

COOPERATIVE PURCHASING: A GUIDE FOR LOCAL OFFICIALS

(FIFTH EDITION)



State of New Jersey
Jon S. Corzine, Governor

Department of Community Affairs
Susan Bass Levin, Commissioner

Division of Local Government Services
Susan Jacobucci, Director

February 2002
Reprinted, September, 2006

F O R E W O R D

To the

FIFTH EDITION

The initial Rules addressing Cooperative Purchasing were adopted in 1979. Now after twenty-two years, there are 110 Cooperative Purchasing Systems representing more than 2,600 local governments. With an ever-increasing interest in Cooperative Purchasing, the process for the establishment and registration of a Cooperative Purchasing System has been simplified and the types of programs expanded.

The Fifth Edition of the Guidelines has been updated to reflect the recent modifications to the *Cooperative Purchasing Rules* resulting from revisions to 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.). In addition, the *Electric Discount and Energy Competition Act* (P.L.1999, c.23) (N.J.S.A. 48:3-49 et al.) also resulted in modifications to the *Cooperative Purchasing Rules*.

I. INTRODUCTION

When local governments put aside provincial interests in exchange for the broader benefits to be achieved through Cooperative Purchasing, they can secure the provision and performance of goods and services at a lower cost. Cooperative Purchasing has demonstrated a strong ability to serve as an effective tool to assist local officials save taxpayer dollars.

Cooperative Purchasing represents viable alternatives to the conventional “go-it-alone” bidding process.

The Cooperative Purchasing Systems registered with the Division of Local Government Services include among their membership counties, municipalities, boards of education, local authorities and other contracting units. Cooperative Purchasing provides local officials with a viable proven alternative purchasing protocol. References to the “Rules” means the *Cooperative Purchasing Rules (N.J.A.C. 5:34-7.1 et seq.)*

This publication describes the different types of Cooperative Purchasing Systems. It contains sample documents for the establishment and participation in a Cooperative Purchasing System. Sample resolutions and agreements are for guidance and should be used with the advice of counsel.

The Division of Local Government Services encourages you to consider the benefits of participating in a Cooperative Purchasing System.

Should you have any questions about Cooperative Purchasing, please contact the Division at:

Bureau of Local Management Services
Division of Local Government Services
Post Office Box 803
Trenton NJ 08625-0803

Phone: 609.292.7842

Web Site:

<http://www.nj.gov/dca/lgs/lpcl/index.shtml>

E-mail: lpcl@dca.state.nj.us

II. COOPERATIVE PURCHASING IS FOR YOU!

Cooperative Purchasing holds great appeal insofar as lower bids may be expected when higher quantities can be aggregated. When evaluating whether to participate in a Cooperative Purchasing System, consider the following as part of the decision-making process:

Participation in a Cooperative Purchasing System does not relieve a local government of its mandated legal responsibilities.

At a minimum, each participant is required to certify that it has received the goods or services as ordered as a basis for payment. The general obligations under the *Local Public Contracts Law* and the *Public School Contracts Law* with regard to advertising, the proper handling of bids and the method of awarding contracts are still applicable. Be certain that the Cooperative Purchasing Agreement clearly defines responsibility for these provisions.

Determine exactly what it is you want to buy.

It may seem easier to rely on specifications drafted by another local government. However, if the specifications do not reflect your own particular needs, you may encounter difficulties. Specification writing is something of a special art. There are many different characteristics that can be specified for most goods and services. Your own needs may not be well served by another's assumptions. Therefore, you may want to consider drafting your own specifications, and not participate in the System's request for bids for that particular good or service.

Items purchased through a Cooperative Purchasing System are not always cheaper than what you can purchase yourself.

Price differentials are dependent on numerous business considerations such as location, inventory levels, timing of delivery, etc. The quality or characteristics of the good or service may not necessarily be what you want either. This is yet another reason to retain your own staff capability to analyze each situation before you act.

Once a determination is made that a Cooperative Purchasing System is desirable, make sure you go about it properly.

The agreement to be drafted must not only meet the requirements of State law and regulations, but also clearly assign the responsibilities to the various participants. It is better to think about possible problems before they arise, rather than ending up in court!

Networking - A secondary benefit.

Periodic meetings of the members of the Cooperative Purchasing System can serve as a forum for the exchange of ideas beyond purchasing.

Beyond Cooperative Purchasing.

Several systems have implemented a cooperative auction for the disposal of surplus equipment. This has helped members dispose of everything from trucks to bicycles and fishing rods, not to mention a row boat with a hole in its hull.

III. TYPES OF COOPERATIVE PURCHASING

“Cooperative Purchasing” is an inclusive term used to describe all purchasing systems where two or more local contracting units join together for the provision or performance of goods or services as provided for by the *Local Public Contracts Law* and the *Public School Contracts Law*.

COOPERATIVE PRICING

“Cooperative Pricing” is a purchasing system in which a Lead Agency advertises for bids; awards a master contract to the vendor providing for its own needs and for the prices to be extended to registered members; and notifies the members of the contract awarded. The registered members then contract directly with the vendor for their own needs, subject to the specifications in the master contract .

Separate contracts or purchase orders are executed between each participating government agency and the successful vendor. The Lead Agency essentially is providing the members of the Cooperative Pricing System the availability of prices for specified items based upon its having carried out the advertising and bid procedures required by the *Local Public Contracts Law*.

The Lead Agency in a Cooperative Pricing System does not bear any contractual responsibility to the vendor, except with respect to those items, which it orders for its own needs. However, in case of disputes, it is conceivable that the Lead Agency might be drawn into litigation.

The bid document notifies potential bidders of the desire of the Lead Agency to make the resulting bid prices available to the participating members of the System. The vendor, in submitting its bid, stipulates whether the price bid will be available to the participating members of the System. The prices and the exact nature and quality of the goods and services provided cannot deviate from what was described in the specifications and awarded in the contract. The overall contract award is controlling with respect to specifications and prices, even though quantities are contracted for by the other participants via their own contract or purchase order.

