

SUBCHAPTER 8. CONTRACTS SUBJECT TO PUBLIC BIDDING

5:34-8.1 Multi-year contracts

(a) All multi-year contracts, including all multi-year leases and multi-year leases with option to purchase which are authorized under N.J.S.A. 40A:11- 15(7), 40A:11-15(15) or 18A:18A-42(f), and other multi-year contracts subject to N.J.S.A. 40A:11-15 and 18A:18A-42 for the procurement of goods or services shall be subject to competitive bidding if the cumulative amount to be expended during the duration of the multi-year lease or contract exceeds the threshold for competitive bidding for the contracting unit.

(b) Pursuant to the provisions of N.J.S.A. 40A:11-15 or 18A:18A-42, a contract award that was based upon receipt of quotations shall not be extended if the total value of the contract exceeds the bid threshold, which includes the original award plus any extension.

5:34-8.2 Determinations of aggregation

(a) This section shall affect determinations of aggregation for purposes of whether a contract is subject to public bidding as set forth in N.J.S.A. 40A:11-3, 40A:11-4 and 40A:11-7, and as set forth in

N.J.S.A. 18A:18A- 3, 18A:18A-4, and 18A:18A-8, and is adopted pursuant to N.J.S.A. 40A:11-7.1 and 18A:18A-8.1. The provisions of this section shall not apply to those goods or services where the work is single in character and for those goods or services that are necessary for the completion of such a contract.

(b) To determine if goods or services that are expected to be used will reach the bid threshold during the contract year, the contracting agent or purchasing agent, as defined at N.J.A.C. 5:34-1.2, shall use professional judgment based on prior experience of the contracting unit, estimates and plans for the upcoming contract year based on information such as the contracting unit's budget and purchasing history, and the amount purchased in the previous contract year. When calculating the amount purchased in the previous contract year, the calculation shall be based on the period of 12 consecutive months following the award of a contract.

(c) To determine if goods or services that are expected to be used during a contract year should be combined with other similar goods or services in a single bid, the contracting agent or purchasing agent shall use the following methods or techniques as may be appropriate:

1. The contracting agent or purchasing agent shall request the various organizational components of the contracting unit to estimate and provide the contracting agent or purchasing agent with their needs. Based upon appropriate study and evaluation of the competitive marketplace, the contracting agent or purchasing agent shall determine the range of goods and services that are best suited for aggregation to maximize potential cost savings and to maximize vendor participation. This can be accomplished by:
 - i. Determining whether there are vendors capable of submitting bids on a range of goods or services that are sufficiently similar; or
 - ii. Determining that commercial business practices related to the provision or performance of the goods or services will result in a price advantage to the contracting unit if the goods or services were made part of a separate contract.

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2. In considering if a particular good or service is subject to public bidding, the amount of money spent with a given vendor shall not in itself be a determining factor of reaching the threshold.
3. In determining if various expenditures are part of the same work or are similar goods or services, the emphasis shall be placed on the purpose of the goods and services rather than from whom they are purchased.
4. Where portions of any goods or services can be purchased through provision of law that do not require the contracting unit to publicly bid, such as a State, county, or cooperative purchasing contract, any remaining portions may be counted as separate from the portion that is not required to be bid. Such purchases may be considered as a separate aggregation calculation for the purpose of reaching the bid threshold.

5:34-8.3 When determinations of aggregation are found to be incorrect

(a) In each instance of (a)1 and 2 below, the amount required to be procured, is hereinafter defined to be the "remaining amount." This section shall affect determinations of aggregation pursuant to N.J.S.A. 40A:11-3, 40A:11-4 and 40A:11-7, and as set forth in N.J.S.A. 18A:18A-3, 18A:18A-4, and 18A:18A-8, and is adopted pursuant to N.J.S.A. 40A:11-7.1 and 18A:18A-8.1 when:

1. Initial estimates of goods or services needed during the contract year are incorrectly anticipated to be less than the bid threshold; or
2. Initial estimates of goods or services needed during the contract year that had been exempt from public bidding are later found to be incorrect.

(b) When either of the conditions in (a)1 or 2 above exist, the provisions of this section shall apply.

(c) If the remaining amount exceeds the bid threshold, public bidding for the remaining amount should take place as soon as practicable after the purchasing agent or contracting agent becomes aware of the change in needs. (See chapter Appendix A.)

