

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

Authorized By: **Robert L. Smartt, Deputy State Treasurer**, Department of the Treasury

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 rulemaking
calendar requirement

Proposal Number: PRN 2004 - 449.

Submit written comments by February 4, 2005 to:

John V. Naiman, Director

Division of Purchase and Property

Department of the Treasury

P.O. Box 039

Trenton, New Jersey 08625-0039

The agency proposal follows:

Summary

In accordance with Executive Order No. 66 (1978)/N.J.S.A. 52:14B-5.1, N.J.A.C. 17:12 will expire on April 20, 2005. The Division of Purchase and Property (Division) proposes the readoption with amendment of its rules at N.J.A.C. 17:12 to clarify 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, nonpublic schools and nonprofit charitable corporations. A summary of the rules as proposed for readoption with amendments follows:

Subchapter 1, Description of Organization, 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. At N.J.A.C. 17:12-1.1, General course and method of operation, proposed amendments expand the list of, or clarify, the types of contracts bid and awarded by the Division. Proposed amendments within N.J.A.C. 17:12-1.2, Source for public information, are intended to encourage the public's use of the Division's website to secure information about the Division's procurement programs and to establish the public information standard presently in effect as a result of the Open Public Records Act. Within N.J.A.C. 17:12-1.3, definitions are proposed for the following added terms used in other sections of N.J.A.C. 17:12: "homeland security," "domestic preparedness," "emergency condition," "prequalification contract," "sealed bid," "signed" and "single source term contract." The definition of the term "signed" is included to establish an electronic signature as a means of binding a vendor to its bid proposal, in anticipation of potential application of electronic bidding in the future. The term "procurement request" is proposed for deletion because it is not used within N.J.A.C. 17:12. Additionally, enhancements are proposed for existing definitions for the sake of clarity and/or elaboration. In N.J.A.C. 17:12-1.4, Application of rules, a correction is made to reflect the updated number of the Treasury Circular that establishes and describes the Division's Delegated Purchasing Authority (DPA) program, whereby State agencies can purchase needed products and/or services when costs do not exceed established threshold levels.

Subchapter 1A, Procurement Methodology, contains proposed amendments addressing several matters. Proposed amendments within N.J.A.C. 17:12-1A.2, Exceptions to formal,

advertised, sealed bidding, provide clarification of the conditions under which State agencies can utilize the Division of Purchase and Property's Delegated Purchasing Authority program. Also, a change is proposed to transfer N.J.A.C. 17:12-1A.2(f)1 to the end of the subsection as paragraph (f)3 to reflect the chronology of the waiver of advertising contract approval process. N.J.A.C. 17:12-1A.3, Cooperative purchasing, sets forth a proposed amendment that establishes the Director's budgetary-established prerogative to work with other governmental entities to address domestic preparedness, homeland security or other emergency or emergency prevention situations encountered by users of contracts issued by the Division of Purchase and Property. At N.J.A.C. 17:1A.4, Extension of contracts for local use, the Division proposes an amendment to permit usage of State contracts by local governments and other Cooperative Purchasing Program participants upon the Director's approval of such extension during the term of the contract rather than only as declared within the submitted bid proposal as currently established, to allow local governments access to a greater number of State contracts. Also, there is a proposed amendment to include website maintenance and operation costs as factors to determine the fee amounts assessed to local governments and other entities choosing to use State contracts via the Division of Purchase and Property's Cooperative Purchasing Program since usage of the website for using agencies' access to State contract provisions is now standard practice. N.J.A.C. 17:12-1A.5, Use of Federal Supply Schedules, is proposed for amendment to define the Director's option to contract with vendors having Federal Supply Schedule contracts to meet domestic preparedness, homeland security or other emergency preparedness or control needs of State contract users.

