

TREASURY-GENERAL

DIVISION OF PURCHASE AND PROPERTY

Purchase Bureau and Contract Compliance and Administration Unit; Surplus Property Unit, Computer Distribution Program

Proposed Readoption with Amendments: N.J.A.C. 17:12

Proposed New Rules: N.J.A.C. 17:12-1.5 and 17:12-5

Proposed Recodification with Amendment: N.J.A.C. 17:12-1A.4 as 2.3

Authorized By: Andrew P. Sidamon-Eristoff, State Treasurer.

Authority: N.J.S.A. 10:5-36(k) and (o); 52:18A-30(d); 52:25-1 et seq.; 52:27H-6(f); 52:32-17 et seq.; 52:34-6 et seq.; 52:34-12(d); and 52:34-13; and Executive Orders No. 34 (1976) and No. 189 (1988).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-244.

Submit written comments by February 17, 2012 to:

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The agency proposal follows:

Summary

Pursuant to the sunset provisions of N.J.S.A. 52:14B-5.1, N.J.A.C. 17:12 would have expired on March 22, 2010; however, Executive Order No. 1 (2010), issued by Governor Christie on January 20, 2010, states in relevant part that “the expiration date of any administrative regulation or rule of any State agency that would otherwise expire between this date and April 18, 2010, is hereby extended until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the provisions of the “Administrative Procedure Act,” P.L. 1968, c. 410 (C. 52:14B-1 et seq.)” Therefore, pursuant to Executive Order No. 1 (2010), the chapter expiration date is extended from March 22, 2010, until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Division of Purchase and Property (Division) proposes new rules at N.J.A.C. 17:12-5 to promulgate the process and requirements of the Division’s responsibilities for conducting the review of all State agency and authority contracts and purchases to ensure vendor compliance with State “pay-to-play” Executive Order and legislation provisions. The Division further proposes the readoption with amendment of its rules at N.J.A.C. 17:12 to clarify and update the processes related to the award and administration of State contracts as the centralized procurement agency for State government, as well as the process of donating surplus computers to local governmental entities, boards of education, non-public schools and nonprofit charitable corporations. The Division of Purchase and Property has determined these rules to be necessary,

reasonable, efficient, understandable, and responsive for the purpose for which they were originally promulgated. A summary of the rules as proposed for readoption with amendments follows:

The heading of Chapter 12 is revised to codify: the renaming of the Division of Purchase and Property's "Purchase Bureau" as "Procurement Bureau" to reflect the Division's and Bureau's role as creator of State contracts for State and other governmental entities rather than as purchaser of products or services; the name change of the Division's "Contract Compliance and Administration Unit" to the more accurate "Contract Compliance and Audit Unit"; and to include mention of the Division's Distribution Support Services Unit as the Division's third major operational unit, which performs warehousing and distributing functions that include the State's surplus computer distribution program.

The heading of Subchapter 1 is amended to include mention of means of procurement, which are established and introduced in additional text of subsections (c) and (d) and more explicitly described in Subchapter 1A.

N.J.A.C. 17:12-1 describes the organization and contains proposed amendments intended to provide clarification of the composition and roles of the Division of Purchase and Property and to provide additional or refined definitions of terms used throughout.

N.J.A.C. 17:12-1.1 provides the general course and methods of procurement of the Division. Amendments proposed at subsections (a) and (b) serve to clarify the Division's organizational structure and ensure continuity of terminology used throughout the rules. The deletion of two sentences in subsection (a) is proposed to avert redundancy since the proposed new nomenclature of the Procurement Bureau and the Contract Compliance and Audit Unit

succinctly establish and communicate their individual functions. The amendments in subsection (c) provide a clearer overview of the multiple, statute-based procurement methodologies available to and utilized by the Division. The deleted text of existing subsection (c), concerning request for proposal procurements, that is, advertised procurements, is transitioned to and restated at paragraph (c)1. The deleted text of subsection (c) concerning non-advertised procurements, that is, waiver of advertising procurements, is transitioned to and restated at subparagraph (c)2v as one part of a new, more detailed listing and delineation of the complementary five types of non-advertised procurement actions now permitted by governing statutes which are cited for each of the five non-advertised procurement actions. Subsection (d), regarding delegation of signatory authorities within the Division, is relocated to subsection (e) without substantive change, as part of the proposed amendments to Subchapter 1, and, in its place as new subsection (d), because of its relevancy and applicability to the preceding types of procurement methodologies is notice that State agencies and quasi-agencies can utilize products or services available from each other without conducting an advertised or non-advertised procurement. Existing subsection (e), which is a simple listing of types of procurements available to the Division, is, in most part, deleted as unnecessary information, although paragraphs (e)4 (waiver of advertising contracting), 6 (joint procurements with other states), and 7 (contracting with vendors having Federal procurement program contracts) are addressed in greater detail within N.J.A.C. 17:12-1A.

N.J.A.C. 17:12-1.2 provides guidance pertaining to public information, with subsection (a) containing Division contact information and is amended to include an updated method to pose a question to the Division and subsection (b), as amended, providing information about the Division's obligations with regard to the State's Open Public Records Act, including certain

exceptions to the general rule that all information submitted by bidders will become public information after bid opening. This amendment strengthens the integrity of the procurement process by ensuring that proposals submitted for an RFP with a negotiation component are not publicly accessible until the contract award is made. N.J.A.C. 17:12-1.2(b) also sets forth procedures for the bidder to identify data or materials that are asserted to be exempt from disclosure. The proposed amendments compel bidders to make a good faith effort to limit the amount of confidential, proprietary, exempted, or privileged information submitted to the Division in order to increase the transparency of the procurement process and ensure that bidder materials are adequately protected. The limitations and recourse for such assertions by bidders are set forth in subsection (b). New subsection (c) states that, when the RFP provides for negotiation with the bidders, public access to proposals prior to the Division's announcement of its intended award of contract is prohibited, as provided at N.J.S.A. 52:34-12.

N.J.A.C. 17:12-1.3 sets forth definitions for use in this chapter. Newly defined words or terms include the following: "advertised procurement," "agreement," "'best and final offer' or 'BAFO,'" "bidder," "business organization," "business registration," "competitive range," "contractor," "Cooperative Purchasing Program," "cooperative procurement agreement," "Delegated purchasing authority," "Distribution and Support Services (DSS)," "Federal supply schedule contract," "hearing officer," "negotiation component," "procurement," "procurement agreement," "Procurement Bureau," "professional," "publicly available," "'purchase' or 'purchasing,'" "purchasing agreement," "quasi-State agency," "responsive proposal," "responsible bidder," "technical," and "using agency." The definitions for the following terms were amended for clarity with no substantive change: "bypass," "compatible," "Division," "request for proposal (RFP)," "sealed proposal," "signed," and "standardization." The definition

for “contract” is amended to clarify that, as historically applied, RFP addenda issued by the Division during a procurement action, are a part of the resultant contract. The definition for “Contract Compliance and Administration Unit (CCAU)” has been amended to reflect the name change of the unit to Contract Compliance and Audit Unit. This amendment also identifies the expanded scope of the unit. The definition of “day” was amended to include mandated State furlough days. The modification of the term “filed” expands its application to include receipt by the Director or a designated Division representative of the Director. The deletion of the term “emergency condition” within the definition of “‘homeland security,’ ‘domestic preparedness’ and ‘emergency condition’” is proposed because the term is not used within this chapter. To reflect more accurately the scope of contracting services provided by the Division, the term “Procurement Bureau” replaces the term “Purchase Bureau.” The phrase “to a rejection of a proposal declared non-responsive” is added to the definition of “protest” to correspond with the provisions of N.J.A.C. 17:12-3.3. Also deleted, are the definitions of contract descriptive terms that are not used in these rules as proposed, namely: “line item contract,” “multi-source contract,” “prequalification contract,” and “single-source term contract.”

N.J.A.C. 17:12-1.4 is amended to clarify terminology, incorporate the various procurement methods (advertised and non-advertised), and update the Treasury Circular reference.

New N.J.A.C. 17:12-1.5 is added to implement the Division’s comprehensive modernization and enhancement of its procurement and contracting system with funding to be derived from a uniform assessment of 0.25 percent of the value of all contractual transactions by State agencies occurring under Division-issued contracts as defined in pertinent provisions of the

RFP. The Division's intent is for the assessment to continue until the costs of the modernization and enhancement effort are covered.

N.J.A.C. 17:12-1A describes various procurement methodologies utilized by the Division.

N.J.A.C. 17:12-1A.1, in addition to proposing non-substantive changes to terminology for clarity, the Division proposes to add statutory and regulatory citations for reference and language to communicate the Division's consideration of the needs of State agencies, as well as local and quasi-State governmental entities as users of the Division's contracts when determining the structure and format of individual procurements and contracts. The change in subsections (b) and (d) from "two or more" bidders to "multiple" bidders is made to reflect the same change made at N.J.S.A. 52:34-12.1. Subsection (c) is revised to note that RFPs may be designed to provide for a single contract award or for multiple contract awards and may establish that proposal pricing be offered and evaluated on the basis of individual line and/or grouped line offers. At paragraph (d)2, the deletion of the phrase "and the ability of potential bidders to provide such maintenance, repair parts, and service" is made upon recognition that the governing statute does not expressly provide for consideration of that specific factor. The replacement of paragraph (d)7 deletes a specific provision that is encompassed by the codification of the provision of N.J.S.A. 52:34-12.1, which establishes the Director's expanded discretion to make multiple awards of contracts when the Director deems multiple awards necessary to serve the State's interests. The proposed amendment to subsection (f) includes a change of the reference from N.J.A.C. 17:12-3 to 17:12-2 to correct a perpetuated error that unintentionally references the Division's rules concerning protests instead of the Division's rules concerning formal, advertised, sealed bidding procedures.

N.J.A.C. 17:12-1A.2 is amended and segments recodified to elucidate and delineate statutorily permitted procurement actions that are in exception to the Division's formal, publicly advertised, competitive procurement process and which are presented in more detail in subsequent sections of Subchapter 1A. To that end, existing subsection (a) is deleted since it refers to only two of the five alternative contract procurement actions, namely, the alternative procurement actions noted at paragraphs (a)2 and 3. New subsection (a) introduces the five alternative contract procurement actions described thereafter within N.J.A.C. 17:12-1A.2. The deleted introductory segment of paragraph (b)2 is removed as it is redundant to the replacement text in the new introductory language of subsection (b). Additionally, proposed new paragraph (b)7, states the Division's statutorily established prerogative to authorize, by individual exception and only with the Division's guidance and oversight, a State using agency to conduct a formal, advertised procurement not exceeding \$250,000 in cost is defined. Subsection (e), concerning recordkeeping requirements, is also deleted because it is redundant with proposed new subsection (b). Also, proposed new subparagraph (c)1xii codifies, as an added basis for non-advertised procurements, the statutory provision at N.J.S.A. 52:34-10.6, concerning homeland security procurement actions. Paragraph (c)2, concerning the need for documenting informal competitive bidding actions, contains both a deletion of a reference to subparagraph (c)1vii, which corrects the error of inclusion of reference to a subparagraph that has no relevance to a competitive bidding action, and the addition of reference to the new subparagraph (c)1xii, which has relevance to the need to document informal competitive bidding actions. Finally, there are also non-substantive clarifications and changes to reflect updated circular letters and references.

The proposed amendments to N.J.A.C. 17:12-1A.3 provide a more detailed description of the Division's statutorily permitted program for establishing cooperative purchasing and cooperative procurement agreements with other states or subdivisions thereof, or, with such agreements with political subdivisions of the State of New Jersey (as permitted by recent legislation (P.L. 2011, c. 139)), or with nationally recognized contracting entities serving other states, and establish limitations and procedural requirements for that contracting program, including provisions that bind the contracted vendor to the State's standard terms and conditions. The replacement of the section heading "Cooperative purchasing" with "Cooperative agreements" is proposed to differentiate between the subject procurement programs and the Division's historical and ongoing use of the term "cooperative purchasing" as referencing the program by which the Division extends its contracts for use by New Jersey's local governments and educational and other public entities, which is the subject of the proposed recodification of "extension of contracts for local use," from N.J.A.C. 17:12-1A.4 to 2.3. The Division's Interstate Cooperative Agreements program, which coincides with similar initiatives in many other states, is based upon the principle of maximizing the benefits of leveraging to achieve favorable contract pricing for products and/or services and reduce procurement costs derived by conjoining competitively bid procurements or contracts. Paragraph (a)1 sets forth terminology to distinguish between interstate cooperative agreements conjoined by the Division before or after the award by the initiating contracting entity. Subsection (c), which sets forth procedural requirements for the Division to address when completing the contracting process so that the best interests of the State are served through and by the act of conjoining an interstate cooperative agreement. The reference to notification emanates from case law direction to issue public notice when the Division initially contemplates entering into such agreement and again when the Division has

determined that it intends to enter into such agreement when the agreement would replace an existing State contract. Subsection (e) is proposed for deletion since homeland security and domestic preparedness needs, including emergent needs, can be addressed under the provisions of this section or other sections of Subchapter 1A.

N.J.A.C. 17:12-1A.4, Extensions of contracts for local use, is proposed for recodification with amendments as N.J.A.C. 17:12-2.3 and discussed below.

Amendments to N.J.A.C. 17:12-1A.5, Use of Federal supply schedule contracts, are intended to allow the Division and State using agencies to take advantage of favorable pricing whenever available from Federal contracts, as is the objective of the enabling statute. The proposed amendments serve to expand application beyond the initial statutory restriction to reprographic equipment and to strengthen the criteria used to determine the feasibility of Federal supply schedule-based procurements or purchases to ensure that agencies are conducting thorough and accurate cost-benefit analyses prior to purchasing goods or services, that prior to the Division's issuance of a contract, comprehensive research and cost comparisons on both current and prospective bases have been conducted, and that full consideration of additional costs such as delivery charges, potential price increases, and financing terms, are factored into each cost assessment. The proposed amendment to subsection (a) is generally iterative of the statutory language, which sets forth the Division's authority to establish contracts incorporating Federal supply schedule contracts if the Division determines that usage of same will provide more favorable pricing or other pertinent advantage to the State using agencies. Existing paragraphs (a)1 through 8 are deleted because the paragraphs reference a specific Federal supply schedule for reprographic equipment. New paragraphs (a)1, 2, and 3 set forth the three conditions imposed by the governing statute as last amended, allowing for broader application of

the Division's incorporation of Federal supply schedules into State contracts. The proposed revision of subsection (b) deletes the outdated reference to the Federal reprographic equipment schedule and establishes that a local government and/or public school entity intending to request that the Division establish a State contract for a particular good or service be mindful of and comply with applicable administrative rules and relevant directives of the New Jersey Department of Community Affairs' Division of Local Government Services, which oversees the procurement activities of local government and public school entities. The proposed amendment to subsection (c) deletes specific reference to homeland security or other emergency-related conditions and broadens the reference and application to all using agencies seeking the Division's creation of a State contract to provide access to the pricing provided by a Federal supply schedule contract. Proposed new subsection (d) is intended to provide product and service providers and any other interested parties with information about the Division's Federal supply schedule contracting program through access to the public document, which details the expanding program's requirements and procedures.

Subchapter 2 sets forth formal, advertised, sealed bidding procedures.

N.J.A.C. 17:12-2.1, Advertising, contains substantive and non-substantive amendments. Subsection (a) is amended to align the statutory and regulatory minimum period to seven business days between initial public notice of a bidding opportunity and the deadline for receipt of proposals to allow for more timely procurements in the event greater expediency is required. A proposed amendment to subsection (b) codifies a statutory modification requiring a minimum of seven business days (rather than five) between public notice of a change to provisions of an active procurement and the deadline for proposal submission. Additionally, N.J.A.C. 17:12-2.1(a) and (b) contain non-substantive changes concerning additional statutory and regulatory

citations and clarifying textual changes. The portions of subsection (c) and all of subsection (d), which are proposed for deletion, pertain to the Division's use of a bidders mailing list, which is no longer in use. New subsection (d) describes the Division's e-RFP Notification Service, which is an e-mail-based notification service available to and controlled by each registering person or entity. It has replaced the hardcopy mailing list process.

