SENATE, No. 4074



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED NOVEMBER 27, 2023

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

Co-Sponsored by:

Senator Burgess

SYNOPSIS

Requires boards of education, municipalities, counties, and certain other local contracting units to determine and utilize cost-saving practices when procuring goods and services.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning cooperative purchasing by certain contracting units, amending N.J.S.18A:18A-1 et seq., P.L.1971, c.198, and P.L.1999, c.440, and supplementing chapter 27D of Title 52 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.18A:18A-2 is amended to read as follows:

18A:18A-2. 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**]** Secretary of 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**]** is 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.

ee. "Cooperative purchasing system" means a cooperative pricing system, joint purchasing system, commodity resale system, county cooperative contract purchasing system, or regional cooperative pricing system in which a board of education, or in which two or more boards of education, enter into a contract for the procurement of goods or services.

(cf: P.L.1999, c.440, s.50)

2. N.J.S.18A:18A-3 is amended to read as follows:

18A:18A-3. 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 possesses a qualified purchasing agent certificate 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 (C.40A:11-4.1 et al.) 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.

c. Prior to entering into a contract for the procurement of any goods or services, the board of education shall ensure that the contractor and any subcontractors are compliant with existing State and federal laws, rules, and regulations concerning:

(1) the antidiscrimination provisions of R.S.10:2-1 through R.S.10:2-4;

(2) the "Law Against Discrimination," P.L.1945, c.169  
(C.10:5-1 et seq.);

(3) the antidiscrimination, equal employment opportunity, and affirmative action provisions applicable pursuant to P.L.1975, c.127 (C.10:5-31 et seq.);

(4) business registration requirements as described pursuant to P.L.2001, c.134 (C.52:32-44 et al.);

(5) the contribution restriction provisions pursuant to P.L.2005, c.51 (C.19:44A-20.13 et seq.);

(6) prevailing wage requirements pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.);

(7) the provisions of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.);

(8) the American goods sourcing provisions of section 18 of P.L.1971, c.198 (C.40A:11-18);

(9) valid classification in a trade as issued by the Division of Property Management and Construction in the Department of Treasury;

(10) submission of a sworn contractor certification pursuant to section 63 of P.L.2000, c.72 (C.18A:7G-37);

(11) compliance by local government officers and employees pursuant to section 5 of P.L.1991, c.29 (C.40A:9-22.5);

(12) the disclosure of investment activities in Iran pursuant to P.L.2012, c.25 (C.52:32-55 et al.); and

(13) provisions concerning the prohibited activities in Belarus and Russia pursuant to section 7 of P.L.2022, c.3 (C.52:32-60.2).

d. 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.

(cf: P.L.2009, c.166, s.6)

3. N.J.S.18A:18A-4 is amended to read as follows:

18A:18A-4. a. Every contract for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by resolution of the board of education to the lowest responsible bidder after public advertising for bids and bidding therefor, except as is provided otherwise in this chapter or specifically by any other law.

The board of education may, by resolution approved by a majority of the board of education and subject to subsections b. and c. of this section, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder, if the board of education finds that any board or, in the case of a contract for a school facilities project, the New Jersey Economic Development Authority, has had prior negative experience with the bidder within the past 10 years, as reported in a contractor evaluation submitted pursuant to N.J.S. 18A:18A-15 or in a school facilities project performance evaluation submitted pursuant to regulations of the Department of the Treasury or section 62 of P.L.2000, c.72 (C.18A:7G-36), as appropriate.

b. As used in this section, "prior negative experience" means any of the following:

(1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with a board of education or, in the case of a school facilities project, with the New Jersey Economic Development Authority;

(2) the bidder defaulted on a contract, thereby requiring a board of education or, in the case of a school facilities project, the New Jersey Economic Development Authority, to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract;

(3) the bidder defaulted on a contract, thereby requiring a board of education or, in the case of a school facilities project, the New Jersey Economic Development Authority, to look to the bidder's surety for completion of the contract or tender of the costs of completion; or

(4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with a board of education or, in the case of a school facilities project, with the New Jersey Economic Development Authority.

c. The following conditions apply if the board of education is contemplating a disqualification based on prior negative experience:

(1) The existence of any of the indicators of prior negative experience set forth in this section shall not require that a bidder be disqualified. In each instance, the decision to disqualify shall be made within the discretion of the board of education and shall be rendered in the best interests of the board of education.

