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February 6, 2017

VIA ELECTRONIC MAIL

William M. Mayo, CPCU, ARM
Executive Director
New Jersey Schools Insurance Group

Re: NJSIG procurement and contracting

Dear NJSIG Management Team:

Attached is the NJSIG official procurement manual. This has been prepared by the Legal Department to serve as an in-depth resource regarding the procurement procedures NJSIG is required to follow. The Legal Department is available to answer any questions regarding procurement compliance, and to aid in the drafting of any procurement documents.

Sincerely yours,

s/ Jill Deitch
Jill Deitch, Esq.
Chief Legal Officer

/JD
Enc.

cc: Michele Carosi
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NJSIG Procurement Manual

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Table of Contents

1	Purpose and intent	3
2	Organizational background	3
3	Public School Contracts Law background	3
4	Procurement Quick Reference Guide.....	4
5	Bid Threshold	5
6	Classification of goods and services.....	5
6.1	General goods and services.....	6
6.2	Specialized goods and services.....	6
6.3	Exempt goods and services.....	7
6.4	Professional services	8
6.5	Extraordinary unspecifiable services.....	8
7	Methods of Procurement	10
7.1	Sound business practices	12
7.2	Competitive quotations.....	12
7.3	Competitive contracting	12
7.4	Request for qualifications	13
7.5	Public bidding.....	14
7.6	Certification and board resolution (EUS).....	15
8	Contract Duration	15
9	Contract Form and Procedure.....	16
10	Ethics and conduct in purchasing	17
11	Conclusion and References	18

1 Purpose and intent

The purpose of this procurement manual is to assist all employees of the New Jersey Schools Insurance Group (“NJSIG”) in the proper procurement practices to be compliant with the applicable laws governing public procurement in the State of New Jersey, including the New Jersey Public School Contracts Law (“PSCL”);² the New Jersey Administrative Code;³ and, NJSIG procurement policy. All procurements must be reviewed and approved by the Legal Department and NJSIG’s Qualified Purchasing Agent prior to initiating any procurement, or awarding any contract. All contracts must be reviewed and approved by the Legal Department prior to being executed by the Executive Director.

2 Organizational background

NJSIG is a public entity insurance group, also known as a self-insurance pool,⁴ that provides insurance coverage and risk management services to member school districts. The concept of pooling is one whereby public entities can join together to provide protection from risks on a group basis. As a self-insurance pool, NJSIG is governed by a Board of Trustees which is comprised of School Board members, Superintendents and Business Administrators from NJSIG member districts.

By joining NJSIG, members collectively attain benefits not possible individually and pool their premiums into a common fund to be used for the benefit of all member districts. NJSIG is comprised of approximately four hundred boards of education and charter school districts, and offers members a cost-effective method of obtaining coverage for the following lines: workers’ compensation, general liability, automobile liability, excess liability, property, error and omissions, bonds, crime, electronic data processing, environmental liability, equipment breakdown, and auto physical damage coverages. NJSIG provides claims administration, underwriting and loss control services for members.

3 Public School Contracts Law background

The PSCL was passed in 1977 for the purpose of updating the law governing the award of contracts by boards of education, while maintaining consistency with the Local Public Contracts Law (“LPCL”).⁵ Prior to the passage of the PSCL, contracting by boards of education was governed by the LPCL.⁶ While NJSIG is not classified as a board of education, NJSIG is required to comply with the PSCL as a result of

regulations promulgated by the State of New Jersey, Department of Banking and Insurance (“DOBI”).⁷ The PSCL, like all bidding statutes, is for the benefit of taxpayers⁸ and its purpose is to guard against favoritism, improvidence, extravagance and corruption in procurement.⁹ The LPCL and PSCL are primarily interpreted and enforced by the State of New Jersey, Department of Community Affairs (“DCA”);¹⁰ however, the State of New Jersey, Department of Education (“DOE”), Office of Fiscal Accountability and Compliance also shares PSCL enforcement responsibilities for boards of education.¹¹

The PSCL requires different methods of procurement be used depending on the type of good or service being procured, and the monetary amount to be spent on that type of good or service for that fiscal year. Thus, the procedures to be followed for a specific procurement are dependent on both the nature of the good or service to be procured and the total amount for that procurement for that fiscal year. The chart below provides a brief guide to identifying the appropriate method to be used for procurement.

4 Procurement Quick Reference Guide

To make use of this guide, first identify the type of good or service to be procured. To categorize the type of good or service to be procured, review the definitions in Section 6. Once you have categorized the good or service, identify the monetary amount of the procurement. Based on these two pieces of information, you can identify the method that should be used to conduct the procurement. Information regarding the methods of procurement is available in Section 7.

