

**Government Purchasing Association
of
New Jersey, Inc.**



Procurement Guide

The information presented in this publication by the Governmental Purchasing Association of New Jersey is intended as a basic guideline for those individuals who normally do not work in the day-to-day operations of the purchasing function. This booklet is not intended to replace the various purchasing resources readily available that will provide detailed and in-depth information regarding the purchasing laws, rules and policies in the State of New Jersey.

Information for this booklet was obtained from sources listed on pages 18 and 19.

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Table of Contents

Page 3

Introduction	
What is Public Procurement?.....	4
Objective of Public Procurement.....	4
Public vs. Private Procurement.....	4
Legal Basis for Public Procurement in New Jersey.....	5
Methods of Procurement	
Determining the Correct Method	5
Methods of Public Procurement	6
Quotes	6
Sealed Bids.....	6
Competitive Contracting.....	6
Request for Proposals/Qualifications (RFP/RFQ).....	6
State Contracts.....	6
Emergencies	6
Determining Factors	
Authority to make purchase	7
Advertising.....	7
Qualified Purchasing Agent.....	7
Required Documents	
Pay-to-Play.....	8
Prevailing Wage	8
Public Works Contractor Certificate.....	8
Business Registration Certificate	8
Affirmative	8
Public Works Contractor Certificate.....	8
Threshold	13
Contract Restrictions	13
Maximum length of contracts	13
Proprietary goods and services.....	13
Miscellaneous	
Sole Source.....	14
Brand-name or Equal.....	14
Bonding.....	14
Insurance	14
Disposal of Surplus Personal Property	14
Education/Training/Ethics in Public Procurement	15
Before you Buy, Ask Yourself these Question	16
Characteristics of a Good Specification	17
Resources	18
Statutes.....	19

Introduction

What is Public Procurement?

Public Procurement is a management tool for acquiring goods and services, but it also involves planning, meeting all statutory requirements, and ensuring fair and open competition. In many entities, the procurement function also involves administering the contract, dealing with vendors, scheduling inventory control, maintaining fixed asset records and assisting the using departments when there are problems with the contract.



Objective of Public Procurement

Procurement involves so much more than finding the lowest price. It involves finding the right good or service in the right quality, in the right quantity, at the right price at the right time; it also involves finding the right source while using the right method.

Equally, or even more important, is gaining the public trust as custodian of their money, ensuring them that fair and open competition is being used.

Public vs. Private Procurement

The public procurement process is subject to many statutory and regulatory rules not required in private industry. There are several state-approved methods for obtaining pricing, and thresholds determine the need for quotes or sealed bids. And there are many requirements for various paperwork before contracts can be awarded. Determining what is required by whom, when and how is all part of public procurement.

Unlike procurement in private industry, public procurement is open for public review. The process needs to be open to scrutiny to ensure taxpayer trust in government and must be fair and open, with not even the hint or perception of favoritism or impropriety. Meeting these goals reduces government's exposure to lawsuits, protests and public embarrassment.

Legal Basis for Public Procurement in NJ

The Local Public Contracts Law (N.J.S.A. 40A:11) and the Administrative Code (N.J.A.C. 5:30 & 5:34) are the main statutory & regulatory requirements. However, there are several other statutes that govern public procurement. To name a few: Stockholder Disclosure Certificate, Business Registration Certificate, Pay-to-Play, Affirmative Action, Prevailing Wage, Public Works Contractor Certificate and Prompt Payment Act.. In addition, the procurement official must work closely with other departments in the entity, including:the C.F.O. and the Clerk and adhere to their statutory requirements.

Methods of Procurement

Determining the Correct Method

The method to be used is determined by the good or service that is being purchased, as well as the aggregation for, or total amount spent on a similar good or service in a specified contract period.

State law establishes thresholds which require agencies to seek quotes or receive bids. The Governor adjusts the threshold amounts every five years, rounding the adjustment to the nearest \$1,000. The adjustment is effective on July 1 of the year in which it is made.

