

SENATE, No. 1291

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

Co-Sponsored by:

Senator Burgess

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.



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2

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

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.

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1 profession and whose practice is regulated by law and the
2 performance of which services requires knowledge of an advanced
3 type in a field of learning acquired by a prolonged formal course of
4 specialized instruction and study as distinguished from general
5 academic instruction or apprenticeship and training. Professional
6 services may also mean services rendered in the provision or
7 performance of goods or services that are original and creative in
8 character in a recognized field of artistic endeavor.

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

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

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

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

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

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

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

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

45 q. "Goods and services" or "goods or services" means any
46 work, labor, commodities, equipment, materials, or supplies of any
47 tangible or intangible nature, except real property or any interest
48 therein, provided or performed through a contract awarded by a

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- 1 purchasing agent, including goods and property subject to
2 N.J.S.12A:2-101 et seq.
- 3 r. "Library and educational goods and services" means
4 textbooks, copyrighted materials, student produced publications,
5 and services incidental thereto, including but not limited to books,
6 periodicals, newspapers, documents, pamphlets, photographs,
7 reproductions, microfilms, pictorial or graphic works, musical
8 scores, maps, charts, globes, sound recordings, slides, films,
9 filmstrips, video and magnetic tapes, other printed or published
10 matter and audiovisual and other materials of a similar nature,
11 necessary binding or rebinding of library materials, and specialized
12 computer software used as a supplement or in lieu of textbooks or
13 reference material.
- 14 s. "Lowest price" means the least possible amount that meets
15 all requirements of the request of a purchasing agent.
- 16 t. "Lowest responsible bidder or vendor" means the bidder or
17 vendor: (1) whose response to a request for bids offers the lowest
18 price and is responsive; and (2) who is responsible.
- 19 u. "Official newspaper" means any newspaper designated by
20 the board of education pursuant to R.S.35:1-1 et seq.
- 21 v. "Purchase order" means a document issued by the
22 purchasing agent authorizing a purchase transaction with a vendor
23 to provide or perform goods or services to the board of education,
24 which, when fulfilled in accordance with the terms and conditions
25 of a request of a purchasing agent and other provisions and
26 procedures that may be established by the board of education, will
27 result in payment by the board of education.
- 28 w. "Quotation" means the response to a formal or informal
29 request made by a purchasing agent to a vendor for provision or
30 performance of goods or services, when the aggregate cost is less
31 than the bid threshold. Quotations may be in writing, or taken
32 verbally if a record is kept by the purchasing agent.
- 33 x. "Responsible" means able to complete the contract in
34 accordance with its requirements, including but not limited to
35 requirements pertaining to experience, moral integrity, operating
36 capacity, financial capacity, credit, and workforce, equipment, and
37 facilities availability.
- 38 y. "Responsive" means conforming in all material respects to
39 the terms and conditions, specifications, legal requirements, and
40 other provisions of the request.
- 41 z. "Public works" means building, altering, repairing,
42 improving or demolishing any public structure or facility
43 constructed or acquired by a board of education to house school
44 district functions or provide water, waste disposal, power,
45 transportation, and other public infrastructures.
- 46 aa. "Concession" means the granting of a license or right to act
47 for or on behalf of the board of education, or to provide a service
48 requiring the approval or endorsement of the board of education,

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1 and which may or may not involve a payment or exchange, or
2 provision of services by or to the board of education, provided that
3 the term concession shall not include vending machines.

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

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

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

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

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

28

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

30 18A:18A-3. a. When the cost or price of any contract
31 awarded by the purchasing agent in the aggregate, does not exceed
32 in a contract year the total sum of \$17,500, the contract may be
33 awarded by a purchasing agent when so authorized by resolution of
34 the board of education without public advertising for bids and
35 bidding therefor, except that the board of education may adopt a
36 resolution to set a lower threshold for the receipt of public bids or
37 the solicitation of competitive quotations. If the purchasing agent
38 possesses a qualified purchasing agent certificate pursuant to
39 subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9),² the
40 board of education may establish that the bid threshold may be up
41 to \$25,000. Such authorization may be granted for each contract or
42 by a general delegation of the power to negotiate and award such
43 contracts pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (13) provisions concerning the prohibited activities in Belarus
40 and Russia pursuant to section 7 of P.L.2022, c.3 (C.52:32-60.2).

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

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

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

2 18A:18A-4. a. Every contract for the provision or performance
3 of any goods or services, the cost of which in the aggregate exceeds
4 the bid threshold, shall be awarded only by resolution of the board
5 of education to the lowest responsible bidder after public
6 advertising for bids and bidding therefor, except as is provided
7 otherwise in this chapter or specifically by any other law.