(2) All mitigating factors shall be considered in determining the seriousness of the prior negative experience and in deciding whether disqualification is warranted.

(3) The bidder shall be furnished by the board of education with a written notice (a) stating that a disqualification is being considered; (b) setting forth the reason for the disqualification; and (c) indicating that the bidder shall be accorded an opportunity for a hearing before the board of education if the bidder so requests within a stated period of time. At the hearing, the bidder shall show good cause why the bidder should not be disqualified by presenting documents and testimony. If the board of education determines that good cause has not been shown by the bidder, it may vote to find the bidder lacking in responsibility and, thus, disqualified.

(4) Disqualification shall be for a reasonable, defined period of time which shall not exceed five years.

(5) A disqualification, other than a disqualification pursuant to which a board of education is prohibited by law from entering into a contract with a bidder, may be voided or the period thereof may be reduced, in the discretion of the board of education, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as reversal of a judgment, or actual change of ownership, management or control of the bidder.

(6) An opportunity for a hearing need not be offered to a bidder whose disqualification is based on its suspension or debarment by an agency or department of the executive branch of the State of New Jersey. The term of such a disqualification shall be concurrent with the term of the suspension or debarment by the State agency or department.

d. The purchase of text books and materials that exceed the bid threshold and are approved by a board of education pursuant to N.J.S.18A:34-1 shall not require the further adoption of a resolution for purchase.

e. Notwithstanding the provisions of this section to the contrary, prior to the procurement of any goods or services pursuant to this section, the purchasing agent shall determine if entering into a cooperative purchasing system, as defined in subsection ee. of N.J.S.18A:18A-2, for the procurement of the goods or services will result in cost savings. A cost savings analysis prescribed by the Division of Local Government Services in the Department of Community Affairs pursuant to section 10 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall include, but not be limited to, factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. If the purchasing agent determines that entering into a cooperative purchasing system for the procurement of goods or services will result in cost savings, the board of education shall utilize a cooperative purchasing system.

f. Prior to entering into a contract for the procurement of any goods or services, the board of education shall ensure that the contractor and any subcontractors are compliant with existing State and federal laws, rules, and regulations as enumerated in subsection c. of N.J.S.18A:18A-3.

(cf: P.L.2002, c.90, s.1)

4. Section 45 of P.L.1999, c.440 (C.18A:18A-4.1) is amended to read as follows:

45. Notwithstanding the provisions of any law, rule or regulation to the contrary, competitive contracting may be used by boards of education in lieu of public bidding for procurement of specialized goods and services the price of which exceeds the bid threshold, for the following purposes:

a. The purchase or licensing of proprietary computer software designed for board of education purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

(1) the operation, management or administration of recreation or social service facilities or programs; or

(2) the operation, management or administration of data processing services;

c. Services performed by an organization engaged in providing energy conservation education and training services to train employees of a board of education to reduce consumption of energy;

d. Telecommunications transmission or switching services that are not part of a tariff or schedule of charges filed with the Board of Public Utilities;

e. The purchase of specialized machinery or equipment of a technical nature, or servicing thereof, which will not reasonably permit the drawing of specifications;

f. Food services provided by food service management companies when not part of programs administered by the New Jersey Department of Agriculture, Bureau of Child Nutrition Programs;

g. Driver education courses provided by licensed driver education schools;

h. At the option of the board of education, any good or service that is exempt from bidding pursuant to N.J.S.18A:18A-5;

i. Laboratory testing services;

j. Concessions;

k. The operation, management or administration of other services, with the approval of the Division of Local Government Services in the Department of Community Affairs.