The quote threshold is 15% of the established bid threshold. Under the quote threshold, good judgment should be used. Each agency can adjust the thresholds below the maximum authorized by statute.

It is important to remember that the contract amount is for the specified contract period. Therefore, a two-year contract for \$15,000 per year is valued at \$30,000. Such a situation governed by the receipt of bids or procured through a co-operative purchasing program.

Methods of Procurement (cont.)

Methods of Procurement

The amount of and purpose for a contract determines the method of procurement to be used. For each method used, there are procedures in place.

- Quotes can be written or oral. The minimum number of quotes is two, if practicable, by statute.
- Sealed Bids are sealed proposals received by the agency. There are different statutory requirements for goods and services bids and for construction bids.
- Competitive Contracting is treated like a sealed bid, but the award can be made on the most advantageous price and other factors considered. The LPCL specifies which services qualify for this type of procedure.
- Request for proposals and request for qualifications are often used for professional services. They do not have the same rigid statutory paperwork requirements and allow for an award based on factors other than price.
- State Contracts and other Cooperative purchasing programs, including county or regional cooperatives and GSA (currently limited to copiers). One lead agency bids for the requirements of all members to secure savings from bulk purchases.
- Emergencies N.J.S.A. 40A:11-6, clarified by N.J.A.C. 5:34-6.1, outlines the general requirements for emergency purchases and contracts. In addition, the statute requires each governing body to adopt rules or regulations to determine the chain of command and confirm the existence of an emergency.

Determining Factors

Authority to Make Purchase

Purchases are contracts between the agency and the vendor. All contracts must be in writing and can be in the form of a purchase order. Unless an emergency exists, funds shall be encumbered before the purchase is made.

The governing body of each agency is responsible for any contracts over the threshold established by statute or local ordinance. The government body can designate a purchasing agent to award contracts for an amount less than the statutory threshold. Individual employees do not have the authority to enter into a contract on behalf of the agency.

Advertising

State statutes require Notice to Bidders for quotations, Pay-to-Play and bids over minimum thresholds. The length of time, method of advertising and statutory wording in the advertisement varies with the threshold and procurement method used.

Qualified Purchasing Agent

A qualified purchasing agent is the individual who has the authority, responsibility and accountability for the purchasing activity of the agency and who has completed appropriate training and purchasing experience as outlined in the statute. Agencies who name a qualified purchasing agent can take advantage of higher quote and bid thresholds. Each agency can name only one QPA.

Required Documents

Pay To Play

N.J.S.A. 19:44A-20.4 et seq. and N.J.S.A. 19:44A-20.26 affect all contracts over \$17,500. These contracts can be awarded by the “fair and open” method of bids or competitive contracting or by the “not-fair and open” method which limits and requires documentation on the amount of political contributions that contracted vendors can make.

Prevailing Wage

N.J.S.A. 34:11-56.48 et seq. established a prevailing wage level for workers engaged in public works. Agencies are required to notify contractors in the specifications if a project is subject to prevailing wage and to receive the required documentation.

Public Works Contractor Certificate

N.J.S.A. 34:11-56 et seq. requires contractors who are bidding on public works projects to be registered annually with the State.