Subchapter 2 has been amended to clarify and reflect modifications of the processes comprising the Division of Purchase and Property's formal, advertised, sealed bidding procedures. N.J.A.C. 17:12-2.1, Advertising, is amended to reflect the Division's expanding use of its website as a primary public notice forum and as the place for interested vendors to access Requests for Proposals and supplementary documents as necessary to vie for

awards of competitively bid State contracts. N.J.A.C. 17:12-2.2, Requirements for bidding, is proposed for amendment and internal recodification to include additional documentation or requirements that, unless provided by a bidder as part of its bid proposal, will be, unless otherwise specified in the Request for Proposal, cause for automatic rejection of that bidder's proposal, starting with the newly implemented statutory requirement for all business entities submitting bids for State contracts to provide proof of current registration with the New Jersey Department of the Treasury's Division of Revenue at the time the bids are opened and ending with a requirement for bidders to comply with the provision of N.J.A.C 17:13-3.2(b), which establishes that bidders competing for the award of a set-aside contract must be approved by the New Jersey Commerce and Economic Growth Commission at the time of bid opening. Also within this subsection, there is a proposed amendment to account for and support the Division's plans for use of electronic bidding forums in the near future. N.J.A.C. 17:12-2.3 is reserved. N.J.A.C. 17:12-2.4 and 2.5 address bid and performance security, respectively. The proposed amendment to N.J.A.C. 17:12-2.6, Bid openings, establishes that a bidder requesting additional time to submit a bid proposal on the date the bids are to be publicly opened must be able to document the reason given for such request. N.J.A.C. 17:12-2.7, Evaluation of proposals, is proposed for amendment to clarify that the composition of proposal evaluation committees will continue to be determined by the Director before bids are opened and will be based upon the resume-cited qualifications of prospective members. Proposed amendments within N.J.A.C. 17:12-2.8, Poor performance as a basis for bypass of low bidder, reflect a change to the referenced statute governing the Director's right to award contracts based upon price and other factors and codifies procedures by which bid proposals from vendors which have failed to perform satisfactorily current or past State contracts may be bypassed for award of a State contract. N.J.A.C. 17:12-2.9, which concerns a practice of the Division whereby an award of contract was made to a vendor whose bid proposal contained exceptions to conditions or requirements set forth in the Request for Proposal, provided the intended

contract awardee agreed to rescind such exceptions, is proposed for repeal. N.J.A.C. 17:12-2.10, Tie bids, contains proposed additional factors and changes in priority to the listing of factors to be applied in the event of tied bid proposals and provides the Director with the option to make multiple awards of contract when practicable. N.J.A.C. 17:12-2.11, Bid errors, contains a proposed amendment to clarify the action to be taken by the Division in the event of an arithmetic disparity or other ambiguity in the pricing offered in a bid proposal. Proposed amendments within N.J.A.C. 17:12-2.12 incorporate statutory revisions at N.J.S.A. 52:32-44 requiring (a) all bidders to include a copy of their New Jersey Division of Revenue business certification document with their bid proposals, (b) all prime contractors having State contracts to ensure that subcontractors are similarly registered with the Division of Revenue, and (c) each prime contractor to maintain and provide the Division with updated records of any and all subcontractors used in the performance of the State contract. Proposed amendments within N.J.A.C. 17:12-2.13, Preference laws; out-of-State vendors, provide for the modification of the format of the Division's publication of a list of states having statutes, rules and/or regulations granting in-state preferences and allow the Director the option to apply reciprocal action against out-of-State vendors that have benefited from such in-state preferences as part of the immediate procurement or to subsequent reprocurments of the contract. N.J.A.C. 17:12-2.14 concerns mutual cancellation of contract.

Subchapter 3, Protest, contains proposed amendments intended to clarify the Division's formal protest procedures and practices. Specifically, amendments within N.J.A.C. 17:12-3.1, Informal hearings; subject matter, are intended to inform the public that final agency decisions on protests filed with the Division are appealable to the Appellate Division of New Jersey Superior Court. Proposed amendments to N.J.A.C. 17:12-3.2, Protest procedures; challenges to a specification, and 3.3, Protest procedures; challenge to a contract award decision, similarly seek to provide more detail regarding the Director's discretionary use of Division staff hearing officers or ad hoc, non-staff hearing officers to address vendor

protests of bid specifications and contract awards. The amendments include clarification of a protester's responsibility to present specific information relative to its point(s) of protest. Discovery procedures are addressed in N.J.A.C. 17:12-3.4.