Any purpose included herein shall not be considered by a board of education as an extraordinary unspecifiable service pursuant to paragraph (2) of subsection a. of N.J.S.18A:18A-5.

l. Notwithstanding the provisions of this section to the contrary, prior to the procurement of any goods or services pursuant to this section, the purchasing agent shall determine if entering into a cooperative purchasing system, as defined in subsection ee. of N.J.S.18A:18A-2, for the procurement of the goods or services will result in cost savings. A cost savings analysis prescribed by the Division of Local Government Services in the Department of Community Affairs pursuant to section 10 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall include, but not be limited to, factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. If the purchasing agent determines that entering into a cooperative purchasing system for the procurement of goods or services will result in cost savings, the board of education shall utilize a cooperative purchasing system.

m. Prior to entering into a contract for the procurement of any goods or services, the board of education shall ensure that the contractor and any subcontractors are compliant with existing State and federal laws, rules, and regulations as enumerated in subsection c. of N.J.S.18A:18A-3.

(cf: P.L.2009, c.4, s.2)

5. N.J.S.18A:18A-11 is amended to read as follows:

18A:18A-11. a. The boards of education of two or more districts may provide jointly by agreement for the provision and performance of goods and services for their respective districts, or one or more boards of education may provide for such provision or performance of goods or services by joint agreement with the governing body of any municipality or county.

Any joint purchasing agreement between the boards of education of two or more school districts may include, as additional participating bodies, nonpublic schools located within the municipalities that comprise those school districts.

b. As used in this section, "nonpublic school" means an elementary or secondary school within the State, other than a public school, offering education for grades kindergarten through 12, or any combination of them, wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964, Pub.L.88-352 (42 U.S.C. s.2000d et seq.).

c. Notwithstanding the provisions of this section to the contrary, prior to the procurement of any goods or services pursuant to this section, the purchasing agent shall determine if entering into a cooperative purchasing system, as defined in subsection ee. of N.J.S.18A:18A-2, for the procurement of the goods or services will result in cost savings. A cost savings analysis prescribed by the Division of Local Government Services in the Department of Community Affairs pursuant to section 10 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall include, but not be limited to, factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. If the purchasing agent determines that entering into a cooperative purchasing system for the procurement of goods or services will result in cost savings, the board of education shall utilize a cooperative purchasing system.

d. Prior to entering into a contract for the procurement of any goods or services, the board of education shall ensure that the contractor and any subcontractors are compliant with existing State and federal laws, rules, and regulations as enumerated in subsection c. of N.J.S.18A:18A-3.

(cf: P.L.2013, c.262, s.1)

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

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

(1) "Contracting unit" means:

(a) Any county; **[**or**]**

(b) Any municipality; or

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

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

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

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

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

(2) "Governing body" means:

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

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

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

(3) "Contracting agent" means the governing body of a contracting unit, or appointed membership of a State authority authorized to enter into a cooperative purchasing agreement pursuant to P.L.2013, c.4, or its authorized designee, which has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by **[**this act,**]** the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to make awards for the contracting unit in connection with purchases, contracts or agreements.

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

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

(6) "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(31) "Quotation" means the response to a formal or informal request made by a contracting agent by a vendor for provision or performance of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the contracting agent.

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

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

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

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

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

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

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

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

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

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

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

(43) "Cooperative purchasing system" means a cooperative pricing system, joint purchasing system, commodity resale system, county cooperative contract purchasing system, or regional cooperative pricing system in which a local contracting unit, or in which two or more local contracting units, enter into a contract for the procurement of goods or services.

(cf: P.L.2016, c.55, s.8)

7. Section 3 of P.L.1971, c.198 (C.40A:11-3) is amended to read as follows:

3. a. When the cost or price of any contract awarded by the contracting 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 or other employee so designated by the governing body when so authorized by ordinance or resolution, as appropriate to the contracting unit, without public advertising for bids, except that the governing body of any contracting unit may adopt an ordinance or resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. If a purchasing agent has been appointed, the governing body of the contracting unit may establish that the bid threshold may be up to $25,000 or the threshold amount adjusted by the Governor pursuant to subsection c. of this section. 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. 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 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may be awarded for a period not exceeding 12 consecutive months. The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the contracting unit's fiscal year.

c. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of every fifth year beginning in the fifth year after the year in which P.L.1999, c.440  
(C.40A:11-4.1 et al) takes effect, adjust the threshold amount, in direct proportion to the rise or fall of the index rate as that term is defined in section 2 of P.L.1971, c.198 (C.40A:11-2), and shall round the adjustment to the nearest $1,000. The Governor shall, no later than June 1 of every fifth year, notify each governing body of the adjustment. The adjustment shall become effective on July 1 of the year in which it is made.

