand name or equivalent" specifications. N.J.A.C. 5:34-9.3 sets forth the procedures that must be followed by contracting units in canceling or postponing the receipt of bids or proposals. N.J.A.C. 5:34-9.4 establishes requirements applicable

to procuring concessions. Both individually and collectively, these rules serve to ensure that proper procedures are being followed with respect to spending public funds and, in that regard, they are beneficial to contracting units and the general public. The rules also help to resolve problems and issues that stymie efforts to achieve economy and efficiency in the procurement process.

The rules proposed for readoption at N.J.A.C. 5:34-1 and 6 have no social impact as they are technical in scope, rather than substantive in nature.

Economic Impact

The social and economic impacts of the rules proposed for readoption are similar. The primary economic gain is derived from promoting competition in procurement and contracting procedures. The proper use of competitive bidding, informal solicitation of quotations, and competitive contracting should benefit contracting units economically by providing them with mechanisms for achieving a fair price for various goods and services.

The rules proposed for readoption at N.J.A.C. 5:34-3.2 are economically beneficial to contracting units in that:

1. Multi-year agreements allow the contracting unit to spread the cost of procuring essential goods and services over time, thereby lessening the impact on the unit's annual operating budget; and

2. For multi-year contracts that exceed the bid threshold, contracting units are required to solicit bids, which helps to assure that goods and services will be procured at the lowest cost.

The rules proposed for readoption at N.J.A.C. 5:34-4 establish requirements for competitive contracting. Competitive contracting provides an alternative to seeking formal bids. The process allows contracting units to purchase goods and services that are difficult to qualify through formal specifications, notwithstanding that there is competition in the marketplace to provide such goods and services. Competitive contracting also allows contracting units to award contracts based on a variety of situations, besides cost. This enables contracting units to benefit from the creativity of the marketplace when evaluating proposals received.

The rules on competitive contracting have the potential to deliver an economic benefit to contracting units. Adherence to the model criteria set forth at N.J.A.C. 5:34-4.2 streamlines the process for evaluating proposals, saving time and money for the contracting unit. The criteria also introduce a variety of technical, management, and cost-related questions for contracting units to consider in specifying their needs, and in evaluating whether the proposals received from different vendors are responsive to those needs. This reduces the risk of wasteful spending and provides assurance that goods and services are procured judiciously.

The rules proposed for readoption at N.J.A.C. 5:34-7, Cooperative Purchasing, allow local contracting units to voluntarily join together to purchase goods and services. This arrangement results in a greater volume of goods and services to be procured, which tends to lower the cost per unit. Hence, in instances of cooperative purchasing, there should be a cost savings to the lead agency and to the participating membership of the cooperative purchasing system, as well as to the local taxpayer. The amount of savings realized is difficult to quantify, as it will vary with the type and character of goods and services purchased cooperatively.

The regulation proposed for readoption at N.J.A.C. 5:34-7.9(b) requires the lead agency of a cooperative pricing system or joint purchasing system to provide its registered members with a review copy of the bid specifications, prior to the advertisement of bids. The review copy, coupled with the ability of contracting units to interact readily via email and other modern day forms of communication, precludes the need for the members of the system to meet formally to discuss the bid specifications. The economic benefit that accrues is realized by a savings in time, travel expenses, and other such costs that are usually associated with holding a meeting at a pre-arranged time and place that all members are required to attend.

The regulation proposed for readoption at N.J.A.C. 5:34-7.11(c) specifies that, upon request, the lead agency of a cooperative pricing system shall provide participating members of the system with a copy of the bid specifications upon the award of a contract. By making the bid specifications available upon request, the lead agency is able to save

some of the copying and mailing costs that would otherwise be incurred if the agency were required, outright, to send the specifications to all of the members of the system. In some instances, this may also stabilize the fees that are charged to members to help cover the cost of administering the system.

The rule proposed for readoption at N.J.A.C. 5:34-7.13 addresses the formation of regional cooperative pricing systems, which are the amalgamation of two or more registered individual cooperative pricing systems. This provides a larger purchasing base for the procurement of highly specialized commodities, such as telecommunications services and the purchase of energy. The purchase of large quantities and volumes of such commodities leads to better pricing which, in turn, conveys an economic benefit to those contracting units that are members of the system.