Procurement Method Guide			
	\$0 to \$5999.99¹²	\$6,000 to \$40,000	\$40,000.01 to ∞
General goods and services¹³	Sound business practices ¹⁴	Competitive quotations ¹⁵	Public bidding ¹⁶
Specialized goods and services¹⁷	Sound business practices ¹⁸	Competitive quotations ¹⁹	Competitive contracting ²⁰

Procurement Method Guide			
	\$0 to \$5999.99¹²	\$6,000 to \$40,000	\$40,000.01 to ∞
Exempt goods and services²¹	Sound business practices ²²	Competitive quotations ²³	Competitive contracting ²⁴
Professional services²⁵	Sound business practices ²⁶	Sound business practices ²⁷	Request for qualifications ²⁸
Extraordinary unspecifiable services²⁹	Sound business practices ³⁰	Competitive quotations ³¹	Certification and board resolution ³²

All procurements of goods and services that have not been previously reviewed by the Legal Department must be reviewed and approved during the initial procurement. After an initial procurement has been reviewed and approved by the Legal Department, a presumption exists that the same procurement method will be used for procurements of a similar nature.

5 Bid Threshold

The bid threshold is the annual dollar amount set forth by statute above which NJSIG is required to advertise for and receive sealed bids in accordance with the PSCL.³³ As of January 2017, the bid threshold is \$40,000 because NJSIG has a qualified purchasing agent.³⁴ NJSIG's Qualified Purchasing Agent is Sean P. Canning, from the Canning Group, LLC. The bid threshold applies to each class of goods and/or services of a similar nature, which in the aggregate total more than the bid threshold. The bid threshold applies to NJSIG as a whole, and not by department. The bid threshold is updated periodically by the Department of Community Affairs. NJSIG employees are not permitted to circumvent the PSCL by splitting purchases to be under the bid threshold.³⁵

6 Classification of goods and services

The PSCL requires different methods of procurement be used depending on the type of goods or service being procured. Set forth below are definitions of each category, as well as examples of goods and services in each category.

6.1 General goods and services

No definition of general goods and services is contained within the PSCL; however, this category includes all goods and services which do not otherwise fall within any of the exceptions to public bidding in the PSCL.

The PSCL does not list examples of general goods and services; however, the following are common examples: construction and capital improvement for facilities,³⁶ plumbing services, electrical services, heating ventilation and air conditioning services, general computer equipment supplies, audiovisual equipment, custodial supplies, food/catering supplies, pest control services, and furniture.

6.2 Specialized goods and services

No definition of specialized goods and services is contained within the PSCL; however, these are listed in the PSCL.³⁷ Only goods and services on this list qualify as specialized goods and services under the PSCL. Specialized goods and services are limited to following:

- The purchase or licensing of proprietary computer software designed for board of education purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;
- The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:
 - a. the operation, management or administration of recreation or social service facilities or programs; or
 - b. the operation, management or administration of data processing services;
- Telecommunications transmission or switching services that are not part of a tariff or schedule of charges filed with the Board of Public Utilities;

- The purchase of specialized machinery or equipment of a technical nature, or servicing thereof, which will not reasonably permit the drawing of specifications;
- Concessions;

This list is not comprehensive, as certain items have been excluded because they are unlikely to be the subject of NJSIG purchasing.

6.3 Exempt goods and services

No definition of exempt goods and services is contained within the PSCL; however, these are listed in the PSCL.³⁸ Only goods and services on this list qualify as exempt goods and services under the PSCL. Exempt goods and services are limited to following:

- The doing of any work by employees of NJSIG;
- The printing of all legal notices; and legal briefs, records and appendices to be used in any legal proceeding in which NJSIG may be a party. Publishing of legal notices in newspapers as required by law;
- Educational goods and services;
- The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with the tariffs and schedules of charges made, charged and exacted, filed with said board;
- Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
- Expenses for travel and conferences;
- The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this

provision shall not be utilized to acquire or upgrade non-proprietary hardware or acquire or update non-proprietary software;

- Vending machines providing food or drink.

This list is not comprehensive, as certain items have been excluded because they are unlikely to be the subject of NJSIG purchasing.

