

[CORRECTED COPY]
CHAPTER 336

AN ACT concerning the State contracting process and the public officers and employees involved in the process, amending and supplementing various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.52:34-10.1 Communications with bidders limited; records.

1. A communication relative to any advertised procurement by a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), shall be limited to the individual or entity designated by the agency as responsible for the procurement. An officer or employee of a State agency who communicates with a bidder, or potential bidder, or any person acting on behalf thereof, for a public contract regarding that contract shall maintain a written record of each communication from the date of the advertisement for bids to the date the contract is awarded. The State agency shall retain the record of each communication for the term of the contract and at least three years thereafter, or such longer period as may be established in the agency's record retention schedule.

C.52:34-10.2 Issuance of notice on Internet.

2. A State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11) that is authorized by law to engage in the procurement of goods or services may, when deemed appropriate, issue on the Internet a notice of the agency's intent to advertise specifications and invitations for bids preliminary to the awarding of a contract and request information thereto from potential bidders. The purpose of such notice shall be to solicit comments from potential bidders on the nature and content of the specifications and to answer such questions as the potential bidders may have prior to the advertisement for bids. If such a notice is issued, an officer or employee of the State agency who communicates with a potential bidder, or any person acting on behalf thereof, shall maintain a written record of each such communication from the date of the issuance of the notice on the Internet until the date of the advertisement for bids.

C.52:34-10.3 Regulations relative to evaluation committee.

3. a. When a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), is a contracting agency, the members of any evaluation committee shall have no personal interest, financial or familial, in any of the contract vendors, or principals thereof, to be evaluated. This provision shall apply whether the members of such committee are appointed by the Director of the Division of Purchase and Property or pursuant to any other procedure as appropriate to the contracting agency.

b. When a State agency is a contracting agency for a contract that includes, but is not limited to, the financing of a capital project, one member of any evaluation committee, whether appointed by the Director of the Division of Purchase and Property or pursuant to any other procedure as appropriate to the contracting agency, shall be a person proficient in the financing of public projects. When a contract encompasses a purchase of information technology goods or services, including the creation or modification of such technology, one member of any evaluation committee shall be a person proficient in such technology for public projects.

c. In all cases, persons appointed to an evaluation committee shall have the relevant experience necessary to evaluate the project. When the contract is awarded, the names of the members of any evaluation committee shall be made public and the members' names, educational and professional qualifications, and practical experience, that were the basis for the appointment, shall be reported to the State Treasurer.

C.52:34-10.4 Regulations for contract oversight and performance; complaint resolution.

4. The Director of the Division of Purchase and Property in the Department of the Treasury shall promulgate regulations, applicable to all contracts for which the director is responsible, that establish procedures for (1) contract oversight and the monitoring of contract performance; and (2) complaint resolution. The director shall establish a vendor performance database.

C.52:34-10.5 Periodic report on value of goods and services purchased.

5. Whenever a governmental entity in this State is authorized to purchase any goods or

services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury, the contractor shall report periodically to the division the value of the goods and services, not including proprietary information, purchased by such governmental entities. The division shall by regulation provide for the content of such reports, how often they are to be made, and the form to be used for the making of such reports.

C.52:34-10.6 Purchase of equipment, goods or services related to homeland security, domestic preparedness.

6. a. Notwithstanding the provisions of any law to the contrary, any purchase by the State or by a State agency or local government unit of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, may be made through the receipt of public bids or as an alternative to public bidding and subject to the provisions of this section, through direct purchase without advertising for bids or rejecting bids already received but not awarded.

b. The equipment, goods or services purchased by a local government unit shall be referred to in the grant agreement issued by the State administrative agency administering such funds and shall be authorized by resolution of the governing body of the local government unit entering into the grant agreement. Such resolution may, without subsequent action of the local governing body, authorize the contracting agent of the local government unit to procure the equipment, goods or services. A copy of such resolution shall be filed with the chief financial officer of the local government unit, the State administrative agency and the Division of Local Government Services in the Department of Community Affairs.

c. Purchases made without public bidding shall be from vendors that shall either (1) be holders of a current State contract for the equipment, goods or services sought, or (2) be participating in a federal procurement program established by a federal department or agency, or (3) have been approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All homeland security purchases herein shall continue to be subject to all grant requirements and conditions approved by the State administrative agency.

d. The Director of the Division of Purchase and Property may enter into or participate in purchasing agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services to meet the domestic preparedness and homeland security needs of this State. Such purchasing agreement may provide for the sharing of costs and the methods of payments relating to such purchases.

