

## LOCAL UNIT ELECTRONIC PROCUREMENT

**5:34-5.1 Purpose**

The purpose of this subchapter is to promulgate minimum standards for local unit procurement of goods, services, and public works, the sale of surplus personal property, and the sale and lease of real property through means of electronic technology, with such standards providing for the integrity and procedural protections of sealed public bidding and competitive contracting in an online environment.

**5:34-5.2 Definitions**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

“Bid” means the response submitted by an offeror through an electronic procurement platform in response to a request for bids, for which the contract is awarded to the lowest responsible and responsive bidder or, in the case of the sale or surplus property (including renewable energy certificates) or the sale or lease of real property, to the highest bidder. This term also encompasses a bid being submitted through a paper-based process parallel to electronic bid submission.

“BPU” means the New Jersey Board of Public Utilities.

“Commodity” or “commodities” means gasoline, diesel fuel, snow removal chemicals, public works materials and supplies, including road and roadway construction materials, or any other such materials as may be approved by the Director to be procured by a local unit through a reverse auction.

“Electronic procurement” means the use of computer technology and the Internet for the solicitation and submission of offers; the provision of notice of revisions or addenda to advertisements or offer documents; the use of reverse auctions; and related practices to assist in determining the successful offeror pursuant to law for goods and services contracts, public works contracts, the sale of personal property, and other public procurement-related activities and services as may be determined appropriate by the Director.

“Electronic procurement platform” or “platform” means a computer software program facilitating electronic procurement of goods and services and public works contracts provided by the vendor of the software over the internet as a service, except that this term shall not include an electronic municipal tax lien service subject to the provisions of N.J.S.A. 54:5-19.1a and N.J.A.C. 5:33. This term shall also encompass platforms for the online competitive sale of surplus property or real property, or competitive solicitations for the lease of real property. E-mail systems, including, but not limited to, Outlook, Gmail, and Hotmail shall not constitute electronic procurement platforms for purposes of this subchapter; however, this definition shall not be interpreted to prohibit either party from receiving email prompts concerning answers to

offeror questions, issuance of notices, or other information transmitted through the electronic procurement platform.

“Energy” means gas supply service or gas related service or electric generation service or electric related service as set forth in the Electric Discount and Energy Competition Act (P.L. 1999, c.23) and Board of Public Utilities rules regarding Government Energy Aggregation Programs at N.J.A.C. 14:4-6

"Local unit" means a board of education as defined in the "Public School Contracts Law," N.J.S.A. 18A:18A-1 et seq., or a contracting unit as defined in the "Local Public Contracts Law," P.L.1971, c.198 (N.J.S.A40A:11-1 et seq.).

“National cooperative contract” means a contract that has been developed utilizing a competitive bidding process by a contracting unit as defined at N.J.S.A. 52:34-6.2b(3) that is located in another state. For purposes of this definition “competitive bidding process” requires open competition, or competition among qualified or pre-qualified offerors, submission of bids, advertisement of the procurement as a national cooperative contract or a regional contract that includes New Jersey in its region, and awarded pursuant to a “lowest responsible,” “most advantageous to the local unit, price and other factors considered,” or other similar standard legally employed by the local unit awarding the contract.

“Offer” means the response submitted by an offeror through an electronic procurement platform, or submitted by paper if allowed by the local unit in parallel with electronic submission, in response to a solicitation for bids, proposals, qualifications, or quotations conducted in a manner authorized under the laws of the State of New Jersey.

“Offeror” means an individual or entity submitting an offer through an electronic procurement platform in response to a solicitation for bids, proposals, qualifications, or quotations conducted in a manner authorized under the laws of the State of New Jersey, or an individual or entity submitting a paper-based response if allowed by the local unit in parallel with electronic submission.

“Offer package” means the forms, documents, and data entry fields provided to prospective offerors for use in responding to a solicitation.

“Offer submission” means documents and information entered into data entry fields that comprise an offeror’s response to a solicitation for bids, proposals, qualifications, or quotations conducted through an electronic procurement platform or a paper-based submission process if allowed by the local unit in parallel with electronic submission.

“Personal identifying information” means information that can be used to distinguish or trace an individual's identity including, but not limited to, the individual’s name, Social Security number, or biometric records, alone or when combined with other personal or identifying information that is linked, or linkable, to a specific individual, such as, but not limited to, a mother’s maiden name and date and place of birth.

