

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Electronic Procurement by Local Government and Public School Contracting Units; Bid and Proposal Openings Where Public Must Be Excluded

Adopted New Rules: N.J.A.C. 5:34-5 and 8.5

Adopted Amendment: N.J.A.C. 5:34-4.3

Proposed: June 15, 2020, at 52 N.J.R. 1275(a).

Adopted: March 9, 2021, by Jacquelyn A. Suárez, Director, Division of Local Government Services.

Filed: March 9, 2021, as R.2021 d.031, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 40A:11-4.12 and 40A:11-37.1.

Effective Date: April 5, 2021.

Expiration Date: August 7, 2027.

Take notice that on May 19, 2020, the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs adopted, on an emergency basis, new rules and an amendment to permit contracting units as defined at N.J.S.A. 40A:11-2 of the Local Public Contracts Law (LPCL) and boards of education as defined at N.J.S.A. 18A:18A-2 of the Public School Contracts Law (PSCL) to conduct procurement through an electronic internet-based platform. Whereas the emergency rules would normally have expired within 60 days of the May filing, due to Governor Murphy's Executive Order No. 127 (2020), the emergency adopted rules have remained in effect during the present public health emergency.

The commenters listed below submitted comments, which are summarized and responded to by the Director.

Michael A. Vrancik, Director of Governmental Relations, New Jersey School Boards Association

1. COMMENT: The New Jersey School Boards Association (NJSBA) supports proposed N.J.A.C. 5:34-4.3, 5, and 8.5. The NJSBA believes that boards of education should be able to take advantage of electronic procurement technology and practices that result in streamlined purchasing procedures and more efficient use of taxpayer funds. Further, the NJSBA believes that the purchase of goods and services through the Internet and other electronic media, commonly known as E-commerce, can provide boards of education with a wider range of purchasing opportunities that may bring products at a better price while still ensuring the security and accuracy of transactions, as well as protecting the integrity of public funds. Given the ongoing COVID-19 outbreak, this rulemaking will allow school districts to solicit bids and conduct procurement in a safe and efficient manner. Enabling school districts to utilize electronic procurement on an immediate basis will also reduce the barriers to conducting competitive procurement during the current COVID-19 outbreak, enabling more efficient use of taxpayer funds.

RESPONSE: The Division of Local Government Services (Division) appreciates the supportive comments from the NJSBA on the concurrently proposed electronic procurement rules.

Gerald T. Reiner, Jr., Purchasing Agent, County of Bergen

2. COMMENT: The regulations, as proposed, set the minimum standard of e-procurement, which were needed for some time. The paper-based bidding process not only poses a burden on contracting units, especially with the social distancing requirements needed to re-open our communities, but under the current circumstances poses a life safety issue. Therefore, this was a perfect time for such regulations to be implemented.

RESPONSE: The Division of Local Government Services appreciates Mr. Reiner's supportive comments on the concurrently proposed electronic procurement rules.

Gordon Ball, Executive Director, National Institute of Governmental Purchasing—Southern New Jersey Chapter (SNJNIGP)

3. COMMENT: SNJNIGP appreciates the opportunity to review and comment on the electronic procurement regulations. The regulations are workable and understandable, with the SNJNIGP membership not having reported any issues with the regulations.

RESPONSE: The Division of Local Government Services appreciates the supportive comments from SNJNIGP on the concurrently proposed electronic procurement rules.

Fran S. Shames, Executive Director, Governmental Purchasing Association of New Jersey (GPANJ)

4. COMMENT: N.J.A.C. 5:34-4.3(c) and 8.5(a) require a proposal or bid opening, respectively, to be broadcast live at the contracting unit's facilities. In the last few months, several boards of education and local contracting units had placed bid advertisements in newspapers directing that bids and/or proposals be submitted to the offices of their architect, engineer, or consultant, with the bid opening occurring at those offices. Neither an architect, engineer, or consultant have the statutory authority, pursuant to the LPCL or the PSCL, to receive and unseal bids. Such individuals, nor their staffs, have the proper training or experience in receiving, handling, and safeguarding bids. Since many local contracting units and boards of education will heavily rely on their e-procurement platform vendors for various related services and guidance, e-procurement vendors should be able to provide, and perform, their services remotely without the need for local units to have such vendors use their own facilities for the receipt and opening of offers. Is it clear that only a local unit's facilities can be used?

RESPONSE: This rulemaking prohibits bid or proposal openings from taking place at the offices of a private entity or in a private residence. However, in the event a local unit's facilities are unavailable, the Division will clarify that a bid or proposal opening may take place at the facilities of another local unit.

