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January 16, 2026

BY ELECTRONIC MAIL AND U.S. CERTIFIED MAIL RRR

Timothy Havlusch, Business Administrator / Board Secretary
Educational Services Commission of New Jersey
1690 Stelton Road
Piscataway, New Jersey 08854
[REDACTED]

**Re: OSC File No. 25-258, ESCNJ, Custodial Supplies; and
OSC File No. 25-271, ESCNJ, Modular Buildings, Purchase, Repair, Removal, Rental and
Installation**

Dear Mr. Havlusch:

These matters are before the Office of the State Comptroller (OSC) pursuant to its authority under N.J.S.A. 52:15C-1 et seq., as a result of the statutorily mandated review of two contracts submitted to OSC by Educational Services Commission of New Jersey (ESCNJ) on behalf of its cooperative pricing system, the Educational Services Commission of New Jersey Cooperative Pricing System (CPS). The procurements are titled "Custodial Supplies" and "Modular Buildings, Purchase, Repair, Removal, Rental and Installation," which were submitted on October 3 and 15, 2024, respectively (collectively, Procurements).¹ Additionally, ESCNJ submitted to OSC its awards of two separate extensions for each of the current contracts underlying the Procurements during the course of OSC's review of the Procurements (collectively, Extensions).² Together the Procurements and Extensions are herein referred to as the Contracts.

Please accept this letter as OSC's follow up to its August 7, 2025 letter advising ESCNJ of its formal interim findings with regard to the Contracts. Despite OSC's requests on August 7 and September 16, 2025 for ESCNJ to submit a corrective action plan (CAP) demonstrating its ability to bring the Procurements into compliance with applicable law, ESCNJ has been unable or unwilling to provide an approvable plan demonstrating its ability to procure in compliance with

¹ These submissions were assigned OSC File No. 25-258 and OSC File No. 25-271, respectively.

² These submissions were assigned OSC File No. 25-535 for the first extension and OSC File No. 25-536 for the second extension of the current Custodial Supplies contract, and OSC File No. 26-449 for the first extension and OSC File No. 26-451 for the second extension of the current Modular Buildings contract.

applicable laws. And, further, despite OSC's repeated attempts to assist ESCNJ in bringing the Procurements into compliance with applicable law, as more thoroughly detailed below, the Procurements continue to fail to comply with applicable public contracting laws, rules, and regulations in numerous respects.

In addition to the Contracts discussed herein, ESCNJ has, as of the date of this letter, submitted 36 separate post-award procurements to OSC. These 36 additional ESCNJ procurement submissions to OSC are fully detailed in the attached Exhibit A, which represents an updated version of the Exhibit A attached to OSC's August 7 letter. As previously noted in OSC's August 7 letter, ESCNJ's post-award submissions listed in Exhibit A are all subject to the same recurring issues of non-compliance addressed in this letter. For the reasons stated herein, and with the guidance indicated in this letter's findings, OSC is hereby marking each of the post-award procurements listed in the attached Exhibit A as final and closed.

This final agency decision and remediation plan incorporates the legal and factual determinations and conclusions set forth in OSC's August 7 letter. For the reasons set forth in the August 7 letter, and for the reasons that follow herein, OSC finds that ESCNJ:

1. Failed to include its own definite needs in its CPS solicitation documents;
2. Failed to include the estimated needs of its cooperative's registered members in its CPS solicitation documents;
3. Failed to describe in its solicitation documents, or otherwise, how it will determine the lowest responsible bidder for its Procurements being solicited as publicly advertised, low bid procurements;
4. Impermissibly sought to award multiple contracts to multiple vendors via a single low bid solicitation; and
5. Violated N.J.S.A. 52:15C-10 and the Public School Contract Law (PSCL) when it unlawfully awarded Extensions of its current Contracts underlying the Procurements without making any adjustments to bring those Contracts into compliance with applicable law, without providing the notice required by N.J.S.A. 52:15C-10(b) to OSC, and in violation of the PSCL's limitations on contract terms, N.J.S.A. 18A:18A-42.³

Based on those findings and conclusions, and consistent with the directives ESCNJ has already violated, OSC directs ESCNJ as follows:

1. Upon expiration of the current Extensions on March 31, 2026, ESCNJ shall not take any action to renew or award the Contracts by way of further extension(s) to the current Contracts, which would continue the ongoing findings of non-compliance discussed herein;
2. ESCNJ shall not take any action to reprocure the Contracts by way of any formal or informal solicitation process similar to the processes proposed in ESCNJ's Procurements, which OSC has found to be non-compliant with applicable law;
3. ESCNJ shall not renew, extend, amend, advertise, or otherwise solicit the Contracts without revisions to address all of the outstanding OSC findings and conclusions. Additionally, given that ESCNJ has acknowledged the Contracts are valued at \$15.2

³ On December 23, 2025, the Legislature enacted P.L. 2025, c. 180, which modified a number of requirements related to the cooperative procurement process. None of those modifications alter the findings described herein.

million or greater, ESCNJ shall not take any such actions with regard to the Contracts without proper notice, submission, review, and approval by OSC in accordance with N.J.S.A. 52:15C-10(b).

Background

A. The Formation of ESCNJ and its Cooperative Pricing System

New Jersey's Legislature created educational services commissions (ESCs) "for the purpose of carrying on programs of educational research and development and providing to public school districts such educational and administrative services as may be authorized pursuant to rules of the State Board of Education."⁴ In 1977, the State Board of Education authorized the formation of ESCNJ⁵ as an ESC, pursuant to N.J.S.A. 18A:6-51 to -70, for the purpose of providing "services to nonpublic schools, cooperative transportation to out-of-district schools, cooperative purchasing, adult education, summer school, computer services, specialized consultants, printing and duplicating services, equipment maintenance services, and other specialized services."⁶ ESCNJ has indicated that in 1996, ESCNJ received authorization from the Department of Community Affairs, Division of Local Government Services (DLGS) to form its CPS. ESCNJ describes its CPS as the largest in New Jersey, offering cooperative purchasing services to over 1,500 school districts and government agencies.⁷ The cooperative purchasing rules state "[w]hen 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 provision and performance of goods and services shall be conducted pursuant to the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.)."⁸

B. OSC's Prior Communications to ESCNJ Regarding Its Procurement Non-Compliance

In 2017, OSC sent a letter to ESCNJ reminding ESCNJ of its obligation to comply with OSC's statutory notice requirements pursuant to N.J.S.A. 52:15C-10. To assess compliance with the 2017 letter, in 2021, OSC requested ESCNJ provide a list of all contracts awarded since January 1, 2019 valued over \$500,000. Upon receipt and review of ESCNJ's list of contracts, in 2022, OSC notified ESCNJ of its continued non-compliance with OSC's statutory notice requirements due to its failure to properly submit numerous contracts.⁹

⁴ N.J.S.A. 18A:6-51.

