

SUBCHAPTER 7. COOPERATIVE PURCHASING

5:34-7.1 Applicability and authority

- (a) The rules in this subchapter shall be known as the Cooperative Purchasing Rules.
- (b) These rules shall apply to all contracting units.
- (c) This subchapter is adopted under the authority of P.L. 1999, c. 440 (N.J.S.A. 40A:11-11).
- (d) Copies of all cooperative purchasing forms are available from the Division of Local Government Services at PO Box 803, Trenton, New Jersey 08625-0803 or at the Division's web site at www.state.nj.us/dca/lgs/pages/dcadlgs/htm.
- (e) When the lead agency of a cooperative pricing system, joint purchasing system or regional cooperative pricing system established and properly registered with the Division is a board of education or educational service commission the provision and performance of goods and services shall be conducted pursuant to the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.). All other lead agencies shall follow the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.).
- (f) Boards of education as defined in N.J.S.A. 18A:18A-2 that pursue joint purchasing as described in N.J.S.A. 18A:18A-11 shall be subject to the rules set forth in this subchapter.

5:34-7.2 Definitions

The following words and terms used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Application" means the forms and all supporting documents for creation, amendment or renewal of a cooperative purchasing system.

"Commodity resale system" means a purchasing system in which a local contracting unit purchases either gasoline, diesel fuel, snow removal chemicals, public works materials and supplies, including road and roadway construction materials, or any other such materials as may be approved by the Director for its own consumption and then sells all or a portion thereof to another local contracting unit.

"Contracting unit" means any county; municipality; board of education; or any board, commission, committee, authority or agency, which is not a State board, commission or committee, authority or agency, and which has administrative jurisdiction over any 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 or board of education 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.

"*Cooperative purchasing system*" means a cooperative pricing system, joint purchasing system, commodity resale system, county cooperative contract purchasing system or regional cooperative pricing system which has been approved and registered pursuant to this subchapter.

"*County cooperative contract purchasing system*" means a cooperative purchasing system that shall only be formed by a county and in which the county advertises for bids and awards a contract to the successful vendor.

"*Energy*" means gas supply service or gas related service or electric generation service or electric related service as set forth in the Electric Discount and Energy Competition Act (P.L. 1999, c.23) and the Interim Government Energy Aggregation Program Standards promulgated by the Board of Public Utilities on June 24, 1999.

"*Form CCCP-1917*" means Request For Registration Or Modification of a County Cooperative Contract Purchasing System which contains the following information: action requested; name of the county cooperative contract purchasing system; name of contract, address, and phone number of lead agency; and certification of compliance with N.J.S.A. 40A:11-1 et seq.

"*Form CP-2001*" means Request For Registration Or Modification of a Cooperative Purchasing System which contains the following information: action requested; name of cooperative purchasing system; name of contact, address, and phone number of lead agency; name of participating contracting units affected by request; and certification of compliance with N.J.S.A. 40A:11-1 et seq. and 18A:18A-1 et seq., as appropriate.

"*Form CP-2060*" means a Request for Registration or Modification of a Commodity Resale System which contains the following information: action requested, identification of the lead agency (seller), participating contracting units (purchaser) and commodity being resold.

"*Joint purchasing system*" means a cooperative purchasing system in which the lead agency serves as the purchasing agent for the membership of the system with all of the duties and responsibilities attendant thereto. The lead agency advertises for bids and awards a single contract to a vendor providing for the payment to the contractor for its own needs and for the needs of the participating registered members of the system. The only contractual relationship is between the lead agency and the vendor.

"*Lead agency*" means the contracting unit which is responsible for the management of the cooperative purchasing system.

"*Regional cooperative pricing system*" means a cooperative pricing system composed of two or more registered cooperative pricing systems and their participating contracting units which have agreed to join together for the provision and performance of goods and services, including the purchase of energy.

"*Registered member*" means a contracting unit which has been approved by the Director for participation in a cooperative purchasing system.

"*Snow removal chemicals*" means snow grits, calcium chloride (rock salt), sand or similar substance used for deicing or improving vehicular traction on snow or ice covered roadways.

5:34-7.3 Cooperative pricing system or joint purchasing system creation

- (a) Two or more contracting units may join together to form a cooperative pricing system or a joint purchasing system for the provision and performance of goods and services.
- (b) The contracting unit designated as the lead agency shall authorize the creation of the system by resolution. The authorizing resolution shall identify the system established as either a joint purchasing system or a cooperative pricing system.
- (c) Motions made, carried, and recorded in the written minutes of a business meeting of a board of education shall be considered to be the same as a resolution.

5:34-7.4 Cooperative pricing system or joint purchasing system formal agreement

- (a) A cooperative pricing system or joint purchasing system shall be based on a formal agreement entered into between the lead agency and each contracting unit. Each agreement shall be authorized by resolution.
- (b) At a minimum, the formal agreement shall include the following:
 - 1. Reference to the authorizing statute;
 - 2. Identification of the type of purchasing system;
 - 3. Description of the items of the goods and services to be purchased;
 - 4. The manner of advertising for bids and of awarding contracts;
 - 5. Clear and specific assignment of responsibilities, duties and rights of all contracting units;
 - 6. Provision for any sharing of administrative costs and/or payment for goods and services purchased, together with any necessary standards of performance;
 - 7. Length of the agreement not to exceed 5 years pursuant to N.J.A.C. 5:34-7.5(f);
 - 8. The name of the lead agency for the system:
 - i. As an option, the responsibility of serving as lead agency may rotate, at the most once a year, among the registered members. Provision for this rotation shall be included in the agreement;
 - ii. Rotation of lead agency responsibilities among registered members shall not invalidate contracts or purchase orders with contractors that are in effect at the time of rotation;
 - iii. The Director shall be notified in writing within 30 days of any change in the lead agency; and

9. A requirement that the system identifier shall appear on all documentation related to purchases made through the system, including bidding documents, purchase orders, vouchers, contracts and records.