6.4 Professional services

Professional services are those that are “rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.”³⁹

Examples of professional services include the services of attorneys, auditors, architects and engineers. Note that the Department of Education has taken the position that insurance brokers DO NOT qualify as a professional services providers under the PSCL.⁴⁰

6.5 Extraordinary unspecifiable services

Extraordinary unspecifiable services are those which “are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.”⁴¹ While no reported New Jersey Court case has dealt with the affirmative categorization of an EUS,⁴² DCA has indicated that the following goods or services may be eligible for classification depending on the circumstances:

- Specification drafting;
- Management consultant studies;
- Labor management consultants;
- Certified landscape architects;

- Information and telecommunications technology preliminary feasibility surveys, design of systems and preparation of specifications, web site design, maintenance, and hosting;
- Expert financial advisors;
- Public relations consultants;
- Child custody, foster care, and similar services when contracted directly with the individuals performing the services and not with any firm, corporation or partnership which employs others to perform the work;
- Establishment of a fixed assets inventory when the total system includes an accounting component;
- Expert witnesses; and,
- Clerk of the works or construction advisor (not the actual construction).⁴³

DCA has also issued guidance indicating that the following goods or services are NOT eligible for classification as EUS:

- Facilities management contracts (for data processing or other operations);
- Information technology services, including programming, service bureau processing, rental of information technology equipment, purchasing of information technology data processing equipment, internet service providers. these activities are in some cases complex but are specifiable, and may be viable candidates for the competitive contracting process;
- Construction management contracts (involving price guarantee, responsibility for conducting the construction, etc);
- Physical taking of a fixed assets inventory;
- Electrical equipment maintenance;

- Maintenance of non-proprietary computers and networking equipment, and common office equipment;
- Tradesmen;
- Heating specialists;
- Maintenance of motor vehicle fleets;
- Feeding programs; and,
- Revaluation services.⁴⁴

These lists are not comprehensive; however, because DCA has issued guidance as to these goods and services, these lists can serve as a useful starting point in determining whether a good or service can be categorized as an EUS.

7 Methods of Procurement

The PSCL requires different methods of procurement be used depending on the type of goods or service being procured. The chart below provides a brief guide to identifying the basic requirements for each procurement method.

Procurement Method Requirements Guide						
	Sound business practices	Competitive quotations	Public bidding	Request for qualifications	Competitive contracting	Certification and board resolution
Resolution Required to Initiate Procurement	No	No	No	No	Yes ⁴⁵	No
Published Notification in Newspaper Required to Initiate Procurement	No	No	Yes ⁴⁶	Yes	Yes ⁴⁷	No

Procurement Method Requirements Guide						
	Sound business practices	Competitive quotations	Public bidding	Request for qualifications	Competitive contracting	Certification and board resolution
Contract Must be Awarded to Lowest Bidder	No ⁴⁸	No ⁴⁹	Yes ⁵⁰	No	No ⁵¹	No ⁵²
Resolution Required to Award Contract	No	No	Yes ⁵³	Yes ⁵⁴	Yes ⁵⁵	Yes ⁵⁶
Published Notification in Newspaper Required to Award Contract	No	No	No	Yes ⁵⁷	Yes ⁵⁸	Yes ⁵⁹
Business Registration Certificate⁶⁰	Yes	Yes	Yes	Yes	Yes	Yes
W-9	Yes	Yes	Yes	Yes	Yes	Yes
Equal Employment Opportunity Compliance Certificate⁶¹	Yes	Yes	Yes	Yes	Yes	Yes
Certification of Non-Involvement in Prohibited Activities in Iran⁶²	Yes	Yes	Yes	Yes	Yes	Yes
Pay-to-Play Political Contribution Certification⁶³	Yes	Yes	No	No	No	Yes

The specific requirements for each method of procurement available to NJSIG under the PSCL are described in detail below.

7.1 Sound business practices

Procurement in accordance with sound business practices requires the purchasing agent to employ “such judgment that the price charged to the contracting unit reflects current market conditions and the quantity and delivery needs of the contracting unit.”⁶⁴

Procurement performed in accordance with sound business practices does not require the passage of a resolution by the NJSIG Board of Trustees to initiate the solicitation process. Contracts awarded pursuant to sound business practices do not require the passage of a resolution by the NJSIG Board of Trustees in order to award the contract. Contracts awarded pursuant to sound business practices do not have to be awarded to the lowest bidder; rather, these contracts must be awarded using the purchasing agent’s judgment as to current market conditions and the quantity and delivery needs.

7.2 Competitive quotations

Procurement via the competitive quotations process requires purchasing agent to develop written procurement requirements and evaluation criteria which must be retained. The purchasing agent must solicit a minimum of two written competitive quotations.⁶⁵ The written evaluation criteria, along with the quotations must be retained. A copy of the quotation from the vendor selected must be attached to any voucher used to pay that vendor. Quotations may be in writing or taken orally if a record is kept by the purchasing agent.⁶⁶

The competitive quotations process does not require the passage of a resolution by the NJSIG Board of Trustees to initiate the solicitation process. Contracts awarded pursuant to a request for competitive quotations do not require the passage of a resolution by the NJSIG Board of Trustees in order to award the contract. Contracts awarded pursuant to a request for competitive quotations do not have to be awarded to the lowest bidder; rather, these contracts must be awarded pursuant to clearly articulated evaluation criteria which are most advantageous to NJSIG, price and other factors considered.⁶⁷