⁵ ESCNJ was initially formed as the "Middlesex County Educational Services Commission." In 2005, it was renamed as the "Middlesex Regional Educational Services Commission." In 2016, it was renamed again as the "Educational Services Commission of New Jersey." New Jersey State Board of Education, Resolution Requesting A Name Change For The Middlesex Regional Educational Services Commission, 4, (Mar. 2, 2016) <https://www.nj.gov/education/sboe/meetings/minutes/2016/030216.pdf>.

⁶ New Jersey State Board of Education, Resolution Requesting A Name Change For The Middlesex Regional Educational Services Commission, 4, (Mar. 2, 2016) <https://www.nj.gov/education/sboe/meetings/minutes/2016/030216.pdf>.

⁷ Educational Services Commission of New Jersey, About the ESCNJ Cooperative Pricing System, <https://www.escnj.us/co-op-pricing/about-escnj-co-op>.

⁸ N.J.A.C. 5:34-7.1(e).

⁹ As of the date of the 2022 letter, ESCNJ had never submitted a procurement to OSC pursuant to N.J.S.A. 52:15C-10.

In 2024, OSC's Audit Division audited ESCNJ pursuant to N.J.S.A. 52:15C-8. OSC's published audit report, pursuant to N.J.S.A. 52:15C-11, found that ESCNJ:

- Failed repeatedly to notify OSC of ESCNJ's contracts and CPS procurements exceeding the \$2.5 million and \$12.5 million thresholds in accordance with N.J.S.A. 52:15C-10;¹⁰
- Failed to comply with the PSCL requirements in procuring insurance services, broker services, and professional services; and
- Accumulated an unused general fund balance surplus of almost \$70 million as of FY 2023, in significant part by virtue of the commissions it collects from vendors participating in its CPS.¹¹

OSC's Audit Division included in its audit report a recommendation that ESCNJ "[s]ubmit internal and cooperative contracts with an estimated value of \$12.5 million or more to OSC for pre-advertisement review and approval."¹² In accordance with that recommendation, in July 2024, ESCNJ started submitting procurements, including those discussed in this letter, to OSC for review under N.J.S.A. 52:15-10.

C. OSC's Attempts to Help ESCNJ Bring Its Procurements into Compliance

Following ESCNJ's submission of the Procurements on October 3 and 15, 2024, on November 4, 2024, OSC identified ways in which the Procurements did not comply with, among other laws, the PSCL and the cooperative purchasing rules.¹³ OSC provided guidance to ESCNJ to aid in bringing the proposed solicitation documents into compliance. OSC alerted ESCNJ that the Procurements were not yet approved for advertisement and advised ESCNJ that the proposed Procurements could not be approved until OSC's concerns were resolved.

On November 18, 2024, ESCNJ supplied revised documents to OSC for the Custodial Supplies solicitation. On November 27, 2024, OSC responded with additional guidance to ESCNJ, noting that the updated documents did not address most of OSC's concerns. OSC reiterated that ESCNJ's proposed Procurements failed to comply with public contracting laws and cooperative purchasing rules. On January 2, 2025, ESCNJ submitted significant revisions to OSC for the Custodial Supplies Procurement. These revisions, again, did not address most of OSC's concerns.

At ESCNJ's request, on January 7, 2025, OSC and representatives from DLGS met with ESCNJ's Business Administrator and legal counsel regarding OSC's concerns. During the meeting, ESCNJ

¹⁰ Although N.J.S.A. 52:15C-10 sets thresholds of \$2 million and \$10 million for notification, N.J.S.A. 52:15C-10(d) directs the State Comptroller, after consultation with the Department of the Treasury, to periodically adjust the notification threshold pursuant to specified criteria. The State Comptroller adjusted the notification thresholds under N.J.S.A. 52:15C-10 to \$2.5 million and \$12.5 million effective July 1, 2020. 52 N.J.R. 1443(b). As of July 1, 2025, OSC's submission thresholds have changed to \$3 million and \$15.2 million. 57 N.J.R. 1626(c).

¹¹ OSC's 2024 audit noted ESCNJ received vendor commissions totaling approximately \$9.5 million in FY 2021 and \$10.8 million in FY 2022. It further noted that "[c]o-op revenue exceeds general fund central services costs to such a degree that the Co-op revenue can cover all general fund central services costs and still provide over 70 cents of every dollar received directly to ESCNJ's general fund balance."

¹² STATE OF N.J. OFFICE OF THE STATE COMPTROLLER, A PERFORMANCE AUDIT OF SELECTED FISCAL AND OPERATING PRACTICES: EDUCATIONAL SERVICES COMMISSION OF NEW JERSEY (Jul. 2024), <https://www.nj.gov/comptroller/reports/2024/20240724.shtml>.

¹³ N.J.A.C. 5:34-7.1 to -7.32.

requested that DLGS authorize ESCNJ to proceed without resolving OSC's concerns, under alternative interpretations of the PSCL and the cooperative purchasing rules. Where interpretations alone would not accomplish ESCNJ's goals, ESCNJ requested that DLGS issue waivers of various provisions of the PSCL and its corresponding rules. During that meeting, ESCNJ indicated that it intended to extend its current Contracts related to the Procurements, pursuant to N.J.S.A. 18A:18A-42, which states "a contract may be extended by mutual agreement of the parties to the contract when a board of education has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires." ESCNJ argued this was an appropriate mechanism under the PSCL, even though OSC stated during the meeting that neither of the Procurements had commenced rebidding, nor was either contract pending award at that time of their proposed extension, and extending the current Contracts would result in continued non-compliance with the law in multiple areas. During the meeting, OSC reminded ESCNJ that OSC's statutory notice requirements include contract extensions, making any such proposed extensions of the current Contracts subject to OSC's notice and review requirements under N.J.S.A. 52:15C-10.