The rules proposed for readoption at N.J.A.C. 5:34-7.18 and 7.19 provide for the cooperative purchase of energy. It is anticipated that these rules will have a positive economic impact. Through cooperative purchasing, local governments will be able to procure both electric supply and gas supply at reduced rates.

The proposed readoption of the rule at N.J.A.C. 5:34-7.20 also has a positive economic impact. When a vendor submits a bid for a cooperative pricing system, the bid price is adjusted to reflect the fact that, other than the lead agency's quantities, the participant's quantities are estimates, to which the participant is not bound. If the quantities are "firm," the bid price should be lower, since the vendor knows the quantity of the commodity that will be purchased.

The rules proposed for readoption at N.J.A.C. 5:34-7.21 through 7.26, address the creation and operation of a county cooperative contract purchasing system. These rules have a favorable economic impact as they ensure the ability to purchase without the need to go through the bid process, which should reduce some purchasing costs for the participating local governments. However, the savings to local governments will not be as significant as purchases made under a comparable cooperative purchasing system because the unit price will be based upon the county's need alone. Nonetheless, the system provides improved pricing over what the contracting unit would obtain on its own, and in doing so, reduces its administrative and procurement costs.

The proposed readoption of N.J.A.C. 5:34-7.27 will have a positive economic impact in that it requires all members of a cooperative purchasing system to provide the lead agency with detailed information regarding the level of purchases made by the members. This information enables the lead agency to track and evaluate all purchases, thereby promoting a more efficient operation of the system and a concomitant cost savings.

The rule proposed for readoption at N.J.A.C. 5:34-7.29 governs the process by which a contracting unit may purchase goods and services under a State-awarded contract. This arrangement is economically beneficial to local contracting units in that it saves them time and money in making purchases. It enables them to circumvent the costs involved in soliciting public bids, and because the State contract involves large quantities, prices are considerably lower as compared to what a contracting unit would otherwise pay, if it were purchasing on its own.

The proposed readoption of N.J.A.C. 5:34-7.30 will have a positive economic impact by providing guidance to contracting units when purchasing goods and services at 10 percent less than the State contract price. The rules enable local contracting units to save the time and expense of soliciting bids, thereby having a positive effect economically.

The rules proposed for readoption at N.J.A.C. 5:34-8.2 and 8.3 provide criteria for contracting units to follow in determining if similar goods and services may be combined into a single bid. The criteria direct contracting units to consider the potential for aggregation when assessing their procurement needs. This precludes the need to issue separate bids for like items at a higher cost. The potential for savings varies on a case-by-case basis, so that it is not specifically measurable. In general, however, the use of aggregation is certain to produce an economic gain for the contracting unit, based on economies of scale.

The proposed readoption of N.J.A.C. 5:34-9.1 will continue to provide guidance in determining whether a particular good or service meets the definition of "proprietary." Proprietary goods and services are items of a specialized nature that are deemed to be necessary for conducting the

affairs of a local contracting unit. The rule requires contracting units to sufficiently explain and certify why a particular good or service is proprietary. The intent is to limit the use of proprietary to situations where it is absolutely necessary. This will serve to stimulate competition which, in general, should result in a cost savings for the contracting unit.

Finally, contracting units, private sector vendors, and the general public will benefit from the proposed readoption of N.J.A.C. 5:34-9.4, which allows the use of concessions. Pursuant to the rule, the contracting unit obtains use of the service and may receive a percentage of the revenue that the vendor collects. Even if a vendor does not receive revenue from a concession, they still benefit because the concession serves as a business advertisement. The general public derives benefit through any potential revenues received by the contracting unit that are used to offset costs, as well as by the openness of the concession procurement process set forth in the rule, which serves to promote its integrity.

Federal Standards Statement

The regulation proposed for readoption at N.J.A.C. 5:34-1.1(d) provides that the rules set forth in this chapter are applicable to public housing authorities. The regulation also specifies that public housing authorities that operate subject to the authority of the U.S. Department of Housing and Urban Development shall adhere to the procurement procedures that 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), which requires that where both State and Federal law encompass the same procurement, the stricter or more limiting procedure that encourages competition shall be used. Except for this provision, the rules proposed for readoption with amendments are otherwise not subject to any Federal requirements.

Jobs Impact

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on the creation or loss of jobs. The rules continue existing practices and do not introduce any new requirements that could alter the jobs market.