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

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

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

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

35 (3) the bidder defaulted on a contract, thereby requiring a board
36 of education or, in the case of a school facilities project, the New
37 Jersey Economic Development Authority, to look to the bidder's
38 surety for completion of the contract or tender of the costs of
39 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 a board of education
44 or, in the case of a school facilities project, with the New Jersey
45 Economic Development Authority.

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

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

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

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

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

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

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

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

39 e. Notwithstanding the provisions of this section to the
40 contrary, prior to the procurement of any goods or services pursuant
41 to this section, the purchasing agent shall determine if entering into
42 a cooperative purchasing system, as defined in subsection ee. of
43 N.J.S.18A:18A-2, for the procurement of the goods or services will
44 result in cost savings. A cost savings analysis prescribed by the
45 Division of Local Government Services in the Department of
46 Community Affairs pursuant to section 10 of P.L. , c. (C.)
47 (pending before the Legislature as this bill) shall include, but not be
48 limited to, factors such as charges for service, materials, delivery,

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1 soft costs, costs of acquisition, and other costs of traditional bidding
2 such as cost overruns, protest, rework, and change orders. If the
3 purchasing agent determines that entering into a cooperative
4 purchasing system for the procurement of goods or services will
5 result in cost savings, the board of education shall utilize a
6 cooperative purchasing system.

7 f. Prior to entering into a contract for the procurement of any
8 goods or services, the board of education shall ensure that the
9 contractor and any subcontractors are compliant with existing State
10 and federal laws, rules, and regulations as enumerated in subsection
11 c. of N.J.S.18A:18A-3.
12 (cf: P.L.2002, c.90, s.1)

13
14 4. Section 45 of P.L.1999, c.440 (C.18A:18A-4.1) is amended
15 to read as follows:

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

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

26 b. The hiring of a for-profit entity or a not-for-profit entity
27 incorporated under Title 15A of the New Jersey Statutes for the
28 purpose of:

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

31 (2) the operation, management or administration of data
32 processing services;

33 c. Services performed by an organization engaged in providing
34 energy conservation education and training services to train
35 employees of a board of education to reduce consumption of
36 energy;

37 d. Telecommunications transmission or switching services that
38 are not part of a tariff or schedule of charges filed with the Board of
39 Public Utilities;

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

43 f. Food services provided by food service management
44 companies when not part of programs administered by the New
45 Jersey Department of Agriculture, Bureau of Child Nutrition
46 Programs;

47 g. Driver education courses provided by licensed driver
48 education schools;

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

3 i. Laboratory testing services;

4 j. Concessions;

5 k. The operation, management or administration of other
6 services, with the approval of the Division of Local Government
7 Services in the Department of Community Affairs.

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

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

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

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

33
34 5. N.J.S.18A:18A-11 is amended to read as follows:

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

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

45 b. As used in this section, "nonpublic school" means an
46 elementary or secondary school within the State, other than a public
47 school, offering education for grades kindergarten through 12, or
48 any combination of them, wherein any child may legally fulfill

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1 compulsory school attendance requirements and which complies
2 with the requirements of Title VI of the Civil Rights Act of 1964,
3 Pub.L.88-352 (42 U.S.C. s.2000d et seq.).

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

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

25 (cf: P.L.2013, c.262, s.1)

26

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

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

31 (1) "Contracting unit" means:

32 (a) Any county; **[or]**

33 (b) Any municipality; or

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

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

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

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

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

17 (2) "Governing body" means:

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

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

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

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

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

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

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

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- 1 (7) "Extraordinary unspecifiable services" means services which
2 are specialized and qualitative in nature requiring expertise,
3 extensive training and proven reputation in the field of endeavor.
- 4 (8) (Deleted by amendment, P.L.1999, c.440[.])
- 5 (9) "Work" includes services and any other activity of a tangible
6 or intangible nature performed or assumed pursuant to a contract or
7 agreement with a contracting unit.
- 8 (10) "Homemaker--home health services" means at home
9 personal care and home management provided to an individual or
10 members of the individual's family who reside with the individual,
11 or both, necessitated by the individual's illness or incapacity.
12 "Homemaker--home health services" includes, but is not limited to,
13 the services of a trained homemaker.
- 14 (11) "Recyclable material" means those materials which would
15 otherwise become municipal solid waste, and which may be
16 collected, separated or processed and returned to the economic
17 mainstream in the form of raw materials or products.
- 18 (12) "Recycling" means any process by which materials which
19 would otherwise become solid waste are collected, separated or
20 processed and returned to the economic mainstream in the form of
21 raw materials or products.
- 22 (13) "Marketing" means the sale, disposition, assignment, or
23 placement of designated recyclable materials with, or the granting
24 of a concession to, a reseller, processor, materials recovery facility,
25 or end-user of recyclable material, in accordance with a district
26 solid waste management plan adopted pursuant to P.L.1970, c.39
27 (C.13:1E-1 et seq.) and shall not include the collection of such
28 recyclable material when collected through a system of routes by
29 local government unit employees or under a contract administered
30 by a local government unit.
- 31 (14) "Municipal solid waste" means, as appropriate to the
32 circumstances, all residential, commercial, and institutional solid
33 waste generated within the boundaries of a municipality; or the
34 formal collection of such solid wastes or recyclable material in any
35 combination thereof when collected through a system of routes by
36 local government unit employees or under a contract administered
37 by a local government unit.
- 38 (15) "Distribution" (when used in relation to electricity) means
39 the process of conveying electricity from a contracting unit that is a
40 generator of electricity or a wholesale purchaser of electricity to
41 retail customers or other end users of electricity.
- 42 (16) "Transmission" (when used in relation to electricity) means
43 the conveyance of electricity from its point of generation to a
44 contracting unit that purchases it on a wholesale basis for resale.
- 45 (17) "Disposition" means the transportation, placement, reuse,
46 sale, donation, transfer, or temporary storage of recyclable materials
47 for all possible uses except for disposal as municipal solid waste.