In addition to the procedural issues discussed at the meeting, the parties addressed the specific problems OSC had identified, one of which was the regulatory requirement that ESCNJ's cooperative solicitations specify both its own definite needs and the estimated needs of its registered members. In response to this, ESCNJ acknowledged that it had no needs of its own for a significant portion of its procured goods and services but argued that its statutory purpose should preempt compliance with any procurement statute or regulations that it determined would impair its ability to fulfill its statutory mission effectively, such as this regulation.

Shortly after the January 7 meeting, on January 10, 2025, OSC provided ESCNJ with updated comments on its Custodial Supplies submission and reiterated many of its concerns from November 2024. In response, on January 14 and 15, 2025, OSC sent emails to ESCNJ requesting the status of ESCNJ's proposed extensions of the expiring Contracts underlying both Procurements but received no response. On January 22, 2025, OSC became aware that, notwithstanding the concerns OSC stated during the meeting, ESCNJ awarded and executed extensions of the aforementioned Contracts citing to N.J.S.A. 18A:18A-42, and without submitting pre-advertisement notice to OSC under N.J.S.A. 52:15C-10.¹⁴

On January 31, 2025, ESCNJ provided OSC with a revised Instruction to Respondents for the Modular Building procurement. OSC responded by asking ESCNJ when revisions would be made to the other solicitation documents on which OSC had previously provided guidance. On February 5, 2025, prior to receipt of a response by ESCNJ, OSC sent a follow-up email to ESCNJ, noting that many of OSC's outstanding concerns in the Instructions to Respondents dating back to November 2024 remained unaddressed in ESCNJ's January 31 revisions. For several months, OSC received no revised solicitation documents from ESCNJ for the Procurements. On June 4, 2025, ESCNJ provided OSC with additional revisions to its Modular Buildings' Instructions to Respondents, as well as a new document entitled Bid Proposal Form A, which was not previously submitted to OSC, and which contained supplemental terms and conditions applicable to the solicitation.¹⁵

¹⁴ On April 8, 2025, OSC sent ESCNJ a Failure to Notify letter indicating that ESCNJ violated N.J.S.A. 52:15C-10(b) when it failed to submit these contract extensions to OSC prior to awarding the extensions.

¹⁵ These revisions did not include any additional details regarding ESCNJ's own definite needs or the estimated needs of its registered members, nor did they substantially modify those other contract provisions discussed herein.

D. OSC's Issuance of an Initial Agency Decision Regarding the Procurements

On August 7, 2025, OSC sent ESCNJ a letter directing it to not proceed with the Procurements, and directing ESCNJ to provide OSC with a CAP in an effort to eliminate further delays in the resolution of pending reviews. The letter detailed how the solicitations failed to comply with the PSCL and cooperative purchasing rules, and directed ESCNJ to provide a plan detailing how ESCNJ's solicitation documents and overall procurement procedures would be brought into statutory and regulatory compliance on a going forward basis. OSC's letter advised that the CAP must address "**the specific process** by which all solicitations issued by the CPS will contain all information required to be included in the solicitation pursuant to the cooperative purchasing rules, and how all resulting contracts will be awarded to the single lowest responsible bidder as required by the PSCL and the rules." (Emphasis added.) On September 6, 2025, ESCNJ submitted a CAP to OSC that did not address with sufficient specificity the processes that ESCNJ would implement to ensure that all of its solicitations comply with the PSCL and cooperative purchasing rules. On September 16, 2025, OSC advised ESCNJ that the CAP was deficient. In the interest of helping ESCNJ to comply with the requirements of its August 7 letter, OSC's September 16 correspondence provided ESCNJ with additional guidance explaining how ESCNJ could revise its CAP to address the insufficiencies noted by OSC.

ESCNJ submitted a revised CAP on September 30, 2025, which remained significantly deficient. On October 9, 2025, OSC informed ESCNJ that its CAP continued to be deficient. In an attempt to prevent further delay and to support ESCNJ's stated intention to comply in developing an acceptable CAP, OSC's October 9 letter recommended that ESCNJ submit updated solicitation documents for the Procurements in lieu of another deficiently revised CAP, and advised that "OSC will review ESCNJ's revisions pursuant to N.J.S.A. 52:15C-10(b), to determine whether they are consistent with OSC's findings, as well as all applicable procurement laws, rules and regulations. Upon a complete review of the procurements, OSC will fully address modifications to the CAP."

ESCNJ submitted its latest revised solicitation documents for the Procurements on October 31, 2025. These updated documents, as OSC noted in a December 10, 2025 letter to ESCNJ, "contain effectively all of the compliance violations previously described in OSC's August 7, 2025 letter." The only real revision made by ESCNJ in these revised solicitation documents was that the Modular Buildings procurement would be split into two contracts – one for the purchase of modular buildings and another for the rental of modular buildings – with both of the proposed contracts having all the same compliance issues as OSC has been noting since November 2024. OSC's December 10, 2025 response to ESCNJ noted that many of these issues were brought to ESCNJ's attention more than one year prior. In the letter, OSC directed ESCNJ to again submit revised solicitation documents complying with the PSCL and cooperative purchasing rules by December 19, 2025. ESCNJ did not cooperate in providing updated documents on that date but rather requested that OSC further extend its deadline for submission of an acceptable CAP pursuant to a letter submitted to OSC after hours on December 19.

Three days later, on December 22, 2025, ESCNJ notified OSC that it had further extended the current Contracts underlying these Procurements for a second time on December 19, without prior notice to OSC and without regard to OSC's prior Failure to Notify letter indicating that these extensions failed to comply with applicable law.

OSC issues this letter after concluding that it is in the public interest to provide transparency regarding ESCNJ's ongoing intransigence in failing to comply with New Jersey's public contracting laws, rules, and regulations, and failing to cooperate in good faith with OSC.