(d) Subject to the provisions of (d)1 and 2 below, the contracting agent or purchasing agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount. If the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, then:

1. The governing body may designate in advance an elected official to determine whether public bidding or the solicitation of quotations would be most advantageous in these circumstances; or
2. If the governing body fails to designate an elected official, it retains the responsibility to make the determination by resolution. (See chapter Appendix A.)

(e) If the remaining amount to be procured by the contracting unit is less than 15 percent of its bid threshold, the contracting agent or purchasing agent may solicit quotations for the remaining amount.

(f) In seeking the governing body's or its designee's authorization to solicit quotations under (d) and (e) above, the contracting agent or purchasing agent shall:

1. Certify to the governing body or its designee, as appropriate, the need for additional goods and services;

2. Provide a description of how similar goods or services have been procured during the contract year to date;
3. Obtain a resolution from the governing body or written approval from its designee, as appropriate, approving the purchase; and
4. Provide a report of all procurements made under this section to the full governing body.

(g) No additional goods or services shall be procured through the solicitation of quotations under (d) above until the resolution or written approval approving the purchase has been passed by the governing body or in the case of a designated elected official, other required form of written approval has been obtained. (See chapter Appendix A.)

(h) If the actual need for goods or services that are publicly bid are found during the course of the contract to be greater than the amount bid, the change order procedures set forth in N.J.A.C. 5:30-11 or 6A:23A-21.1 shall be used, as appropriate.

(i) Contracts issued pursuant to this section shall include a reference to the subsection under which the purchase is authorized.

5:34-8.4 Intentional miscalculations to avoid public bidding

Under no circumstance shall a contracting unit avoid bidding by knowingly miscalculating estimates, taking advantage of differences between contract year and fiscal year, or using another mechanism or artifice intended to intentionally avoid public bidding.

SUBCHAPTER 9. SPECIAL CIRCUMSTANCES

5:34-9.1 Purchase of proprietary goods or services

(a) In determining whether a good or service meets the definition of "proprietary" set forth in N.J.S.A. 40A:11-2(39) or 18A:18A-2cc, the terms used in the definition of "proprietary" shall be defined as follows:

1. "Specialized nature" means that the purpose to which the goods or services will be used has such unique characteristics that only the goods or services of a single vendor are capable of meeting the contracting unit's needs. The following shall be considered as non-limiting examples of goods or services that may, under appropriate conditions, meet the test of being of a specialized nature:
 - i. The use of a good or service other than the proprietary one will undermine the functionality or operational performance of existing facilities; or
 - ii. The good or service is patented and the patented feature is essential for operational performance.
2. "Necessary for the conduct of its affairs" means that the public need for the proprietary designation is of such a compelling nature that the value to the public that is gained by the proprietary designation overshadows the public benefit of permitting "brand name or equivalent" and the benefits of such competition. The following shall be considered as non-limiting examples of goods or services that may, under appropriate conditions, meet the test of being necessary for the conduct of its affairs:

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- i. The contracting unit has a substantial investment in facilities, training, replacement parts, or complimentary items that warrants reliance on a specific manufacturer or vendor to maintain the value of the investment.
 - ii. Unique circumstances as to a facility or environment preclude the use of other goods or services.
- (b) Prior to advertising for the receipt of bids that includes proprietary goods or services, the contracting agent or purchasing agent shall certify in writing to the chief executive officer of the contracting unit an explanation of why the goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. The description shall not consist of rewriting or paraphrasing the statute or regulations but shall be specific to the circumstances. Such certification shall be included as part of the bid documents.
- (c) The resolution of the governing body required by N.J.S.A. 40A:11-13(d) or 18A:18A-15d shall include a description of why the goods or services are specialized in nature and necessary for the conduct of the affairs of the contracting unit. The description shall not consist of rewriting or paraphrasing the statute or regulations but shall be specific to the circumstances.
- (d) When taken in context of computer systems or dedicated software, the use of the proprietary designation shall be interpreted to allow for competition within the purposes for which the software is to be used. The competitive contracting process at N.J.S.A. 40A:11-4.1 et seq. and 18A:18A-4.1 et seq. is intended to allow for competition where there may be a limited number of vendors selling certain types of application software, that is, financial, human resources, web site hosting, computerized telephone systems, geographic information, police records, or computerized dispatch systems. The competitive contracting process is not intended for those circumstances that involve networking or telecommunications switching services.

