

AN EXAMINATION OF NEW JERSEY'S PROCUREMENT LAWS AND REGULATIONS:  
ANALYZING THE IMPACT ON PRIVATE SECTOR COMPETITION

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A dissertation submitted in partial fulfillment  
of the requirements for the degree of  
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School of Public Affairs

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by

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University of Baltimore  
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## **DEDICATION**

To my parents and heroes – Antoinette and the late Joseph G. Novelli (1929-1995) -- Thank you from the bottom of my heart for providing your three children with such a loving and supportive home filled with much laughter, encouragement, and joy. Thank you for teaching us about the importance of getting a good education and following our dreams to the zenith. Thank you for working so hard to help put us through private universities. Thank you for always being our biggest cheerleaders throughout our formative years – and beyond. Mom – Happy 76<sup>th</sup> Birthday!!!! This doctorate is your birthday gift.

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## **ABSTRACT**

### **AN EXAMINATION OF NEW JERSEY’S PROCUREMENT LAWS AND REGULATIONS: ANALYZING THE IMPACT ON PRIVATE SECTOR COMPETITION**

Dominic Jude Novelli

The New Jersey Legislature must take a closer look at the current public procurement process in order to create a more competitive environment and encourage more private sector enterprises to participate. This study utilized quantitative data supplied in two different survey instruments – one presented to public procurement professionals ( $n=165$ ) -- and the other to private sector leaders ( $n=154$ ). In both surveys, respondents were asked to share their opinions on a number of specific components within New Jersey’s procurement process and the impact that these components had in encouraging or discouraging a larger base of potential suppliers.

A comparison of the quantitative data generated by both surveys illustrated strong positive associations between the two on a number of different aspects of the New Jersey procurement system including: the vast amount of paperwork in a bid document, the time between a bid’s advertisement and its opening; government payment timetables; “low-ball” bidding, and the inefficient bidding process. The findings published in this manuscript demonstrate that there are notable flaws in New Jersey’s existing procurement process that need to be addressed through further detailed study as well as the implementation of consequent adjustments designed to create a more effective, efficient, and competitive procurement system for New Jersey’s public agencies.

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## INTRODUCTION

Throughout the United States, leaders of governmental entities are challenged each year to formulate budgets to fund the work of their jurisdictions, reflecting respective constituent needs as well as responding to the calls to hold the line on spending and property taxes. In order to provide the services and programs necessary to meet constituent needs, governmental entities procure hundreds of millions of dollars in goods and services to meet their mandates and conduct their business. As Susan A. MacManus notes in her examination of public procurement, *Doing Business with Government*, “The magnitude of government purchase staggers the mind even more when one takes into account the other governments that are active buyers: fifty state governments and 83,186 local governments (3,042 counties; 19,200 municipalities; 16,691 townships and towns; 14,721 school districts; and 29,532 special districts)” (MacManus 1992, 3). The number of federal, state and local governments doing business means that the volume of transactions is massive. “Each day, government agencies across the country publish thousands of requests for goods and services, for which they will spend hundreds of billions of dollars over the course of a single year. According to Governing.com, the federal government will spend \$470 billion in 2006 on such requests. State and local spending on goods and services reached \$466 billion in 2005 and is expected to climb to more than \$550 billion by 2009,” (Pickett 2006, 20) reports Mike Pickett in *Contract Management*.

Because of the huge volume of parties engaging in these transactions, the need to have in place specific laws to regulate the procurement of goods and services with public dollars is, without question, critical. In hundreds of cases throughout the United States, government officials and vendors alike have been convicted of corruption and graft in the public procurement process, thus breaking the laws that protect public taxpayer dollars and ensure the dollars are used for their intended purpose: to fund the work of governmental entities. Yet Steven Kelman (1990) makes the counter –argument that public officials are no more likely than anyone else to have their hands in the till. Indeed, under his watch as President Clinton’s Chief Procurement Officer (part of OMB), there were major liberalizing of procurement controls that produced a quantum leap in government credit card usage – making small purchases especially more efficient. These procurement laws must strive to make the process more efficient all the while putting up barriers to corrupt practices.

Procurement laws vary considerably across the United States. For instance, some states give local jurisdictions the ability to purchase goods and services without the need for sealed, competitive bidding, and at higher bid thresholds than others. Various entities require differing levels of paperwork and are guided by diverse regulations and laws that define the public bidding process. In New Jersey, the highest bid threshold possible for a governmental entity is \$36,000 (New Jersey Local Finance Notice, 2010-13). Thus if a good or service is estimated to cost in excess of \$36,000, the purchasing agent is required to procure the item through a competitive sealed bid process, with some statutory exceptions. The exceptions range from professional services (i.e. attorneys, engineers,

architects, or physicians) to those items purchased utilizing a Federal or New Jersey cooperative purchasing agreement. Local governments have the legal ability to “piggy-back” on pricing for a given period of time. Outside of the exceptions noted in the law, competitive bidding must take place.

When establishing a competitive sealed bid under the Local Public Contracts Law, the State of New Jersey requires jurisdictions to include specific documents for bidders to complete and/or submit in the sealed package in order to be judged as a responsive bidder. Some of these items include: a non-collusion affidavit, a disclosure statement (N.J.S.A. 40A:9-22-1, et seq.) indicating whether the bidder has a relative working for the governmental entity, a statement of ownership (N.J.S.A. 52:25-24.2 et seq.), a statement of affirmative action compliance (N.J.S.A. 10:5-31, et seq./ N.J.A.C. 17:27), Americans with Disabilities Act (ADA) certification (42 U.S.C. S12.), a Public Works Contractor Registration Act Certificate (N.J.S.A. 34:11-56.48), consent of insurance, a bid guarantee, a performance bond or consent of surety, a business registration certificate (BRC), a form to acknowledge receipt of addenda, and disclosure of the use of any subcontractors (New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.). Depending on the type of bid – whether of a good or a service – and the estimated value of the contract, a number of these documents must be completed by the vendor and returned in the sealed package. In addition, some entities have the right to request that additional documents be included in the process. The County of Bergen (NJ), for instance, asks vendors to complete a form called the “Direct Financial Disclosure of Campaign Contributions.” As the cover document indicates, “campaign contributions to the County Executive, individual members of the Board of Chosen

Freeholders and Constitutional Officers should be disclosed to the public as part of transparency in government” (County of Bergen).