Amendments at N.J.A.C. 17:12-2.2, Requirements for bidding, revise the list of essential, base requirements for any bidder's proposal, including electronically submitted proposals, submitted to the Division in response to an advertised procurement conducted by the Division. These are basic bidding requirements, some of which are statute-based and others of which are essential for the Division to conduct the evaluation(s) required to determine the proposal(s) that are most favorable to the State, price and other factors considered. These requirements, also set forth in all RFPs, are published to engender increased transparency and enhance public awareness. The proposed changes respond to the Division's optional electronic bidding program and to the efforts to reduce the requirements placed on bidders to encourage participation and avert as many non-responsive proposals as possible. Specifically, in paragraph (a)1, the deleted text concerning a requirement that a bidder be registered by the Department of the Treasury's Division of Revenue to do business in New Jersey is deleted because the cited statute concerning business registration was changed to require said registration to be completed, not at the time of bidding, but prior to the award of a contract. In its stead, and with a conceptual intent to place the bidding requirements in a more logical sequence, the requirement set forth in existing paragraph (a)11 is relocated to the first paragraph position with clarifications. At paragraph (a)3, additional text establishes that an offeror must abide by RFP-stipulated signatory requirements to convey its binding commitment to the proposal and, as applicable, the resultant contract. The

proposed replacement of paragraph (a)4 is intended to clarify that RFPs contain requirements for certain documents and forms to be completed, signed, and/or included with the proposal and that other RFP-specified documents and forms need not be included with the proposal but presented to the Division upon subsequent request of the Division. Existing paragraphs (a)10 and 12 are proposed for deletion because the provisions for a proposal's inclusion of certifications concerning MacBride Principles, Affirmative Action, and Ownership Disclosure, and for the inclusion of bid security if required, are now encompassed by the modification of paragraph (a)4.

N.J.A.C. 17:12-2.3 is recodified from N.J.A.C. 17:12-1A.4 and pertains to the extension of contracts for local use. The proposed rules in this section provide the Director with discretion to seek proposals for contracts or amend contracts to permit use by Cooperative Purchasing Program participants. To address equal footing concerns, the provision in current rules for bidders to opt out of an extension of contract to local governments, school boards and other Cooperative Purchasing participants is deleted. N.J.A.C. 17:12-1A.4(d) through (g) are proposed for deletion as these subsections describe the Division's fee-based hard copy subscription service for Cooperative Purchasing Program participants, that is, local governments, boards of education, etc., and this process is now completed via electronic access at no cost. Subsections (f) and (g) are encompassed by, and thus redundant to, the provisions of subsections (a), (b), and (c), as recodified.

N.J.A.C. 17:12-2.4, Bid security, is amended to allow for use of forms of bid security other than certified or cashier's checks, bid bonds, or irrevocable letters of credit, as set forth in the specific RFP.

N.J.A.C. 17:12-2.5, Performance security, is amended similar to the amendments proposed at N.J.A.C. 17:12-2.4, to allow for additional types of performance security to be submitted by a contractor, as set forth in the specific RFP.

N.J.A.C. 17:12-2.6, Bid openings, is proposed for amendment to change the heading to “Receipt and public availability of proposals.” Subsection (a) is amended to provide for one-day postponements for inclement weather or similar problem affecting generic transportation, and to clarify the Division’s prerogative if a single bidder timely requests a brief extension of the established deadline due to a documentable, transport-related adverse condition. The Division shall publish notice of the postponement on the Division’s website. This provision is solely intended to foster competition by precluding the loss of potentially favorable proposals due to unanticipated transport events. Subsections (b) and (c) present non-substantive changes to the text reflecting the Division’s adjustment from use of the term “bid” to use of the term “proposal.” Subsections (d), (e), and (f) are added to effect expanded provisions of N.J.S.A. 52:34-12, which allow the Division to conduct post-proposal opening negotiations with all or select bidders, or a single bidder, but only if the intent to negotiate is set forth in the RFP and only if the contents of the proposals are not revealed to the bidders until after the notice of the Division’s intent to award the contract has been issued. The same statute provides that records of the procurements be withheld from public access until the evaluations and negotiations are completed and the notice of intent to award is issued by the Division. The proposed addition of subsection (g) addresses the scheduled availability of proposals and the information contained therein, including the release of pricing and other information submitted in the proposals. Paragraphs (g)1, 2, and 3 establish requirements and limitations concerning a bidder’s responsibilities with regard to proposal-related declarations of exemptions to the provisions of

the State's Open Public Records Act (OPRA) and set forth the various circumstances regarding information release as well as the parameters by which the bidder shall abide when submitting confidential, proprietary, or otherwise privileged information. These amendments provide greater transparency to the proposal solicitation process and also provide pertinent information to interested parties pertaining to the submission of protected information or data.

N.J.A.C. 17:12-2.7, Evaluation of proposals, is amended to codify more detailed information about the Division's proposal evaluation programs and to set forth specific steps and provisions for conducting post-proposal negotiation and/or best and final offer processes as permitted by amended N.J.S.A. 52:34-12. In the introduction of subsection (a), added text is intended to establish that the contract award recommendation that concludes the evaluation of proposals by an evaluation committee comprised of State personnel and a Division staff member or by a Division staff member alone, is not binding on the Director, who statutorily has final say in the Division's awards of contracts. The heading is modified to clarify that the rules are addressing the proposal evaluation process applicable to the Division's standard publicly advertised, competitive procurements. In paragraph (a)1, the longstanding requirement for objectivity and impartiality in those conducting proposal evaluations as set forth in evaluation procedures and documents is codified, and the text concerning the preparation of an evaluation report and the timely assignment of weights to evaluation criteria is relocated to subsection (b). In paragraph (a)2, the use of the generic term "Division staffer" replaces the term "Purchase Bureau buyer of record" as the terms "Purchase Bureau" and "buyer" are not accurately descriptive of the contract procurement actions of the Division and its procurement staff. The remainder of N.J.A.C. 17:12-2.7, beginning with subsection (c) and ending with paragraph (j)8, codify the Division's procedures and protocols as applied to complete the evaluation of

proposals and determine which proposal merits the award of contract when the Division conducts its standard competitive procurement program as the means to contract for the goods and/or services needed by the agencies served by the Division's contracts.

N.J.A.C. 17:12-2.8, Poor performance as a basis for bypass of low bidder, is amended to make several non-substantive changes to engender greater clarity. The proposed amendment to paragraph (a)2 is intended to identify, with more specificity, State sources that may serve as the basis for determining a bidder's demonstrated responsibility and capability through its performance of past or current contracts and through its maintenance of statutorily required licensures, certifications, and registrations. Similarly, the amendments to subsection (b) provide more detail regarding additional measures available to the Division to ascertain a bidder's performances of non-State contracts as necessary to determine if an award of contract is or is not merited. Subsection (c) iterates the Division's prerogative to assess and determine value by consideration of price and other factors when determining an award of contract. In addition, the amendments at subsection (e) codify the Director's prerogative to withdraw the notice of intent to award in situations where a protesting bidder has substantially proven its ability to perform the contract.

N.J.A.C. 17:12-2.9 remains reserved.

N.J.A.C. 17:12-2.10, Tie bids, is amended to make several non-substantive changes to update program names and make clarifying language and usage changes. Paragraph (a)1 is proposed for deletion and replaced with a new paragraph to allow use of a bidder's contract performance history as a tie-breaking factor since that factor is one of the "other factors" considered in all primary proposal evaluations and thus should not be redundantly applied to

break tied proposals. The change provides for first consideration of specific tie-breaking factors if such provision was made part of the RFP.

N.J.A.C. 17:12-2.11, Bid errors, is amended to enumerate and state more clearly the factors considered when determining whether and under what circumstances a bidder can request the Division's authorization to withdraw its unopened or erred proposal. The proposed amendment to subsection (b), itemizing factors of evidence of good faith relative to a bidder's request to withdraw its proposal is taken from an appellate court decision that serves as the basis for the Division's determinations concerning such requests by bidders. In subsection (c), the number of days for a bidder to confirm erred pricing is clarified as "business" days. Paragraph (e)2 is replaced to reflect actual actions taken by the Division to curtail transactions when a contract is terminated due to proposal error.

N.J.A.C. 17:12-2.12 contains proposed amendments that reflect changes made to the governing statute that previously required a business organization to be business-registered with the Department of the Treasury's Division of Revenue at the time of bidding and to include a copy of its registration with its proposal and not requires, instead, that the verifiable business registration of the named contractor and any of its subcontractors "be effected prior to the time a contract, purchase order, or other contracting document is awarded or authorized." With this change, the requirement for business registration with the Division of Revenue ceases to be a bidding requirement and, instead, becomes a pre-contract award requirement for contractors and subcontractors.

Amendments proposed to N.J.A.C. 17:12-2.13 consist of the addition of several phrases to clarify existing language for potential bidders. In subsection (d), "upon request" is inserted to clarify that the list of other states having statutes, rules, and/or regulations that establish an in-

state preference standard, while not published on-line or otherwise, will be provided by the Division to any person or vendor who requests access to the information. In subsection (e), the change of reference from the date of bid opening to the deadline for proposal submission does not alter the timeframe but is made as part of the Division's effort to convert to the use of the term "proposal" rather than "bid." In subsection (j), the clarifying changes include an added cross-reference to the administrative rules regarding the Division's prerogative to forgo an award of contract to a bidder with a record of poor contractual performance of relevant public and private sector contracts in addition to records of poor performance of Division-issued contracts emanating from activities pursuant to the provisions of N.J.A.C. 17:12-4, Complaint and Audit Procedures. Due to an infrequency of pertinent events that are reported on an event-by-event basis and to the resultant obsolescence of the annual report, the requirement of subsection (m) is proposed for deletion.

N.J.A.C. 17:12-2.14, pertaining to mutual cancellation of a contract remains unchanged.

N.J.A.C. 17:12-3 outlines procedures for filing protests pursuant to an advertised RFP.

N.J.A.C. 17:12-3.1, pertaining to informal hearing; subject matter, remains unchanged.

N.J.A.C. 17:12-3.2, Protest procedures; challenges to a specification, is amended to provide clarification to the timing of protests and also grants additional time for the Division to consider the protest issue(s) and then determine and effect the appropriate responsive action(s). Additionally, an amendment is proposed to codify the Director's current prerogative to address a protest of specifications by modification of the RFP specifications and/or the bidding schedule, by canceling the procurement, or by other appropriate actions. Specifically, subsection (b) contains a new provision intended to encourage bidders to utilize the Division's standardized Electronic Question and Answer segment of the contract procurement process to present their

questions and/or issues concerning an RFP's specifications and requirements rather than by filing a formal protest of the specifications. Upon public notice and release of an RFP addendum containing the Division's responses to the electronically posed questions and issues, a bidder may then formally challenge the RFP's specifications and requirements, so long as the challenge is submitted to the Director at least seven business days prior to the scheduled proposal submission deadline to allow time for consideration and remedial action, if, or as, required. Several other non-substantive changes were also proposed to ensure consistent use of terminology and modifying language.

N.J.A.C. 17:12-3.3, Protest procedures; challenge to a contract award decision, is amended to strengthen language pertaining to the automatic rejection of a bid proposal for failure to comply with the prerequisites as set forth in N.J.A.C. 17:12-2.2 and to explain that, while the Division's decision to reject a proposal can be challenged, the requirements of N.J.A.C. 17:12-2.2, as administrative rules, are not subject to dispute. Paragraph (a)1 contains an insertion of the term "or a portion thereof" to clarify that, in certain instances, a deficiency that compels an automatic rejection may apply only to a segment of a proposal and not to an entire proposal, such as can occur with a segmented RFP and contract. The proposed amendments to subsection (b) are intended to clarify that a bidder can, within 10 business days following the Division's notice, or within fewer days if the notice so stipulates, file a protest either to challenge the Division's automatic rejection of its proposal or to challenge the announced intent to award the contract to another bidder, as applicable. Further, with the proposed amendments to subsection (c), the Division is proposing to require notice of intent to award be issued to all bidders participating in an advertised procurement and for every advertised procurement rather than, as in the existing rules, only when the award is being made to a bidder that did not submit the lowest responsive

proposal. In addition, the proposed amendment provides that the deadline for filing a protest of an intended award of contract is 10 business days after a bidder's receipt of said notice or the specific deadline set forth in said notice, whichever date is earlier. Several non-substantive changes have also been made to improve consistency.

N.J.A.C. 17:12-3.4, Discovery procedures, is amended to describe, more clearly, that protesting parties are obliged to provide all documentation required for the Division to conduct a thorough review of the records of the procurement. Two minor terminology changes are also proposed.

The heading of Subchapter 4, Complaint Procedures, is amended to include audit procedures governing using agencies.

N.J.A.C. 17:12-4.1, Purpose and scope of subchapter, is amended to clarify that the procedures set forth in this subchapter are applicable to using agencies. In addition, language has been proposed to delineate that the State preserves all rights or remedies available at law or in equity for using agencies failing to comply with the complaint process set forth in this subchapter.

Amendments proposed at N.J.A.C. 17:12-4.2 serve to clarify that the procedures set forth in this subchapter apply to using agencies filing complaints against contractors.

N.J.A.C. 17:12-4.3, Filing of complaints; subject matter, is amended to provide using agencies greater discretion with respect to the filing of complaints regarding performance of their contractual obligations. The amended language also clarifies that formal complaints are not necessary in instances where a State contract includes specific performance standards, such as a liquidated damages clause.

N.J.A.C. 17:12-4.4, Time frames, is amended to clarify that using agencies are to file their rebuttal to a contractor's response to a filed using agency complaint. Also, an amendment is proposed to establish that the deadline for a contractor to file a response to an agency-filed complaint or to appeal a CCAU decision is 10 "business" days after a bidder's receipt of said notice or the specific deadline set forth in said notice, whichever date is earlier. In addition, language has been proposed to delineate that the State preserves all rights or remedies available at law or in equity prior to or throughout the complaint adjudication process.

N.J.A.C. 17:12-4.5, Resolution of complaints, is amended to substitute "in-person" for "oral" to more accurately describe the type of presentation discussed in this section. In addition, the section is amended to indicate the proper venue for appeals of final agency decisions. Also, an amendment has been proposed to delineate that the State preserves all rights or remedies available at law or in equity during complaint appeal processes.

N.J.A.C. 17:12-4.6 pertaining to rejection of goods and/or services remains unchanged.

A non-substantive change in terminology is proposed for N.J.A.C. 17:12-4.7 to change "vendor" to "contractor."

N.J.A.C. 17:12-4.8 is amended to reflect the change from "vendor" to "contractor" as in N.J.A.C. 17:12-4.7. Further, subsection (a) is amended to replace the word "rescind" with the word "terminate" for accuracy and consistency with the Division's currently applied terminology for an unnatural end to a contract. Paragraph (a)2 is amended to make certain the 10-day response period is 10 business days and not 10 calendar days, unless the notice of complaint document issued by CCAU specifies a response period of less duration, as justified therein.

N.J.A.C. 17:12-4.9, Discovery procedures, is amended to encompass audit and complaint discovery procedures and reflects the terminology change from "vendor" to "contractor" as

previously amended within this subchapter. Further, this rule is amended to delineate the State's right to use the complaint to prove non-compliance and as a basis for pursuing available rights or remedies as set forth in the contract.

Proposed new Subchapter 5 contains rules pertaining to the Division's responsibilities to conduct the Political Contribution Compliance Review Process as part of the State's program to ensure that no purchases or contracts in excess of \$17,500 are made or awarded by State agencies and authorities to business entities that have contributed in excess of \$300.00 to certain political entities.

