

goods or services, shall be divided, so as to bring it or any of the parts thereof under the bid threshold, for the purpose of dispensing with the requirement of public advertising and bidding therefor.

b. In contracting for the provision or performance of any goods or services included in or incidental to the provision or performance of any work which is single in character or inclusive of the provision or performance of additional goods or services, all of the goods or services requisite for the completion of such contract shall be included in one contract.

L.1971,c.198,s.7; amended 1975, c.353, s.7; 1979, c.350, s.4; 1985, c.60, s.4; 1985, c.469, s.9;1999, c.440, s.12.

40A:11-7.1 Rules concerning determinations of aggregation.

13. For the purpose of ensuring consistency between the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., the Director of the Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules concerning determinations of aggregation for the purposes of whether a contract is subject to public bidding as set forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4 and 40A:11-7) and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and N.J.S.18A:18A-8.

L.1999,c.440,s.13.

40A:11-8 Bids for provision or performance of goods or services.

8. Every contracting agent shall, at intervals to be fixed by the governing body, solicit by public advertisement the submission of bids for the provision or performance of goods or services which are and which under section 4 of P.L.1971, c.198 (C.40A:11-4) can be contracted to be provided or performed only after public advertisement for bids and bidding therefor and all contracts for the provision or performance of such goods or services shall be awarded only in that manner.

L.1971,c.198,s.8; amended 1999, c.440, s.14.

40A:11-9 Purchasing agent, department or board; establishment; powers.

9. Purchasing agent, department or board; establishment; powers.

a. The governing body of any contracting unit may by ordinance, in the case of a municipality, by ordinance or resolution, as the case may be, in the case of a county, or by resolution in all other cases, establish the office of purchasing agent, or a purchasing department or a purchasing board, with the authority, responsibility, and accountability as its contracting agent, for the purchasing activity for the contracting unit, to prepare public advertising for bids and to receive bids for the provision or performance of goods or services on behalf of the contracting unit and to award contracts permitted pursuant to subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3) in the name of the contracting unit, and conduct any activities as may be necessary or appropriate to the purchasing function of the contracting unit.

b. The Director of the Division of Local Government Services, after consultation with the Commissioner of Education, shall establish criteria to qualify individuals who have completed appropriate training and possess such purchasing experience as deemed necessary to exercise such supplemental authority as may be set forth in subsection a. of section 3 of P.L.1971, c.198 (C.40A:11-3). These criteria also shall authorize county purchasing agents certified pursuant to P.L.1981, c.380 (C.40A:9-30.1 et seq.) to exercise such supplemental authority.

L.1971,c.198,s.9; amended 1975, c.353, s.8; 1977, c.53, s.5; 1999, c.440, s.15.

40A:11-10 Joint agreements for provision and performance of goods and services; cooperative marketing; authorization.

10. Joint agreements for provision and performance of goods and services; cooperative marketing; authorization.

(a) (1) The governing bodies of two or more contracting units may provide by joint agreement for the provision and performance of goods and services for use by their respective jurisdictions.

(2) The governing bodies of two or more contracting units providing sewerage services pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint agreement for the purchase of goods and services related to sewage sludge disposal.

(3) The governing body of two or more contracting units providing electrical distribution services pursuant to and in accordance with R.S.40:62-12 through R.S.40:62-25, may provide by joint agreement for the provision or performance of goods or services related to the distribution of electricity.

(4) The governing bodies of two or more contracting units may provide for the cooperative marketing of recyclable materials recovered through a recycling program.

(5) The governing bodies of two or more contracting units may provide by joint agreement for the purchase of the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent for the provision of cable television service pursuant to R.S.40:48-1 et seq. and the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented.

(b) The governing body of any contracting unit may provide by joint agreement with the board of education of any school district for the provision and performance of goods and services for use by their respective jurisdictions.

(c) Such agreement shall be entered into by resolution adopted by each of the participating bodies and boards, which shall set forth the categories of goods or services to be provided or performed, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating body and board, and other matters deemed necessary to carry out the purposes of the agreement.

(d) Each participating body's and board's share of expenditures for purchases under any such agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the participating body and board.

Letter of Appeal
Schools and Libraries Division
October 26, 2006
Page 5

Thomas**Communications**
& Technologies LLC

Attachment 2
Public School Contracts Law (N.J.S.A. 18A-1 et seq.)

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PSCL - Public School Contracts Law

Public School Contracts Law

NJ.S.A. 18A:18A-1 et seq.

(Current as of March 2004)

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18:18A-1. Short title; citation

This chapter shall be known and may be cited as the "Public School Contracts Law."

P.L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-2. Definitions

As used in this chapter, unless the context otherwise indicates:

a. "Board of education" means and includes the board of education of any local school district, consolidated school district, regional school district, county vocational school and any other board of education or other similar body other than the State Board of Education, the Commission on Higher Education or the Presidents' Council, established and operating under the provisions of Title 18A of the New Jersey Statutes and having authority to make purchases and to enter into contracts for the provision or performance of goods or services. The term "board of education" also shall include the board of trustees of a charter school established under P.L.1995, c.426 (C.18A:36A-1 et seq.).

