State of New Jersey Statutes

Title 52 State Government, Departments and Officers
Chapter 52:34-6.2 Cooperative purchasing agreements with other states for purchase of goods, services; rules, regulations
Section 7

a. Notwithstanding the provisions of any other law to the contrary except the provisions of R.S.30:4-95, and as an alternative to the procedures concerning the awarding of public contracts provided in P.L.1954, c.48 (C.52:34-6 et seq.), the Director of the Division of Purchase and Property in the Department of the Treasury may enter into cooperative purchasing agreements with one or more other states, or political subdivisions thereof, for the purchase of goods and services. A cooperative purchasing agreement shall allow the jurisdictions which are parties thereto to standardize and combine their requirements for the purchase of a particular good or service into a single contract solicitation which shall be competitively bid and awarded by one of the jurisdictions on behalf of jurisdictions participating in the contract.

b. (1) The director may elect to purchase goods or services through a contract awarded pursuant to a cooperative purchasing agreement whenever the director determines this to be the most cost-effective method of procurement. Prior to entering into any contract to be awarded or already awarded through a cooperative purchasing agreement, the director shall review and approve the specifications and proposed terms and conditions of the contract.

(2) The director may also elect to purchase goods or services through a contract awarded pursuant to a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process, in which other states participate, whenever the director determines this to be the most cost-effective method of procurement. Prior to entering into any contract to be awarded through a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process, the director shall review and approve the specifications and proposed terms and conditions of the contract.

(3) Notwithstanding any other law to the contrary, any contracting unit authorized to purchase goods, or to contract for services, may make purchases and contract for services through the use of a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process by another contracting unit within the State of New Jersey, or within any other state, when available. Prior to making purchases or contracting for services, the contracting unit shall determine that the use of the cooperative purchasing agreement shall result in cost savings after all factors, including charges for service, material, and delivery, have been considered.
For purposes of this paragraph, “contracting unit” means any county, municipality, special district, school district, fire district, or any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority or agency, and which has administrative jurisdiction over any district, 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, 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.

As a follow-up to the law signed by Governor Chris Christie, the New Jersey Department of Community Affairs, Division of Local Government Services (“DLGS”) issued a 12 page bulletin (http://www.state.nj.us/dca/divisions/dlgs/lfns/12/2012-10.pdf) intended to clarify how the law could be applied to local New Jersey public/municipal agencies (aka “Local Contracting Units”).

Below is a summary of this bulletin, it identifies the necessary requirements for both the NJPA member and Contract Awarded vendor to conduct procurement through NJPA competitively bid contracts in the State of New Jersey.

On May 14, 2012, the New Jersey Division of Local Government Services issued guidance to political subdivisions on how to implement P.L. 2011, c.139, which allows them to utilize national cooperative purchasing agreements like those established by NJPA. The guidance issued by the Division puts specific requirements on both the political subdivisions utilizing a cooperative and on the supplier who holds the cooperative purchasing agreement. The detailed requirements can be found below this executive summary. We have broken those requirements into two buckets – those required of the political subdivision and those required of the supplier.

The requirements for the vendor include:

- Four documentation requirements (state certification, statement of corporate ownership, EEDO compliance and non-collusion).
- Certification of internal control practices

The requirements for the political subdivision include:

- Proof that the cooperative purchasing agreement was procured in a fair and open fashion
- Advertisement that it intends to join a cooperative purchasing agreement
- Proof that the cooperative purchasing agreement will lead to savings

Additional detail on these points can be found below.

Vendor Requirements
• **Documentation Requirements:**
  - New Jersey Business Registration Certificate for the contractor and any sub-contractors (i.e., copy of certificate)
  - Statement of Corporate Ownership (an original form prepared for the contracting agency awarding the contract)
  - Public Contract EEO Compliance (Employee Information Report form or proof of participation in a federally approved affirmative action program)
  - A non-collusion affidavit (only if required by a local unit)

• Internal control practices, along with other requirements such as affirmative action compliance, submission of a business registration certificate, statement of corporate ownership, and other routine submission and compliance requirements are not eliminated under the Law and national contractors are obliged to meet these requirements.

**Political Subdivision Requirements**

• The local government must verify that the award of the contract was done through competitive bidding. In most cases this standard would be met by obtaining information from the issuing agency or national cooperative administrator about the bidding process that was used.
  - “Fair and open process” means, at a minimum, that the contract shall be:
    - Publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract;
    - Awarded under a process that provides for public solicitation of proposals or qualifications;
    - Awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and
    - Publicly opened and announced when awarded.

• The local government must advertise its intent to award a national cooperative contract, and vendors must be allowed to present alternative approaches. This notice must include:
  - Name of the entity that awarded the contract
  - Title of contract (description of the contract, i.e., office supplies)
  - A web link to where the contract can be viewed online
  - Length of contract (must be consistent with length of public contracts law regulating the contracting unit)
  - A statement naming the vendor to whom the contracting unit intends to award the contract
  - A statement of the authority under which the contract is being awarded; generally this will be N.J.S.A. 52:34-6.2(b)(3)
  - A notice of when the comment period ends
The Law requires that a contracting unit can use national cooperatives only when the contracting unit determines “that the use of the cooperative purchasing agreement shall result in cost savings after all factors, including charges for service, material, and delivery, have been considered.”

- The contracting unit is ultimately responsible for developing its own procedures for implementing and documenting the due diligence necessary to reach a cost savings determination that survives legal scrutiny.

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