N.J.A.C. 17:12-5.1, Background and program administration responsibility, provides the statutory basis and the history of the development of the program that was created to curtail the corrupting influence of "pay-to-play" practices.

N.J.A.C. 17:12-5.2 sets forth the definitions of "business entity," "contribution," and "State agencies and authorities."

N.J.A.C. 17:12-5.3, Review of submissions, describes the certification and disclosure obligations to which State agencies and authorities must attend prior to a purchase or contract award in excess of the threshold dollar figure and the responsibility for certified business entities to report ownership changes and political contributions during the two-year certification period.

N.J.A.C. 17:12-5.4, Determination of business entity ineligibility, establishes that the State agency or authority has the responsibility to communicate to a business entity that it has been deemed ineligible when the Division's Review Unit has determined, based on its reviews of ownership disclosure and political contribution information, that a disqualifying contribution has occurred or a conflict of interest exists.

N.J.A.C. 17:12-5.5, Reconsideration of determination of ineligibility, establishes the provisions and procedures for a business entity to apply if it opts to challenge the Review Unit's declaration of ineligibility by appealing to the Director.

N.J.A.C. 17:12-5.6, Appeal of Director's determination, sets forth the protocol for appealing the Director's determination.

N.J.A.C. 17:12-5.7, Public exigency, establishes the process for a State agency or authority to seek special dispensation to address exigent circumstances.

Subchapter 6, Debarment, Suspension and Disqualification of a Person(s), remains unchanged and Subchapters 7 and 8 remain reserved.

The heading of Subchapter 9 is amended to reflect that the State's Surplus Computer Distribution Program is administered by the Surplus Property unit within the Division's Distribution and Support Services Unit and also to signify that the program applies only to used, surplus computers.

N.J.A.C. 17:12-9.1 contains a non-substantive change to reflect the proper nomenclature of the Distribution and Support Services Unit, as amended in the heading of Subchapter 9.

N.J.A.C. 17:12-9.2 pertaining to the purpose and intent of the subchapter remains unchanged.

N.J.A.C. 17:12-9.3, Definitions, is amended to add the definition for the Distribution and Support Services Unit, update the operating system requirement within the "eligible computer" definition, and amend the Surplus Property Unit definition to reflect its organizational placement within the Distribution and Support Services Unit.

N.J.A.C. 17:12-9.4 and 9.5 contain several non-substantive changes to reflect the organizational change of the Surplus Property Unit to being a section within the Distribution and Support Services Unit.

N.J.A.C. 17:12-9.6 pertaining to the condition of eligible computers and items of surplus peripheral equipment distributed hereunder remains unchanged.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments and new rules will have a beneficial social impact as they aim to streamline the State procurement process and reduce burdens placed on potential bidders. These rules, as amended, will continue the Division's ongoing efforts to conduct competitive bidding wherever possible and to award contracts that provide the most advantage to the State, price and other factors considered, while providing for new opportunities to secure best pricing through leveraged procurement. In all of the procurement processes, the Division guards against favoritism, improvidence, extravagance, and corruption; while providing for fair and equal treatment of the goods and services providers as bidders and contractors.

Economic Impact

The rules proposed for readoption with amendments and new rules will continue the ongoing efforts to ensure that the State and general public benefit from the cost and performance advantages achieved by competitive bidding and leveraged procurement to meet the operational needs of State government and the political subdivisions that choose to utilize the State contracts issued under the rules proposed for readoption with amendments and new rules. Proposed new

N.J.A.C. 17:12-1.5, which implements a 0.25 percent assessment of the value of contractual transactions by State agencies via Division-issued contracts to fund the modernization and enhancement of the Division's procurement program, will not substantively affect the economy of the State or its agencies, nor will it impact upon the earnings of the contracted vendors who provide goods and services to the State and its agencies. In effect, the nominal assessment, which, for example, will amount to 25 cents for every \$100.00 paid to a Division-contracted product or service provider, will be clearly disclosed for all applicable procurements so that participants can factor the assessment when considering price-relevant elements. It is anticipated that the conveniences and efficiencies resulting from the enhanced programs will provide both contracted vendors and using agencies with opportunities to derive cost-benefits in excess of the assessed amounts.

The Division's ability to leverage in providing procurement services for the agencies of the State has had a positive impact on State and local government budgets, as well as the State's overall economic condition. The rules proposed for readoption with amendments and new rules allow for discretionary local government and quasi-State agency participation in State contracts and thus do not generate a State mandate/State pay issue.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments and new rules are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not believe that the rules proposed for readoption with amendments and new rules will increase or decrease jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments and new rules will have no impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and new rules will apply to all persons and entities that seek awards of the State's goods and/or services contracts issued by the Division of Purchase and Property. Many such persons and entities are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No reporting or recordkeeping requirements are imposed on small businesses by the rules proposed for readoption with amendments and new rules beyond those requirements applicable to every business entity submitting a proposal in response to bidding opportunities offered by the Division. The engagement of professional services is not necessary to fulfill these requirements, unless specifically required by the RFP. The contract procurement procedures and requirements are necessary to ensure fair, competitive methodologies to establish contracts for use by State agencies and other using agencies, including local governmental entities. Aside from bid security and performance security requirements, which are rarely applied and only when necessary to protect the expenditure of public funds, the rules impose no capital costs upon small businesses, beyond those normally incurred. The proposed nominal 0.25 percent assessment set forth as a proposed new rule at N.J.A.C. 17:12-1.5 should impose no hardship on small businesses as the assessment can be factored into proposed bid pricing.

Housing Affordability Impact

The Department does not anticipate that the rules proposed for readoption with amendments and new rules will cause any increase or decrease in the average cost of housing, as the rules concern the processes and procedures governing the Division's procurement- and contract-related programs and services.

Smart Growth Development Impact

The Department does not anticipate that the rules proposed for readoption with amendments and new rules will have any impact on the availability of affordable housing or the construction of new housing within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Act, as the rules concern the processes and procedures governing the Division's procurement- and contract-related programs and services.

Full text of the proposed recodification, amendments, and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 12

DIVISION OF PURCHASE AND PROPERTY: [PURCHASE] **PROCUREMENT** BUREAU;
[AND] CONTRACT COMPLIANCE AND [ADMINISTRATION] **AUDIT** UNIT; [SURPLUS
PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM] **AND DISTRIBUTION
SUPPORT SERVICES UNIT**

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION; **MEANS OF PROCUREMENT**

17:12-1.1 General course and method of operation

(a) The Division of Purchase and Property, in and of the New Jersey Department of the Treasury, provides centralized procurement and related services to agencies of the Executive Branch of State government. Within its statutory framework, the primary mission of the Division is to procure, in a timely and effective manner, **contracts for** the goods and services necessary for the daily operation of State government. [As it relates to procurement] **In addition to a program support unit**, the Division includes the [Purchase] **Procurement** Bureau, [and] the Contract Compliance and [Administration] **Audit** Unit, [{"CCAU"}] **and the Distribution and Support Services Unit**. [The Purchase Bureau is primarily responsible for the State's procurement process. CCAU is responsible for ensuring that using agencies comply with State procurement guidelines and that contract vendors fulfill their contractual obligations.] This chapter sets forth the rules [which] **that** apply to the Division, **State agencies and other** public entities, and vendors participating in the State's **procurement and** contracting processes.

(b) The Director of the Division of Purchase and Property (**Division**) is charged with the responsibility for establishing contracts and issuing purchase orders, the [price] **cost** of which is to be paid with State funds or funds in the State's custody and control, and occasionally those contracts involving no cost to the State or those generating revenue for the State. If the aggregate amount involved does not exceed the threshold established pursuant to N.J.S.A. 52:34-7, any [purchase] **procurement** or contract may be made, negotiated, or awarded by the Director without advertising, in any manner the Director may deem effective and practicable to permit full and free competition.

(c) When the aggregate amount exceeds the threshold established pursuant to N.J.S.A. 52:34-7, [the request for proposal ("RFP")] shall permit such full and free competition as is consistent with the procurement of goods and services necessary to meet the requirements of the using agency or

agencies. Any such purchase or contract where the cost or contract price exceeds the threshold referenced above may, with the written approval of the State Treasurer, be made, negotiated or awarded by the Director without advertising when the subject matter or the circumstances of the procurement are as described in N.J.S.A. 52:34-9 and/or 52:34-10.] **the Division shall, as prescribed and/or practicable, use one of the following methods to procure the needed goods and/or services:**

1. An advertised competitive bidding process that utilizes a Request for Proposal or Request for Qualifications and permits such full and free competition as is consistent with the procurement of goods and services necessary to meet the requirements of the using agency or agencies; or

2. A non-advertised procurement process in accordance with applicable statutes and with the requirements and restrictions expressly set forth in this chapter, specifically pertaining to contracting pursuant to:

i. N.J.S.A. 52:34-6.1, with a conforming product or service provider holding a current Federal supply schedule contract or other Federal procurement program contract having most favorable pricing, as described at N.J.A.C. 17:12-1A.5;

ii. N.J.S.A. 52:34-6.2, by participating in cooperative procurement agreements formed with or by another state or states, or a political subdivision thereof or of New Jersey, or with or by a nationally recognized and accepted cooperative procurement entity with which other states participate, as described at N.J.A.C. 17:12-1A.3;

iii. N.J.S.A. 30:6-23 et seq. and Executive Order No. 67 (2005), through the set-aside of select goods or services for exclusive access by using agencies from the

designated Central Non-profit Agency to provide for meaningful employment of New Jersey citizens with special needs;

iv. N.J.S.A. 30:4-95, through the set-aside of select goods or services for exclusive access by using agencies from the New Jersey Department of Corrections' DeptCor unit to provide opportunities for meaningful skills development and work habits of the institutionalized labor pool; or

v. N.J.S.A. 52:34-8 et seq., when the subject matter and/or circumstance necessitates waiver of advertising procurements and upon written approval of the State Treasurer, as described at N.J.A.C. 17:12-1A.2(c).

(d) An agreement between one State agency and another State agency or quasi-State agency to meet the need for goods or services of one of the agencies, which need would otherwise be addressed through a procurement is not a procurement and need not adhere to procedures pertaining to the processes set forth above in (c) above.

[(d)] **(e) The Director may delegate to staff within the Division [of Purchase and Property the signing of purchase orders on the Director's behalf] review and signatory authority for the approval and execution of specifications, award recommendations, contracts, and purchase orders for such amounts as the Director may establish from time to time and implement through the issuance of policy memoranda.**

[(e) When deemed to be in the best interest of the State, the Director may authorize the award of contracts on the following bases:

1. Line item contract;
2. Single-source term contract;
3. Multi-source term contract;

4. Waiver of advertising contract;
5. Prequalification contract;
6. Purchasing agreements with another state or other states, political subdivisions or agencies thereof to meet domestic preparedness and homeland security needs of this State; or
7. Purchasing/contracting with vendors having Federal Supply Schedule contracts for products or services needed to meet domestic preparedness and homeland security needs of this State.]

17:12-1.2 [Source for public] **Public** information

(a) The public is encouraged to obtain information concerning the State procurement program and RFPs by accessing the Division's Internet site at www.state.nj.us/treasury/purchase. If the information being sought is not available on the Division's website, the public can request information **by posing questions via the Division's website**, by writing to the Director of the Division of Purchase and Property, PO Box 039, Trenton, New Jersey 08625-0039, or by visiting the Division's reception area at 33 West State Street, 9th Floor.

(b) [Subsequent to bid opening] **After the opening of sealed proposals**, all information submitted by bidders in response to a [bid] solicitation **of proposals** is considered public information, notwithstanding any disclaimers to the contrary submitted by a bidder, except **when an RFP contains a negotiation component or** as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (**OPRA**), and the common law. **As a part of its proposal, each bidder may identify any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. Assertions that the entire proposal and/or prices are exempt from public**

disclosure under OPRA, the common law, or the U.S. Copyright Act are overbroad and will not be honored by the Division. In the event that a public request is made for materials that the bidder has identified as confidential, the Director shall have the final authority to determine whether the materials are exempt from public disclosure under OPRA and shall take action as required by applicable law. The bidder or contractor may elect to defend its assertion of exemption from the public disclosure requirements of OPRA or the common law, but in doing so, all costs and expenses associated therewith shall be the responsibility of the bidder or contractor. The State assumes no such responsibility or liability.

(c) When the RFP permits negotiation with bidders after the submission of proposals, such proposals shall be made publicly available only after issuance of a notice of intent to award.

17:12-1.3 Definitions

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

“Advertised procurement” refers to the formal process used by the Division to obtain sealed proposals in response to a Request for Proposal.

“Agreement” refers to documentation that establishes a mutually binding legal relationship and conveys contractual terms, conditions, and/or requirements between two, or among more than two, public entities applicable to intrastate or interstate actions.

“Best and final offer” or “BAFO” means a price timely submitted by a bidder upon invitation by the Division after proposal opening, with or without prior discussion or negotiation.

...

“Bidder” means a vendor who has offered a proposal in response to the Division’s solicitation of proposals.

“Business organization” means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereto.

“Business registration” means the formal certification by the Department of the Treasury’s Division of Revenue that a business entity, upon its application to the Division of Revenue, has attained and maintained status as a registered business in accordance with the provisions of N.J.S.A. 52:32-44.

“Bypass” means a contract award made to other than the lowest priced **responsive** proposal from a responsible bidder[(s) submitting a conforming proposal]. A bypass occurs when the Director determines that the **responsive** proposal, which is most advantageous to the State, is not the lowest priced responsive proposal.

“Compatible” relates to instances when, in the Director's business judgment, it is advantageous to [purchase] **procure** materials, supplies, or services that are, or equipment that is, capable of performing in conjunction with those previously [purchased]. This also refers to situations in which] **procured, where** the [purchase] **use** of materials, supplies, services, or equipment at variance with those previously [purchased has the potential to] **procured may** degrade or impair the performance of those previously [purchased] **procured** and/or negatively impact upon warranties or licenses of those previously [purchased] **procured**.

“Competitive range” means the group of responsive proposals that are among the most highly rated proposals.

"Contract" means a mutually binding legal relationship obligating the contractor to furnish goods and/or services and the purchaser to pay for them, subject to appropriation where the using agency derives its annual budget by means of appropriation from the State Legislature. [The] **For publicly advertised contracts, the** contract typically consists of the Division's **standard** terms and conditions, the RFP, the responsive proposal, the notice of acceptance or award, any subsequent written document memorializing the agreement, any amendments or modifications to any of these documents and any attachments, addenda or other supporting documents, or other writings agreed to by the State and the contractor describing the work to be performed.

"Contract Compliance and [Administration] **Audit Unit**" (CCAU) refers to [a] **the** unit within the [Office of the Director,] Division of Purchase and Property[. CCAU is responsible for monitoring using agencies and contracted vendors to ensure their conformance to State procurement statutes, regulations, and contractual terms, conditions and requirements. To this end,] **having the responsibility and authority to audit State contract usage to promote compliance with contract provisions and applicable procurement mandates and guidelines.** CCAU acts as the initial arbiter of complaints filed **by using agencies** pursuant to N.J.A.C. 17:12-4 and [conducts audits of the State's contractors and using agencies] **administers the State's Contractor Certification and Disclosure of Political Contributions program pursuant to N.J.S.A. 19:44A-20.13 et seq.** CCAU also has oversight responsibility for contracts [which] **that** are subject to waiver of advertising pursuant to N.J.S.A. 52:34-9 and 10. **In addition, CCAU monitors using agencies and contracted vendors to ensure their conformance with State procurement statutes, rules, and contractual terms, conditions, and requirements.**

"Contractor" refers to a business entity awarded a contract by the Division.