Subchapter 4, Complaint Procedures, contains proposed amendments that are intended to clarify and refine the descriptions of the standard policies and procedures for the handling and adjudication of formal complaints filed by using agencies against contracted vendors. At N.J.A.C. 17:12-4.1, Purpose and scope of subchapter, there is a proposed amendment to reference the governing statute rather than the sundry subsets of authority that are currently listed and that are more frequently modified. N.J.A.C. 17:12-4.2, General, contains a proposed amendment in text intended to clarify, by cross-reference, the rule addressing bypassing of bids for poor performance. The proposed amendment within N.J.A.C. 17:12-4.3, Filing of complaints; subject matter, will maintain the Contract Compliance and Administration Unit's (CCAU's) option to determine whether the filing of a complaint by a using agency is untimely since there can be justified cause for delays in such filing, such as in cases when using agencies take additional time to try to resolve a disputed matter with the contractor but are unsuccessful in their efforts. The proposed amendment within N.J.A.C. 17:12-4.4, Time frames, establishes that a contractor's corrective action or offer of same, in and of itself, will not automatically invalidate a filed formal complaint but can be considered by CCAU in its assessment and decision on the matter of complaint. Also within this section, clarification is made that CCAU decisions on formal complaints are made independently by CCAU and are, therefore, subsequently appealable to the Director, subject to timely filing by the contractor. N.J.A.C. 17:12-4.5, Resolution of complaints, contains proposed amendments that continue the clarification that the CCAU decision is appealable to the Director and then clarify the policy and practice relative to the Director's use of Division staff hearing officers or ad hoc, non-staff hearing officers for fact-finding and assessment of the issues of protest. Also within N.J.A.C. 17:12-4.5, specifically at subsection (c), is a proposed change to clarify and give notice that appeals of the Director's

final agency determinations on appeals of CCAU decisions on formal complaints are appealable to the Law Division of the Superior Court of New Jersey. Additionally at subsection (d) of N.J.A.C 17:12-4.5, text is added to establish that time limitations established by the New Jersey Contractual Liability Act are not stayed or otherwise affected by the period of time during which the Division administers and/or adjudicates contract-related complaints. N.J.A.C. 17:12-4.6 concerns rejection of goods and/or services, and N.J.A.C. 17:12-4.7 concerns emergency situations. Clarifying amendments are made to N.J.A.C 17:12-4.8, Effect of vendor non-compliance with contract provisions, and N.J.A.C. 17:12-4.9, Discovery procedures.

Subchapter 5 is reserved.

Subchapter 6, Debarment, Suspension and Disqualification of a person(s), contains a single proposed amendment at N.J.A.C. 17:12-6.1, which is intended to match the amendments proposed in other subchapters of N.J.A.C. 17:12, that is, to cite the governing statute rather than the disparate subsets of authority currently listed.

Subchapters 7 and 8 are reserved.

The proposed amendments to Subchapter 9 are intended to update and clarify aspects of the Computer Distribution Program overseen by the Surplus Property Unit. N.J.A.C. 17:12-9.1 and 9.2 concern the description of organization and program and the subchapter purpose and intent, respectively. N.J.A.C. 17:12-9.3 contains proposed amendments to the definition of "eligible computer" to clarify which base and peripheral items are included as part of an eligible computer package and to remove reference to a particular product brand. Clarifying amendments are proposed to N.J.A.C. 17:12-9.1, 9.4, Procedures, and 9.5, Notification of availability. N.J.A.C. 17:12-9.6 concerns the condition of eligible computers and equipment distributed, and contains proposed amendments intended to clarify what constitutes a working computer and to include a statement that sets forth the terms of risk under which computers are donated to eligible entities.

As the Division has provided a 60-day comment period in 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 will continue the procedures which have served to benefit the State and the general public. The amendments to N.J.A.C. 17:12, as proposed, conform to and support the purpose and provisions of N.J.S.A. 52:34-6 et seq., which requires the Division to conduct competitive bidding wherever possible and to award contracts that provide the most advantage to the State, price and other factors considered. In that process, the Division guards against favoritism, improvidence, extravagance and corruption while treating all vendors equally and fairly.