Under the laws of the State of New Jersey, if some of these documents are deemed necessary in a specific bid and are not completed by a bidder and returned in the sealed envelope, the bid will be automatically thrown out, without any ability for the bidder to cure the defect. These laws pertain to the lowest bids submitted as well. As a result of these regulations, the state restricts local governments’ ability to award contracts to the best bidder who offers a competitive price. Flexibility is thus cast aside, and with it, the potential for the public sector to partner with otherwise responsible, efficient, and cost-effective vendors.

Consequently when fewer companies elect to participate and submit sealed bids in the procurement process, the competition is obviously not as rigorous. With fewer bids entered, governmental entities are forced to choose from a smaller pool of bidders. As a result, it is quite possible that a governing body could be forced to pay a higher price for the same commodity or service than if more vendors had submitted bids. In the end, fewer bidders usually mean higher prices for the government and the possibility of ineffective vendors, which ultimately means that the taxpayers will pay more to fund the purchase of services or commodities.

The flexibility that the private sector craves in order to sell their quality products to a vast marketplace (the public sector) simply does not exist. As a result of extensive regulation, the paperwork hurdles, and the bureaucracy of the system, many businesses choose to forgo this plentiful market and instead look to sell to fellow private sector partners – a business system that is more flexible and one that they better understand.

Consequently, the selection of quality vendors to supply the public sector with needed goods and services grows smaller and smaller.

While overly extensive regulation may be the chief factor that contributes to the shrinking competitive market for the public sector, it is important to note that there are at least two other issues that may impact competition as well. The focus of government on overregulation of the procurement process can force public sector entities to settle for “low-ball” bidders, those whose products and services are substandard, thus causing governments to spend even more money to rectify the inefficiencies. Under New Jersey statutes, the vendor who submits the lowest responsive bid is in prime position to receive a contract award. However, just because a vendor enters the lowest bid, submits all the required documents, and appears to be responsible, does not necessarily mean that vendor is the best choice for the entity. Quite clearly, government is caught in conflict between trying to balance its need for fundamental regulations to protect public dollars from unscrupulous officials and vendor corruption, and the need for flexibility in regulations that will allow it to conduct its business in the most efficient and effective manner possible. In both cases, the prudent usage of taxpayer dollars remains the paramount concern.

The focus of this study is the procurement laws and regulations that govern public purchasing in the State of New Jersey, and whether or not they create a disincentive for the private sector to do business with the public sector. Without question, this issue is critical to New Jersey’s local governments and to the citizens of the state. If the research gathered indicates that competition has indeed been stifled by overregulation and the inflexibility of the established laws, then changes in New Jersey’s public procurement

system may be warranted. When fewer and fewer private sector entities choose to submit sealed bids to a public agency, then less competition means higher prices for the government and the taxpayers that support its operations. In addition, public agencies may be forced to do business with companies that are less responsible and cost them more in the long run. Ultimately, higher prices for goods and services translate into higher property taxes for the property owners. Alternately, when there is a larger pool of participants in a bid process, New Jersey's governmental agencies will realize more competitive pricing for a service or commodity – thus saving the agency, and the taxpayers, large sums of money.

As noted previously, there may be other factors outside of New Jersey's overregulation of procurement that may be influencing competition in the process. Two factors that are most prevalent are low-balling and the payment process.

With respect to the concept of low-balling, it is possible that some vendors choose not to pursue public procurement due to their frustrations with the practice of low-balling by other vendors. Quite simply, since vendors recognize that the apparent low bidder is in the proverbial driver's seat under New Jersey procurement law, some unscrupulous bidders may purposely submit bids that are far below the estimated value of a commodity or service contract just to receive the award. Once awarded the contract by the governing body, the vendor will pursue change orders to the contract in order to add dollars to the original award. Unfortunately, some vendors may get away with this deception because the employees charged with the responsibility of monitoring the contracts may not have the time, energy, or aptitude to do battle with the vendor. Under New Jersey law, contracts can be increased – with governing body approval – up to a total of 20%



(N.J.S.A. 40A:11-1 et seq.). Thus a contract that was originally awarded at a low bid of \$100,000 could possibly mean an additional \$20,000 for the vendor. This is designed to compensate a vendor for circumstances that were unforeseen during the bidding process, such as the removal of asbestos during a flooring replacement job. One would argue that an experienced and responsible vendor pricing such a job would reasonably assume that given the type and age of the product, and the standards in place when the original work was completed, that asbestos would be present and would need to be removed.

Due to the restrictions placed on New Jersey's public agencies by overly strict procurement laws, the practice of low-balling may be fairly common. Yet it should be noted that low-ball cases and change orders are not easily gauged due to the fact that local governmental entities are not required to report to the state any contract that required an amendment due to a change order. Governmental jurisdictions have the freedom to award contract change orders up to 20% of the initial award provided that the governing body takes the formal action – in the form of an adopted resolution – to award the additional dollars to the vendor. It is only in the cases of change orders above the 20% threshold that must be processed through the State of New Jersey. This regulation is widely known throughout the bidding community. As a result, vendors usually look to restrict their change order requests below the 20% ceiling – thus avoiding the “red flag” of a state inquiry into the variation.

Without question and despite the establishment of prompt payment legislation in many jurisdictions, the public sector payment process creates difficulties for some. In particular, smaller vendors who depend on a quicker cash flow system in order to make ends meet struggle while awaiting their checks from government agencies. In their

dealings with the private sector, vendors are more accustomed to receiving payment within specified shorter time frames, such as net 15, 20, or 25. As a result of financial accountability measures that are put in place to protect the public sector, government – for the most part – pays out on a more delayed timeline. Vendors accustomed to submitting an invoice on a Monday and receiving payment by the following Friday from fellow private sector enterprises are not going to realize that kind of response time despite the best of intentions of the public agencies. As an example, say that a vendor has been awarded a contract to provide \$50,000 worth of furniture to a public agency. Upon approval of the award of that contract by the governing body, a purchase order for the \$50,000 worth of furniture is mailed to the vendor. At the same time, the receiving report copy of the purchase order is forwarded to the user agency who will be accepting delivery of the furniture. Once the furniture has been completely delivered and the user agent is satisfied, the agent will then sign the receiving report and forward it to the treasury office. The vendor must also sign and submit its voucher from the purchase order and forward it to the treasury office, indicating that the vendor has fulfilled its end of the contract. Once the two documents are matched up in the treasury office, the item can be placed on the bills list which is approved by the governing body at its next scheduled meeting. However governing bodies do not meet every week. At most, they will meet every two weeks. Upon approval by the governing body, the check can then be dated, cut, and mailed out to the respective vendor.