“Cooperative procurement agreement” refers to a contractual relationship in which the Division, pursuant to the provisions of N.J.S.A. 52:34-6.2, joins with, or is joined by, another state or states or political divisions thereof or of New Jersey, or with a nationally recognized and accepted cooperative procurement entity in which other states participate, for the acquisition of goods and/or services that have been, or are to be, procured through competitive bidding.

“Cooperative Purchasing Program” refers to the Division’s intrastate program that provides procurement-related assistance to local New Jersey governmental entities and boards of education, State and county colleges and other public entities having statutory authority to utilize select State contracts issued by the Division, pursuant to the provisions of N.J.S.A. 52:25-16.1 et seq.

“Day” or “business day” means [a normal work day and excludes Saturday, Sunday or State legal holiday] any weekday, excluding Saturdays, Sundays, State legal holidays, and State-mandated furlough days.

“Delegated Purchasing Authority” or “DPA” refers to the Director’s assignment of authority to State using agencies to make purchases when the product or service being procured is not available under an existing Division-issued State contract and when the cost does not exceed the statutorily defined formal advertised bidding threshold pursuant to N.J.S.A. 52:34-7.

...

“Distribution and Support Services” (DSS) refers to the unit within the Division that provides warehousing and distribution services to State and other governmental agencies

to meet their product requirements and administers the State's surplus property programs, including the computer distribution program.

"Division" means the Division of Purchase and Property **and its support and operational units**, including the [Purchase] **Procurement** Bureau, [and] CCAU, **and DSS**.

...

“Federal supply schedule contract” refers to a contract established and administered by contracting agencies of the Federal government, including and particularly the General Services Administration, which may, at the discretion of the Division, serve as an alternate price guide for the purchase of goods and services by State using agencies.

"Filed" means received by the Director **or her or his Division representative**.

“Hearing officer” means the Director’s representative from within or outside the Division, but independent of the procurement process, appointed by the Director to review the written record of an advertised procurement, and/or, in the discretion of the Director, to preside over an in-person presentation or informal hearing in response to a vendor’s challenge, in accordance with N.J.S.A. 52:34-10.10, and as set forth in N.J.A.C. 17:12-3.2 and 3.3.

"Homeland security[,]" **and** "domestic preparedness" [and "emergency condition"] refer to circumstances [which] **that** may be cause for immediate procurement action necessary to meet potential or existing **life and safety or** security[, safety or other life and safety] concerns as deemed essential by the Governor or other authorized State official and sanctioned as such by the State Treasurer.

["Line item contract" refers to a contract for which bid proposals are sought for a specific item or group of items and which is typically awarded to no more than one of the bidders.

"Multi-source contract" means a commodity or service contract awarded to two or more bidders required to meet the needs of agencies in accordance with the provisions of N.J.S.A. 52:34-12.1. The Director takes into consideration such factors as delivery and pickup locations, quantities, compatibility, and standardization and, if applicable, the use of the State contracts by Cooperative Purchasing participants.]

“Negotiation component” refers to an RFP provision that establishes the Division’s intent to negotiate with bidders pursuant to the provisions of N.J.S.A. 52:34-12(f), the codified generic procedures set forth at N.J.A.C. 17:12-2.7, and the specified provisions for negotiation set forth in the RFP.

...

["Prequalification contract" means a contract without pre-established quantifiable requirements for goods and/or services where it is in the best interests of the State to establish two or more qualified contractors to compete for work orders for specific requirements.]

“Procurement” refers to the processes used by the Division to establish formal contracts by which using agencies can purchase required goods and services.

“Procurement agreement” refers to a contractual relationship that is contemplated or created under the Division’s prerogatives established by N.J.S.A. 52:34-6.2, concerning cooperative agreements, when the relationship is initiated prior to or during the competitive bidding process.

“Procurement Bureau" refers to the Divisional unit responsible for the preparation, advertisement, and issuance of RFPs, for the tabulation and evaluation of proposals and for recommending award(s) of contract(s) to the Director.

“Professional,” relative to contract services and as differentiated from “technical” services, refers to services performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services include those services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor, as well as extraordinary, non-specifiable services if, after evaluation and assessment, such services are determined to be such that they cannot reasonably be described by written specifications.

"Protest" means a timely filed challenge to a specification in an advertised RFP, **to a rejection of a proposal declared non-responsive**, or to a contract award decision made by the Director.

"[Purchase Bureau" refers to the bureau under the direct authority of the Director that is responsible for the preparation, advertisement and issuance of RFPs, tabulation and evaluation of proposals and making contract award recommendations to the Director.]

“Publicly available,” with respect to any procurement, either in printed or electronic format, means access to the record of any particular procurement or contract for review and/or copying, with the exception of any material deemed by the Director to be proprietary, confidential, or subject to any privilege, or exclusion under OPRA, the common law, and/or U.S. copyright law.

“Purchase” or “purchasing” refers to the acquisition of goods and/or services accomplished through the issuance of a purchase order.

“Purchasing agreement” refers to a contractual relationship that is contemplated or created under the Division’s prerogatives established by N.J.S.A. 52:34-6.2, concerning cooperative agreements, when the relationship is initiated after the competitive bidding has been conducted.

“Quasi-State agency” refers to any agency commission, board, authority, or other such governmental entity, which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

"Request for Proposal ([]RFP[])" means all documents, whether attached or incorporated by reference, used for [soliciting] a **publicly advertised procurement process that solicits proposals or offers to provide the goods and/or services specified therein.**

“Responsible bidder” refers to a bidding entity deemed by the Division to have integrity and to be reliable and capable of performing all contract requirements.

“Responsive proposal” refers to a proposal that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of an RFP’s terms and conditions, specifications, and other requirements.

...

"Sealed [bid] **proposal**" means that the contents of the [bid] proposal cannot be opened or viewed before the [date and time of the] formal [bid] opening **of proposals** without leaving evidence that the document has been opened or viewed.

"Signed" means a physical or electronic signature evincing [an intent by] a bidder’s **intent** to be bound.

["Single-source term contract" means a competitively bid commodity or service contract awarded to one bidder that is deemed able to meet the need(s) of the using agency or agencies in accordance with the provisions of N.J.S.A. 52:34-12.]

"Standardization" relates to instances when, in the Director's business judgment, it is advantageous to [purchase] **procure** materials, supplies, or equipment consistent and compatible in design, fit, style, composition, or manufacture with materials, supplies, or equipment currently in use or to [purchase] **procure** services identical or approximate to those previously [purchased] **procured**, notwithstanding that materials, supplies, equipment, or services at variance to those previously [purchased] **procured** can be used without negatively impacting the performance of those previously [purchased] **procured**. Standardization is appropriate in instances where cost savings relating to maintenance, technical support, training, and/or parts inventory can be reasonably anticipated by [purchasing] **procuring** materials, supplies, equipment, or services identical or approximate to those previously [purchased] **procured**.

“Technical,” relative to contract services and as differentiated from “professional” services, refers to services that require the application of a special skill or practical knowledge in such areas as information technology, telecommunications, electronics, or other applied sciences.

...

“Using agency” refers to a State department or agency, a quasi-State governmental entity, or a Cooperative Purchasing Program participant authorized to purchase products and/or services under a specific contract procured by the Division.

...

17:12-1.4 Application of rules

Except as otherwise provided in this chapter, these rules shall apply to all [contracts resulting from an RFP, to all waiver of advertising contracts and to] **advertised and non-advertised contracts awarded by the Division or under the authority of the Division, including all Delegated Purchasing Authority contracts as set forth in Department of the Treasury Circular [00-13 DPP] 11-10-DPP, Delegated Purchasing Authority, as amended or re-designated, and accessible at <http://www.nj.gov/infobank/circular/circindx.htm>.**

17:12-1.5 Procurement efficiency program

In accordance with the provisions of N.J.S.A. 52:27B-56 and in order to maintain the State's procurement system at a level to meet common industry standards of efficiency, the Director shall make an assessment from each contractor in the amount of one quarter of one percent of the value of all transactions on contracts as defined in the RFP.

SUBCHAPTER 1A. PROCUREMENT METHODOLOGY

17:12-1A.1 Formal, advertised, sealed bidding

- (a) Except as provided in this subchapter, all [purchases] **procurements** shall be through formal, advertised, sealed bidding.
- (b) The Director shall structure [Requests for Proposals] **RFPs** for formal, advertised, sealed bidding to provide for a single contract award to a single bidder, unless contract awards to [two or more] **multiple** bidders are permitted as hereinafter provided in this subchapter.

(c) The Director may structure an RFP for formal, advertised, sealed bidding to include multiple lines encompassing more than one commodity, group of commodities, service or group of services, with [a] separate contract awards for each price line **or grouping of price lines**.

(d) [The] **Pursuant to the provisions of N.J.S.A. 52:34-12.1, the** Director may structure an RFP for formal, advertised, sealed bidding to be awarded to [two or more] **multiple** bidders [on the basis of] **to meet the anticipated needs of State agencies and, if the State contracts are to be extended to Cooperative Purchasing Program participants pursuant to N.J.A.C. 17:12-2.3, the anticipated needs of Cooperative Purchasing Program participants, based upon** one or more of the following criteria:

1. The anticipated quantities **of products and/or services** required by [State] using agencies [and, if the State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the anticipated quantities required by cooperative purchasing participants];

2. The needs of [State] using agencies [and, if the State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the anticipated needs of cooperative purchasing participants] for **prompt access to providers of** maintenance, repair parts, and service [and the ability of potential bidders to provide such maintenance, repair parts and service];

3. The needs of [State] using agencies [and, if State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the needs of cooperative purchasing participants] for cost-efficient, timely local deliveries;

4. The needs of [State] **using** agencies [and, if the State contracts resulting from RFP are to be extended to cooperative purchasing participants, the needs of cooperative purchasing

participants] to purchase materials, supplies, services, or equipment compatible with those previously purchased;

5. The needs of [State] **using** agencies [and, if the State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the needs of cooperative purchasing participants] for standardization of equipment, interchangeability of parts, or continuation of services;

6. The collective safety, environmental, or technological needs of [State] using agencies [and, if the State contracts resulting from the RFP are to be extended to cooperative purchasing participants, the collective safety, environmental or technological needs of cooperative purchasing participants]; and/or

[7. The requirements of any law directing the Division to purchase a particular product or to purchase from a particular source.]

7. Any other factors that the Director determines make multiple awards necessary to serve the State's interests.

(e) [Any RFP under (d) above shall be structured to result in the number of contract awards documented as necessary on the basis of the criteria set forth in (d) above.] The [RFP file for any such procurement] **Division's record of each contract procurement conducted under the provisions of (d) above** shall document the reason(s) for the multiple contract award structure [of the RFP].

(f) [All proposals received in response to an RFP for a formal advertised sealed bids shall be solicited, evaluated and awarded] **All advertised procurements shall be conducted** pursuant to the provisions of N.J.A.C. 17:12-[3]2.

17:12-1A.2 Exceptions to formal, advertised, sealed bidding

[(a) With the exception of contracts awarded by State agencies via the Division's Delegated Purchasing Authority program and contracts awarded by the Division upon approval by the State Treasurer to waive the public advertisement requirement, that is, waiver of advertising contracts, all contracts issued by the Division shall be formally advertised and competitively bid with requirements for the submittal of sealed bids.]

(a) All contracts issued by the Division shall be formally advertised and competitively procured with requirements for the submission of sealed proposals, except for the following types of contracts:

1. Contracts between State agencies or between State agencies and quasi-State agencies where one qualified agency can provide services to meet specified needs of another agency, including the transactions between using agencies and the designated Central Non-Profit Agency pursuant to N.J.S.A. 30:6-23 et seq. and Executive Order No. 67 (2005) and between using agencies and the Department of Corrections Bureau of State Use Industries pursuant to N.J.S.A. 30:4-95;

2. Purchase orders issued or awarded under the provisions of the Division's Delegated Purchasing Authority program pursuant to the provisions of (b) below;

3. Contracts awarded by the Division upon approval by the State Treasurer to waive the public advertisement requirement, pursuant to the provisions of (c) below;

4. Cooperative procurement agreements with one or more other states, or political subdivisions thereof or of New Jersey, or with a nationally recognized and accepted cooperative procurement entity in which other states participate, pursuant to the provisions of N.J.A.C. 17:12-1A.3; or

5. Contracts issued by the Division that allow the use of Federal procurement program contractors, including those with Federal supply schedule contracts issued by the Federal General Services Administration, pursuant to the provisions of N.J.A.C. 17:12-1A.5.

(b) [State agency purchasing under] Delegated Purchasing Authority [procedures shall be done only] **purchases. State using agencies may make purchases pursuant to their assigned Delegated Purchasing Authority** under the [following] conditions[:] **set forth in (b)1 through 6 below, with provision for exception as set forth in (b)7 below. Records of all Delegated Purchasing Authority purchases shall be maintained by State agencies pursuant to each agency's record retention schedule.**

1. [Purchases not exceeding] **The purchase does not exceed** the formal advertised bidding threshold established at N.J.S.A. **52:25-23 or** 52:34-7, or the adjusted amount established under the provisions of N.J.S.A. 52:34-7.1, [do] **and therefore does** not require formal, advertised, sealed bidding[; and].

[2. The Director has delegated, to State agencies, authority to make purchases not exceeding the advertised bidding threshold amount set forth in (b)1 above, subject to the following conditions:]

[i.] **2.** The **using** agency's anticipated fiscal year volume for a qualifying item or service is no greater than the formal advertised bidding threshold amount set forth in (b)1 above[;].

[ii.] **3.** The purchase is one that cannot be made through a State contract, the State Distribution and Support Services [Center] **Unit**, the Bureau of State Use Industries, or the Central Non-profit Agency (CNA), ACCSES NJ, Inc.[; and].

[iii.] **4.** (No change in text.)

[(c)] **5. The purchase is compliant with the** Delegated Purchasing Authority procedures [are] set forth in[, and are subject to revision through,] the [Division's] **Department of the Treasury Circular [on] 11-10-DPP, Delegated Purchasing Authority [procedures], as amended or re-designated, and accessible at <http://www.nj.gov/infobank/circular/circindx.htm>.**

[(d)] **6.** Should violations of Delegated Purchasing Authority provisions be verified, the Director may rescind or reduce the level of Delegated Purchasing Authority granted the offending **State** agency.

7. As established at N.J.S.A. 52:25-23.d, through written order or pursuant to a written request from a State agency, the Director may authorize a State agency to undertake an advertised procurement in excess of the amount delegated to the agency under N.J.S.A. 52:25-23, but less than \$250,000 when the procurement is limited to the needs of the specific agency under the following conditions:

i. The advertised procurement shall be conducted in accordance with statutes, regulations and policies governing State procurement;

ii. The Director shall designate a person within the Division to assist the State agency with the advertised procurement;

iii. Under no circumstances shall the State agency proceed with the advertised procurement until the Director has given the agency written authorization to proceed; and

iv. The State agency shall maintain a record of each contract awarded by the agency, including proper proof that the contract was duly advertised and achieved competition, which shall be available for audit by the Division.

[(e) Records of all Delegated Purchasing Authority purchases shall be maintained by State agencies pursuant to each agency's record retention schedule.]