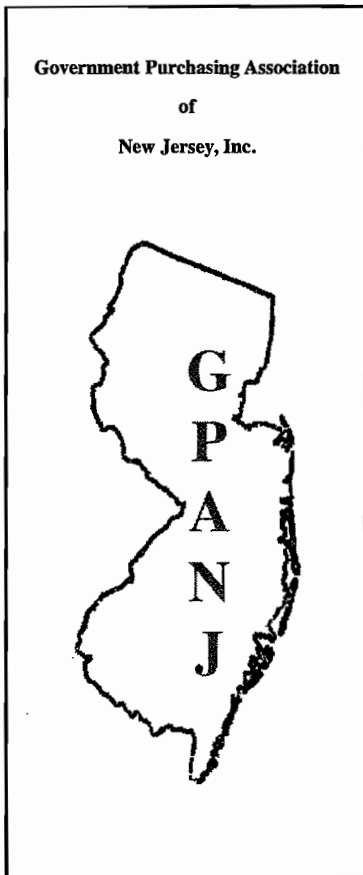
Affirmative Action

N.J.S.A. 10:5-31 et seq. requires Affirmative Action language to be included in the notice to bidders, in the contracts and requires filing of documentation by those entering in contracts with an agency.

Business Registration Certificate

N.J.S.A. 52:32-44 requires that all business organizations that do business with a contracting agency register with the State, and provide proof of that registration to the local contracting agency before the contracting agency enters into a contract with the business organization, as follows: In response to a request for receipt of bids or a request for receipt of competitive proposals, at the time a bid or proposal is submitted; or for all other transactions, before the issuance of a purchase order or other type of contract document.

**Visit us on the WEB:
www.GPANJ.org**



**For answers to your questions,
E-mail us at:
memberservices@gpanj.org**

Join the Governmental Purchasing Association of New Jersey (GPANJ)

General Information

The Governmental Purchasing Association of New Jersey, Inc. was founded in 1959, and has been dedicated to promoting professionalism and creditable purchasing methods. Over 300 members represent cities, boroughs, townships, boards of education, utilities, authorities, colleges and parks, as well as county and state agencies.

Purpose of Association

- To promote and foster professional competence.
- To study, discuss and recommend improvements in governmental purchasing regulations.
- To make available specifications and bid documents to members.
- To collect/distribute governmental purchasing officials information on the organization and administration of governmental purchasing.
- To work for improvement of laws relating to governmental purchasing.

Membership Eligibility

Those who are employed by governmental agencies or subdivisions in the State of New Jersey whose duties consist in whole or in part of purchasing materials, supplies, apparatus, equipment or contractual services are eligible for membership.

Meetings

General membership dinner meetings are held six times a year at a centrally located restaurant.

These meetings feature prominent guest speakers and offer the purchasing official the opportunity to make professional contacts. Participants share in the interchange of information and problem solving sessions. Purchasing procedures and legislation are also discussed.

Complete the Membership Application Form on opposite page and mail in to join the GPANJ.

Certification credits are awarded for attendance at General Membership meetings.

Membership Application Form

Please enroll the following in the Governmental Purchasing Association of New Jersey, Inc.

Name _____

Title _____

Governmental Agency _____

Address _____

Telephone _____

E-Mail _____

- Enclosed is check for annual dues in the amount of \$90.00
 Enclosed is a purchase order - P.O. # _____

Mail to : Donna Griffin, GPANJ
Manchester Township
1 Colonial Drive
Manchester, NJ 08759

Learn more about
GPANJ!

Network with Purchasing
Professionals from around
the State.

Join us at the next
GPANJ Meeting!

Determining Factors

(Continued from Page 8)

Thresholds

The current thresholds are:

- Bid: Up to \$21,000 without Qualified Purchasing Agent or up to \$29,000 with a Q.P.A., or any amount under these amounts, as determined by the entity
- Quote: 15% of bid threshold as determined by the agency
- Business Registration Certificate required for amounts over the quote threshold and is aggregated by vendor not by commodity
- Affirmative Action Set Aside: for construction is 1/2 of 1% of contracts over \$2.5 million.
- Pay-to-Play: \$17,500
- Prevailing Wage: \$11,892 for municipalities, \$2,000 for all non-municipalities

Contract Restrictions

- Maximum length of contracts: The L.P.C.L. N.J.S.A. 40A:11-15 has the maximum length of various types of contracts. Generally, the most common are:
 - Professional Services—one year
 - Most goods and services—two years
- Proprietary goods and services are those which are of a specialized nature, and necessary for the conduct of business. They still must be bid, but it is not necessary to specify that an acceptable equal will be accepted. For instance, if the warranty of playground equipment will become null and void if another manufacturer's swings are used, a specification may be written limiting the bid to one manufacturer. If all current water meters are one brand name and the entity has an investment in equipment, training and repair parts for one brand, a proprietary bid could be acceptable.