5:34-9.2 Use of "brand name or equivalent" pursuant to N.J.S.A. 40A:11-13 and 18A:18A-15

- (a) To encourage free, open, and competitive bidding, prior to referencing a "brand name or equivalent" in a bid specification pursuant to N.J.S.A. 40A:11-13 or 18A:18A-15, a contracting agent or purchasing agent shall first consider using a specification based on any of the following:
1. A standard issued by a national or international testing or standards setting organization, including, but not limited to, the American Society for Testing and Materials (ASTM), National Institute of Standards and Technology (NIST), Internet Engineering Task Force (IETF), International Standards Organization (ISO), IEEE Industry Standards and Technology Organization (IEEE- ISTO), any entity accredited to set standards by the American National Standards Institute (ANSI);
 2. A generic specification available through a commercial or non-commercial service such as MasterSpec® or similar service; or
 3. Specialized programs such as a listing in the Building Products Pre Approval Program maintained by the National Institute of Building Sciences.
- (b) A contracting agent or purchasing agent shall not use a "brand name or equivalent" unless they have knowledge that at least one equal exists. If there are no equals or if the nature of the brand name good or service effectively restricts bidders to that single good or service, the contracting agent or purchasing agent must consider the matter subject to the provisions of proprietary goods or services at N.J.A.C. 5:34-9.1.

(c) When a specification uses "brand name or equivalent," the listed brand name shall serve as a reference or point of comparison for the functional or operational characteristic desired for the good or service being requested. Where a bidder submits an equivalent, it shall be the responsibility of the bidder to document the equivalence claim. Failure to submit such documentation shall be grounds for rejection of the claim of equivalence.

(d) Under no circumstance shall specifications require any form of "pre- approval" or "pre- qualification" of an equivalent product before the submission of bids.

5:34-9.3 Cancellation or postponement of receipt of bids or proposals

(a) Publicly announced receipt of bids or competitive contracting proposals shall be considered cancelled when the contracting unit must amend or modify the bid specifications and cannot meet the requirements of N.J.S.A. 40A:11- 23 and 18A:18A-21. The following procedures shall be used in the event a contracting unit cancels the receipt of publicly advertised bids or competitive contracting proposals:

1. All vendors who have either submitted bids or proposals, or received specifications or request for proposals, shall be notified by telephone, fax, or e-mail that the receipt thereof has been cancelled, the reason therefore, and notification regarding the return of the unopened bids pursuant to this section.
2. The contracting unit shall allow vendors to retrieve bids or proposals that had been:
 - i. Submitted at or before the time of cancellation;
 - ii. Previously sent but had not arrived by the time of cancellation; or
 - iii. For those not picked up by a vendor within 10 business days of being notified of their availability, the contracting unit shall return them, unopened, by certified mail or other delivery service that provides a delivery receipt.
3. On the day and time originally scheduled for receipt of bids or proposals, a notice shall be posted at the place where bids were to have been received, stating that the receipt of bids or proposals has been cancelled. No bids or proposals are to be received at this time.
4. All advertisements for the receipt of rescheduled bids or proposals must adhere to the requirements of N.J.S.A. 40A:11-23 or 18A:18A-21, as appropriate to the contracting unit for the statutory number of days between notice and when new bids or proposals can be received.

(b) Publicly announced receipt of bids or competitive contracting proposals shall be considered postponed when an unforeseen circumstance occurs that would affect or prohibit the opening of bids or proposals. The opening of the bids or proposals must occur within five days, excluding Saturdays, Sundays, and holidays, of the original date of the receipt of bids or proposals. The following procedures shall be used in the event a contracting unit must postpone the receipt of publicly advertised bids or competitive contracting proposals:

1. As soon as practicable, all vendors who have either submitted bids or proposals, or received specifications or request for proposals, shall be notified by telephone, fax, or e- mail that the receipt thereof has been postponed and the reason therefore.
2. If possible, on the day and time originally scheduled for receipt of bids or proposals, a notice shall be posted at the place where bids were to have been received, stating that the receipt of bids or proposals has been postponed.

3. In the event of a postponement, no bids or proposals shall be opened.

5:34-9.4 Concessions

(a) The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., define the term "concession" as the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit. In the case of the Public School Contracts Law, vending machines are specifically excluded from the definition. Further, a concession is only subject to this section if it is awarded to or supports a for-profit organization or purpose.