5. COMMENT: N.J.A.C. 5:34-4.3(c)3 mandates the presence of any documents required to be part of the proposal submission to be noted for each proposal. This is not a requirement of the LPCL or PSCL. Such a requirement can place a purchasing agent and its local contracting unit in a difficult situation if a document is not announced because it was out of order rather than left out as part of the proposal submission. Inadvertent failure to note a document present in the submission can lead to litigation by disgruntled bidders who could claim that someone intentionally removed or misplaced the document. It could result in all bids being rejected and the receipt of new bids required.

RESPONSE: The objective of announcing the presence of each required bid or proposal document was to approximate, as closely as possible, the ability of an individual attending an in-person bid opening to examine the submissions. Although the Division has determined to adopt the above-referenced provision at both N.J.A.C. 5:34-4.3(c)3 and 8.5(d), in light of the concerns raised by the commenter, the Division will consult with stakeholders on whether to remove or otherwise modify the requirement, as more experience is gained while working with the new rules. The requirement that paper-based responses to competitive contracting proposal solicitations must be displayed back and front for the camera prior to opening the proposals at a remote bid opening during a public health emergency will also remain.

6. COMMENT: At N.J.A.C. 5:34-5.2, the definition of the term "bid" is straightforward. However, the term also encompasses a bid being submitted through a paper-based process parallel to electronic bid submission. The idea of a paper-based system being parallel to an electronic procurement platform is also referenced in the definitions of "offer," "offeror" and "offer submission." How is a purchasing agent going to develop and implement two different submission processes that must run parallel with each other?

RESPONSE: The commenter appears to address N.J.A.C. 5:34-5.4 rather than the definitions at N.J.A.C. 5:34-5.2. N.J.A.C. 5:34-5.4 gives local units the option to accept, for a single competitive procurement, paper-based offer submissions alongside offers submitted through an

electronic procurement platform. If a local unit is not confident in its staff's ability to effectively administer a parallel paper-based and electronic procurement process, the local unit can select one or the other.

7. COMMENT: How is the term "personal identifying information" used in the proposed regulations? Is it used at N.J.A.C. 5:34-5.3(a)2 for an online offeror registration process?

RESPONSE: The term "personal identifying information" is defined at N.J.A.C. 5:34-5.2 as "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." N.J.A.C. 5:34-5.14 requires electronic procurement platforms to encrypt any personal identifying information necessary for an offeror to register for, and use, the system; with personal identifying information being maintained only to the minimum extent necessary for functionality.

8. COMMENT: N.J.A.C. 5:34-5.3(a)6, as currently drafted, is somewhat confusing and appears to conflict with N.J.A.C. 5:34-5.3(e). Since a local unit must use the statutory provisions at N.J.S.A. 18A:18A-21 or 40A:11-23 regarding the issuing of a notice of revision or addenda, it could take a while before prospective offerors' posted questions receive the local unit's posted responses. N.J.A.C. 5:34-5.8(b)5 as currently drafted poses the same issue.

RESPONSE: The referenced provisions are not in conflict. N.J.A.C. 5:34-5.3(a)6 requires an electronic procurement platform to allow prospective vendors or contractors, defined collectively in the rulemaking as "offerors," to post questions regarding the solicitation and local units to post the responses. The rulemaking further states that, if a local unit's response would have the impact of changing the bid or proposal specifications such that the local unit would be required to issue revision or addenda under law, the local unit cannot rely on the posted response to avoid the statutory requirement to issue notices of revision or addenda to all contractors or bidders requesting to be notified of same. Where a prospective vendor or contractor obtains a bid or proposal package from the electronic procurement platform, N.J.A.C. 5:34-5.3(e) allows local units to choose between transmitting notices of revision or addenda through the electronic procurement platform exclusively or sending the notices to prospective contractors or vendors through the physical delivery methods otherwise specified by law.

9. COMMENT: N.J.A.C. 5:34-5.3(a)7 would authorize a local unit to extend the amount of time for submission of offers beyond the originally advertised time. The provision does not include "date and time" or "date," and seems to apply to increasing the time for receipt of bid in real time. N.J.S.A. 40A:11-23b, of the Local Public Contracts Law, does not allow bids to be received after the time designated in the advertisement. This could be an area for litigation by disgruntled offerors; there are both reported and unreported court cases regarding the application of N.J.S.A. 40A:11-23b and the alleged abuses of time extensions. What would be some reasons for, and examples of, when a local unit could permissively extend the amount of time?