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1 (18) "Cooperative marketing" means the joint marketing by two
2 or more contracting units of the source separated recyclable
3 materials designated in a district recycling plan required pursuant to
4 section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written
5 cooperative agreement entered into by the participating contracting
6 units thereof.

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

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

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

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

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

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

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

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- 1 computer software used as a supplement or in lieu of textbooks or
2 reference material.
- 3 (26) "Lowest price" means the least possible amount that meets
4 all requirements of the request of a contracting agent.
- 5 (27) "Lowest responsible bidder or vendor" means the bidder or
6 vendor: (a) whose response to a request for bids offers the lowest
7 price and is responsive; and (b) who is responsible.
- 8 (28) "Official newspaper" means any newspaper designated by
9 the contracting unit pursuant to R.S.35:1-1 et seq.
- 10 (29) "Purchase order" means a document issued by the
11 contracting agent authorizing a purchase transaction with a vendor
12 to provide or perform goods or services to the contracting unit,
13 which, when fulfilled in accordance with the terms and conditions
14 of a request of a contracting agent and other provisions and
15 procedures that may be established by the contracting unit, will
16 result in payment by the contracting unit.
- 17 (30) "Purchasing agent" means the individual duly assigned the
18 authority, responsibility, and accountability for the purchasing
19 activity of the contracting unit, and who has such duties as are
20 defined by an authority appropriate to the form and structure of the
21 contracting unit, pursuant to the "Local Public Contracts Law,"
22 P.L.1971, c.198 (C.40A:11-1 et seq.) and who possesses a qualified
23 purchasing agent certificate.
- 24 (31) "Quotation" means the response to a formal or informal
25 request made by a contracting agent by a vendor for provision or
26 performance of goods or services, when the aggregate cost is less
27 than the bid threshold. Quotations may be in writing, or taken
28 verbally if a record is kept by the contracting agent.
- 29 (32) "Responsible" means able to complete the contract in
30 accordance with its requirements, including but not limited to
31 requirements pertaining to experience, moral integrity, operating
32 capacity, financial capacity, credit, and workforce, equipment, and
33 facilities availability.
- 34 (33) "Responsive" means conforming in all material respects to
35 the terms and conditions, specifications, legal requirements, and
36 other provisions of the request.
- 37 (34) "Public works" means building, altering, repairing,
38 improving, or demolishing any public structure or facility
39 constructed or acquired by a contracting unit to house local
40 government functions or provide water, waste disposal, power,
41 transportation, and other public infrastructures.
- 42 (35) "Director" means the Director of the Division of Local
43 Government Services in the Department of Community Affairs.
- 44 (36) "Administrator" means a municipal administrator appointed
45 pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business
46 administrator, a municipal manager or a municipal administrator
47 appointed pursuant to the "Optional Municipal Charter Law,"
48 P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager

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16

1 appointed pursuant to "the municipal manager form of government
2 law," R.S.40:79-1 et seq.; or the person holding responsibility for
3 the overall operations of an authority that falls under the "Local
4 Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et
5 seq.).

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

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

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

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

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

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

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

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

43

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

46 3. a. When the cost or price of any contract awarded by the
47 contracting agent in the aggregate does not exceed in a contract year
48 the total sum of \$17,500, the contract may be awarded by a

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1 purchasing agent or other employee so designated by the governing
2 body when so authorized by ordinance or resolution, as appropriate
3 to the contracting unit, without public advertising for bids, except
4 that the governing body of any contracting unit may adopt an
5 ordinance or resolution to set a lower threshold for the receipt of
6 public bids or the solicitation of competitive quotations. If a
7 purchasing agent has been appointed, the governing body of the
8 contracting unit may establish that the bid threshold may be up to
9 \$25,000 or the threshold amount adjusted by the Governor pursuant
10 to subsection c. of this section. Such authorization may be granted
11 for each contract or by a general delegation of the power to
12 negotiate and award such contracts pursuant to this section.