[(f)] (c) **Waiver of Advertising procurements.** In accordance with the provisions of N.J.S.A. 52:34-8, contracting for goods and/or services [at costs] in excess of the competitive bidding threshold established at N.J.S.A. 52:34-7, or the adjusted amount established under the provisions of N.J.S.A. 52:34-7.1, without public advertising, requires prior approval by the State Treasurer or the Treasurer's designee. Awards of waiver of advertising contracts shall be made in accordance with the procedures set forth in the [Division's] **Department of the Treasury Circular [on] 11-14-DPP, Requests for Waivers of Advertising, as amended or re-designated,** and may occur when the following conditions have been met:

1. The State agency initiating the Request for Waiver of Advertising procurement is addressing one or more of the following situations:

i. [Services] **The services** to be performed are of a technical and professional nature or are to be performed under the supervision of the Director and paid on a time basis;

ii. - iii. (No change.)

iv. The purchase is of supplies or services as to which [bid] **proposal** prices after advertising therefor were not reasonable or [independent] **independently attained**, provided that no negotiated purchase, contract, or agreement may be entered into unless each responsible bidder is notified, the negotiated price is lower than the lowest rejected price, and the price is the lowest negotiated price offered by any responsible bidder;

v. (No change.)

vi. [Public] **A public** exigency, that is, life, health, and/or other [emergencies,] **emergency that** requires the immediate delivery of [the articles] **essential goods and/or** performance of [the] **a** service;

vii. - ix. (No change.)

x. The product(s) is (are) **traded** on a national commodity exchange and market fluctuations require immediate action; [and/or]

xi. [Standardization] **The purchase is of equipment of a technical nature and standardization** of equipment and interchangeability of parts is in the public interest; **and/or**

xii. The purchase is of equipment, goods, or services related to homeland security and domestic preparedness and is paid for or reimbursed by Federal funds awarded by the U.S. Department of Homeland Security or other Federal agency, from vendors participating in a Federal procurement program, in consultation with the New Jersey Office of Homeland Security and Preparedness;

2. The Request for Waiver of Advertising packet includes documentation [which] **that** establishes that informal competitive bidding was conducted if the procurement is addressing any situation(s) described in [(f)1i] **(c)1i, ii, iii, iv, [vii,] viii, ix [and/or], xi, and/or xii** above, and which includes written justification for any bypass of a lower bidder, **or, as applicable to the sole source circumstance addressed at (c)1vii above, that due diligence was applied to determine that only one source of supply is available;** and

3. (No change.)

17:12-1A.3 Cooperative [purchasing] **agreements**

[(a) The Director may enter into cooperative purchasing agreements with one or more other states, or political subdivisions thereof, for the purchase of goods and services.]

(a) Pursuant to the provisions of N.J.S.A. 52:34-6.2, the Director may, prior to, during, or after an advertised competitive procurement for the purchase of goods and/or services conducted by another state or other states, or political subdivision(s) thereof or of New Jersey, or by a nationally recognized and accepted cooperative procurement entity in which another state participates, or other states participate, or after the award of contract(s) thereof, enter into a cooperative agreement with said state(s), political subdivision(s), or entity when the Director deems such agreement to be the most cost-effective contractual solution. Cost effectiveness shall be determined by considering pertinent factors, such as the following:

- 1. Lower than current State contract pricing that will afford material cost savings;**
- 2. Lower than pricing for comparable goods or services of other State or public entity contracts;**
- 3. Expanded product or service availability;**
- 4. The ability to avoid the cost and time of a State procurement;**
- 5. A record of satisfactory vendor performance;**
- 6. Lower minimum purchase requirements;**
- 7. A comparatively better quality of goods or services; and**
- 8. Administrative cost factors required to participate in the cooperative agreement.**

(b) Any such [purchasing] **cooperative** agreement shall provide for the combined requirements of the **cooperating** parties to be, **or to have been**, procured through [formal advertised sealed bids] **an advertised competitive bidding process.**

(c) Prior to entering into any [such] purchasing agreement **or procurement agreement**, the Director shall [review]:

1. Review and approve the specifications and proposed terms and conditions of the contract[.] **between the product or service provider and the other state(s), political subdivision(s) thereof, or nationally recognized and accepted cooperative procurement entity in which another state or other states participate;**

2. Comply with legal provisions for notification, as applicable; and

3. Require the contractor or scheduled contract awardee to execute an addendum containing the State contracting terms and conditions and any other terms making the procurement agreement more favorable to the State, as determined by the Director.

(d) The Director may solicit and award such contracts, provided that the [purchasing] **cooperative** agreement specifies that each party to the [purchasing] agreement is solely responsible for purchases made by such [party] **entity** under the terms of any resultant contract.

[(e) The Director may enter into agreements with purchasing cooperatives comprised of other states, or political subdivisions thereof, or other New Jersey agencies or authorities, to address domestic preparedness or homeland security concerns or emergency conditions encountered by State agencies or other users of State contracts.]

17:12-1A.4 (Reserved)

17:12-1A.5 Use of Federal [Supply Schedules] **supply schedule contracts**

[(a) Public entities which are statutorily authorized to contract, including State agencies, counties, municipalities, boards, school boards, commissions, independent institutions of higher

education, county colleges and State colleges, hereinafter collectively referred to as "public entities," may procure goods or services using prices, terms and conditions equivalent to those of the Federal Supply Schedules, without advertising for bids, or having rejected all bids obtained pursuant to advertising, subject to the following conditions:]

(a) N.J.S.A. 52:34-6.1 establishes that the Director, on behalf of State agencies of the executive branch of State government, including quasi-State agencies identified in N.J.S.A. 52:27B-56.1 (hereinafter collectively referred to as "State agencies"), shall promulgate Federal supply schedules of the Federal General Services Administration or schedules from other Federal procurement programs (hereinafter collectively referred to as "Federal supply schedule contracts"), as alternate price guides for the purchase of goods and services, subject to the following conditions:

[1. Use of the equivalent price, terms and conditions of the Federal Supply Schedule 36, Part IV, or update thereto, to procure goods or services is limited to those goods and services listed in the Item Numbers of Federal Supply Schedule 36, Part IV, or update thereto, that relate to reprographic equipment or services, including digital copiers ("Special Item Numbers");

2. Total procurement by public entities of goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, listed in (a)1 above, shall not exceed \$500,000 in a fiscal year or, in the alternative, one product unit at any price in excess of \$500,000 during a fiscal year;]

[3.] **1.** [When goods or services are not available under a State contract, the price paid by a public entity for goods and services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, listed in (a)1 above, shall be] **The price of the good and/or service being procured is no greater than the price offered to Federal agencies;**

[4.] **2.** [A public entity procuring goods or services listed in any of the Special Item Numbers within Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, must receive] **The State receives** the benefit of any contract price reductions, whether statutory, regulatory or contractual in nature, during the term of the contract; **and**

[5. A public entity procuring goods or services listed in any of the Special Item Numbers within Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, must be protected from price increases during each respective term of the contract;

6. When goods or services are available under a State contract, only goods or services listed in any of the Special Item Numbers within Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, that are no greater in cost than the State contract price for the same or equivalent goods or services can be procured. When goods or services are available under a State contract, a public entity seeking to procure goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, shall verify with the vendor before procurement, that the cost for the particular goods or services is no greater than the State contract price for the same or equivalent goods or services;]

[7.] **3.** [When goods or services are available under a State contract, if the cost of the goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, is] **The price of the good and/or service under consideration for purchase via a Federal supply schedule contract is not equal to or greater than the State contract price for the same or equivalent goods or services, [the public entity is precluded from procuring such goods or services, unless the public entity determines that, because of factors other than price, the purchase of such goods or services at a price greater**

than the State contract price is more advantageous to the public entity; and] **unless the Director determines that the best interests of the State are served by use of the proposed Federal supply schedule-based contract.**

[8. When goods or services are available under a State contract, the vendor selling goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, listed in (a)1 above, shall agree in writing prior to finalization of sale to a public entity that, to the extent the material State contract terms and conditions differ from the material terms and conditions of the vendor's Federal contract, the State contract terms and conditions shall prevail. The public entity's purchasing agent is responsible for determining the materiality or non-materiality of differences in the terms and conditions of the two contracts.]

(b) A public entity statutorily authorized to contract under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., or the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and procuring [goods or services listed in any of the Special Item Numbers of the Federal Supply Schedule 36, Part IV, or update thereto, referenced in (a)1 above, shall file documentation] **a good and/or service based upon a Federal supply schedule contract shall abide by procurement provisions and procedures** as set forth in administrative rules promulgated by the Division of Local Government Services, Department of Community Affairs.

[(c) If there is a sufficient legal authority to do so for the period in question, to address homeland security or other emergency preparedness or control needs of State agencies, the Director may enter into contracts with vendors having Federal Supply Schedule contracts for the types of equipment, goods and services deemed necessary by a State agency, and accepted as necessary by the Director, to address such needs.]

(c) A using agency intending to purchase a product and/or service from a vendor based upon that vendor's Federal supply schedule contract shall comply with all provisions and procedures detailed in the Department of the Treasury Circular 11-03-DPP, Purchases from Federal Supply Schedules or Schedules of Other Federal Procurement Programs, as amended or re-designated, that sets forth essential procedural and documentary requirements.

(d) A vendor offering a product and/or service to State agencies referencing a Federal supply schedule contract must meet the specific eligibility criteria and procedural provisions set forth and standardized in the Department of the Treasury Circular 11-03-DPP, Purchases from Federal Supply Schedules or Schedules of Other Federal Procurement Programs, as amended or re-designated, which is a condition to be communicated to the vendor by the using agency contemplating such purchase activity. The circular is accessible at <http://www.nj.gov/infobank/circular/circindx.htm>.

SUBCHAPTER 2. FORMAL, ADVERTISED, SEALED BIDDING PROCEDURES

17:12-2.1 Advertising

(a) Advertising is required when the contract amount is expected to exceed the public bidding threshold or is not subject to the **relevant** exceptions of N.J.S.A. 52:34-[9]6, 9, or 10. [The notice of bid opportunity shall be placed in newspapers and other such media, such as the Division of Purchase and Property's website, as permitted] **Public notice of the bidding opportunity shall be placed on the Division's website and with other media, including newspapers, as required** by law at N.J.S.A. 52:34-12 and [selected] **determined** by the State Treasurer [as will give] **to provide** best notice thereof to bidders. Advertisements shall be made

a minimum of [10] **seven** business days in advance of the [bid opening] **announced deadline for receipt of proposals** to encourage free and open competition.

(b) If, during the course of [a purchase] **an** advertised **procurement** pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such [amendments] **alterations shall be set forth in addenda to the RFP and** shall be advertised a minimum of [five] **seven** business days in advance of the [bid opening date and time] **announced deadline for receipt of proposals**.

(c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website [on the Internet]. [A list of bidders by commodity code is also maintained for the State's convenience in order to facilitate notice of a specific bidding opportunity and of RFP-accessibility on the Division's website to prospective bidders. However, the placement of a vendor's name on a bid list does not grant the vendor an absolute entitlement to receive notice of a bid solicitation. It is the vendor's responsibility at all times to exercise due diligence in reviewing the legal notices and Internet data to assure its participation in State bidding opportunities.

(d) If a vendor does not respond to three consecutive opportunities to bid for the same product or service, the Director may remove the vendor's name from the list of bidders for that product or service.]

(d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining

to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-RFP Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division.

17:12-2.2 Requirements for bidding **and contract award**

(a) [The following requirements are in addition to those contained in specific RFPs issued by the Division.] In order to be eligible for consideration for award of contract, the [vendor's] **bidder's** proposal shall **conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:**

[1. Be submitted by an entity registered with the Department of the Treasury to do business in the State of New Jersey in accordance with N.J.S.A. 52:32-44.1.b;]

1. Be enclosed and sealed, which for electronic format submissions shall be as described in the RFP document. Faxed or e-mailed proposals shall not be accepted when the submission of a sealed proposal is a requirement;

2. (No change.)

3. Be signed by a representative of the bidding entity in accordance with the provisions for such signature as set forth in the RFP;

[4. Have all required forms completed and include all required attachments;]

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

5. Be accompanied by bid security **in the amount and form specified**, when required by **the RFP**;

6. Include **all RFP-required** pricing information;

7. Be preceded by the bidder's attendance and registration at any [pre-bid] **pre-proposal** conference and/or site inspection for which attendance and registration is mandatory **pursuant to the RFP**. However, the Director reserves the right to waive this requirement upon terms the Director deems acceptable, if doing so is in the State's best interest;

8. Contain initials adjacent to any **actual or apparent** price alterations. If a unit price in a bidder's proposal has been altered or appears to be an alteration, the bidder's initials shall appear adjacent to the alteration. However, in the event **that** there is at least one duplicate copy of the [bid] **proposal** included in the bidder's **sealed** proposal [at the time of formal opening of bids] **packet**, and if during the immediately subsequent [bid] **proposal** review process it is noted that there is an uninitialed price alteration and that the copy reflects the same alteration, the copy shall be placed with the original and maintained as part of the official record. The uninitialed price change or changes would then be accepted as eligible for further evaluation. Examples of alterations include, but are not limited to, crossouts, erasures, white-outs, writeovers, and strikeovers, with re-entered prices. If the alteration has not been initialed, that particular item only shall be [automatically] rejected, except if the extended price is verifiably correct and does not contain an alteration or if the extended total price is verifiably correct and does not contain

an alteration, it shall be considered the [bid] **offered** price. In the event of [an automatic] **a** rejection of a single line of a proposal responding to a request for multiple prices for multiple items, the remainder of the [bid] **proposal** shall be evaluated, unless otherwise stipulated in the RFP;

9. Be prepared in ink or typewritten or, as applicable, in the electronic format specified by the RFP. If information essential [to a bid] **for an effective** evaluation, including, but not limited to, price, terms, and product description, is submitted in pencil, the proposal shall be rejected unless that same essential information appears elsewhere in the proposal, **or in the copies thereof**, either typewritten or printed, and provided that the information is entirely consistent with the information submitted in pencil and does not invite any other interpretation;

[10. Comply with the MacBride Principles of nondiscrimination in employment as set forth at N.J.S.A. 52:18A-89.5, N.J.S.A. 52:34-12.2, State Affirmative Action rules promulgated pursuant to N.J.S.A. 10:5-31 et seq., Ownership Disclosure requirements pursuant to N.J.S.A. 52:25-24.2, or business organization registration requirements pursuant to N.J.S.A. 52:32-44 et seq. and at N.J.A.C. 17:12-2.12;]

[11.] **10.** Be sealed, which for electronic format submissions shall be described in the RFP document. Telephone, telefacsimile, or telegraph [bids] **proposals** shall not be accepted for publicly advertised bid solicitations requiring the submittal of sealed [bids] **proposals; and**

[12. Include bid security in the amount and form specified, if required by the RFP; and]

[13.] **11.** If the [bid solicitation is for a contract that has] **RFP contains** set-aside program provisions for a specified category or specified categories of businesses, be submitted by a business properly approved by and registered with the New Jersey [Commerce and Economic Growth Commission at the time of bid opening] **Department of the Treasury unit responsible**

for administering the State's small business registration program in accordance with the administrative rules at N.J.A.C. 17:13, governing the State's set-aside programs.

(b) (No change.)

[17:12-2.3 (Reserved)]

17:12-[1A.4]2.3 Extension of contracts for local use

(a) The Director may [invite bidders to], **through provision in an RFP**, extend a State contract for [local] use[, that is, for] **by New Jersey's** local governments[,]; volunteer fire departments and first-aid or rescue squads[,]; school districts[,]; county colleges[,]; State colleges[,]; quasi-State agencies[,]; independent authorities; and independent institutions of higher education.

[(b) In the event the Director invites bidders to extend a contract for local use, a bidder must affirmatively indicate its consent to such extension in accordance with the provisions of the RFP at the time of contract award, or at any time during the period of performance of the contract.]

(b) If after award of a contract, either the Director or the contractor seeks to extend a contract for use by the Cooperative Purchasing Program participants, the Director and contractor may agree to such arrangement, provided the contractor agrees in writing to extend the contract to all Cooperative Purchasing Program participants on the same terms and conditions as set forth in the underlying State contract.

(c) In the event a contract permits extension for [local] use **by the Cooperative Purchasing Program participants**, such use shall be limited to the goods and services that are the subject of the contract and shall be subject to the terms and conditions of the contract, **as appropriate.**

[(d) The Director may establish a subscription fee for the dissemination of State contract and specification information to members of its Cooperative Purchasing Program. That fee shall be chargeable on an annual basis, and shall be structured to include State costs of program operation, including website service, personnel, printing and mailing of notices of award and other procurement information to the participating members.