The State Cooperative Purchasing System managed by the Division of Purchase and Property in the Department of the Treasury is a large-scale version of a cooperative pricing system. Certain goods and services purchased under State contact may be purchased by local governments. Information is available from the Division of Purchase and Property by calling 609.984.7047 or at their web site, www.state.nj.us/treasury/purchase.

JOINT PURCHASING

In a Joint Purchasing System, two or more local contracting units agree that one of them will serve as the Lead Agency or “purchasing agent” for the system, at least with respect to certain specified categories of purchases. The Lead Agency, in its capacity as purchasing agent, does the purchasing for the members of the System. It prepares the formal bid specifications; advertises for and receives bids; and executes a contract with the lowest responsible bidder for the full amount of the commodities or services needed by all participants.

A significant difference between Joint Purchasing and Cooperative Pricing is that Joint Purchasing requires the participants to identify in advance the specific individual quantity for the particular good or service to be bid. In addition to its other responsibilities, the Lead Agency is responsible for certifying that funds are available not only for its own needs, but for the aggregate quantity from all of the other participants. The contractual relationship, which ensues, is between the vendor and the Lead Agency. Only the Lead Agency does the buying and deals with the vendor. Thus, after the receipt of bids and evaluation, but prior to the award of a contract, funds for the purchase of the goods or services are transferred from the members to the Lead Agency. The lead agency then adjusts its budget accordingly. Details for these actions are arranged by the respective local unit financial officer.

COMMODITY RESALE

With the implementation of stricter environmental standards for underground gasoline storage tanks, many local governments removed their tanks and closed their gas dispensing facilities. As an alternative, they entered into contractual relationships with neighboring governments for the purchase of gasoline and diesel fuel.

Similarly, many local contracting units purchase snow removal chemicals from neighboring local governments. In most instances this results in cost savings since there is no need to construct and maintain a separate salt silo. The "resale" of commodities has also been found to exist, albeit to a lesser extent, in the area of public works materials, such as road and roadway construction materials.

The commodities available for “resale” are limited by the *Rules* to gasoline, diesel fuel, snow removal chemicals and public works materials.

Only by establishing a Commodity Resale System may the seller, the System’s Lead Agency, through a Dedication by Rider, deposit the funds received from the sale of gasoline into the “fuel” account, for example, rather than returning the funds to surplus.

COUNTY COOPERATIVE CONTRACT PURCHASING

County Cooperative Contract Purchasing is a Cooperative Purchasing System that may be created only by a county government. The county advertises for bids and awards a contract to the successful bidder. With the approval of both the county and the successful vendor, local contracting units located within the geographic boundary of the county may purchase under the contract subject to its specifications, terms and conditions. It is similar in concept to the State Cooperative Purchasing System.

This form of Cooperative Purchasing should not be used as a substitute for Cooperative Pricing. County Cooperative Contract Purchasing should be limited to those situations where exact quantities are not known and the commodity to be purchased is unique. Remember, the primary beneficiary is the vendor. The price reduction achieved through the purchase of mass quantities as in Cooperative Pricing or Joint Purchasing is not to be found in County Cooperative Contract Purchasing.

REGIONAL COOPERATIVE PRICING SYSTEM

Regional Cooperative Pricing is a Cooperative Pricing System composed of two or more registered Cooperative Pricing Systems and their participating contracting units that have agreed to join together for the provision and performance of goods and services, including the purchase of energy.

Regional Cooperative Pricing is an outgrowth of the deregulation of energy and the need for an uncomplicated and efficient method for existing registered Cooperative Pricing Systems to join together to aggregate their energy needs. A process was developed that would not require the Lead Agency of each participating system to secure new participatory resolutions and cooperative purchasing agreements from the individual members of each system. By virtue of membership in one of the systems forming the Regional Cooperative Pricing System, the participating local governments are members of the Regional Cooperative Pricing System.

IV. LEGAL BASIS FOR COOPERATIVE PURCHASING

The basis for Cooperative Purchasing is to be found in the *Local Public Contracts Law* (N.J.S.A. 40A:11-11) and the *Public School Contracts Law* (N.J.S.A. 18A:18A-11).

LOCAL PUBLIC CONTRACTS LAW

State Cooperative Purchasing Program

N.J.S.A. 40A:11-12 provides for the participation of local governments in the Cooperative Purchasing Program administered by the Division of Purchase and Property in the Department of the Treasury. This is essentially a Cooperative Pricing Service, through which certain commodities purchased under State contract may also be purchased by local governments. Not all commodities purchased by the State may be purchased by local governments.

The State can provide lists of available State contract commodities. Local governments may then contact the vendor directly. Purchases made under State contract cannot differ as to specification, quality or price from that contained in the State contract. However, in some cases a higher price may be charged to local governments if specified in the State contract.

In dealing with State contracts, local governments should take into account the following issues:

- Avoid the temptation to purchase goods and services from a vendor that is not on the State contract.
- Always verify that the specific goods and services were awarded to the successful vendor or otherwise covered under the contract.
- That the prices being charged are consistent with the contract award.

Whenever making such a purchase, the vendor's State Contract number should be verified with the Division of Purchase and Property that may be contacted at 609.984.7047 or www.state.nj.us/treasury/purchase.

While the State regulations do not require formal action by local governing bodies to participate, the local governments themselves are required to observe the basic requirements of the *Local Public Contracts Law* or the *Public School Contracts Law*. This means that the governing body must award contracts over the current bid threshold amount (*N.J.A.C. 5:34-7.29(c)*). The purchasing agent may be authorized by resolution to make purchases below the bid threshold amount. Information on the amount of the current bid threshold may be obtained by contacting the Division of Local Government Services at 609.292.7842.

Local Systems

N.J.S.A. 40A:11-10 and *11* and *N.J.S.A. 18A:18A-11* permit counties, municipalities, school districts and authorities to provide for the provision and performance of goods and services by joining together for the creation of purchasing systems. *N.J.S.A. 40A:11-10* provides for joint purchasing systems while *N.J.S.A. 40A:11-11* furnishes the statutory authorization for cooperative pricing. County Cooperative Contract Purchasing is specifically provided for in *N.J.S.A. 40A:11-11(6)*.

