

# ASSEMBLY, No. 2821

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**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**

Introduced Pending Technical Review by Legislative Counsel.



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

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8

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

10 18A:18A-2. As used in this chapter, unless the context  
11 otherwise indicates:

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

23 b. "Purchasing agent" means the secretary, business  
24 administrator, or the business manager of the board of education  
25 duly assigned the authority, responsibility and accountability for the  
26 purchasing activity of the board of education and having the power  
27 to prepare advertisements, to advertise for and receive bids and to  
28 award contracts as permitted by this chapter, but if there **[be]** is no  
29 secretary, business administrator or business manager, such officer,  
30 committees or employees to whom such power has been delegated  
31 by the board of education.

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

33 d. "District" means and includes any local school district,  
34 consolidated school district, regional school district, county  
35 vocational school and any other board of education or other similar  
36 body other than the State board, established under the provisions of  
37 Title 18A of the New Jersey Statutes.

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

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

40 g. "Extraordinary unspecifiable services" means services which  
41 are specialized and qualitative in nature requiring expertise,  
42 extensive training, and proven reputation in the field of endeavor.

43 h. "Professional services" means services rendered or  
44 performed by a person authorized by law to practice a recognized  
45 profession and whose practice is regulated by law and the  
46 performance of which services requires knowledge of an advanced

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 type in a field of learning acquired by a prolonged formal course of  
2 specialized instruction and study as distinguished from general  
3 academic instruction or apprenticeship and training. Professional  
4 services may also mean services rendered in the provision or  
5 performance of goods or services that are original and creative in  
6 character in a recognized field of artistic endeavor.

7 i. (Deleted by amendment, P.L.1999, c.440[.])

8 j. "Purchases" means transactions, for a valuable  
9 consideration, creating or acquiring an interest in goods, services,  
10 and property, except real property or any interest therein.

11 k. "Work" means any task, program, undertaking, or activity,  
12 related to any development, redevelopment, construction, or  
13 reconstruction performed or provided pursuant to a contract with a  
14 board of education.

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

20 m. "Bid threshold" means the dollar amount set in  
21 N.J.S.18A:18A-3, above which a board of education shall advertise  
22 for and receive sealed bids in accordance with procedures set forth  
23 in N.J.S.18A:18A-1 et seq.

24 n. "Contract" means any agreement, including but not limited  
25 to a purchase order or a formal agreement, which is a legally  
26 binding relationship enforceable by law, between a vendor who  
27 agrees to provide or perform goods or services and a board of  
28 education which agrees to compensate a vendor, as defined by and  
29 subject to the terms and conditions of the agreement. A contract  
30 also may include an arrangement whereby a vendor compensates a  
31 board of education for the vendor's right to perform a service, such  
32 as, but not limited to, operating a concession.

33 o. "Contract year" means the period of 12 consecutive months  
34 following the award of a contract.

35 p. "Competitive contracting" means the method described in  
36 sections 45 through 49 of P.L.1999, c.440 (C.18A:18A-4.1 through  
37 C.18A:18A-4.5) of contracting for specialized goods and services in  
38 which formal proposals are solicited from vendors; formal  
39 proposals are evaluated by the purchasing agent or counsel or  
40 school business administrator; and the board of education awards a  
41 contract to a vendor or vendors from among the formal proposals  
42 received.

43 q. "Goods and services" or "goods or services" means any  
44 work, labor, commodities, equipment, materials, or supplies of any  
45 tangible or intangible nature, except real property or any interest  
46 therein, provided or performed through a contract awarded by a  
47 purchasing agent, including goods and property subject to  
48 N.J.S.12A:2-101 et seq.

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

12 s. "Lowest price" means the least possible amount that meets  
13 all requirements of the request of a purchasing agent.

14 t. "Lowest responsible bidder or vendor" means the bidder or  
15 vendor: (1) whose response to a request for bids offers the lowest  
16 price and is responsive; and (2) who is responsible.

17 u. "Official newspaper" means any newspaper designated by  
18 the board of education pursuant to R.S.35:1-1 et seq.

19 v. "Purchase order" means a document issued by the  
20 purchasing agent authorizing a purchase transaction with a vendor  
21 to provide or perform goods or services to the board of education,  
22 which, when fulfilled in accordance with the terms and conditions  
23 of a request of a purchasing agent and other provisions and  
24 procedures that may be established by the board of education, will  
25 result in payment by the board of education.