Economic Impact

The rules proposed for readoption with amendments will continue the ongoing efforts to ensure that the State and general public benefit from the cost and performance advantages achieved by competitive bidding in the daily operation of State government and the political subdivisions which choose to utilize the State contracts issued under these rules. In providing purchasing services for the agencies of the State, the Division has a significant effect on State government budgets and on the economy of the State. These rules allow for local government participation in State contracts at the option of the local governmental entity and thus do not generate a State mandate/State pay issue.

Federal Standards Statement

A Federal standards analysis is not required because these rules proposed for readoption with amendments are based on New Jersey statutes and are not subject to Federal requirements or standards.

Jobs Impact

The Division anticipates only favorable impact on the workforce in the State by these rules as proposed for readoption with amendments. The Division will continue to provide opportunities for vendors to compete for goods and services contracts as necessary to meet the needs of State government, and such contracts will enable businesses to employ New Jersey citizens to perform the contract requirements.

Agriculture Industry Impact

Certain of the contracts issued by the Division are with agriculture-based businesses. However, the application of these rules, as amended, will have no undue or adverse impact on the agriculture industry of New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments affect all persons and entities which seek the award of goods and services contracts with the State. Many such bidders 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 these rules. The bidding procedure compliance requirements are necessary in order to ensure a fair, competitive system for State purchases. Aside from bid security and performance security requirements which are applied infrequently and only when necessary as sound business practice to protect the expenditure of public funds, the rules should impose no capital costs upon bidders beyond those normally incurred in the course of contracting in their respective business areas. No need for the engagement of professional services in the bidding process is anticipated. No lesser requirements or exemptions are provided for small businesses as the requirements imposed are considered the minimum necessary to ensure a fair, open and competitive bidding process.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:12.

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

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

17:12-1.1 General course and method of operation

(a) **[Among its other functions, the]** **The** Division of Purchase and Property, in and of the New Jersey Department of the Treasury, provides **[central]** **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, the goods and services necessary for the daily operation of State government. As it relates to procurement, the Division includes the Purchase Bureau and the Contract Compliance and Administration Unit ("CCAU"). **[Both entities report directly to the Office of the Director of the Division.]** 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 apply to the **[Purchase Bureau, CCAU]** **Division**, public entities and vendors participating in the State's contracting process.

(b) The Director of the Division of Purchase and Property is charged with the responsibility for [making purchase] **establishing** contracts and issuing purchase orders, the price 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 **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 [thereon is that] **or the circumstances of the procurement are as** described in [N.J.S.A. 52:34-9](#) [and] **and/or** [52:34-10](#).

(d) The Director may delegate [or authorize] **to staff within the Division of Purchase and Property** the signing of purchase orders on the Director's behalf 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. (No change.)
2. [Term] **Single-source term** contract;
3. Multi-source term contract; [or]
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 information

(a) The public [may] **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** 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, [, or by accessing the Division's Internet site at www.state.nj.us/treasury/purchase].

(b) Subsequent to bid opening, all [bid documents are] **information submitted by bidders in response to a bid solicitation is** considered public information, notwithstanding any disclaimers to the contrary submitted by a bidder, **except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A 47:1A-1 et seq., and the common law.**

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:

"Bid security" means a guarantee, in [the form of a bond or deposit] **a form acceptable to the Division**, that the bidder, if selected, will accept the contract as bid; otherwise, the bidder [(in the case of a deposit) or the bidder] or, **as applicable**, its guarantor [(in the case of a bond)] will be liable for the amount of the loss suffered by the State, which loss may be partially or completely recovered by the State in exercising its rights against the [deposit or bond] **instrument of bid security**.

"Bypass" means a contract award made to other than the lowest **priced proposal from a** responsible bidder(s) submitting a conforming proposal. A bypass occurs when the Director determines that the 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 materials, supplies, or services that are, or equipment that is, capable of performing in conjunction with those previously purchased [, that is,]. **This also**

refers to situations in which the purchase of materials, supplies, services or equipment at variance with those previously purchased has the potential to degrade or impair the performance of those previously purchased and/or negatively impact upon warranties or licenses of those previously purchased.

"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 contract **typically** consists of the Division's [Standard Terms and Conditions] **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 [of the foregoing] **or other writings agreed to by the State and the contractor describing the work to be performed**.