- b. "Purchasing agent" means the secretary, business administrator or the business manager of the board of education duly assigned the authority, responsibility and accountability for the purchasing activity of the board of education and having the power to prepare advertisements, to advertise for and receive bids and to award contracts as permitted by this chapter, but if there be no secretary, business administrator or business manager, such officer, committees or employees to whom such power has been delegated by the board of education.
- c. (Deleted by amendment, P.L.1999, c.440.)
- d. "District" means and includes any local school district, consolidated school district, regional school district, county vocational school and any other board of education or other similar body other than the State board, established under the provisions of Title 18A of the New Jersey Statutes.
- e. (Deleted by amendment, P.L.1999, c.440.)
- f. (Deleted by amendment, P.L.1999, c.440.)
- g. "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.
- h. "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.
- i. (Deleted by amendment, P.L.1999, c.440.)
- j. "Purchases" means transactions, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.
- k. "Work" means any task, program, undertaking, or activity, related to any development, redevelopment, construction or reconstruction performed or provided pursuant to a contract with a board of education.
- l. "Aggregate" means the sums expended or to be expended for the provision or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the same contract year through a contract awarded by a purchasing agent.
- m. "Bid threshold" means the dollar amount set in N.J.S.18A:18A-3, above which a board of education shall advertise for and receive sealed bids in accordance with procedures set forth in N.J.S.18A:18A-1 et seq.
- n. "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a board of education which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a board of education for the vendor's right to perform a service, such as, but not limited to, operating a concession.

- o. "Contract year" means the period of 12 consecutive months following the award of a contract.
- p. "Competitive contracting" means the method described in sections 45 through 49 of P.L.1999, c.440 (C.18A:18A-4.1 through C.18A:18A-4.5) of contracting for specialized goods and services in which *formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or school business administrator; and the board of education awards a contract to a vendor or vendors from among the formal proposals received.*
- q. "Goods and services" or "goods or services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a purchasing agent, including goods and property subject to N.J.S.12A:2-101 et seq.
- r. "Library and educational goods and services" means textbooks, copyrighted materials, student produced publications and services incidental thereto, including but not limited to books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials, and specialized computer software used as a supplement or in lieu of textbooks or reference material.
- s. "Lowest price" means the least possible amount that meets all requirements of the request of a purchasing agent.
- t. "Lowest responsible bidder or vendor" means the bidder or vendor: (1) whose response to a request for bids offers the lowest price and is responsive; and (2) who is responsible.
- u. "Official newspaper" means any newspaper designated by the board of education pursuant to R.S.35:1-1 et seq.
- v. "Purchase order" means a document issued by the purchasing agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the board of education, which, when fulfilled in accordance with the terms and conditions of a request of a purchasing agent and other provisions and procedures that may be established by the board of education, will result in payment by the board of education.
- w. "Quotation" means the response to a formal or informal request made by a purchasing agent to a vendor for provision or performance of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the purchasing agent.
- x. "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.
- y. "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.
- z. "Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a board of education to house school district functions or provide water, waste disposal, power, transportation and other public infrastructures.
- aa. "Concession" means the granting of a license or right to act for or on behalf of the board of

education, or to provide a service requiring the approval or endorsement of the board of education, and which may or may not involve a payment or exchange, or provision of services by or to the board of education, provided that the term concession shall not include vending machines.

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

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

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

Amended 1994, c.48, s.59; 1999, c.440, s.50.

18A:18A-3. Bid threshold

a. When the cost or price of any contract awarded by the purchasing agent in the aggregate, does not exceed in a contract year the total sum of \$17,500, the contract may be awarded by a purchasing agent when so authorized by resolution of the board of education without public advertising for bids and bidding therefor, except that the board of education may adopt a resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. If the purchasing agent is qualified pursuant to subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9) the board of education may establish that the bid threshold may be up to \$25,000. Such authorization may be granted for each contract or by a general delegation of the power to negotiate and award such contracts pursuant to this section.

b. Commencing in the fifth year after the year in which P.L.1999, c.440 takes effect, and every five years thereafter, the Governor, in consultation with the Department of the Treasury, shall adjust the threshold amount and the higher threshold amount which the board of education is permitted to establish as set forth in subsection a. of this section or the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the index rate as that term is defined in N.J.S.18A:18A-2, and shall round the adjustment to the nearest \$1,000. The Governor shall notify all local school districts of the adjustment no later than June 1 of every fifth year. The adjustment shall become effective on July 1 of the year in which it is made.

Any contract made pursuant to this section may be awarded for a period of 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 may be awarded for a period not exceeding 12 consecutive months.

Amended 1980, c.144, s.1; 1983, c.171, s.1; 1999, c.440, s.51.

18A:18A-3.1. Private driver education schools

Boards of education may enter into contracts with private driver education schools for the purpose of providing driver education courses to students on an individual or group basis, according to rules prescribed by the Commissioner of Education, when it is determined by the local board of education that the private driver education school can provide behind-the-wheel driver education that is substantially equivalent to that provided by the board of education, and at less cost than current or other proposed programs.