



BERGEN COUNTY ***ASSOCIATION OF SCHOOL BUSINESS OFFICIALS***

USING NATIONAL COOPERATIVE CONTRACTS BY BOARDS OF EDUCATION

PRESENTED BY:

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CERTIFIED PUBLIC ACCOUNTANTS
REGISTERED MUNICIPAL ACCOUNTANTS

Background and Law

P.L. 2011, c.139

- * In 2011, the State Legislature passed P.L. 2011, C. 139 allowing local contracting units to utilize national cooperative contracts as a method of procurement

Background and Law

P.L. 2011, c.139

- * Chapter 139 added the following language:

“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.”

(continued)

Background and Law

P.L. 2011, c.139

*“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 of 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 of performance of goods or services.”*

Background and Law

P.L. 2011, c.139

- * On May 14, 2012, the New Jersey Department of Community Affairs (“DCA”) - Division of Local Government Services (“DLGS”) issued Local Finance Notice 2012-10 which provided guidance to contracting units seeking to implement the new national cooperative contracting option.

* <https://www.nj.gov/dca/divisions/dlgs/lfns/12/2012-10.pdf>



Local Finance Notice

Philip D. Murphy
Governor

Lt. Governor Sheila Y. Oliver
Commissioner

Melanie R. Walter
Director

Types of National Cooperatives

1. A profit or not-for profit organization that coordinates and aggregates contracts from different state and local governments and promotes their use.
 - Often include a marketing fee built into the bid price
 - Website enables contracting units to contact vendors to obtain contract terms and conditions and instructions on joining the organization



Types of National Cooperatives

2. A state, regional or single government agency that awards contracts for its own use and is authorized under its own laws to extend those contracts to other government agencies.
 - Similar to N.J. Division of Purchase and Property's Cooperative Purchasing Program
 - Sometimes charge a marketing or service fee
 - May have a website though membership is not usually required

Legal Interpretations

General interpretation

- Although public bidding is not required when using a National Cooperative Contract, they are still subject to purchasing laws and rules that apply to all other contracts awarded by school districts in accordance with the Public School Contracts Law
- Routine submission and compliance requirements are not eliminated under the law and national contractors are obligated to meet these requirements

Legal Interpretations

Requirements that make a contract part of a national cooperative

- Contract must be awarded through a competitive bidding process
- School Districts can only access national cooperative contracts that were solicited by another “contracting unit” as defined in the statute
- Original bid must have been advertised as a national cooperative contract (or a regional contract that includes New Jersey in its region)

Legal Requirements

Documentation requirements

- New Jersey Business Registration Certificate
- Statement of Corporate Ownership
- Public Contract EEO Compliance
- Non-Collusion Affidavit (if required by the local unit)



Legal Requirements

Cost-Savings Determination

- The District is required to prepare a calculation and document the cost savings through the utilization of the National Cooperative Purchasing Contract prior to the award of the contract.
- Suggested methods include:
 - Compare current State contract pricing to that of the proposed national cooperative contract.
 - Compare pricing for comparable goods or services under current available contracts (i.e. other cooperative purchasing programs, competitive quotations, etc...)
 - Compare recently procured comparable contracts entered by other public entities to that of the proposed national cooperative



Legal Requirements

Other Considerations in Analyzing Cost-Savings

- Cost and time of a separately procured public bid
- Fee to participate in cooperative agreement
- Shipping Costs
- Vendor rebates



Legal Requirements

Political Contribution Disclosure

- District must obtain a list of reportable political contributions (PCDF/BEDC) by all contractors awarded contracts over \$17,500 regardless of procurement process (i.e. publicly bid)
- Only exception is for emergency contracts that require immediate delivery of goods or services



Legal Requirements

Competitive Bidding Process

- District must verify and obtain information identifying the bidding process that was utilized by the National Cooperative administrator to ensure that the following requirements were satisfied:
 - ✓ Publicly advertised in newspapers or on the internet website
 - ✓ Awarded under a process that provides for public solicitation of proposals
 - ✓ Publicly opened and announced when awarded
 - ✓ Awarded to lowest responsible bidder

Legal Requirements

Advertising

- District must advertise in its official newspaper the District's intent to utilize a National Cooperative Purchasing contract before passing a resolution to award the contract (at least 10 days prior to the award)
- Notice should include the following elements:
 - ✓ Name of the entity that awarded the contract
 - ✓ Title or description of the contract
 - ✓ A web link to where the contract can be viewed online
 - ✓ Length of the contract
 - ✓ Statement naming the vendor the District intends to award the contract to
 - ✓ Statute under which the contract is being awarded; generally N.J.S.A.52:34-6.2
 - ✓ Notice of when the comment period ends

Legal Requirements

Miscellaneous

- District must follow the national organization's instructions for joining or becoming a member prior to using a contract awarded by the organization.
 - Depending on the degree of authority given to the District's purchasing agent, the governing body may need to approve such membership
- District's agreement with vendors under a national cooperative contract will expire when the original issuing agency's contract expires. If the issuing agency does not extend the contract, the District will have to rebid or make alternative arrangements for procuring the goods or services.

Legal Requirements

Miscellaneous (continued)

- Pricing must be for a known period
- Contracts with prepayments or down-payments are not permitted (unless otherwise permitted by New Jersey law)
- District is responsible for determining what documents are needed for a given procurement



Limitations and Reporting Requirements

Public Works/Construction Contracts

- The use of national cooperative contracts only applies to contracts for goods and services.
- It does not apply to public works or construction contracts
 - For example, this may affect a District that plans to construct or install turf fields, masonry, fencing, roofing or indoor flooring projects.
- There are several national cooperative contracts offering time and material contracts for work that may fall under New Jersey public works or construction laws.

Limitations and Reporting Requirements

General Services Administration/Federal Supply Schedule (GSA/FSS) Contracts

- Chapter 139 does not apply to contracts issued by federal agencies
- These contracts are subject to the Division of Purchase and Property authorizing them as State contracts and cannot be used otherwise
- Vendors who are on GSA schedules may also have been awarded contracts through a national cooperative procurement in which case, Chapter 139 allows the District to participate in the national cooperative contract

Limitations and Reporting Requirements

Vendor Payments

- Some national cooperative contracts require online payment as vendors may not accept purchase order or vouchers
- Districts must adopt policies and procedures permitting the payment of claims electronically to vendors.
- Boards of Education are prohibited from using Procurement Cards (P-cards) or credit cards.

Limitations and Reporting Requirements

Reporting to the Office of the State Comptroller (OSC)

- Contracts awarded under a national cooperative agreement are also subject to the following requirements under N.J.S.A. 52:15C-10:
 - Contracts exceeding \$2,000,000 but below \$10,000,000 must be reported to the OSC within 20 days after award
 - Contracts exceeding \$10,000,000 must be approved by the OSC prior to awarding the contract

Limitations and Reporting Requirements

Reporting to the Office of the State Comptroller (OSC)

- N.J.A.C. 17:44-2.2 requires Districts to insert the following language into all contracts, including national cooperative contracts:

“The vendor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.”

Other

Appendix A

Model “Notice of Intent to Award Contract under a National Cooperative Purchasing Agreement”

Appendix B

Purchasing Agent’s Guide to Using National Cooperative Contracts (i.e. checklist)



QUESTIONS
And
Answers

