

[First Reprint]

ASSEMBLY, No. 2786

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MAY 20, 2010

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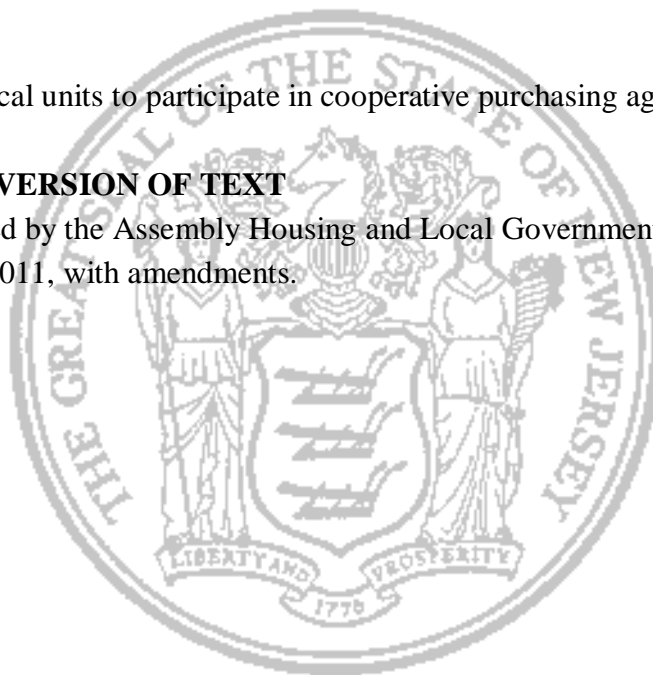
Senators Beach, Gordon, Greenstein and Stack

SYNOPSIS

Permits local units to participate in cooperative purchasing agreements.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Local Government Committee on February 3, 2011, with amendments.



(Sponsorship Updated As Of: 6/30/2011)

1 AN ACT concerning cooperative purchasing agreements and
2 amending P.L.1996, c.16.

3

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

6

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

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

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

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

40 **(3) Notwithstanding any other law to the contrary, any**
41 **contracting unit authorized to purchase goods, or to contract for**
42 **services, may make purchases and contract for services through the**
43 **use of a nationally-recognized and accepted cooperative purchasing**
44 **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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted February 3, 2011.

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 For purposes of this paragraph, "contracting unit" means any
8 county, municipality, special district, school district, 'fire district'
9 or any board, commission, committee, authority or agency, which is
10 not a State board, commission, committee, authority or agency, and
11 which has administrative jurisdiction over any district, included or
12 operating in whole or in part, within the territorial boundaries of
13 any county or municipality which exercises functions which are
14 appropriate for the exercise by one or more units of local
15 government, and which has statutory power to make purchases and
16 enter into contracts awarded by a contracting agent for the provision
17 or performance of goods or services.

18 c. The director may solicit bids and award contracts on behalf
19 of this State and other jurisdictions which are parties to a
20 cooperative purchasing agreement provided that the agreement
21 specifies that each jurisdiction participating in a contract is solely
22 responsible for the payment of the purchase price and cost of
23 purchases made by it under the terms of any contract awarded
24 pursuant to the agreement.

25 d. The director may promulgate rules and regulations pursuant
26 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
27 1 et seq.), which are necessary to effectuate the purposes of this
28 section.

29 (cf: P.L.2005, c.336, s.13)

30

31 2. This act shall take effect immediately.

Guidance on Use of New Law Regarding National Contracts

Recently Governor Christie enacted [P.L.2011, c.139](#) into law. This law affects public contracting laws for all government contracting agencies by permitting agencies to use contracts awarded by “national” or “regional” cooperatives or other states that were competitively bid. The law supplements existing law on the use of such contracts and is intended to provide additional flexibility to local government in the area of procurement.

Appropriate State agencies are reviewing the new law and the Division of Local Government Services intends to issue additional guidance in the near future.

Until then, contracting units should proceed with prudence to ensure their actions are compliant with the law. Pending additional guidance, contracting units should take into account the following as local circumstances dictate.

1. In applying the law, consider that there is no stated intent that NJ businesses should be put at a disadvantage because of differences between NJ public contracting law and that of jurisdictions that awarded the cooperative contract.
2. Local procurement procedures should continue to ensure the public trust. Laws relating to disclosure of political contributions, non-collusion, and ethics should continue to be followed.
3. Contracting officials should be cautious to ensure that the new authority is not abused. Local officials continue to have responsibility to choose vendors in an open and transparent manner to ensure public confidence in the integrity of government spending. Further, if a national contract is used, membership and participation rules of the national cooperative should be reviewed and followed.
4. Best practices should include ensuring that pricing under the national model is competitive and that economy in the form of low pricing is not unduly compromised by the possible of efficiency of national contractors. To that extent, contracting units should review State and local cooperative system contracts to see if there other available contracts that provide lower prices.
5. When using online ordering systems, local officials must establish and maintain internal controls to ensure quote and bid thresholds are maintained, encumbrances are established, purchases are documented, and there is an audit trail. Procurement and fiscal staff are reminded that all purchases with a dollar volume over the contracting units bid threshold require award by the governing body.
6. The new law does not make changes to previous law concerning U.S. General Services Administration Federal Supply Contracts. GSA/FSS contract use is not authorized by contracting units unless the contracts are issued as State contracts by the Division of Purchase and Property (N.J.A.C. 17:12-1A.5). While it is possible that some GSA/FSS vendors are part of national

cooperative contracts and contracts may be available through them, the new law does not change the existing limits on GSA contracts.

7. Contracting units that previously awarded contracts for goods or services that may be covered by a national cooperative contract are obligated to fulfill those contracts until they expire. Using a national contract in the presence of an awarded contract could constitute a charge of breach of contract by that vendor.

The vendor community will be bringing the new law to the attention of contracting units. Contracting officials choosing to move forward with such purchases in advance of additional guidance should carefully review vendor claims of compliance with the new law with their legal advisors to ensure they are consistent with the law.

The Division appreciates that this law is new and potentially creates a wide range of new procurement sources. Contracting unit officials should act prudently pending issuance of further guidance.