d. Prior to entering into a contract for the procurement of any goods or services, the contracting unit shall ensure that the contractor and any subcontractors are complaint with existing State and federal laws, rules, and regulations concerning:

(1) the antidiscrimination provisions of R.S.10:2-1 through R.S.10:2-4;

(2) the "Law Against Discrimination," P.L.1945, c.169  
(C.10:5-1 et seq.);

(3) the antidiscrimination, equal employment opportunity, and affirmative action provisions applicable pursuant to P.L.1975, c.127 (C.10:5-31 et seq.);

(4) business registration requirements pursuant to P.L.2001, c.134 (C.52:32-44 et al.);

(5) the contribution restriction provisions pursuant P.L.2005, c.51 (C.19:44A-20.13 et seq.);

(6) prevailing wage requirements pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.);

(7) the provisions of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)

(8) the American goods sourcing provisions of section 18 of P.L.1971, c.198 (C.40A:11-18);

(9) valid classification in a trade as issued by the Division of Property Management and Construction in the Department of Treasury;

(10) submission of a sworn contractor certification pursuant to section 63 of P.L.2000, c.72 (C.18A:7G-37);

(11) compliance by local government officers and employees pursuant to section 5 of P.L.1991, c.29 (C.40A:9-22.5);

(12) provisions concerning the disclosure of investment activities in Iran pursuant to P.L.2012, c.25 (C.52:32-55 et al.); and

(13) provisions concerning the prohibited activities in Belarus and Russia pursuant to section 7 of P.L.2022, c.3 (C.52:32-60.2).

(cf: P.L.2009, c.166, s.2)

8. Section 4 of P.L.1971, c.198 (C.40A:11-4) is amended to read as follows:

4. a. Every contract awarded by the contracting agent for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by resolution of the governing body of the contracting unit to the lowest responsible bidder after public advertising for bids and bidding therefor, except as is provided otherwise in this act or specifically by any other law. The governing body of a contracting unit may, by resolution approved by a majority of the governing body and subject to subsections b. and c. of this section, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder, if the governing body finds that it has had prior negative experience with the bidder.

b. As used in this section, "prior negative experience" means any of the following:

(1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with the contracting unit;

(2) the bidder defaulted on a contract, thereby requiring the local unit to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract;

(3) the bidder defaulted on a contract, thereby requiring the local unit to look to the bidder's surety for completion of the contract or tender of the costs of completion; or

(4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with the contracting unit.

c. The following conditions apply if the governing body of a contracting unit is contemplating a disqualification based on prior negative experience:

(1) The existence of any of the indicators of prior negative experience set forth in this section shall not require that a bidder be disqualified. In each instance, the decision to disqualify shall be made within the discretion of the governing body and shall be rendered in the best interests of the contracting unit.

(2) All mitigating factors shall be considered in determining the seriousness of the prior negative experience and in deciding whether disqualification is warranted.

(3) The bidder shall be furnished by the governing body with a written notice (a) stating that a disqualification is being considered; (b) setting forth the reason for the disqualification; and (c) indicating that the bidder shall be accorded an opportunity for a hearing before the governing body if the bidder so requests within a stated period of time. At the hearing, the bidder shall show good cause why the bidder should not be disqualified by presenting documents and testimony. If the governing body determines that good cause has not been shown by the bidder, it may vote to find the bidder lacking in responsibility and, thus, disqualified.

(4) Disqualification shall be for a reasonable, defined period of time which shall not exceed five years.

(5) A disqualification, other than a disqualification pursuant to which a governing body is prohibited by law from entering into a contract with a bidder, may be voided or the period thereof may be reduced, in the discretion of the governing body, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as reversal of a judgment, or actual change of ownership, management or control of the bidder.