26 w. "Quotation" means the response to a formal or informal  
27 request made by a purchasing agent to a vendor for provision or  
28 performance of goods or services, when the aggregate cost is less  
29 than the bid threshold. Quotations may be in writing, or taken  
30 verbally if a record is kept by the purchasing agent.

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

36 y. "Responsive" means conforming in all material respects to  
37 the terms and conditions, specifications, legal requirements, and  
38 other provisions of the request.

39 z. "Public works" means building, altering, repairing,  
40 improving or demolishing any public structure or facility  
41 constructed or acquired by a board of education to house school  
42 district functions or provide water, waste disposal, power,  
43 transportation, and other public infrastructures.

44 aa. "Concession" means the granting of a license or right to act  
45 for or on behalf of the board of education, or to provide a service  
46 requiring the approval or endorsement of the board of education,  
47 and which may or may not involve a payment or exchange, or

1 provision of services by or to the board of education, provided that  
2 the term concession shall not include vending machines.

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

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

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

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

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

27

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

29 18A:18A-3. a. When the cost or price of any contract  
30 awarded by the purchasing agent in the aggregate, does not exceed  
31 in a contract year the total sum of \$17,500, the contract may be  
32 awarded by a purchasing agent when so authorized by resolution of  
33 the board of education without public advertising for bids and  
34 bidding therefor, except that the board of education may adopt a  
35 resolution to set a lower threshold for the receipt of public bids or  
36 the solicitation of competitive quotations. If the purchasing agent  
37 possesses a qualified purchasing agent certificate pursuant to  
38 subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9), the  
39 board of education may establish that the bid threshold may be up  
40 to \$25,000. Such authorization may be granted for each contract or  
41 by a general delegation of the power to negotiate and award such  
42 contracts pursuant to this section.

43 b. Commencing in the fifth year after the year in which  
44 P.L.1999, c.440 (C.40A:11-4.1 et al.) takes effect, and every five  
45 years thereafter, the Governor, in consultation with the Department  
46 of the Treasury, shall adjust the threshold amount and the higher  
47 threshold amount which the board of education is permitted to  
48 establish as set forth in subsection a. of this section or the threshold

1 amount resulting from any adjustment under this subsection, in  
2 direct proportion to the rise or fall of the index rate as that term is  
3 defined in N.J.S.18A:18A-2, and shall round the adjustment to the  
4 nearest \$1,000. The Governor shall notify all local school districts  
5 of the adjustment no later than June 1 of every fifth year. The  
6 adjustment shall become effective on July 1 of the year in which it  
7 is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44  
45 3. N.J.S.18A:18A-4 is amended to read as follows:

46 18A:18A-4. a. Every contract for the provision or performance  
47 of any goods or services, the cost of which in the aggregate exceeds  
48 the bid threshold, shall be awarded only by resolution of the board

1 of education to the lowest responsible bidder after public  
2 advertising for bids and bidding therefor, except as is provided  
3 otherwise in this chapter or specifically by any other law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 cooperative purchasing system, unless the procurement is for new  
2 building construction or expansion.

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

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

9

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

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

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

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

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

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

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

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

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

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

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

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

47 i. Laboratory testing services;

48 j. Concessions;

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

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

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

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

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

30  
31 5. N.J.S.18A:18A-11 is amended to read as follows:

32 18A:18A-11. a. The boards of education of two or more  
33 districts may provide jointly by agreement for the provision and  
34 performance of goods and services for their respective districts, or  
35 one or more boards of education may provide for such provision or  
36 performance of goods or services by joint agreement with the  
37 governing body of any municipality or county.

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

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

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

18     d. Prior to entering into a contract for the procurement of any  
19 goods or services, the board of education shall ensure that the  
20 contractor and any subcontractors are compliant with existing State  
21 and federal laws, rules, and regulations as enumerated in subsection  
22 c. of N.J.S.18A:18A-3.  
23 (cf: P.L.2013, c.262, s.1)

24  
25     6. Section 2 of P.L.1971, c.198 (C.40A:11-2) is amended to  
26 read as follows:

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

29     (1) "Contracting unit" means:

30     (a) Any county; **[or]**

31     (b) Any municipality; or

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

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

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

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

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

14 (2) "Governing body" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 cooperative agreement entered into by the participating contracting  
2 units thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et  
2 seq.).

