Stevens & Lee

M E M O

TO: NJEDGE.NET, Inc.

FROM: Stevens & Lee, P.C.

RE: Summary of Authority to Purchase from NJEdge via Coop or Directly

DATE: February 8, 2023

Purchasing of goods and services by public entities in New Jersey is governed by strict rules. Entities must conduct a competitive procurement process unless other contracting authority has been provided by statute. Cooperative purchasing and shared services are two such examples.

Under the Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq*. ("LPCL"), and the Public Schools Contracts Law, N.J.S.A. 18A:18A-1, *et seq*. ("PSCL"), public entities are authorized to purchase goods and services through duly formed "cooperative purchasing systems," without advertising for bids or public bidding.[1] County Colleges are likewise authorized to purchase goods and services through a cooperative pricing system. N.J.S.A. 18A:64A-25.11a. Further, the authority to purchase via cooperative purchasing is broadly extended via State Purchasing Law, N.J.S.A. 52:34-6.2, to any contracting unit in the state, except state agencies and authorities.

The Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, *et seq*. (the "Shared Services Act") any local unit may enter into shared services agreements with another local unit for the receipt or provision of services that each local unit is empowered to provide or receive in its jurisdiction.[2]

NJEDGE.NET, Inc. ("NJEdge") is an Educational Research and Services Corporation formed pursuant to N.J.S.A. 18A:3B-6.1. As such it is a New Jersey 501(c)(3) non-profit, charitable corporation and technology consortium organized and established by the New Jersey President's Council pursuant to its authority under N.J.S.A. 18A:3B-8(d) and consisting of member institutions who are public research universities, state and independent colleges and universities, two-year community colleges, K-12 school districts, hospitals and government agencies.

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[1] *See* N.J.S.A. 52:34-6.2(b)(3) (broadly establishing authority to purchase goods and services from any cooperative purchase agreement developed via a competitive bidding process, whether in New Jersey or another state).

[2] *See* N.J.S.A. 40A:65-4.

The following summary describes the statutory basis for NJEdge's authority to: (a) act as a Lead Agency or Contracting Unit on behalf of its membership for the procurement of goods and services through cooperative purchasing; (b) establish its own cooperative purchasing system; and (c) enter into shared services agreements with other public entities.

A. Cooperative Purchasing as Lead Agency and Contracting Unit

As an Educational Research and Services Corporation, NJEdge is authorized to act as a "Lead Agency" or "Contracting Unit" for the procurement of goods and services concerning educational technology systems for its statutory member entities. Its authorizing statute—N.J.S.A. 18A:3B-6.1—states in relevant part:

> b. (1) An educational research and services corporation ***may act as a lead agency or contracting unit for the procurement of goods or services concerning educational technology systems and related services by those entities comprising the educational and research services corporation***.
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> (2) An educational research and services corporation ***shall be deemed a local unit*** for the purposes of the "Uniform Shared Services and Consolidation Act," sections 1 through 35 of P.L.2007, c. 63 (C.40A:65-1 through C.40A:65-35) and may act as a lead agency or contracting unit for the procurement of goods or services concerning educational technology systems and related services by municipalities, fire districts, counties, local authorities subject to the "Local Authorities Fiscal Control Law," P.L.1983, c. 313 (C.40A:5A-1 et seq.), school districts, county colleges, State colleges[3], public research universities[4], nonprofit independent institutions of higher education that receive direct State aid, or any combination of those entities.

A "lead agency" is the entity that enters into a master contract under a cooperative purchasing system, while a "contracting unit" is the participating entity that procures goods or services from a vendor using a master contract. Accordingly, under its "Lead Agency" designation, NJEdge has issued requests for proposals ("RFPs") and negotiated pricing contracts for strategic partnerships on behalf of its membership, enabling members to obtain products that are in high demand at the most cost-competitive pricing available directly from the vendors who have responded to NJEdge RFPs. Under its "Contracting Unit" designation, NJEdge has

[3] N.J.S.A. 18A:3B-3 defines "state college" as any college or university established pursuant N.J.S.A. 18A:64-1, *et seq*. State colleges are authorized to participate as a "contracting unit" in cooperative purchasing systems, and procure goods and services therefrom. *See* N.J.S.A. 18A:64-63.1.

[4] N.J.S.A. 18A:3B-3 defines "public research university" as: (a) Rutgers, The State University of New Jersey ("Rutgers"); (b) Rowan University ("Rowan"); (c) the New Jersey Institute of Technology ("NJIT"); (d) Montclair State University ("Montclair"); and (e) Kean University ("Kean"). These universities are authorized to participate in cooperative purchasing systems, and procure goods and services therefrom. *See* N.J.S.A. 18A:64-63.1 (Rutgers); N.J.S.A. 18A:64M-9.2 (Rowan); N.J.S.A. 18A:64E-18.1 (NJIT); N.J.S.A. 18A:64N-11 (Montclair); N.J.S.A. 18A:64O-11 (Kean).

competitively procured goods and services for the benefit of its membership who can purchase from NJEdge through the master purchase agreement.

