

CHAPTER 4

AN ACT authorizing certain cooperative purchasing agreements for certain purchases and amending P.L.1984, c.218 and P.L.1971, c.198.

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

1. Section 13 of P.L.1984, c.218 (C.5:12-161) is amended to read as follows:

C.5:12-161 Powers of authority.

13. The Casino Reinvestment Development Authority shall have the following powers:

- a. To adopt and have a common seal and to alter the same at pleasure;
- b. To sue or be sued;
- c. To acquire, hold, use and dispose of any eligible project in which it is making an investment;
- d. To acquire, rent, hold, use, and dispose of other personal property for the purposes of the Casino Reinvestment Development Authority;
- e. To acquire by purchase, gift, or otherwise, or lease as lessee, real property or easements or interests therein necessary or useful and convenient for the purposes of the Casino Reinvestment Development Authority which real property, easements or interests may be subject to mortgages, deeds of trust, or other liens or otherwise, and to hold and to use the same, and to dispose of the property so acquired no longer necessary for the purposes of the Casino Reinvestment Development Authority;
- f. To make and enforce bylaws or rules and regulations for the management and regulation of its business and affairs and for the use, maintenance, and operation of any facility, and to amend the same;
- g. To enter into any agreements or contracts, execute any instruments, and do and perform any acts or things necessary, convenient, or desirable for the purposes of the Casino Reinvestment Development Authority, including the entering into of cooperative purchasing agreements for the purchase of fuel, or other goods or services deemed necessary, convenient, or desirable by a majority vote of the members of the Casino Reinvestment Development Authority, with any governmental unit, including a county or municipal authority, and the entering into of agreements or contracts with any such governmental unit to provide for the payment of principal of and interest on any obligation issued by that governmental unit, the maintenance of necessary reserves in connection with these obligations or the payments under any lease entered into in connection with any eligible project;
- h. To determine eligibility for investments in eligible projects in order to accomplish the purposes of the Casino Reinvestment Development Authority;
- i. To collect and invest any proceeds received under subsection b. of section 3 and section 14 of this act;
- j. To invest in obligations of local governmental units issued to finance eligible projects, provided that the investment shall only be effected through direct negotiation by the Casino Reinvestment Development Authority with the local governmental unit;
- k. To make agreements of any kind with any governmental unit or person for the use or operation of all or any part of any eligible project for consideration and for periods of time and upon other terms and conditions as the Casino Reinvestment Development Authority may fix and agree upon, which agreements may include a partnership, limited partnership, joint venture or association in which the Casino Reinvestment Development Authority is a general or limited partner or participant;

l. To require and collect fees and charges as the Casino Reinvestment Development Authority shall determine to be reasonable in connection with the exercise of any power given to the Casino Reinvestment Development Authority under the act;

m. To the extent permitted under a contract of the Casino Reinvestment Development Authority with purchasers of its bonds entered into pursuant to section 3 of this 1984 amendatory and supplementary act, to invest and reinvest any of its moneys not required for immediate use, including moneys received for the purchase of its bonds prior to the bonds being issued as it shall deem prudent. A pro rata share of 66 2/3 % of all interest earned by the Casino Reinvestment Development Authority on any such investments shall be paid to the licensees who entered into a contract with the Casino Reinvestment Development Authority for the purchase of its bonds and who contributed to the moneys which were received by the Casino Reinvestment Development Authority and were invested pursuant to this subsection. All functions, powers and duties relating to the investment or reinvestment of these funds, including the purchase, sale or exchange of any investments or securities, may, upon the request of the Casino Reinvestment Development Authority, be exercised and performed by the Director of the Division of Investment, in accordance with written directions of the Casino Reinvestment Development Authority signed by an authorized officer, without regard to any other law relating to investments by the Director of the Division of Investment;

