

LOCAL FINANCE NOTICE

Local and Public School Contracts Laws: Administrative Rules Summary

One of the provisions of P.L. 1999, c. 440 granted the rulemaking authority under the Local Public Contracts and Public School Contracts Laws to the Director of the Division of Local Government Services, in consultation with the Commissioner of Education. For the past two years the Division has worked with the Department of Education and professional organizations to draft and finalize the rules. An update to existing Local Public Contracts rules, (N.J.A.C. 5:34-1, 2, 3, 6 and 7) went into effect on December 4, 2000. New procurement rules, N.J.A.C. 5:34-4, 5, 8 and 9 went into effect on January 22, 2002.

This Local Finance Notice is separated into the following sections:

- Summary of Local and Public School Contracts Laws rules
- Summary of Local Unit Encumbrance of Funds and Change Order rules
- Summary of Boards of Education Budget Control and Change Order rules

This Notice is intended to highlight the subject matter covered by the rules. It is expected that if readers need the details of each section, they will review the rule itself. The rules can be reviewed and downloaded from the State's Procurement website www.state.nj.us/njded/pscl/index.html.

For additional information or to obtain published copies of the rule, please contact the Division's Bureau of Local Management Services at (609) 292-7842, by fax at (609) 633-6243 or by e-mail at lpcl@dca.state.nj.us.

Summary of the Local and Public Contracts Laws Rules

N.J.A.C. 5:34-1 – General Provisions and Definitions

Sets forth the general provisions and definitions used in the rule.

N.J.A.C. 5:34-2 – Extraordinary Unspecifiable Services (EUS)

Sets forth the requirements for compliance with the extraordinary unspecifiable services (EUS) bidding exemption pursuant to N.J.S.A. 40A:11-5(1)(a)(ii) and 18A:18A-5(a)(2).

N.J.A.C. 5:34-3 – Certain Multi-year Contracts and Leases Beyond Fiscal Year

Details the procedures for multi-year contracts, multi-year leases, multi-year leases with option to purchase, and leases for items authorized by N.J.S.A. 40A:11-15 and 18A:18A-42. This section remains unchanged.

N.J.A.C. 5:34-4 – Administration of the Competitive Contracting Process

This section prescribes the rules applicable to competitive contracting pursuant to N.J.S.A. 40A:11-4.1 et seq. and 18A:18A-4.1 et seq. Competitive contracting is applicable to those types of goods and services that are difficult to describe by written bid specifications. Request for Proposals (RFPs) may be used in lieu of formal bid specifications and contracting units are permitted to weigh other factors, besides cost, in evaluating the suitability of a proposal and awarding a contract.

N.J.A.C. 5:34-4.1 defines terms related to competitive contracting.

N.J.A.C. 5:34-4.2 provides model evaluation criteria that, subject to the circumstances of a specific proposal, should be used in evaluating competitive contracting RFPs.

N.J.A.C. 5:34-4.3 establishes the procedure for opening, evaluating and awarding contracts under the competitive contracting process. Competitive contracting proposals are opened in the same manner as bid proposals. The rule permits an authorized agent of the contracting unit to appoint an evaluation committee to evaluate proposals received.

N.J.A.C. 5:34-4.4 prescribes the process that contracting units must follow in applying to the Director for approval to use competitive contracting for the operation, management, or administration of services not otherwise listed in N.J.S.A. 40A:11-4.1(a) through (j) and 18A:18A-4.1(a) through (j).

N.J.A.C. 5:34-4.5 relates to the use of competitive contracting in connection with energy services work.

N.J.A.C. 5:34-5 – Qualified Purchasing Agents and Increasing the Bid Threshold

This section governs qualifications and certification requirements necessary to become a Qualified Purchasing Agent (QPA) pursuant to N.J.S.A. 40A:11-9b or 18A:18A-3a. The rule also prescribes the process for increasing the bid threshold pursuant to N.J.S.A. 40A:11-3a or 18A:18A-3a.

N.J.A.C. 5:34-5.1 establishes the criteria individuals must meet to qualify as a QPA. The section also describes the duties that qualify someone as a “purchasing agent”. This is done to acknowledge that while not given the title of purchasing agent, individuals who perform certain functions act as purchasing agents for purposes of QPA qualification.

N.J.A.C. 5:34-5.2 establishes the procedures for increasing the bid threshold.

N.J.A.C. 5:34-5.3 requires a contracting unit’s bid threshold to revert to the lower statutory bid threshold in the event the QPA is unable to exercise the authority, responsibility and accountability of the contracting unit’s purchasing functions.

N.J.A.C. 5:34-6 – Emergency Purchases and Contracts

Contains the provisions for emergency purchases and contracts pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7. This section requires local units to establish plans for emergency purchasing, including the implementation of a designated chain of command to ensure that there are always appropriate individuals available for determining and confirming the existence of an emergency and the provisions for emergency purchasing may be implemented.