5:34-7.5 Cooperative pricing system or joint purchasing system registration

- (a) A cooperative pricing system or joint purchasing system shall be subject to registration with and approval by the Director.
- (b) The lead agency of a proposed system shall apply to the Director on behalf of the system's participating contracting units.
- (c) Applications shall be made on Form CP-2001.
- (d) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.28.
- (e) In reviewing the application, the Director shall utilize the following criteria, as established by N.J.S.A. 40A:11-11:
1. Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration;
 2. Adequacy of public disclosure of such actions as are taken by the participants;
 3. Adequacy of procedures to facilitate compliance with all provisions of the Local Public Contracts Law, Public School Contracts Law and corresponding rules; and
 4. Clarity of provisions to assure that the responsibilities of the respective parties are understood.
- (f) Approval shall be for a period not to exceed five years, and shall be limited to the terms, participants and scope of services presented for approval. Any subsequent changes shall be submitted to the Director on Form CP- 2001.
- (g) The lead agency shall notify the Director in writing of a decision to terminate the registration of the system prior to its approved expiration date.

*NOTICE
of
Changes*

5:34-7.6 Cooperative pricing system or joint purchasing system membership registration

- (a) A contracting unit may apply for membership in an approved cooperative purchasing system by passage of a resolution and executing a formal agreement with the lead agency.
- (b) The lead agency shall apply to the Director for approval on behalf of the proposed new member on Form CP-2001.
- (c) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.28.

- (d) Participation in the system for all registered members terminates on the system expiration date assigned by the Director.
- (e) The lead agency shall notify the Director in writing within five days of the withdrawal of any registered member from an approved cooperative purchasing system.
- (f) A registered member which has formally terminated its participation in an approved cooperative purchasing system, may renew its membership by following the procedure defined in this section.
- (g) A registered member of a cooperative purchasing system shall retain membership in a system until the member formally withdraws from participation or the system is dissolved.

5:34-7.7 Cooperative pricing system or joint purchasing system identifier

- (a) The Director shall assign an alpha-numeric system identifier to each cooperative pricing system or joint purchasing system at the time of its approval.
- (b) The system identifier shall be included on all bidding documents, purchase orders, vouchers, contracts and records relating to the operations of the approved cooperative purchasing system.

5:34-7.8 Cooperative pricing system or joint purchasing system renewal

- (a) Documents requesting the renewal of the registration of a cooperative pricing system or joint purchasing system shall be submitted to the Director for review and approval prior to the date set by the Director for the expiration of the system's registration.
- (b) The lead agency shall authorize the renewal of the system by resolution.
- (c) The lead agency shall apply to the Director on behalf of its membership for system renewal for a period not to exceed five years.
- (d) The renewal application package shall at a minimum include the following:
 - 1. Form CP-2001;
 - 2. Lead agency resolution reauthorizing the system; and
 - 3. A list of the current membership of the System.
- (e) The time for the review-approval period shall commence only upon the determination by the Director that the application for system renewal is complete.
- (f) The lead agency shall notify the Director in writing of a decision not to renew the system's registration.

5:34-7.9 Cooperative pricing system or joint purchasing system administrative responsibilities

(a) Upon approval of system registration and annually thereafter either on the anniversary of the registration of the system or in January of each succeeding year, the lead agency shall publish in its official newspaper a notice similar in content to the following:

Notice of Cooperative Purchasing

(Name of lead agency) acts as lead agency in a cooperative purchasing agreement in cooperation with (list number) registered members. Under this system, the (name of lead agency) solicits competitive bids for certain items purchased by registered members. This is a (specify, joint purchasing system or cooperative pricing system) as defined and regulated by N.J.A.C. 5:34-7. Interested citizens or vendors may obtain information regarding the manner of operation of this system by contacting (name, address and phone number of lead agency). System Identifier _____, approved by the New Jersey Division of Local Government Services through (expiration date of the system).

- (b) Prior to the advertisement for bids, a registered member may request a review copy of the bid specifications.
- (c) Before seeking bids, the lead agency shall obtain from the registered members:
1. In the case of a joint purchasing system, the exact quantity of goods to be provided or services to be performed that the lead agency shall purchase for the registered members.
 2. In the case of a cooperative pricing system, the estimated quantities that each registered member proposes to contract for during the life of the master contract.
- (d) The lead agency of a joint purchasing system shall disclose in the specifications, the quantities and details of delivery required.
- (e) The lead agency of a cooperative pricing system shall include in the specifications lead agency requirements, stated in definite quantities; and registered member requirements, stated as individual estimated needs.
1. The specification shall list the registered members who have submitted estimates, their delivery address, their estimated maximum quantities and other relevant information to permit the bidder to understand what is potentially involved.
- (f) The lead agency in a joint purchasing system and the individual registered members in a cooperative pricing system shall be responsible for compliance with the change order requirements of N.J.A.C. 5:34-4.
- (g) Each registered member may, by resolution, provide for and authorize payment in advance for estimated administrative costs to be paid to the lead agency for a joint

*COOP NEED ESTIMATES
Do not
SAY Lead
Agency*

purchasing or cooperative pricing system. Such administrative costs shall be budgeted by the lead agency as a Special Item of Revenue offset with appropriations.

(h) No contract shall be made by any registered member for a price which exceeds any other price available to the registered member.

5:34-7.10 Cooperative purchasing system requirement for bids

INCORPORATE INTO BID DOCUMENT CO-OP

(a) Each request for bids shall contain the following:

1. Language requiring uniform bid price(s) for both the lead agency and registered members. A provision with respect to the registered members shall be included substantially as follows:

REQUIREMENTS OF REGISTERED MEMBERS

Check here if willing to provide the goods or services herein bid upon to registered members of the (System Name and System Identifier) who have submitted estimates, without substitution or deviation from specifications, size, features, quality, price or availability as herein set forth. It is understood that orders will be placed directly by the registered members identified herein by separate contract, subject to the overall terms of the master contract to be awarded by the (name of the lead agency), and that no additional service or delivery charges will be allowed except as permitted by these specifications.

Check here if not willing to extend prices to registered members of the (System Name and System Identifier) who have submitted estimates as described above. It is understood that this will not adversely affect consideration of this bid with respect to the needs of (name of the lead agency).