n. To the extent permitted under the contract of the Casino Reinvestment Development Authority with the holders of its bonds, to invest and reinvest any of its moneys not required for immediate use, including proceeds from the sale of any obligations, securities or other investments as it shall deem prudent. All functions, powers and duties relating to the investment or reinvestment of these funds, including the purchase, sale or exchange of any investments or securities, may upon the request of the Casino Reinvestment Development Authority be exercised and performed by the Director of the Division of Investment, in accordance with written directions of the Casino Reinvestment Development Authority signed by an authorized officer, without regard to any other law relating to investments by the Director of the Division of Investment;

o. To enter into all agreements or contracts with any governmental unit or person, execute any instruments, and do and perform any acts or things necessary, convenient or desirable for the purposes of the Casino Reinvestment Development Authority to carry out any power expressly given in this act;

p. To exercise the right of eminent domain in the city of Atlantic City;

q. To establish and exercise authority over the Atlantic City Tourism District established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and, in addition to the powers provided in this section, to exercise, with regard to the tourism district, those powers granted to the authority pursuant to P.L.2011, c.18 (C.5:12-218 et al.);

r. To meet and hold hearings at places as it shall designate; and

s. To establish, develop, construct, acquire, own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly, through lessees, licensees or agents, projects consisting of facilities, at a site or sites within the State of New Jersey, that are related to, incidental to, necessary for or complementary to, the accomplishment of any of the purposes of the authority or of any project of the authority authorized in accordance with P.L.1984, c.218 (C.5:12-144.1 et seq.), as amended.

2. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to read as follows:

C.40A:11-2 Definitions.

2. As used herein the following words have the following definitions, unless the context otherwise indicates:

(1) "Contracting unit" means:

(a) Any county; or

(b) Any municipality; or

(c) Any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority, except as provided pursuant to P.L.2013, c.4, or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, including functions exercised in relation to the administration and oversight of a tourism district located in a municipality in which authorized casino gaming occurs, and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services.

The term shall not include a private firm that has entered into a contract with a public entity for the provision of water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

"Contracting unit" shall not include a private firm or public authority that has entered into a contract with a public entity for the provision of wastewater treatment services pursuant to P.L.1995, c.216 (C.58:27-19 et al.).

"Contracting unit" shall not include a duly incorporated nonprofit association that has entered into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1).

"Contracting unit" shall not include a duly incorporated nonprofit entity that has entered into a contract for management and operation services with a municipal hospital authority established pursuant to P.L.2006, c.46 (C.30:9-23.15 et al.).

(2) "Governing body" means:

(a) The governing body of the county, when the purchase is to be made or the contract or agreement is to be entered into by, or in behalf of, a county; or

(b) The governing body of the municipality, when the purchase is to be made or the contract or agreement is to be entered into by, or on behalf of, a municipality; or

(c) Any board, commission, committee, authority or agency of the character described in subsection (1) (c) of this section.

(3) "Contracting agent" means the governing body of a contracting unit, or appointed membership of a State authority authorized to enter into a cooperative purchasing agreement pursuant to P.L.2013, c.4, or its authorized designee, which has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by this act, to make awards for the contracting unit in connection with purchases, contracts or agreements.

(4) "Purchase" means a transaction, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.

(5) (Deleted by amendment, P.L.1999, c.440.)

(6) "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and 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 may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

(7) "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

(8) (Deleted by amendment, P.L.1999, c.440.)

(9) "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a contracting unit.

(10) "Homemaker--home health services" means at home personal care and home management provided to an individual or members of the individual's family who reside with the individual, or both, necessitated by the individual's illness or incapacity. "Homemaker--home health services" includes, but is not limited to, the services of a trained homemaker.

(11) "Recyclable material" means those materials which would otherwise become municipal solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(12) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(13) "Marketing" means the sale, disposition, assignment, or placement of designated recyclable materials with, or the granting of a concession to, a reseller, processor, materials recovery facility, or end-user of recyclable material, in accordance with a district solid waste management plan adopted pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.) and shall not include the collection of such recyclable material when collected through a system of routes by local government unit employees or under a contract administered by a local government unit.