Following this timeline, there are a number of different possibilities that may delay the payment process on both ends of the transactions. If the vendor forgets to return its voucher, the payment will not be made. If the user agent delays the processing

of its receiving report, the payment will be delayed. Once the paperwork has been matched after the governing body has met, the item now has to wait until the next meeting (two weeks later) in order to be placed on that bills' list – another delay. While the payment process is a simple one to follow, the numerous steps designed to protect the integrity of the payment process and ultimately the public's dollars create some hurdles in the effort to “speed up” the payment process. Despite the fact that businesses are nearly 100% assured that the government's check will not bounce, nonetheless some private sector operations cannot extend their payment timetables that far out in the distance – particularly the smaller businesses. This may explain some of the reasons fewer and fewer private sector enterprises want to do business with New Jersey's public sector.

With respect to the subject of extensive regulation of the procurement process, it is important to note the vast amount of measures that are introduced each year that address and impact public procurement throughout New Jersey. During the course of the New Jersey State Legislature (2006-2007) session, 173 different pieces of legislation were introduced directed at some part of the public procurement process in the state (Valenti 2008). Moreover, in just the first week of the following session of the Legislature (2008-2009), 43 of these measures were re-introduced for consideration (Valenti 2008). In June 2009, the New Jersey Legislature website indicated that 118 bills concerning public contracts had been introduced (New Jersey State Legislature). A small sampling of these measures include: A1198 – authorizes local contractor preference program; A1647 – requires vendors bidding on certain contracts to provide health care benefits to their employees; A3516 – prohibits businesses that outsource jobs overseas to

receive State contracts; S818 – requires that prevailing wages be paid by contractors awarded bids for solid waste collection and transportation; and S2854 – which requires contractors to provide the N.J. Dept. of Treasury with employment information about contracts with public bodies (New Jersey State Legislature). In each of these examples, the legislation creates either additional obstacles for private sector businesses or even limitations on their ability to win a specific award.

For instance under the terms of A1198 “the local contractor preference program,” counties and municipalities would be forced to create a program whereby vendors within the county or municipality would receive automatic preference if their bids are no more than 10% higher than the lowest responsive bidder – not located in the jurisdiction (New Jersey State Legislature). In turn, an otherwise low and responsive bidder would be boxed out of an award as a result of this mandate on local procurement offices. In each of these legislative samples, additional barriers are being placed in front of potential private sector partners making it more difficult to receive an award or more burdensome to complete the process to receive a contract.

Should the findings in this study support the hypothesis that procurement policies and regulations impede vendor participation in the procurement process, New Jersey’s leaders may have to institute necessary legislative changes to make the public procurement process more competitive and more efficient for vendors and public sector entities throughout New Jersey.

## REVIEW OF LITERATURE

In conducting a review of the scholarly works published over the past twenty years or so on the subject of public procurement and competition, I have taken note of several experts in the field including: Susan MacManus, David V. Lamm, Steven J. Kelman, David P. Gagan and Jacques S. Gansler. Each has examined the many facets of the public procurement process and has identified factors that impact the way in which the public and private partner together.

A key work on the subject of public procurement, although admittedly a bit dated, that of Susan MacManus, whose book *Doing Business with Government* is a compilation of data collected in the early 1990's. As Thomas Dye writes in the foreword of the book, "Susan MacManus reports on the hard realities confronting businesses that would undertake to contract with government. Her reporting is informed by the most extensive survey to date of business opinion of government contracting – 3,282 business respondents representing all sizes and industrial classifications of firms, newly formed and established firms, all ownership types, minority-owned firms, and even a control group of firms that have never won a government contract" (MacManus 1992, xxi).

This extensive study highlights a number of significant issues confronting government contracting. In her findings, MacManus states that the private sector experiences frustration with the contracting process and believes that a number of quite negative conclusions are identified in the process. She has found that businesses claim that the process is inefficient, ineffective, burdensome, wasteful, expensive, and unfair (MacManus 1992, xxi). As she noted in her publication, "Perhaps part of this frustration

arises from the very nature of public business: the need to insure honesty, openness, impartiality, and competition. Certainly this is the oft-stated bureaucratic rationale for complex advertising and bidding procedures, burdensome applications, detailed specifications, legal entanglements, performance bonds, delayed payments, mandated employment policies, and excessive paperwork” (MacManus 1992, xxi).

MacManus purposely questioned the business community about their sentiments with respect to competitiveness, efficiency, and equitability of procurement policies and procedures (MacManus 1992, 1). She specifically asked private sector leaders exactly why they do business with government and precisely what problems they encounter in doing so (MacManus 1992, 1).

Her publication emphasizes the need to expand the vendor pool in several different areas – not simply merely increasing its size (MacManus 1992, 2). MacManus was outspoken about increasing the competency of the pool as well as generating a greater interest from vendors who were more representative of the ethnic, racial and gender composition of U.S. businesses (MacManus 1992, 2).

MacManus states that the response to the question why, in the era of privatization, businesses are reluctant to sell to government is summed up in two words: different and difficult (MacManus 1992, 28). “The most common explanation is that businesses see public sector purchasing and contracting practices as different, more difficult, and potentially riskier from a liability perspective than private sector practices. One attorney specializing in public contract law, quoted in ‘Nation’s Business,’ argues that ‘government contracts differ markedly from customary business contracts for three reasons – the laws, the specifications, and the performance standards’” (MacManus 1992,

28). In her work, MacManus makes a point of discussing how government's inability to shed its rigid structure discourages the private sector from participating in the procurement process writing, "Businesses are frequently disenchanted with the seeming inflexibility and inefficiency created by government's rigid adherence to (and interpretation of) standard specifications" (MacManus 1992, 28).