“Public works” mean as set forth at N.J.A.C. 5:34-1.2. The term “public works” shall include “public works construction” contracts as defined at N.J.S.A. 40A:11-4.9.

“Qualifications” means responses submitted by contractors or vendors in response to a request for qualifications solicited by a local unit, from which the local unit will determine which contractors or vendors are permitted to solicit bids or proposals.

“Real property” shall include, in addition to land and anything growing on, attached to, or erected on the land, development rights or easements, or any right, interest, or estate in the area extending above any real property, or capital improvement thereon, to such a height or altitude as any title, interest, or estate in real property may extend, commonly known as “air rights.”

“REC” means a renewable energy certificate issued by the New Jersey Board of Public Utilities such as, but not limited to, solar renewable energy certificates (SRECs).

“Reverse auction” means an auction where bidders submit progressively lower bids versus a bidder’s initial bid, with the winner submitting the lowest responsible bid, rather than a standard auction process where the highest bid wins.

“Set-aside program” means a program enacted by a local unit as permitted under N.J.S.A. 18A:18A-51 through 59 or 40A:11-41 through 49, as applicable, whereby certain contracts or portions thereof are reserved for qualified minority business enterprises, qualified women’s business enterprises, qualified small business enterprises, qualified veterans business enterprises, or any other qualified business enterprises for which set-aside programs are permitted under the Local Public Contracts Law or Public School Contracts Law.

“Surplus property” means personal property not needed for a local unit’s public use. This term shall encompass renewable energy certificates (RECs) but shall not include personal property that is necessary or incidental to the furnishing, refurnishing, or refurbishing of a building sold or leased as part of an online auction of real property.

### **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.
- (b) Prospective offerors must be able to obtain specifications, plans, and any other documents pertaining to a solicitation for bids, proposals, qualifications, or quotations conducted in a manner authorized under the laws of the State of New Jersey; including bid checklists and any documents required to be submitted by an offeror upon submitting an offer or before the local unit can award a contract. If a local unit conducts a procurement through a platform that requires payment of a registration or other fee before such materials can be obtained, the materials shall also be made available to prospective offerors on the local unit's website and/or at the local unit's offices during the local unit's regular business hours. For materials

obtained at the local unit's offices, the local unit shall not charge a prospective offeror in excess of what can otherwise be charged for obtaining such documents if the local unit did not employ an electronic procurement platform.

- (c) All information pertaining to a competitive procurement conducted through an electronic procurement platform shall be transmitted and received through the platform and accessible within the platform. Offer submissions shall be transmitted to a secure electronic lockbox, to which access shall be restricted to individuals specifically authorized by the local unit with all activity in the lockbox logged. The contents of offer submissions connected with a competitive procurement shall not be able to be accessed before the submission deadline, except that for reverse auctions, the lowest bid amount may be visible. Notwithstanding the provisions of this subsection, authorized persons within the local unit shall have the exclusive ability to view a competitive quotation as received in real time.
- (d) For contracts subject to competitive procurement, the names of all offerors and the price of their respective offers shall be verbally announced in public by the local unit once the submission deadline has passed. 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 offerors that have obtained offer packages.
- (e) Notwithstanding the provisions of any other law to the contrary, where a prospective offeror has obtained an offer package through an electronic procurement platform, notices of revisions or addenda shall be transmitted to the prospective offeror through the electronic procurement platform in lieu of the method of delivery otherwise required under New Jersey law for the procurement solicitation. A local unit, at its option, may choose to supplement platform originated notices of revisions or addenda by using the provisions otherwise required by State law. Receipt of notices of revisions or addenda transmitted through an electronic procurement platform shall be evidenced by a time stamp generated by the platform confirming when notice was transmitted to the prospective offeror. For prospective offerors obtaining offer packages from the local unit offices, notices of revisions or addenda shall be transmitted in the manner required under New Jersey law for the solicitation.
- (f) Local units may accept a bid bond, performance bond, or surety company certificate in a format where the bond or certificate can be verified electronically through a verification code issued by the surety agency. Notwithstanding the requirements of (c) above, a local unit may accept a guarantee in the form of a cashier's check or certified check when authorized by law; however:
  - 1. The offeror shall include an image of the check upon submitting an offer submission through the electronic procurement platform.
  - 2. The physical check shall be sealed upon submission to the local unit and clearly marked as part of the offeror's response;
  - 3. The local unit shall receive the physical check from the offeror no later than the deadline for receipt of offer submissions; and
  - 4. The local unit cannot open the sealed envelope containing the physical check until the time and place of the opening of offer submissions.

