

Authorized By: Elizabeth Maher Muoio, State Treasurer.

Authority: N.J.S.A. 10:5-36.k and o, 52:18A-30.d, 52:25-1 et seq., 52:25-16.1, 52:32-17 et seq., 52:34-6 et seq., 52:34-6.2.d, 52:34-10.4, 52:34-10.10, 52:34-12.a, and 52:34-13; and Executive Orders Nos. 34 (1976) and 189 (1988).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-050.

Comments may be submitted through June 17, 2022, by email in Microsoft Word format, or in a format that can be easily converted to Word, to [DPPRule.Comments@treas.nj.gov](mailto:DPPRule.Comments@treas.nj.gov) or on paper to:

Maurice A. Griffin, Acting Director  
Division of Purchase and Property  
33 West State Street, 8th Floor  
PO Box 039  
Trenton, NJ 08625-0039

The agency proposal follows:

[page=710]

### Summary

The Division of Purchase and Property (Division), the centralized procurement agency for the State of New Jersey, proposes amendments and a new rule at N.J.A.C. 17:12 to clarify and update the processes related to the award and administration of State contracts. The proposed amendments and new rule will: (1) as permitted by N.J.S.A. 52:27B-56, provide that the program efficiency can be assessed against the contractor or the agency, as specified in the request for proposals document; (2) update the delegated purchasing authority in accordance with P.L. 2021, c. 412; and (3) streamline the process for review and approval of the political contribution certification and disclosure forms. Proposed new N.J.A.C. 17:12-3.5 will require a fee to be posted by a protestor when filing a protest in response to a notice of intent to award. A summary of the proposed amendments follows.

At N.J.A.C. 17:12-1.5, the existing fee is 0.25 percent and is assessed to the purchasing entity. The proposed amendment would delete the 0.25 percent fee. The fee to be assessed will be set forth in the request for proposal document, which will also indicate whether the fee will be assessed to the purchasing entity or the vendor.

N.J.A.C. 17:12-1A.2 sets forth the delegated purchasing authority under which a purchasing entity is able to purchase goods and services without formal advertising. On January 18, 2022, the Governor signed P.L. 2021, c. 412, which increased the value of the delegated purchasing authority for using agencies to \$ 150,000 on January 18, 2022; \$ 200,000 on January 18, 2023; and, \$ 250,000 on January 18, 2024. Additionally, P.L. 2021, c. 412, increased the maximum value for which the Director of the Division of Purchase and Property (Director) may, by written order, delegate purchasing authority to an agency from \$ 250,000 to \$ 1,000,000, subject to certain requirements; specifically, (1) when the Director has determined that such purchases or contracts are for the procurement of goods or services which are unique to the operations of that particular using agency; or (2) when a public exigency exists, such as when a public health emergency, pursuant to the Emergency Health Powers Act or a state of emergency has been declared by the Governor. The proposed amendments delete the \$ 250,000 maximum purchasing authority that the Director may delegate by written order and replace it with \$ 1,000,000, as permitted at P.L. 2021, c. 412. The proposed amendments additionally set forth the circumstances under which the Director may delegate the up to \$ 1,000,000 purchasing authority.

Proposed new N.J.A.C. 17:12-3.5, Filing fees, permits the Director of the Division of Purchase and Property to establish and assess fees to cover the administrative costs for the operation of the Division. The proposed new section would require persons or entities submitting a protest in response to the Division's notice of intent to award a contract, to include a filing fee with the protest to cover a small portion of the administrative costs associated with reviewing and responding to protests received. The filing fee will be on a sliding scale based upon the estimated contract value and must be paid prior to, or with, the filing of the protest.

The proposed amendments at N.J.A.C. 17:12-5.3, Review of submissions, are intended to clarify and streamline the process of the submission and review of the political contribution certification and disclosure forms, without making any substantive changes to the requirements.

The proposed amendments at N.J.A.C. 17:12-5.4, Determination of business entity ineligibility, are

intended to clarify and streamline the process advising a business entity of an ineligibility determination, by having the Division Review Unit make the notification, not the State agency or authority.