7.3 Competitive contracting

The competitive contracting process requires the use of request for proposal (“RFP”) documentation by statute.⁶⁸ The RFP documentation must include the requirements for the procurement and the methodology by which proposals will be evaluated.⁶⁹ The NJSIG employee responsible for the procurement should prepare the weighted evaluation criteria for evaluation of proposals prior to publication of the solicitation for proposals.⁷⁰ If the weighted evaluation criteria are not disclosed as part of the solicitation for proposals, they must be disclosed at the time and date proposals are due, but prior to opening any proposals.⁷¹ While not required, it is recommended that the NJSIG employee responsible for the procurement convene a committee to handle evaluation of the submissions.⁷² The evaluation report, based on the disclosed evaluation criteria, must be submitted to the Board of Trustees, and will become part of the public record.⁷³

The competitive contracting process requires the passage of a resolution by the NJSIG Board of Trustees to initiate the solicitation process for all procurements that are being conducted in this manner for the first time.⁷⁴ A notice of the availability of proposal documentation must be published in the official newspaper of NJSIG at least twenty (20) days prior to the deadline for the submission of proposals.⁷⁵ Contracts awarded pursuant to the competitive contracting process require the passage of a resolution by the NJSIG Board of Trustees in order to award the contract.⁷⁶

Contracts awarded pursuant to the competitive contracting process do not have to be awarded to the lowest bidder; rather, these contracts must be awarded pursuant to clearly articulated weighted evaluation criteria which are published in the request for proposal.⁷⁷ Once awarded by the Board of Trustees, NJSIG is required to publish a notice of the official newspaper of NJSIG describing the nature, duration, and amount of the contract, the name of the vendor and a statement that the resolution and contract are on file and available for public inspection in the office of NJSIG.⁷⁸

7.4 Request for qualifications

The procurement process by which professional services contracts must be awarded by NJSIG is not described in the PSCL; however, the Office of the State Comptroller as promulgated best practices for awarding services contracts.⁷⁹ These best practices involve a process with clearly articulated evaluation criteria that promotes a transparent and efficient contracting. This process is commonly known as a request for qualifications (“RFQ”) process. The RFQ process is similar in nature to the process for competitive contracting, and thus the RFQ documentation must

include the requirements for the procurement and the methodology by which proposals will be evaluated.

The RFQ process does not require the passage of a resolution by the NJSIG Board of Trustees to initiate the solicitation process. A notice of the availability of proposal documentation should be published in the official newspaper of NJSIG at least twenty (20) days prior to the deadline for the submission of proposals. Contracts awarded pursuant to the RFQ process require the passage of a resolution by the NJSIG Board of Trustees in order to award the contract which states the supporting reasons for its action.⁸⁰ Contracts awarded pursuant to the RFQ process do not have to be awarded to the lowest bidder; rather, these contracts must be awarded pursuant to clearly articulated evaluation criteria which are published in the RFQ.

Once awarded by the Board of Trustees, NJSIG is required to publish a notice of the official newspaper of NJSIG describing the nature, duration, and amount of the contract, the name of the vendor and a statement that the resolution and contract are on file and available for public inspection in the office of NJSIG.⁸¹

7.5 Public bidding

The public bidding procurement process requires the use of public advertising for bids and bidding,⁸² and should utilize request for proposal documentation to solicit responses. This is the default process by which all procurements which exceed the bid threshold must be conducted unless another procurement method is permitted by the PSCL.⁸³ This process requires NJSIG to set forth the terms and conditions, the specifications, the legal requirements, and other provisions of the procurement so as to determine whether a proposal is responsive.⁸⁴ This process also requires NJSIG to inquire as to the bidder's ability to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.⁸⁵ Contracts awarded pursuant to the public bidding process must be awarded to the lowest responsible bidder which has submitted a responsive proposal.⁸⁶

The public bidding procurement process does not require the passage of a resolution by the NJSIG Board of Trustees to initiate the solicitation process. A notice of the availability of proposal documentation must be published in the official newspaper of NJSIG at least ten (10) days prior to the deadline for the submission of proposals.⁸⁷ Contracts awarded pursuant to the public bidding procurement process require the passage of a resolution by the NJSIG Board of Trustees in order to award

the contract.⁸⁸ NJSIG is not required to publish a notice of the award of contracts awarded pursuant to public bidding in the official newspaper of NJSIG.