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

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

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

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

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

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

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

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

40

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

43 3. a. When the cost or price of any contract awarded by the  
44 contracting agent in the aggregate does not exceed in a contract year  
45 the total sum of \$17,500, the contract may be awarded by a  
46 purchasing agent or other employee so designated by the governing  
47 body when so authorized by ordinance or resolution, as appropriate  
48 to the contracting unit, without public advertising for bids, except



1 that the governing body of any contracting unit may adopt an  
2 ordinance or resolution to set a lower threshold for the receipt of  
3 public bids or the solicitation of competitive quotations. If a  
4 purchasing agent has been appointed, the governing body of the  
5 contracting unit may establish that the bid threshold may be up to  
6 \$25,000 or the threshold amount adjusted by the Governor pursuant  
7 to subsection c. of this section. Such authorization may be granted  
8 for each contract or by a general delegation of the power to  
9 negotiate and award such contracts pursuant to this section.

10 b. Any contract made pursuant to this section may be awarded  
11 for a period of 24 consecutive months, except that contracts for  
12 professional services pursuant to subparagraph (i) of paragraph (a)  
13 of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) may  
14 be awarded for a period not exceeding 12 consecutive months. The  
15 Division of Local Government Services shall adopt and promulgate  
16 rules and regulations concerning the methods of accounting for all  
17 contracts that do not coincide with the contracting unit's fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47       (1) The existence of any of the indicators of prior negative  
48 experience set forth in this section shall not require that a bidder be

1 disqualified. In each instance, the decision to disqualify shall be  
2 made within the discretion of the governing body and shall be  
3 rendered in the best interests of the contracting unit.

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

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

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

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

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

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

1 a cooperative purchasing system, unless the procurement is for new  
2 building construction or expansion.

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

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

9

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

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

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

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

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

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

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

39 (4) the operation and management of a county hospital pursuant  
40 to the "Local Hospital Authority Law," P.L.2006, c.46 (C.30:9-  
41 23.15 et al.);

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

43 d. Homemaker--home health services;

44 e. Laboratory testing services;

45 f. Emergency medical services;

46 g. Contracted food services;

- 1 h. Performance of patient care services by contracted medical
- 2 staff at county hospitals, correctional facilities and long-term care
- 3 facilities;
- 4 i. At the option of the governing body of the contracting unit,
- 5 any good or service that is exempt from bidding pursuant to section
- 6 5 of P.L.1971, c.198 (C.40A:11-5);
- 7 j. Concessions;
- 8 k. The operation, management or administration of other
- 9 services, with the approval of the Director of the Division of Local
- 10 Government Services;
- 11 l. Maintenance, custodial, and groundskeeping services;
- 12 m. Consulting services;
- 13 n. Emergency medical billing services;
- 14 o. Property appraisal services;
- 15 p. Reassessment or revaluation services;
- 16 q. Grant writing services;
- 17 r. Animal control services;
- 18 s. Private on-site inspection agency services, as may be
- 19 authorized by rules and regulations adopted by the Department of
- 20 Community Affairs.

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

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

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

45 Prior to entering into a contract for the procurement of any goods  
46 or services, the contracting unit shall ensure that the contractor and  
47 any subcontractors are compliant with existing State and federal

1 laws, rules, and regulations as enumerated in subsection d. of  
2 section 3 of P.L.1971, c.198 (C.40A:11-3).  
3 (cf: P.L.2022, c.139, s.3)  
4

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

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

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

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

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

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

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

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

44 e. The division shall develop a cost savings analysis template  
45 comparing the costs of cooperative purchasing systems and other  
46 methods of procurement including, but not limited to, factors such  
47 as charges for service, materials, delivery, soft costs, costs of

1 acquisition, and other costs of traditional bidding such as cost  
2 overruns, protest, rework, and change orders. The division shall:

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

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

7 f. As used in this section:

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

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

19

20 11. This act shall take effect immediately.

21

22

23

#### STATEMENT

24

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

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

47 This bill also requires the Director of the Division of Local  
48 Government Services in the Department of Community Affairs, in

1 consultation with the Commissioner of Education, to develop  
2 harmonized guidelines for a local contracting unit, including boards  
3 of education, to enter into cooperative purchasing systems for the  
4 procurement of goods or services.

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

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

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

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