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Local Finance Notice

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Final Adopted E-Procurement Regulations: Goods, Services, and Public Works Contracts

The Director of the Division of Local Government Services has adopted [final regulations](#) authorizing use of electronic procurement platforms by local governments and boards of education. In addition, the final adoption of N.J.A.C. 5:30-8.5 and subsection (c) of N.J.A.C. 5:34-4.3 addresses circumstances when a state of emergency declared by the Governor for public health reasons requires a bid or proposal opening to occur without members of the public present, on which the Division will be issuing a separate Notice. The Notice of Final Adoption contains the Division's responses to the original adopted and concurrently proposed regulations.

Defining E-Procurement

Electronic procurement (or "e-procurement") is the use of internet-based technology platforms for the solicitation and submission of competitive bids, proposals, quotations, or qualifications. Electronic procurement platforms encompassed under these regulations are software services facilitating procurement of goods and services, public works contracts (including construction), commodities and energy. E-mail systems, including, but not limited to, Outlook and Gmail shall not constitute electronic procurement platforms; however, email may be used to alert contractors and vendors about information transmitted through the platform (e.g. answers to questions, issuance of notices).

Use of e-procurement platforms are also permitted for competitive solicitations and online auctions for the sale of surplus personal property and, in the case of municipalities, counties, fire districts and boards of education, the sale or lease of real property. The Division will issue separate Local Finance Notices about e-procurement in these contexts.

All entities subject to the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.) are permitted to utilize e-procurement platforms, but the procurements themselves need not be limited to those covered under the Local Public or Public School Contracts Laws. For example, a local unit can use an e-procurement platform to issue a “fair and open” RFP for professional services under N.J.S.A. 19:44-20.4 et seq., which is not subject to Local Public Contracts Law competitive contracting statutes (N.J.S.A. 40A:11-4.1 through 4.5). However, electronic municipal tax lien services subject to the provisions of N.J.S.A. 54:5-19.1a and N.J.A.C. 5:33 are not covered under these regulations.

The regulations use the term “offer” as a collective reference to bids, proposals, qualifications, and quotations, and the term “offeror” for the individual or entity submitting a bid, proposal, quote or qualifications. However, for purposes of this Notice, the terms bidder or vendor (or prospective bidder or vendor) will reference individuals or entities responding to procurement solicitations.

Platform and Process Basics

E-procurement platforms must ensure the security and integrity of the procurement as well as facilitate equal access to information and documents connected to the procurement. Unless otherwise stated in this Notice, all advertisements, solicitations, submissions, revisions and addenda must be transmitted and received through the platform. In order to facilitate the most open and competitive process, if a local unit’s e-procurement platform requires payment of a registration or other fee before such materials can be obtained, the materials shall also be made available on the local unit’s website and/or offices during regular business hours. For materials obtained at the local unit’s offices, the local unit shall not charge an amount exceeding the maximum charge for obtaining such documents if the local unit did not employ an electronic procurement platform. For example, a Local Public Contract Law contracting unit soliciting an RFP through competitive contracting may not charge more than \$50 or the cost of reproducing the documentation, whichever is greater (N.J.S.A. 40A:11-4.5(a)).

The e-procurement platform must allow submission of all responsive documents and information either with the offer or before the contract award, as applicable, to a secure electronic lockbox. This lockbox shall not be accessible by local unit personnel before the submission deadline, except competitive quotations may be viewed in real time by authorized personnel and, for reverse auctions, the lowest bid amount may be made visible to other bidders. All actions on the platform must be logged (including the IP address) and timestamped. The platform must have a question-and-answer function allowing prospective vendors or contractors to post questions about the procurement solicitation for the local unit’s response; the local unit is not obligated to utilize this function although this is recommended. Questions and answers must be visible to all prospective vendors or contractors who have obtained the solicitation documents. For any local unit answers that would effectively revise or add to the substance of, rather than serve to clarify, an advertisement or bid document for a procurement subject to N.J.S.A. 18A:18A-21 or 40A:11-23, the local unit must issue a notice of revision or addenda pursuant to these statutes.

Notwithstanding provisions of the Local Public or Public School Contracts Laws to the contrary, if a bidder obtains bid documents through the e-procurement platform, revisions and addenda

pursuant to N.J.S.A. 18A:18A-21 or 40A:11-23 may be transmitted solely through the platform, rather than mailed or faxed separately to each prospective vendor or contractor. The platform must timestamp the transmission of any notices of revisions or addenda to the prospective vendor or contractor. For any prospective vendor or contractor obtaining bid documents outside of the e-procurement platform, the local unit shall continue to provide notices of revisions or addenda through the statutory methods.