C.52:34-10.7 Responsibilities of State Contract Manager for a contract.

7. The State Contract Manager shall be the State employee who shall be responsible for the overall management and administration of a State contract entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury. The State agency using the contract shall designate the State Contract Manager for that contract and inform the Director of the Division of Purchase and Property of its designation, except that the director may designate the State Contract Manager when the director deems necessary.

The State Contract Manager for each contract shall be identified at the time of execution of the contract. At that time, the contractor shall be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and E-mail address.

For a contract where only one State agency uses the contract, the State Contract Manager shall be responsible for engaging the contractor, assuring that purchase orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager shall be the person that the contractor contacts after the contract is executed for answers to any questions and concerns about any aspect of the contract. The State Contract Manager shall be responsible for coordinating the use and resolving minor disputes between the contractor and the State agency.

If the contract has multiple users, the director may designate the State Contract Manager for

that contract. The State Contract Manager shall be the central coordinator of the use of the contract for all using agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract shall notify and coordinate the use of the contract with the State Contract Manager.

The State Contract Manager shall have the following additional duties:

if the State Contract Manager determines that the contractor has failed to perform the required work and is unable to resolve that failure to perform directly with the contractor, the State Contract Manager shall file a formal complaint with the contract compliance unit in the Division of Purchase and Property and request that office to assist in the resolution of the contract performance problem with the contractor;

the State Contract Manager shall be responsible for arranging for contract extensions and preparing any re-procurement of the contract with the Purchase Bureau;

the State Contract Manager shall be responsible for obtaining permission from the director to reduce the scope of work, amend the contract or add work or special projects to the contract after contract award;

the State Contract Manager shall be responsible for completion of a project performance assessment form for submission to the division, with a copy to the Office of Management and Budget; and

the State Contract Manager shall be responsible for submitting the contractor final deliverables to the Associate Director of the Office of Management and Budget.

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor cannot resolve a dispute with contract users.

C.52:34-10.8 Contracts for professional services.

8. Contracts awarded for professional services by a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), shall be contracts only for services rendered or 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 contracts shall also 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. Professional services contracts shall also include contracts for extraordinary unspecifiable services if, after evaluation and assessment, such services are determined to be such that they cannot reasonably be described by written specifications.

C.52:34-10.9 Filing of disclosure statement of State officers or employees.

9. A State officer or employee, or special State officer or employee, of a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), shall file, in writing, with the head of the State agency and the Executive Commission on Ethical Standards, for the period covering five years prior to taking office or commencing employment to the date of filing, a disclosure statement in a form to be determined by the Executive Commission on Ethical Standards.

C.52:34-10.10 Investigation of vendor challenges.

10. The Director of the Division of Purchase and Property shall institute a process whereby vendor challenges to the division's procurement process are investigated and considered by hearing officers appointed by the director and independent of the division's procurement process, and are resolved by written final agency determination of the director. Such challenges shall not be contested cases subject to the requirements of the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), and the regulations promulgated pursuant to that act. A final agency determination shall be appealable to the Appellate Division of New Jersey Superior Court.

C.52:34-10.11 "State agency" defined, adoption of procurement practices by Judicial branch, legislative branch.

11. a. As used in sections 1, 2, 3, 8, and 9 of P.L.2005, c.336 (C.52:34-10.1, C.52:34-10.2, C.52:34-10.3, C.52:34-10.8, and C.52:34-10.9), "State agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such principal department, and any independent State authority, commission, instrumentality or agency.

b. The Administrative Director of the Courts, in consultation and cooperation with the Director of the Division of Purchase and Property in the Department of the Treasury, shall adopt procurement and contracting processes for the Judicial Branch of the State that are consistent with the intent of sections 1, 2, 3, 8, and 9 of P.L.2005, c.336 (C.52:34-10.1, C.52:34-10.2, C.52:34-10.3, C.52:34-10.8, and C.52:34-10.9).

c. The Legislature, in consultation and cooperation with the Director of the Division of Purchase and Property, shall adopt procurement and contracting processes for the Legislative Branch of the State that are consistent with the intent of sections 1, 2, 3, 8, and 9 of P.L.2005, c.336 (C.52:34-10.1, C.52:34-10.2, C.52:34-10.3, C.52:34-10.8, and C.52:34-10.9).