RESPONSE: N.J.A.C. 5:34-5.3(a)7 requires a platform to allow a local unit to extend the submission deadline, but does not obviate other legal requirements, such as proper advertisement of the extension. The reference to "time" was meant to address changes in the submission date, as well as the time; however, the regulation will be changed upon adoption to include reference to the date, as well as to the time.

10. COMMENT: With respect to N.J.A.C. 5:34-5.3(d), the local units should have the sole discretion on whether to release the names of prospective offerors that have obtained offer packages.

RESPONSE: N.J.A.C. 5:34-5.3(d) requires local units conducting a competitive procurement to announce, in public, the names of all respondents and the price of their respective submissions. As bid and proposal openings are public, the Division finds it necessary to maintain this requirement to promote transparency. By contrast, current law gives local units sole discretion on whether to release names of prospective vendors or contractors having obtained bid or proposal documents, and N.J.A.C. 5:34-5.3(d) maintains the ability of local units to exercise such discretion.

11. COMMENT: N.J.A.C. 5:34-5.3(f) currently permits a local unit to accept a guarantee in the form of a cashier's check or certified check, when authorized by law, when a bid or proposal is submitted electronically through the e-procurement platform. There are concerns with the handling and safeguarding of the physical check from its sealed submission to the opening of the sealed envelope with the opening of offer submissions. The check could be never submitted by an offeror or misplaced by the local unit. If the physical check is not there when the offers are submitted and opened, will that offeror's offer have to be rejected because of a "lost" envelope?

RESPONSE: If a local unit is not confident of its ability to track and maintain custody of a cashier's or certified check submitted separately from a bid or proposal submitted through an electronic procurement system, nothing at N.J.A.C. 5:34-5.3(f) prevents a local unit from requiring all forms of bid guarantees to be transmitted electronically.

12. COMMENT: Pursuant to N.J.A.C. 5:34-5.4, can a local unit decide to purchase certain goods or services under the electronic procurement process during one budget year cycle, and revert to a paper-based process for those same goods or services in the following budget year cycle?

RESPONSE: Yes, the rulemaking gives local units the ability to use an electronic procurement platform for certain procurements while using a paper-based process for other procurements.

13. COMMENT: All paper-based offer submissions shall be opened at the same date and time as those submitted through the local unit's electronic procurement platform. At that time, the local unit shall upload the paper-based offer submissions onto the platform. Does this meet the requirement of a paper-based response in parallel with electronic submission? However, how is a paper-based offer submission uploaded onto a platform?

RESPONSE: When a local unit elects to accept bids or proposals either submitted through an electronic procurement platform or in a paper-based format for the same competitive procurement, N.J.A.C. 5:34-5.4 requires paper-based submissions and electronic submissions cannot be subject to different submission deadlines, and all submissions must be opened during the same public opening. Upon opening, all paper-based submissions must be uploaded into the electronic procurement system to ensure all submissions are together.

14. COMMENT: Should N.J.A.C. 5:34-5.5(c) be relocated to paragraphs (a)1 and 2 and become N.J.A.C. 5:34-5.5(a)3? It appears to be a good fit.

RESPONSE: The Division finds that N.J.A.C. 5:34-5.5(c), which requires the amount of time for submission of a bid or proposal through an electronic procurement platform to be the same as would be required a paper-based procurement process, to be appropriately codified.

15. COMMENT: N.J.A.C. 5:34-5.6(b) states, in part, that the advertisement shall include, as a reference, a local unit's right to reject all bids pursuant to the law. Subsections a and b of N.J.S.A. 40A:11-23 do not contain the phrase "... right to reject all bids pursuant to law." What are the provision, or provisions, of law, or laws, referenced in subsection (b)?

RESPONSE: The phrase "pursuant to law" is required under this subsection because of the reverse auction format, to ensure prospective bidders understand that the local unit reserves its right to reject all bids pursuant to whatever law the procurement is taking place under. For example, N.J.S.A. 40A:11-32 establishes the circumstances pursuant to which all bids submitted under the Local Public Contracts Law may be rejected.

16. COMMENT: Would the provisions of the "Pay-to-Play" law apply to N.J.A.C. 5:34-5.8(d)? If so, the purchasing agent would not have the authority to accept or reject bids over \$17,500.

RESPONSE: The "Pay-to-Play" law would not apply, as N.J.A.C. 5:34-5.8 pertains to the sale of surplus personal property by a local unit.

17. COMMENT: With respect to N.J.A.C. 5:34-5.8(k)1, many local units have contracts with businesses that provide such services. This is the type of service contract that should be carefully reviewed before agreeing to the contractual terms and conditions.

RESPONSE: The Division agrees with the commenter and will provide such advice in any guidance document issued concerning this rulemaking, if needed.