Agriculture Industry Impact

The Division does not anticipate that the rules proposed for readoption with amendments will have an impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments relate to the internal purchasing practices of contracting units, and do not impose any additional reporting, recordkeeping, or other compliance requirements on "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Existing reporting, recordkeeping, and compliance requirements on small businesses are within the scope of normal business practices and commensurate with the work those small businesses are awarded from contracting units.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey, if any at all, and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to local government and school district contracting.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no anticipated impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because the rules pertain to local government and school district contracting.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:34-1, 2, 3, 4, 6, 7, 8, and 9, and 5:34 Appendices A, B, and C.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 7. COOPERATIVE PURCHASING

5:34-7.1 Applicability and authority

(a)-(c) (No change.)

(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 www.state.nj.us/dca/lgs/lpcl/copur/mstr_2001_form_rl.pdf <http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html>.

(e)-(f) (No change.)

SUBCHAPTER 9. SPECIAL CIRCUMSTANCES

5:34-9.6 Purchasing at 10 percent less than a State cooperative contract price

(a)-(b) (No change.)

(c) The Division has provided an optional submission checklist in chapter Appendix B, "Purchasing At 10 Percent Less Than The State Cooperative Contract Price N.J.S.A. 40A:11-5(4) and N.J.S.A. 18A:18A-5(e)." The checklist is intended to help contracting units comply with the provisions of this section. The checklist is available in the public contracts law section of the Division's website [http://www.nj.gov/dca/divisions/dlgs/](http://www.state.nj.us/dca/lgs/http://www.nj.gov/dca/divisions/dlgs/).

5:34-9.7 Use of the General Services Administration's Federal Supply Schedules

(a)-(c) (No change.)

(d) The Division has provided an optional submission checklist in chapter Appendix C, "Use of the General Services Administration's Federal Supply Schedules N.J.S.A. 40A:11-12b and N.J.S.A. 18A:18A-10b." The checklist is intended to help contracting units comply with the provisions of this section. The checklist is available in the public contracts law section of the Division's website [http://www.nj.gov/dca/divisions/dlgs/](http://www.state.nj.us/dca/lgs/http://www.nj.gov/dca/divisions/dlgs/).

(Agency Note: Additions to N.J.A.C. 5:34 Appendix A are indicated in italicized boldface, **thus**; those portions of the appendix indicated in regular boldface, **thus**, are intended to be so permanently.)

APPENDIX A

LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS

The examples that follow relate to N.J.A.C. 5:34-8.3, which identifies practices that should be used in instances where the initial estimates of goods or services needed during the current contract year were anticipated to be less than the bid threshold, or had been exempt from public bidding, but are later found to be incorrect. The rule sets forth practices to follow in determining if the remaining amount should be publicly bid, or if quotations should be solicited. The following situations repeat each rule and provide an interpretative model.

In the following situations, the remaining amount (as previously defined) means: the value of similar goods and services that are needed for the remainder of the current contract year, plus the value of similar goods and services needed in the subsequent contract year.

SITUATION 1

N.J.A.C. 5:34-8.3(e): If the remaining amount exceeds the bid threshold, public bidding should take place as soon as possible.

Example: Assume that a contracting unit has a bid threshold of \$[21,000]**17,500** and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director advises the purchasing agent that one field and a parking area were excluded from the initial solicitation and that an additional \$10,000 worth of chain link fence needs to be purchased for the remainder of the year. The Recreation Director further advises that an additional \$[23,000]**21,000** worth of chain link fence is required for anticipated projects in the next year.

Solution: The purchasing agent or contracting agent would have to immediately initiate public bidding procedures to procure the remaining chain link fence, because the additional need this year, plus the need next year, exceeds the bid threshold.

SITUATION 2

N.J.A.C. 5:34-8.3(d): If the remaining amount is between 15 percent and 100 percent of the contracting unit’s bid threshold, and the contracting unit has previously designated an elected official to determine whether public bidding or the solicitation of quotations is most advantageous to the contracting unit, then the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

Example: The following example relates to situations where similar goods or services will not be required in the subsequent contract year, and the contracting agent or purchasing agent has the option to either publicly bid the remaining amount, or seek authorization from the governing body or its designee to solicit quotations.

Assume that a contracting unit has a bid threshold of \$[21,000]17,500 and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that one field was excluded from the initial solicitation, resulting in an additional current year purchase of \$10,000. The Recreation Director further advises that no purchases of chain link fence are required for the subsequent year.

Solution: The purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount because it is between 15 percent and 100 percent of the contracting unit’s bid threshold.