MacManus addresses the problem of slower payment schedules as well. She notes that some members of the business community specifically stay clear of partnering with the public sector due to its poor reputation with respect to payment schedules – payments that are not timely regardless of the various statutes that require a speedier time frame (MacManus 1992, 29).

With respect to government's voluminous paperwork, MacManus notes, "Large and small firms alike find the paperwork associated with government procurement (pre- and post-bid) as overly burdensome. In her publication, MacManus specifically cites Lamm's 1986 survey of defense-related firms. Lamm found that almost 70 percent identified burdensome paperwork at both ends of the process as a major problem in dealing with the government (MacManus 1992, 30). One company he studied claimed it was 'too much paperwork for 3 to 5 percent profit,' and another lamented that a 'recent quote on a government job required three weeks and 100 pages of paperwork, in contrast to a similar commercial job that required three hours and 10 pages of paperwork'" (MacManus 1992, 30).

Despite a robust procurement business, MacManus found that large numbers of companies – both those who have participated in public procurement previously and those that have never attempted to – have very negative perceptions about the

government procurement process (MacManus 1992, 18). Accordingly these companies believed that the process was extremely political, lacking competition, and were filled with contracts that were geared toward a sole source vendor (MacManus 1992, 18). “Even in competitive bidding situations, some feel that bid specifications are written so specifically as to produce limited competition among potential suppliers. Others feel just the opposite – that specifications are written too generally and imprecisely, effectively giving too much latitude to government officials to chose the supplier” (MacManus 1992, 18).

Yet over the years, little research has been done where the focus rested on the perspective of the private sector community. In fact, MacManus notes that up until her survey in the 1990’s, the only other work of note was Lamm’s study, in which he examined 427 different companies in the defense industry to gather that opinion of their leaders with respect to business officials’ attitudes toward selling to government (MacManus 1992, 30).

“Without competition, the public purchasing process is likely to be criticized for violating the most basic and sacred of the purchasing tenets: ‘In principle, competition is the centerpiece around which the public purchasing process turns.’ As stated in *State and Local Government Purchasing*, ‘The importance of competition demands that acquisitions be made under conditions which foster competition among a sufficient number of potential vendors representing a wide spectrum of producers or services or marketplaces’” (MacManus 1992, 45).



MacManus identified a chief component to overhauling the public procurement environment – namely, “a public procurement process that promotes impartiality and openness without limiting competition” (MacManus 1992, 45).

MacManus also tackled the issue of the low-ball bidder. “Awarding a contract to the lowest bidder without some calculation of the vendor’s capacities to deliver a quality product or service in a timely fashion also contributes to a government’s bad reputation among potential suppliers. This is especially the case if a firm engages in low-balling, which occurs when a firm intentionally bids excessively low just to get the contract and then cannot deliver the goods or services in the manner prescribed in the contract” (MacManus 1992, 45).

“Government purchasing practices are generally adopted for ‘the public good,’ not to be intentionally onerous or burdensome. The unique requirements of public sector purchasing – openness, impartiality, and competitiveness – make government policies and procedures more complex, and frequently more confusing, than private sector practices” (MacManus 1992, 82).

Clearly one of the differences between MacManus’s research and the research I have undertaken is that my survey data focuses on the procurement regulations in New Jersey specifically, as opposed to procurement regulations in general. While I randomly selected companies from across the country as MacManus did, the focus of my questioning was on the procurement laws specific to New Jersey. MacManus’s polling was more open-ended; she polled businesses to get feedback on their impressions of public procurement in general. As I have stated previously, I believe that this is more

difficult and less useful because the laws and regulations that govern public procurement in the United States vary significantly from one state to the next.

One obvious drawback with respect to national procurement studies is the fact that the vast differences between purchasing laws in one state as compared to another cannot be taken into consideration. Documents that are required in sealed bids in New Jersey may be entirely different from those in New York and Pennsylvania and vice versa. As a result, it is difficult to compare like processes. My quest for existing research for studies involving New Jersey's procurement system has come up empty. I have not been able to find a single study that specifically evaluates the competitive nature of New Jersey's procurement system and, more specifically, the impact or influence that this has on the private sector. The question of whether the specific laws, regulations and requirements in New Jersey procurement influence whether or not a company in New Jersey bids on public work in New Jersey simply has not been examined.

In a paper published in 1990, Steven J. Kelman provided an explanation of the history of procurement reform in the United States (Kelman, 1990). He detailed that the "Progressives" one century prior, created standards in which to guide officials in the performance of government procurement. "In order to avoid corruption, procurement officials were required to follow detailed rules" (Kelman, 1990). However Kelman states that changing the behavior of procurement officials working under these guidelines became the goal of the reform. By having individuals concentrate more of their time on contributing to the creativity of the overall mission of the procurement process as opposed to being more "tunnel visioned" on the goal of maintaining strict compliance

with the procurement regulations, enabled changes to take place that would allow “progressive” reforms to take place (Kelman 2006, 877).

As Kelman noted, “This reform involved changes both in office-wide processes (for example, in awarding new contracts, buying offices were asked to take into account how vendors had performed on previous contracts) and in individual human behavior (for example, people were asked to look for new procedures to allow the agency on contract quickly or new mechanisms for structuring business relationships with vendors)” (Kelman 2006, 877).

In his analysis of contracting, Steven J. Kelman notes that there are three basic but essential goals for governmental procurement design. Kelman states, “The first goal of the design of contracting is to get a good deal for the government. A ‘good deal’ means that the government gets good prices and good performance from the firms with which it does business. The second goal of the design of contracting is to prevent corruption and promote the integrity on the part of government officials, especially in regard to awarding contracts and accepting work performed under a contract. The third goal in the design of contracting is fairness to people interacting with the contracting system. Being fair means treating similar cases alike and different cases differently. Fairness requires that all qualified contractors have equal access to bidding for the business of ‘their’ government” (Kelman 2002, 285).