"Contract Compliance and Administration Unit" (CCAU) refers to a unit within the Office of the Director, Division of Purchase and Property. CCAU is responsible for [ensuring that using agencies and contract vendors comply with State procurement guidelines and fulfill their respective obligations] **monitoring using agencies and contracted vendors to ensure their conformance to State procurement statutes, regulations, and contractual terms, conditions and requirements**. To this end, CCAU acts as the initial arbiter of complaints filed pursuant to N.J.A.C. 17:12-4 and conducts audits of the State's contractors and using agencies. **CCAU also has oversight responsibility for contracts which are subject to waiver of advertising pursuant to N.J.S.A. 52:34-9 and 10.**

"Day" or "**business day**" means [business day, not including] **a normal work day and excludes** Saturday, Sunday or State legal holiday.

...

"Homeland security," "domestic preparedness" and "emergency condition" refer to circumstances which may be cause for immediate procurement action necessary to meet potential or existing 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" [means a procurement specified in the RFP for which the bidder is asked to give individual pricing information and which, under the terms of the RFP, is usually susceptible to a separate contract award] **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.**

...

"Performance security" means a guarantee, executed subsequent to award, in [the form of a bond or deposit] **a form acceptable to the Division**, that the successful bidder will complete the contract as agreed and that the State will be protected from loss in the event the contractor fails to complete the contract as agreed.

"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 request" means an RFP issued or initiated by the Director, pursuant to [N.J.S.A. 52:34-6](#), or by a State agency in the event that the procurement is subject to [N.J.S.A. 52:34-9](#) or 10 or Direct Purchase Authorization as set forth in Department of the Treasury Circular PC-23H, as amended or redesignated.]

...

"Purchase Bureau" refers to [one of the bureaus] **the bureau** under the direct authority of the Director [. The Purchase Bureau] **that** is responsible for the preparation, advertisement and issuance of RFPs, tabulation and evaluation of bid proposals and making contract award recommendations to the Director. [The Purchase Bureau has similar responsibilities for contracts which are subject to waiver of advertising pursuant to [N.J.S.A. 52:34-9](#) and 10.]

...

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

"Signed" means a physical or electronic signature evincing an intent by a bidder 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.

...

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 all [Direct Purchase Authorization] **Delegated Purchasing Authority** contracts as set forth in Department of the Treasury Circular [PC-23H] **00-13-DPP**, as amended or re-designated.

SUBCHAPTER 1A. PROCUREMENT METHODOLOGY

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

(a) With the exception[s] of contracts awarded **by State agencies** via the Division's [Direct Purchase] **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 [State agencies directly, or by] the Division [on behalf of such agency or agencies,] shall be formally advertised and competitively bid with requirements for the submittal of sealed bids.

(b) State agency purchasing under [Direct] **Delegated** Purchasing Authority procedures shall be done only under the following conditions:

1. (No change.)

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

iii. (No change.)

(c) [Direct Purchase] **Delegated Purchasing** Authority procedures are set forth in, and are subject to revision through, the Division's Circular on [Direct Purchasing Authorization] **Delegated Purchasing Authority procedures.**

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

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

(f) 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 Circular on Requests for Waivers of Advertising and may occur when the following conditions have been met:

[1. The Treasurer has signed the Request for Waiver of Advertising document prepared and submitted by the State agency via the Division, except when verbal authorization is granted by the Treasurer, the Director, or their respective designees to address life, health, and/or other emergencies;]

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

i - x. (No change.)

xi. Standardization of equipment and interchangeability of parts is in the public interest;

[and]

[3.] **2.** The Request for Waiver of Advertising packet includes documentation which establishes that informal competitive bidding was conducted if the procurement is addressing any situation(s) described in (f) [2i] **1**i, ii, iii, iv, vii, **viii, ix** and/or [ix] **xi** above, and which includes written justification for any bypass of a lower bidder; **and**

3. The Treasurer has signed the Request for Waiver of Advertising document prepared and submitted by the State agency via the Division, except when oral authorization has been granted by the Treasurer, the Director, or their respective designees to address life, health, and/or other emergencies.

17:12-1A.3 Cooperative purchasing

(a) - (d) (No change.)

(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 Extension of contracts for local use

(a) (No change.)