(e) At the end of each fiscal year, the Director shall review expenditures under the program, certify as to their accuracy, and adjust subscription rates accordingly.

(f) Pursuant to N.J.S.A. 52:25-16.5 et seq., the Director may permit the use of selected State contracts for commodities and services by independent institutions of higher education. The Director shall periodically make a list of selected contracts available to these institutions for their use.

(g) The independent institutions of higher education shall be responsible for issuance of purchase orders, certification of accepted commodities, payment of invoices, and resolution of complaints relative to procurement transactions with State contract vendors.]

17:12-2.4 Bid security

(a) (No change.)

(b) Bid security, in such amount as the Director deems necessary, shall consist of a certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," an individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit issued by a Federally insured financial institution and naming "Treasurer, State of New Jersey" as beneficiary, **and/or other form of security as required by the Director.**

(c) A bidder's failure to submit the required bid security with its proposal shall be cause for [automatic] rejection **of the proposal**.

17:12-2.5 Performance security

(a) (No change.)

(b) Performance security, in such amount as the Director deems necessary, shall consist of a certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," an individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit issued by a Federally insured financial institution and naming "Treasurer, State of New Jersey" as beneficiary, **and/or other form of security as required by the Director**.

(c) (No change)

17:12-2.6 [Bid openings] **Receipt and public availability of proposals**

(a) [Bids] **Proposals** must be received [prior to or at the time and] **before the publicly announced deadline** at the place designated for [bid openings] **proposal submission**. All other [bids] **proposals** shall be rejected. The Director may, [extend the time for bid opening when a vendor notifies the Purchase Bureau of the vendor's intent to bid but, due to a documentable emergency occurring on the date of the scheduled bid opening, timely delivery is not possible. The vendor must make such request prior to the time of the scheduled bid opening.] **in the event of inclement weather or other condition affecting or likely to affect bidders' timely delivery of proposals, postpone the deadline to the next operable business day. If timely delivery of a physical or electronic proposal is not possible due to a documentable cause of delay on**

the date of bid opening and that is beyond the control of said vendor, said vendor can request, prior to the set deadline, that the Director postpone the deadline. If the Director determines that a [delayed opening] **postponement** is in the State's best interest, the Director shall designate a revised [bid opening time.] **same-day deadline.** **In either of these circumstances, the Director shall post notice of the postponement of the deadline for bid submission on the Division's website.** All [bids] **previously received proposals** will [be held and] remain sealed until the revised bid opening time.

(b) A bid is "read" at the formal opening when the bidder's name and price(s) are announced. Each individual price need not be announced.

(c) If a bid is received by the Purchase Bureau prior to the specified time and date of the bid opening, but has not been opened and read publicly, the Director shall notify all bidders and schedule a bid opening date, time and place for that bid.]

(b) Promptly after the deadline for submission of proposals, the opening and reading of proposals shall be conducted.

(c) If a proposal timely received by the Division was not opened because it was misplaced by the Division or due to any other inadvertence by the Division, the Director shall set a date, time, and place for the opening of that proposal and notify and invite all participating bidders to attend.

(d) Each bidder's name and address will be read at the proposal opening event. If there is no public representation at the event, the Division may opt to forgo the reading of proposals.

(e) For RFPs having a negotiation component, only the names and addresses of the bidders will be publicly announced at the proposal opening. Files relating to such procurements

will be available for public review, upon request and upon scheduling by the Director, only after issuance of a notice of intent to award by the Division.

(f) If an RFP has a negotiation component, the proposals and documentation relating to negotiations shall not be available for public inspection until after a notice of intent to award has been issued by the Division. After the notice of intent to award has been issued, each proposal and, if applicable, documentation relating to any negotiations will be available for public inspection in accordance with governing law.

(g) After award of contract(s), all proposals shall be considered public documents under OPRA unless an OPRA exemption is applicable. The following provisions shall apply for all procurements:

1. Within its proposal, the bidder must identify in writing any data or materials it asserts are exempt from public inspection under OPRA or other governing law, and explain the legal basis for all such assertions;

2. Assertion by a bidder that its entire proposal is, or prices offered are, exempt from public inspection under OPRA or other governing law shall be presumed to be contrary to the law, and the Division need not give the bidder's assertion any effect. Such an assertion may result in the rejection of the proposal; and

3. In the event that the Division receives a challenge from any person or entity to a bidder's assertion that any of its data or materials are exempt from public inspection, the Division shall give the bidder notice of the challenge, and the Division shall allow the bidder to respond to the challenge in the same manner as the Division is afforded. The notice given by the Division shall be as much notice as practicable based on the circumstances of the challenge and the Division's legal obligations. If the bidder fails to

timely respond to the notice of the challenge, the Division shall make its own determination as to whether the bidder's data or materials are exempt from public inspection under OPRA and shall not be liable to the bidder for any decision the Division makes.

17:12-2.7 Evaluation of proposals **for publicly advertised procurements**

(a) Proposals shall be evaluated in either of two ways[:], **with a recommendation for proposed award(s) made to the Director upon conclusion of the evaluation. All recommendations, whether prepared by an evaluation committee or by a Division staff member assigned to conduct the procurement, are advisory in nature and not binding upon the Director. The evaluation methods are:**

1. By an evaluation committee appointed by the Director prior to the date of the scheduled [bid] proposal opening **event**. The Director shall appoint the members of the evaluation committee on the basis of professional resumes supplied by the proposed members. **No member of the evaluation committee shall have any personal, financial, or familial interest that would affect his or her ability to evaluate the proposals objectively and impartially. Each member of the evaluation committee shall certify in writing that no such real or apparent conflict of interest exists. Members of evaluation committees shall conduct evaluations of proposals objectively, impartially, and with propriety.** The Director retains the discretion to reject [a] proposed members, remove [a] sitting members [or] **and** add additional [member(s)] **members** to an evaluation committee[.]; [Upon conclusion of its evaluation of the proposals, the committee shall prepare a written report with a recommendation for award based on its evaluation of the proposals against the evaluation criteria set forth in the

RFP. If applicable, the committee shall establish weights for the evaluation criteria prior to the bid opening date, and those weights shall not be made public until after the bids are opened;] or

[2. By a Purchase Bureau buyer of record. The assigned buyer shall prepare a written report or an award recommendation, which shall be based on the assessment of the proposals in accordance with the evaluation process defined in the RFP.]

2. Division staffer assigned to conduct the procurement.

(b) For all RFPs that set forth evaluation criteria, values or utility models to be applied by the evaluators in assessing the proposals, and that do not reveal specific, assigned weights or elements, the evaluation committee or assigned Division staff member shall, prior to the opening of proposals, determine, document, and date-stamp such weighted evaluation criteria, values, or utility models. For RFPs not having a negotiation component, the pre-set weighted evaluation criteria, values, or utility models shall be available to the public at the proposal opening event.

(c) Proposals shall be evaluated by the Division for compliance with the provisions of N.J.A.C. 17:12-2.2 and by the evaluation committee or the assigned Division staff member for responsiveness to the material requirements of the RFP. A proposal that is not compliant with the provisions of N.J.A.C. 17:12-2.2 or responsive to the material requirements of the RFP shall not be eligible for further consideration for award of contract, and the bidder offering said proposal shall receive notice of the rejection of its proposal.

(d) The Director may waive minor irregularities or omissions in a proposal.

(e) The evaluation committee or the assigned Division staff member may, by written request, ask a bidder to clarify, in writing, its proposal in order to determine whether a

proposal should be further considered for award. The process of clarification is not an opportunity for a bidder to revise or modify its proposal, and any response or portion of a response by a bidder to the Division's written request for clarification that attempts to revise or modify its proposal shall be given no effect.

(f) The evaluation committee or assigned Division staff member shall determine which proposals are in the competitive range. Proposals deemed not to be in the competitive range need not be further evaluated. Proposals in the competitive range, except as may be limited as specified in this section, shall be evaluated by the evaluation committee or the assigned Division staff member on the basis of price and the other evaluation criteria set forth in the RFP. Upon conclusion of the evaluation of the proposals, the committee or the assigned Division staff member shall prepare a written report with a recommendation for award based on its evaluation of the proposals, for the Director's consideration.

(g) The Director shall review the award recommendation and documentation presented by the evaluation committee or the assigned Division staffer, and may accept it, modify it, reject it, or refer the award modification back to the evaluation committee or assigned Division staff member for additional consideration. The Director retains the discretion to issue a notice of intent to award to a responsible bidder whose conforming proposal is most advantageous to the State, price and other factors considered, or to reject all proposals when the Director determines it is in the public interest or the State's interest to do so.

(h) The Director shall issue the notice of intent to award to all participating bidders. The notice of intent to award document sent to the scheduled contract awardee(s) shall include the identification of certification(s) and/or other essential documents that were not required to be included with the proposal but are required for contract award and a

designated date when the required certifications and/or documents are due. A scheduled awardee's failure to comply within the time afforded shall constitute grounds for the Director's rescission of the notice of intent to award to the non-responsive scheduled awardee. If the requested materials are not timely submitted, the Director may refer the matter back to the evaluation committee or the assigned Division staffer for consideration as to whether the scheduled award should proceed, with reconsideration of all pertinent factors, including the issue of assessment of costs incurred by the State as a result of the scheduled awardee's delay by, or the non-award of the contract to, the named awardee.

(i) In the event that it is determined that all proposals shall be rejected or no award shall be made, the Director shall so notify all bidders.

(j) In addition to the requirements for the evaluation of proposals set forth in (a) through (i) above, the following requirements shall apply to publicly advertised procurements that contain a negotiation component:

1. The RFP shall state that the State may negotiate with bidders;
2. If it is determined by the evaluation committee or assigned Division staff member that negotiations shall be conducted, the evaluation committee or assigned Division staff member will negotiate only with bidders whose proposals are determined by the evaluation committee or the assigned Division staff member to be in the competitive range. Further, if the evaluation committee or assigned Division staff member determines that the number of proposals in the competitive range precludes timely and effective negotiations with each bidder or determines that pricing offered in any one or more of the viable proposals exceeds the amount of funding available for the procurement, the evaluation committee or

assigned Division staff member may further limit the number of proposals in the competitive range;

3. In the event the evaluation committee or assigned Division staff member decides to conduct negotiations, the evaluation committee or assigned Division staff member shall notify each bidder whose proposal has been deemed to be in the competitive range of the intent to negotiate. The notice may identify, in general terms, the elements or factors upon which the State intends to base its negotiations or may be tailored to each individual bidder. Alternatively, the evaluation committee or assigned Division staff member may opt to conduct a Best and Final Offer process with the bidders whose proposals are deemed to be in the competitive range;

4. During the course of negotiations, no bidder's technical proposal or pricing shall be revealed to any other bidder or to any person who is not a member of the evaluation committee or Division staff involved with the conduct of the negotiations;

5. With reasoned and documentable cause, the evaluation committee or assigned Division staff member, or a Director-assigned negotiator, may opt to conduct additional rounds of negotiations with a single bidder or with more than one bidder in the competitive range and not with others; and the basis for deciding which bidder is, or which bidders are, chosen for any additional rounds of negotiations shall be documented as part of the Division's record of negotiations;

6. As provided for in negotiations under paragraph (j)3 above, the evaluation committee or assigned Division staff member may request all bidders in the competitive range to submit a Best and Final Offer. If the evaluation committee or assigned Division staff member elects to do so, written notice shall be provided to all bidders in the

competitive range of the time and place for submission of a Best and Final Offer. If deemed in the best interests of the State, additional Best and Final Offers may be requested. Although bidders' Best and Final Offers must be in writing, the Division's requests for them may initially be made orally to expedite the evaluation process but must be promptly confirmed in writing;

7. If a bidder does not respond to the request for a Best and Final Offer or asserts that its last price is firm, that bidder's most recent prior offer will be considered to be its Best and Final Offer; and

8. All discussions conducted during a negotiated procurement shall be documented as part of the record of the procurement.

17:12-2.8 Poor performance as a basis for bypass of low bidder

(a) [Poor] **A record of poor performance on prior and/or current State contracts by a [vendor] bidder submitting a lower priced [bid] proposal is sufficient basis for bypassing its proposal. In determining whether a [vendor's] bidder's poor performance warrants the bypass of [that vendor's] its proposal, the Director shall take into consideration the frequency and seriousness of the [vendor's] bidder's poor performance as a contractor. Poor contract performance is evidenced by:**

1. Complaints filed pursuant to N.J.A.C. 17:12-4.3, which [are] **have been** resolved against rather than in favor of the contractor; or

2. Other information contained in the Division's vendor performance [database] **records, a using agency's records,** or obtained from **audits or** investigations of the [vendor's] **bidder's** prior work experience **completed by the Division, a using agency, a Cooperative Purchasing**

Program participant, or, its current licensure, registration, or certification status and relevant prior licensure, registration, or certification history, or its status or rating with established business/financial reporting services, as applicable.

(b) The Director may, in those instances where there is evidence of a record of poor performance by a [vendor] **bidder** with customers other than the State, [solicit] **request additional information beyond that in the bidder's proposal from the bidder in question** regarding the [vendor's] **bidder's** present capability to perform adequately under the terms of the contract in question. If the [vendor] **bidder's response to the Division's request, in the Director's discretion,** fails to demonstrate its current ability to perform **adequately,** the Director may bypass that [vendor] **bidder's proposal.**

(c) Subsections (a) and (b) above shall not be construed to otherwise limit the Director's authority to bypass [low bidders] **lower-priced proposals or proposals that are otherwise less advantageous to the State,** in accordance with the statutory authority established at N.J.S.A. 52:34-12(g).

(d) Notice of a decision to bypass a bidder's proposal based upon poor performance shall be given **to that bidder** at the time the notice of intent to award is issued to all bidders [to any bidder whose proposal was bypassed].

(e) After receiving notice of bypass for poor performance, that bidder [may], in accordance with the provisions of N.J.A.C. 17:12-3.3, **may** challenge the bypass decision. If in the Director's judgment the bidder has substantiated its ability to perform the contract, or it is otherwise in the public interest, the Director may reverse the decision to bypass **and may withdraw the notice of intent to award to allow the bidder's proposal to be evaluated and considered for award, if it was not evaluated with the other proposals.**

17:12-2.10 Tie [bids] **proposals**

(a) In the event that [bid] proposals submitted by two or more bidders are [deemed to be] tied **with respect to price, and the application of the other evaluation criteria specified in the RFP does not provide a basis to distinguish between or among the tied proposals**, the Director shall award the contract based on a review of the following factors listed in order of priority:

[1. History of vendor performance, as evidenced by the Division's vendor performance database;]

1. Tie-breaking provision(s) set forth in the RFP;

2. A usable [cash-or] **cash- or** volume-based discount that renders one [bid] **proposal** more favorably priced;

3. Delivery advantage, specifically shorter **proposed** time frames for delivery and/or closer proximity to the point of delivery;

4. Active registration **on the date of bid opening as an approved small business** with [New Jersey Commerce and Economic Growth Commission as a small business at the time of bid opening] **the Department of the Treasury unit responsible for administering the State's small business registration program;** and

5. (No change.)

(b) When [none] **application** of the above [distinguishable characteristics are available] **distinguishing factors does not result in a breaking of the tie status**, the Director may, if practicable, make multiple awards.

17:12-2.11 [Bid] **Proposal** errors

(a) Prior to [bid] **the opening of proposals**, any bidder may request that its [bid] **proposal** be withdrawn. Such requests must be made to the [Supervisor, Purchase Bureau,] **Director** in writing. If the request is granted, the bidder may submit [a revised bid] **another proposal**, as long as the [bid] **replacement proposal** is received prior to the announced date and time for [bid] **proposal** opening and at the place specified.

