

5:34-3

LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS - CERTAIN LEASES OF EQUIPMENT AND SERVICE AGREEMENTS BEYOND THE FISCAL YEAR

5:34-3.1 Duration of contract

- (a) Leases (which term includes rental agreements) and service agreements for items authorized by N.J.S.A. 40A:11-15(7) and 40A:11-15(15) or N.J.S.A. 18A:18A-42(f) shall not be renewed or extended beyond the number of years set forth in each such statutory provision. The specifications for rebidding after the maximum number of years should not require that the equipment be in the possession or service of the contracting unit.
- (b) Such leases and service agreements may be written for any period of time not to exceed the maximum statutory period, or for shorter periods with provision for renewal at the option of the contracting unit, provided that such renewal shall not cause the cumulative length to exceed the permitted length of time. Such renewals may be authorized only by resolution of the governing body.

Amended by R.2000 d.485, effective December 4, 2000.

5:34-3.2 Application of bidding requirements

- (a) All multi-year contracts, including all multi-year leases and multi-year leases with option to purchase, which are authorized under N.J.S.A. 40A:11-15(7), 40A:11-15(15) or 18A:18A-42(f), and other multi-year contracts subject to N.J.S.A. 40A:11-15 and 18A:18A-42 for the procurement of goods or services shall be subject to competitive bidding if the cumulative amount to be expended during the duration of the multi-year lease or contract exceeds the threshold for competitive bidding for the contracting unit.
- (b) Change orders to reflect price increases shall not be required for purchases that are part of a contract where the bid specifications included provisions for price changes based on an objective benchmark not under the direct control of the supplier.
- (c) Leases of textbooks and services incidental thereto may be made, negotiated or awarded by a board of education without public advertising for bids.

Amended by R.2000 d.485, effective December 4, 2000. Amended by R.2002 d.16, effective January 22, 2002.

5:34-3.3 Option to purchase, prohibitions, cancellation clause

- (a) In addition to providing for the use of equipment during the period of the lease, the lease may provide for rental payments to be credited towards the purchase price for purpose of acquisition of the equipment if the contracting unit, at its sole option, decides to buy the equipment, and said option was included in the original specifications and in the original contract.
- (b) Leases shall not, however, provide for the acquisition of ownership at the beginning of the lease term, with installment payments to be made thereafter.
- (c) If the contracting unit anticipates that a lessor may desire to assign its right to receive lease payments to an outside non-contractual third party, provision for such assignment must have been permitted by the lease specifications and be included in the lease agreement, and the lessee must be notified in writing by the lessor before payments may be made to a third party pursuant to such an assignment.
- (d) While N.J.S.A. 40A:11-15 and 18A:18A-42 authorize lease arrangements, such contractual arrangements must contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

Amended by R.2000 d.485, effective December 4, 2000.

5:34-3.4 Equipment changes

- (a) Equipment leased shall not be expanded, upgraded or otherwise materially changed or increased in cost during the term of the lease without competitive bidding, except as follows:
 - 1. Equipment changes which were specifically described, either by itemization or by performance standards, in the original bidding specifications and for which all bidders were requested to submit bid proposals, when in accordance with a formal written plan of time-phased expansion, prepared prior to solicitation of bids, and when the bid proposals for such changes were considered in the determination of the successful bidder; or
 - 2. An item of equipment which is discontinued by the vendor may be replaced with a comparable model which performs the same or increased workload provided that neither the workload nor the cost exceeds that specified in the original contract or the plan of expansion referred to in (a)1 above.
- (b) Any such changes made in accordance with this section shall be made by an amendatory contract and the procedure followed shall be in compliance with the regulations regarding change orders.

Amended by R.2000 d.485, effective December 4, 2000.