

Notice Number

Date

LOCAL FINANCE NOTICE**Public Contracts Laws Reporting Requirements:****Purchasing at 10% Less than State Cooperative Contract Prices
Use of GSA Supply Schedules for Reprographic Equipment or Services**

The Division has recently acted to propose formal rules implementing existing sections of the Local Public Contracts Law and the Public School Contracts Law. The rules affect reporting requirements when contracting units use the laws related to purchasing at 10 percent less than the State Cooperative Contract prices and using U.S. Government General Services Administration (GSA) pricing to purchase reprographic equipment or services (including digital copiers). The laws were adopted last year as part of P.L. 1999, c. 440.

The proposed rule formalizes the Division's existing procedure for reporting purchases using the 10 percent less than State Cooperative Contract Prices rule. The Department of the Treasury's recently adopted rule (N.J.A.C. 17:12-1A.5) regarding the use of GSA contracts only for reprographic equipment or services provides for the Division to adopt rules regarding the reporting of those transactions. This Notice provides contracting units guidance to follow in advance of the formal rule adoption.

Purchasing at 10% less than the State Cooperative Contract Price

This provision is found in the Local Public Contracts Law at N.J.S.A. 40A:11-5(4) and in the Public School Contracts Law at N.J.S.A. 18A:18A-5(e). It permits, subject to specific procedures and conditions, contracting units to buy goods and services in excess of the bid threshold without public bidding if they can purchase them for at least 10 percent less than a State contract price. The procedures require the contracting unit to:

- Solicit and receive at least three (3) quotations, the lowest of which must be at least 10 percent less than State contract (State cooperative contract vendors for the materials, supplies or equipment cannot provide a price lower than the State contract).
- The purchase must be for identical materials, supplies or equipment and in the same quantities as found on the State contract.
- There must be a recorded 2/3 vote of the full membership of the governing body.
- Information on the purchase must be filed with the Division within five (5) working days of the award.

The law requires information on the transaction to be reported to the Division. The rule proposal codifies and supplements the requirements in the law. The proposal requires that the following information be submitted to the Director within five (5) working days of the award of a contract:

1. Copy of the purchase order;
2. Copy of the requisition or request for purchase order (if applicable);
3. The written certification of its purchasing agent stating that the purchase price of the materials, supplies or equipment is at least 10% less than the State contract price.

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4. Documentation verifying that the materials, supplies or equipment purchased by the contracting unit are identical to the materials, supplies or equipment on State contract;
5. Copy of each request for quotation issued by the purchasing agent;
6. Copy of each of the three (3) quotations received by the purchasing agent, which shall include the vendor's name, address, identification of items offered, prices quoted, and percent discount (if applicable); and
7. Copy of the adopted resolution approved by two-thirds affirmative vote of the full membership of the governing body or, in the case of boards of education, copy of the motion made, carried and recorded in the written minutes of the meeting.

The rule also requires that all purchase orders or contract documents include the reference "N.J.A.C. 5:34-9.6" and the State contract number in order to document the legal basis under which the purchase was made. This will assist in audits and other reviews of compliance with public contracts laws.

To assist contracting units in submitting the information, the Division has prepared an optional document submission form. A copy of the form is enclosed and is also posted to the Public Contracts Law section of the Division's web site, www.state.nj.us/dca/lgs.

Use of GSA Supply Schedules for Reprographic Equipment or Services

Chapter 440 also established conditions under which federal GSA Federal Supply Schedules could be used to purchase reprographic equipment or services, including digital copiers, and making use of the provision, subject to rules adopted by the Department of the Treasury. This provision is found in the Local Public Contracts Law at N.J.S.A. 40A:11-12b and in the Public School Contracts Law at N.J.S.A. 18A:18A-10b. These rules were recently adopted and include the authority for the Division to supplement the reporting requirements. A copy of the Treasury's adopted rules is enclosed with this Notice. They require that:

1. The goods or services must be listed in the Special Item Numbers of Federal Supply Schedule 36, Part IV, or update thereto;
2. Total procurement cannot exceed \$500,000 in a fiscal year;
3. The price paid for goods or services listed in Schedule 36, Part IV cannot be greater than the price offered to Federal agencies;
4. The public entity must receive the benefit of any contract price reductions;
5. The public entity must be protected from price increases;
6. The price paid for goods or services procured under Schedule 36, Part IV cannot be greater than the State contract price;
7. If the price exceeds the State contract price, the public entity cannot procure such goods or services unless it determines that, based on factors other than price, the procurement would otherwise be more advantageous to the public entity; and,
8. When goods or services are available under a State contract, vendors must agree in writing that if the terms and conditions of the State contract differ from the terms and conditions of the vendor's Federal contract, the terms and conditions of the State contract shall prevail.

The reporting requirements of these transactions are similar to those of the under 10 percent of State contract requirements. They are:

1. Copy of the purchase order;
2. Copy of the requisition or request for purchase order (if applicable);

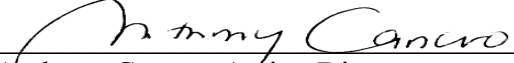
3. Documentation verifying the price and description of the reprographic equipment or services, including digital copiers, under the Federal Supply Schedules;
4. Written certification of the contracting unit's purchasing agent verifying that the price of the reprographic equipment or services, including digital copiers, is no greater than the State contract price or, in the alternative, provide the rationale justifying payment of the higher Federal Supply Schedule price;
5. A copy of the vendor's consent to the terms and conditions of the State contract governing in the event of a conflict with the vendor's Federal contract; and,
6. Copy of the adopted resolution approved by the membership of the governing body or, in the case of boards of education, copy of the motion made, carried and recorded in the written minutes of the meeting.

This rule also requires that all purchase orders or contract documents include the reference "N.J.A.C. 5:30-9.7" and if available, the State contract number issued by the Division of Purchase and Property in order to document the legal basis under which the purchase was made. This will assist in audits and other reviews of compliance with public contracts laws.

Similarly, the Division has prepared an optional document submission form. A copy of the form is enclosed and is also posted to the Public Contracts Law section of the Division's web site, www.state.nj.us/dca/lgs.

The Federal Supply Schedules can be confusing documents. The Division recommends that contracting officials carefully study the documents and use their best judgment in meeting the compliance requirements. Division staff does not have specific expertise on these contracts and cannot provide technical support on individual items.

If you need additional information or assistance please contact the Division at 609-292-7842 or by e-mail at lpcl@dca.state.nj.us.



Anthony Cancro, Acting Director
Division of Local Government Services

Enclosure

Distribution: Chief Financial Officers of all local units; School Business Administrators, Purchasing Agents via Governmental Purchasing Agents Association of New Jersey