(b) If, after [bid] **proposal** opening but before contract award, a bidder discovers an error in its proposal, that bidder may make written request to the Director for authorization to withdraw its proposal from consideration for award. **If the bidder's request to withdraw is made in good faith, and the State will not be significantly prejudiced by granting the withdrawal of the proposal beyond the loss of the benefit of the bargain to the State of the withdrawing bidder's offer, the Director shall grant the request.** Evidence of the bidder's good faith [in making this request shall be used by the Director in making the determination. Some of the factors the Director may consider are that the] **can be demonstrated by one or more of the following factors:**

1. A mistake **that** is so significant that to enforce the contract resulting from the proposal would be unconscionable; [that the]

2. A mistake **that** relates to a material feature **or term** of the contract; **and** [that the]

3. A mistake **that** occurred notwithstanding the bidder's exercise of reasonable care[; and that the State will not be significantly prejudiced by granting the withdrawal of the proposal].

(c) If, during a [bid] **proposal** evaluation process, an obvious pricing error made by a **bidder deemed to be a** potential contract awardee is found, the Director shall issue written notice to

[the] **that** bidder. The bidder will have five **business** days after receipt of the notice to confirm its pricing. If the [vendor] **bidder** fails to respond, its [bid] **proposal** shall be considered withdrawn, and no further consideration shall be given **to** it.

(d) If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the bidder's intention is not readily discernible from other parts of the [bid] proposal, the Director may seek clarification from the bidder to ascertain the true intent of the [bid] **proposal**.

(e) The Director shall:

1. Terminate any contract without delay upon discovery of an error [which] **that** occurred during the [bid] **proposal** evaluation process and led to an erroneous award. It is not the intent of this provision to reconsider the Director's business judgment in making an award. The Director shall document the error and promptly notify all affected parties[.]; **and**

[2. Void those contracts or purchase orders which were signed on the Director's behalf in excess of the amount authorized.]

2. Bar issuance of new purchase orders and cancel outstanding purchase orders made under the contract being terminated.

17:12-2.12 Registration of corporations and other business entities

(a) [All corporations and other] **In accordance with the provisions of N.J.S.A. 52:32-44.1.b.,** business [entities] **organizations** seeking to do business with the State of New Jersey must be **business-**registered with the New Jersey Department of the Treasury's Division of Revenue [and provide evidence thereof with their bid proposals in order to be eligible for award of a State

contract.] **prior to the time a contract or purchase order is awarded or authorized. Proof of such registration must be provided by an intended contract or purchase order awardee upon request by the Division or using agency.**

(b) [Subcontractors which are corporations or other] **In accordance with N.J.S.A. 52:32-44.1.c., subcontractors that are** business [entities] **organizations** must be registered with the New Jersey Department of the Treasury's Division of Revenue and provide evidence thereof to the prime contractor before being permitted by the prime contractor to sign a subcontract under a State contract.

(c) Each prime contractor shall receive and maintain the names and current addresses of all subcontractors performing State contract work for the contractor and shall forward such information **and proof of their business registration** to the Division [of Purchase and Property] **for the Director's approval prior to the commencement of work by subcontractors in accordance with the express provisions of the binding contract.**

17:12-2.13 Preference laws; out-of-State vendors

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

"In-State preference" **or "in-state preference"** means a procedure established by statute, rule, regulation, or practice whereby a state or local government procurement agency gives a bidder an advantage in the evaluation of [bids] **proposals** based on whether the bidder maintains its principal place of business within the borders of the state or locality, and includes any advantage given to a bidder based on whether the goods or services offered in a [bid] **proposal** were produced, manufactured, mined, or grown within the borders of the state or locality.

"Out-of-State bidder" means a bidder [which] **that** does not have a regular place of business in New Jersey.

"Principal place of business" means a bidder's office, factory, warehouse, or other space which is recognized by a state or local government as the basis for applying an [in-State] **in-state** preference in favor of the bidder.

"Regular place of business" means a bona fide office, factory, warehouse, or other space [which] **that** is regularly maintained by the bidder, occupied by one or more of the bidder's employees, and used in carrying on the bidder's business. The maintenance of a temporary job site or field office in New Jersey, the storage of goods in New Jersey, and the employment of an independent agent or subcontractor in New Jersey do not, individually or combined, constitute a regular place of business.

(b) Pursuant to the provisions of N.J.S.A. 52:32-1.4 et seq., the Director shall apply on a reciprocal basis against an out-of-State bidder any [in-State] **in-state** preference [which] **that** is applied in favor of that bidder by the state or locality in which the bidder maintains its principal place of business.

(c) The Director shall provide notice of the [State's] **Division's** intent as to [in-State] **in-state** preference through appropriate language in the terms, conditions, and/or specifications of the [bid solicitation] **RFP**.

(d) For purposes of implementing [these] **the provisions of this section**, the Director shall make available **upon request** for public inspection a list of states having statutes, rules, and/or regulations [which] **that** grant [in-State] **in-state** preferences in the competitive bidding for goods and services. Such list may be based on surveys conducted by the Division and/or by research conducted by national organizations of state and local governments, procurement

agencies, government officials, and purchasing agents, such as the National Association of State Purchasing Officials, the National Institute of Governmental Purchasing, and the Council of State Governments. In addition, the Director may receive and review information from prospective bidders [which] **that** indicates that any state or local government agency outside of New Jersey applies an [in-State] **in-state** preference in its procurement statutes, rules, regulations, ordinances, charters, or practices.

(e) The Director shall also apply in-State preference in the evaluation of [bids] **proposals** whenever a [bid] **proposal** is received from an out-of-State bidder where residential preference statutes, rules, regulations, or practices exist in political sub-divisions of a state. It shall be the responsibility of the bidder or bidders for a specific procurement to provide written evidence to the Director of the existence of such local government preference rules, regulations, ordinances, charters, or practices either with the bidder's proposal or within five business days [of the public bid opening] **after the deadline for proposal submission**. Written evidence that is not provided to the Director within five business days of the public bid opening may not be considered in the evaluation of that procurement, but may be retained and considered in the evaluation of subsequent procurements.

(f) Consistent with the procedures and practices of the Division [of Purchase and Property], the Director shall reasonably apply any reciprocal in-State preference in a similar manner and to similar effect as the other state or locality. Where an in-state preference is applied by another state or locality in the form of a percentage which is added to or subtracted from bidders' prices, markups, or discounts, the Director shall similarly apply the same percentage against an affected out-of-State bidder. Where an in-state preference is applied by another state or a locality in the

form of a categorical rejection of certain [bids] **proposals**, the Director shall apply a similar categorical rejection against an affected out-of-State bidder.

(g) The bidder or bidders [which] **that** would benefit by the imposition of in-State preference must otherwise be eligible for an award as a responsive and responsible bidder.

(h) The Director may waive a reciprocal in-State preference [on] **in** a specific procurement where such waiver would be in the best interests of the State, including where the resulting prices for goods and services would exceed the reasonable estimate of the using agency or would otherwise be unreasonably high, or where the State is entering into a long-term contract or a contract for large quantities of goods or services.

(i) (No change.)

(j) The Director may waive reciprocal in-State preference when the action would result in an award to a [vendor which has] **bidder having** a poor record of **performance, pursuant to N.J.A.C. 17:12-2.8 or a record of** complaints [or] **and/or** contract terminations pursuant to N.J.A.C. 17:12-4.

(k) - (l) (No change.)

[(m) The Director shall annually prepare, following the close of the State's fiscal year, a report for the State Treasurer on the cost consequences to the State of applying the reciprocal in-State preference described in this section.]

SUBCHAPTER 3. PROTEST PROCEDURES

17:12-3.2 Protest procedures; challenges to a specification

(a) A vendor intending to submit a proposal in response to an advertised RFP, pursuant to N.J.S.A. 52:34-6 et seq., [that objects to] **and finding cause to challenge** a specification

contained within the RFP, may submit a written protest to the Director, setting forth, in detail, the grounds for such protest.

(b) The written protest shall be submitted to the Director **only after the Division has formally responded to questions posed during the RFP-established question and answer period and** in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled [date and time of bid opening] **deadline for proposal submission.**

1. A protest of a specification of any [bid] **proposal** solicitation document issued by the Director shall contain the following items:

i. (No change.)

ii. The specification(s) at issue and the specific grounds for challenging the [bid] **cited** specification(s), including all arguments, materials, or other documentation that may support the protester's position that the specification should be changed; and

iii. A statement as to whether the protester requests an opportunity for [oral] **an in-person** presentation and the reason(s) for the request.

2. (No change.)

3. [The] **In order to provide sufficient time for full assessment of the issue(s) of the challenge and, if merited, to effect changes to the RFP and public notice of such changes,** the Director may disregard any protest of specifications filed [less than 72 hours before] **fewer than seven business days prior to** the scheduled [bid opening] **deadline for proposal submission.**

(c) The Director shall, upon receipt of a timely protest of a specification contained in an advertised RFP, issue a final written decision on the protest prior to the public opening and reading of [bids] **proposals** received in response to that RFP.

(d) The Director may resolve a protest of a specification by amending the RFP and extending the deadline for proposal submission, by canceling the procurement, or by any other appropriate means.

1. The Director has sole discretion to determine if an [oral] **in-person** presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. [Oral] **In-person** presentations are fact-finding for the benefit of the Director. The Director has the discretion to limit attendance at an [oral] **in-person** presentation to those bidders likely to be affected by the outcome of the protest.

2. The Director, or the Director's designee from within or outside the Division, may perform a review of the written record or conduct an [oral] **in-person** presentation [directly]. In the case of a review or [oral] **an in-person** presentation being handled by a hearing officer designee from outside the Division, the determination of such designee shall be in the form of a report to the Director, which shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the Director. Subsequent to the 10-business-day period for comments/exceptions, the Director shall make a final written decision on the matter. In the case of a review or [oral] **in-person** presentation being handled by a designee from within the Division, the determination shall be issued by the Director, or the Director's designee, and such determination shall be a final agency decision pursuant to N.J.A.C. 17:12-3.1(b).

17:12-3.3 Protest procedures; challenge to a contract award decision

(a) A [vendor, after submitting] **bidder, having submitted** a proposal in response to an advertised RFP administered pursuant to N.J.S.A. 52:34-6 et seq., may submit a written protest to the Director concerning the following:

1. Rejection of its proposal, **or a portion thereof**, when such rejection arises [under the provisions of] **as a consequence of failure to comply with any of the prerequisites set forth in** N.J.A.C. 17:12-2.2, Requirements for bidding **and contract award**. Such [protests may only dispute whether] **a protest may not challenge the existence of the prerequisite(s) cited as cause for the rejection but may assert that** the facts of a particular case are sufficient to [meet the specific requirements of that section] **satisfy or conform to the cited prerequisite(s);** and/or

2. (No change.)

(b) A [vendor, after submitting] **bidder, having submitted** a proposal in response to an advertised RFP and finding cause to protest the award decision pursuant to (a)1 or 2 above, shall make written request to the Director, setting forth, in detail, the specific grounds for challenging **the rejection of its proposal for challenging or the scheduled contract award, as applicable.** The protest shall be filed within 10 business days following the [vendor's] **bidder's** receipt of written notification that its [bid] **proposal** has not been accepted or of notice of [the award decision] **the intent to award, as applicable, or, pursuant to (e) below, prior to the deadline specified in the Division's notice of intent to award communication to the bidder, whichever date is earlier.**

1. A protest regarding the Director's decision to award a contract shall contain the following items:

i. - ii. (No change.)

iii. A statement as to whether the protester requests an opportunity for [oral] **an in-person** presentation and the reason(s) for the request.

2. - 3. (No change.)

(c) The Division shall, except as set forth in (e) below, hold all contract awards [involving the non-acceptance of a lower cost proposal] for 10 **business** days, pending potential protests from bidders. [In situations where the award is the result of the non-acceptance of a lower cost proposal, all bidders shall be notified of the award decision.] **For publicly advertised procurements, the Division shall notify all bidders of the outcome of the competition by issuance of a notice of intent to award.** If the contract award is protested pursuant to (a)2 above, the Division shall not award the contract in question until a final decision is rendered by the Director on the merits of the protest. The Director may award the contract, notwithstanding the receipt of a protest pursuant to the above provisions, if the failure to award the contract [shall] **will** result in substantial cost to the State or if public exigency so requires. In such event, the Director shall notify all interested parties.

(d) The protest accepted by the Director shall be resolved by written decision on the basis of the Director's review of the written record including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, the proposals submitted in response to the RFP, the evaluation committee report and/or the award recommendation document, pertinent administrative rules, statutes, and case law, and any associated documentation the Director deems appropriate. In cases where no [oral] **in-person** presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.

1. The Director has sole discretion to determine if an [oral] **in-person** presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. [Oral] **In-**

person presentations are fact-finding for the benefit of the Director. The Director has the discretion to limit attendance at an [oral] **in-person** presentation to those parties likely to be affected by the outcome of the protest.

2. The Director, or the Director's designee from within or outside the Division, may perform a review of the written record or conduct an [oral] **in-person** presentation directly. In the case of a review or [oral] **in-person** presentation being handled by a hearing officer designee from outside the Division, the determination of such designee shall be in the form of a report to the Director, which shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the Director. Subsequent to the 10-business-day period for comments/exceptions, the Director shall make a final written decision on the matter. In the case of a review or [oral] **in-person** presentation being handled by a designee from within the Division, the determination shall be issued by the Director, or the Director's designee, and such determination shall be a final agency decision pursuant to N.J.A.C. 17:12-3.1(b).

(e) (No change.)

17:12-3.4 Discovery procedures

Notwithstanding the provisions set forth in N.J.A.C. 17:12-3.2(b)1 and 3.3(b)1, the Director is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the protest. Upon receipt of the Director's request, the [protesting vendor] **bidder** shall promptly provide the requested records and documents free of charge in the time, place, and manner specified by the Director. [Failure of the protesting vendor to comply with this section may, at the reasonable discretion of the

Director, constitute sufficient basis] **If the protesting bidder fails to comply with the provisions of this section, such failure may constitute a reasonable basis for the Director to resolve the protest against the [vendor] bidder submitting the protest. The Director may also consider relevant information requested and received from other parties deemed appropriate by the Director.**

SUBCHAPTER 4. COMPLAINT AND AUDIT PROCEDURES

17:12-4.1 Purpose and scope of subchapter

The purpose of this subchapter is to set forth the procedure [that governs] **for using agencies to file complaints related to contracts arising as a result of procurements conducted under the provisions of N.J.S.A. 52:34-6 et seq. If a using agency does not use this complaint process, the State does not waive any of its rights or remedies available at law or in equity.**

17:12-4.2 General

The provisions of this subchapter deal specifically with means of assuring prompt action in cases where **a State contract user, by filing a formal complaint with CCAU, claims that a State contractor's performance fails to meet contract requirements, and establishing a record that documents a contractor's poor performance in cases where a contractor's performance fails to meet contract requirements.** The Director may, pursuant to N.J.A.C. 17:12-2.8, [bypass a proposal submitted by any vendor which, on prior or ongoing State contracts, has performed poorly under circumstances within its control, without resorting to debarment or suspension action under N.J.A.C. 17:12-6. Each contractor is specifically responsible for the acts of its employees and subcontractors. The Director may also] refrain from doing business with

any vendor for repeated or excessive breaches of **State** contract terms, including, but not limited to, those listed in N.J.A.C. 17:12-4.3(b), as necessary to protect the State's best interests.

17:12-4.3 Filing of complaints; subject matter

(a) [All using] **Using** agencies shall promptly [notify CCAU] **initiate and file a formal complaint** of any failure by a contractor to comply with the **provisions**, terms, and conditions of a State contract. [Notification] **The complaint** shall be in writing and on Form PB-36 or the equivalent **and be submitted to the CCAU**. [A complaint may be considered time barred if it is not filed within 10 days following the occurrence or discovery of the action or inaction that is the subject of the complaint, unless otherwise determined by the Director to be acceptable in consideration of the nature, criticality and/or extent of the complaint and/or its significance to the performance of the contract.] **Complaints are not required where a contract contains specific performance standards including, but not limited to, liquidated damages. In such cases, the using agency may consult with CCAU prior to imposing the contract standards.**

[(b) The following alleged breaches in contract terms will be made known to the CCAU pursuant to (a) above]

(b) Alleged breaches of contract provisions that may be reported to the CCAU include, but are not limited to:

1. - 8. (No change.)

