

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Notice of Readoption

Local Public and Public School Contracts Law

Readoption: N.J.A.C. 5:34-1, 2, 3, 4, 6, 7, 8, and 9 and 5:34 Appendices A, B, and C

Authorized By: Melanie R. Walter, Director, Division of Local Government Services.

Authority: N.J.S.A. 40A:11-37.1 and 18A:18A-49.2.

Effective Date: August 7, 2020.

New Expiration Date: August 7, 2027.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the rules regulating public contracting and procurement for local governments and school districts, N.J.A.C. 5:34, are readopted and shall continue in effect for a seven-year period. The rules were scheduled to expire on September 13, 2020. The Division of Local Government Services has reviewed these rules and has determined them to be necessary, reasonable, and proper for purposes for which they were originally promulgated. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extended the expiration date of the chapter seven years from the date of filing, except for Subchapter 5, which was adopted by emergency adoption effective May 21, 2020, and has been separately proposed.

The rules at N.J.A.C. 5:34 were originally adopted in 1990, having been amended and supplemented over the years pursuant to statutory changes and new developments in public sector procurement. Readoption of N.J.A.C. 5:34 is essential to ensuring fairness and integrity in the realm of public procurement along with the most efficient use of public funds. A summary of the rules proposed for readoption at N.J.A.C. 5:34 follows:

N.J.A.C. 5:34-1 defines this chapter's scope of application and provides definitions for the key words and terms used therein.

N.J.A.C. 5:34-2 limits use of the "extraordinary unspecifiable services" exception to public bidding and sets forth procedures for implementing the exception.

N.J.A.C. 5:34-3 provides guidelines on the duration of equipment leases and service agreements along with the application of bidding requirements. The subchapter also sets forth requirements for lease-purchase arrangements, assignment of lease payments, and multi-year lease agreements. Lastly, the subchapter features limitations on equipment changes for such contracts.

N.J.A.C. 5:34-4 establishes procedures for competitive contracting.

N.J.A.C. 5:34-5 establishes a regulatory framework enabling contracting units as defined at N.J.S.A. 40A:11-2 of the Local Public Contracts Law and boards of education as defined at N.J.S.A. 18A:18A-2 of the Public School Contracts Law to conduct procurement through an electronic internet-based platform. The readopted rules promulgate minimum standards for procurement of goods, services, public works, and sale of surplus personal and real property through means of electronic technology, with such standards providing for the integrity and procedural protections of sealed public bidding and competitive contracting in an online environment. In addition, the readopted rules promulgate requirements for holding a public bid or proposal opening when physical attendance by the public cannot be accommodated for public health reasons during a state of emergency. This subchapter, adopted by emergency adoption effective May 21, 2020, has been separately and concurrently proposed for readoption at 52 N.J.R. 1275(a).

N.J.A.C. 5:34-6 sets forth the requirements for emergency purchases and contracts pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7.

N.J.A.C. 5:34-7 contains regulatory requirements governing the creation, administration, and procurement practices of cooperative purchasing systems, joint purchasing systems, county cooperative contract purchasing systems, cooperative pricing systems, and regional

cooperative pricing systems. This subchapter details the procedures for registering and operating commodity resale systems, as well as establishes requirements for energy aggregation and the cooperative purchasing of energy by local governments and school districts. In addition, this subchapter contains provisions that must be followed when making purchases under the State Cooperative Purchasing Program and conditions by which contracting units may avail themselves of purchases at least 10 percent less than the State contract price.

N.J.A.C. 5:34-8 sets forth when goods and services should be aggregated for purposes of determining whether competitive bidding is required. The subchapter establishes that multi-year contracts whose amount exceeds the bid threshold during the contract term must be competitively bid, and bars intentional miscalculations to avoid public bidding.

The subchapter also contains one appendix. N.J.A.C. 5:34 Appendix A identifies practices that should be used in instances where initial estimates of goods and services needed during the current contract year were anticipated to be less than the bid threshold, or were otherwise exempt from public bidding, but are later found to be incorrect. The appendix sets forth practices to follow in determining if the remaining amount should be publicly bid, or if quotations should be solicited.

N.J.A.C. 5:34-9 applies to several miscellaneous procurement issues. These include the purchase of proprietary goods and services, requirements for using "brand name or equivalent" specifications, cancellation or postponement of receipt of bids or proposals, procedures for procuring concessions, special circumstances surrounding solid waste collection, purchase of goods and services valued at less than 15 percent of the bid threshold, publication requirements for contract awards, use of mediation to reach a finding of prior negative experience, and the appointment of a duly authorized designee to act on behalf of a purchasing agent under the Public School Contracts Law. In addition, the subchapter sets forth procedures that a local government or school district must follow when utilizing either of the following competitive bidding exceptions: use of a price quote at least 10 percent less than the State cooperative contract price, and when use of the General Service Administration's Federal Supply Schedules is permitted. Lastly, the subchapter contains two appendices, N.J.A.C. 5:34 Appendices B and C contain checklists that must be submitted to the Director of the Division of Local Government Services when utilizing the above-referenced exceptions to competitive bidding.

LABOR AND WORKFORCE DEVELOPMENT

(b)

DIVISION OF WAGE AND HOUR COMPLIANCE

Prohibited COVID-19 Related Employment Discrimination

Adopted Concurrent New Rules: N.J.A.C. 12:70

Proposed: April 20, 2020, at 52 N.J.R. 933(a).

Adopted: August 10, 2020, by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Filed: August 10, 2020, as R.2020 d.081, **without change**.

Authority: P.L. 2020, c. 9.

Effective Date: August 10, 2020.

Expiration Date: August 10, 2027.

Summary of Hearing Officer's Recommendations and Agency's Responses:

The period for submission of written comments to the Department's Office of Legal and Regulatory Services regarding the concurrent proposed new rules ended on June 19, 2020. The Department received a