Findings

A. ESCNJ's Solicitation Documents Fail to Identify ESCNJ's Own Definite Needs

When the lead agency of a CPS solicits a cooperative contract, it must intend to procure goods or services for both itself and its registered members.¹⁶ Furthermore, in any solicitation and master contract that the CPS issues, the scope of work or services of the procurement must be based upon the lead agency's own definite needs.¹⁷ However, ESCNJ, as the lead agency of the CPS, acknowledged that for a majority of the cooperative contracts it procures, ESCNJ has no independent or discrete need for the goods or services, and only issues the procurements on behalf of its registered members. ESCNJ argues that its definite needs, as the lead agency of CPS, should be defined as ESCNJ's own discrete needs plus the combined needs of all of its registered members that constitute independent school districts represented on ESCNJ's Board of Directors. However, neither the current rules nor the ESC enabling statutes include language implying such an interpretation is appropriate or reasonable. Accordingly, OSC finds that ESCNJ's issuance of the Procurements solely on behalf of its registered members, without ESCNJ's independent, individual, or discreet need for the procurements violates cooperative purchasing rules.

B. ESCNJ's Solicitation Documents Fail to Identify Members' Estimated Needs

Prior to issuance of a solicitation, a lead agency of a CPS is required to obtain from its registered members "the estimated quantities that each registered member proposes to contract for during the life of the master contract" and include those estimated quantities, alongside the lead agency's own definite needs, in the solicitation.¹⁸ The requirement that a lead agency seek member estimates and include those estimates in the CPS's solicitation and master contract is the essential common thread that is interwoven among individual cooperative purchasing rules, including:

- N.J.A.C. 5:34-7.2, which defines "Cooperative pricing system" as "a purchasing system in which a local contracting unit advertises for bids and awards a master contract to a successful vendor *for its own quantities and the estimated quantities submitted by the individual registered members.*" (Emphasis added);
- N.J.A.C. 5:34-7.10, which requires the solicitation to give bidders the option to either bid only for the lead agency's own definite quantities or for the lead agency's own definite quantity and the estimated quantities of the CPS members;
- N.J.A.C. 5:34-7.11, which requires that the lead agency's own quantities and the estimated quantities submitted by the individual registered members be specified in the master contract, in addition to the solicitation pursuant to N.J.A.C. 5:34-7.9(e); and

¹⁶ N.J.A.C. 5:34-7.2; N.J.A.C. 5:34-7.11.

¹⁷ N.J.A.C. 5:34-7.9; N.J.A.C. 5:34-7.11.

¹⁸ N.J.A.C. 5:34-7.9.

- N.J.A.C. 5:34-7.12, which sets out rules for use of cooperative contracting by CPS members that have not submitted estimates.

Despite these unambiguous requirements, ESCNJ has not provided satisfactory estimates from any of its CPS registered members in any of its proposed procurements submitted to OSC.¹⁹

ESCNJ asserts that it should not be bound by the cooperative purchasing rules because ESCs are governed by a different set of authorizing statutes than typical school districts, specifically N.J.S.A. 18A:6-51 to -70. ESCNJ's argument fails to consider that the requirement that a lead agency obtain estimates from its registered member does not arise from any statute or regulation specific to school districts. Rather, this requirement is uniformly required of all lead agencies of cooperative purchasing systems created pursuant to N.J.A.C 5:34-7.1 to -7.32 regardless of whether they are school districts or not. When ESCNJ sought and received DLGS approval of its CPS, it accepted the applicability of the rules to its CPS and to itself as the lead agency of the CPS.²⁰ Those rules explicitly apply to all contracting units. A contracting unit is defined as:

any county; municipality; board of education; or any board, commission, committee, authority or agency, which is not a State board, commission or 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 or board of education 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.

[N.J.A.C. 5:34-7.2.]

This definition further indicates there is no reasonable basis to exclude ESCNJ based on its status as an ESC. Accordingly, OSC finds that ESCNJ is subject to the cooperative purchasing rules and that its failure to identify its members' estimated needs in its solicitations constitutes a violation of those rules.

¹⁹ Prior to October 31, 2025, ESCNJ had not provided OSC with any estimates from its registered members for use of the Procurements. In its October 31 revisions to the Procurements, ESCNJ submitted rudimentary estimates that did not include any estimated quantities. Regarding the Custodial Supplies contract, ESCNJ provided evidence of soliciting estimated quantities from 40 members, of which 9 said they would be utilizing the contract in some form. For the Modular Buildings contracts, ESCNJ provided approximately 12 definite responses, of which only 2 indicated that those members intended to use the Contracts in some form.

²⁰ DLGS's Cooperative Purchasing Form (CP-2001), used to register new cooperative purchasing systems, requires the lead agency of a proposed contracting unit to certify that "the requirements of N.J.S.A. 40A:11-1 et seq. or N.J.S.A. 18A:18A-1 et seq., as appropriate, and N.J.A.C. 5:34-7.1 et seq. are understood and the System is in compliance with them."

C. Although ESCNJ Purports to Award the Procurements to the Lowest Responsible Bidder, Its Award Procedures, As Stated in the Solicitation Documents, Are Inconsistent with that Award Standard

The PSCL requires contracts to be awarded to the lowest responsible bidder, except in those specific instances when a statutory exception applies.²¹ No statutory exception applies to the Procurements discussed herein.²² The lowest responsible bidder is the bidder “whose response to a request for bids offers the lowest price and is responsive; and . . . who is responsible.”²³ The lowest price is “the least possible amount that meets all requirements of the request of a purchasing agent.”²⁴

While the documents of both the Custodial Supplies and Modular Buildings solicitations state that they will be awarded to the lowest responsible bidder, ESCNJ’s solicitation documents include award procedures that fail to articulate how bids will be assessed to determine the lowest price and the lowest responsible bidder, as defined by the PSCL. ESCNJ has failed to describe how its procedures will determine the lowest price in its responses to OSC’s request for clarification on this issue.