18. COMMENT: At N.J.A.C. 5:34-5.8(k)2, the word “vendor” should be inserted between the words “platform” and “either.”

RESPONSE: The Division agrees with commenter and will change paragraph (k)2, accordingly.

19. COMMENT: At N.J.A.C. 5:34-5.9(e), should the word “district” be deleted in the first line and replaced with the phrase “municipality or county”?

RESPONSE: The Division will remove the term “district” to clarify that the subsection applies to municipalities, counties, and fire districts.

20. COMMENT: The commenter recommends that N.J.A.C. 5:34-8.5 be relocated from Subchapter 8 to Subchapter 6, which pertains to emergency purchases and contracts, in order to better conform the subject matter to the section, as well as to make the section easier to find.

RESPONSE: The Division disagrees with commenter because the subject matter of N.J.A.C. 5:34-6 deals with procurement under emergency circumstances where public bidding is not required under the LPCL or PSCL.

21. COMMENT: With respect to N.J.A.C. 5:34-8.5(e), after a bid opening closes, a purchasing agent would find it very difficult to fully scan the bid package of the apparent low bidder and post it to the contracting unit’s website. After the close of a bid opening, the purchasing agent is very busy attending to administrative duties regarding the protection of the bids received and preparing various types of preliminary bid summation sheets. This task would be very difficult for an individual to complete after the close of the bid opening. If there are many low bidders due to the method of award, this difficulty would be compounded by all bids needing to be scanned and posted to the local unit’s website.

RESPONSE: N.J.A.C. 5:34-8.5(e) was proposed with the objective of maximizing transparency if a bid opening could not accommodate in-person attendance during a public health emergency. Although the Division will ultimately adopt the above-referenced provision at this juncture, in light of the concerns raised by the commenter, after more experience with the adopted rules, the Division will further consult with stakeholders on whether to remove or otherwise modify the requirement, if deemed necessary.

22. COMMENT: With respect to N.J.A.C. 5:34-5.13(d), what kind of situation or event would have to occur for a local unit to utilize the emergency procurement provision of the Local Public Contracts Law, N.J.S.A. 40A:11-6, for procuring an electronic procurement platform? The use of the statutory emergency provision has been subject to abuse.

RESPONSE: With respect to the procurement of an electronic procurement platform under an emergency contract, N.J.A.C. 5:34-5.13(d) states “[N]othing 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.” This sentence is meant to make clear that the emergency procurement must be proper under the LPCL and PSCL. This rule does not create any expansion to the emergency contract exception in those laws.

23. COMMENT: N.J.A.C. 5:34-5.13(f)3 permits a local unit to procure an electronic procurement platform through a national cooperative contract. In addition to conducting due diligence on a national contract to determine if a contract will result in cost savings after all factors considered, there is a need to ensure that New Jersey legal requirements (LPCL and other applicable statutes) have been met by local units planning to use a national contract, namely N.J.S.A. 52:34-6.2.b(3) and Local Finance Notice 2012-10 issued on May 14, 2012.

RESPONSE: The Division will provide guidance on the proper use of a national cooperative contract in any guidance document issued concerning this rulemaking, if deemed necessary.

24. COMMENT: N.J.A.C. 5:34-5.15(a)1 should require legal counsel to review all contract documents. Administrative officials should not be approving the contract, but rather reviewing it to determine whether the technical and procurement requirements have been met.

RESPONSE: Because certain contracts for electronic procurement platforms may not be of sufficient monetary value to make review by outside legal counsel cost-effective, the Division will not require mandatory legal counsel review of such contracts as part of this section.

However, the Division acknowledges the commenter’s concerns about the wording of the paragraph blurring the line between the roles of administrative officials, such as purchasing agents, and legal counsel. Consequently, the words “and approved” will be deleted from the paragraph upon adoption.

25. COMMENT: With respect to N.J.A.C. 5:34-5.15(a)2, the governing body should be required to award the contract for an electronic procurement platform, notwithstanding the contract’s value.

RESPONSE: N.J.A.C. 5:34-5.15(e) requires the governing body to award a contract with an electronic procurement platform vendor, regardless of the value of the contract. The only exception to this requirement would be if a local unit needed to award an emergency contract for a platform to the extent permitted by law.

26. COMMENT: Does the five-year limit established at N.J.A.C. 5:34-5.15(e) for contracts for electronic procurement platforms only apply if a local unit uses competitive contracting?

RESPONSE: The five-year contract duration limit applies to platform contracts that were acquired through bidding, as well as by competitive contracting.