N.J.S.A. 40A:11-11 requires approval of all cooperative purchasing systems by the Director of the Division of Local Government Services before they can operate. The statute also details the general obligations of local governments and vendors with an eye toward preventing abuses.

The status of boards of education with respect to Cooperative Purchasing is somewhat unique. The *New Jersey Administrative Code* for the Department of Education at *6A:23-7.4* states:

A district board of education or charter school board of trustees may by resolution establish a joint purchasing system pursuant to *N.J.S.A. 40A:11-11*. Such joint purchasing system shall become effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

Therefore, before a board of education may implement a cooperative purchasing system, compliance with the *Cooperative Purchasing Rules* and approval of the proposed system by the Director of the Division of Local Government Services is required.

Dispute Resolution — Boards of Education Only

In a purchasing system composed solely of boards of education, if a controversy or dispute arises among the parties with regard to a contract, the matter is referred to the county superintendent of the county in which the districts are located for resolution pursuant to *N.J.S.A. 18A:18A-14*. If the districts are in different counties, the dispute is referred to the superintendents of the respective counties. Failure of the superintendents to achieve resolution within 30 days, requires the matter be referred to the Commissioner of the Department of Education for determination.

V. OBTAINING STATE APPROVAL

HOW TO REQUEST APPROVAL

The process for the registration of a Cooperative Purchasing System is straightforward. The Lead Agency submits an application to the Division for review and approval. The application includes: (1) authorizing resolutions from the Lead Agency and system member(s); (2) a copy of the Cooperative Purchasing Agreement between the Lead Agency and each member(s) of the system; and (3) the appropriate Cooperative Purchasing Form (See Table below).

COOPERATIVE PURCHASING FORMS

TYPE OF PURCHASING SYSTEM	FORM
Cooperative Pricing Joint Purchasing Regional Cooperative Pricing	CP-2001
Commodity Resale	CP-2060
County Cooperative Contract Purchasing	CP-1917

The Division will act upon a request for registration within 45 days of receipt, unless additional information is required.

Approval is valid for a period of up to five years, and is only applicable with respect to the system as described in the application. If additional participants join, terms of the relationship are changed, or the scope of the items to be purchased is expanded, an additional application must be filed.

CRITERIA FOR APPROVAL

The basic criteria for approval are set forth in *N.J.S.A. 40A:11-11(a)-(d)* and are applicable to local government and boards of education. The Division will make sure that the provisions of law are complied with. The Division will be especially interested in having a clear understanding of the roles of the respective participants. It is of even greater importance to the participants themselves that their respective rights, responsibilities and duties be mutually understood at the outset.

IDENTIFICATION CODE

Upon approval of a new purchasing system, the Division will assign it a unique alphanumeric identifier. All documentation utilized in connection with activities of the Cooperative Purchasing System must display the System's identifier. Its use will assist in identifying how the competitive bid price was established, and will facilitate the audit process.

Purchases made through a Cooperative Purchasing System do not have to be reported to the Division.

Just remember — the principles of the *Local Public Contracts Law* and the *Public School Contracts Law*, as well as sound financial management, which apply to independent purchasing by a governmental unit, also apply to purchasing made through a Cooperative Purchasing System.

VI. USE OF PRE-EXISTING CONTRACTS

The Cooperative *Purchasing Rules* at *N.J.A.C. 5:34-7.12*, permit a new or existing member of a Cooperative Purchasing System to purchase under the terms and conditions of a contract previously awarded by the Lead Agency on behalf of itself and the members of the system, in two unique situations:

- A registered member of a Cooperative Pricing System who has not submitted an estimate for the good or service being bid.
- A contracting unit, which becomes a registered member of the Cooperative Pricing System subsequent to the award of a contract.

Written approval of both the Lead Agency and the contractor is required before the registered member may avail itself of the already awarded contract.

The Lead Agency should monitor the use of pre-existing contracts, especially if it appears that the same registered member fails to submit estimates, but then seeks approval to use the awarded contract. While the "non-estimate submitting" member will benefit from a lower price, all of the members who initially submitted estimates might have realized additional cost savings had this member submitted its estimate on time.

The use of pre-existing contracts should be the exception, not the rule.

VII. COOPERATIVE PRICING SAMPLE DOCUMENTS

The following pages contain a series of sample documents for the establishment and participation in a Cooperative Pricing System.

The appropriate documents should be tailored to meet the specific needs of your situation. Any resolution or agreement should be reviewed by counsel prior to adoption.

Be sure that the document clearly details the responsibilities of the parties and sets forth the procedures to be followed.

SAMPLE FORM	PAGE
Lead Agency Resolution for the Establishment of a Cooperative Pricing System	13
Resolution for Member Participation in a Cooperative Pricing System	15
Cooperative Pricing System Agreement	17

**LEAD AGENCY RESOLUTION
FOR THE ESTABLISHMENT OF
A COOPERATIVE PRICING SYSTEM**

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ESTABLISH A COOPERATIVE PRICING SYSTEM AND TO ENTER INTO
COOPERATIVE PRICING AGREEMENTS WITH OTHER CONTRACTING UNITS

RESOLUTION NUMBER _____

WHEREAS, *N.J.S.A. 40A:11-11(5)* authorizes two or more contracting units to establish a Cooperative Pricing System and to enter into a Cooperative Pricing Agreement for its administration; and

WHEREAS, the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey is desirous of establishing a Cooperative Pricing System and entering into a Cooperative Pricing Agreement with other contracting units;

WHEREAS, the (CONTRACTING UNIT) has agreed to serve as the Lead Agency for a Cooperative Pricing System; and

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY NAME), State of New Jersey duly considered the establishment of a Cooperative Pricing System for the provision and performance of goods and services,

NOW, THEREFORE BE IT RESOLVED as follows:

COOPERATIVE PRICING SYSTEM ESTABLISHED

The (GOVERNING BODY) hereby authorizes the creation of a Cooperative Pricing System to be known as (NAME OF COOPERATIVE PRICING SYSTEM) with the (CONTRACTING UNIT) serving as the Lead Agency.