In his essay, Kelman describes the federal government’s statute that guides procurement for the United States government. Kelman explains, “The Competition in Contracting Act (CICA), the basic competition statute currently governing federal procurement, establishes the principle of ‘full and open competition,’ the idea that any

firm be allowed to bid on a government contract. CICA provides a number of exceptions, such as the ‘unusual and compelling urgency’ of the procurement or the presence of only one source who can do the job” (Kelman 2002, 296).

Again, however, it is important to note that unlike the federal government, the State of New Jersey does not recognize the concept of “sole source” procurement. Under New Jersey law, if an agency wishes to purchase a good that is considered to be “sole source” and it is not available under a State contract, the item has to be competitively bid listing the name brand but noting that the buyer will accept a bid from a vendor offering “an approved equal” if one exists.

As Kelman explains in the essay, he has not been a big fan of the “award to the low bidder” mentality but he notes some of its benefits. “The decision rule ‘award to the low bidder’ after an open competition has been a classic way to award government contracts. This solution was brilliant, and even its critics – of whom I am one – have sought to smooth its many sharp edges rather than abandon it entirely. Competition brings the advantages to the market mechanism from reducing price, increasing quality, and encouraging innovation. It promotes fairness by offering all seeking to sell to the government an opportunity to participate. Awarding to the low bidder promotes economy in the fulfillment of government requirements, provides the transparent arrangement that assures bidders they have been treated impartially, and reduces the opportunity for corruption” (Kelman 2002, 298).

At the same time, Kelman recognizes some of the problems of the “low-bidder.” He believes that a low bid award can create problems due to the fact that some of these quite often go to contractors who through their own ignorance or intentionally, low-ball

the cost of the project or the magnitude of the contract's requirements – which, in turn, leads a greater chance that the work will never be completed (Kelman 2002, 298).

Kelman adds, “Contractors often win through a conscious strategy to ‘buy in and get well,’ bidding unrealistically low initial process and hoping to make money through contract modifications after award” (Kelman 2002, 298).

In his writings, Kelman details the importance and value of streamlining the procurement process in order to make it more responsive and less burdensome on contractors as well as to public sector purchasing professionals. He explains that a government manager's other challenge -- with respect to the contracting process -- is to meets its stated goals but not by creating impediments in the process (Kelman 2002, 312). Impediments such as creating additional red tape and unnecessary paperwork only serve to create difficulties with the timeliness of the procurement process. He believes that it works to not only to “discourage contractors from seeking government business,” but also turns “contracting officials into clerks rather than business advisors” (Kelman 2002, 312).

With respect to streamlining, Kelman references the earlier work of James F. Nagle on the subject. “In a history of U.S. federal government contracting published in 1992, just before the streamlining efforts of the 1990's began, Nagle wrote that a ‘system that began with no written guidance now finds itself bound in paper from end to end.’ Streamlining is not simply about the government's convenience, but about signaling government employees about the senses of urgency they should have in meeting the goals the contracting tool is supposed to support” (Kelman 2002, 313).

Kelman contends that progress has been made with streamlining over the past decade by the federal government as well as by some states and smaller jurisdictions as a result of a reduction in the layers of regulations. This has been accomplished by providing more discretion for government officials and a reduction in contractor oversight.

Once again, it must be noted that the practice of “Best Value Source Selection” – utilized on the federal level – is not permissible in the State of New Jersey. Kelman explains the benefits of “Best Value” in this essay. “Traditionally, in the U.S. federal government, and still in many state and local jurisdictions, accepting sealed bids and awarding contracts to the low bidder was the preferred evaluation method. The worry was that methods allowing tradeoffs would be too subjective, give too much discretion to government officials, and be insufficiently transparent” (Kelman 2002, 298).

With the fact that low-bid awards have lost their favor on the federal level, Kelman explains that in order to make a source selection, the public body instead conducts a trade off of price and various quality-related factors (Kelman 2002, 298).

“CICA requires that a solicitation must include all evaluation factors under the best-value source selection including: price, technical capability, and past performance. CICA requires that price be a factor in every evaluation. In many best-value source selections, the award goes to the lowest bidder because the government may still decide that the firm that has bid the lowest price offers the best value, all things considered” (Kelman 2002, 298).

In New Jersey procurement, vendors that have performed well in the past receive no special consideration in future procurements, but those who have performed poorly

can be excluded from receiving an award if they were to submit the lowest bid. As Kelman indicates, “During the 1990’s, the past performance of bidders has become a major evaluation factor and is required by regulation. The idea is to provide an incentive for good performance by rewarding or punishing bidders for the quality of their performance when they bid on future contracts” (Kelman 2002, 299). As noted previously, New Jersey procurement law does not permit an extra advantage to those vendors who have provided good products or services previously. Unlike the federal best-value concept, each procurement process in New Jersey is considered separate and apart in the eyes of the law. Thus vendors who have performed well previously cannot receive special consideration over other bidders. New Jersey’s law would consider this to be an unfair advantage and create an unlevel playing field for the procurement. As a result, the best-value approach would not be suitable in New Jersey.

For the purposes of this study, I was highly influenced by a procurement reform article that was published in the February 2005 edition of *Government Procurement*. The piece written by David P. Gagan titled, “Harnessing Procurement Transformation in the Public Sector,” detailed the need for the public sector procurement managers to examine possible methods to improve their operations, and ultimately, to encourage competition (Gagan 2005, 18). Gagan contends that “purchasing directors in every government enterprise must be willing to engage in continuous reforms to ensure that procurement goals work in unison” (Gagan 2005, 19). Gagan recommends a number of changes he believes will aid in increasing competition and encouraging more private sector participation; among them: evaluating procurement processes, promoting communications, and managing vendor relationships (Gagan 2005, 18).

With respect to evaluating procurement processes, Gragan states that such evaluation is necessary because “pubic procurement agencies operate in a particularly rule-bound setting” (Gragan 2005, 18). He states, “A purchasing director should routinely monitor the regulatory environment for requirements that may no longer make sense from the perspective of the agency’s overall mission” (Gragan 2005, 18). In addition, he recommends that purchasing managers should ask themselves, “Are current procurement guidelines and statutes structured to allow the use of the latest procurement tools and technologies that are available to procurement professionals” (Gragan 2005, 18)? And “are current regulations aligned with realities of the day-to-day procurement processes that take place within the purchasing organization” (Gragan 2005, 18)?

