

**ASSEMBLY, No. 4025**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED MARCH 7, 2024

**Sponsored by:**

**Assemblywoman SHAVONDA E. SUMTER**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Modifies use of cooperative purchasing agreements by certain public contracting units for construction services; prohibits time-and-materials contracts in certain circumstances; allows indefinite delivery, indefinite quantity public contracts in certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning certain contracts by certain public contracting  
2 units, amending P.L.1996, c.16, and supplementing Title 52 of  
3 the Revised Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 7 of P.L.1996, c.16 (C.52:34-6.2) is amended to read  
9 as follows:

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

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

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

41 (3) Notwithstanding any other law to the contrary, any  
42 contracting unit authorized to purchase goods, or to contract for  
43 services, may make purchases and contract for services through the  
44 use of a nationally-recognized and accepted cooperative purchasing  
45 agreement that has been developed utilizing a competitive bidding

**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 process by another contracting unit within the State of New Jersey,  
2 or within any other state, when available. Prior to making  
3 purchases or contracting for services, the contracting unit shall  
4 determine that the use of the cooperative purchasing agreement  
5 shall result in cost savings after all factors, including charges for  
6 service, material, and delivery, have been considered.

7 (4) A contracting unit shall purchase and contract for  
8 construction services for a public works project through a  
9 cooperative purchasing agreement only if the contract is awarded by  
10 a contracting unit in the State of New Jersey and is competitively  
11 bid in compliance with all requirements regarding public bidding,  
12 bid security, performance guarantees, insurance, and other public  
13 contracting requirements that are applicable to public works  
14 contracts. Public works projects undertaken by a contracting unit  
15 through a cooperative purchasing agreement shall be subject to the  
16 “Public Works Contractor Registration Act,” P.L.1999, c.238  
17 (C.34:11-56.48 et seq.), and the “New Jersey Prevailing Wage Act,”  
18 P.L.1963, c.150 (C.34:11-56.25 et seq.).

19 (5) Contracting units shall not utilize time-and-materials  
20 contracts available through a cooperative purchasing agreement to  
21 undertake a public works project subject to the “Public Works  
22 Contractor Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et  
23 seq.), and the “New Jersey Prevailing Wage Act,” P.L.1963, c.150  
24 (C.34:11-56.25 et seq.).

25 For the purposes of this paragraph, the term “time-and-materials  
26 contract” means a contract for the actual costs for materials and  
27 acquiring services on the basis of direct labor hours at specified  
28 fixed hourly rates that include wages, overhead, general and  
29 administrative expenses, and profit.

30 (6) For the purposes of prevailing wage enforcement, a  
31 contracting unit that awards a contract for construction services for  
32 a public works project through a cooperative purchasing agreement  
33 shall verify and maintain an accurate copy of:

34 the name, principal business address in the State, and telephone  
35 number of the contractor; or

36 if the contractor's principal business address is not within the  
37 State, the name and address of the contractor's custodian of records  
38 and agent for service of process in this State.

39 For purposes of this **[paragraph]** subsection, "contracting unit"  
40 means any county, municipality, special district, school district, fire  
41 district, State college or university, public research university,  
42 county college, or any board, commission, committee, authority or  
43 agency, which is not a State board, commission, committee,  
44 authority or agency, and which has administrative jurisdiction over  
45 any district, included or operating in whole or in part, within the  
46 territorial boundaries of any county or municipality which exercises  
47 functions which are appropriate for the exercise by one or more  
48 units of local government, and which has statutory power to make

1 purchases and enter into contracts awarded by a contracting agent  
2 for the provision or performance of goods or services, and the New  
3 Jersey Transit Corporation created pursuant to P.L.1979, c.150  
4 (C.27:25-1 et seq.).

5 c. The director may solicit bids and award contracts on behalf  
6 of this State and other jurisdictions which are parties to a  
7 cooperative purchasing agreement provided that the agreement  
8 specifies that each jurisdiction participating in a contract is solely  
9 responsible for the payment of the purchase price and cost of  
10 purchases made by it under the terms of any contract awarded  
11 pursuant to the agreement.

12 d. The director may promulgate rules and regulations pursuant  
13 to the "Administrative Procedure Act," P.L.1968, c.410  
14 (C.52:14B-1 et seq.), which are necessary to effectuate the purposes  
15 of this section.

16 (cf: P.L.2018, c.162, s.14)

17

18 2. (New section) Notwithstanding any provision of law to the  
19 contrary, a contracting unit as defined in subsection b. of section 7  
20 of P.L.1996, c.16 (C.52:34-6.2) may award indefinite delivery,  
21 indefinite quantity contracts for goods or services, including public  
22 works, without final plans and specifications for an individual  
23 project, provided the bid advertisement for the contract promotes  
24 free, open, and competitive bidding and sets forth the process by  
25 which individual purchase orders may be issued. A contracting unit  
26 may issue purchase orders under an indefinite delivery, indefinite  
27 quantity contract provided the items for delivery were specified in  
28 the bid advertisement for the contract.

29

30 3. This act shall take effect immediately.

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STATEMENT

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35 This bill modifies cooperative purchasing requirements for  
36 construction services used by certain contracting units.

37 Under current law, any contracting unit can make purchases and  
38 contract for services through the use of a nationally-recognized and  
39 accepted cooperative purchasing agreement when available and  
40 determined to have a cost savings. This bill requires that, for  
41 construction services for a public works project, cooperative  
42 purchasing agreements can only be used if the contract is awarded  
43 by a contracting unit in the State of New Jersey and is competitively  
44 bid in compliance with all requirements regarding public bidding,  
45 bid security, performance guarantees, insurance, and other public  
46 contracting requirements that are applicable to public works  
47 contracts. Public works projects undertaken by a contracting unit  
48 through a cooperative purchasing agreement would be subject to the

1 “Public Works Contractor Registration Act” and the “New Jersey  
2 Prevailing Wage Act.”

3 The bill also prohibits the use of time-and-materials contracts  
4 that are available through a cooperative purchasing agreement by  
5 contracting units to undertake a public works project subject to the  
6 “Public Works Contractor Registration Act” and the “New Jersey  
7 Prevailing Wage Act.”

8 Additionally, the bill requires contracting units that award a  
9 contract for construction services for a public works project through  
10 a cooperative purchasing agreement to verify and maintain a copy  
11 of certain contractor contact information for prevailing wage  
12 enforcement purposes.

13 The bill also allows a contracting unit to award indefinite  
14 delivery, indefinite quantity contracts for goods or services,  
15 including public works, without final plans and specifications for an  
16 individual project, provided the bid advertisement for the contract  
17 promotes free, open, and competitive bidding and sets forth the  
18 process by which individual purchase orders may be issued.

19 As used in this bill, “contracting unit” means any:

20 County;

21 Municipality;

22 Special district;

23 School district;

24 Fire district;

25 State college or university;

26 Public research university;

27 County college;

28 Board, commission, committee, authority or agency, which is not  
29 a State board, commission, committee, authority or agency, and  
30 which has administrative jurisdiction over any district, included or  
31 operating in whole or in part, within the territorial boundaries of  
32 any county or municipality which exercises functions which are  
33 appropriate for the exercise by one or more units of local  
34 government, and which has statutory power to make purchases and  
35 enter into contracts awarded by a contracting agent for the provision  
36 or performance of goods or services; and New Jersey Transit  
37 Corporation.