(6) An opportunity for a hearing need not be offered to a bidder whose disqualification is based on its suspension or debarment by an agency or department of the executive branch of the State of New Jersey. The term of such a disqualification shall be concurrent with the term of the suspension or debarment by the State agency or department.

d. Notwithstanding the provisions of this section to the contrary, prior to the procurement of any goods or services pursuant to this section, the purchasing agent shall determine if entering into a cooperative purchasing system, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), for the procurement of the goods or services will result in cost savings. A cost savings analysis prescribed by the Division of Local Government Services in the Department of Community Affairs pursuant to section 10 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall include, but not be limited to, factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. If the purchasing agent determines that entering into a cooperative purchasing system for the procurement of goods or services will result in cost savings, the contracting unit shall utilize a cooperative purchasing system.

e. Prior to entering into a contract for the procurement of any goods or services, the contracting unit shall ensure that the contractor and any subcontractors are compliant with existing State and federal laws, rules, and regulations as enumerated in subsection d. of section 3 of P.L.1971, c.198 (C.40A:11-3).

(cf: P.L.1999, c.440, s.8)

9. Section 1 of P.L.1999, c.440 (C.40A:11-4.1) is amended to read as follows:

1. Notwithstanding the provisions of any law, rule, or regulation to the contrary, competitive contracting may be used by local contracting units in lieu of public bidding for procurement of specialized goods and services the price of which exceeds the bid threshold, for the following purposes:

a. The purchase or licensing of proprietary computer software designed for contracting unit purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

(1) the operation and management of a wastewater treatment system, a stormwater management system, or a water supply or distribution facility of the type described in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15), provided that competitive contracting shall not be used as a means of awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et al.) and P.L.1985, c.72 (C.58:27-1 et al.);

(2) the operation, management or administration of recreation or social service facilities or programs, which shall not include the administration of benefits under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.), or under General Assistance;

(3) the operation, management or administration of data processing services; or

(4) the operation and management of a county hospital pursuant to the "Local Hospital Authority Law," P.L.2006, c.46   
(C.30:9-23.15 et al.);

c. (Deleted by amendment, P.L.2009, c.4)

d. Homemaker--home health services;

e. Laboratory testing services;

f. Emergency medical services;

g. Contracted food services;

h. Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities;

i. At the option of the governing body of the contracting unit, any good or service that is exempt from bidding pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

j. Concessions;

k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services;

l. Maintenance, custodial, and groundskeeping services;

m. Consulting services;

n. Emergency medical billing services;

o. Property appraisal services;

p. Reassessment or revaluation services;

q. Grant writing services;

r. Animal control services;

s. Private on-site inspection agency services, as may be authorized by rules and regulations adopted by the Department of Community Affairs.

Any purpose included herein shall not be considered by a contracting unit as an extraordinary unspecifiable service pursuant to subparagraph (ii) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5).

As used in this section, "stormwater management system" means the same as that term is defined in section 3 of P.L.2019, c.42 (C.40A:26B-3).

Notwithstanding the provisions of this section to the contrary, prior to the procurement of any goods or services pursuant to this section, the purchasing agent shall determine if entering into a cooperative purchasing system, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), for the procurement of the goods or services will result in cost savings. A cost savings analysis prescribed by the Division of Local Government Services in the Department of Community Affairs pursuant to section 10 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall include, but not be limited to, factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. If the purchasing agent determines that entering into a cooperative purchasing system for the procurement of goods or services will result in cost savings, the contracting unit shall utilize a cooperative purchasing system.

Prior to entering into a contract for the procurement of any goods or services, the contracting unit shall ensure that the contractor and any subcontractors are compliant with existing State and federal laws, rules, and regulations as enumerated in subsection d. of section 3 of P.L.1971, c.198 (C.40A:11-3).

(cf: P.L.2022, c.139, s.3)

10. (New section) a. Notwithstanding any law, rule, or regulation to the contrary, the Director of the Division of Local Government Services in the Department of Community Affairs, in consultation with the Commissioner of Education, shall develop harmonized guidelines for a local contracting unit, including a board of education, to enter into cooperative purchasing systems.

b. The cooperative purchasing system guidelines developed pursuant to subsection a. of this section shall include, but not be limited to:

(1) the types of goods and services, including work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, that may be procured through a contract awarded by a contracting agent under a cooperative purchasing system, including goods and property subject to N.J.S.12A:2-101 et seq.;

(2) the requirements concerning the process for advertising and soliciting bids for contracts through a cooperative purchasing system, and the factors that shall be utilized in the awarding of contracts;