Gragan believes that if procurement professionals were to more closely examine and evaluate answers to these questions on a timelier basis, they would be in a better position to implement procedures to improve processes (Gragan 2005, 18). While procurement directors should be evaluating these issues and questions for their organizations, asking potential bidders their opinions about the very same regulatory environment is also crucial to the process.

With respect to promoting communication, Gragan notes that “the need for outreach and communication extends to the vendor community as well” (Gragan 2005, 19). He explains, “Quasi-governmental organizations, such as small and minority business-development centers, chambers of commerce, and procurement technical assistance centers, frequently seek ways to encourage business participation in the public procurement process” (Gragan 2005, 19). The potential exists to poll vendors about the



importance and usefulness of these concepts in order to help maintain information flow between the vendor community and the purchasing agency.

Concerning communication lines with the private sector, Gragan stresses the importance of managing vendor relationships. “Fostering sound relationships with vendors ensures the creation of a healthy and competitive procurement environment” (Gragan 2005, 19). “When appropriate, public purchasers should solicit vendor input to gain an understanding about the state of the industry prior to issuing a bid” (Gragan 2005, 19).

In another major piece of procurement literature, *The Procurement Revolution*, Jacques S. Gansler contends that one of the major challenges for government is “reforming the acquisition process” (Gansler 2003, 38). “In spite of the significant gains made during the last few years, it is still a fact that government purchases of goods and services take too long, cost too much, and often don’t result in the highest quality. Clearly, there is a lot of room for additional improvements” (Gansler 2003, 38). Gansler states, “The government must learn to use incentives rather than regulations as the way to create higher performance at lower costs. Obviously, if contractors are rewarded for improving their performance and lowering their costs, they will make every effort to do that” (Gansler 2003, 39). Gansler argues that by being more flexible with private sector partners, government can reap the benefits of better products and had better prices.

As I continued my review of associated literature on the subject matter, I identified the works of additional scholars who have contributed various works on the topic of the public procurement process and its relationship with the private sector.

These authors include: Jeffrey Keisler and William Buehring, Kenneth Barden, Michael Pickett, and Michael Keating.

In the *Journal of Public Procurement*, Jeffrey M. Keisler and William A. Buehring examine the issue of competition in their article, “How many vendors does it take to screw down a price? A primer on Competition” (Keisler and Buehring 2005, 291-317). Keisler and Buehring argue that the public sector agencies can indeed influence the competitive nature of a market for a particular good. “As budgets decrease, government agencies are under increasing pressure to reduce costs without compromising their missions. An important mechanism for cost-cutting is procurement practices that facilitate competition among vendors, so that government agencies benefit from the inefficiencies inherent in private enterprise. The challenge is to define rules that create enough competition to be cost-effective without deterring entrants; give and take is necessary between government and potential vendors” (Keisler and Buehring 2005, 293).

In their analysis, Keisler and Buehring created a model bidding process and used it to examine several scenarios with various sets of vendors, cost structures, and capacities (Keisler and Buehring 2005, 295). The authors’ primary finding is that “the cost reduction attainable through wise management of the competitive environment can be of the same order as the total cost of the project” (Keisler and Buehring 2005, 295).

Keisler and Buehring note, “It is difficult to quantify the competitive situation that would be best for a given agency. Simulation of the competitive environment makes it possible to explicitly compute the premium the government agency would pay over the vendor’s actual costs. The simulation also takes into account how much power (i.e.

ability to create a situation to one's liking) the situation gives to the government and various vendors" (Keisler and Buehring 2005, 295).

The authors reach several conclusions with respect to the issue of competition. For instance, they believe that if agencies could quite simply get a better understanding of just how to cultivate and maintain competition, they would be in a better position to lower their costs (Keisler and Buehring 2005, 296). In addition, they report, "Experience with procurement shows that appropriate competition cuts costs, but it does not explain how costs are lowered" (Keisler and Buehring 2005, 296).

They view competition from two different angles – essentially the before and after viewpoint. "In theory, competition is sometimes, but not always, feasible and beneficial in procurement. Basically, the procurement process consists of two stages: bidding and post-contract. The potential for competition in the bidding stage is great, whereas vendors often attempt to raise prices during the latter stage" (Keisler and Buehring 2005, 297).

The authors also address the issue of low-balling, noting in the process, "Theoretical arguments also tend to support competition for cases that do not fall clearly into either pure competition or pure government control. The existence of such techniques as low-balling (and the expectations of barriers to entry after contracting) favors ongoing competition after initial contracts are awarded. The presence of economies of scale and the potential for implicit collusion make it less attractive to try to establish ongoing competition; however laws are in place to prevent explicit collusion" (Keisler and Buehring 2005, 299).

The authors offered a series of recommendations which include:

1) “To save money in the long term, the government agency as a buyer must make farsighted decisions regarding competition at the time it commits to establishing a private market to meet its demand” (Keisler and Buehring 2005, 313).

2) “Under competitive pressures similar to those in the model, government buyers should attempt to have four vendors (having fewer than four vendors results in conditions that are worse [three vendors] to catastrophic [one vendor]). If few vendors are available, the government should be extremely vigilant in enforcing a high sensitivity of vendor share to bid price” (Keisler and Buehring 2005, 313).

3) “Buyers should identify ways in which vendors may worry about the competitive environment being turned excessively against them and ensure that this action will not happen, especially if it is a prohibitive concern. Otherwise, attractive potential vendors will not want to bid” (Keisler and Buehring 2005, 314).

In the end, the authors stress the importance of purchasing professionals recognizing the value of the artificial market. “Procurement of government services occurs in an artificial market, even if the market is competitive. Government buyers who use competitive procurement processes can save large sums of money or incur very high costs, depending on their actions at the time the rules of competition and the structure of the artificial market are established” (Keisler and Buehring 2005, 315).