Miscellaneous

- **Sole source:** The State does not recognize sole source suppliers even when vendors say that no one else can supply the product or service. Public bids are required for goods and services not on the exempt list (40A:11-5). Generally, bids specifications should be written to allow for an acceptable equal. The statute does allow for bids for proprietary goods under certain circumstances.
- **Brand-name or equal:** Unless there is a specific reason for using a particular brand name, such as replacement parts for playground equipment when the warranty requires a certain brand, specifications shall be "brand name or equivalent." The brand designated should be for the purpose of reference as to the minimum standard that must be met. The designated brand name should not be a statement of preference. The purchasing agent should refer to the rules (N.J.A.C. 5:34-9.2)
- **Bonding:** For construction bids over \$100,000, bid bonds, consent of surety and performance bonds are required. Labor payment and material bonds may be required. For bids less than that amount, they are optional. It is important to know the difference and the characteristics of valid bonds.
- **Insurance:** requirements vary by the project and the agency. The entity may require the contractor to purchase and maintain insurance during the life of the contract. Generally, the entity is named as certificate holder and additional insured.
- **Disposal of Surplus Property:** The statute allows for trade-ins to be included as part of a bid specification. In addition, there are methods of sale of personal property in N.J.S.A. 40A:11-36. The value of the property must be in excess of 15% of the bid threshold.

Education/Training/ Ethics in Public Procurement

Education/Training: The Center Government for Services at Rutgers University offers three courses in public procurements. Those successfully completing Purchasing I, II and III, as well as Local Government Finance, qualify to be a Registered Public Purchasing Official (RPPO) if they are responsible for the day-to-day procurement functions in their entity and have five years experience.

In addition, the State of New Jersey issues certificates for Qualified Purchasing Agents (QPA) who meet certain criteria. These include having a RPPO certificate or certificate from a national organization with a minimum number of years acting as the Purchasing Agent in an entity.

There are a number of continuing education programs and seminars available throughout the year sponsored by the New Jersey League of Municipalities, the Governmental Purchasing Association of New Jersey (GPANJ) and the North and South New Jersey chapters of the National Institute of Governmental Purchasing (NIGP).

Ethics in Public Procurement: N.J.S.A. 40A:9-22.1 et seq., the New Jersey Code of The Local Government Ethics Law was enacted in 1991. It begins by stating that, "Public office and employment are a public trust." To that end, public procurement should be based on but not limited to principles of accountability, effective, efficient procedures, integrity, informed decision-making, legality, responsiveness and transparency.

Before You Buy, Ask Yourself These Questions

Why Bid?

- *Local Public Contracts Law*
- *Maintains public trust in how their tax dollars are spent*
- *Maintains vendor trust in the process*
- *Aggregation (40A:11-2(19))*
- *Fosters competition*
- *Lowers prices*
- *Raises quality*

What thresholds apply?

- *Quotes*
- *Sealed Bids*
- *Prevailing Wages*
- *Business Registration Certificate*
- *Pay-To-Play*
- *Authorizing Resolution*

If the item is over the bid threshold, what method will you use?

- *Sealed bid*
- *Competitive contract*
- *Extraordinary Unspecifiable Service*
- *Professional Service Agreement*
- *Proprietary Bid*
- *State Contract or local co-op*
- ***THERE IS NO SOLE SOURCE SUPPLIER!***

Who has the authority to award the contract?

Is a resolution by the government body required?