The proposed amendments at N.J.A.C. 17:12-5.5, Reconsideration of determination ineligibility, are intended to clarify the timeframe for a business entity to request reconsideration of an ineligibility determination, consistent with the proposed amendments at N.J.A.C. 17:12-5.4.

As the Division has provided for a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments and new rule will have a beneficial social impact as they aim to streamline the State procurement process and reduce burdens placed on potential bidders. These rules, as amended, will continue the Division's ongoing efforts to conduct competitive bidding wherever possible and to award contracts that provide the most advantage to the State, pricing and other factors considered, while providing for new opportunities to secure best pricing through leveraged procurements. In appropriate circumstances, the new rule will result in improved pricing, due to faster procurement cycle times where the lowest price, responsive proposal methodology is used. In all of the procurement processes, the Division guards against favoritism, improvidence, extravagance, and corruption, while providing for the fair and equal treatment of bidders and contractors.

### **Economic Impact**

The proposed amendments and new rule will continue the ongoing efforts to ensure that the State and general public benefit from the cost and performance advantages achieved by competitive bidding and leveraged procurement to meet the operational needs of State government and the political subdivisions that choose to utilize State contracts. The Division's ability to provide procurement services for the agencies of the State has had a positive impact on State and local government budgets, as well as the State's overall economic condition. The proposed amendments and new rule impose no requirements on local government budgets and, thus, do not generate a State mandate/State pay issue.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and new rule are not subject to any Federal requirements or standards.

### **Jobs Impact**

The Department does not believe that the proposed amendments and new rule will increase or decrease jobs in the State.

### **Agriculture Industry Impact**

The proposed amendments and new rule will have no impact on the agriculture industry in the State.

### **Regulatory Flexibility Statement**

The proposed amendments and new rule will apply to all persons and entities that seek awards of the State's goods and/or services contracts issued by the Division of Purchase and Property. Many such persons and entities are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No reporting or recordkeeping requirements are imposed on small businesses by the proposed amendments and new rule, beyond those requirements applicable to every business entity submitting a proposal in response to bidding opportunities offered by the Division. Additionally, the engagement of professional services is not necessary to fulfill these requirements. The rules impose no capital costs upon small businesses, beyond those normally incurred by all bidders on State contracts.

### **Housing Affordability Impact Analysis**

The Department does not anticipate that the proposed amendments and new rule will cause any increase or decrease in the average cost of housing or have any impact on the affordability of housing, as the rules concern the processes and procedures governing the Division's procurement and contract related programs and services.

### **Smart Growth Development Impact Analysis**

The Department does not anticipate that the proposed amendments and new rule will have any impact on the availability of affordable housing or the construction of new housing within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Act, as the rules concern the processes and procedures governing the Division's procurement- and contract-related programs and services.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

[page=711] SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION; MEANS OF PROCUREMENT

17:12-1.5 Procurement efficiency program

In accordance with the provisions [of] **at** N.J.S.A. 52:27B-56 and in order to maintain the State's procurement [system] **operations** at a level to meet common industry standards of efficiency, the Director shall make [an] **a percentage** assessment from [each contract in the amount of one quarter of one percent of] the value of all transactions on **each** contract[s as defined in the RFP]. **The assessment shall be made to the contractor or the using agency, as specified in the RFP.**

SUBCHAPTER 1A. PROCUREMENT METHODOLOGY

17:12-1A.2 Exceptions to advertised procurement procedures

(a) (No change.)

(b) Delegated Purchasing Authority purchases. State using agencies may make purchases pursuant to their assigned Delegated Purchasing Authority under the conditions set forth [in] **at** (b)1 through 6 below, with provision for exception as set forth [in] **at** (b)7 below. Records of all Delegated Purchasing Authority purchases shall be maintained by State agencies pursuant to each agency's record retention schedule.

1.-6. (No change.)

