

SPECIAL ADOPTION

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Qualified Purchasing Agents

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

Special Repeal and New Rules Adopted: April 11, 2012 by Thomas H. Neff, Director, Division of Local Government Services.
Filed: April 11, 2012 as R.2012 d.092.

Authority: N.J.S.A. 40A:11-9.

Effective Date: April 11, 2012.

Expiration Date: April 11, 2013.

Pursuant to the special adoption language of N.J.S.A. 40A:11-9.i, the repeal and new rules at N.J.A.C. 5:34-5 are effective upon filing with the Office of Administrative Law. The readopted repeal and new rules will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4f) if filed on or before the 365-day expiration date, in accordance with N.J.S.A. 40A:11-9.i.

The agency special adoption follows:

Summary

New rules N.J.A.C. 5:34-5.1 through 5.5 implement revisions to N.J.S.A. 40A:11-9 of the Local Public Contracts Law made by P.L. 2009, c. 166, § 3. Said revisions pertain to the certification and recertification of qualified purchasing agents, as well as procedures for a local unit bid threshold increase. Existing N.J.A.C. 5:34-5.1 through 5.4 are repealed and replaced by the above-referenced new rules. All subsequent citations are to the new rules unless otherwise stated.

N.J.A.C. 5:34-5.1 implements the statutory requirement for establishing a series of public procurement courses and an examination that qualified purchasing agent (QPA) candidates must successfully complete prior to certification. N.J.A.C. 5:34-5.2 sets out continuing education requirements for those with QPA certification, including requiring 20 contact hours every three years in various areas of expertise; this is similar to like programs such as municipal clerk recertification. QPA certification expires pursuant to a schedule specified in the rule. The rule also implements the statutory procedure to be followed when a QPA certification is allowed to lapse.

N.J.A.C. 5:34-5.3 implements the statutory requirement that those applying for certification after June 30, 2013 complete a "Green Purchasing" course (Environmentally Preferable Procurement) prior to taking the exam; all others must take the course within four years of its being established in order to maintain certification. The new N.J.A.C. 5:34-5.4(a) eliminates the requirement that local units having QPA's must file with the Director resolutions increasing their bid threshold. Subsection (a) of the former N.J.A.C. 5:34-5.4 (allowing temporary bid threshold increase to \$26,000 if purchasing agent is eligible for QPA certification) is reconstituted as subsection (b) of the new N.J.A.C. 5:34-5.4. Finally, N.J.A.C. 5:34-5.5 enacts the provision in N.J.S.A. 40A:11-9.g allowing local units to temporarily appoint a purchasing agent as a QPA without the requisite certification. Local units having lost their QPA may appoint a non-QPA-certified purchasing agent to a QPA role for one year, with the ability to re-appoint the individual for a final one-year term upon receiving approval from the Director. Current rules require a reversion to the \$17,500 bid threshold if a local unit's qualified purchasing assistant is unable to exercise their duties.

Pursuant to N.J.S.A. 40A:11-9.i, the rules are deemed effective upon filing pending formal action by the Director. The special adoption language in N.J.S.A. 40A:11-9.i requires the Director of the Division of Local Government Services to amend, adopt, or readopt said rules

through the formal rulemaking process set out in the Administrative Procedure Act, P.L. 1968, c. 410, within 365 days of filing.

Social Impact

The special adopted repeal and new rules, by implementing the revisions to N.J.S.A. 40A:11-9, are anticipated to produce taxpayer savings by promoting more efficient public procurement. In addition, new N.J.A.C. 5:34-5.3 implements the provision of N.J.S.A. 40A:11-9c requiring qualified purchasing assistants to complete a course on "Green Purchasing."

Economic Impact

The Director anticipates that the special adopted repeal and new rules themselves will not have a fiscal impact on local units and the constituents they serve. Rather, the rules implement revisions to N.J.S.A. 40A:11-9 pertaining to qualified purchasing agents and local unit bid thresholds. All application, examination, or certification fees are set by statute.

Federal Standards Statement

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

Jobs Impact

The Director does not anticipate the creation or loss of any jobs as a result of the special adopted repeal and new rules.

Agriculture Industry Impact

The Director does not anticipate that the special adopted repeal and new rules will have an impact on the agriculture industry.

Regulatory Flexibility Statement

The special adopted repeal and new rules would affect all local units, including school districts, employing either provisional or certified qualified purchasing agents. The new rules would not impose any reporting, recordkeeping or compliance requirement on "small businesses," as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in addition to those already imposed by existing laws governing public contracting and political contributions.