N.J.A.C. 5:34-7 – Cooperative Purchasing

Sets forth the regulatory requirements for the joining of two or more local contracting units for the establishment of cooperative purchasing systems for the provision of goods or performance of services, pursuant to N.J.S.A. 40A:11-11 and 18A:18A-11. The significant difference between the existing subchapter and the amended rules is the addition of new types of cooperative purchasing and new and revised administrative requirements. These include the addition of regional cooperative pricing systems; cooperative purchasing of energy; member reports; binding estimate option; the broadening of the requirements for purchasing under State contract; and county cooperative contract purchasing.

N.J.A.C. 5:34-8 – Contracts Subject to Public Bidding (Aggregation)

Addresses contracts that are subject to public bidding. Such contracts include multi-year contracts and contracts that combine similar goods and services under a single bid (aggregation) pursuant to N.J.S.A. 40A:11-7.1 and 18A:18A-8.

N.J.A.C. 5:34-8.1 describes the type of multi-year contracts that must be bid and cannot be extended because the cumulative amount of the contract exceeds the contracting unit's bid threshold.

N.J.A.C. 5:34-8.2 sets forth the circumstances and considerations that apply when determining whether purchases of goods and services must be aggregated.

N.J.A.C. 5:34-8.3 describes circumstances where determinations of aggregation were incorrect including, incorrect determinations that public bidding was not required and more goods or services are required to be purchased (the remaining amount).

N.J.A.C. 5:34-8.4 prohibits a contracting unit from knowingly miscalculating estimates or using other mechanisms to avoid public bidding.

N.J.A.C. 5:34-9 – Special Circumstances

Includes miscellaneous procurement issues that alone were insufficient to be allocated to a separate subchapter. Some of the procurement issues dealt with in this subchapter are the purchase of proprietary goods and services, procedures for procuring concessions and special circumstances surrounding the collection of solid waste.

N.J.A.C. 5:34-9.1 defines the terms "specialized nature" and "necessary for the conduct of its affairs" as they are used in determining if a good or service meets the definition of the term "proprietary."

N.J.A.C. 5:34-9.2 sets forth the requirements that are applicable for using the concept of "brand name or equivalent" in bid specifications.

N.J.A.C. 5:34-9.3 sets forth procedures for canceling and postponing the receipt of publicly advertised bids or competitive contracting proposals.

N.J.A.C. 5:34-9.4 addresses the process for authorizing concessions. Concessions that are awarded to or support a for-profit organization or purpose are subject to these rules. **Under the Public School Contracts Law at N.J.S.A. 18A:18A-2aa, all vending machines are excluded from the definition of a concession.**

N.J.A.C. 5:34-9.5 is titled Miscellaneous Circumstances and addresses special procurement issues. This section deals with the following matters:

- Solid waste collection;
- Purchases that are less than 15% of the bid threshold;
- The timeframe for posting notices of certain contract award;
- The use of mediation in prior negative experience;
- Appointment of a duly authorized designee to act on behalf of a purchasing agent pursuant to the Public School Contracts Law.

Summary of Local Unit Encumbrance of Funds and Change Order Rules

N.J.A.C. 5:30-5 – Encumbrance Accounting and Certifications of Availability of Funds

This subchapter has been amended and recodified and deals principally with accounting procedures and formalizes rules governing encumbrance accounting and certification of availability of funds. A new section added to this subchapter formally recognizes and allows computerized systems to generate purchase orders, eliminating the need for pre-numbered forms when these systems generate the numbers and produce appropriate purchasing internal control.

N.J.A.C. 5:30-11 – Change Orders and Open-End Contracts

Regulates change orders and open-end contracts. The governing body must authorize change orders for certain types of contracts by resolution. Professional services and extraordinary unspecifiable services (EUS) contracts are not included in the total amount of change orders executed for the particular contract to exceed the originally awarded contract price by more than 20 percent. The clerk or secretary of the governing body of each contracting unit shall report to the Director all change orders from the previous fiscal year, which exceeded the 20 percent limitation. The report is on an appendix to the contracting unit's annual budget

Summary of Boards of Education Budget Control and Change Order Rules

N.J.A.C. 6A:23-2.11(a)1 – Budgetary Controls and Overexpenditure of Funds

Sets forth procedures for budgetary controls and overexpenditure of funds. The subchapter states that a district board of education or charter school board of trustees shall not approve an encumbrance or expenditure (liability of payment) which, when added to the total of existing encumbrances and expenditures, exceeds the amount appropriated in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6A:23-2.2(g)1.

N.J.A.C. 6A:23-7.1 – Change Orders and Open-End Contracts

Sets forth procedures for change orders and open-end contracts. Professional services and extraordinary unspecifiable services (EUS) contracts change orders, change orders for materials, supplies and equipment, and change orders for construction, reconstruction and major repair contracts are governed by procedures stated within this subchapter. All change orders for construction, reconstruction, and major repair contracts shall be submitted to the Office of Facilities Financing for approval, except under certain conditions stated within.

Distribution: Municipal Clerks, School Business Administrators, Clerks to the Boards of Freeholders, Authority Executive Directors, Boards of Fire Commissioners (recipients to distribute copies to other appropriate officials); and members of professional purchasing organizations (through their organizations)