2. A statement as to the procedure to be followed in the event that the lowest responsible bidder, in the bid document, declines to extend prices to the registered members who submitted estimates. Examples of such procedures include:
 - i. The contract for the stated needs of the lead agency will be awarded to the lowest responsible bidder, and new bids will be sought and a master contract subsequently awarded with respect to the needs of the registered members who have submitted estimates;
 - ii. The contract for the needs of the lead agency will be awarded to the lowest responsible bidder, and a master contract for the registered members who have submitted estimates will be awarded to the next lowest bidder whose bid agrees to extend prices; or

- iii. The contract for the needs of the lead agency will be awarded, all other bids shall be rejected and no further bids will be sought by the lead agency on behalf of the registered members who have submitted estimates.
- (b) The master contract shall state that the bid prices may be extended to registered members who have not submitted estimates prior to the advertisement for bids with the written approval of the lead agency and the contractor.
- (c) A statement as to whether or not insurance certificates and/or performance bonds are necessary. OK

5:34-7.11 Cooperative pricing system financial and contractual details

- (a) The lead agency shall certify the funds available for its own needs.
- (b) The master contract executed shall provide for the following:
 - 1. The quantities ordered for the lead agency's own needs; and
 - 2. The estimated aggregate quantities to be ordered by the registered members who submitted estimates, subject to the specifications and prices set forth in the master contract.
- (c) The lead agency shall supply the registered members of the cooperative pricing system who have submitted estimates, the name of the successful bidder, prices awarded and the contract identification number. A registered member may request a copy of the specifications. Each registered member who submitted estimates may then order directly from the vendor. If the cost of the order is under the bid threshold, and if the contracting agent is authorized to do so, then the contracting agent may issue a purchase order, pursuant to N.J.S.A. 40A:11-3a or 18A:18A-3a, as appropriate. If the cost of the order exceeds the bid threshold, then the contract must be awarded by resolution of the governing body in accordance with N.J.S.A. 40A:11-4a or 18A:18A-4a, as appropriate. The system identifier shall be affixed to each purchase order or contract and shown on all forms pertaining thereto.
- (d) Registered members who submit estimates shall not issue orders and contractors shall not make deliveries, that deviate from the specifications or price as set forth in the master contract.

5:34-7.12 Cooperative pricing system use of pre-existing contracts

- (a) A registered member of a cooperative pricing system which has not submitted estimates to the lead agency before the advertisement for bids may participate in the resulting contract for that particular item only with the prior written approval of the lead agency and the contractor.
- (b) A contracting unit which is not a registered member of a cooperative pricing system at the time of the awarding of a contract may participate in the contract once it has

become a registered member of the system and has received the written approval of the lead agency and the contractor.

(c) This section shall not apply to joint purchasing systems.

5:34-7.13 Regional cooperative pricing system

(a) Two or more registered cooperative pricing systems may join together for the provision and performance of goods and services, including the purchasing of energy. The registered membership of each individual cooperative pricing system shall be deemed to be a member of the regional cooperative pricing system upon submission to the Director a list of the membership of each system comprising the regional cooperative pricing system.

(b) Registration of a regional cooperative pricing system shall be pursuant to the requirements set forth in N.J.A.C. 5:34-7.5.

(c) When a municipality which has aggregated its residents or business customers for gas supply service or electric generation service becomes a member of a regional cooperative pricing system for the purpose of purchasing energy, it shall simultaneously notify the lead agency of the cooperative pricing system of which it is a member and the lead agency of the regional cooperative pricing system of the participation of its residential or business customers and their respective energy supply demands.

5:34-7.14 Joint purchasing systems financial and contractual details, exclusive of boards of education

(a) The financial and contractual details set forth in this section shall apply only to contracting units subject to the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). Boards of education shall be subject to the financial and contractual details set forth in the Public School Contracts Law (N.J.S.A. 18A:18A-1.1 et seq.) and the administrative requirements contained in N.J.A.C. 6:20.

(b) In the case of a joint purchasing system, the lead agency shall comply with the certification of funds requirement of N.J.A.C. 5:30-5 with respect to the full amount of the contract and Division of Local Government Services' requirements for Encumbrance Accounting Systems.

(c) The funds of the lead agency applicable to its own share of the contract to be awarded shall be charged to regular appropriations in its budget.

(d) Prior to handling the funds of the other registered members, the lead agency shall request approval of the Director for a Dedication by Rider pursuant to N.J.S.A. 40A:4-39, entitled "Receipts from Other Agencies participating in the (Name of System) joint purchasing system, System Identifier _____." In order to meet the statutory requirement that expenditures under a Rider may be made only in accordance with the availability of funds, the following steps shall be taken:

1. Prior to the award of contract, the chief financial officer of each registered member (other than the lead agency) shall issue a certificate of available funds, in accordance with N.J.A.C. 5:30-5.
2. The contracting agent of each registered member, with authorization by resolution of the governing body if over the statutory bid limit, shall issue a purchase order to the lead agency together with a copy of its certification of available funds.
3. The lead agency shall, in accordance with N.J.A.C. 5:30-5, issue its own certificate, covering the full amount of the proposed contract including both its own share and those of the registered members. The certificate shall be conditional with respect to the amounts due from the registered members so that the certificate shall read in part as in the following example:

\$5,000 From (Lead Agency) appropriation number 207, Road Department, Other Expenses.

\$2,000 Due from (Name of registered member) pursuant to its purchase order number 70243 and Certification of Available Funds dated _____, (Lead Agency) Dedication by Rider Account Number 7.

\$1,000 Due from (Name of registered member) per its purchase order Number A- 402 and Certification of Available Funds dated _____, (Lead Agency) Dedication by Rider Account Number 7.