With respect to the artificial market, the authors state that, “When creating a private market to provide a public good, government agencies can influence the market’s competitive characteristics. Markets have predictable, often counter-intuitive, behaviors” (Keisler and Buehring 2005, 291).

In furtherance on the concept of the artificial market, Keisler and Buehring noted the following: “Buyers should be realistic about what can and what cannot be controlled. For example, it is desirable to keep vendor costs low, but it is more important to keep buyer costs low. It is desirable to keep vendor margins reasonable, but buyers should not be concerned if vendors make a reasonable profit: it is necessary to keep competition alive. Also, it may be impossible to simultaneously minimize vendor profit and buyer cost” (Keisler and Buehring 2005, 314).

On the topic of procurement reform, Kenneth Barden authored an article in *Government Procurement* that details how public sector purchasing professionals can “further the goals of effective government” (Barden 2006, 14). In his analysis, Barden cites the importance of transparency in the process: “Transparency is important to assure trust and confidence in the procurement system. Vendors must be assured that the opportunities to provide goods and services are offered on a level playing field, while the public’s interest is preserved in the best, most effective use of tax and other public moneys – all while avoiding corruptive influences” (Barden 2006, 14).

Barden also notes, “Transparency can be achieved by government agencies through the use of effective advertising, public bid opening procedures, objective bid evaluation criteria, independent evaluation methods consistent with stipulations of the bidding documents, awarding of contracts to qualified vendors having submitted the lowest evaluated bid without negotiations, publication of award results, fair and speedy protest and dispute resolution handling processes, and disclosure of signed contracts and prices” (Barden 2006, 14). Barden makes a point of stressing that “effective and fair procedural rules are important in open competitive bidding” (Barden 2006, 14).

In *Contract Management*, Mike Pickett offers an interesting athletic analogy to illuminate the importance of a level playing field in public procurement (Pickett 2006, 19).

In football, a level playing field provides certain indisputable equalities to many aspects of the game. However, a good player will always outperform a poor one on a level field – talent is undeniable. In the business of government procurement, however, what often separate talented rookies from established champions are not a company's strengths or abilities, but the levelness of the playing field. Small and medium-sized businesses with more innovative products and higher-quality services constantly strive to compete with their larger counterparts, often at a disadvantage due to lack of timely information. Today, however, information technology is playing a significant role in leveling the playing field, making more government contracts fair games for businesses of all sizes. (Pickett 2006, 19)

Like MacManus, Pickett details the vastness of the public sector market throughout the country. "The U.S. government, including federal, state, and local agencies, is the single largest market in the country, purchasing, in aggregate, more goods and services than any entity in the world. The government buys with unparalleled transparency (advance notices, bids/requests for proposals (RFP's), planholders/bidders' lists, bid results, and awards) and unparalleled predictability and time sensitivity" (Pickett 2006, 19). He further details the importance of public procurement transparency by stating that the competitive playing field for potential vendors would be vastly leveled if they had direct access to procurement opportunities on all of the levels of government coupled with comprehensive strategic information and research (Pickett 2006, 20).

Pickett believes that utilizing every possible tool to promote a procurement opportunity is the key to creating competition in the process. “Government agencies need tools that speed efficiencies, identify the best vendors at the right price, and advertise contracts to the largest group of relevant suppliers possible – all while carefully managing the often complex, time-consuming, and expensive procurement process. Nearly all state and local government agencies now use the Web as the primary means of posting procurement information for the private sector” (Pickett 2006, 23). When agencies increase the visibility of their RFP’s by posting them online and using technology to publicize their needs, a larger pool of vendors can compete for their contracts (Pickett 2006, 23). Greater competition for government contracts ensures that the agency will get the best product or service at the best price (Pickett 2006, 23).

Pickett reemphasizes the value of the level playing field for all stakeholders in the process. “Everyone benefits in a level playing field. Citizens enjoy better products and services provided by their government, such as better roads, buildings, WiFi, and transportation infrastructure” (Pickett 2006, 23). When all vendors can compete equally in the marketplace, governments can select the best products and services from the best vendors available. This, in turn, means citizens are benefiting from increasingly better government services, at the most efficient price, and vendors are constantly innovating and delivering better products and services to stay competitive (Pickett 2006, 23). “Fairness in government contracting, brought about by innovations in technology, is giving companies of all sizes a new chance to fight for and win valuable government business” (Pickett 2006, 23).

Michael Keating, a Research Manager for *Government Product News* and *Government PROcurement* magazine, published an article in the latter publication concerning purchasing agents' attempts to "boost bid response rates" (Keating 2006, 12). Numerous purchasing agents from across the United States offered their insights and perspectives, among them -- Jack Beachham, C.P.M., A.P.P., Purchasing Agent for Tarrant County (Fort Worth), Texas who noted: "You can never get too many bid responses" (Keating 2006, 12).

"'Having a wealth of prospective bidders leads to more competition and lower prices,' adds Brett Wood, CPPB, Purchasing Administrator for Johnson County, Kansas. He notes that attracting a sizeable number of bidders from all corners of the globe 'keeps our local vendors on their toes. They make sure that they provide more services. Since they want to keep the business here locally, our local vendors have had to really stretch to make sure that they are competing and that they are providing value when they get work'" (Keating 2006, 12).

"'What can public purchasers do to increase bid response rates? 'My personal opinion is that the use of a nationally based system, like Onvia DemandStar or RFP Depot, is the best way to get better competition,' said Kirk W. Buffington of Fort Lauderdale. 'Most agencies are still relying on some type of home-grown database, where bid announcements are really only being sent to bidders who are registered with that agency,' Buffington adds. 'By using a national database such as RFP Depot, I'm distributing my bid announcements to a database that is more than 50,000 vendors strong'" (Keating 2006, 14).



According to Keating, “Other government entities are also using various media to spread the word about bidding opportunities. For instance, a recent National Association of State Procurement Officials (NASPO) survey covering 17 state purchasing departments shows that 13 of the 17 respondents use their own department web site for presenting bid announcements to vendors. However, many of the responding departments also rely on local newspapers, e-mail notifications to registered vendors, and other tools to announce bids” (Keating 2006, 15).