Laurie Wiegand-Jackson, President, Utility Advantage, LLC

27. COMMENT: Nothing in this rulemaking should prevent a local unit from purchasing solely through traditional paper-based submissions. It may be difficult for the local unit to procure and establish the procurement platform in a timely manner, especially with the staff constraints that arise in emergency conditions, such as this pandemic.

RESPONSE: The emergency adopted and concurrently proposed rules do not require local units to conduct purchasing solely through an electronic procurement platform. Local units retain the ability to conduct procurement through paper-based means, even if the local unit has procured an electronic procurement platform.

28. COMMENT: Regarding access to the specifications, plans, and any other documents pertaining to a solicitation for bids, proposals, qualifications, or quotations, N.J.A.C. 5:34-5.3 and 5.4(b) should both be amended to require the local unit to post the materials on their website for download by prospective vendors, regardless of the requirement of payment of fees to obtain the materials through the platform. This provides access to the greatest number of vendors since it removes the barriers to register in a third-party platform or physically visit the local unit’s offices.

RESPONSE: N.J.A.C. 5:34-5.3(b) will be changed to clarify that if an electronic procurement platform requires the payment of a registration fee or other fee before such materials can be obtained, the local unit has the option of making the materials available on the local unit’s website in lieu of making the materials available at the local unit’s office during regular business hours.

29. COMMENT: We support the live broadcast of bid openings by the local unit as described at proposed N.J.A.C. 5:34-4.3(c) to provide transparency of both price quotations and to address whether the proposal submission has the documents required to be part of the proposal. However, language should be added to require that any exceptions taken by the vendor to the proposed terms and/or requirements be announced publicly.

RESPONSE: Because local units are not required to announce exceptions to bid or proposal specifications publicly at an in-person bid or proposal opening, at this time, the Division does not find it necessary to require such announcements to be made during a proposal opening held remotely during a public health emergency.

30. COMMENT: We have concerns about the minimum amount of time to submit an offer pursuant to the Local Public Contracts Law being sufficient to enable a vendor to register to use the platform, train its staff, and submit its proposal in that timeframe. We recommend that the minimum amount of time to submit an offer be increased or the platform be required to allow vendors to register in just one business day. Further, online training and customer support though the phone or chat must be available to support vendors using the platform.

RESPONSE: The LPCL and PSCL generally require a minimum of 10 days be given to submit a bid, with an additional day given if the final day for response would fall on a Monday or any day directly following a State or Federal holiday, and generally requires a minimum of 20 days to respond to a request for proposals solicited pursuant to the competitive

contracting process. The commenter does not provide examples of electronic procurement platforms taking an extended period of time to register a prospective bidder or vendor. At this time, the Division will not change the rules concerning this matter, but reserves the right to amend these rules in the future if this becomes a problem. As for customer service, N.J.A.C. 5:34-5.3(a)10 requires the platform to provide help desk support through the internet, email, and at least one toll-free telephone number.

Ephram E. Levin, Esq., of the Law Firm Parker McKay, P.A.

31. COMMENT: The circumstances under which a bid opening must be broadcast online pursuant to N.J.A.C. 5:30-8.5 and 4.3 require clarification. Subsection (a) uses the phrase “[i]n the event the contracting unit cannot accommodate in-person attendance at a bid opening for public health reasons during a state of emergency declared by the Governor,” whereas subsections (c), (d), and (e) do not. Subsection (b) ostensibly requires that advertisements for bids include “a statement that in-person attendance is prohibited due to public health-related restrictions on public gatherings due to a declared state of emergency,” but this will not always be the case if social distancing can be adequately facilitated amongst physical attendees. Where a contracting unit can accommodate in-person attendance either outside or in a large room, must the unit still “use web-conference call or online livestreaming technology with both video and audio capability” to broadcast the opening and “include explicit instructions on how the public can remotely access the opening” in the advertisement? If the contracting unit is to make this determination using a fact-specific inquiry (size of room, size of project, number of expected bidders, etc.), guidance as to the factors that should influence that determination should be made would be very helpful.

RESPONSE: In order to clarify the circumstances under which a bid opening may be held without in-person attendance, N.J.A.C. 5:34-4.3(c) and 8.5(a) will be changed upon adoption to state that vendors, and the general public, may be prohibited from physically attending the public announcement if, during a state of emergency declared for public health reasons, the emergency reasonably prevents the local unit from accommodating in-person attendance. This language is similar to the standard for a governing body to hold a remote public meeting pursuant to N.J.A.C. 5:39-1.3(a). Further technical guidance will be provided through a Local Finance Notice issued by the Division, if deemed necessary.