12. Section 1 of P.L.1996, c.16 (C.52:34-6.1) is amended to read as follows:

C.52:34-6.1 Purchase of goods, services from Federal Supply Schedules for State agencies, federal procurement programs.

1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et seq.) to the contrary, the Director of the Division of Purchase and Property in the Department of the Treasury shall promulgate the Federal Supply Schedules of the Federal General Services Administration or schedules from other federal procurement programs pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as an alternate price guide for the purchase of goods and services for State agencies and for the entities defined in section 1 of P.L.1959, c.40 (C.52:27B-56.1), subject to the following conditions:

(1) the price of the goods or services being procured is no greater than the price offered to federal agencies;

(2) (Deleted by amendment, P.L.2005, c.336.);

(3) the State receives the benefit of federally mandated price reductions during the term of the contract; and

(4) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under the State contract, unless the State determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules or schedules from other federal procurement programs would be more advantageous to the State.

13. Section 7 of P.L.1996, c.16 (C.52:34-6.2) is amended to read as follows:

C.52:34-6.2 Cooperative purchasing agreements with other states for purchase of goods, services; rules, regulations.

7. a. Notwithstanding the provisions of any other law to the contrary except the provisions of R.S.30:4-95, and as an alternative to the procedures concerning the awarding of public contracts provided in P.L.1954, c.48 (C.52:34-6 et seq.), the Director of the Division of Purchase and Property in the Department of the Treasury may enter into cooperative purchasing agreements with one or more other states, or political subdivisions thereof, for the purchase of goods and services. A cooperative purchasing agreement shall allow the jurisdictions which are parties thereto to standardize and combine their requirements for the purchase of a particular good or service into a single contract solicitation which shall be competitively bid and awarded by one of the jurisdictions on behalf of jurisdictions participating in the contract.

b. (1)The director may elect to purchase goods or services through a contract awarded pursuant to a cooperative purchasing agreement whenever the director determines this to be the most cost-effective method of procurement. Prior to entering into any contract to be awarded or already awarded through a cooperative purchasing agreement, the director shall review and

approve the specifications and proposed terms and conditions of the contract.

(2) The director may also elect to purchase goods or services through a contract awarded pursuant to a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process, in which other states participate, whenever the director determines this to be the most cost-effective method of procurement. Prior to entering into any contract to be awarded through a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process, the director shall review and approve the specifications and proposed terms and conditions of the contract.

c. The director may solicit bids and award contracts on behalf of this State and other jurisdictions which are parties to a cooperative purchasing agreement provided that the agreement specifies that each jurisdiction participating in a contract is solely responsible for the payment of the purchase price and cost of purchases made by it under the terms of any contract awarded pursuant to the agreement.

d. The director may promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which are necessary to effectuate the purposes of this section.

14. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read as follows:

C.52:34-12 State advertisement for bids.

7. a. Whenever advertising is required: (a) specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency and shall, wherever practicable, include such factors as life-cycle costs, sliding percentage preference scales, or other similar analysis as shall be deemed effective by the Director of the Division of Purchase and Property, hereinafter referred to as the director, (b) the advertisement for bids shall be in such newspaper or newspapers and other medium or media selected by the State Treasurer as will best give notice thereof to bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding; (c) the advertisement shall designate the time and secure location when and where proposals, which may be submitted in electronic or other format designated by the director, shall be received, opened and publicly announced, the amount of the cash or certified check, if any, which must accompany each bid, and such other terms as the State Treasurer may deem proper; (d) notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a newspaper or newspapers and other medium or media selected by the State Treasurer to give notice to bidders at least seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date; (e) failure to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by subsection (d) of this section shall prevent the acceptance of bids and require the readvertisement for bids; (f) for any procurement, the State Treasurer or the director may negotiate with bidders the final terms and conditions of any procurement, including price; such ability to so negotiate must be expressly set forth in the applicable invitation to bid and such bids shall not be publicly accessible until after negotiations have been completed and the notice of intent to award the contract has been issued; (g) award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered; and (h) the Treasurer shall require, with respect to contracts for information technology goods and services, a limitation of liability determined by the Director of the Division of Purchase and Property. When negotiations occur pursuant to subparagraph f. of this section, a written record of the nature and content of the negotiations, as well as the dates and persons involved, shall become a public record when the notice of intent to award the contract is issued.