The Custodial Supplies solicitation indicates that “[t]he contract shall be awarded, if at all, to the lowest responsible bidder in compliance with N.J.S.A. 18A:18A-2 (t).” Bidders are asked to submit their prices per line item against an ESCNJ-provided catalog price for specific products or items they deem equivalent. Additionally, bidders are required to include their restocking fee, if they charge one. ESCNJ stated that it will utilize a formula to calculate the lowest responsible bidder, but it has not provided that formula or explained how it intends to assess the provided prices per line item or restocking fees required in the cost proposal form to determine the lowest responsible bidder.

The Modular Building solicitation also requires bidders to provide various types of supplemental pricing data including: (1) both the bidders’ “Regular Pricing” and “ESCNJ Member Purchase Price”; (2) labor costs for installation services; and (3) per-mile delivery costs. It also requires bidders to submit supplemental pricing for various “additive alternative” bid items. It is unclear by what process or formula ESCNJ intends to compare these distinct price submissions for the purpose of determining the lowest price to ensure an award to the lowest responsible bidder consistent with the statutory definitions. OSC asked ESCNJ to provide information on its processes of determining the lowest price and the basis for both awards. ESCNJ has not done so

²¹ N.J.S.A. 18A:18A-4.

²² In addition, the cooperative purchasing rules explicitly require cooperative purchases by ESCs to be made pursuant to the PSCL. N.J.A.C. 5:34-7.1 (“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 provision and performance of goods and services shall be conducted pursuant to the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.).”)

²³ N.J.S.A. 18A:18A-2.

²⁴ Ibid.

and has not included within its procurement documents the specific methodology that will be used to make this determination for the Procurements.²⁵

D. ESCNJ Seeks to Use a Single Solicitation to Make Multiple Awards, Which the PSCL Does Not Permit

Unless a specific statutory exception applies to a particular procurement, the PSCL only contemplates a single award to a single vendor for publicly advertised low bid procurements.²⁶ Every contract for the provision or performance of any goods or services, the cost of which, in the aggregate, exceeds the bid threshold, shall be awarded only by resolution of the board of education to the lowest responsible bidder.²⁷ Furthermore, the cooperative purchasing rules do not contemplate awards to multiple bidders, except when the lowest responsible bidder declines to extend its pricing to registered members, in which case the lead agency may issue one contract for the needs of the lead agency and a separate master contract for the estimated needs of its registered members.²⁸ However, in no instance do the rules contemplate award of more than a singular master contract for the needs of those registered members.²⁹

Notwithstanding the foregoing, the Procurements, as well as numerous other ESCNJ cooperative contracts submitted to OSC,³⁰ seek to award multiple contracts from single bid solicitations on a line-by-line basis and in some cases on a county or regional basis. ESCNJ argues that its statutory mission to “provid[e] to public school districts such educational and administrative services as may be authorized pursuant to rules of the State Board of Education”³¹ should preempt the PSCL and the requirement to make a single award to the lowest responsible bidder. However, there is no legal authority for such a position. Nothing in the enabling legislation for ESCs preempts the limitations of public contracting laws, the PSCL specifically, or the cooperative purchasing rules.

Additionally, ESCNJ contends that it should be permitted to award contracts by county to provide procurement services to its registered membership, which includes entities geographically distributed throughout the state. Much of ESCNJ’s CPS membership consists of entities that are not school districts, including municipal entities, state entities, and private organizations. The membership of ESCNJ’s CPS thus does not reflect ESCNJ’s statutory mission to assist and support school districts. Moreover, nothing in ESCNJ’s statutory authority requires it to provide a CPS to its members, much less to provide procurement services throughout New Jersey to

²⁵ Regarding the Custodial Supplies contract, ESCNJ responded that it would establish and document a formula and that it would compare bid on an “apples to apples” basis. Regarding the modular building contract, ESCNJ’s response was simply “Evaluation panel.” It is unclear how this response addresses OSC’s questions on this topic, but OSC notes that evaluation panels are not typically utilized in the context of low-bid procurements. Notwithstanding this, ESCNJ has yet to provide OSC with any explanation of the formulas it proposes to utilize to get to such a result, or include any formula or explanation within its solicitation documents for the benefit of the bidders.

²⁶ See N.J.S.A. 18A:18A-2(t); N.J.S.A. 18A:18A-4.

²⁷ N.J.S.A. 18A:18A-4(a).

²⁸ N.J.A.C. 5:34-7.10.

²⁹ See N.J.A.C. 5:34-11.

³⁰ See Exhibit A.

³¹ N.J.S.A. 18A:6-51 (“Definitions”) states: “Educational Services Commission’ means an agency established or to be established in one or more counties for the purpose of carrying on programs of educational research and development and providing to public school districts such educational and administrative services as may be authorized pursuant to rules of the State Board of Education.”

contracting units not associated with school districts. Rather, with full knowledge of the statutory authority provided to and obligations imposed on ESCs, the Legislature subjected them to the PSCL, which does not contemplate awarding multiple contracts by county via a single bid solicitation. DLGS has also subjected all DLGS-approved CPSs to the cooperative purchasing rules, and as a result of ESCNJ's voluntary application to act as a DLGS-approved CPS, ESCNJ agreed to comply with those rules.

In practice, the operation of ESCNJ's CPS appears to be at least partially motivated by profit. Nothing in ESCNJ's statutory mission requires it to utilize a regulated CPS to provide the vast array of goods and services available from the CPS's approximately 120 cooperative contracts, which include everything from automobiles and roofing repairs to musical instrument repair and natural gas supply. However, as OSC's 2024 audit noted, these contracts have helped ESCNJ amass an almost \$70 million surplus, funded in significant respect by commissions received from vendors for use of ESCNJ's CPS. ESCNJ's determination to leverage its CPS as a means to raise money is wholly unrelated to its statutory mission and provides no basis for noncompliance with the PSCL or the cooperative purchasing rules.