(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.** [A bidder's failure to so indicate shall preclude the extension of the contract for local use in the event such bidder is awarded the contract.]

(c) (No change.)

(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) - (g) (No change.)

17:12-1A.5 Use of Federal Supply Schedules

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

(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.

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 exceptions of [N.J.S.A. 52:34-9](#) or 10. The notice of bid opportunity shall be placed in newspapers [or] **and** other such media, **such as the Division of Purchase and Property's website,** as [allowed] **permitted** by law and

selected by the State Treasurer as will give best notice thereof to bidders. Advertisements shall be made a minimum of 10 [working] **business** days in advance of the bid opening to encourage free and open competition.

(b) If, during the course of a purchase advertised pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such amendments shall be advertised a minimum of five [working] **business** days in advance of the bid opening date and time.

(c) In addition to statutorily mandated public advertising, the Division [may] **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 [RFP distribution] **notice of a specific bidding opportunity and of RFP-accessibility on the Division's website** to prospective bidders. However, the [mere] 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) (No change.)

17:12-2.2 Requirements for bidding

(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 proposal shall:

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;

Recodify existing 1.-5. as **2.-6.** (No change in text.)

[6.] **7.** Be preceded by the bidder's attendance and registration at any pre-bid conference and/or site inspection for which attendance and registration is mandatory. 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** [allow a vendor to meet a pre-bid conference attendance/registration requirement by listening to the tape recording of the conference. This right may be exercised by the Director upon a vendor's verifiable demonstration of extenuating circumstances which prevented attendance or for other factors deemed, by the Director, to be in the State's best interests];

[7.] **8.** (No change in text.)

[8.] **9.** Be prepared in ink or typewritten **or, as applicable, in the electronic format specified by the RFP.** If information essential to a bid 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, 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;

[9.] **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 [foreign corporation] **business organization**

registration requirements pursuant to N.J.S.A. [14A:13-1] 52:32-44 et seq. and at N.J.A.C. 17:12-2.12; [and]

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

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

13. If the bid solicitation is for a contract that has 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.

(b) (No change.)

17:12-2.6 Bid openings

(a) Bids must be received prior to or at the time and at the place designated for bid openings. All other bids 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 [an] **a documentable** emergency **occurring on the date of the scheduled bid opening**, timely delivery is not possible. The vendor [making this request must do so] **must make such request** prior to the time of the scheduled bid opening. If the Director determines that a delayed opening is in the State's best interest, the Director shall designate a revised bid

opening time. All bids will be held and remain sealed until the revised bid opening time.

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

17:12-2.7 Evaluation of proposals

(a) Proposals shall be evaluated in either of two ways:

1. By an evaluation committee appointed by the Director **prior to the date of the scheduled bid opening.** The **Director shall appoint the members of the evaluation committee on the basis of professional resumes supplied by the proposed members. The Director retains the discretion to reject a proposed member, remove a sitting member or add additional member(s) 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. (No change.)

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

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

(c) Subsections (a) and (b) above shall not be construed to otherwise limit the Director's authority to bypass low bidders in accordance with the statutory authority established at N.J.S.A. 52:34-12[(f)] **(g)**.

(d) Notice of a decision to bypass a bidder's proposal based upon poor performance shall be given 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, 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.

17:12-2.9 [Irregularities in bidding] **(Reserved)**

[The Director may make a stipulated award to a bidder when deemed to be in the best interests of the State, considering price and other factors such as terms, conditions and specifications. However, in no case shall the stipulated award be used to correct a non-responsive proposal.]

17:12-2.10 Tie bids

(a) In the event that [prices] **bid proposals** submitted by two or more bidders are [identical] **deemed to be tied**, the Director shall award the contract based on a review of the following factors listed in order of priority:

1. (No change.)

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

[2.] **3. Delivery advantage, specifically shorter timeframes for delivery and/or closer proximity to the point of delivery;** [and]

4. Active registration with New Jersey Commerce and Economic Growth Commission as a small business at the time of bid opening; and

[3.] **5. In-State location.**

(b) When none of the above distinguishable characteristics are available, the Director [shall] **may**, if practicable, make multiple awards.