Housing Affordability Impact Analysis

The special adopted repeal and new rules will have no anticipated impact on housing affordability. The repeal and new rules pertain to the certification and recertification of qualified purchasing agents, as well as procedures for a local unit bid threshold increase.

Smart Growth Development Impact Analysis

The special adopted repeal and new rules will have no anticipated impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The repeal and new rules pertain to the certification and recertification of qualified purchasing agents, as well as procedures for a local unit bid threshold increase.

Full text of the repealed rules may be found in the New Jersey Administrative Code at N.J.A.C. 5:34-5, pending their deletion through the 5-7-12 Code update.

Full text of the special adopted new rules follows:

SUBCHAPTER 5. QUALIFIED PURCHASING AGENTS

5:34-5.1 Qualified purchasing agent

(a) An individual shall be considered a qualified purchasing agent pursuant to N.J.S.A. 40A:11-9.b to exercise the supplemental authority as set forth in N.J.S.A. 40A:11-3 and 40A:11-4.3 or N.J.S.A. 18A:18A-3 and 18A:18A-4.3 upon meeting the criteria relevant to the individual as set forth in N.J.S.A. 40A:11-9.

(b) To meet the criteria of required training courses set forth in N.J.S.A. 40A:11-9.b(5), an applicant shall successfully complete the following courses, provided by the Center for Government Services at Rutgers, the State University, by the Division of Local Government Services, or, with the approval of the director, an alternative State University or county college:

1. Principles of Public Purchasing I;
2. Principles of Public Purchasing II;
3. Principles of Public Purchasing III;

4. Municipal Finance Administration, or either of the following courses: Municipal Finance Administration for Municipal Clerks, or Municipal Finance Administration for Purchasing Agents; and

5. For individuals applying for a qualified purchasing agent certificate after June 30, 2013, Environmentally Preferable Procurement.

(c) Applicants for a qualified purchasing agent examination and certification shall submit an application form available under the Professional Certification section on the Division website (www.nj.gov/dca/divisions/dlgs) to the Director. The application submission shall include proof(s) of meeting the requirements in N.J.S.A. 40A:11-9 and as described as part of the application form. Applications may be submitted at any time. At the discretion of the Director, additional documentation may be required upon receipt of an application. Upon meeting the requirements of law the applicant shall be issued a certificate as a qualified purchasing agent.

5:34-5.2 Continuing education requirements

(a) Renewal of a qualified purchasing agent certificate shall be required every three years, subject to the applicant's fulfillment of continuing education requirements and the submission of an application for renewal.

1. Applicants shall obtain 20 continuing education contact hours in subject areas of procurement procedures, office administrative/general duties, ethics, and information technology.

2. Qualified purchasing agent certificates shall expire and be due for renewal according to the following schedule:

i. All qualified purchasing agent certificates issued prior to January 1, 2005, shall first expire and be due for renewal as of June 30, 2015, and every three years thereafter.

ii. All qualified purchasing agent certificates issued on or after January 1, 2005, but prior to January 1, 2010, shall first expire and be due for renewal as of January 1, 2016, and every three years thereafter.

iii. All qualified purchasing agent certificates issued between January 1, 2010 and April 11, 2012 shall first expire and be due for renewal as of June 30, 2016, and every three years thereafter. All qualified purchasing agent certificates issued after April 11, 2012 shall first expire and be due for renewal either on June 30 or December 31, whichever is sooner, at least three years from when they are first issued, and every three years thereafter, except that no qualified purchasing agent certificate issued after April 11, 2012 shall expire sooner than June 30, 2016.

3. Renewal of qualified purchasing agent certificates shall be requested on the renewal form available under the Professional Certification section on the Division website www.nj.gov/dca/divisions/dlgs, or an approved copy thereof. The form shall be submitted to the Director.

4. An individual who holds a qualified purchasing agent certificate and allows such certificate to lapse by failing to renew shall be required to apply to take the qualifying examination required pursuant to N.J.A.C. 5:34-5.1(c), and pay the requisite fee for such application in order to obtain a new qualified purchasing agent certification, except that, when an individual applies within six months of the expiration of the certificate or later with the written approval of the Director for good cause, the application may be made in the same manner as a renewal.

5:34-5.3 "Green Purchasing" course

(a) Commencing June 30, 2013, all applicants who are otherwise qualified to apply for the examination for a qualified purchasing agent pursuant to N.J.S.A. 40A:11-9.b must complete the course Environmentally Preferable Procurement, as provided by the Division of Local Government Services, or, with the approval of the Director, the Center for Government Services at Rutgers, the State University; an alternate State University, or a county college.