7. As established at N.J.S.A. 52:25-23.d, through written order or pursuant to a written request from a State agency, the Director may authorize a State agency to undertake an advertised procurement in excess of the amount delegated to the agency [under] **pursuant to** N.J.S.A. 52:25-23, but less than [\$ 250,000] **\$ 1,000,000 or the amount stated at N.J.S.A. 52:25-23.d**, when the procurement is limited to the needs of the specific agency under the following conditions:

**i. When the Director has determined that such purchases or contracts are for the procurement of goods or services that are unique to the operations of that particular using agency and are not common or similar to goods or services used by other State agencies and, therefore, not suitable for leveraging with other State agency procurements;**

**ii. When a public exigency exists, such as when a public health emergency, pursuant to the Emergency Health Powers Act or a state of emergency has been declared by the Governor and is in effect;**

Recodify existing i.-iv. as **iii.-vi.** (No change in text.)

(c) (No change.)

SUBCHAPTER 3. PROTEST PROCEDURES

**17:12-3.5 Filing fees**

**(a) In order to cover a portion of the administrative costs associated with protests, all protests submitted to the Division pursuant to this section shall be accompanied by the appropriate filing fee, as indicated in this section.**

**1. A protest filed pursuant to N.J.A.C. 17:12-3.3(a)2, in response to a notice of intent to award shall be accompanied by the filing fee based upon the estimated contract value as set forth below:**

**i. An RFP with an estimated contract value less than, or equal to, 10 million dollars (\$ 10,000,000) shall be accompanied by a filing fee of \$ 100.00;**

**ii. Any RFP with an estimated contract value greater than 10 million dollars and one cent and less than 25 million dollars (\$ 10,000,000.01-\$ 25,000,000) shall be accompanied by a filing fee of \$ 250.00;**

**iii. Any RFP with an estimated contract value greater than 25 million dollars and one cent and less than 50 million dollars (\$ 25,000,000.01-\$ 50,000,000) shall be accompanied by a filing fee of \$ 500.00; and**

**iv. Any RFP with an estimated contract value over 50 million dollars and one cent (\$ 50,000,000.01) shall be accompanied by a filing fee of \$ 1,000.00.**

**2. A protest filed pursuant to N.J.A.C. 17:12-3.3(a)3, in response to the cancellation of an RFP after the opening of proposals, shall be accompanied by a fee of \$ 50.00.**

**(b) The filing fee must be received prior to or with the protest.**

## SUBCHAPTER 5. POLITICAL CONTRIBUTION COMPLIANCE REVIEW PROCESS

### 17:12-5.3 Review of submissions

(a) Any business that is requested to do so by a State agency or authority must submit completed certification and disclosure forms. The Division Review Unit will review the certification and disclosure forms [completed by business entities and submitted by State agencies and authorities] for compliance to the requirements of the governing statute and executive orders. If the Review Unit cannot make a determination of compliance or non-compliance to the Chapter 51, Executive Order Nos. 117 and 118 (2008) requirements based upon the documentation submitted by the requesting agency or authority, the Review Unit will [require the requesting agency or authority to provide] **seek** clarification or additional information, as needed, to complete the review and render a determination of eligibility.

(b)-(c) (No change.)

### 17:12-5.4 Determination of business entity ineligibility

If the Review Unit determines that the business entity has made a disqualifying contribution or that a conflict of interest exists, the Review Unit will advise the **business entity and the** State agency or authority, in writing, of [that circumstance and will identify the basis for] the determination. [The State agency or authority shall inform the business entity of the ineligibility determination.]

### 17:12-5.5 Reconsideration of determination of ineligibility

If a business entity believes that the determination of ineligibility was in error, it may request reconsideration by the Director. A request for reconsideration of the ineligibility determination must be made, in writing, to the Director within 10 business days of the business entity's receipt of the [State agency's or authority's] notice of ineligibility or prior to the deadline specified in that [agency's or authority's] notice of ineligibility, whichever date is earlier. Upon review of the written record or, if required at the discretion of the Director, an in-person presentation by the business entity in support of its request for reconsideration, and of the information provided to the Director by the Review Unit concerning its determination of ineligibility, the Director shall issue a written decision on the matter under reconsideration.