

THE NEW WORLD OF COOPERATIVE PURCHASING

Efficiency boon or the death knell of small business? |

by Patrick D. Kennedy, Esq. and Melanie R. Walter

Cooperative purchasing, a system where government bodies jointly utilize their purchasing power, is a rapidly escalating trend among states and local governments seeking to streamline the procurement process, and, at least in theory, avail themselves of the benefits of large-scale price efficiencies.

The approach has gained nationwide popularity as a result of its perceived efficiency, and New Jersey has taken aggressive steps to implement and increase the scope of its system. Nonetheless, there are potential pitfalls and adverse economic consequences that should be considered as New Jersey reviews the impact of its recent decisions.

New Jersey's first foray into cooperative purchasing occurred in 1971 when the state authorized local governments to participate in state bid contracts. In 1996, the New Jersey Legislature further authorized the Division of Purchase and Property to enter into cooperative purchasing agreements that allowed participating states or political subdivisions to standardize and combine their purchasing processes. In 2005, the legislature authorized New Jersey to enter into other states' and national cooperative contracts that utilized a competitive bidding process and would be beneficial to the state. State bidding on federal contracts was also extended to local governments, allowing them to participate in the program administered by the Division of Purchase and Property, using local cooperative purchasing agreements with state approval. The recent enactment of Public Law 2011, c.139, further expanded this system. It affects public contracting for all government contracting units by permitting agencies, school districts, local governments, and non-profits to participate directly in competitively bid contracts awarded by "national" or "regional" cooperatives. As a result, local government units in New Jersey can now utilize national cooperative purchasing agreements without seeking prior approval of the contract by the Treasury department, subject, however, to recent regulatory guidance by the Department of Community Affairs.

Cooperative Purchasing generally involves either participation in a National Cooperative Purchasing Agreement or use of state-approved GSA/FSS contracts pursuant to the limitations of N.J.A.C. 17:12-1A.5. It is intended to "enable New Jersey to benefit from procurements that were more cost-effective because of volume purchasing, standardized specifications and increased leverage in the marketplace." In concept, cooperative purchasing makes sense. It is touted by its proponents for its efficiency, with advocates claiming local governments can save time, money and effort by avoiding re-bidding the same government contracts in each locality around the state or nation. If paperclips have already been bid once, they believe there is no need to duplicate that bid process a thousand times.

Additionally, the Division of Purchase and Property maintains that cooperative purchasing gives state and local agencies increased buying power, making them akin to a large corporation rather than a small-volume local purchaser. This enables local governments to leverage volume-driven cost reductions. These perceived advantages make cooperative purchasing a very attractive solution for internal cost savings and administrative reasons, as well as a viable means of complying with

legislative directives to assure cost-effectiveness, and to act in the public's best overall interest when entering into a competitively bid contract.

Participation in cooperative purchasing agreements needs to be looked at holistically, however, to determine if it is really the best strategy for the state and its local units. Reduced local notice and unavailability of





competition for bids caused by the use of national cooperative contracts may mean that emphasis on efficiency and administrative savings will erode New Jersey's traditional bidding concepts of notice, and full, free and unrestricted competitive pricing. Moreover, it may well cause direct harm to small local businesses.

New Jersey historically has placed a high value on full and free local competition. State bidding requirements

and public procurement laws reflect this policy position. But many of the national contracts that form the basis for cooperative purchasing require that bidders be national companies with national marketing and distribution mecha-

nisms. Most do not directly advertise in New Jersey. Such scope and notice limiting processes and requirements arguably are too restrictive to survive scrutiny for bids solely in New Jersey, yet they now form the foundation of much of our government procurement.

The result of these combined conditions is that New Jersey's procurement dollars are no longer going to the existing network of small, local vendors who used to openly compete, driving down prices and promoting local small businesses. Instead, a substantial portion of public business now only goes to "big box" companies. Copiers, carpets, air filters, information technology and fish food for the state hatchery are all items the state has contracted for through cooperative purchasing, in many instances supplanting local small businesses who used to compete for, bid on and win these contracts. Is this utilization of big-box companies more cost-effective than local competition, or even good fiscal policy for the state? That answer is subject to differing opinions.

Ultimately, whether the cooperative purchasing process' perceived efficiency and volume-purchasing cost-savings offset the costs of a decline in local competition, and the potential loss in jobs and tax revenues by local small businesses, is an important question that New Jersey legislators, agencies and businesses need to consider. A thorough review of the impact of cooperative purchasing is warranted to reach a reasoned conclusion whether the potential for improved efficiency is worth the actual price New Jersey is paying.

Is this utilization of big-box companies more cost-effective than local competition, or even good fiscal policy for the state? That answer is subject to differing opinions.