7.6 Certification and board resolution (EUS)

The procurement process for EUS requires the NJSIG employee handling the procurement to file a certification with the NJSIG Board of Trustees describing the nature of the procurement, stating that it is not possible to draft specifications, describing the informal process by which the NJSIG employee solicited quotations and describing why the procurement qualifies as an EUS under the PSCL.⁸⁹ Contracts awarded pursuant to the EUS process require the passage of a resolution by the NJSIG Board of Trustees in order to award the contract which states the supporting reasons for its action.⁹⁰ Contracts awarded pursuant to the EUS process require the publication of a notice of the award in the official newspaper of NJSIG.⁹¹ Contracts awarded pursuant to the EUS process do not have to be awarded to the lowest bidder.⁹²

8 Contract Duration

Generally under the PSCL all contracts may not exceed two years (twenty-four months).⁹³ However, contracts for professional services may not exceed one year (twelve months).⁹⁴ Contracts awarded pursuant to a competitive contracting process may not exceed five years (sixty months).⁹⁵ In addition, there are several categories of goods that have been authorized specific contractual lengths.⁹⁶ These include:

- Data processing service, for any term of not more than seven years;
- Insurance, including the purchase of insurance coverages, insurance consultant or administrative services, and including participation in a joint self-insurance fund, risk management program or related services provided by a school board insurance group, or participation in an insurance fund established by a county, for any term of not more than three years;
- Leasing or servicing of automobiles, motor vehicles, electronic communications equipment, machinery and equipment of every nature and kind and textbooks and non-consumable instructional materials, for any term not exceeding in the aggregate, five years;

- Supplying of any product or the rendering of any service by a company providing voice, data, transmission or switching services, for a term not exceeding five years;
- Driver education instruction conducted by private, licensed driver education schools, for any term not exceeding in the aggregate, three years;
- Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction; and,
- Food supplies and food services for any term of not more than three years.

This list is not comprehensive, as certain items have been excluded because they are unlikely to be the subject of NJSIG purchasing.

Finally, any contract for services – other than professional services – for which the contract length is three years or less, may include a provision in the contract for one two-year extension, or two one-year extensions.⁹⁷ However, in order to extend a contract in this manner, the contract must be awarded by a resolution of the Board of Trustees upon a finding that the services are being performed in an effective and efficient manner.⁹⁸ The terms and conditions of the contract must remain substantially the same, and any price increase cannot exceed the index rate for the twelve (12) months preceding the most recently quarterly calculation.⁹⁹ This provision cannot be used to extend a contract so that it runs for more than a total of five consecutive years.¹⁰⁰

9 Contract Form and Procedure

All contracts, regardless of amount must be reviewed by the Legal Department prior to execution. Only the Executive Director of NJSIG may execute contracts on behalf of NJSIG. All NJSIG contracts, regardless of amount, must be in writing.¹⁰¹ NJSIG will not reimburse an employee for goods and services personally purchased by the employee, excluding preauthorized tuition reimbursement, travel, meals and conferences.

In addition to the PSCL, there are requirements created by other laws that apply to NJSIG procurements. For all NJSIG procurements, the NJSIG employee conducting the procurement must obtain a State of New Jersey, business registration certificate,¹⁰² a W-9 form, an equal employment opportunity compliance certificate¹⁰³ and a Certification of Non-Involvement in Prohibited Activities in Iran¹⁰⁴ from the vendor. Finally, for all procurements that exceed \$17,500 for a fiscal year, and were conducted by sound business practices, by obtaining competitive quotations, or by Certification and Board Resolution (EUS) the contractor must provide a Political Contribution Vendor Certification and Disclosure Form to comply with the Pay-to-Play laws.¹⁰⁵ This is because this disclosure form is required where the contract was awarded without being “publically advertised for bids.”¹⁰⁶

No contract will be valid, and payment will not be processed, unless these documents are obtained prior to the execution of the contract. It is the responsibility of the NJSIG employee conducting the procurement to ensure that all required documents have been obtained.

10 Ethics and conduct in purchasing

NJSIG employees must not convey any information to a vendor which could confer an unfair advantage upon a vendor during the proposal solicitation process.¹⁰⁷ To this end, all vendor questions regarding a procurement must be submitted to the designated NJSIG email address, RFP@njsig.org. Answers to vendor questions will be posted by the designated date, and will be publically available to all vendors to promote information symmetry between bidders. As stated above, NJSIG employees are not permitted to circumvent the PSCL by splitting purchases to be under the bid threshold.¹⁰⁸

NJSIG employees are required to report any evidence that a bid was not arrived at independently in competition to the Legal Department.¹⁰⁹ No NJSIG employee or family member shall accept any gift or thing of value from a bidder or entity that transacts with NJSIG, directly or indirectly, that would be reasonably likely to create the perception that such a gift or thing of value would influence the decision making of a NJSIG employee.¹¹⁰ No NJSIG employee shall have a direct interest, be beneficially interested in, or receive compensation or a reward of any kind as a result of any contract entered into by NJSIG.¹¹¹ All individuals that participate in the evaluation of a procurement using competitive contracting, including members of an evaluation committee, must complete a conflict of interest certification.¹¹² If a NJSIG employee has a conflict of interest with relation to a procurement, they are prohibited from being involved in any way with that procurement.¹¹³