17:12-2.11 Bid errors

(a) - (c) (No change.)

(d) If [there is discovery of a conflict] **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 [a significant disparity] **any other ambiguity in the pricing other than a disparity** between the unit price and [total] 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.

(e) (No change.)

17:12-2.12 Registration of [out-of-State] corporations **and other business entities**

[Corporations slated for award of contract but not organized under the laws the State of New Jersey shall be afforded seven days after notification by the Purchase Bureau of the intent to award to register with the New Jersey Department of the Treasury, Division of Revenue. A corporation's failure to provide proof of either certification or notification of filing with the Division of Revenue within the seven day period constitutes cause for automatic rejection of that firm's bid.] **(a) All corporations and other business entities seeking to do business with the State of New Jersey must be 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.**

(b) Subcontractors which are corporations or other business entities 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 to the Division of Purchase and Property.

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

(a) - (c) (No change.)

(d) For purposes of implementing these provisions, the Director shall [maintain and] make available for public inspection a list [to be updated annually] of states having statutes, rules and/or regulations which grant in-state preferences in the competitive bidding for goods and services. [The Director shall develop and maintain the list] **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 indicates that any state or local government agency outside of New Jersey applies an 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 whenever a bid 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 [working] **business** days of the public bid opening. Written evidence that is not provided to the Director within five [working] **business** days of the public bid opening [will] **may** not be considered in the evaluation of that procurement, but [will] **may** be retained and considered in the evaluation of subsequent procurements.

(f) - (g) (No change.)

(h) The Director may [consider waiving] **waive** a reciprocal in-State preference on a specific procurement[. The Director may waive the application of a reciprocal in-State preference] 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) - (m) (No change.)

SUBCHAPTER 3. PROTEST

17:12-3.1 Informal hearings; subject matter

(a) (No change.)

(b) Protests of the type described in this subchapter, for the purpose of this chapter, 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. **Final agency determinations by the Director on matters of protest are appealable to the Appellate Division of the Superior Court of New Jersey.**

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., [and objecting] **that objects** to 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 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.

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

i. (No change.)

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

iii. (No change.)

2. - 3. (No change.)

(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 received in response to that RFP.

1. (No change.)

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 presentation directly [, or may appoint a hearing officer]. In the case of [the latter, the hearing officer's report] **a review**

or oral 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 [is] 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 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) (No change.)

(b) A vendor, after submitting 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 award. The protest shall be filed within 10 [working] **business** days following the vendor's receipt of written notification that its bid has not been accepted or of notice of the award decision.

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

i. (No change.)

ii. [All] **The specific grounds for challenging the intended contract award, including all** arguments, materials and/or other documentation that may support the protester's position that the contract award should be overturned; and

iii. (No change.)

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 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. 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 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. [Such] **In cases where no oral presentation is held, such** review of the written record shall, in and of itself, constitute an informal hearing.

1. (No change.)

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 presentation directly [, or may appoint a hearing officer]. In the case of [the latter, the hearing officer's report] a review or oral 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 [is] 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 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.)

SUBCHAPTER 4. COMPLAINT PROCEDURES

17:12-4.1 Purpose and scope of subchapter

The purpose of this subchapter is to set forth the procedure that governs complaints related to contracts arising as a result of [the bidding procedures set forth in N.J.A.C. 17:12-2, N.J.S.A. 52:34-9 or 10 and Direct Purchase Authorization as set forth in Department of the

Treasury Circular PC-23H, as amended or redesignated] **procurements conducted under the provisions of N.J.S.A. 52:34-6 et seq.**

17:12-4.2 General

The provisions of this subchapter deal specifically with means of assuring prompt action in cases where performance fails to meet contract requirements. The Director [may refrain from doing business with] **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[, if its poor performance is due to] **under** circumstances within its control [and is not due to the act of a third party or event beyond the control of the contractor], 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 contract terms, including, but not limited to, those listed in **N.J.A.C. 17:12-4.3(b)** [below], as necessary to protect the State's best interests.

17:12-4.3 Filing of complaints; subject matter

(a) All using agencies shall promptly notify CCAU of any failure by a contractor to comply with the terms and conditions of a State contract. Notification shall be in writing and on Form PB-36 or the equivalent. A complaint [shall] **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.