- (g) Engineering and architectural documents requiring an engineer's or architect's seal and/or signature shall have digital seals and digital signatures pursuant to rules promulgated by the New Jersey Board of Professional Engineers and Land Surveyors and the New Jersey Board of Architects, respectively. Electronic signatures or digital signatures may be utilized for all other documents requiring a signature from the offeror.
- (h) 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.
- (i) Notwithstanding the fact that a winning public works bid was submitted through an electronic procurement platform, 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.

#### **5:34-5.4 Procurements using electronic procurement platform and parallel paper-based process**

In a single competitive procurement that is not a reverse auction, a local unit may allow offerors the option of using either an electronic procurement platform or 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, to submit an offer. All paper-based offer submissions shall be opened at the same date and time as offers submitted through the local unit's electronic procurement platform, at which time the local unit shall upload the paper-based offer submissions onto the platform. This section shall not be interpreted to prevent local units from requiring all offers to be submitted through an electronic procurement platform and prohibiting paper-based offer submissions.

#### **5:34-5.5 Advertisements; time for response**

- (a) 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.
  1. 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.
  2. If a local unit is utilizing both an electronic procurement platform and a paper-based offer submission process for the same procurement, the advertisement shall state that offers may be submitted by either method. 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.
- (b) 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 offices during regular business hours and must include the address of the building where the materials can be obtained, along with the regular business hours.

- (c) The minimum amount of time to submit an offer under the Local Public Contracts Law, Public School Contracts Law, or any other law shall remain the same as for paper-based procurement.

#### **5:34-5.6 Reverse auctions generally**

- (a) A local unit may only utilize a reverse auction for purchases of energy and commodities..
- (b) If the local unit is utilizing an electronic procurement platform with 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.
- (c) Bidders shall not be able to view the identity of other bidders in the reverse auction while the auction is in progress.
- (d) Unless otherwise specified under this subchapter, 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 its first bid.
- (e) The Director shall have the sole discretion to establish a pilot program evaluating the feasibility of reverse auctions for other goods and services procurements.

#### **5:34-5.7 Additional provisions applicable to reverse auctions for procurement of energy supply from third-party supplier**

- (a) A local unit may only utilize an electronic procurement platform for energy supply if the platform vendor is registered with the BPU as an "energy agent" pursuant to the New Jersey Electric Discount and Energy Competition Act of 1999 (EDECA).
- (b) Only those third-party energy suppliers that are licensed by the BPU are eligible bidders. Third-party energy suppliers licensed by the BPU may only submit bids to local units located within their permitted service area.
- (c) 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 e-mail 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), e-mail notices transmitted to all eligible third-party energy suppliers pursuant to this section shall be in lieu of newspaper advertisement.

- (d) 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.
- (e) 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.

### **5:34-5.8 Sale of surplus property**

- (a) The sale of surplus property pursuant to N.J.S.A. 18A:18A-45 or 40A:11-36 may be conducted on an electronic procurement platform either through an online public auction or through the online equivalent of a sealed bid process.
- (b) An electronic procurement platform used for the sale of surplus property shall provide, at a minimum:
  1. Detailed online instructions on how to use the platform;
  2. A bid registration process that will reliably confirm the identity of the person or entity bidding, as well as any individuals authorized to submit bids. This registration should include full contact information, including a physical address and the logging of the IP address used to create the account;
  3. The ability to upload and save onto the platform any completed forms, disclosures, and certifications that, pursuant to New Jersey law, must be submitted to the local unit;
  4. Timestamping and logging of all local unit and bidder actions on the platform, including IP address;
  5. The ability for prospective bidders to post questions, and the local unit to post responses thereto, in a manner visible to all prospective bidders. This shall not absolve the local unit from issuing a notice of revision or addenda as may be required pursuant to law;
  6. 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;
  7. Platform-related help desk support for prospective bidders and the local unit through the internet, e-mail, and at least one toll-free telephone number; and
  8. A standard complaint procedure concerning platform-related problems for both the local unit and bidders. 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.
- (c) The governing body of a local unit must adopt an authorizing resolution for each online sale of surplus property containing, at a minimum, the following:

1. A description of the surplus property;
  2. A statement that the surplus property is no longer needed for public use and that the sale will be held on an electronic procurement platform either through an online public auction or the online equivalent of a sealed bid process;
  3. The name of the electronic procurement platform;
  4. For each item of surplus property that is part of a local unit's fixed asset inventory, the description of each item shall include information that sufficiently identifies the item and provides an audit trail;
  5. For surplus property that is not part of the local unit's fixed asset inventory, except for motorized vehicles titled in the name of the local unit, a general description sufficient to inform the public of the item or items being sold. If RECs are being sold through online public auction, the number of RECs to be sold shall be stated in the resolution;
  6. For each motorized vehicle titled in the name of the local unit, a description of each vehicle with sufficient detail to inform the public of the item being sold, along with the vehicle information number (VIN) displayed on the title;
  7. If the sale is being conducted through an online public auction:
    - i. The date and time of the online auction. If the online auction will take place over a set number of hours or days, the resolution shall state the dates and times upon which the sale will commence and conclude; and
    - ii. Whether a reserve price is to be set and, if so, the amount of the reserve price.
  8. A statement that the local unit reserves the right to reject all bids if the local unit determines such rejection to be in the public interest; and
- (d) No single resolution shall authorize more than one online sale; however, multiple items of surplus property may be sold at a single online sale. In the resolution authorizing an online sale, the governing body may delegate, to the purchasing agent, the authority to accept or reject bids on any item where the winning bid comes in under the local unit's bid threshold.
- (e) If a local unit has rejected all bids pursuant to N.J.S.A. 18A:18A-45(e) or 40A:11-36(5) and holds a subsequent public sale of surplus property, the subsequent public sale shall be authorized by the governing body in a separate resolution from the resolution authorizing the initial public sale.
- (f) Advertisements of the online sale of surplus property shall continue to be published in the local unit's official newspaper pursuant to N.J.S.A. 18A:18A-45 or 40A:11-36. The advertisement shall, at a minimum, set forth:
1. A general description of the surplus property to be sold and the conditions of sale;
  2. State that the public sale is being held online, and whether it will be held as an online auction or by the online equivalent of a sealed bid process;
  3. Include the name of the electronic procurement platform on which the sale is being conducted, along with the website address of the platform;

4. If the public sale is being conducted through an online public auction, the date and time of the online auction. If the online public auction will take place over a set number of hours or days, the advertisement shall state the dates and times upon which the auction will commence and conclude;
  5. If the public sale is being conducted through the online equivalent of sealed bid submission, the date and time by which bids must be submitted; and
  6. A statement that the local unit reserves the right to reject all bids if the local unit determines such rejection to be in the public interest.
- (g) An online sale shall commence not less than seven, nor more than 14, days after the date of publication of the advertisement.
- (h) If the local unit is using a live auction that permits bidders the option to submit bids online, the advertisement shall, at a minimum, set forth:
1. A general description of the surplus property to be sold and the conditions of sale;
  2. The time, date, and location of the auction; and
  3. A statement that bidders may participate either in person or electronically, along with the website address where bidders can obtain information on participating electronically.
- (i) If a local unit receives no bids for an item of surplus property at an initial public sale, and the local unit places the item up for a subsequent online auction, the local unit may set by resolution, a “buy it now” price that, once a bidder agrees to pay, concludes all bidding. The “buy it now” price shall be no less than the estimated fair value of the item of surplus property.
- (j) In the event there are no bidders, or a minimum reserve price was not met for an item, the electronic procurement platform may provide an option of continuing or reopening a sale after the close of an online public auction. The potential for this occurrence must be provided for in the agreement between the local unit and the electronic procurement platform vendor, with the provision made clear to bidders on the platform’s website. In the event of a continuance or re-opening, those bidders who participated in the sale shall be notified of the new date, but the local unit is not required to publish an additional notice in its official newspaper.
- (k) An electronic procurement platform vendor may collect monies from the sale of surplus property through an online public auction, deduct the commission owed, and disburse the balance of proceeds to the local unit, but only if:
1. The contract between the platform vendor and the local unit expressly provides for this arrangement; and
  2. The electronic procurement platform vendor either holds the proceeds in an escrow account, or otherwise posts a surety bond, auctioneer’s bond, or insurance in an amount sufficient to cover the potential loss of such funds.