To protect the integrity of procurement process, where formal bids are solicited and received, no bid shall be opened prior to the expiration of the time within which NJSIG has designated to receive bids.¹¹⁴ The date on which proposals are due shall also not fall on a Monday, or the day after any State Holiday.¹¹⁵ Upon the award of a contract, the resolution of the Board of Trustees (if required) will be publically posted on the NJSIG website, and published in the official newspaper of NJSIG (if required).

11 Conclusion and References

This procurement manual was created to serve as an introduction to the procurement process for NJSIG employees, and does not purport to be inclusive of all information required to conduct compliant and ethical procurements. All NJSIG employees involved in the procurement process are expected to demonstrated both sound business judgment, and act in accordance with the ethical standards expected of public employees. If you have any questions regarding procurement generally, or a specific procurement, please contact the Legal Department.

¹ This procurement manual was prepared by Stephen R. Tucker, Esq. and Jill Deitch, Esq.

² N.J.S.A. 18A:18A-1, et seq.

³ N.J.A.C. 5:34-1, et seq.

⁴ P.L. 1983, c. 108; N.J.S.A. 18A:18B, et seq.

⁵ N.J.S.A. 40A:11-1, et seq.; Senate Education Committee Statement to P.L. 1977, c. 114, available at https://web.archive.org/save/_embed/https://repo.njstatelib.org/bitstream/handle/10929.1/6057/L1977c114.pdf?sequence=1&isAllowed=y.

⁶ Senate Education Committee Statement to P.L. 1977, c. 114.

⁷ N.J.A.C. 11:15-4.4(a); 28 N.J.R. 3135(a).

⁸ See George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 36 (1994).

⁹ M.J. Paquet v. N.J. Dep't of Transp., 171 N.J. 378, 386 (2002) (citations omitted). As such, the Appellate Division has noted that bidding statutes require rigid adherence by the courts in interpreting its terms. Hall Constr. Co., Inc. v. N.J. Sports and Exposition Auth., 295 N.J. Super. 629, 635 (App. Div. 1996).

¹⁰ See N.J.S.A. 18A:18A-4.1(k); N.J.S.A. 18A:18A-4.4(b); N.J.S.A. 18A:18A-4.5(h).

¹¹ See, e.g., OFAC case #INV-043-14, available at <https://web.archive.org/web/20161129173315/https://assets.documentcloud.org/documents/1292725/n-j-s-office-of-fiscal-accountability-report-on.pdf>.

¹² This amount is equal to 15% of the bid threshold.

¹³ This includes any goods or services that do not fall within any other category.

¹⁴ N.J.S.A. 18A:18A-37(c); N.J.A.C. 5:34-9.5(b).

¹⁵ N.J.S.A. 18A:18A-37(a).

¹⁶ N.J.S.A. 18A:18A-4(a).

¹⁷ These are listed at N.J.S.A. 18A:18A-4.1(a) – (k).

¹⁸ N.J.S.A. 18A:18A-37(c); N.J.A.C. 5:34-9.5(b).

¹⁹ N.J.S.A. 18A:18A-37(a).

²⁰ N.J.S.A. 18A:18A-4.1.

²¹ These are listed at N.J.S.A. 18A:18A-5(a)-(k). While professional services and extraordinary unspecifiable services are included in this list, their requirements differ significantly and as such they are listed separately.

²² N.J.S.A. 18A:18A-37(c); N.J.A.C. 5:34-9.5(b).