E. ESCNJ Evidenced its Ongoing Intent to Ignore Its Procurement Obligations Under N.J.S.A. 52:15C-10 and the PSCL When it Unlawfully Awarded Extensions of the Current Contracts Underlying the Procurements without N.J.S.A. 52:15C-10(b) Notice to OSC, and In Violation of N.J.S.A. 18A:18A-42

Pursuant to N.J.S.A. 52:15C-10(b), every public entity in New Jersey, including ESCs, are required to notify OSC at the earliest time practicable, but no later than the commencement of any procurement process, of contracts they intend to procure for which the good-faith estimated value of the proposed contract meets or exceeds OSC's pre-advertisement threshold. That requirement includes contract renewals and extensions valued at or above the pre-advertisement threshold.³² As OSC indicated to ESCNJ during the January 7, 2025 meeting with ESCNJ's Business Administrator and legal counsel, and in OSC's Failure to Notify Letter of April 8, 2025, attached here as Exhibit B, ESCNJ's post-award submissions for the above-referenced contract extensions violated N.J.S.A. 52:15C-10(b) and N.J.A.C. 19:70-3.1 because ESCNJ failed to submit these contract extensions, which exceeded OSC's pre-advertisement submission threshold, prior to awarding the extensions, despite knowledge of the submission requirements and the applicability of the pre-advertisement notice requirements to these contract extensions.

The contract extensions are four examples of recent noncompliance with ESCNJ's statutory obligation to notify OSC of procurements pursuant to N.J.S.A. 52:15C-10. These examples further exacerbate ESCNJ's underlying history of non-compliance with the statute, which OSC's Audit Division sought to address in its 2024 audit report. These ongoing violations, despite repeated communications from OSC regarding how to comply with the law which began as early as 2017, demonstrate a clear intent to avoid OSC's procurement review authority to avoid scrutiny for the numerous areas of non-compliance discussed herein.

³² At the time of these extensions, this threshold was \$12.5 million. As of July 1, 2025, this threshold was adjusted to \$15.2 million.

Conclusion

OSC has arrived at the above findings after careful examination of the Procurements, discussions with ESCNJ's representatives, consideration of the January 7, 2025 meeting with ESCNJ and DLGS, and review of applicable laws. This review has been guided by the recognition that bidding laws are intended "to guard against favoritism, improvidence, extravagance and corruption" and "to secure for the public the benefits of unfettered competition." Terminal Const. Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. 403, 410 (1975); Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 313 (1994).

ESCNJ has repeatedly disregarded applicable law while increasing its purchasing power and generating income from the commissions and fees it obtains through its CPS. Although OSC has previously identified what steps ESCNJ should take to bring its processes into compliance with the PSCL and the cooperative purchasing rules, ESCNJ continues to enter into and further extend contracts containing the unlawful provisions rather than bring procurements into compliance with applicable law. This non-compliance has continued in spite of OSC's significant efforts to work cooperatively with ESCNJ.

In light of ESCNJ's repeated extensions of non-compliant contracts without proper submission to OSC, and in view of ESCNJ's refusal to address OSC's concerns described above with regard to the Procurements, OSC concludes pursuant to N.J.S.A. 52:15C-10(b)(4) that the Procurements, as currently proposed, fail to comply with applicable public laws, rules, and regulations. OSC again directs ESCNJ not to proceed with the Procurements or further extensions of the Contracts in their current form.

To date, ESCNJ has not complied with OSC's attempt to resolve this matter by way of a remediation plan, by refusing to provide a compliant CAP demonstrating any good faith effort to resolve the issues raised by OSC in its August 7 letter, and has thus violated N.J.S.A. 52:15-14 as well as N.J.S.A. 52:15C-11(a), which states that local governments "shall fully cooperate with the State Comptroller to develop recommendations for a corrective or remedial action plan." OSC finds that ESCNJ has not fully cooperated with OSC in the preparation of a plan to remedy its violations of the PSCL.

It is against the public interest to permit these significant expenditures of taxpayers' funds to be spent without the protections of New Jersey's public bidding laws and OSC's statutory review. Therefore, in accordance with N.J.S.A. 52:15C-11(b), ESCNJ is advised that it shall not proceed with the Procurements, nor shall it extend its Contracts for these services.

This letter represents OSC's final agency decision with regard to the Procurements, Extensions, and Contracts. As such, this determination is appealable to the Appellate Division of the Superior Court in accordance with New Jersey Court Rules (R. 2:4-1), which provides a party 45 days to appeal. Additionally, OSC reserves the right, at law and in equity, to seek enforcement of these directives.

Sincerely,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

By: Alysia M Walsh
Alysia Walsh, Director
Public Contracting Oversight Division

Enclosures:

Exhibit A – Thirty-Six Additional ESCNJ Procurement Submissions to OSC

Exhibit B – OSC's April 8, 2025 Failure to Notify Letter

c: Lauren Palladino, Purchasing Administrator, ESCNJ, [REDACTED]
Hope Blackburn, Board Counsel, ESCNJ, [REDACTED]
Christopher Jensen, Director, OSC Audit Division, [REDACTED]
Michael Rogers, Director, DLGS, [REDACTED]