**5:34-5.9 Sale of real property by municipalities, counties, and fire districts pursuant to the local lands and buildings law**

- (a) The sale of real property by open public sale at auction to the highest bidder pursuant to N.J.S.A. 40A:12-13 may be conducted on an electronic procurement platform.
- (b) An electronic procurement platform used for the sale of real property pursuant to this section shall provide, at a minimum:
1. Detailed online instructions on how to use the platform;
  2. A bid registration process that will reliably confirm the identity of the person or entity bidding as well as any individuals authorized to submit bids. This registration should include full contact information, including a physical address and the logging of the IP address used to create the account;
  3. The ability to upload and save onto the platform any completed forms, disclosures, and certifications that, pursuant to New Jersey law, must be submitted to the municipality, county, or fire district;
  4. Timestamping and logging of all actions by a bidder or the municipality, county, or fire district on the platform, including IP address;
  5. The ability for prospective bidders to post questions, and the municipality, county, or fire district to post responses thereto, in a manner visible to all prospective bidders. This shall not absolve the municipality or county from issuing a notice of revision or addenda as may be required pursuant to law;
  6. Individual user accounts with password protected access for municipal, county, or fire district 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;
  7. Platform-related help desk support for prospective bidders and the municipality, county, or fire district through the Internet, e-mail, and at least one toll-free telephone number; and
  8. A standard complaint procedure concerning platform-related problems for both government entity and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the government entity for inspection, along with a record of problems arising with the system and the resolution of same.
- (c) Advertisements of the online public auction for the sale of real property shall continue to be published in a newspaper circulating in the municipality or municipalities in which the land is situated pursuant to N.J.S.A. 40A:12-13(a). The advertisement shall, at a minimum, include:
1. The address where each parcel of real property is located, along with the block and lot;
  2. That an auction for sale to the highest bidder of the parcel or parcels of real property is being held online;
  3. The name of the electronic procurement platform on which the auction is being conducted, along with the website address of the platform;
  4. The dates and times upon which the online auction will commence and conclude;

5. Any conditions of sale and restrictions on use as may be permitted pursuant to N.J.S.A. 40A:12-13(a);
  6. As may be applicable, the time within which any conditions of sale shall be operative;
  7. Any reservation by the governing body of the right to reject all bids where the highest bid is not accepted; and
  8. If applicable, a description of any estate or interest that the municipality, county, or fire district intends to retain, along with a statement that bidders shall be required to submit a bid under Option A and Option B as set forth in at N.J.S.A. 40A:12-13(a).
- (d) An online auction for the sale of real property shall commence not less than seven days after the date of the last newspaper publication advertising the online auction.
- (e) If a live auction allows for bidders to participate electronically, the advertisement shall at minimum include, in addition to the content required at (b)1, 5, 6, 7, and 8 above, the date, time, and place of the auction, a statement that bidders may participate either in person or electronically and the website address where bidders can obtain information on participating electronically.

**5:34-5.10 Lease of real property to highest bidder by municipalities, counties, and fire districts pursuant to the local lands and buildings law**