\$8,000 Total Certified.
4. The lead agency shall then award the total contract to the successful bidder.
5. The lead agency shall not advance funds of its own to cover the purchase on behalf of the registered members but shall make payments only upon receipt of the funds. Payments to the lead agency shall be made promptly in accordance with an agreed-upon schedule, which may include making payment to the lead agency in advance of receipt of goods. The voucher providing for the advance payment shall indicate:

"Transfer of funds to (name of lead agency) as cash advance to enable it to purchase the following on behalf of (name of registered member) as Lead Agency in (name of joint purchasing system), System Identifier _____."
 "(Then list what is to be purchased.)"
6. Funds received by the lead agency as advances from registered members shall be:
 - i. Placed in a separate bank account established within the Rider and held in trust for the purpose of permitting the lead agency to serve as contracting agent for the awarding of joint purchasing contracts;
 - ii. Used only for the payment of actual bills to the contractors pursuant to the overall joint purchasing agreement; and

- iii. Returned immediately to the registered member upon any determination that the full amount is not needed for payments as initially expected.

5:34-7.15 Commodity resale system registration

- (a) A contracting unit which purchases gasoline, diesel fuel or snow removal chemicals, public works materials and supplies, including road and roadway construction materials or any other such materials as may be approved by the Director directly from a vendor for its own consumption, may resell a portion of that commodity to another local contracting unit.
- (b) All commodity resale systems shall be subject to an initial registration with and approval by the Director. In reviewing the application, the Director shall utilize the criteria set forth in N.J.A.C. 5:34-7.5(e).
- (c) Approval shall be for a period not to exceed five years.
- (d) The lead agency of the proposed system shall apply to the Director on behalf of the other participating unit(s).
- (e) Application shall be made on Form CP-2060.
- (f) The lead agency shall authorize the creation of the resale system by resolution.
- (g) The lead agency acting on behalf of itself and any participating contracting unit shall at the time of initial system registration or when a new member is added to the system, submit to the Director a copy of the purchase agreement or contract between the units and all confirming resolutions.
- (h) The Director shall act upon the application pursuant to N.J.A.C. 5:34- 7.10.
- (i) Any change in the status of the system, the addition or deletion of a member or commodity, shall be submitted by the lead agency to the Director on Form CP-2060.
- (j) The Director shall be notified in writing by the lead agency within 10 days of any change in the status of the commodity resale system.

5:34-7.16 Commodity resale system renewal

- (a) Documents requesting the renewal of the registration of a commodity resale system shall be submitted to the Director for review and approval 45 days prior to the date set by the Director for the expiration of the system's registration.
- (b) The lead agency shall apply to the Director for renewal of the Commodity Resale System for a period not to exceed five years.
- (c) The renewal package shall include the following:
 - 1. Form CP-2060;
 - 2. The lead agency resolution reauthorizing the system; and
 - 3. A list of the current membership of the system.

- (d) The time for the review-approval period shall commence upon the determination by the Director that the application for system renewal is complete.
- (e) The lead agency shall notify the Director in writing of a decision not to renew the system's registration.

5:34-7.17 Accounting requirements for commodity resale systems

- (a) The accounting requirements set forth in this section shall apply only to contracting units subject to the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). Boards of education shall be subject to the financial and contractual details set forth in the Public School Contracts Law (N.J.S.A. 18A:18A-1.1 et seq.) and the administrative requirements contained in N.J.A.C. 6:20.
- (b) Expenditure of lead agency funds applicable to its own use of the commodity shall be charged to current fund appropriations in its annual budget.
- (c) The lead agency shall request approval of the Director for a Dedication by Rider pursuant to N.J.S.A. 40A:4-39, entitled "Receipts from Other Agencies participating in the (Name of System) Commodity Resale System, System Identifier." In order to meet the statutory requirement that expenditures under a Rider may be made only in accordance with the availability of funds, the following steps shall be taken:
 - 1. The authorized contracting agent of each registered member shall issue a purchase order to the lead agency, together with a copy of its certification of available funds, and resolution of the governing body if projected expenditures exceed the statutory bid threshold;
 - 2. The lead agency, at agreed upon intervals, shall submit to the participating members of the system an invoice for the amount of the commodity consumed. Payments to the lead agency shall be made by appropriation in the annual budget; and
 - 3. Funds received by the lead agency from registered members shall be:
 - i. Placed in a bank account established by Rider and held in trust; and
 - ii. Used only for the payment or purchase of the resale commodity consumed.

5:34-7.18 Energy aggregation

- (a) A municipality may provide energy supply to residents and businesses situated within its territorial boundaries.
- (b) A county government may enter into a contract for a government energy aggregation program only if one or more constituent municipalities in the county adopt an ordinance authorizing the county to enter into such a contract.
- (c) A county government energy aggregation program shall only be conducted for residential and business customers located within the constituent municipalities that have approved participation in the county's government aggregation program.

(d) Only counties and municipalities acting pursuant to the conditions set forth in this chapter may aggregate residential and business customers for gas supply or for electric generation services.

(e) A cooperative pricing system undertaking energy aggregation in which the lead agency is not a county or municipality and the membership includes a mix of local contracting units including municipalities and counties, shall not include municipalities and counties who seek to provide energy to residents and businesses.

5:34-7.19 Cooperative purchasing of energy

(a) Two or more contracting units may join together to form a cooperative pricing system for the sole specific purpose of purchasing energy, or an existing registered cooperative purchasing system may add energy as a commodity to be purchased, pursuant to the Electric Discount and Energy Competition Act (P.L. 1999, c.23) and the Interim Government Energy Aggregation Program Standards promulgated by the Board of Public Utilities.

(b) The purchase of energy shall be subject to the terms and conditions of the bid specifications and a master contract. The specifications shall be drafted pursuant to Section 4.1a and 4.1b, Bidding Specifications of the Interim Government Energy Aggregation Program Standards promulgated by the Board of Public Utilities.

(c) Take and pay contracts for the purchase of energy where the government aggregator commits to pay for a certain amount of energy, whether or not the energy is actually received or used by the government aggregator or participants in a cooperative pricing system are specifically prohibited.

5:34-7.20 Binding estimate option

Notwithstanding any of the restrictions or conditions set forth in this chapter, the lead agency of a cooperative purchasing system shall determine prior to the solicitation of bids whether the estimates submitted by a duly registered member of the system shall be considered firm and binding or a member may withdraw its estimate even after a supplier has been selected. The mechanism for determining systemwide consensus shall be the responsibility of the lead agency.