COOPERATIVE PRICING AGREEMENT

The (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into separate Cooperative Pricing Agreements with the participating contracting units and said Agreement shall be deemed a single Agreement.

COPY OF RESOLUTION TO DIVISION OF LOCAL GOVERNMENT SERVICES

A single certified copy of this resolution shall be forwarded to the Division of Local Government Services as part of the application for the registration of this Cooperative Pricing System.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

BY: _____
(NAME AND TITLE)

ATTEST BY: _____
(NAME AND TITLE)

**RESOLUTION FOR MEMBER PARTICIPATION
IN A COOPERATIVE PRICING SYSTEM**

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ENTER INTO A COOPERATIVE PRICING AGREEMENT

RESOLUTION NUMBER _____

WHEREAS, N.J.S.A. 40A:11-11(5) authorizes contracting units to establish a Cooperative Pricing System and to enter into Cooperative Pricing Agreements for its administration; and

WHEREAS, the (NAME OF LEAD AGENCY), hereinafter referred to as the "Lead Agency" has offered voluntary participation in a Cooperative Pricing System for the purchase of goods and services;

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey duly considered participation in a Cooperative Pricing System for the provision and performance of goods and services;

NOW, THEREFORE BE IT RESOLVED as follows:

TITLE

This RESOLUTION shall be known and may be cited as the Cooperative Pricing Resolution of the (CONTRACTING UNIT)

AUTHORITY

Pursuant to the provisions of *N.J.S.A. 40A:11-11(5)*, the (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into a Cooperative Pricing Agreement with the Lead Agency.

CONTRACTING UNIT

The Lead Agency shall be responsible for complying with the provisions of the *Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.)* and all other provisions of the revised statutes of the State of New Jersey.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

CERTIFICATION

BY:

(NAME AND TITLE)

ATTEST BY:

(NAME AND TITLE)

COOPERATIVE PRICING SYSTEM AGREEMENT

(NAME OF COOPERATIVE PRICING SYSTEM)

AGREEMENT FOR A COOPERATIVE PRICING SYSTEM

This Agreement made and entered into this ___ day of _____, 20____, by and between the, (NAME OF LEAD AGENCY) and (LIST FULL NAME OF PARTICIPANTS), who desire to participate in the (NAME OF THE COOPERATIVE PRICING SYSTEM).

WITNESSETH

WHEREAS, *N.J.S.A. 40A:11-11(5)*, specifically authorizes two or more contracting units to establish a Cooperative Pricing System for the provision and performance of goods and services and enter into a Cooperative Pricing Agreement for its administration; and

WHEREAS, the (NAME OF LEAD AGENCY) is conducting a voluntary Cooperative Pricing System with other contracting units; and

WHEREAS, this Cooperative Pricing System is to effect substantial economies in the provision and performance of goods and services; and

WHEREAS, all parties hereto have approved the within Agreement by Resolution¹ in accordance with the aforesaid statute; and

WHEREAS, it is the desire of all parties to enter into such Agreement for said purposes;

NOW, THEREFORE, IN CONSIDERATION OF the promises and of the covenants, terms and conditions hereinafter set forth, it is mutually agreed as follows:

1. The goods or services to be priced cooperatively may include (LIST GOODS and/OR SERVICES TO BE PRICED COOPERATIVELY) and such other items as two or more participating contracting units in the system agree can be purchased on a cooperative basis.

1. For boards of education only: A motion made and 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.

2. The items and classes of items which may be designated by the participating contracting units hereto may be purchased cooperatively for the period commencing with the execution of this Agreement and continuing until terminated as hereinafter provided.
 3. The Lead Agency, on behalf of all participating contracting units, shall upon approval of the registration of the System and annually thereafter [CHOOSE ONE: (1) EITHER ON THE ANNIVERSARY OF THE REGISTRATION OF THE SYSTEM OR (2) IN JANUARY OF EACH SUCCEEDING YEAR] publish a legal ad in such format as required by *N.J.A.C. 5:34-7.9(a)* in its official newspaper normally used for such purposes by it to include such information as:
 - (A) The name of Lead Agency soliciting competitive bids or informal quotations.
 - (B) The address and telephone number of Lead Agency.
 - (C) The names of the participating contracting units.
 - (D) The State Identification Code assigned to the Cooperative Pricing System.
 - (E) The expiration date of the Cooperative Pricing System.
 4. Each of the participating contracting units shall designate, in writing, to the Lead Agency, the items to be purchased and indicate therein the approximate quantities desired [IF NOT AN OPEN ENDED CONTRACT], the location for delivery and other requirements, to permit the preparation of specifications as provided by law.
 5. The specifications shall be prepared and approved by the Lead Agency and no changes shall be made thereafter except as permitted by law. Nothing herein shall be deemed to prevent changes in specifications for subsequent purchases.
 6. A single advertisement for bids or the solicitation of informal quotations for the goods or services to be purchased shall be prepared by the Lead Agency on behalf of all of the participating contracting units desiring to purchase any item.
 7. The Lead Agency when advertising for bids or soliciting informal quotations shall receive bids or quotations on behalf of all participating contracting units. Following the receipt of bids, the Lead Agency shall review said bids and on behalf of all participating contracting
-

units, either reject all or certain of the bids or make one award to the lowest responsible bidder or bidders for each separate item. This award shall result in the Lead Agency entering into a Master Contract with the successful bidder(s) providing for two categories of purchases:

(A) The quantities ordered for the Lead Agency's own needs, and

(B) The estimated aggregate quantities to be ordered by other participating contracting units by separate contracts, subject to the specifications and prices set forth in the Lead Agency's Master Contract.