B. <u>EdgeMarket Cooperative Pricing System</u>

In addition, NJEdge formed The EdgeMarket Cooperative Pricing System ("EdgeMarket"), a Cooperative Purchasing System (DCA #269EMCPS) approved by the New Jersey Department of Community Affairs ("DCA"). This designation as a Cooperative Purchasing System (DCA #269EMCPS) expanded NJEdge's existing statutory authority to act as a "Lead Agency" for entities beyond its existing membership. As an approved New Jersey Cooperative Pricing System, NJEdge can issue RFPs on behalf of EdgeMarket. Any contracting unit in New Jersey authorized to participate in the cooperative purchasing process may purchase from EdgeMarket after a resolution authorizing the contracting unit to join the cooperative is adopted by the governing body and the contracting unit executes the approved membership agreement.

Every public entity except State Agencies and Authorities, may purchase directly from a Cooperative Pricing System:

> Notwithstanding any other law to the contrary, any contracting unit authorized to purchase goods, or to contract for services, may make purchases and contract for services through the use of a nationally recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process by another contracting unit within the State of New Jersey, or within any other state, when available. Prior to making purchases or contracting for services, the contracting unit shall determine that the use of the cooperative purchasing agreement shall result in cost savings after all factors, including charges for service, material, and delivery, have been considered.
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> For purposes of this paragraph, "***contracting unit" means any county, municipality, special district, school district, fire district, State college or university, public research university, county college, or any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority or agency,*** and which has administrative jurisdiction over any district, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services, and the New Jersey Transit Corporation created pursuant to P.L.1979, c. 150 (C.27:25-1 et seq.).
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> N.J.S.A. 52:34-6.2

C. <u>Shared Services Agreement</u>

The Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, *et seq*. (the "Shared Services Act"), authorizes local units to enter into shared services agreements as follows:

> Any local unit may enter into an agreement with any other local unit or units to provide or receive any service that each local unit participating in the agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purposes of any of the participating local units including services from licensed or certified professionals required by statute to be appointed. [N.J.S.A. 40A:65-4]

As discussed, *supra*, NJEdge is deemed a "local unit" for purposes of the Shared Services Act.[5] County colleges[6] established pursuant to N.J.S.A. 18A:64A-1, *et seq*., are deemed "local units" as well. Although not explicitly stated in the Shared Services Act, NJEdge would be permitted to engage in shared services agreements with state colleges and public research universities as a "local unit" based on the authority given those institutions in their enabling acts.

For example, on December 16, 2020, the Rowan University Board of Trustees approved a resolution authorizing a shared services agreement with the Township of Mantua for operation of the Jean and Ric Edelman Fossil Park.[7] As authority for entering the shared services agreement, the university cited N.J.S.A. 18A:64M-9(k), which authorizes the Board of Trustees to "[e]nter into contracts and agreements with the State or any of its political subdivisions or with the United States, or with any public body, department or other agency of the State or the United States or with any individual, firm or corporation which are deemed necessary or advisable by the board for carrying out the provisions of this act."[8] Similar provisions exist in the statutory framework governing Rutgers, NJIT, Montclair, and Kean.[9]

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[5] *See* N.J.S.A. 18A:3B-6.1(b)(2).

[6] ""Local unit" means a "contracting unit" pursuant to section 2 of P.L.1971, c. 198 (C.40A:11-2), a "district" pursuant to N.J.S.18A:18A-2, a "county college" pursuant to N.J.S.18A:64A-1, a joint meeting or regional service agency, as defined in this section, or any authority or special district that is subject to the "Local Authorities Fiscal Control Law," P.L.1983, c. 313 (C.40A:5A-1 et seq.)."N.J.S.A. 40A:65-3

[7] *See* Resolution #2020.12.30, Approval of a Shared Services Agreement Between the Township of Mantua and Rowan University, available at https://sites.rowan.edu/president/_docs/12.16.20_bot-audience.pdf; *see also*

[8] *See also* Resolution #2020.02.11, Approval of a Shared Services Agreement to Promote Economic Growth and Sustainability in the Route 322-Rowan University West Campus Regional Development Area, available at https://sites.rowan.edu/president/_docs/2.12.20_final-resolutions.pdf.

[9] *See* N.J.S.A. 18A:64-6(k) (Rutgers); N.J.S.A. 18A:64E-18(n) (NJIT); N.J.S.A. 18A:64N-9(k) (Montclair); N.J.S.A. 18A:64O-9(k) (Kean).