- (a) The lease of real property to the highest bidder at a competitive solicitation held pursuant to N.J.S.A. 40A:12-14 may be conducted on an electronic procurement platform.
- (b) An electronic procurement platform used for the solicitation of bids for the lease of real property pursuant to this section shall provide, at a minimum:
1. Detailed online instructions on how to use the platform;
  2. A bid registration process that will reliably confirm the identity of the person or entity bidding, as well as any individuals authorized to submit bids. This registration should include full contact information, including a physical address and the logging of the IP address used to create the account;
  3. The ability to upload and save onto the platform any completed forms, disclosures, and certifications that, pursuant to New Jersey law, must be submitted to the municipality, county, or fire district;
  4. Timestamping and logging of all actions by the bidder and the government entity on the platform, including IP address;
  5. The ability for prospective bidders to post questions, and the municipality, county or fire district to post responses thereto, in a manner visible to all prospective bidders. This shall not absolve the government entity from issuing a notice of revision or addenda as may be required pursuant to law;
  6. Individual user accounts with password protected access for municipal, county, or fire district 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;
7. Platform-related help desk support for prospective bidders and the government entity through the Internet, e-mail, and at least one toll-free telephone number; and
  8. A standard complaint procedure concerning platform-related problems for the government entity and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the government entity for inspection, along with a record of problems arising with the system and the resolution of same.
- (c) Advertisements of the online competitive solicitation for the lease of real property shall continue to be published in a newspaper circulating in the municipality or municipalities in which the leasehold is situated pursuant to N.J.S.A. 40A:12-14(a). The advertisement shall, at a minimum, set forth:
1. The address where each parcel of real property is located along with the block and lot and, if a capital improvement or space therein or thereon is to be leased, a brief description of the capital improvement;
  2. That the competitive solicitation of a lessor is being held online and that the lease shall be awarded to the highest bidder either through an online public auction or through the online equivalent of a sealed bid submission;
  3. The name of the electronic procurement platform on which the competitive solicitation is being conducted, along with the website address of the platform;
  4. If an online auction is being held, the dates and times upon which the sale will commence and conclude;
  5. If the public sale is being conducted through the online equivalent of sealed bid submission, the date and time by which bids must be submitted;
  6. Any conditions, restrictions, and limitations upon the tenancy subject to the lease; and
  7. Any reservation by the governing body of the right to reject all bids where the highest bid is not accepted.
- (d) An online auction for the lease of real property shall commence not less than sevendays after the date of the last newspaper publication advertising the online auction.
- (e) If the public solicitation is being conducted through the electronic equivalent of sealed bids, the date of the deadline for submitting bids shall be no less than seven days after the date of the last newspaper publication advertising the sale.
- (f) If a planned live auction allows bidders to participate electronically, the advertisement shall, in addition to the content required at (b)1, 6, and 7 above:
1. State that the lease shall be awarded to the highest bidder by open public bidding at auction;
  2. Set forth the date, time, and place of the auction; and

3. Include a statement that bidders may participate in the auction either in person or electronically and the internet address of the website where bidders can obtain information on participating electronically;

### **5:34-5.11 Sale of real property by boards of education**

- (a) The sale of real property to the highest bidder at a public sale held pursuant to N.J.S.A. 18A:20-6 and 18A:20-7 may be conducted on an electronic procurement platform.
- (b) An electronic procurement platform used for the sale of real property pursuant to this section shall provide, at a minimum:
  1. Detailed online instructions on how to use the platform;
  2. A bid registration process that will reliably confirm the identity of the person or entity bidding, as well as any individuals authorized to submit bids. This registration should include full contact information, including a physical address, and the logging of the IP address used to create the account;
  3. The ability to upload and save onto the platform any completed forms, disclosures, and certifications that, pursuant to New Jersey law, must be submitted to the board of education;
  4. Timestamping and logging of all board of education and bidder actions on the platform, including IP address;
  5. The ability for prospective bidders to post questions, and the board of education to post responses thereto, in a manner visible to all prospective bidders. This shall not absolve the board of education from issuing a notice of revision or addenda as may be required pursuant to law;
  6. Individual user accounts with password protected access for board of education 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;
  7. Platform-related help desk support for prospective bidders and the board of education through the Internet, e-mail, and at least one toll-free telephone number; and
  8. A standard complaint procedure concerning platform-related problems for both the board of education and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the board of education for inspection, along with a record of problems arising with the system and the resolution of same.
- (c) Advertisements of the online public sale shall continue to be published pursuant to N.J.S.A. 18A:20-6 in a newspaper published in the school district, or if none are published therein, then a newspaper circulating in the school district. The advertisement shall, at a minimum, set forth:
  1. The address where each parcel of real property is located, along with the block and lot;