(b) Concessions are specifically deemed to include, but are not limited to, the following:

1. The right to publish a map, newsletter, directory, or calendar containing the meeting schedules and other information about contracting unit services or activities where the contractor sells advertising as full or partial payment for providing the service;
2. Installation of "welcome to (name of entity)" signs on public property where a local organization pays a fee to the sign manufacturer, who may or may not make a payment to the contracting unit, and includes the name of the local organization on the sign;
3. Use of public space or facilities (such as scoreboards, bus shelter or facility advertising) for advertising in exchange for fees or services, or discounts on services;
4. Installation of vending machines in public facilities (except for vending machines in schools);
5. The donation, sale, installation, or maintenance of equipment or facilities for use of the contracting unit;
6. The choice of a local or long distance telephone service for pay phones on public property;
7. Copying machines in a government or library facility made available for public use;
8. The right to sell goods or services on public property; or
9. Other services, rights or use as may meet the definition of concession.

(c) A concession shall not be deemed to include contributions of goods, services, or financial support for the sponsorship of the celebration of public events where the contributions offset in full

or in part the cost of the specific event. For the purpose of providing examples, such public events include, but are not limited to, seasonal recreation programs, concert series, holiday celebrations, and tourism related programs. In addition, vending machines in public facilities that are considered as protected speech under the United States Constitution, such as newspapers, or facilities used for collection of material being sent through a pickup and delivery service are not deemed to be a concession.

(d) Prior to commencing procurement of any concession, the governing body of the contracting unit shall:

1. Obtain from legal counsel an opinion of the legality of procuring the concession; and
2. Pass a resolution authorizing the procurement of a concession. The resolution

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shall include:

- i. A description of the public need to award a concession;
- ii. The concession to be awarded;
- iii. The considerations, including the benefits and any risks the governing body took into account in reaching the decision to award a concession;
- iv. An estimate of the total value of the concession;
- v. If any, an estimate of any revenue or services to be received by the contracting unit;
- vi. The basis of award of the concession is based upon the most advantageous price and other factors or the lowest responsible bidder;
- vii. An estimate of any costs to be incurred by the contracting unit as part of the concession;
- viii. Any services, facilities, or endorsement to be provided by the contracting unit; and
- ix. The method to be used to procure the concession pursuant to (g) below.

(e) The original legal opinion and resolution required in (d) above shall suffice for purposes of the subsequent procurement of a particular concession where the entire procurement process had been previously completed.

(f) The total estimated value of the concession shall be considered as the aggregate value in determining the procurement method that will be used. The concession shall be awarded in accordance with the relevant procedure for the method used to procure the concession. The total estimated value shall include all revenue, if any, that may be expected to be received by the concessionaire, which shall be deemed to include the value of all payments, goods, and services received by the contracting unit. A specific exception to this subsection shall be the use of bank automated teller machines or other cash vending machines. The threshold for this service shall be based on the estimated annual value of fees charged to users of the service and the value of all payments, goods and services received by the contracting unit.

(g) Unless otherwise specifically provided for by law, concessions shall be awarded through either of the following means:

1. By informal quotations, when the total estimated value of the concession is less than the bid threshold; or
2. By receipt of public bid or competitive contracting, when the total estimated value of the concession exceeds the bid threshold or at any time at the option of the governing body.

(h) While contracting units that are boards of education are not required to use the concession process for food and drink vending machines, the use of these provisions are recommended to enhance the integrity of the procurement process. If a contracting unit that is a board of education combines food and drink vending machines with concessions in a single procurement, the procedures of this section shall apply for the entire procurement.

(i)

5:34-9.5 Miscellaneous circumstances

(a) When a single contract for the collection of solid waste includes both municipal solid waste, pursuant to N.J.S.A. 40A:11-15(3), and collection from facilities owned by a contracting unit, pursuant to N.J.S.A. 40A:11-15(38), the contract may be granted for a term of not more than five years.

(b) When contracts for goods or services are less than 15 percent of the bid threshold, the purchasing agent shall employ sound business practices in awarding the contract. For the purpose of this subsection, sound business practice means employing such judgment that the price charged to the contracting unit reflects current market conditions and the quantity and delivery needs of the contracting unit.