Thirty-Six Additional ESCNJ Procurement Submissions to OSC

Date Submitted	OSC File No.	Contract Title	Notice Type	Contract Amount	Submission*	Status
07/05/2024	25-37	Athletic Equipment Conditioning and Repair	N.J.S.A. 52:15C-10a.	\$3.8M	Timely	Marked Closed and Final 8/7/25
07/05/2024	25-38	Time and Material Plumbing Services	N.J.S.A. 52:15C-10a.	\$6.5M	Timely	Marked Closed and Final 8/7/25
07/08/2024	25-45	Athletic Facility Lighting	N.J.S.A. 52:15C-10a.	\$10M	Timely	Marked Closed and Final 8/7/25
07/09/2024	25-51	Emergency Notification Systems	N.J.S.A. 52:15C-10a.	\$10M	Late	Marked Closed and Final 8/7/25
07/10/2024	25-52	General Repair and Maintenance	N.J.S.A. 52:15C-10b.	\$12.5M	Late. No 10(b) Notice.	Marked Closed and Final 8/7/25
07/10/2024	25-53	Building Access and Security Systems	N.J.S.A. 52:15C-10a.	\$10M	Late	Marked Closed and Final 8/7/25
07/10/2024	25-55	Generator Equipment and Maintenance	N.J.S.A. 52:15C-10b.	\$15M	Late. No 10(b) Notice.	Marked Closed and Final 8/7/25
07/10/2024	25-56	Fire Alarm Systems	N.J.S.A. 52:15C-10a.	\$9M	Late	Marked Closed and Final 8/7/25
07/11/2024	25-63	Bleachers, Interior, Purchase and Installation	N.J.S.A. 52:15C-10a.	\$9M	Late	Marked Closed and Final 8/7/25
07/11/2024	25-64	Gym Floor Repair and Refinishing	N.J.S.A. 52:15C-10a.	\$3M	Late	Marked Closed and Final 8/7/25
08/15/2024	25-155	Video Surveillance Systems for School Buses	N.J.S.A. 52:15C-10a.	\$10M	Late	Marked Closed and Final 8/7/25
09/27/2025	25-240	Electric School Buses	N.J.S.A. 52:15C-10a.	\$8M	Timely	Marked Closed and Final 8/7/25
09/27/2025	25-241	HVAC Purchase & Installation	N.J.S.A. 52:15C-10a.	\$6M	Timely	Marked Closed and Final 8/7/25
09/27/2024	25-242	Food Service Smallwares, Supplies and Equipment	N.J.S.A. 52:15C-10a.	\$3.5M	Timely	Marked Closed and Final 8/7/25
10/21/2024	25-284	Fencing, Purchase, Installation and Repair	N.J.S.A. 52:15C-10a.	\$2.7M	Timely	Marked Closed and Final 8/7/25
10/24/2024	25-295	Maintenance, Repair and Operation Supplies and Equipment	N.J.S.A. 52:15C-10a.	\$8.1M	Timely	Marked Closed and Final 8/7/25

Date Submitted	OSC File No.	Contract Title	Notice Type	Contract Amount	Submission*	Status
01/03/2025	25-488	Grounds Equipment	N.J.S.A. 52:15C-10b.	\$62M	Late. No 10(b) Notice	Marked Closed and Final 8/7/25
01/13/2025	25-516	Disaster Recovery Services	N.J.S.A. 52:15C-10a.	\$9.7M	Timely	Marked Closed and Final 8/7/25
01/22/2025	25-534	Synthetic Turf	N.J.S.A. 52:15C-10b.	\$53M	Late. No 10(b) Notice	Marked Closed and Final 8/7/25
02/09/2025	25-585	Electric Vehicle Charging Stations	N.J.S.A. 52:15C-10a.	\$7.2M	Timely	Marked Closed and Final 8/7/25
03/07/2025	25-670	School Buses	N.J.S.A. 52:15C-10a.	\$10.6M	Timely	Marked Closed and Final 8/7/25
03/26/2025	25-729	Gym Floor Repair and Refinishing	N.J.S.A. 52:15C-10a.	\$5M	Timely	Marked Closed and Final 8/7/25
03/26/2025	25-730	Building Management Systems	N.J.S.A. 52:15C-10a.	\$6.5M	Timely	Marked Closed and Final 8/7/25
03/26/2025	25-731	Purchase and Installation of Lockers	N.J.S.A. 52:15C-10a.	\$4M	Timely	Marked Closed and Final 8/7/25
05/02/2025	25-832	Classroom Supplies	N.J.S.A. 52:15C-10a.	\$4M	Timely	Marked Closed and Final 8/7/25
06/10/2025	25-936	Fire Alarm Systems	N.J.S.A. 52:15C-10a.	\$11M	Timely	Marked Closed and Final 8/7/25
06/10/2025	25-937	Generator Equipment	N.J.S.A. 52:15C-10a.	\$4M	Timely	Marked Closed and Final 8/7/25
06/12/2025	25-947	Class 4-8 Trucks	N.J.S.A. 52:15C-10b.	\$18M	Late. No 10(b) Notice	Marked Closed and Final 8/7/25
06/27/2025	25-1021	Athletic Surfaces - Outdoor Tracks	N.J.S.A. 52:15C-10a.	\$8M	Timely	Marked Closed and Final 8/7/25
06/27/2025	25-1022	Athletic Surfaces – Outdoor Courts	N.J.S.A. 52:15C-10a.	\$5M	Timely	Marked Closed and Final 8/7/25
06/27/2025	25-1023	Electrical Services Time & Material	N.J.S.A. 52:15C-10a.	\$9.9M	Timely	Marked Closed and Final 8/7/25
07/07/2025	26-14	Emergency Notification Systems	N.J.S.A. 52:15C-10a.	\$10M	Timely	Marked Closed and Final 8/7/25
10/09/2025	26-326	Commercial Carpet and Flooring	N.J.S.A. 52:15C-10b.	\$29M	Late. No 10(b) Notice	Open. To be closed per this letter.

Date Submitted	OSC File No.	Contract Title	Notice Type	Contract Amount	Submission*	Status
11/05/2025	26-353	HVAC Building Management System – Time & Material	N.J.S.A. 52:15C-10a.	\$9.5M	Timely	Open. To be closed per this letter.
11/21/2025	26-395	Cars, Crossovers, Class 1-3 Pickup Trucks/Chassis, SUVs and Vans ESCNJ #23/24-11	N.J.S.A. 52:15C-10b.	\$38.3M	Late. No 10(b) Notice	Open. To be closed per this letter.
12/22/2025	26-450	Emergency Notification Systems	N.J.S.A. 52:15C-10a.	\$10M	Timely	Open. To be closed per this letter.

*“Timely” means: ESCNJ’s notice and submission under N.J.S.A. 52:15C-10(a) was submitted to OSC within 20 days of contract award in accordance with N.J.S.A. 52:15C-10(a).

“Late” means: ESCNJ’s notice and submission under N.J.S.A. 52:15C-10(a) was not submitted to OSC within 20 days of contract award in violation of N.J.S.A. 52:15C-10(a).

“No 10(b) Notice” means: ESCNJ failed to submit the procurement under N.J.S.A. 52:15C-10(b) despite the contract being subject to 10(b) review per its awarded cost.