2. That the public sale is being held online and that the real property shall be sold to the highest bidder either through an online public auction or through the online equivalent of sealed bid submission;
  3. Include the name of the electronic procurement platform on which the public sale is being conducted, along with the website address of the platform;
  4. If an online auction is being held, the dates and times upon which the sale will commence and conclude;
  5. If the public sale is being conducted through the online equivalent of sealed bid submission, the date and time by which bids must be submitted;
  6. Any reservation by the board of the right to reject all bids where the board of education does not accept the highest bid; and
  7. Any conditions of sale and restrictions on use as may be permitted by law to be imposed by a board of education.
- (d) If a live auction is being held that allows for bidders to participate electronically, the advertisement shall, in addition to the content required at (b)1, 6, and 7:
1. State that the sale of the real property shall be made to the highest bidder by open public bidding at auction;
  2. Set forth the date, time, and place of the auction; and
  3. Include a statement that bidders may participate in the public auction either in person or electronically and the Internet address of the website where bidders can obtain information on participating electronically.

#### **5:34-5.12 Lease of real property to highest bidder by boards of education**

- (a) The lease of real property to the highest bidder pursuant to N.J.S.A. 18A:20-8.2 may be conducted on an electronic procurement platform.
- (b) An electronic procurement platform used for the solicitation of bids for the lease of real property pursuant to this section shall provide, at a minimum:
1. Detailed online instructions on how to use the platform;
  2. A bid registration process that will reliably confirm the identity of the person or entity bidding, as well as any individuals authorized to submit bids. This registration should include full contact information, including a physical address and the logging of the IP address used to create the account;
  3. The ability to upload and save onto the platform any completed forms, disclosures, and certifications that, pursuant to New Jersey law, must be submitted to the board of education;
  4. Timestamping and logging of all actions by the bidder and the board of education on the platform, including IP address;

5. The ability for prospective bidders to post questions, and the board of education to post responses thereto, in a manner visible to all prospective bidders. This shall not absolve the board of education from issuing a notice of revision or addenda as may be required pursuant to law;
  6. Individual user accounts with password protected access for board of education 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;
  7. Platform-related help desk support for prospective bidders and the board of education through the Internet, e-mail, and at least one toll-free telephone number; and
  8. A standard complaint procedure concerning platform-related problems for both the board of education and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the board of education for inspection, along with a record of problems arising with the system and the resolution of same.
- (c) Advertisements of the online competitive solicitation for the lease of real property shall continue to be published in a newspaper published in the school district in which the leasehold is situated, or if none are published therein, a newspaper circulating in the district in which the leasehold is situated. The advertisement shall, at a minimum, set forth:
1. The address where each parcel of real property is located, along with the block and lot and, if a capital improvement or space therein or thereon is to be leased, a brief description of the capital improvement;
  2. That the competitive solicitation of a lessor is being held online and that the lease shall be awarded to the highest bidder through the online equivalent of a sealed bid submission;
  3. The name of the electronic procurement platform on which the competitive solicitation is being conducted, along with the website address of the platform;
  4. The date and time by which bids must be submitted;
  5. Any conditions, restrictions, and limitations upon the tenancy subject to the lease; and
  6. Any reservation by the board of the right to reject all bids where the board does not accept the highest bid.

### **5:34-5.13 Fees and procurement of electronic procurement platforms**

- (a) For public works contracts or contracts for goods or services, an electronic procurement platform vendor shall not charge an offeror
1. A fee of more than \$50.00 per offer submission;
  2. A fee of more than \$50.00 for accessing documents and information connected to an offer (not including any fees required for platform registration);
  3. A percentage of the winning offer; or