8. The Lead Agency shall enter into a formal written contract(s) directly with the successful bidder(s) only after it has certified the funds available for its own needs.
 9. Each participating contracting unit shall also certify the funds available only for its own needs ordered; enter into a formal written contract, when required by law, directly with the successful bidder(s); issue purchase orders in its own name directly to successful vendor(s) against said contract; accept its own deliveries; be invoiced by and receive statements from the successful vendor(s); make payment directly to the successful vendor(s) and be responsible for any tax liability.
 10. No participating contracting unit in the Cooperative Pricing System shall be responsible for payment for any items ordered or for performance generally, by any other participating contracting unit. Each participating contracting unit shall accordingly be liable only for its own performance and for items ordered and received by it and none assumes any additional responsibility or liability.
 11. The provisions of Paragraphs 7, 8, 9, and 10 above shall be quoted or referred to and sufficiently described in all specifications so that each bidder shall be on notice as to the respective responsibilities and liabilities of the participating contracting units.
 12. No participating contracting unit in the Cooperative Pricing System shall issue a purchase order or contract for a price which exceeds any other price available to it from any other such system in which it is authorized to participate or from bids or quotations which it has itself received.
 13. The Lead Agency reserves the right to exclude from consideration any good or service if, in its opinion, the pooling of purchasing requirements or needs of the participating contracting units is either not beneficial or not workable.
-

14. The Lead Agency shall appropriate sufficient funds to enable it to perform the administrative responsibilities assumed pursuant to this Agreement.
15. *It is agreed that each participating contracting unit shall pay the Lead Agency an annual fee of (AMOUNT OF FEE) as its estimated prorated share of the administrative costs incurred by the Lead Agency. This amount shall be paid (NUMBER OF DAYS) days from the receipt of billing from the Lead Agency. In the event this estimated prorated share should prove insufficient, each party agrees to pay an additional prorated sum to be determined by all of the participating contracting units.*²
16. *For the first year of the term of this Agreement, the (NAME OF LEAD AGENCY) shall serve as the Lead Agency, and thereafter, for each succeeding year, the Lead Agency designation shall be rotated among the System members in the following order: (LIST MEMBERS TO SERVE AS LEAD AGENCY). The Director of the Division of Local Government Services within the State Department of Community Affairs shall be notified within thirty (30) days of any change in the designated Lead Agency.*³
17. This Agreement shall become effective on (INSERT DATE) subject to the review and approval of the Director of the Division of Local Government Services and shall continue in effect for a period not to exceed five (5) years from said date unless any party to this Agreement shall give written notice of its intention to terminate its participation.⁴
18. *Additional local contracting units may from time to time, execute this Agreement by means of a Rider annexed hereto, which addition shall not invalidate this Agreement with respect to other signatories. The Lead Agency is authorized to execute the Rider on behalf of the members of the System.*⁵
19. All records and documents maintained or utilized pursuant to terms of this Agreement shall be identified by the System Identifier assigned by the Director, Division of Local Government Services, and such other numbers as are assigned by the Lead Agency for purposes of identifying each contract and item awarded.

2. Clause 15 relating to the payment of an Administrative Fee is optional. If a Fee is charged, language defining how the Fee is established should be included. The participating contracting units may help underwrite the administrative costs incurred by the Lead Agency in fulfilling its role as "purchasing agent" for the System through the payment of an Administrative Fee. While the Fee is optional, the question of whether to impose a Fee should be resolved and agreed to by the participating members at the time the System is established.

3. Clause 16 relating to the rotation of Lead Agency responsibility is optional.

4. Approval may be for less than five (5) years at the discretion of the Lead Agency.
5. To facilitate signing, appropriate language permitting counterpart copies to be signed by the Lead Agency and individual participants may be included. See sample "Paragraph 18 Rider" on Page 22

20. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their authorized corporate officers and their respective seals to be hereto affixed the day and year above written.

FOR THE LEAD AGENCY

BY:

(NAME AND TITLE))

FOR THE PARTICIPATING UNIT

BY:

(NAME AND TITLE)

“PARAGRAPH 18 RIDER”

The sample Cooperative Pricing Agreement in Paragraph 18 provides for the execution of the Agreement by means of a Rider. This use of the Rider can expedite the process for the execution of the Agreement by a number of potential members to a Cooperative Pricing System.

COOPERATIVE PRICING AGREEMENT RIDER

Pursuant to Paragraph 18 of the Cooperative Pricing Agreement, the (INSERT NAME OF MEMBER) hereby requests that it be allowed to participate in the cooperative arrangement described in the above-mentioned Agreement.

The (INSERT NAME OF MEMBER) acknowledges that it has received and reviewed the Agreement in its entirety, and agrees to be bound by its promises, covenants, terms and conditions, as well as by any rules and regulations duly promulgated by the Lead Agency and the members of the Cooperative Pricing System.

The (INSERT NAME OF MEMBER) shall likewise be entitled to all the rights and benefits of a member of the Cooperative Pricing System.

IN WITNESS WHEREOF, the parties hereto have caused this Rider to be executed by their authorized officers on the _____st day of _____, 20_____.

ATTEST: (MEMBER)

CLERK

AUTHORIZED SIGNATORY

Pursuant to Paragraph 18 of the Cooperative Pricing Agreement, the [LEAD AGENCY] does hereby accept [Insert Name of Member] as a member of the Cooperative Pricing System in

consideration for the execution of the foregoing Rider and the promises, covenants, terms and conditions, as well as by any rules and regulations, referred to therein.

ATTEST: (LEAD AGENCY)

CLERK

AUTHORIZED SIGNATORY

VIII. JOINT PURCHASING SAMPLE DOCUMENTS
--

The following pages contain a series of sample documents for the establishment and participation in a Joint Purchasing System.

The appropriate documents should be tailored to meet your specific needs. Any resolution or agreement should be reviewed by counsel prior to adoption.

Be sure that the document clearly details the responsibilities of the parties and clearly sets forth procedures to be followed.