Local units may accept a bid bond, performance bond, or surety company certificate through the e-procurement platform if the bond or certificate can be verified through a vendor or contractor-specific code issued by the surety agency. Verification of the surety agency code is facilitated through the e-procurement platform's software. When authorized by law, a local unit has the option to accept a guarantee in the form of a cashier's check or certified check through the following procedure:

- An image of the check must be included with the bid or proposal submitted through the e-procurement platform
- The physical check must be submitted to the local unit in a sealed envelope clearly marked as part of the bid response
- The local unit shall receive the physical check no later than the deadline for receipt of bids or proposals
- The local unit shall open the sealed envelope from the bidder no earlier than the deadline for receipt of bids or proposals.

Electronic signatures or digital signatures may be utilized for all other documents requiring a signature from the prospective vendor or contractor. Engineering and architectural documents requiring an engineer's or architect's seal and/or signature shall have digital seals and digital signatures pursuant to [N.J.A.C. 13:40-8.1A](#) (New Jersey Board of Professional Engineers and Land Surveyors) and [N.J.A.C. 13:27-6.5](#) (New Jersey Board of Architects), respectively.

A local unit may utilize an electronic procurement system to solicit competitive quotations pursuant to N.J.S.A. 18A:18A-3 or 40A:11-6.1, with the local unit having the exclusive ability to view quotes as received in real time. The platform shall permit the local unit to maintain a downloadable and printable record of the quote solicitation.

For contracts subject to competitive procurement, the names of all bidders and the price of their respective bids or proposals shall be verbally announced in public by the local unit once the submission deadline has passed in accordance with N.J.S.A. 40A:11-23b. The local unit may also display the results for public view on a screen and/or post the results on the local unit's website. Prior to the submission deadline, local units shall have the sole discretion on whether to release the names of prospective bidders having obtained bid documents or requests for proposals.

A request by a winning bidder to withdraw a public works bid pursuant to N.J.S.A. 40A:11-23.3 must be transmitted by certified or registered mail notwithstanding whether the winning public works bid was submitted through an electronic procurement platform.

All information and data submitted in response to a local unit procurement solicitation is deemed property of the local unit. The platform vendor shall have a protocol to submit this information and data to the local unit in a universal electronic format, including all offeror personal identifying information. Local units must adhere to all applicable records retention requirements set forth by law and shall not utilize an electronic procurement platform vendor as the permanent repository of such records. The electronic procurement platform vendor shall provide the local unit with these records within 30 days of the solicitation closing or such alternate timeframe as the local unit and the vendor agree upon. Under no circumstances may the platform vendor purge such information and data before providing it to the local unit.

Additional e-procurement platform requirements established by N.J.A.C. 5:34-5.3(a), and 5:34-5.14(a) and (b), are included in an Appendix to this Notice.

Using a Parallel E-Procurement and Paper-Based Bid Process

The Division anticipates that most local units electing to utilize e-procurement platforms for one or more procurements will require all submissions to be made through the platform and prohibit paper-based submissions. However, in a single competitive procurement that is not a reverse auction, a local unit has the option of allowing bids or proposals to be submitted both through the electronic procurement platform and the paper-based process set forth in the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., or such other New Jersey law as may be applicable to the procurement. A local unit must establish a uniform submission deadline across both methods that complies with the Local Public Contracts Law, Public School Contracts Law, or such other law as may apply to the procurement. All paper-based submissions shall be opened at the same date and time as those submitted through the local unit's electronic procurement platform, at which time the local unit shall upload the paper-based bids or proposals onto the platform. Please note that a contractor or vendor cannot submit both through the e-procurement platform and via paper for the same competitive procurement.

Advertisements for Competitive Procurements Conducted Electronically

All notices and advertisements that the Local Public Contracts Law, Public School Contracts Law, or any other law requires to be published in one or more newspapers shall continue to be published as required by law regardless of whether the local unit is utilizing an electronic procurement platform. In any instance where a local unit utilizes an electronic procurement platform for a competitive procurement, any newspaper notice or advertisement required by law shall contain, in addition to such other information as may be required pursuant to law, a statement that the procurement is being conducted through an electronic procurement platform along with the name and internet address of the platform. The minimum amount of time to submit a bid or proposal under the Local Public Contracts Law, Public School Contracts Law, or any other law shall remain the same as for paper-based procurement.