Jerry Volpe, Qualified Purchasing Agent

32. COMMENT: The use of electronic bidding is increasingly paramount to providing more tools in our procurement toolbox. While supportive of the overall language, the commenter offers two amendments. With respect to N.J.A.C. 5:34-8.5(a) and 4.3(c) and their requiring a bid or proposal opening be broadcast live from the contracting unit’s facilities, the location of the live broadcast should not matter, so long as the relevant public procurement laws are being followed. Further, several e-procurement platforms allow for remote recording, which would solve the integrity of process issue. As such, the phrase “from the contracting unit’s facilities” should be deleted. Bid or proposal openings from other locations, such as home offices or other facilities should be permitted under this rulemaking.

RESPONSE: The Division disagrees with the commenter’s suggestions. A bid or proposal opening should be held at a government facility to ensure bids and proposals are handled by authorized personnel with the proper protocols in place. However, in the event that the local unit’s facilities are unavailable, the Division will clarify that a bid or proposal opening may take place at the facilities of another local unit.

James Shoop, Shoop SBA, LLC

33. COMMENT: The term “qualifications” is used for various definitions at N.J.A.C. 5:34-5.2 and should be individually defined as it appears to pertain to an individual procurement method.

RESPONSE: The Division agrees to add a definition of the term “qualifications” at N.J.A.C. 5:34-5.2. The term will be defined as “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 submit bids or proposals.” This definition encompasses local government procurement processes, such as, but not necessarily limited to, the Water Supply and

Wastewater Treatment Public-Private Contracting Acts, N.J.S.A. 58:26-19 et seq., and 58:27-19 et seq.

34. COMMENT: N.J.A.C. 5:34-2.1 should be amended to incorporate insurance, including the purchase of insurance coverage and consulting services, as examples of extraordinary unspicifiable services.

RESPONSE: The commenter’s proposed change deals with examples of what services may be classified as “extraordinary unspicifiable services” under the LPCL and PSCL, and is consequently beyond the scope of the rulemaking.

35. COMMENT: N.J.A.C. 5:34-4.4 should be amended to permit, by rule, the use of competitive contracting for school and district improvement services, as well as reference the services that may be procured by competitive contracting pursuant to P.L. 2015, c. 95.

RESPONSE: The commenter’s proposed change involves the parameters for when competitive contracting may be used as a method of procurement, which goes beyond the scope of this rulemaking and will not be considered.

36. COMMENT: N.J.A.C. 5:34-9.5(e) should be amended to reflect the fact that, in school districts, only the superintendent has the authority to make personnel appointments.

RESPONSE: N.J.A.C. 5:34-9.5 pertains to a board of education appointing a “duly authorized designee” to act on behalf of, and be responsible to, the purchasing agent for such actions as related to purchasing. The commenter’s proposed change is beyond the scope of this rulemaking and consequently will not be considered at the present time.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 5:34-5.3(d) is changed to clarify that a local unit must verbally announce the name and price associated with each offer submitted through an electronic procurement. A local unit shall have the discretion to display information on the submitted offers on a projector screen for public view and/or post said information on the local unit’s website.

2. N.J.A.C. 5:34-5.6(b) is being changed upon adoption to clarify that, in addition to the period when bids will be accepted along with a reference of the local unit’s right to reject all bids pursuant to law, public advertisements shall also include the content required at N.J.A.C. 5:34-5.5(a)1.

3. N.J.A.C. 5:34-5.6(e) is revised for greater conciseness, with no substantive change.

4. N.J.A.C. 5:34-5.9 and 5.10 are changed upon adoption to expressly reference fire districts in the rules permitting the use of electronic procurement platforms for the competitive sale or lease of real property and associated personal property. N.J.S.A. 40A:14-70.b states that all sales and leases of real property and associated personal property shall be in accordance with the Local Land and Buildings Law (N.J.S.A. 40A:12-1 et seq.), the provisions of which also apply to municipalities and counties.

5. N.J.A.C. 5:34-5.13(f)1 is changed upon adoption to clarify that a lead agent in a cooperative purchasing system shall be subject to N.J.A.C. 5:34-7 when entering into a contract for an electronic procurement platform that will be made available for use by the system’s members.

6. With respect to all information and data submitted by a vendor or contractor in response to a local unit procurement solicitation, N.J.A.C. 5:34-5.14(c) is changed upon adoption to clarify that the phrase “universal electronic format” includes examples of software, such as PDF and Excel-based documents, as appropriate to the information or data being transmitted.