SAMPLE FORM	PAGE
Lead Agency Resolution for the Establishment of a Joint Purchasing System	24
Resolution for Member Participation in a Joint Purchasing System	26
Joint Purchasing System Agreement	28

**LEAD AGENCY RESOLUTION
FOR THE ESTABLISHMENT OF
A JOINT PURCHASING SYSTEM**

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ESTABLISH A JOINT PURCHASING SYSTEM
AND TO ENTER INTO JOINT PURCHASING AGREEMENTS
WITH OTHER CONTRACTING UNITS

RESOLUTION NUMBER _____

WHEREAS, *N.J.S.A. 40A:11-10* authorizes two or more contracting units to establish a Joint Purchasing System and enter into a Joint Purchasing Agreement for its administration; and

WHEREAS, the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey is desirous of establishing a Joint Purchasing System and entering into said Joint Purchasing Agreement with other contracting units; and

WHEREAS, the (CONTRACTING UNIT) has agreed to serve as the Lead Agency for a Joint Purchasing System with other contracting units; and

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY NAME), State of New Jersey duly considered the establishment of a Joint Purchasing System for the provision and performance of goods and services,

NOW, THEREFORE BE IT RESOLVED as follows:

JOINT PURCHASING SYSTEM ESTABLISHED

The (GOVERNING BODY) hereby authorizes the creation of a Joint Purchasing System to be known as the (NAME OF JOINT PURCHASING SYSTEM) with the (CONTRACTING UNIT) serving as the Lead Agency.

JOINT PURCHASING AGREEMENT

The (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into separate Joint Purchasing Agreements with the participating contracting units and said Agreement shall be deemed a single Agreement.

**COPY OF RESOLUTION TO
THE DIVISION OF LOCAL GOVERNMENT SERVICES**

A single certified copy of this resolution shall be forwarded to the Division of Local Government Services as part of the application package for the registration of this Joint Purchasing System.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

BY:

(NAME AND TITLE)

ATTEST BY:

(NAME AND TITLE)

**RESOLUTION FOR MEMBER PARTICIPATION
IN A JOINT PURCHASING SYSTEM**

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ENTER INTO A JOINT PURCHASING AGREEMENT

RESOLUTION NUMBER _____

WHEREAS *N.J.S.A. 40A:11-11(10)* authorizes contracting units to establish a Joint Purchasing System and to enter into a Joint Purchasing Agreement for its administration; and

WHEREAS the (NAME OF LEAD AGENCY), hereinafter referred to as the "Lead Agency" has offered voluntary participation in a Joint Purchasing System for the provision and performance of goods and services; and

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey duly considered participation in a Joint Purchasing System for the provision and performance of goods and services,

NOW, THEREFORE BE IT RESOLVED as follows:

TITLE

This Resolution shall be known and may be cited as the Joint Purchasing Resolution of the (CONTRACTING UNIT)

AUTHORITY

Pursuant to the provisions of *N.J.S.A. 40A:11-10* the (CHIEF EXECUTIVE OFFICER OF THE CONTRACTING UNIT) is hereby authorized to enter into a Joint Purchasing Agreement with the Lead Agency.

CONTRACTING UNIT

The Lead Agency shall be responsible for complying with the provisions of the Local Public Contracts Law (*N.J.S.A. 40A:11-1 et seq.*) and all other provisions of the revised statutes of the State of New Jersey.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

CERTIFICATION

BY: _____
(NAME AND TITLE)

BY: _____
(NAME AND TITLE)

JOINT PURCHASING SYSTEM AGREEMENT

(NAME OF JOINT PURCHASING SYSTEM)

AGREEMENT FOR A JOINT PURCHASING SYSTEM

This Agreement made and entered into this ___ day of _____, 20_____, by and between the, (NAME OF LEAD AGENCY) and (LIST FULL NAME OF PARTICIPANTS), to participate in a Joint Purchasing System.

WITNESSETH

WHEREAS, *N.J.S.A. 40A:11-10*, specifically authorize two or more contracting units to enter into a Joint Purchasing Agreement for the provision and performance of goods and services; and

WHEREAS, the (NAME OF LEAD AGENCY) is conducting a voluntary Joint Purchasing System with other authorized contracting units utilizing the administrative purchasing services and facilities of the (NAME OF LEAD AGENCY); and

WHEREAS, this Joint Purchasing Agreement is to effect substantial economies in the provision and performance of goods and services; and

WHEREAS, all parties hereto have approved the within Agreement by Resolution;¹ and in accordance with the aforesaid statute; and

WHEREAS, it is the desire of all parties to enter into such Agreement for said purposes;

NOW, THEREFORE, IN CONSIDERATION OF the promises and of the covenants, terms and conditions hereinafter set forth, it is mutually agreed as follows:

1. The goods or services to be priced jointly may include (LIST THE GOODS AND SERVICES TO BE PURCHASED JOINTLY) and such other items as two or more participating contracting units in the system agree can be purchased on a joint basis.

1. For boards of education only: A motion made and carried, and
--

recorded in the written minutes of a business meeting of a board of education shall be considered the same as a resolution.

2. The items and classes of items which may be designated by the participating contracting units hereto shall be purchased jointly for the period commencing with the execution of this Agreement and continuing until terminated as hereinafter provided.
 3. The Lead Agency, on behalf of all participating contracting units, shall upon approval of the System's registration and annually thereafter [CHOOSE ONE: (1) EITHER ON THE ANNIVERSARY OF THE SYSTEM'S REGISTRATION or (2) IN JANUARY OF EACH SUCCEEDING YEAR] publish a legal ad in such format as required by *N.J.A.C. 5:34-7.9 (a)* in its official newspaper normally used for such purposes by it to include such information as:
 - (A) The name of Lead Agency soliciting competitive bids or informal quotations.
 - (B) The address and telephone number of Lead Agency.
 - (C) The names of the participating contracting units.
 - (D) The State Identification Code assigned the Joint Purchasing System.
 - (E) The expiration date of the Joint Purchasing Agreement.
 4. Each of the participating contracting units shall designate, in writing, to the Lead Agency, the items to be purchased and indicate therein the quantities desired [IF NOT AN OPEN ENDED CONTRACT], the location for delivery and any other requirements, to permit the preparation and filing of specifications as provided by law.
 5. The specifications shall be prepared and approved by the Lead Agency, and no changes shall thereafter be made. Nothing herein shall be deemed to prevent changes in specifications for subsequent purchases.
 6. A single advertisement for bids or the solicitation of informal quotations for the goods or services to be purchased shall be prepared by the Lead Agency on behalf of all of the participating contracting units desiring to purchase any item.
 7. The Lead Agency when advertising for bids or soliciting informal quotations shall receive bids or quotations on behalf of all participating contracting units.
-