5:34-7.21 County cooperative contract purchasing system creation

(a) Only a county may establish a county cooperative contract purchasing system. The county, at its discretion and with the approval of the vendor, may permit contracting units located within the county's geographic boundaries to procure the provision and performance of goods and services for their own needs, subject to the specifications, terms and conditions set forth in the contract awarded by the county.

(b) A county shall authorize the establishment of a county cooperative contract purchasing system by resolution.

5:34-7.22 County cooperative contract purchasing system registration

- (a) A county cooperative contract purchasing system shall be subject to registration with and approval by the Director.
- (b) Application for registration shall be made on CCCP-1917.
- (c) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.28.
- (d) In reviewing the application, the Director shall utilize the following criteria, as established by N.J.S.A. 40A:11-11(5):
 - 1. Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration;
 - 2. Adequacy of public disclosure of such actions taken by the lead agency;
 - 3. Adequacy of procedures to facilitate compliance with all provisions of the Local Public Contracts Law and corresponding rules; and
 - 4. Clarity of provision to assure that the responsibilities of the respective parties are understood.
- (e) Approval shall be for a period not to exceed five years, and shall be limited to the terms and scope of services presented for approval. Any subsequent changes shall be submitted to the Director on Form CCCP-1917 for county cooperative contract purchasing system.
- (f) A county shall notify the Director in writing of a decision to terminate the registration of the system.

5:34-7.23 County cooperative contract purchasing system identifier

- (a) The Director shall assign a system identifier to each county cooperative contract purchasing system at the time of its approval.
- (b) The identifier shall be included on all contracts, purchase orders, bidding documents, vouchers and records relating to the operations of the county cooperative contract purchasing system.
- (c) The identifier shall be provided to each local contracting unit purchasing under the terms and conditions of a contract awarded by the county as a county cooperative contract purchasing system. The participating contracting units shall include the system identifier on all contracts, purchase orders, documents, vouchers and records relating to the purchases made through a county cooperative contract purchasing system.

5:34-7.24 County cooperative contract purchasing system administrative responsibilities

- (a) Upon approval of a county cooperative contract purchasing system registration and annually thereafter either on the anniversary of the registration of the system or in

January of each succeeding year, the lead agency shall publish in its official newspaper a notice similar in content to the following:

Notice of County Cooperative Contract Purchasing System

The County of (name of county) acts as lead agency in a county cooperative contract purchasing system. Under this system, the County solicits competitive bids for certain items to be purchased. Local contracting units within the county may purchase under the terms and conditions of selected contracts awarded by the County without the necessity of securing formal bids. This is a county cooperative contract purchasing system as defined and regulated by N.J.A.C. 5:34-7. Interested citizens or vendors may obtain information regarding the manner of operation of this system by contacting (name, address and phone number of system contact). The System Name Is _____. The System Identifier is: _____. The Systems' establishment was approved by the Director of the Division of Local Government Services and has an expiration date of (expiration date).

- (b) The county shall make the contract number available to any contracting unit within the county which seeks to purchase under the terms of a contract awarded by the county.
- (c) A county managing a county cooperative contract purchasing system shall include in the specifications the county's own requirements, stated in definite quantities. The county shall identify the contracting units which may purchase under the terms of the contract if awarded.

5:34-7.25 County cooperative contract purchasing system county requirement for bids

- (a) Each request for bids to be included in the county cooperative contract purchasing system by the county shall contain the following:
 - 1. Language requiring uniform bid price(s) for both the county and registered members. A provision with respect to the registered members shall be included substantially as follows:

ACCOMMODATION OF LOCAL CONTRACTING UNITS WITHIN THE COUNTY
OF (Name of County)

[] Check here if willing to provide the goods and services herein bid upon to local governmental contracting units located within the County of (insert name of county) (System Name and Identifier) without substitution or deviation from specifications, size features, quality, price or availability as herein set forth. It is understood that orders will be placed directly by the contracting units, subject to the overall terms of the contract to be awarded by the County of (name of the

county), and that no additional service or delivery charges will be allowed except as permitted by these specifications.

Check here if not willing to extend prices to contracting units located in the County of (name of county) affect consideration of this bid with respect to the needs of (name of the lead agency).

2. A statement as to the procedure to be followed in the event that the lowest responsible bidder declines to extend prices to the registered members. The contract for the stated needs of the county will be awarded to the lowest responsible bidder, and specifically not made available to contracting units within the county.

5:34-7.26 County cooperative contract purchasing system renewal

- (a) Documents requesting the renewal of the registration of a county cooperative contract purchasing system shall be submitted to the Director for review and approval prior to the date set by the Director for the expiration of the system's registration.
- (b) The county shall authorize the renewal of the system by resolution.
- (c) The county shall apply to the Director for system renewal for a period not to exceed five years.
- (d) The renewal application package shall at a minimum include the following:
 1. Form CCCP-1917; and
 2. County resolution reauthorizing the system.
- (e) The 10-day period for the review and approval of the renewal of a county cooperative contract purchasing system registration shall commence only upon the determination by the Director that the application renewal is complete.
- (f) The county shall notify the Director in writing of a decision not to renew the system's registration.

5:34-7.27 Member reports

At the discretion of the lead agency for a cooperative purchasing system, county cooperative contract purchasing system and any energy cooperative pricing system, participants shall file such reports, forms or documents designated by the lead agency, setting forth the use and expenditures related to contracts executed by the participants of the cooperative purchasing system. Such reports may be used to track and evaluate the utilization of the contracts executed by the lead agency on behalf of the participants.

5:34-7.28 Time for review-all systems

- (a) The Director shall approve or reject all applications within 45 days.

- (b) The 45 day review period shall commence only upon the determination by the Director that the application is complete.
- (c) Failure of the Director to act upon an application within 45 days shall constitute a default approval of the application for a period of five years or in the case of new membership, until the date previously approved by the Director for the termination of system registration pursuant to N.J.A.C. 5:34-7.5(f).