Federal Standards Statement

No Federal standards analysis is required because the adopted new rules and amendment are not adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 4. ADMINISTRATION OF COMPETITIVE CONTRACTING PROCESS

5:34-4.3 Opening and evaluating proposals and awarding competitive contracts

(a)-(b) (No change.)

(c) ***Vendors and the general public may be prohibited from physically attending a proposal opening if, during a state of emergency declared by the Governor for public health reasons, the emergency reasonably prevents the local unit from accommodating in-person attendance.*** In the event the contracting unit cannot accommodate in-person attendance at a proposal opening for public health reasons during a state of emergency declared by the Governor, the contracting unit ***[may prohibit vendors and the general public from physically attending the public announcement required pursuant to (b) above, if the contracting unit]* ***must*** broadcast*[s]* the proposal opening live at the contracting unit's facilities. ***Another local unit's facilities may be used for the public opening of proposals in the event that the local unit cannot use its facilities for said purpose.*****

1. The advertisement for proposals must include explicit instructions on how the public can remotely access the opening, along with a statement that in-person attendance is prohibited due to public health-related restrictions on public gatherings due to a declared state of emergency.

2. The contracting unit shall use web-conference call or online livestreaming technology with both video and audio capability, with the video showing sufficient scope and coverage, so that the official opening the proposals can be clearly seen to be opening only the proposals timely submitted.

3. At the opening, the title of the proposal must be clearly announced. If the contracting unit has solicited paper-based proposals, the contracting unit shall display each sealed proposal package, back and front, for the camera prior to opening the proposals. In addition to announcing the vendor name and price as required by (b) above, the presence of any documents required to be part of the proposal submission shall be noted for each proposal.

Recodify existing (c)-(f) as (d)-(g) (No change in text.)

SUBCHAPTER 5. 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. Email 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.A. 40A: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" means 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 submit 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, refurbishing, 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, email, 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. ***[The]* *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*[, as well as]* *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 ***[may, at his or her]* *shall have the* sole discretion*[,]* ***to* establish a pilot program ***[to evaluate]* *evaluating* the ***[extension]* *feasibility* of reverse auctions ***[to]* *for* other goods and services procurements.**********

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

(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 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.

(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, email, 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; and
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.

(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*,* [and]* 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*,* [or]* county*, or fire district*;
4. Timestamping and logging of all actions by a bidder or the municipality*,* [or]* county*, or fire district* on the platform, including IP address;
5. The ability for prospective bidders to post questions, and the municipality*,* [or]* county*, or fire district* to post responses thereto, in a manner visible to all prospective bidders. This shall not absolve the municipality*,* [or]* county*, or fire district* 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*,* [or]* 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*,* [or]* county*, or fire district* through the Internet, email, and at least one toll-free telephone number; and
8. A standard complaint procedure concerning platform-related problems for both the *[local unit]* ***government entity*** and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the *[local unit]* ***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*,* [or] 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 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 [the district is using]* a live auction [that]* 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*,* [and]* 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*,* [or] county*, or fire district*;
4. Timestamping and logging of all actions by the bidder and the [municipality or county]* government entity* on the platform, including IP address;
5. The ability for prospective bidders to post questions, and the municipality*,* [or] county*, or fire district* to post responses thereto, in a manner visible to all prospective bidders. This shall not absolve the [municipality or county]* 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*,* [or] 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 or county]* government entity* through the Internet, email, and at least one toll-free telephone number; and

8. A standard complaint procedure concerning platform-related problems for the [municipality or county]* government entity* and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the [municipality or county]* 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 seven days 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, email, 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 above:

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, email, 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. *[A]* **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 ***[in a universal electronic format]***, 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 ***[and approved]*** 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.

SUBCHAPTER 8. CONTRACTS SUBJECT TO PUBLIC BIDDING

5:34-8.5 Bid opening during public health emergency

(a) *Bidders and the general public may be prohibited from physically attending a bid opening if, during a state of emergency declared by the Governor for public health reasons, the emergency reasonably prevents the local unit from accommodating in-person attendance.* In the event the contracting unit cannot accommodate in-person attendance at a bid opening for public health reasons during a state of emergency declared by the Governor, the contracting unit [may prohibit bidders and the general public from physically attending the bid opening if the contracting unit] *must* broadcast*[s]* the bid opening live from the contracting unit's facilities. *Another local unit's facilities may be used for the bid opening in the event that the local unit cannot use its facilities for conducting the bid opening.*

(b) The advertisement for bids must include explicit instructions on how the public can remotely access the opening, along with a statement that in-person attendance is prohibited due to public health-related restrictions on public gatherings due to a declared state of emergency.