8. Following the receipt of bids, the Lead Agency shall review said bids and on behalf of all participating contracting units, either reject all or certain of the bids or make one award to the lowest responsible bidder or bidders for each separate item.
9. The award shall result in only the Lead Agency entering into a formal written contract(s) directly with the successful bidder(s).
10. The Lead Agency on behalf of each participating contracting unit shall certify the funds available for all the needs ordered under a particular contract(s); issue all purchase orders in its own name directly to the successful vendor(s) against said contract; and be invoiced by and receive statements from the successful vendor(s).
11. The Lead Agency shall be responsible for payment for any items ordered, or for performance generally, by any other participating contracting unit. Each participating contracting unit, however, shall be required to accept its own deliveries.
12. The provisions of Paragraphs 7, 8, 9, 10 and 11 above shall be quoted or referred to and sufficiently described in the specifications so that each bidder shall be on notice as to the respective responsibilities and liabilities of the participating contracting unit.
13. No participating contracting unit in the Joint Purchasing System shall issue a purchase order or contract for a price which exceeds any other price available to it from any other such system in which it is authorized to participate or from bids or quotations which it has itself received.
14. The Lead Agency reserves the right to exclude from consideration any good or service if, in its opinion, the pooling of purchasing requirements or needs of the participating contracting units is either not beneficial or not workable.
15. The Lead Agency shall appropriate sufficient funds to enable it to perform the administrative responsibilities assumed pursuant to this Agreement.
16. *It is agreed that each participating contracting unit shall pay the Lead Agency an annual fee of (AMOUNT OF FEE) as its estimated prorated share of the administrative costs incurred by the Lead Agency. This amount shall be paid (NUMBER OF DAYS) days from the receipt of billing from the Lead Agency. In the event this estimated prorated share should prove insufficient, each party agrees to pay an additional prorated sum to be determined by all of the participating units.²*

2. Clause 16 relating to the payment of an Administrative Fee is optional. If a Fee is charged, language defining how the Fee is established should be included. The participating contracting units may help underwrite the administrative costs incurred by the Lead Agency in fulfilling its role as "purchasing agent" for the System through the payment of an Administrative Fee. While the Fee is optional, the question of whether or not to impose a Fee should be resolved and agreed to by the participating members at the time the System is established.

17. It is further agreed that upon notification by the Lead Agency that it is about to award a contract to a vendor on behalf of itself and participating agencies, each participating agency shall issue a purchase order and make payment in advance to the Lead Agency for its respective portion of the pending contract. The Lead Agency shall hold such advance payment in trust for the purpose for which it was made in accordance with *N.J.A.C. 5:34-7.14(d)6iii* and shall promptly return any unneeded portion.
18. This Agreement shall become effective on (INSERT DATE) subject to the review and approval of the Director of the Division of Local Government Services and shall continue in effect for a period not to exceed five (5) years from said date unless any party to this Agreement shall give written notice of its intention to terminate its participation.³
19. All records and documents maintained or utilized pursuant to terms of this Agreement shall be identified by the System Identifier assigned by the Director, Division of Local Government Services, and such other numbers as are assigned by the Lead Agency for purposes of identifying each contract and item awarded.
20. This Agreement shall be binding upon and enure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their authorized corporate officers and their respective seals to be hereto affixed the day and year above written.

FOR THE LEAD AGENCY:

BY: _____
(NAME AND TITLE)

FOR THE PARTICIPATING UNIT:

BY: _____
(NAME AND TITLE)

3 Approval may be for less than five (5) years at the discretion of the Lead Agency

IX. COMMODITY RESALE SAMPLE DOCUMENTS

The following pages contain a series of sample documents for the establishment and participation in a Commodity Resale System. The Sample Agreement is for the sale of gasoline and diesel fuel.

The appropriate documents should be tailored to meet your specific needs. Any resolution or agreement be reviewed by counsel prior to adoption.

Be sure that the document clearly details the responsibilities of the parties and sets forth the procedures to be followed

SAMPLE FORM	PAGE
Lead Agency Resolution for the Establishment of a Commodity Resale System	33
Basis for an Agreement for the Resale of Gasoline and Diesel Fuel as part of a Commodity Resale System	34

**LEAD AGENCY RESOLUTION
FOR THE ESTABLISHMENT OF A COMMODITY RESALE SYSTEM
FOR THE RESALE OF GASOLINE AND DIESEL FUEL**

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ESTABLISH A COMMODITY RESALE SYSTEM AND TO ENTER INTO
COMMODITY RESALE AGREEMENTS WITH OTHER CONTRACTING UNITS

RESOLUTION NUMBER _____

WHEREAS, *N.J.A.C. 5:34-7.15* authorizes contracting units to establish a Commodity Resale System; and

WHEREAS, the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey is desirous of establishing a Commodity Resale System for the resale of (IDENTIFY COMMODITY (S)); and

WHEREAS, the (CONTRACTING UNIT) has agreed to serve as the Lead Agency for a Commodity Resale System with (LIST PARTICIPANTS)

NOW, THEREFORE BE IT RESOLVED on the (DATE OF ACTION) by the (GOVERNING BODY) of (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey, as follows:

The (GOVERNING BODY) hereby authorizes the creation of a Commodity Resale System to be known as the (NAME OF COMMODITY RESALE SYSTEM) with the (CONTRACTING UNIT) serving as the Lead Agency.