(b) Within four years from the date the course Environmentally Preferable Procurement is established, individuals who have been issued a qualified purchasing agent certificate either before, on, or after April 11, 2012 are required to complete the course, in order to continue to be qualified. The course will be completed in addition to the continuing education requirements pursuant to N.J.A.C. 5:34-5.2.

(c) Individuals who apply for the qualified purchasing agent examination after June 30, 2013, pursuant to N.J.A.C. 5:34-5.1, are not required to complete the Environmentally Preferable Procurement course a second time.

5:34-5.4 Procedures for increasing the bid threshold

(a) A contracting unit with a purchasing agent who possesses a qualified purchasing agent certificate pursuant to N.J.S.A. 40A:11-9 desiring to take advantage of the supplemental authority of N.J.S.A. 40A:11-3 and 40A:11-4.3 or N.J.S.A. 18A:18-3 and 18A:18A-4.3 shall have its governing body pass a resolution authorizing the amount of a higher bid threshold for the contracting unit, the amount of which shall not exceed the statutory maximum bid threshold.

(b) A contracting unit that has appointed a purchasing agent who meets the following eligibility requirements to sit for the qualified purchasing agent (QPA) examination and who intends to take the examination once it becomes available, may increase its bid threshold to \$26,000 through the following procedure:

1. Individuals desiring to qualify for the examination must meet each of the following criteria:

i. Be a citizen of the United States, of good moral character, and be a high school graduate or equivalent;

ii. Successfully complete Principles of Public Purchasing I, II, and III, and one of the Municipal Finance Administration courses, all as provided by the Rutgers Center for Government Services; or have been performing the duties of a purchasing agent (as defined at N.J.A.C. 5:34-1.2) for at least three consecutive years;

iii. Possess two years of college education and two years of full-time governmental experience performing duties relative to public procurement. Additional years of experience may be substituted for the college education on a year-for-year basis;

iv. Attest that they will apply for either the first or second QPA certification exam to be administered by the Division, and participate in such exam. They shall further agree that their test score shall be provided to the contracting unit; and

v. Document the foregoing by completing an "Affidavit of QPA Qualification." The affidavit is available on the Division of Local Government Services website, www.nj.gov/dca/lgs/lppl/. The affidavit requires certification of the individual, their supervisor, and the chief executive officer of the contracting unit that the individual possesses the required education and/or experience, and that the individual exercises the duties of a purchasing agent pursuant to N.J.S.A. 40A:11-2(30), with specific relevance to the authority, responsibility, and accountability of the purchasing activity of the contracting unit.

2. Contracting units using this procedure are required to notify the Division of their action by adopting a resolution that: names the individual that meets the eligibility criteria who shall serve as purchasing agent, and raises the contracting unit's bid threshold to an amount that does not exceed \$26,000. The resolution shall be submitted to the Director with the Affidavit of QPA Qualification of the named purchasing agent.

3. Upon notification by the Division that the individual did not take or failed to pass the examination, within one month of the notification, the contracting unit bid threshold shall automatically revert to \$17,500. If the individual passes the examination or the contracting unit otherwise appoints a purchasing agent who holds a QPA certificate, the temporary bid threshold shall remain until the contracting unit, pursuant to N.J.A.C. 5:34-5.4(a), raises its bid threshold to the statutory maximum.

5:34-5.5 Vacancy in the office of purchasing agent

(a) Following the appointment of a purchasing agent for a contracting unit, pursuant to N.J.S.A. 40A:11-9.g, if the person appointed no longer performs such duties, the governing body or chief executive officer, as appropriate to the form of government, may appoint, for a period not to exceed one year commencing from the date of the vacancy, a person who

does not possess a qualified purchasing agent certificate to serve as a temporary purchasing agent. Any person so appointed may, with the approval of the Director, be reappointed as a temporary purchasing agent for a maximum of one additional year following the end of the first temporary appointment. No contracting unit shall employ a temporary purchasing agent for more than two consecutive years.

1. Prior to the end of the first year appointment of a temporary purchasing agent, the governing body, or chief executive officer, as

appropriate, shall request, in writing, permission from the director to appoint a temporary purchasing agent for a second year.

2. During the term of appointment of a temporary purchasing agent, a contracting unit's bid threshold may remain at the maximum amount allowed, as long as the governing body has passed a resolution authorizing such amount.