If a local unit is utilizing both an electronic procurement platform and a paper-based bid or proposal submission process for a single procurement, the advertisement shall state that offers may be submitted by either method. If a local unit conducts a procurement through a platform

that requires payment of a fee before any offer documents can be accessed on the platform, the advertisement shall state that such materials can be obtained from the local unit's website and/or physical offices during regular business hours and must include the website address and/or the address of the building where the materials can be obtained, along with the regular business hours.

Procuring the Platform; General Fee Limitations and Considerations

Even in cases where a prospective vendor or contractor pays all fees associated with using the e-procurement platform, the platform is subject to public bidding if the aggregate fees to be charged over the life of the contract will exceed the local unit's bid threshold. A local unit may use the competitive contracting process to procure the platform without seeking prior Division approval. Local units have the option of obtaining an e-procurement platform through cooperative purchasing; however, before purchasing a platform through a national cooperative, a local unit shall determine and document that the use of the national cooperative contract shall result in cost savings after all applicable factors have been considered, as well as continue to follow the procedures described in [Local Finance Notice 2012-10](#).

A bid specification or competitive contracting RFP for an electronic procurement platform shall specify whether 1) the local unit is to pay for the system, 2) the platform vendor is to be compensated solely through fees and charges to prospective vendors and contractors or 3) the platform vendor must provide a response under both options. When an electronic procurement platform vendor is to be compensated solely through charging fees to prospective vendors and contractors using the platform, in determining whether the value of the contract will exceed the local unit's bid threshold, the local unit shall utilize the fees and charges together with a good-faith aggregate estimate of the number of platform users that would be subject to such fees and charges over the contract term. If the electronic procurement platform is solicited through a competitive contracting process, the platform vendor with the lowest aggregate fees and charges to offerors shall prevail on the price factor. Under circumstances when an electronic procurement platform will be awarded to the lowest responsible bidder, the platform vendor with the lowest aggregate fees and charges to offerors shall be considered the low bidder.

For goods, services, and public works contracts, an electronic procurement platform vendor shall not charge a prospective vendor or contractor:

- A fee of more than \$50.00 per submission;
- A fee of more than \$50.00 for accessing documents and information, exclusive of any fees required for platform registration;
- A percentage of the winning bid; or
- Both a submission fee and an additional fee for document and information access.

If a procurement is subject to a local unit's set-aside program established pursuant to N.J.S.A. 18A:18A-51 through 59 or N.J.S.A. 40A:11-41 through 49, as applicable, any fee charged by the e-procurement platform vendor for document access or bid submission shall be waived by the platform vendor or refunded to the bidder by the local unit.

Local units should be mindful that any fees and charges for utilization of e-procurement platforms by prospective vendors and contractors could potentially discourage smaller, less established firms from participating, thereby reducing competition, increasing costs and lessening diversity. To encourage maximum vendor and contractor participation, particularly for smaller scale projects, a local unit should consider assuming the cost of an e-procurement platform.

Reverse Auctions

In reverse auctions, bidders progressively submit lower bids versus the initial bid, with the winner being the lowest responsible bidder. A local unit may only utilize a reverse auction for procuring energy and commodities. For purposes of the e-procurement regulations, the term "commodity" or "commodities" means gasoline, diesel, snow removal chemicals, public works materials and supplies (including road/roadway construction materials). The Director retains the discretion to approve the procurement of other materials through a reverse auction and may establish a pilot program to evaluate the feasibility of reverse auctions for other goods and services procurements.

If the local unit procures commodities and/or energy through a reverse auction format, the local unit shall publish all required notices and advertisements in one or more newspapers pursuant to the Local Public Contracts Law or Public School Contracts Law, as applicable. In addition to the content required pursuant to N.J.A.C. 5:34-5.5(a)1, the advertisement shall also include the period when bids will be accepted and reference the local unit's right to reject all bids pursuant to law. Bidding must either take place or close no earlier than 10 days after the date of newspaper publication, with bidders unable to view the identity of other bidders in the reverse auction while the auction is in progress. All bidders shall upload, to the platform, any documents or information that are required to accompany a bid pursuant to the Local Public Contracts Law or the Public School Contracts Law by no later than when a bidder places their first bid.

A local unit may only utilize an electronic procurement platform for energy supply if the platform vendor is registered with the State Board of Public Utilities (BPU) as an [energy agent](#) pursuant to the New Jersey Electric Discount and Energy Competition Act of 1999 (EDECA). Only BPU-licensed third-party energy suppliers are eligible to bid and [third-party energy suppliers](#) licensed by the BPU may only submit bids to local units located within their permitted service area.