Characteristics of a Good Specification

Good Specifications

- *Regularly reviewed to ensure that it meets agency needs, as well as all current statutory requirements and sound procurement practices*
- *Modified for each bid, depending on the requirements; i.e. bonding and insurance requirements and applicable dates*
- *Written in a logical, easily understood manner that leaves no questions for vendors submitting bids and reduces any chance of vendor protests*
- *Identifies the minimum requirements of suitability and acceptability*
- *Insures maximum competition.*
- *Provides a test or inspection method*
- *Includes measurable methodology for an equitable award at the lowest responsive and responsible price.*

The ABC's Of A Good Specification

ACCURATE

BRIEF

CLEAR

Keep It Simple and Short

Resources



Websites of Interest

Governmental Purchasing Association of NJ:

<http://www.gpanj.org/>

Division of Local Government Services:

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

NJ State Contracts:

<http://www.state.nj.us/treasury/purchase/contracts.htm>

NJ Cooperative Purchasing:

<http://www.state.nj.us/treasury/purchase/cooppurc.htm>

NJ Dept. of Corrections: (items available for purchase)

<http://www.state.nj.us/deptcor/>

NJ Dept. of Treasury, Division of Contract Compliance and EEO
in Public Contracting:

http://www.state.nj.us/treasury/contract_compliance/index.html

Prevailing Wages

<http://www.state.nj.us/labor/lse/lspubcon.html>

NJ Board of Public Utilities (BPU):

<http://www.state.nj.us/bpu/home/home.shtml>

NJ League of Municipalities:

<http://www.njslom.org/>

Rutgers University, Center for Government Services:

<http://policy.rutgers.edu/cgs/>

State of NJ Government Information:

<http://www.state.nj.us/nj/govinfo/>

National Institute of Governmental Purchasing:

<http://www.nigp.org/>

Southern NJ National Institute of Governmental Purchasing:

<http://www.sjnigp.org/>

Northern NJ National Institute of Governmental Purchasing:

Foti@co.somerset.nj.us

Guide to Bidding Goods & Services

<http://www.state.nj.us/dca/lgs/lpcl/yellowbook/index.shtml>

Procurement-Related Statutes/Regulations

N.J.S.A. 40A:11 Local Public Contracts Law

N.J.S.A. 18A:18A Public School Contracts Law

N.J.A.C. 5:34 & 5:30 Local Public Contracts Law Rules

N.J.S.A. 10:5-31 Affirmative Action

N.J.S.A. 52:25-24.2 Disclosure of Stockholder Ownership

N.J.S.A. 56:25 Prevailing Wage Act

N.J.S.A. 56.48 Public Works Contractor Registration

N.J.S.A. 52:32-44 Business Registration Certification

N.J.S.A. 52:38-1 et seq. Project Labor Agreement

42 U.S.C. S12101 American with Disabilities Act

N.J.S.A. 40A:11-21 Bid Bond

N.J.S.A. 40A:11-22 Performance Bond

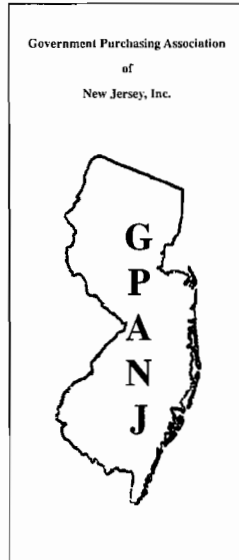
N.J.S.A. 40A:11-22 Consent of Surety

N.J.S.A. 19:44A –20.26 et seq. Pay-to-Play

N.J.S.A. 2A:30A-1 et seq. Prompt Payment

**GOVERNMENTAL
PURCHASING ASSOCIATION
OF NEW JERSEY**

Donna Griffin, GPANJ
Manchester Township
1 Colonial Drive
Manchester, NJ 08759



***Visit us on the WEB: www.GPANJ.org
For answers to your questions, E-mail us at: memberservices@gpanj.org
(Membership application enclosed)***