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

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

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

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

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

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

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

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

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

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18

- 1 (7) the provisions of the "Sales and Use Tax Act," P.L.1966,
2 c.30 (C.54:32B-1 et seq.)
3 (8) the American goods sourcing provisions of section 18 of
4 P.L.1971, c.198 (C.40A:11-18);
5 (9) valid classification in a trade as issued by the Division of
6 Property Management and Construction in the Department of
7 Treasury;
8 (10)submission of a sworn contractor certification pursuant to
9 section 63 of P.L.2000, c.72 (C.18A:7G-37);
10 (11)compliance by local government officers and employees
11 pursuant to section 5 of P.L.1991, c.29 (C.40A:9-22.5);
12 (12)provisions concerning the disclosure of investment activities
13 in Iran pursuant to P.L.2012, c.25 (C.52:32-55 et al.); and
14 (13)provisions concerning the prohibited activities in Belarus
15 and Russia pursuant to section 7 of P.L.2022, c.3 (C.52:32-60.2).
16 (cf: P.L.2009, c.166, s.2)

17

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

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

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

34 (1) the bidder has been found, through either court adjudication,
35 arbitration, mediation, or other contractually stipulated alternate
36 dispute resolution mechanism, to have: failed to provide or perform
37 goods or services; or failed to complete the contract in a timely
38 manner; or otherwise performed unsatisfactorily under a prior
39 contract with the contracting unit;

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

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

46 (4) the bidder is debarred or suspended from contracting with
47 any of the agencies or departments of the executive branch of the

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1 State of New Jersey at the time of the contract award, whether or
2 not the action was based on experience with the contracting unit.

3 c. The following conditions apply if the governing body of a
4 contracting unit is contemplating a disqualification based on prior
5 negative experience:

6 (1) The existence of any of the indicators of prior negative
7 experience set forth in this section shall not require that a bidder be
8 disqualified. In each instance, the decision to disqualify shall be
9 made within the discretion of the governing body and shall be
10 rendered in the best interests of the contracting unit.

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

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

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

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

34 (6) An opportunity for a hearing need not be offered to a bidder
35 whose disqualification is based on its suspension or debarment by
36 an agency or department of the executive branch of the State of
37 New Jersey. The term of such a disqualification shall be concurrent
38 with the term of the suspension or debarment by the State agency or
39 department.

40 d. Notwithstanding the provisions of this section to the
41 contrary, prior to the procurement of any goods or services pursuant
42 to this section, the purchasing agent shall determine if entering into
43 a cooperative purchasing system, as defined in section 2 of
44 P.L.1971, c.198 (C.40A:11-2), for the procurement of the goods or
45 services will result in cost savings. A cost savings analysis
46 prescribed by the Division of Local Government Services in the
47 Department of Community Affairs pursuant to section 10 of P.L. ,
48 c. (C.) (pending before the Legislature as this bill) shall

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1 include, but not be limited to, factors such as charges for service,
2 materials, delivery, soft costs, costs of acquisition, and other costs
3 of traditional bidding such as cost overruns, protest, rework, and
4 change orders. If the purchasing agent determines that entering into
5 a cooperative purchasing system for the procurement of goods or
6 services will result in cost savings, the contracting unit shall utilize
7 a cooperative purchasing system.

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

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

14

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

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

22 a. The purchase or licensing of proprietary computer software
23 designed for contracting unit purposes, which may include
24 hardware intended for use with the proprietary software. This
25 subsection shall not be utilized for the purpose of acquiring general
26 purpose computer hardware or software;

27 b. The hiring of a for-profit entity or a not-for-profit entity
28 incorporated under Title 15A of the New Jersey Statutes for the
29 purpose of:

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

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

42 (3) the operation, management or administration of data
43 processing services; or

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

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

48 d. Homemaker--home health services;

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

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

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

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

47 Prior to entering into a contract for the procurement of any goods
48 or services, the contracting unit shall ensure that the contractor and

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1 any subcontractors are compliant with existing State and federal
2 laws, rules, and regulations as enumerated in subsection d. of
3 section 3 of P.L.1971, c.198 (C.40A:11-3).
4 (cf: P.L.2022, c.139, s.3)
5

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

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

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

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

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

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

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

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

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

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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.

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

46 This bill also requires the Director of the Division of Local
47 Government Services in the Department of Community Affairs, in
48 consultation with the Commissioner of Education, to develop

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

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

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

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

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