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- ²³ N.J.S.A. 18A:18A-37(a).
- ²⁴ N.J.S.A. 18A:18A-4.1(h) permits competitive contracting be used for any good or service that is exempt from bidding pursuant to N.J.S.A. 18A:18A-5. While N.J.S.A. 18A:18A-5 permits exempt goods and services under this section to be awarded by resolution, the Office of the State Comptroller has issued guidance indicating that best practices are to engage in a competitive contracting process. See Best Practices for Awarding Service Contracts, March 4, 2010, State of New Jersey, Office of the State Comptroller, available at https://web.archive.org/web/20150906070655/http://nj.gov/comptroller/news/docs/service_contracts_report.pdf.
- ²⁵ N.J.S.A. 18A:18A-5(a)(1).
- ²⁶ N.J.S.A. 18A:18A-37(c); N.J.A.C. 5:34-9.5(b)
- ²⁷ The requirement to obtain competitive quotations under N.J.S.A. 18A:18A-37(a) does not apply to contracts for professional services.
- ²⁸ N.J.S.A. 18A:18A-5(a)(1); see Best Practices for Awarding Service Contracts, March 4, 2010, State of New Jersey, Office of the State Comptroller.
- ²⁹ N.J.S.A. 18A:18A-5(a)(2).
- ³⁰ N.J.S.A. 18A:18A-37(c); N.J.A.C. 5:34-9.5(b).
- ³¹ N.J.A.C. 5:34-2.3(a); N.J.S.A. 18A:18A-37(a).
- ³² N.J.A.C. 5:34-2.3(b).
- ³³ See N.J.S.A. 18A:18A-2(m); N.J.S.A. 18A:18A-3.
- ³⁴ See Adjustment to Public Bidding Threshold, July 1, 2015, State of New Jersey, Department of the Treasury, Division of Purchase and Property, available at <https://web.archive.org/web/20160618160026/http://www.state.nj.us/treasury/purchase/adpubbid05.shtml>
- ³⁵ N.J.S.A. 18A:18A-8(a).
- ³⁶ See, e.g., Advance Elec. Co., Inc. v. Montgomery Tp. Bd. of Educ., 351 N.J. Super. 160 (App. Div. 2002), cert. denied, 174 N.J. 364 (2002).
- ³⁷ N.J.S.A. 18A:18A-4.1(a) – (k)
- ³⁸ N.J.S.A. 18A:18A-5(a)(3)-(23). While professional services and extraordinary unspecifiable services are included in this list, their requirements differ significantly and as such they are listed separately.
- ³⁹ N.J.S.A. 18A:18A-2(h).
- ⁴⁰ See OFAC case #INV-043-14.
- ⁴¹ N.J.S.A. 18A:18A-2(g).
- ⁴² While the Court previously examined the exemption for “[i]nsurance, including the purchase of insurance coverage and consultant services,” see Local 1081 of Communications Workers of America, AFL-CIO v. Essex County, 255 N.J. Super. 671 (App. Div. 1992), this service is considered to exempt by virtue of N.J.S.A. 18A:18A-5(a). In addition, the Appellate Division has held that construction/renovation of a facility is not an EUS. Oceanside Charter School v. New Jersey State Dept. of Educ. Office of Compliance Investigation, 418 N.J. Super. 1, 15 (App. Div. 2011).
- ⁴³ New Jersey Department of Community Affairs, Division of Local Government Services, Local Finance Notice AU 2002-2, issued on February 26, 2002, at 2, available at <https://web.archive.org/web/20150915234025/http://www.nj.gov/dca/divisions/dlgs/lfnfs/02/au-2002-2.pdf>.
- ⁴⁴ DCA, DLGS, Local Finance Notice AU 2002-2, at 2.
- ⁴⁵ N.J.S.A. 18A:18A-4.3(a).
- ⁴⁶ N.J.S.A. 18A:18A-21(a).
- ⁴⁷ N.J.S.A. 18A:18A-4.5(a).
- ⁴⁸ N.J.A.C. 5:34-9.5(b).
- ⁴⁹ N.J.S.A. 18A:18A-37(a).
- ⁵⁰ N.J.S.A. 18A:18A-4(a); N.J.S.A. 18A:18A-2(t).
- ⁵¹ N.J.S.A. 18A:18A-4.4(b).
- ⁵² N.J.S.A. 18A:18A-5(a)(2).
- ⁵³ N.J.S.A. 18A:18A-4(a).
- ⁵⁴ N.J.S.A. 18A:18A-5(a)(1).
- ⁵⁵ N.J.S.A. 18A:18A-4.5(e).
- ⁵⁶ N.J.S.A. 18A:18A-5(a)(2).
- ⁵⁷ N.J.S.A. 18A:18A-5(a)(1).
- ⁵⁸ N.J.S.A. 18A:18A-4.5(g).
- ⁵⁹ N.J.A.C. 5:34-2.3(c).
- ⁶⁰ N.J.S.A. 52:32-44(b).
- ⁶¹ N.J.S.A. 10:5-31, et seq.; N.J.A.C. 17:27.

⁶² N.J.S.A. 52:32-58.

⁶³ N.J.S.A. 19:44A-20.26.

⁶⁴ N.J.A.C. 5:34-9.5(b).

⁶⁵ N.J.S.A. 18A:18A-37(a).

⁶⁶ N.J.S.A. 18A:18A-2(w).

⁶⁷ N.J.S.A. 18A:18A-37(a).

⁶⁸ N.J.S.A. 18A:18A-4.4(a)-(d).

⁶⁹ N.J.S.A. 18A:18A-4.4(a).

⁷⁰ N.J.A.C. 5:34-4.3(b).

