

H. BID THRESHOLD AND AGGREGATION¹²

The following two short paragraphs in the LPCL and PSCL were historically the source of much consternation of purchasing agents since the 1970's:

- a. No contract in the aggregate which is single in character or which necessarily or by reason of the quantities required to effectuate the purpose of the contract includes the provision or performance of additional goods or services, shall be divided, so as to bring it or any of the parts thereof under the bid threshold, for the purpose of dispensing with the requirement of public advertising and bidding therefor.
- b. In contracting for the provision or performance of any goods or services included in or incidental to the provision or performance of any work which is single in character or inclusive of the provision or performance of additional goods or services, all of the goods or services requisite for the completion of such contract shall be included in one contract.

The essence of the provisions is that bids should not be broken up by carving out quantity or demand by any means to avoid the bidding process. It covers public works contracts, i.e., do not break out electrical and plumbing from a renovation project that would otherwise exceed the bid threshold to avoid bidding the whole job. It covers supplies, such as asphalt to prevent separate purchase orders that separate out spring and winter patching programs without bidding (of course, if the bid threshold were exceeded, separate bids for spring and winter patching would be permissible).

The problem was varying interpretations and unique circumstances that made applying the law challenging to procurement and elected officials. Then, statutory amendments in 1999 granted DLGS specific authority to adopt rules that would attempt to bring consistency to the laws. Those rules, N.J.A.C. 5:34-8.2 through 8.4 attempt to provide the needed guidance. The application of the law through the rules is summarized below through a series of questions and answers to guide the user through aggregation aggravation. While this is an abbreviated guide, be sure to consult the full rule before acting.

1. Will the bid threshold be met?
 - a) Use professional judgment based on prior experience of the contracting unit, then
 - b) Estimate and plan based on budget and purchasing history, considering
 - c) The amount purchased in the previous contract year.
 - d) Use the last 12 months as a guide.
2. Should like items be combined into a single bid?
 - a) Get user estimates.

¹² This section references N.J.S.A. 40A:11-7 and 7.1 and 18A:18A:-8 and 8.1., and N.J.A.C. 5:34-8.2-8.4.

- b) Use the marketplace as a guide by finding out if:
 - Single vendors can submit bids for the range of goods or services desired; or
 - Industry practices will result in a price advantage if items are bid at the same time.
 - If either answer is yes, bid it out.
- c) Also consider the following:
 - Don't base the evaluation solely on if the amount of money spent with a vendor exceeds threshold.
 - Place emphasis on the purpose, not from where they are bought.
 - Items bought through cooperative purchasing can be separate from others.
- d) Document all findings

Congratulations, you made what you thought were sound decisions! But, then things happen and for whatever reason, you didn't bid something, and it turns out the initial estimates were too low and what is needed puts you over the threshold. When it does, consider the following:

- If the remaining amount for the year is over the threshold, bid it out.
- If what is estimated for next year **exceeds** the bid threshold, bid it all out.
- The same **is not needed** next year and the additional amount is **less** than 15% of the threshold, use quotes for the remainder.
- The same materials are not needed next year, and the additional amount is **more** than 15% of the threshold, bid it, or ask governing body permission to use quotes.
 - If, the **additional** materials for this year **and** next year together are more than 15%, but less than the threshold, ask the governing body for direction to:
 - Either bid or get quotes
 - Do this by:
 - Certifying to the governing body, that there is a need for more;
 - Describe how they had been procured during the contract year to date; and
 - Obtain a resolution of the governing body approving the purchase
 - Do nothing until the governing body acts