(c) When a notice of award for professional services, competitive contracting, and extraordinary unspecifiable services is required to be published in the official newspaper of the contracting unit, such a notice shall be published no later than 20 calendar days after the passage of the resolution awarding the contract.

(d) Pursuant to N.J.S.A. 40A:11-4b(1) and 18A:18A-4b(1) with regard to the use of mediation to reach a finding of prior negative experience, if the mediation activity included a requirement of confidentiality and if no final determination of responsibility was reached, such mediation activity shall not be considered as a cause for a finding of prior negative experience, unless stipulation was made to the contrary.

(e) In a contracting unit subject to the Public School Contracts Law, a purchasing agent may appoint a "duly authorized designee" to act on behalf of and be responsible to the purchasing agent for such actions as related to purchasing. The purchasing agent shall recommend such designee to the board of education for their consideration and approval. The designee cannot act on behalf of the purchasing agent until board approval is received. Under these circumstances, the purchasing agent shall continue to hold the authority, responsibility, and accountability for the purchasing activity of the contracting unit. The use of this provision does not permit a "duly authorized designee" to exercise the authority of a duly-appointed qualified purchasing agent.

5:34-9.6 Purchasing at 10 percent less than a State cooperative contract price

(a) A contracting unit that procures materials, supplies, or equipment for at least 10 percent less than the State cooperative contract price, pursuant to N.J.S.A. 40A:11-5(4) submit the following documentation to the Director of the Division of Local Government Services within five working days of the award of any such contract:

1. A copy of the purchase order;
2. A copy of the requisition or request for purchase order (if applicable);
3. The written certification of its purchasing agent stating that the purchase price of the materials, supplies or equipment is at least 10 percent less than the State contract price;
4. Documentation verifying that the materials, supplies or equipment purchased by the contracting unit are identical to the materials, supplies or equipment on State contract;
5. A copy of each request for quotation issued by the purchasing agent;
6. Copies of each of the three quotations received by the purchasing agent, which

shall include the vendor's name, address, identification of items offered, prices quoted, and the percent discount (if applicable); and

7. A copy of the adopted resolution, approving or awarding the contract for the purchase of materials, supplies, or equipment, approved by two-thirds affirmative vote of the full membership of the governing body.

(b) All purchase orders or contract documents shall include the identifier "N.J.A.C. 5:34-9.6" and the State contract number in order to validate the legal basis under which the purchase was made, and to assist in the conduct of audits and other reviews for statutory compliance.

(c) The Division has provided an optional submission checklist in chapter Appendix B, "Purchasing At 10 Percent Less Than The State Cooperative Contract Price N.J.S.A. 40A:11-5(4)." The checklist is intended to help contracting units comply with the provisions of this section. The checklist is available in the public contracts law section of the Division's website <http://www.state.nj.us/dca/divisions/dlgs>.

5:34-9.7 Use of the General Services Administration's Federal Supply Schedules

(a) A contracting unit statutorily subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., or the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., may use without advertising for bids, or having rejected all bids obtained pursuant to N.J.S.A. 40A:11-13.2 or 18A:18A-22, as appropriate, the Federal Supply Schedules procurement programs, or update thereto. A contracting unit shall, pursuant to N.J.S.A. 40A:11-12.b or 18A:18A-10.b, submit the following documentation to the Director of the Division of Purchase and Property within five working days of the award of any such contract:

1. A copy of the purchase order;
2. A copy of the requisition or request for purchase order (if applicable); and
3. Documentation identifying the price of the goods or services, under the Federal Supply Schedules or schedules from other Federal procurement programs.

(b) All purchase orders or contract documents shall include the identifier "N.J.A.C. 5:34-9.7" and if available, the State contract number issued by the Division of Purchase and Property in order to validate the legal basis under which the purchase was made, and to assist in the conduct of audits and other reviews for statutory compliance.

(c) Contracting units statutorily authorized to contract under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. or the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq. and procuring goods or services under the General Services Administration's Federal Supply Schedules or schedules from other Federal procurement programs or update thereto, shall comply with administrative rule promulgated by the Department of the Treasury Purchase Bureau at N.J.A.C. 17:12-1A.5, Use of Federal Supply Schedules.

(d) The Division has provided an optional submission checklist in chapter Appendix C, "Use of the General Services Administration's Federal Supply Schedules N.J.S.A. 40A:11-12b and N.J.S.A.