(3) provisions ensuring local contracting units enter into contracts for the procurement of goods or services through a cooperative purchasing system with contractors and subcontractors that are compliant with existing State and federal laws, rules, and regulations as enumerated in subsection d. of N.J.S.18A:18A-3 and subsection e. of section 3 of P.L.1971, c.198 (C.40A:11-3); and

(4) information outlining the benefits of entering into cooperative purchasing systems, including but not limited to: cost-savings for the procurement of goods and services; access to experienced and reliable contractors and subcontractors; improvements in project execution time; elimination of pre-bid costs; and guaranteed maximum pricing to eliminate unforeseen expenses.

c. The division shall distribute the guidelines developed pursuant to subsection a. of this section to the governing body of each municipality, county, and school district in this State.

d. The division shall publish the cooperative purchasing system guidelines developed pursuant to subsection a. of this section on the division’s Internet website in an easily accessible location and format.

e. The division shall develop a cost savings analysis template comparing the costs of cooperative purchasing systems and other methods of procurement including, but not limited to, factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. The division shall:

(1) distribute the template to the governing body of each municipality, county, and school district in this State; and

(2) publish the cost savings analysis template on the division’s Internet website in an easily accessible location and format.

f. As used in this section:

"Cooperative purchasing system" means a cooperative pricing system, joint purchasing system, commodity resale system, county cooperative contract purchasing system, or regional cooperative pricing system in which a local contracting unit, or in which two or more local contracting units, enter into a contract for the procurement of goods or services.

"Local contracting unit" means a board of education, as defined in and subject to the provisions of the “Public School Contracts Law,” N.J.S.18A:18A-1 et seq., or a local contracting unit, as defined in and subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

11. This act shall take effect immediately.

STATEMENT

This bill requires certain political subdivision contracting units (contracting units), including boards of education and local contracting units under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to determine and utilize cost-saving practices when procuring goods and services. The bill provides that a cost savings analysis prescribed by the Division of Local Government Services in the Department of Community Affairs is required to include, at a minimum: factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. If the purchasing agent determines that entering into a cooperative purchasing system for the procurement of goods or services will result in cost savings, the contracting unit is required to utilize a cooperative purchasing system.

Under the bill, prior to entering into a contract for the procurement of any goods or services, the contracting unit is required to ensure that the contractor and any subcontractors are compliant with existing State and federal laws, rules, and regulations including, but not limited to, employment discrimination, employment opportunity, wage requirements, and material and product sourcing.

This bill also requires the Director of the Division of Local Government Services in the Department of Community Affairs, in consultation with the Commissioner of Education, to develop harmonized guidelines for a local contracting unit, including boards of education, to enter into cooperative purchasing systems for the procurement of goods or services.

Under the bill, the cooperative purchasing system guidelines will include, but not be limited to:

* the types of goods and services, including work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property, that may be procured through a contract awarded by a contracting agent under a cooperative purchasing system;
* the requirements concerning the process for advertising and soliciting bids for contracts through a cooperative purchasing system, and the factors that are required to be utilized in the awarding of contracts;
* provisions ensuring contracting units enter into contracts for the procurement of goods or services through a cooperative purchasing system with contractors and subcontractors that are compliant with existing State and federal laws, rules, and regulations related to employment discrimination, employment opportunity, wage requirements, and material and product sourcing, and any other standards determined by the director to be appropriate for inclusion; and
* information outlining the benefits of entering into cooperative purchasing systems, including but not limited to: cost-savings for the procurement of goods and services; access to experienced and reliable contractors and subcontractors; improvements in project execution time; elimination of pre-bid costs; and guaranteed maximum pricing to eliminate unforeseen expenses.

The division is required to develop a cost savings analysis template comparing the costs of cooperative purchasing systems and other methods of procurement including, but not limited to, factors such as charges for service, materials, delivery, soft costs, costs of acquisition, and other costs of traditional bidding such as cost overruns, protest, rework, and change orders. The division will: (1) distribute the template to the governing body of each municipality, county, and school district in the State; and (2) publish the cost savings analysis template on the division’s Internet website in an easily accessible location and format.

Under the bill, the division is required to distribute the guidelines to the governing body of each municipality, county, and school district in this State, and publish the guidelines on the division’s Internet website in an easily accessible location and format.