To facilitate locking in spot pricing, the governing body of a local unit procuring energy through an electronic procurement platform may adopt a resolution or ordinance, as appropriate, authorizing its purchasing agent to award a contract to the successful bidder shortly after bids are closed if the price is below a specified amount. The purchasing agent shall report back to the governing body with the reverse auction results. As with the electronic procurement of other goods and services, the energy supplier shall provide to the local unit all documents that are required to be submitted pursuant to law prior to contract award.

The local unit shall provide the advertisement of the reverse auction to each eligible third-party energy supplier that is not registered on the electronic procurement platform through email or regular mail, except where an eligible supplier affirmatively opts-out of receiving such notices.

Notwithstanding the requirements of N.J.A.C. 5:35-5.4(a), email notices transmitted to all eligible third-party energy suppliers pursuant to this section shall be in lieu of newspaper advertisement.

Notwithstanding the general prohibition on charging a percentage of the winning bid, in reverse auctions for energy the platform vendor may base its fee on the amount of electricity or natural gas purchased.

Local Unit Contracts with Electronic Procurement Platform Vendors

All contracts between a local unit and an electronic procurement platform vendor shall be awarded by the governing body notwithstanding the value of the contract or whether the contract was procured competitively or through cooperative purchasing, except under those exceptional and limited circumstances when a contract can be awarded on an emergency basis. In addition to being reviewed by legal counsel if deemed necessary by the local unit, the contract should be reviewed by a qualified purchasing agent or, in lieu of a qualified purchasing agent, the chief financial officer or equivalent, or the school business administrator, as appropriate to the type of entity, prior to its execution. The total duration of a contract for an electronic procurement platform shall not exceed five years.

The contract must contain adequate provisions for compensating the local unit against losses resulting from negligence or misconduct on the part of the platform vendor and its employees and agents. All disputes between the parties and disputes concerning the contract or its operation shall be in writing and forwarded to the other party through registered or certified mail. New Jersey law shall apply to and govern the contract and the relationship between the local unit and the platform vendor. All contracts shall have appropriate provisions for service of process to the vendor. Neither of the following terms shall be enforceable in a contract between a local unit and an electronic procurement platform vendor:

- Requiring the local unit to indemnify or hold harmless a platform vendor or its employees and agents; or
- Mandating binding arbitration as a means of dispute resolution between the local unit and the platform vendor.

Key Changes between Initial and Final Adoption

In conclusion, the following changes were made upon final adoption of the electronic procurement regulations at N.J.A.C. 5:34-5:

- Added definition for “qualifications.” N.J.A.C. 5:34-5.2
- Clarification that an e-procurement platform must allow a local unit to extend the date, along with the time, for the submission of bid or proposal documents. N.J.A.C. 5:34-5.3(a)7
- Clarification that bid documents or requests for proposals may be obtained through a local unit’s website. N.J.A.C. 5:34-5.3(b)
- Allows local units the option of displaying the results of a bid or proposal opening for public view on a screen and/or post the results on the local unit’s website; however,

clarifies that the names of all bidders and the price of their respective bids or proposals be verbally announced in public. N.J.A.C. 5:34-5.3(d)

- Clarifies that an advertisement for a competitive procurement conducted through a reverse auction shall incorporate the content required under N.J.A.C. 5:34-5.5(a)1. N.J.A.C. 5:34-5.6(b)
- Emphasizes that a lead agent in a DLGS-registered cooperative purchasing system must follow N.J.A.C. 5:34-7 when entering into a contract for an electronic procurement system on behalf of itself and system members.
- Removes the requirement that a qualified purchasing agent approve a local unit's contract with an electronic procurement vendor.

Approved: Jacquelyn A. Suárez, Director

Document	Internet Address
N.J.A.C. 5:34-5	https://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_34/njac_5345.pdf
Regulations – NJ Board of Prof. Engineers & Land Surveyors	https://www.njconsumeraffairs.gov/regulations/Chapter-40-State-Board-of-Professional-Engineers-and-Land-Surveyors.pdf
Regulations – NJ Board of Architects	https://www.njconsumeraffairs.gov/regulations/Chapter-27-New-Jersey-State-Board-of-Architects.pdf
Local Finance Notice 2012-10	https://www.nj.gov/dca/divisions/dlgs/lfn/12/2012-10.pdf
BPU Registered Energy Agents	https://www.state.nj.us/bpu/pdf/energy/shopping_forms/EA_PA_EC_Active_Registrations_List_7.1.2021.pdf
BPU Registered Third-Party Energy Suppliers	https://www.state.nj.us/bpu/pdf/energy/shopping_forms/Third_Party_Supplier_Active_License_List_6.29.2021.pdf