5:34-7.29 The State of New Jersey's cooperative purchasing program

- (a) The system identifier of 1 NJCP shall represent the State of New Jersey Cooperative Purchasing Program administered by the Division of Purchase and Property within the Department of the Treasury. This identifier shall be used by all contracting units purchasing under the Division of Purchase and Property's Cooperative Purchasing Program.
- (b) Participation in the State Cooperative Purchasing (Pricing) Program does not require a formal agreement with the Division of Purchase and Property, nor is approval of the Director required.
- (c) Contracts awarded under a State Cooperative Purchasing contract that are in excess of the contracting units bid threshold shall be made by resolution of the governing body. A resolution of the governing body shall not be required for State Cooperative Purchasing contracts for textbooks or other educational material that were previously approved by a board of education as part of the board's adopted curriculum policies.
- (d) The terms and conditions of the contracts awarded by the State Division of Purchase and Property shall be binding upon the contracting unit and the vendor. When using a State contract, contracting units are not entitled to any bonding or indemnification protection that is provided to the State unless specifically extended to the contracting unit by the vendor. A vendor is not required to extend such protections, but may do so upon agreement with the contracting unit.
- (e) A correctly prepared and properly executed purchase order by a contracting unit shall serve as a contract between the contracting unit and a contractor awarded a contract pursuant to N.J.S.A. 40A:11-12 or 18A:18A-10. In addition to the system identifier, each purchase order shall include the State contract number on which the purchase is based.

5:34-7.30 Application of N.J.S.A. 40A:11-5(4) or 18A:18A-5e: purchases at 10 percent less than State contract price

- (a) In applying the provisions of N.J.S.A. 40A:11-5(4) or 18A:18A-5e, the purpose of purchasing identical materials, supplies or equipment, in the same quantities, under a State contract without public bidding, the following conditions shall apply. For the purpose of this section, the term contract item shall mean the item being purchased that is the identical material, supply or equipment.
 - 1. Quotations for the contract item shall not be received from any vendor to whom the State contract has been awarded and where such vendor has agreed

to extend the contract pricing for the item to local contracting units pursuant to N.J.S.A. 52:25-16.1.

2. When a State contract includes different prices based on the quantity or volume purchased, the contracting unit shall be based on quotations for identical quantity or volume levels.
3. Terms and conditions of the State contract, as found in the Notice of Award related to length of contract, warranty, delivery and spotting terms, supply, costs, payment terms, installation and other related items (except bonding and indemnification provisions) are met by the vendor providing the quotation.
4. If the specification for a contract item in a Notice of Award includes a specific manufacturer's brand and model number, quotations shall be based on the same manufacturer's brand and model number.
5. If the specification for a contract item in a Notice of Award for the contract item is based on a performance specification, the contracting agent may receive quotations reflecting different manufacturer's brand and models, and when making the contract award, the contracting agent shall certify in writing that the item being purchased is identical to or exceeds the specification of the contract item.
6. Only those options or alternatives that are provided for in a Notice of Award may be purchased by a contracting unit. The addition of non-included options or alternates as a part of a contract award under this section is prohibited.

5:34-7.31 Authority of Director

- (a) The Director shall take whatever additional action deemed advisable to assure the orderly conduct of cooperative purchasing systems in accordance with sound financial administration in accordance with statutory responsibilities.
- (b) The Director shall prepare such guidelines as determined necessary to assist contracting units in the creation and administration of cooperative purchasing systems.

5:34-7.32 Enforcement

- (a) All cooperative purchasing systems shall comply with the provisions of these rules at all times. The lead agency of any cooperative purchasing system deemed by the Director to be in noncompliance shall be notified by certified mail. The lead agency shall explain in writing within 10 working days the steps being taken to correct the noncompliance. Failure of the lead agency to respond within the time provided shall result in the notification to the lead agency by the Director by certified mail to appear before the Director, or his or her designee. Notice shall be given at least 10 working days prior to the date of appearance and shall detail the nature of the alleged noncompliance. Failure to appear may result in the suspension or termination of the registration of the system.

- (b) No later than five days after an appearance required herein, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the lead agency.
- (c) A determination of noncompliance shall result in the immediate commencement of a 15 day grace period. During this time, the lead agency shall rectify all items of noncompliance, to the satisfaction of the Director.
- (d) Failure of the lead agency to undertake such action as required by the Director to resolve the issue of noncompliance may result in the suspension or termination of the registration of the system.

SUBCHAPTER 8. CONTRACTS SUBJECT TO PUBLIC BIDDING

5:34-8.1 Multi-year contracts

- (a) All multi-year contracts, including all multi-year leases and multi-year leases with option to purchase which are authorized under N.J.S.A. 40A:11-15(7), 40A:11-15(15) or 18A:18A-42(f), and other multi-year contracts subject to N.J.S.A. 40A:11-15 and 18A:18A-42 for the procurement of goods or services shall be subject to competitive bidding if the cumulative amount to be expended during the duration of the multi-year lease or contract exceeds the threshold for competitive bidding for the contracting unit.
- (b) Pursuant to the provisions of N.J.S.A. 40A:11-15 or 18A:18A-42, a contract award that was based upon receipt of quotations shall not be extended if the total value of the contract exceeds the bid threshold, which includes the original award plus any extension.

5:34-8.2 Determinations of aggregation

- (a) This section shall affect determinations of aggregation for purposes of whether a contract is subject to public bidding as set forth in N.J.S.A. 40A:11-3, 40A:11-4 and 40A:11-7, and as set forth in N.J.S.A. 18A:18A-3, 18A:18A-4, and 18A:18A-8, and is adopted pursuant to N.J.S.A. 40A:11-7.1 and 18A:18A-8.1. The provisions of this section shall not apply to those goods or services where the work is single in character and for those goods or services that are necessary for the completion of such a contract.
- (b) To determine if goods or services that are expected to be used will reach the bid threshold during the contract year, the contracting agent or purchasing agent, as defined at N.J.A.C. 5:34-1.2, shall use professional judgment based on prior experience of the contracting unit, estimates and plans for the upcoming contract year based on information such as the contracting unit's budget and purchasing history, and the amount purchased in the previous contract year. When calculating the amount purchased in the previous contract year, the calculation shall be based on the period of 12 consecutive months following the award of a contract.