State of New Jersey

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

OFFICE OF THE STATE COMPTROLLER
PUBLIC CONTRACTING OVERSIGHT DIVISION
P.O. BOX 024
TRENTON, NJ 08625-0024
(609) 984-2888

KEVIN D. WALSH
Acting State Comptroller

ALYSIA WALSH
Acting Director

April 08, 2025

Via Electronic and Certified Mail RRR

Timothy Havlusch, Business Administrator / Board Secretary
Educational Services Commission of New Jersey
1690 Stelton Rd,
Piscataway, NJ 08854
[REDACTED]

Re: OSC File No. 25-535, ESCNJ, Post-Award, Custodial Services; OSC File No. 25-536, ESCNJ, Post-Award, Modular Buildings: Purchase, Repair, Removal, Rental and Installation

Dear Mr. Havlusch:

As you are aware, the Public Contracting Oversight Division of the Office of the State Comptroller (OSC) is currently reviewing multiple pre-advertisement and post-award submissions from Educational Services Commission of New Jersey (ESCNJ), pursuant to OSC's procurement notification statute, N.J.S.A. 52:15C-10. OSC's procurement notification statute requires contracting units to submit procurements valued at or above \$12.5 million to OSC prior to solicitation. That statute additionally requires contracting units to submit procurements valued at \$2.5 million or more to OSC within 20 days of contract award.

On January 22, 2025, ESCNJ submitted the above-captioned contract extensions, each valued above \$12.5 million to OSC after the extensions were awarded and executed, without pre-advertisement notice to OSC, in violation of N.J.S.A. 52:15C-10(b). This continues ESCNJ's unlawful practices identified in OSC's August 1, 2024 audit report, which found, among other things, that ESCNJ had improperly awarded seven contracts, with a combined value of approximately \$14.6 million, without seeking competition, and failed to provide post-award notification to OSC of procurements valued at \$2.5 million or more as required N.J.S.A. 52:15C-10(a). The audit further found deficiencies in

Timothy Havlusch, Business Administrator / Board Secretary
Educational Services Commission of New Jersey
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ESCNJ's compliance with New Jersey's Department of Community Affairs, Division of Local Government Services' Cooperative Purchasing Rules, N.J.A.C. 5:34-7.¹

On October 3, 2024, and October 15, 2024, ESCNJ submitted two procurements to OSC, one for Custodial Supplies, and one for Modular Buildings, respectively, for pre-advertisement review. ESCNJ had contracts in place at the time for both procurements that were set to expire on January 21, 2025 (the Procurements). On January 22, 2025, ESCNJ provided OSC with post-award notifications pursuant to N.J.S.A. 52:15C-10(a), indicating to OSC that it had extended both of the expiring contracts underlying the Procurements. Since submission of the Procurements, OSC has provided guidance to ESCNJ to bring the Procurements into compliance with applicable laws, rules and regulations.

At ESCNJ's request, on January 7, 2025, OSC and the Division of Local Government Services ("DLGS") met with ESCNJ's Business Administrator and legal counsel, regarding OSC's compliance concerns. OSC noted that the current iteration of these contracts under OSC review would expire soon, and ESCNJ acknowledged that it would be unlikely to award new contracts before the current contracts expired. ESCNJ indicated that it would seek to extend its current contracts pursuant to a provision of Public School Contracts Law ("PSCL") which states that "a contract may be extended by mutual agreement of the parties to the contract when a board of education has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires." N.J.S.A. 18A:18A-42. ESCNJ argued this was an appropriate mechanism under PSCL, despite the fact that neither of the Procurements had commenced rebidding, nor was either pending award at that time. During this meeting, OSC repeatedly reminded ESCNJ that OSC's notice requirements include contract extensions. OSC sent emails to ESCNJ requesting ESCNJ's proposed actions with regard to the expiring contract, but received no response.

Thereafter, as indicated above, on January 22, 2025, ESCNJ provided OSC with post-award notification, pursuant to N.J.S.A. 52:15C-10(a), indicating that it had extended both of the contracts at issue. According to the OSC notice forms submitted by ESCNJ, the Custodial Supplies contract has an estimated value of \$14 million, and the Modular Buildings contract an estimated value of \$53 million. Neither submission cites statutory authority for the proposed contract extension, states the contract term, or explains the valuation method.

Pursuant to N.J.S.A. 52:15C-10(b), every public entity in New Jersey, including educational service commissions such as ESCNJ, are required to notify OSC of contracts for which the good-faith estimated value of the proposed contract meets or exceeds

¹ Since the release of OSC's audit, ESCNJ has submitted many procurements under OSC's notice statute, N.J.S.A. 52:15C-10. However, many of the submissions, based upon ESCNJ's estimated and awarded values, are in violation of the post-award submission requirements established by N.J.S.A. 52:15C-10(a), and the pre-advertisement submission requirements established by N.J.S.A. 52:15C-10(b).

Timothy Havlusch, Business Administrator / Board Secretary
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\$12.5 million at the earliest time practicable, but no later than the commencement of any procurement process. That requirement includes contract renewals and extensions valued at \$12.5 million or more. With regard to ESCNJ's post-award submissions for the above-referenced contract extensions, despite knowledge of the submission requirements and the applicability of the pre-advertisement notice requirements to these contract extensions, ESCNJ violated N.J.S.A. 52:15C-10(b) when it failed to submit these contract extensions to OSC prior to awarding the extensions.

In light of the above, OSC hereby directs ESCNJ to notify its Board Members, at its next regular public meeting, of this letter and the violations discussed herein, and to thereafter submit to OSC the meeting minutes at which this notification was made. Additionally, on a going forward basis, ESCNJ must ensure its procurement submissions are made to OSC in a timely manner in accordance with applicable law, and are valued and submitted in accordance with OSC's notice statute and all applicable regulations. To that end, OSC directs ESCNJ to provide OSC with its written procurement policies and procedures for valuing procurements and submitting same to OSC, in accordance with applicable laws, within 10 business days of the date of this letter.

Should you have any questions, do not hesitate to contact me. Thank you for your anticipated cooperation.

Sincerely,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

By: /s./David Sullivan
David Sullivan
Staff Attorney, Public Contracting Oversight Division

cc: Christopher Jensen, Director, OSC Audit Division, [REDACTED]
Lauren Palladino, Purchasing Administrator, ESCNJ, [REDACTED]
Hope Blackburn, Board Counsel, ESCNJ, [REDACTED]