Any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do. The State Treasurer or designee may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410

(C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement the provisions of this section.

This section shall apply to all bids received on and after the date of enactment of P.L.1999, c.440.

b. Whenever by law a State independent authority may negotiate with bidders, after bid opening, the final terms and conditions of any procurement, including price, and such ability to so negotiate is expressly set forth in the applicable invitation to bid, a written record of the nature and content of the negotiations, as well as the dates and persons involved, shall not be publicly accessible until after the notice of intent to award the contract is issued.

15. Section 1 of P.L.1986, c.26 (C. 52:34-12.1) is amended to read as follows:

C.52:34-12.1 Awarding of contracts to multiple bidders.

1. a. When awarding contracts pursuant to section 7 of P.L.1954, c.48 (C.52:34-12), the Director of the Division of Purchase and Property may make awards to multiple bidders, to furnish the same or similar materials, supplies, services or equipment, where multiple bidders are necessary:

- (1) to furnish the quantities required by using agencies;
- (2) to provide expeditious and cost-efficient local deliveries to using agencies;
- (3) to enable using agencies to purchase materials, supplies, services or equipment which are compatible with those previously purchased;
- (4) to provide for standardization of equipment, interchangeability of parts or continuation of services;
- (5) to provide using agencies or participants in cooperative purchasing arrangements with a diversity of product choices to meet the collective safety, environmental or technological needs of such agencies or cooperative purchasers; or
- (6) when the director determines that multiple awards are necessary to serve the State's interests.

b. The director may determine whether the anticipated use of a contract by entities authorized by law to participate in cooperative purchasing arrangements with the State justifies awarding a contract to multiple bidders on the basis of any one or more of the criteria set forth in subsection a. of this section.

c. Where multiple contracts have been awarded pursuant to subsection a. of this section, a using agency shall make purchases from that contractor whose contract terms and conditions are most advantageous to the agency, price and other factors considered.

d. All purchases made by using agencies under subsection c. of this section shall be reported to the director, in a manner prescribed by the director. The report shall include the reasons for selecting a particular contractor under subsection c. of this section.

e. (Deleted by amendment, P.L.2005, c.336.)

16. R.S.52:25-23 is amended to read as follows:

Purchasing authority delegation for amounts under \$25,000; under \$250,000, certain.

52:25-23. The Director of the Division of Purchase and Property may, by written order, delegate purchasing authority to the using agencies for purchases or contracts not in excess of \$25,000.00; except that:

- a. Purchases or contracts shall not be divided to circumvent the dollar limit imposed by this section;
- b. Prior to issuing purchase orders pursuant to this section, a using agency shall verify the existence of funds for the purchase or contract and shall verify that the article or service to be purchased or contracted for is not available under any of the contracts issued by the Division of Purchase and Property; and
- c. Records of all purchases made or contracts negotiated under this section shall be maintained by the using agency and made available for audit by or under the direction of the Director of the Division of Purchase and Property and shall include proper proof that the

purchase or contract was made or negotiated competitively, where competition is practicable.

The Director of the Division of Purchase and Property may, by written order, rescind or reduce the level of purchasing authority delegated to any using agency determined by the director to have violated the provisions of the delegated authorization.

d. The director may, by written order, delegate purchasing authority to a specific agency for advertisement of purchases or contracts not in excess of \$250,000, subject to the requirements set forth in this section, when the director has determined that such purchases or contracts are for the procurement of goods or services which are unique to the operations of that particular using agency and are not common or similar to goods or services used by other State agencies and, therefore, are not suitable for leveraging with other State agency procurements.

17. This act shall take effect on the first day of the third month following enactment.

Approved January 12, 2006.