18A:18A-10b." The checklist is intended to help contracting units comply with the provisions of this section. The checklist is available in the public contracts law section of the Division's website <http://www.state.nj.us/dca/divisions/dlgs>.

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APPENDIX A

The examples that follow relate to N.J.A.C. 5:34-8.3, which identifies practices that should be used in instances where the initial estimates of goods or services needed during the current contract year were anticipated to be less than the bid threshold, or had been exempt from public bidding, but are later found to be incorrect. The rule sets forth practices to follow in determining if the remaining amount should be publicly bid, or if quotations should be solicited. The following situations repeat each rule and provide an interpretative model.

In the following situations, the remaining amount (as previously defined) means: the value of similar goods and services that are needed for the remainder of the current contract year, plus the value of similar goods and services needed in the subsequent contract year. In reviewing these examples, be mindful that pursuant to the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., the bid threshold for boards of education without an appointed Qualified Purchasing Agent differs from the bid threshold for contracting agencies subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

SITUATION 1

N.J.A.C. 5:34-8.3(c): If the remaining amount exceeds the bid threshold, public bidding should take place as soon as possible.

Example: Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director advises the purchasing agent that one field and a parking area were excluded from the initial solicitation and that an additional \$10,000 worth of chain link fence needs to be purchased for the remainder of the year. The Recreation Director further advises that an additional \$21,000 worth of chain link fence is required for anticipated projects in the next year.

Solution: The purchasing agent or contracting agent would have to immediately initiate public bidding procedures to procure the remaining chain link fence, because the additional need this year, plus the need next year, exceeds the bid threshold.

SITUATION 2

N.J.A.C. 5:34-8.3(d): If the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, and the contracting unit has previously designated an elected official to determine whether public bidding or the solicitation of quotations is most advantageous to the contracting unit, then the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

Example: The following example relates to situations where similar goods or services will not be required in the subsequent contract year, and the contracting agent or purchasing agent has the option to either publicly bid the remaining amount, or seek authorization from the governing body or its designee to solicit quotations.

Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that one field

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was excluded from the initial solicitation, resulting in an additional current year purchase of \$10,000. The Recreation Director further advises that no purchases of chain link fence are required for the subsequent year.

Solution: The purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount because it is between 15 percent and 100 percent of the contracting unit's bid threshold.

SITUATION 3

N.J.A.C. 5:34-8.3(d): If the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, and the contracting unit has previously designated an elected official to determine whether public bidding or the solicitation of quotations is most advantageous to the contracting unit, then the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

Example: The following example relates to situations where the remaining amount equals the value of similar goods or services to be purchased for the current contract year plus the value of similar goods or services for the subsequent contract year and is equal to between 15 percent and 100 percent of the contracting unit's bid threshold.

Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget. To date, they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that one field was excluded from the initial solicitation resulting in an additional need for \$5,000 worth of chain link fence for the remainder of the current contract year. The Recreation Director advises further that \$10,000 worth of additional chain link fence needs to be purchased during the subsequent year. The additional \$15,000 of new chain link fence (\$5,000 for the remainder of the current contract year, and \$10,000 for the subsequent contract year) is less than the bid threshold of \$17,500.

Solution: Since the remaining amount is between 15 percent and 100 percent of the contracting unit's bid threshold, the purchasing agent or contracting agent may seek authorization from the governing body or its designee to solicit quotations or publicly bid the remaining amount.

SITUATION 4

N.J.A.C. 5:34-8.3(e): If the remaining amount is less than 15 percent of the contracting unit's bid threshold, the contracting agent or purchasing agent is authorized to solicit quotations for the purchase of the remaining amount.

Example: Assume that a contracting unit has a bid threshold of \$17,500 and is on a calendar year budget cycle. To date they have purchased \$15,000 worth of chain link fence through solicitation of quotations. In December, the Recreation Director informs the purchasing agent or contracting agent that the engineer miscalculated the area, and that an additional 40 linear feet of chain link fence needs to be purchased. The cost for the additional chain link fence is \$2,600.

Solution: The purchasing agent or contracting agent would be able to solicit quotations for the remaining chain link fence, because \$2,600 (the remaining amount of goods to be purchased) is less than 15 percent of the contracting unit's bid threshold.