The (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into a contract with (CONTRACTING UNIT) for the sale of (NAME OF COMMODITY(S) TO BE SOLD).

COOPERATIVE PURCHASING GUIDELINES

A single certified copy of this Resolution along with (1) a copy of the (PURCHASE AGREEMENT) and (2) a copy of the Request for Registration or Modification of a Commodity Resale System Form (Cooperative Purchasing Form CP-2060) shall be forwarded to the Director of the Division of Local Government Services within the State Department of Community Affairs.

This resolution shall take effect immediately upon passage.

BY: _____

ATTEST BY:

(NAME AND TITLE)

(NAME AND TITLE)

**BASIS FOR AN AGREEMENT
FOR THE RESALE OF GASOLINE AND DIESEL FUEL
AS PART OF A COMMODITY RESALE SYSTEM**

AN AGREEMENT for the resale of [GASOLINE] [DIESEL FUEL] made on this _____ th day of _____, 20____ by and between the [MEMBER] and the [LEAD AGENCY] entered into pursuant to the Commodity Resale Provisions of the Cooperative Purchasing Rules (*N.J.A.C. 5:34-7.1 et seq.*).

WHEREAS, [LEAD AGENCY] owns and operates a fuel storage and dispensing facility for its own needs; and

WHEREAS, [MEMBER] is desirous of making use of the motor fuel system owned by [LEAD AGENCY] located at [LOCATION OF FUEL FACILITY].

NOW THEREFORE, in consideration for the promises and of the mutual covenants herein contained, the parties hereto agree as follows:

1. SUPPLY OF MOTOR FUEL

[LEAD AGENCY] will provide an estimated [NUMBER OF GALLONS] gallons of [TYPE OF FUEL/OCTANE] gasoline and [NUMBER OF GALLONS] gallons of [Number 2 DIESEL FUEL] per month for use by the [MEMBER]. In the event that [MEMBER] fuel consumption increases over the above stated gallons, the [LEAD AGENCY] shall bill for the actual amount of fuel consumed by [MEMBER].

2. BASE MOTOR FUEL RATE AND TIME OF PAYMENT

The rate that [MEMBER] shall pay for the motor fuel supply pursuant to the Agreement shall be the base motor fuel rate. It shall be computed as follows:

The [MEMBER] motor fuel rate shall be a combination of:

- (a) The contract cost which [LEAD AGENCY] pays for motor fuel; and
- (b) An administrative service charge of [INSERT PERCENT] percent on the amount of motor fuel actually supplied for the month.

3. PAYMENT OBLIGATION

A monthly invoice for the previous month's usage shall be forwarded to the [LEAD AGENCY] to [MEMBER] on or before the [DATE] of each month. Payment shall be made as required under Section 2 of this Agreement. Monies received from [MEMBER] shall be placed in the [ACCOUNT NAME]. If [MEMBER] has a negative cash balance for [NUMBER] consecutive billing periods, that shall constitute cause for termination of the Agreement. Prior to any termination, [MEMBER] shall receive a [INSERT NUMBER OF DAYS] advance notice regarding its negative cash balance.

4. FUEL DISPENSING

All motor fuels to be supplied by [LEAD AGENCY] to [MEMBER] shall be dispensed by metering pumps at the [NAME OF SITE] located at [ADDRESS OF SITE].

5. MOTOR FUEL DISPENSING SYSTEM

[LEAD AGENCY] will maintain at its own cost the motor fuel dispensing system. [MEMBER] shall have the right to verify the accuracy of the dispensing system at its expense. [MEMBER] shall give the [LEAD AGENCY] [NUMBER OF DAYS] days notice prior to conducting any test. [MEMBER] shall be assigned entrance keys to the motor fuel dispensing system. The keys shall remain the property of the [LEAD AGENCY].

6. HOURS OF SERVICE

Unless notified in writing, the supply of motor fuel(s) is available [INSERT NUMBER OF HOURS] per day or [BETWEEN THE HOURS OF] , [NUMBER OF DAYS] per week

7. EMERGENCIES

In the event of an emergency, [LEAD AGENCY] will use its best efforts to provide all motor fuel(s) that [MEMBER] requires.

8. MOTOR FUEL RATE CHANGES

Parties to this Agreement acknowledge and understand that the contract cost in Paragraph 2 fluctuates based upon the contract rate [LEAD AGENCY] must pay for the delivery of motor fuel to its dispensing facility. [LEAD AGENCY] shall notify [MEMBER] of any changes in the method of contract cost calculation [INSERT NUMBER OF DAYS] days before imposing any such rate change(s).

9. EXCUSED PERFORMANCE

[LEAD AGENCY] agrees to use its best efforts to provide a continuous and regular and uninterrupted supply of motor fuel, subject to the terms of this Agreement.

10. INDEMNIFICATION

[MEMBER] shall completely indemnify, protect and hold harmless [LEAD AGENCY] from any and all costs, expenses, liability, losses, claims, suits and proceeding of any nature whatsoever brought against the [LEAD AGENCY] as an additional insured on its liability policy with a minimum of [INSERT AMOUNT]. [MEMBER] shall provide evidence of same by providing [LEAD AGENCY] with a Certificate of Insurance within [NUMBER OF DAYS] after this Agreement goes into effect. Failure of [MEMBER] to provide such a Certificate of Insurance shall be cause for termination of this Agreement.

11. TERMINATION

This Agreement shall be in effect to a period of [INSERT NUMBER OF YEARS] upon approval by the governing bodies of [LEAD AGENCY] and [MEMBER].

Either party may terminate this Agreement with [INSERT NUMBER OF DAYS] advance notice by certified mail, to the official address of the other party.

12. GOVERNING LAW

COOPERATIVE PURCHASING GUIDELINES

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written.

FOR THE LEAD AGENCY:

BY: _____
(NAME AND TITLE)

FOR THE PARTICIPATING UNIT:

BY: _____
(NAME AND TITLE)

FR 05.11.01