4. Separate fees for accessing documents or information connected to an offer and for submitting an offer.
- (b) In the case of reverse auctions for energy, the electronic procurement platform vendor may base its fee on the amount of electricity or natural gas purchased.
  - (c) If a procurement is subject to a local unit's set-aside program, any fee charged by the electronic procurement platform vendor to either access documents and information or submit an offer in connection with the procurement shall be waived by the platform vendor or refunded to the offeror by the local unit.
  - (d) For any contract for an electronic procurement platform where the aggregate fees to be charged over the life of the intended contract will exceed the local unit's bid threshold, an electronic procurement platform shall not be construed to fall under one of the exceptions to public advertising for bids set forth at N.J.S.A. 18A:18A-5 or 40A:11-5, except as set forth at N.J.S.A. 40A:11-5(3) or 18A:18A-5(c). Nothing in this section shall be interpreted to prohibit a local unit from procuring an electronic procurement platform under an emergency contract pursuant to N.J.S.A. 18A:18A-7 or 40A:11-6, as applicable, and N.J.A.C. 5:34-6.1 under circumstances when an emergency contract may be awarded pursuant to law.
  - (e) The use of an electronic procurement platform may be procured through competitive contracting pursuant to N.J.S.A. 40A:11-4.1 et seq. or 18A:18A-4.1 et seq., as appropriate, without seeking prior approval of the Director of the Division of Local Government Services.
  - (f) A local unit may procure use of an electronic procurement platform through cooperative purchasing.
    1. Subject to the provisions at N.J.A.C. 5:34-7, a lead agent in a cooperative purchasing system as defined at N.J.A.C. 5:34-7.2 may enter into a contract for an electronic procurement platform that can in turn be made available for use by the system's members;
    2. A local unit may procure an electronic procurement platform;
      - i. Under a contract entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury for which the terms are extended to local units, subject to the provisions of N.J.S.A. 40A:11-12 or 18A:18A-10, as applicable, and N.J.A.C. 5:34-7.29; or
      - ii. Utilizing the Federal Supply Schedules of the General Services Administration or schedules from other Federal procurement programs promulgated by the Director of the Division of Purchase and Property in the Department of the Treasury subject to the provisions of N.J.S.A. 40A:11-12 or 18A:18A-10, as applicable, and N.J.A.C. 5:34-9.7.
    3. A local unit may, pursuant to N.J.S.A. 52:34-6.2, procure an electronic procurement platform through a national cooperative contract. Prior to awarding a contract to an electronic procurement platform vendor that would otherwise need to be procured competitively, the local unit shall determine that the use of the national cooperative contract shall result in cost savings after all applicable factors have been considered. The local unit shall document the cost savings calculation.

- (g) A bid specification or RFP for an electronic procurement platform shall specify whether the local unit is to pay for the system with offerors using the platform without charge, or whether the platform vendor is to be compensated solely through charging fees to offerors using the platform, or whether the platform vendor is to provide a response under both options.
- (h) When an electronic procurement platform vendor is to be compensated solely through charging fees to offerors and prospective offerors 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.
  - 1. 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.
  - 2. If the 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 the low bidder.

#### **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 is provided 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.
- (c) All information and data submitted by the offeror in response to a local unit procurement solicitation, or competitive solicitation in relation to surplus property or real property, is deemed property of the local unit. The platform vendor shall have a protocol to submit this information and data to the local unit, including all offeror personal identifying information, in a universal format appropriate to the information or data being transmitted such as, but not necessarily limited to, PDF or Excel-based documents.
- (d) The local unit shall adhere to all applicable records retention requirements set forth at 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 all records referenced at (c) above 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.

#### **5:34-5.15 Contracts with electronic procurement platform vendors**

- (a) All contracts between a local unit and an electronic procurement platform vendor shall:
- 1. In addition to being reviewed by legal counsel if deemed necessary by the local unit, 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 the execution of the contract as to the terms, including satisfaction of the requirements of this section;
  - 2. Be awarded by the governing body notwithstanding the value of the contract, or whether the contract was procured competitively or through cooperative purchasing, except in circumstances where an emergency contract may be entered into pursuant to law; and
  - 3. Contain adequate provisions for compensating the local unit against losses caused as a result of negligence or misconduct on the part of the platform vendor and the platform vendor's employees and agents.

- (b) The following terms shall not be enforceable in a contract between a local unit and an electronic procurement platform vendor:
1. A provision requiring the local unit to indemnify or hold harmless a platform vendor or its employees and agents; and
  2. A provision requiring binding arbitration as a means of dispute resolution between the local unit and the platform vendor.
- (c) 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.
- (d) All contracts entered into between the local unit and the electronic procurement platform vendor shall be in writing, executed by all parties, and have appropriate provisions for termination of the contract, including, but not limited to, termination for failure to perform on the part of the vendor.
- (e) Contracts for electronic procurement platforms shall not be considered data processing service contracts pursuant to N.J.S.A. 40A:11-15(5), and the total duration of a contract for an electronic procurement platform shall not exceed five years.