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

1. - 7. (No change.)

8. Failure to comply with any relevant legal **or contractual** requirement.

17:12-4.4 Time frames

(a) (No change.)

(b) The contractor against which the complaint was filed must reply to the complaint within 10 days of its receipt thereof. 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) (No change.)

(d) As soon as practicable after receipt of the response provided in (c) above, CCAU shall issue an initial [recommendation to the Director. Any party may file exceptions or comments to the initial recommendation within 10 days] **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 days of receipt of CCAU's**

initial determination.

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

17:12-4.5 Resolution of complaints

(a) A **CCAU-adjudicated** complaint **appealed to 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 complaint and any attachments, the terms, conditions and requirements of the contract which includes the proposal submitted by the contractor, pertinent administrative rules, statutes and case law, and any associated documentation the Director deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

(b) (No change.)

(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 presentation directly [, or may appoint a hearing officer]. In the case of [the latter, the hearing officer's report] **a review or oral 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 [is] 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 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 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 the running of any limitations period in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.**

17:12-4.8 Effect of vendor non-compliance with contract provisions

(a) The Director may, in the following circumstances, rescind [its] **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. - 3. (No change.)

(b) (No change.)

17:12-4.9 Discovery procedures

CCAU is entitled to request, receive, review and audit copies of any and all records and documents at any time. Upon receipt of the CCAU request, the vendor shall promptly provide the requested records and documents free of charge in the time, place and manner specified by CCAU. Failure of the vendor to comply with the requirements of this section

may, at the reasonable discretion of the Director, constitute sufficient basis to resolve the issue(s) [in disfavor of] **against** the non-compliant vendor. CCAU may also consider relevant information requested and received from other parties deemed appropriate by the Director.

SUBCHAPTER 6. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:12-6.1 Purpose and scope

The purpose of this subchapter is to set forth the procedures that apply to debarment, suspension and disqualification of a person or persons from public contracting. This subchapter shall apply to all contracts [arising as a result of the bidding procedures set forth in N.J.A.C. 17:12-2, [N.J.S.A. 52:34-9](#) or 10, and Direct Purchase Authorization as set forth in the Department of the Treasury Circular PC-23 H, as amended or re-designated] **awarded pursuant to N.J.S.A 52:34-6 et seq.** Hearings arising as a result of this subchapter are contested cases subject to the requirements of the Administrative Procedures Act, [N.J.S.A. 52:14B-1](#) et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 9. SURPLUS PROPERTY UNIT, 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 [its] **State government's** surplus personal property. The surplus property programs are administered by the Division's Surplus

Property 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.

...

"Eligible computer" means a surplus working computer [including a central processing unit and] **or central processing unit (CPU), which may include** peripherals such as a mouse, keyboard, [cable/wire and] monitor, **and power cables** [excluding a printer], that is a Pentium-based or equivalent system **of recent or current technology**, [Y2K compliant] and purged of all user data and software[, with the exception of Microsoft Windows Operating Systems and any applications software or networking card which is transferable under the applicable licensing agreement.] **If transferable under applicable licensing agreements with the manufacturer, an operating system and/or application software may be included or loaded on the CPU.**

...

17:12-9.4 Procedures

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

(c) The Surplus Property Unit 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) - (f) (No change.)

(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 as follows:

1. (No change.)

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, 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 **[expressing] providing** timely written **[interest] requests**, but **[less] 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. 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) (No change.)

(b) Eligible computer or peripheral equipment not picked up by the eligible recipient at the specified time and place shall be offered to the **next** eligible recipient **[next]** in line.

(c) (No change.)

17:12-9.6 Condition of eligible computers and items of surplus peripheral equipment distributed hereunder

While the State will make reasonable efforts to ensure that each eligible computer is working, that is, [Y2K compliant and purged of all user data and software with the exception of the operating system] **capable of running software**, the State [shall make] **makes** no express or implied warranty with respect to any eligible computer **or peripheral equipment**. All eligible computers and/or items of surplus peripheral equipment shall be offered on an "as is, where is, **and with all faults**" basis. **The State will not be liable for any damages that may result from the use or operation of any transferred**

computer, peripheral equipment or software.