Appendix

Electronic Procurement Platforms – Additional Technical Requirements

5:34-5.3 Electronic procurement platforms – local unit procurement of goods and services and public works

(a) An electronic procurement platform used for local government procurement shall provide, at a minimum:

1. Detailed online instructions on how to use the platform;
2. An online offeror registration process that will reliably confirm the identity of the person or entity registering, as well as any individuals authorized to sign and submit offers. This registration should include full contact information, including a physical address and the logging of the IP address used to create the offeror's account;
3. The ability to upload and save onto the platform, any completed forms, disclosures, and certifications that, pursuant to New Jersey law, must either accompany an offer or must be submitted to the local unit prior to contract award, and, prior to submission, prompt offerors when such documents have not been incorporated into an offeror's response;
4. The ability for offerors to electronically transmit, and local units to receive, all documents and information responsive to, and required to be submitted either with the offer or before the contract award;
5. Timestamping and logging of all local unit and offeror actions on the platform, including IP address.
6. The ability for prospective offerors to post questions, and the local unit to post responses thereto, in a manner visible to all prospective offerors. This shall not absolve the local unit from issuing a notice of revision or addenda when required pursuant to N.J.S.A. 18A:18A-21 and 40A:11-23, or any other applicable law;
7. The ability of a local unit to extend the amount of time for submission of offers beyond the originally advertised date and time;
8. The ability of the local unit to view which prospective offerors have interacted with the procurement solicitation, as well as immediately view submitted offers after the submission deadline has passed;
9. Individual user accounts with password protected access for local unit officers and employees, wherein permitted activities on the platform can be restricted and segregated. Individual user account activity shall be archived to facilitate administrative review and investigation. The platform shall set a maximum time for inactivity before the user is automatically logged out;
10. Platform-related help desk support for prospective offerors and the local unit through the internet, e-mail, and at least one toll-free telephone number;

11. Web-based training, including online tutorials, for both prospective offerors and those local unit officers and employees responsible for administering the local unit's competitive procurement process;
12. A standard complaint procedure concerning platform-related problems for both the local unit and offerors. The complaint procedure shall require that a complaint log be maintained which shall be available to the local unit for inspection, along with a record of problems arising with the system and the resolution of same;
13. The ability to accommodate such set-aside programs as a local unit may establish for one or more procurements; and
14. The ability to download and print each package of submitted offer documents, tabulate offers into a spreadsheet format, publish offer results and local unit contract awards online, as desired by the local unit.

5:34-5.14 Cybersecurity and data ownership

(a) At a minimum, the following cybersecurity framework shall be followed for all electronic procurement platforms:

1. The platform shall:
 - i. Be hosted on FedRAMP Moderate Impact Level Authorized dedicated servers or in a FedRAMP Moderate Impact Level Authorized Cloud, unless the host of the dedicated servers or cloud provides annual evidence of satisfactory cybersecurity internal controls through a SOC2 audit report. When using cloud services, the platform vendor shall check provider credentials and contracts to ensure FedRAMP Moderate Impact compliance;
 - ii. Encrypt passwords and personal identifying information, as well as offer document submissions transmitted to an electronic lockbox before opening by the local unit;
 - iii. Maintain personal identifying information only to the minimum extent and for the minimum duration necessary for platform processes to function. Social Security numbers shall not be utilized as identification numbers for system purposes;
 - iv. Employ a password policy adhering to at least the minimum standards established by the National Institute of Standards and Technology in the United States Department of Commerce, or such other successor organization as may be established by the Federal government;
 - v. Undertake stress testing and regular security risk assessments for detecting compromises and implement regular security updates;
 - vi. Develop a cybersecurity incident response plan along with a disaster recovery or business continuity plan;
 - vii. Create and regularly test all back up, information disposal, and disaster recovery procedures; and
 - viii. If dedicated servers are used, the servers shall be located on United States soil.

2. The platform vendor shall notify the local unit as soon as possible of any cybersecurity incidents resulting in data being compromised;
3. Platform vendor staff with access to platform data shall be educated in current security measures appropriate to the level and type of access to the data; and
4. The platform vendor shall have a computer security incident response team (CSIRT) in place and a plan of action to remediate all incidents where data has been compromised.

(b) The local unit shall require the electronic procurement platform vendor to provide annual evidence of satisfactory cybersecurity internal controls. The local unit shall have the latitude to require a SOC2 audit report or alternate evidence such as, but not limited to, International Standards Organization (ISO) certification.