17:12-4.4 Time frames

(a) As soon as possible after receipt of the complaint, CCAU will [inform] **provide written notice** to the contractor against which the complaint was filed [of the complaint in writing].

(b) [The] **Once notified, the** contractor [against which the complaint was filed] must reply to the complaint within 10 **business** days of its receipt thereof **or, pursuant to (f) below, prior to the deadline specified in CCAU's notice of complaint, whichever date is earlier.** The contractor may cure or submit a corrective action plan for any defects during that period. A cure or corrective action plan may be taken into consideration by CCAU in determining whether a complaint is to be resolved against the contractor. The contractor shall notify CCAU of any cure or corrective action plan effected by the contractor. However, such a cure or corrective action plan shall not serve as cause for automatic invalidation of a meritorious complaint.

(c) The using agency may file, **with CCAU,** a response to the submission of the [respondent] **contractor** within five **business** days of receipt thereof and provide a copy of its response to the contractor.

(d) As soon as practicable after receipt of the response provided in (c) above, CCAU shall issue an initial determination to the contractor and complainant regarding the merits of the complaint. The contractor or complainant may file an appeal to the Director within 10 **business** days of receipt of CCAU's initial determination **or, pursuant to (f) below, prior to the deadline specified in CCAU's initial determination, whichever date is earlier.**

(e) - (f) (No change.)

(g) A pending complaint or an initial determination by the CCAU shall not prevent the State from exercising any other right or seeking any remedy available at law or in equity.

17:12-4.5 Resolution of complaints

(a) (No change.)

(b) At the discretion of the Director, the complainant and/or respondent may be required to make an [oral] **in-person** presentation, which may include an opportunity to submit additional documentation relevant to the issues set forth in the original complaint. [Oral] **In-person** presentations as convened under [these rules] **this subchapter** are fact-finding for the benefit of the Director. At such [oral] **in-person** presentations, the State shall be represented by pertinent members of the Division and by the Office of the Attorney General, if required. The Director has the discretion to limit attendance at an [oral] **in-person** presentation to those parties likely to be affected by the outcome of the complaint process.

(c) The Director, or the Director's designee from within or outside the Division, may perform a review of the written record or conduct an [oral] **in-person** presentation directly. In the case of a review or [oral] **in-person** presentation being handled by a hearing officer designee from outside the Division, the determination of such designee shall be in the form of a report to the Director, which shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the Director. Subsequent to the 10-business-day period for comments/exceptions, the Director shall make a final written decision on the matter. In the case of a review or [oral] **in-person** presentation being handled by a designee from within the Division, the determination shall be issued by the Director, or the Director's designee, and such determination shall be a final agency decision, which shall be appealable to the [Law] **Appellate** Division of the Superior Court.

(d) Hearings arising under this subchapter are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The period during which a complaint is being handled

administratively shall not [stop] **toll** the running of any limitations period in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

(e) An initial decision by the CCAU pending on appeal before the Director or a final determination by the Director or Director's designee shall not prevent the State from exercising any other right or seeking any other remedy available at law or in equity.

17:12-4.7 Emergency situations

When, in the discretion of the Director, the non-compliance by the contractor affects or may affect the health, safety, or welfare of the State or its citizenry, the Director shall immediately contact the contractor and attempt to obtain full compliance. If no resolution is immediately forthcoming, the Director may, without delay, engage a substitute [vendor] **contractor** and charge the non-complying contractor any additional costs the State incurs as a result of the substitution.

17:12-4.8 Effect of [vendor] **contractor** non-compliance with contract provisions

(a) The Director may, in the following circumstances, [rescind] **terminate** the State contract with a non-complying contractor and immediately purchase or direct the using agency to purchase goods or obtain services from another source and charge the defaulting contractor the difference in price, if any:

1. (No change.)
2. Refusal of a contractor to answer inquiries by the Division or failure of a contractor to respond to a formal complaint within 10 **business** days of receipt **or prior to the deadline specified in CCAU's notice of complaint**, as mandated in N.J.A.C. 17:12-4.4(b);

3. (No change.)

(b) (No change.)

17:12-4.9 [Discovery] **Audit and complaint discovery** procedures

(a) CCAU, **either as part of discovery in connection with a complaint filed under this subchapter, or for any other reason**, is entitled to request, receive, review, and audit copies of any and all records and documents **related to a State contract** at any time. Upon receipt of the CCAU request, the [vendor] **contractor** shall promptly provide the requested records and documents free of charge in the time, place, and manner specified by CCAU.

(b) Failure of the [vendor] **contractor** to comply with the requirements of this section may, at the reasonable discretion of the Director[, constitute]:

1. **Constitute** sufficient basis to resolve the issue(s) **in the complaint** against the non-compliant [vendor] **contractor**. CCAU may also consider relevant information requested and received from other parties deemed appropriate by the Director[.]; **and/or**

2. **Be used by the State to prove contract non-compliance and may be the basis for the State to take any action or seek any remedy available under the contract, at law or in equity.**

(c) **The audit result and any information received in response to a CCAU request pursuant to this section may be used by the State to establish contract non-compliance, to take any action, or seek any remedy available under the contract, at law, or in equity.**

SUBCHAPTER 5. [(RESERVED)] **POLITICAL CONTRIBUTION COMPLIANCE REVIEW PROCESS**

17:12-5.1 Background and program administration responsibility

(a) Chapter 51 and the administrative rules of New Jersey Election Law Enforcement Commission at N.J.A.C. 19:25 prohibit the award of contracts in excess of \$17,500 by State agencies and authorities to business entities that have made or solicited certain disqualifying political contributions, specifically contributions in excess of \$300.00 to gubernatorial candidate committees, and State and county political party committees. Additionally, Chapter 51 requires disclosure by all business entities to be awarded State contracts in excess of \$17,500 of all contributions to Continuing Political Committees that are organized under Section 527 of the Internal Revenue Code. The Department of the Treasury was made responsible for conducting the review of all State agency and authority contracts and purchases in excess of \$17,500 for any contribution by an intended contractor that represents an apparent conflict of interest that may preclude such award. Chapter 51 expressly excepts, from application of these review requirements, the award of a contract "when the public exigency requires the immediate delivery of goods or performance of services as determined by the State Treasurer."

(b) Effective November 15, 2008, Executive Order No. 117 (2008) expanded the definition of "business entity," by prohibiting contracting with business entities that have contributed more than \$300.00 to legislative leadership committees and municipal political committees and to a candidate committee or election fund of any candidate for the newly created office of Lieutenant Governor. Effected that same date, Executive Order No. 118 (2008) added redevelopers to the definition of business entities and State redevelopment agencies to the definition of State agencies and institutions. The Division's Chapter 51 Review Unit reviews all certification and disclosure forms received from the Division and other State agencies

and State authorities submitted pursuant to affected law and executive order and issues a determination regarding each submission's approval or ineligibility for contract award.

17:12-5.2 Definitions

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

“Business entity” means that term as defined by N.J.S.A 19:44A-20.17 and Executive Order No. 117 (2008).

“Chapter 51” means P.L. 2005, c. 51, codified as N.J.S.A. 19:44A-20.13 et seq. (which substantially codified Executive Order No. 134 (2004) and Executive Order No. 18 (2005)).

“Contribution” means a contribution reportable by the recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act” (N.J.S.A. 19:44A-1 et seq.), which is defined by the Election Law Enforcement Commission in N.J.A.C. 19:25-24.1.

“State agencies and authorities” means all State agencies, including any of the principal departments in the Executive Branch, and any division, board, bureau, office, commission, or other instrumentality within or created by such department and any independent State authority, board, commission, instrumentality, or agency, including any State redevelopment agency.

17:12-5.3 Review of submissions

(a) Any business that is requested to do so by a State agency or authority must submit completed certification and disclosure forms. The Division Review Unit will review the certification and disclosure forms completed by business entities and submitted by State agencies and authorities for compliance to the requirements of the governing statute and executive orders. If the Review Unit cannot make a determination of compliance or non-compliance to the Chapter 51, Executive Order Nos. 117 and 118 (2008) requirements based upon the documentation submitted by the requesting agency or authority, the Review Unit will require the requesting agency or authority to provide clarification or additional information as needed to complete the review and render a determination of eligibility.

(b) If or when the documentation provided to the Review Unit is sufficient and verifiable as meriting approval as necessary to proceed with an award of contract, the Review Unit shall issue a two-year certification to the business entity effective as of the date of approval by the Review Unit and inform the requesting agency or authority of such approval.

(c) A business entity must continue to comply with all statutory and executive order requirements during the two-year certification period. If there are any changes in political contributions or the business entity's ownership structure, the approved business entity must re-submit a complete a new set of forms.

17:12-5.4 Determination of business entity ineligibility

If the Review Unit determines that the business entity has made a disqualifying contribution or that a conflict of interest exists, the Review Unit will advise the State agency or authority in writing of that circumstance and will identify the basis for the

determination. The State agency or authority shall inform the business entity of the ineligibility determination.

17:12-5.5 Reconsideration of determination of ineligibility

If a business entity believes that the determination of ineligibility was in error, it may request a reconsideration by the Director. A request for reconsideration of the ineligibility determination must be made in writing to the Director within 10 business days of the business entity's receipt of the State agency's or authority's notice of ineligibility or prior to the deadline specified in that agency's or authority's notice of complaint, whichever date is earlier. Upon review of the written record or, if required at the discretion of the Director, an in-person presentation by the business entity in support of its request for reconsideration, and of the information provided to the Director by the Review Unit concerning its determination of ineligibility, the Director shall issue a written decision on the matter under reconsideration.

17:12-5.6 Appeal of Director's determination

A business entity shall have 10 business days following its receipt of the Director's written decision to appeal the Director's decision to the State Treasurer. The Treasurer shall determine whether the matter is contested within the meaning of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and if so, shall refer the matter to the Office of Administrative Law for an initial decision, and thereafter shall issue a final decision. If the State Treasurer determines the matter is not contested, the State Treasurer shall issue a

written final determination. The business entity can file an appeal of the Treasurer's final decision with the Appellate Division of New Jersey Superior Court.

17:12-5.7 Public exigency

Pursuant to N.J.S.A. 19:44A-20.22, if a State agency or authority determines that a public exigency requires a particular transaction to proceed without Chapter 51 review, or despite potential Chapter 51 ineligibility, the agency or authority shall present the information relating to the exigent circumstances to the Review Unit as soon in the procurement process as possible. The Review Unit will coordinate consideration of the exigent circumstances by the State Treasurer.

SUBCHAPTER 9. [SURPLUS PROPERTY] DISTRIBUTION AND SUPPORT SERVICES UNIT, SURPLUS COMPUTER DISTRIBUTION PROGRAM

17:12-9.1 Description of organization and program

The Division [of Purchase and Property], as the centralized procurement agency for State government, is responsible for the disposal of State government's surplus personal property. The surplus property programs are administered by the Division's [Surplus Property] **Distribution and Support Services** Unit, which through public bidding and auctioning, sells or otherwise disposes of the State's surplus personal property. This subchapter sets forth the rules whereby surplus computer-related equipment is made available for use by local governmental entities, boards of education, nonpublic schools, and nonprofit charitable corporations at no cost.

17:12-9.3 Definitions

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

...

“Distribution and Support Services (DSS) Unit” refers to a **Divisional unit that provides warehousing and distribution services to State and other governmental agencies to meet their product requirements and administers the State’s surplus property programs, including the surplus computer distribution programs.**

...

"Eligible computer" means a surplus working computer or central processing unit (CPU), which may include peripherals, such as a mouse, keyboard, monitor, and power cables, that is, a [Pentium-based] **Pentium III-based** or equivalent system of recent or current technology, and purged of all user data and software. If transferable under applicable licensing agreements with the manufacturer, an operating system and/or application software may be included or loaded on the CPU.

...

"Surplus Property [Unit] **Section**" means the [Surplus Property Unit within] **segment of the [Division of Purchase and Property] Division’s Distribution and Support Services Unit** having responsibility for the State's surplus personal property.

17:12-9.4 Procedures

(a) (No change.)

(b) The Surplus Property [Unit] **Section** shall be responsible for receipt of eligible computers and surplus peripheral equipment from State Departments and distribution thereof to eligible recipients.

(c) The Surplus Property [Unit] **Section** shall advise eligible recipients of the availability/non-availability of eligible computers and/or surplus peripheral equipment on a quarterly basis through a dedicated telephone line and internet posting at www.state.nj.us/treasury/surpluspc. Such internet posting shall include a description of the eligible computer(s) and/or item(s) of surplus peripheral equipment to be available to eligible recipients and the date of availability. Such internet posting shall be made 60 days prior to the date of availability, which shall be considered a "timely" request.

(d) Eligible recipients having a need for an eligible computer(s) and/or any item(s) of surplus peripheral equipment posted on the internet must advise the Surplus Property [Unit] **Section** in writing on their respective letterhead of such interest no later than 30 days prior to the date of availability.

(e) All timely written requests received for an eligible computer(s) and/or any item(s) of surplus peripheral equipment shall be time and date stamped upon receipt by the Surplus Property [Unit] **Section**.

(f) Upon the request of the Surplus Property [Unit] **Section**, an entity expressing interest in an eligible computer(s) and/or any item(s) of surplus peripheral equipment must provide satisfactory evidence of its status as an eligible recipient. In the case of nonprofit charitable corporations, such evidence shall be proof of organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. [15A 1-1] **15A:1-1** et seq.

(g) In the event two or more eligible recipients express timely written interest in the same eligible computer(s) and/or item(s) of surplus peripheral equipment, the eligible computer(s) and/or item(s) of surplus peripheral equipment shall be distributed by the Surplus Property [Unit]

Section as follows:

1. If adequate numbers of eligible computer(s) and/or item(s) of surplus peripheral equipment are available, timely written requests from eligible recipients shall be satisfied in their entirety by the Surplus Property [Unit] **Section**.

2. If the number of eligible computer(s) and/or item(s) of surplus peripheral equipment available are inadequate to distribute to all eligible recipients, eligible computer(s) and/or item(s) of surplus peripheral equipment shall be distributed on the basis of the order in which timely written requests were first received by the Surplus Property [Unit] **Section**, one per eligible recipient.

3. If the number of eligible computers and/or items of surplus peripheral equipment available is greater than the number of eligible recipients providing timely written requests, but fewer than the number necessary to fully respond to each timely written request, one eligible computer and/or one item of surplus peripheral equipment shall be distributed per eligible recipient. Any eligible computer(s) and/or item(s) of surplus peripheral equipment remaining thereafter shall be distributed one per eligible recipient on the basis of the order in which timely written requests were first received by the Surplus Property [Unit] **Section**. This procedure shall continue until all eligible computers and/or items of surplus peripheral equipment are distributed.

17:12-9.5 Notification of availability

(a) The Surplus Property [Unit] **Section** shall notice an eligible recipient of a determination that an eligible computer(s) and/or item(s) of peripheral equipment are available for pick-up two weeks prior to the date of availability. Such eligible recipient shall advise the Surplus Property [Unit] **Section** at the time of such notice of its continued interest in the eligible computer(s) and/or item(s) of surplus peripheral equipment proposed to be distributed to it. An eligible recipient expressing continued interest shall be responsible for picking up the eligible computer(s) and/or item(s) of surplus peripheral equipment at the time and place designated by the Surplus Property [Unit] **Section**.

(b) - (c) (No change.)