

SENATE, No. 1442

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

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

Introduced Pending Technical Review by Legislative Counsel.



S1442 SINGLETON

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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)

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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.

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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.