SITUATION 3

N.J.A.C. 5:34-8.3(d): If the remaining amount is between 15 percent and 100 percent of the contracting unit’s bid threshold, and the contracting unit has previously designated an elected official to determine whether public bidding or the solicitation of quotations is most advantageous to the contracting unit, then the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

Example: The following example relates to situations where the remaining amount equals the value of similar goods or services to be purchased for the current contract year plus the value of similar goods or services for the subsequent contract year and is equal to between 15 percent and 100 percent of the contracting unit’s bid threshold.

Assume that a contracting unit has a bid threshold of \$[21,000]17,500 and is on a calendar year budget. To date, they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that one field was excluded from the initial solicitation resulting in an additional need for \$5,000 worth of chain link fence for the remainder of the current contract year. The Recreation Director advises further that \$10,000 worth of additional chain link fence needs to be purchased during the subsequent year. The additional \$15,000 of new chain link fence (\$5,000 for the remainder of the current contract year, and \$10,000 for the subsequent contract year) is less than the bid threshold of \$[21,000]17,500.

Solution: Since the remaining amount is between 15 percent and 100 percent of the contracting unit’s bid threshold, the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

SITUATION 4

N.J.A.C. 5:34-8.3(e): If the remaining amount is less than 15 percent of the contracting unit’s bid threshold, the contracting agent or purchasing agent is authorized to solicit quotations for the purchase of the remaining amount.

Example: Assume that a contracting unit has a bid threshold of \$[21,000]17,500 and is on a calendar year budget cycle. To date they have purchased \$[19,000]15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that the engineer miscalculated the area, and that an additional 40 linear feet of chain link fence needs to be purchased. The cost for the additional chain link fence is \$2,600.

Solution: The purchasing agent or contracting agent would be able to solicit quotations for the remaining chain link fence, because \$2,600 (the remaining amount of goods to be purchased) is less than 15 percent of the contracting unit’s bid threshold.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Student Residency

Proposed Amendments: N.J.A.C. 6A:22

Authorized By: New Jersey State Board of Education, Christopher D. Cerf, Commissioner, Secretary.

Authority: N.J.S.A. 18A:38-1

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-085.

Submit written comments by July 19, 2013 to:

David Corso, Assistant Commissioner
New Jersey Department of Education
River View Executive Plaza
Building 100, P.O. Box 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Department of Education (Department) proposes to amend N.J.A.C. 6A:22, Student Residency, as noted in this Summary.

In accordance with the New Jersey State Constitution, Article VIII, Section IV, Paragraph 1, the Legislature established a system of free public schools for all children in the State. Through N.J.S.A. 18A:38-1, the Legislature provided for students to attend school in a particular district based upon domicile, residency, or “affidavit student” status (living with and supported by a person other than the parent or guardian for reasons not related to attending school). Effective January 1994, the Legislature substantially amended the statute to strengthen the criteria for affidavit student status, and to provide a new framework for determining student eligibility.

In the years following the 1994 amendment, experience proved implementing rules were necessary to effectuate the statute’s provisions in a fair and consistent manner. After approximately one year of discussion and comment, the State Board of Education in November 2001 adopted N.J.A.C. 6A:28-2, Entitlement to Attend School Based on Domicile/Residency in the District. In September 2004, the rules were readopted with amendments based on further experience and developments in law, and additionally recodified as a separate chapter (N.J.A.C. 6A:22, Student Residency). From their inception, the implementing rules for N.J.S.A. 18A:38-1 have sought to maintain the balance intended by the statute, which is to deter attempts to attend school in a particular school district despite no lawful entitlement, while recognizing as paramount a student’s right to free public education.

The rules in this chapter address the following areas: standards for determining eligibility; proofs of eligibility; procedures for initial assessment upon application, and for prompt enrollment or notice of admission denial; written notices of ineligibility; procedures for removal of enrolled students; and appeals and assessment/calculation of tuition.

The proposed amendments incorporate recommendations made by the Education Transformation Task Force (Task Force) to ease the burden that residency issues place on school districts. The proposed amendments seek to clarify residency rules at the outset, thereby reducing the number of cases that require litigation.

The Department proposes other amendments to correct grammar and to reorder and simplify the rules so they are more easily understood by the public and school district officials. For example, the Department proposes to remove the 27-word descriptor that appears after “student” in eight rules throughout the chapter. The amendment will simplify rule