(c) To determine if goods or services that are expected to be used during a contract year should be combined with other similar goods or services in a single bid, the contracting agent or purchasing agent shall use the following methods or techniques as may be appropriate:

1. The contracting agent or purchasing agent shall request the various organizational components of the contracting unit to estimate and provide the contracting agent or purchasing agent with their needs.
2. Based upon appropriate study and evaluation of the competitive marketplace, the contracting agent or purchasing agent shall determine the range of goods and services that are best suited for aggregation to maximize potential cost savings and to maximize vendor participation. This can be accomplished by:
 - i. Determining whether there are vendors capable of submitting bids on a range of goods or services that are sufficiently similar; or
 - ii. Determining that commercial business practices related to the provision or performance of the goods or services will result in a price advantage to the contracting unit if the goods or services were made part of a separate contract.
3. In considering if a particular good or service is subject to public bidding, the amount of money spent with a given vendor shall not in itself be a determining factor of reaching the threshold.
4. In determining if various expenditures are part of the same work or are similar goods or services, the emphasis shall be placed on the purpose of the goods and services rather than from whom they are purchased.
5. Where portions of any goods or services can be purchased through provision of law that do not require the contracting unit to publicly bid, such as a State, county, or cooperative purchasing contract, any remaining portions may be counted as separate from the portion that is not required to be bid. Such purchases may be considered as a separate aggregation calculation for the purpose of reaching the bid threshold.

5:34-8.3 When determinations of aggregation are found to be incorrect

(a) In each instance of (a)1 and 2 below, the amount required to be procured, is hereinafter defined to be the "remaining amount." This section shall affect determinations of aggregation pursuant to N.J.S.A. 40A:11-3, 40A:11-4 and 40A:11-7, and as set forth in N.J.S.A. 18A:18A-3, 18A:18A-4, and 18A:18A-8, and is adopted pursuant to N.J.S.A. 40A:11-7.1 and 18A:18A- 8.1 when:

1. Initial estimates of goods or services needed during the contract year are incorrectly anticipated to be less than the bid threshold; or
2. Initial estimates of goods or services needed during the contract year that had been exempt from public bidding are later found to be incorrect.

- (b) When either of the conditions in (a)1 or 2 above exist, the provisions of this section shall apply.
- (c) If the remaining amount exceeds the bid threshold, public bidding for the remaining amount should take place as soon as practicable after the purchasing agent or contracting agent becomes aware of the change in needs. (See chapter Appendix.)
- (d) Subject to the provisions of (d)1 and 2 below, the contracting agent or purchasing agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount. If the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, then:
1. The governing body may designate in advance an elected official to determine whether public bidding or the solicitation of quotations would be most advantageous in these circumstances; or
 2. If the governing body fails to designate an elected official, it retains the responsibility to make the determination by resolution. (See chapter Appendix.)
- (e) If the remaining amount to be procured by the contracting unit is less than 15 percent of its bid threshold, the contracting agent or purchasing agent may solicit quotations for the remaining amount.
- (f) In seeking the governing body's or its designee's authorization to solicit quotations under (d) and (e) above, the contracting agent or purchasing agent shall:
1. Certify to the governing body or its designee, as appropriate, the need for additional goods and services;
 2. Provide a description of how similar goods or services have been procured during the contract year to date;
 3. Obtain a resolution from the governing body or written approval from its designee, as appropriate, approving the purchase; and
 4. Provide a report of all procurements made under this section to the full governing body.
- (g) No additional goods or services shall be procured through the solicitation of quotations under (d) above until the resolution or written approval approving the purchase has been passed by the governing body or in the case of a designated elected official, other required form of written approval has been obtained. (See chapter Appendix.)
- (h) If the actual need for goods or services that are publicly bid are found during the course of the contract to be greater than the amount bid, the change order procedures set forth in N.J.A.C. 5:30-11 or 6A:23-7.1 shall be used, as appropriate.
- (i) Contracts issued pursuant to this section shall include a reference to the subsection under which the purchase is authorized.

5:34-8.4 Intentional miscalculations to avoid public bidding

Under no circumstance shall a contracting unit avoid bidding by knowingly miscalculating estimates, taking advantage of differences between contract year and fiscal year, or using another mechanism or artifice intended to intentionally avoid public bidding.

SUBCHAPTER 9. SPECIAL CIRCUMSTANCES

5:34-9.1 Purchase of proprietary goods or services

(a) In determining whether a good or service meets the definition of "proprietary" set forth in N.J.S.A. 40A:11-2(39) or 18A:18A-2cc, the terms used in the definition of "proprietary" shall be defined as follows:

1. "Specialized nature" means that the purpose to which the goods or services will be used has such unique characteristics that only the goods or services of a single vendor are capable of meeting the contracting unit's needs. The following shall be considered as non-limiting examples of goods or services that may, under appropriate conditions, meet the test of being of a specialized nature:
 - i. The use of a good or service other than the proprietary one will undermine the functionality or operational performance of existing facilities; or
 - ii. The good or service is patented and the patented feature is essential for operational performance.
2. "Necessary for the conduct of its affairs" means that the public need for the proprietary designation is of such a compelling nature that the value to the public that is gained by the proprietary designation overshadows the public benefit of permitting "brand name or equivalent" and the benefits of such competition. The following shall be considered as non-limiting examples of goods or services that may, under appropriate conditions, meet the test of being necessary for the conduct of its affairs:
 - i. The contracting unit has a substantial investment in facilities, training, replacement parts, or complimentary items that warrants reliance on a specific manufacturer or vendor to maintain the value of the investment.
 - ii. Unique circumstances as to a facility or environment preclude the use of other goods or services.

(b) Prior to advertising for the receipt of bids that includes proprietary goods or services, the contracting agent or purchasing agent shall certify in writing to the chief executive officer of the contracting unit an explanation of why the goods or services are

of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. The description shall not consist of rewriting or paraphrasing the statute or regulations but shall be specific to the circumstances. Such certification shall be included as part of the bid documents.