⁷¹ N.J.A.C. 5:34-4.3(b).

⁷² N.J.A.C. 5:34-4.3(c)(2).

⁷³ N.J.S.A. 18A:18A-4.5(d); N.J.A.C. 5:34-4.3(c).

⁷⁴ N.J.S.A. 18A:18A-4.3(a).

⁷⁵ N.J.S.A. 18A:18A-4.5(a).

⁷⁶ N.J.S.A. 18A:18A-4.5(e).

⁷⁷ N.J.S.A. 18A:18A-4.4(b).

⁷⁸ N.J.S.A. 18A:18A-4.5(g).

⁷⁹ Best Practices for Awarding Service Contracts, March 4, 2010, State of New Jersey, Office of the State Comptroller.

⁸⁰ N.J.S.A. 18A:18A-5(a)(1).

⁸¹ N.J.S.A. 18A:18A-5(a)(1).

⁸² N.J.S.A. 18A:18A-4(a).

⁸³ N.J.S.A. 18A:18A-4(a).

⁸⁴ N.J.S.A. 18A:18A-4(a); N.J.S.A. 18A:18A-2(y); N.J.S.A. 18A:18A-15.

⁸⁵ N.J.S.A. 18A:18A-4(a); N.J.S.A. 18A:18A-2(x).

⁸⁶ N.J.S.A. 18A:18A-4(a); N.J.S.A. 18A:18A-2(t).

⁸⁷ N.J.S.A. 18A:18A-21(a).

⁸⁸ N.J.S.A. 18A:18A-4(a).

⁸⁹ N.J.A.C. 5:34-2.3(b).

⁹⁰ N.J.S.A. 18A:18A-5(a)(2).

⁹¹ N.J.A.C. 5:34-2.3(c).

⁹² N.J.S.A. 18A:18A-5(a)(2).

⁹³ N.J.S.A. 18A:18A-3; N.J.S.A. 18A:18A-42.

⁹⁴ N.J.S.A. 18A:18A-3; N.J.S.A. 18A:18A-42.

⁹⁵ N.J.S.A. 18A:18A-4.2.

⁹⁶ N.J.S.A. 18A:18A-42(a)-(o).

⁹⁷ N.J.S.A. 18A:18A-42.

⁹⁸ N.J.S.A. 18A:18A-42.

⁹⁹ N.J.S.A. 18A:18A-42.

¹⁰⁰ N.J.S.A. 18A:18A-42.

¹⁰¹ N.J.S.A. 18A:18A-40.

¹⁰² N.J.S.A. 52:32-44(b).

¹⁰³ N.J.S.A. 10:5-31, *et seq.*; N.J.A.C. 17:27. If the contractor does not have a valid EEO certificate, they can apply for with the Department of the Treasury. The form is available at: http://web.archive.org/web/20160101000000*/http://www.state.nj.us/dca/announcements/pdf/AA_Supplement.pdf

¹⁰⁴ N.J.S.A. 52:32-58. A list of firms that are not compliant is available from the State of New Jersey, Department of the Treasury online, at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>.

¹⁰⁵ N.J.S.A. 19:44A-20.26; P.L. 2005, c. 271.

¹⁰⁶ See N.J.S.A. 19:44A-20.26. The Department of Community affairs has interpreted the exception applicable to contracts that are not “publicly advertised for bids” broadly so as to apply to any contract awarded pursuant to a “fair and open” process as defined by the State Pay-to-Play Law, P.L. 2004, c. 19. See Local Finance Notice No. 2007-11, June 4, 2007, State of New Jersey, Department of Community Affairs, available at <https://web.archive.org/web/20150905213929/http://nj.gov/dca/divisions/dlgs/lfns/07/2007-11.doc>; see also N.J.S.A. 19:44A-20.7 (“fair and open process’ means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications;

and publicly opened and announced when awarded. The decision of a public entity as to what constitutes a fair and open process shall be final.”)

¹⁰⁷ N.J.S.A. 18A:18A-4.4(c).

¹⁰⁸ N.J.S.A. 18A:18A-8(a).

¹⁰⁹ N.J.S.A. 18A:18A-5(d).

¹¹⁰ N.J.S.A. 40A:9-22.5, et seq.

¹¹¹ N.J.S.A. 18A:6-8. The applicability of this provision has not been tested in court; however, the question would be whether NJSIG employees are considered to be “officially connected with” the public school system of the State of New Jersey, and whether NJSIG is considered to be a state educational institution.

¹¹² N.J.A.C. 5:34-4.3(e)-(f).

¹¹³ N.J.A.C. 5:34-4.3(e).

¹¹⁴ N.J.S.A. 18A:18A-21(b).

¹¹⁵ N.J.S.A. 18A:18A-21(a).