(14) "Municipal solid waste" means, as appropriate to the circumstances, all residential, commercial and institutional solid waste generated within the boundaries of a municipality; or the formal collection of such solid wastes or recyclable material in any combination thereof when collected through a system of routes by local government unit employees or under a contract administered by a local government unit.

(15) "Distribution" (when used in relation to electricity) means the process of conveying electricity from a contracting unit that is a generator of electricity or a wholesale purchaser of electricity to retail customers or other end users of electricity.

(16) "Transmission" (when used in relation to electricity) means the conveyance of electricity from its point of generation to a contracting unit that purchases it on a wholesale basis for resale.

(17) "Disposition" means the transportation, placement, reuse, sale, donation, transfer or temporary storage of recyclable materials for all possible uses except for disposal as municipal solid waste.

(18) "Cooperative marketing" means the joint marketing by two or more contracting units of the source separated recyclable materials designated in a district recycling plan required pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative agreement entered into by the participating contracting units thereof.

(19) "Aggregate" means the sums expended or to be expended for the provision or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the same contract year through a contract awarded by a contracting agent.

(20) "Bid threshold" means the dollar amount set in section 3 of P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall advertise for and receive sealed bids in accordance with procedures set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).

(21) "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.

(22) "Contract year" means the period of 12 consecutive months following the award of a contract.

(23) "Competitive contracting" means the method described in sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-4.5) of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or administrator; and the governing body awards a contract to a vendor or vendors from among the formal proposals received.

(24) "Goods and services" or "goods or services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to N.J.S.12A:2-101 et seq.

(25) "Library and educational goods and services" means textbooks, copyrighted materials, student produced publications and services incidental thereto, including but not limited to books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials, and specialized computer software used as a supplement or in lieu of textbooks or reference material.

(26) "Lowest price" means the least possible amount that meets all requirements of the request of a contracting agent.

(27) "Lowest responsible bidder or vendor" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.

(28) "Official newspaper" means any newspaper designated by the contracting unit pursuant to R.S.35:1-1 et seq.

(29) "Purchase order" means a document issued by the contracting agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the contracting unit, which, when fulfilled in accordance with the terms and conditions of a request of a contracting agent and other provisions and procedures that may be established by the contracting unit, will result in payment by the contracting unit.

(30) "Purchasing agent" means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity of the contracting unit, and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit, pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) and who possesses a qualified purchasing agent certificate.

(31) "Quotation" means the response to a formal or informal request made by a contracting agent by a vendor for provision or performance of goods or services, when the

aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the contracting agent.

(32) "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

(33) "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.

(34) "Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a contracting unit to house local government functions or provide water, waste disposal, power, transportation, and other public infrastructures.

(35) "Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

(36) "Administrator" means a municipal administrator appointed pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business administrator, a municipal manager or a municipal administrator appointed pursuant to the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed pursuant to "the municipal manager form of government law," R.S.40:79-1 et seq.; or the person holding responsibility for the overall operations of an authority that falls under the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

(37) "Concession" means the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit.

(38) "Index rate" means the rate of annual percentage increase, rounded to the nearest half-percent, in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed and published quarterly by the United States Department of Commerce, Bureau of Economic Analysis.

(39) "Proprietary" means goods or services of a specialized nature, that may be made or marketed by a person or persons having the exclusive right to make or sell them, when the need for such goods or services has been certified in writing by the governing body of the contracting unit to be necessary for the conduct of its affairs.

(40) "Service or services" means the performance of work, or the furnishing of labor, time, or effort, or any combination thereof, not involving or connected to the delivery or ownership of a specified end product or goods or a manufacturing process. Service or services may also include an arrangement in which a vendor compensates the contracting unit for the vendor's right to operate a concession.

(41) "Qualified purchasing agent certificate" means a certificate granted by the director pursuant to section 9 of P.L.1971, c.198 (C.40A:11-9).

(42) "Mistake" means, for a public works project, a clerical error that is an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor, material, or both, from the final bid computation.

3. This act shall take effect immediately.

Approved January 14, 2013.