(c) The resolution of the governing body required by N.J.S.A. 40A:11-13(d) or 18A:18A-15d shall include a description of why the goods or services are specialized in nature and necessary for the conduct of the affairs of the contracting unit. The description shall not consist of rewriting or paraphrasing the statute or regulations but shall be specific to the circumstances.

(d) When taken in context of computer systems or dedicated software, the use of the proprietary designation shall be interpreted to allow for competition within the purposes for which the software is to be used. The competitive contracting process at N.J.S.A. 40A:11-4.1 et seq. and 18A:18A-4.1 et seq. is intended to allow for competition where there may be a limited number of vendors selling certain types of application software, that is, financial, human resources, web site hosting, computerized telephone systems, geographic information, police records, or computerized dispatch systems. The competitive contracting process is not intended for those circumstances that involve networking or telecommunications switching services.

5:34-9.2 Use of "brand name or equivalent" pursuant to N.J.S.A. 40A:11-13 and 18A:18A-15

(a) To encourage free, open, and competitive bidding, prior to referencing a "brand name or equivalent" in a bid specification pursuant to N.J.S.A. 40A:11-13 or 18A:18A-15, a contracting agent or purchasing agent shall first consider using a specification based on any of the following:

1. A standard issued by a national or international testing or standards setting organization, including, but not limited to, the American Society for Testing and Materials (ASTM), National Institute of Standards and Technology (NIST), Internet Engineering Task Force (IETF), International Standards Organization (ISO), IEEE Industry Standards and Technology Organization (IEEE-ISTO), any entity accredited to set standards by the American National Standards Institute (ANSI);
2. A generic specification available through a commercial or non-commercial service such as MasterSpec® or similar service; or
3. Specialized programs such as a listing in the Building Products Pre Approval Program maintained by the National Institute of Building Sciences.

(b) A contracting agent or purchasing agent shall not use a "brand name or equivalent" unless they have knowledge that at least one equal exists. If there are no equals or if the nature of the brand name good or service effectively restricts bidders to that single good or service, the contracting agent or purchasing agent must consider the matter subject to the provisions of proprietary goods or services at N.J.A.C. 5:34-9.1.

(c) When a specification uses "brand name or equivalent," the listed brand name shall serve as a reference or point of comparison for the functional or operational characteristic desired for the good or service being requested. Where a bidder submits an equivalent, it shall be the responsibility of the bidder to document the equivalence claim. Failure to submit such documentation shall be grounds for rejection of the claim of equivalence.

(d) Under no circumstance shall specifications require any form of "pre- approval" or "pre-qualification" of an equivalent product before the submission of bids.

5:34-9.3 Cancellation or postponement of receipt of bids or proposals

(a) Publicly announced receipt of bids or competitive contracting proposals shall be considered cancelled when the contracting unit must amend or modify the bid specifications and cannot meet the requirements of N.J.S.A. 40A:11- 23 and 18A:18A-21. The following procedures shall be used in the event a contracting unit cancels the receipt of publicly advertised bids or competitive contracting proposals:

1. All vendors who have either submitted bids or proposals, or received specifications or request for proposals, shall be notified by telephone, fax, or e-mail that the receipt thereof has been cancelled, the reason therefore, and notification regarding the return of the unopened bids pursuant to this section.
2. The contracting unit shall allow vendors to retrieve bids or proposals that had been:
 - i. Submitted at or before the time of cancellation;
 - ii. Previously sent but had not arrived by the time of cancellation; or
 - iii. For those not picked up by a vendor within 10 business days of being notified of their availability, the contracting unit shall return them, unopened, by certified mail or other delivery service that provides a delivery receipt.
3. On the day and time originally scheduled for receipt of bids or proposals, a notice shall be posted at the place where bids were to have been received, stating that the receipt of bids or proposals has been cancelled. No bids or proposals are to be received at this time.
4. All advertisements for the receipt of rescheduled bids or proposals must adhere to the requirements of N.J.S.A. 40A:11-23 or 18A:18A-21, as appropriate to the contracting unit for the statutory number of days between notice and when new bids or proposals can be received.

(b) Publicly announced receipt of bids or competitive contracting proposals shall be considered postponed when an unforeseen circumstance occurs that would affect or prohibit the opening of bids or proposals. The opening of the bids or proposals must occur within five days, excluding Saturdays, Sundays, and holidays, of the original date of the receipt of bids or proposals. The following procedures shall be used in the event a contracting unit must postpone the receipt of publicly advertised bids or competitive contracting proposals:

1. As soon as practicable, all vendors who have either submitted bids or proposals, or received specifications or request for proposals, shall be notified by telephone, fax, or e-mail that the receipt thereof has been postponed and the reason therefore.
2. If possible, on the day and time originally scheduled for receipt of bids or proposals, a notice shall be posted at the place where bids were to have been received, stating that the receipt of bids or proposals has been postponed.
3. In the event of a postponement, no bids or proposals shall be opened.

5:34-9.4 Concessions

(a) The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., define the term "concession" as 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. In the case of the Public School Contracts Law, vending machines are specifically excluded from the definition. Further, a concession is only subject to this section if it is awarded to or supports a for-profit organization or purpose.

(b) Concessions are specifically deemed to include, but are not limited to, the following:

1. The right to publish a map, newsletter, directory, or calendar containing the meeting schedules and other information about contracting unit services or activities where the contractor sells advertising as full or partial payment for providing the service;
2. Installation of "welcome to (name of entity)" signs on public property where a local organization pays a fee to the sign manufacturer, who may or may not make a payment to the contracting unit, and includes the name of the local organization on the sign;
3. Use of public space or facilities (such as scoreboards, bus shelter or facility advertising) for advertising in exchange for fees or services, or discounts on services;
4. Installation of vending machines in public facilities (except for vending machines in schools);
5. The donation, sale, installation, or maintenance of equipment or facilities for use of the contracting unit;
6. The choice of a local or long distance telephone service for pay phones on public property;
7. Copying machines in a government or library facility made available for public use;
8. The right to sell goods or services on public property; or