(c) The contracting unit shall use web-conference call or online livestreaming technology with both video and audio capability, with the video showing sufficient scope and coverage so that the official opening the bids can be clearly seen to be opening only the bids timely submitted.

(d) At the opening, the title of the bid must be clearly announced. If the contracting unit has solicited paper-based bids, the contracting unit shall display each sealed bid package, back and front, for the camera prior to opening the bid. The contents of each bid package shall be read aloud upon opening, including the price(s) and noting, at a minimum, the presence of any documents required to be part of the bid submission.

(e) After the close of the bid opening, at a minimum, the bid package of the apparent low bidder shall be fully scanned and posted to the contracting unit's website. In cases where there is no single low bidder, but many low bidders due to the method of award by individual items, all bids should be scanned and posted to the website. Instructions should be provided to all bidders with the full web address where the bid results can be found.

(a)

DIVISION OF CODES AND STANDARDS

Notice of Administrative Correction
Uniform Construction Code
Subcodes
Responsibilities
N.J.A.C. 5:23-3.4

Effective Date: February 23, 2021.

Take notice that the Department of Community Affairs (Department) discovered an error in the text of N.J.A.C. 5:23-3.4. Effective September 3, 2019, the Department adopted the 2018 editions of the International Mechanical Code (IMC), the International Fuel and Gas Code (IFGC), and the International Residential Code (IRC) as the mechanical subcode, the fuel gas subcode, and the one- and two-family dwelling subcode of the Uniform Construction Code (UCC), respectively (see 51 N.J.R. 1399(a)). The text at N.J.A.C. 5:23-3.4(a)5, corresponding to the mechanical subcode, delineates that at Section 918 of the IMC, Forced-Air Warm-Air Furnaces, plan review is the responsibility of building and fire protection subcode officials, and inspections are the responsibility of building subcode officials. Similarly, the text at N.J.A.C. 5:23-3.4(a)7, corresponding to the fuel gas subcode, delineates that at Section 618 of the IFGC, Forced-Air Warm-Air Furnaces, plan review is, likewise, the responsibility of building and fire protection subcode officials, and inspections are the responsibility of building subcode officials. However, the text at N.J.A.C. 5:23-3.4(a)6, corresponding to the one- and two-family dwelling subcode, incorrectly delineates that at Section G2442 of the IRC, likewise entitled Forced-Air Warm-Air Furnaces and including a cross reference to Section 618 of the IFGC within its title, inspections are the responsibility of fire protection subcode officials. Thus, the text at

N.J.A.C. 5:23-3.4(a)6 should be corrected to match the responsibilities assigned to the companion sections in the IFGC and IMC.

The Department has requested, and the Office of Administrative Law has agreed to, such correction be made administratively. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

SUBCHAPTER 3. SUBCODES

5:23-3.4 Responsibilities

(a) (No change.)

1. - 5. (No change.)

6. One- and Two-Family Dwelling Subcode:

Table with 3 columns: Subcode, Plan Review, Inspection. Row 1: G2442, Building/Fire, [Fire] Building.

7. - 9. (No change.)

(b)-(d) (No change.)

(b)

DIVISION OF CODES AND STANDARDS

Notice of Administrative Correction
Uniform Construction Code
Subcodes
Responsibilities
N.J.A.C. 5:23-3.4

Effective Date: March 2, 2021.

Take notice that the Department of Community Affairs (Department) discovered an error in the text of N.J.A.C. 5:23-3.4. Effective November 2, 2020, the Department adopted amendments to the Responsibilities section of the Uniform Construction Code (UCC) (see 52 N.J.R. 1999(a)). The text at N.J.A.C. 5:23-10.3(b)1 delineates plan review and inspection responsibilities pertaining to the radon hazard subcode. However, the corresponding section related to responsibilities within the radon hazard subcode, at N.J.A.C. 5:23-3.4(a)9, employs divergent language. Thus, the language used at N.J.A.C. 5:23-3.4(a)9 should be corrected to match the language used at N.J.A.C. 5:23-10.3(b)1 to ensure that the code language is consistent throughout.

The Department has requested, and the Office of Administrative Law has agreed to, such correction be made administratively. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

SUBCHAPTER 3. SUBCODES

5:23-3.4 Responsibilities

(a) (No change.)

1.-8. (No change.)

9. Radon Hazard Subcode: [Building subcode official, except that N.J.A.C. 5:23-10.4(b)14 shall be the responsibility of the Electrical Subcode official.] Plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b) and (c) shall be the responsibility of the building subcode official, except that N.J.A.C. 5:23-10.4(b)13 and (c)14 shall be the responsibility of the electrical subcode official.

(b)-(d) (No change.)