One of the rare references to New Jersey procurement that I have found in the research is included in Keating’s analysis. In it Keating details the manner in which the State of New Jersey, in particular, publicizes its procurements. “In New Jersey, the Purchase Bureau in the Division of Purchase and Property, within the state’s Department of Treasury, uses various means to notify vendors about upcoming bids. The Purchase Bureau advertises bidding opportunities in the Newark Star Ledger (visit: [www.govinfo.bz/5966-107](http://www.govinfo.bz/5966-107)) and also on the Bureau’s home page (visit: [www.govinfo.bz/5966-108](http://www.govinfo.bz/5966-108)). In addition, the New Jersey Bureau offers e-mail delivery of RFP’s for vendors who wish to be notified of solicitations that may be of interest to them. Vendors can enroll to receive e-mail notifications of bids (e-Bid) via the Internet” (Keating 2006, 15).

Two of the most recent publications studying the topic of American public procurement and contracting, in specific, were authored by Jessica Terman and Kaifeng Yang and edited by Jody Freeman and Martha Minow. In *Public Administration Quarterly*, Terman and Kaifeng question the true benefit of increased competition in the public sector marketplace. They stress that marketplace realities do not necessarily

translate into perfect competition (Terman and Yang 2010, 405). The authors state, “...although policies of contracting-out are heavily relied upon, literature is mixed on whether increased contractor competition leads to better government performance” (Terman and Yang 2010, 405). On the flipside, Terman and Yang also note two publications from earlier in the decade – Romsek and Johnson in 2002 and John and Ward in 2005 in which both identified that vendor competition eventually lead to better performance “if it was done appropriately” (Terman and Yang 2010, 406).

Editors Jody Freeman and Martha Minow in their book **Government by Contract: Outsourcing and American Democracy** offer several serious concerns with respect to the federal government’s recent contracting experiences. While the emphasis of their publication is focused on the outsourcing of contracts, the relevance to my study is quite clear – these are contractor issues that have resulted after the government has implemented a formal bidding process to procure these services. Freeman and Minow claim that recent contracts have resulted in the following problems for the government: fraud and waste; insufficient oversight of contractors; illegal and abusive conduct by private sector actors; the undermining of democratic norms of transparency, rationality, and accountability; and diminished government capacity (Freeman and Minow 2009, 4-5).

Outside of war-time procurement which calls for an expedited process, the editors raise concerns about the numbers of other contracts that are awarded without a formal competitive process, the necessary public transparency, or accountability to insure that the proper contractors are receiving the awards in the first place. Consequently less public deliberation has also been noted (Freeman and Minow 2009, 12).

Freeman and Minow state very strongly, “Our current government contracting system does not work. It is largely invisible and unresponsive to the public in whose name it is undertaken. The existing rules and procedures fail to guard adequately against inefficiency, conflict of interest, and abuse” (Freeman and Minow 2009, 20).

Additional research with respect to public procurement regulations and competition was also identified in foreign nations as well. Khi Thai explored the challenges of procuring for the United Nations. Brian Clark and Steve Norris published an article concerning the difficulties of getting a larger vendor base in the United Kingdom. And Sofia Lundberg detailed the restrictions that public officials managing the procurement process in Sweden.

During my review of the literature addressing this topic, it is worth noting a great deal of research has been published examining competition in public procurement in European nations and the United Nations. With respect to the latter, Khi V. Thai published an article in the *Journal of Public Procurement* that detailed the efforts being made to remedy a host of problems endemic to the U.N.’s procurement procedures (Thai 2002, 109-127). Thai details the extraordinary and long-standing problem facing the United Nations: the lack of competition in procurement. Nearly 50 percent of the contracts had no competition (Thai 2002, 109). An analysis of the procurement process discovered a particularly glaring problem: vendors were given virtually no time frame in order to complete the necessary paperwork in which to submit their bid proposals. This perpetual confusion in the process ultimately leads potential vendors to bypass bidding with the agency altogether.

A great deal of research focused on the procurement process abroad – a process that is quite different than New Jersey’s. Yet it is worth noting that several pieces did focus on the competitive nature of public procurement, and the translatable issues involved. In *Supply Management*, Brian Clark and Steve Norris detail the difficulties that the United Kingdom faced with respect to inviting a sufficient number of vendors to participate in “restricted procedure” procurement (Clark and Norris 1999, 45). Under regulations in the UK, “a public-sector purchaser subject to the EU procurement rules, known as the ‘contracting authority,’ may predetermine the range within which the number of persons it intends to invite to tender for a contract shall be fixed” (Clark and Norris 1999, 45). Although the process puts a lower limit on the minimum number of vendors to participate – for example, five – the law also permits a ceiling on the number of vendors permitted to participate. One has to question what happens to the responsible vendor who just misses the cut because of the cap. Why should that vendor be shut out of the process? While the regulations state that the set range will ensure a competitive field, it could be argued that they also limit the competitive nature of the process by shutting other companies out.

Clark and Norris argue that under the restricted procedure process, the very nature of the reality of the real-life business world is being compromised. “From a practical point of view, it will be very difficult in the real world for contracting authorities to invite more than three candidates to tender, or even negotiate, in large complex procurements. In view of the huge time and financial costs involved in participating, most contracting authorities will be driven to push the number of bidders down as far as possible – often ending in the appointment of a single preferred bidder” (Clark and Norris 1999, 45).

In 2005, *International Advances in Economic Research* published an analysis written by Sofia Lundberg titled, “Restrictions on Competition in Municipal Competitive Procurement in Sweden.” The article examines the various procurement procedures available to municipalities in Sweden and the impact that they have on competition (Lundberg 2005, 329). Lundberg explains that Sweden’s municipalities have the option of utilizing five different procedures to procure goods and services – most prevalent is the “first price sealed bid auction” that is similar to the competitive sealed bid process in New Jersey (Lundberg 2005, 329). From an economic standpoint for the municipalities, Lundberg’s contention is that the sealed auction process preserves the competitive nature of procurement because a vast number of different companies have the freedom to compete in the process by submitting their prices. She notes, “The auction is efficient and therefore auction theory does not support restrictions on competition” (Lundberg 2005, 329). What Lundberg takes exception to in her study is that under Swedish law, municipalities can elect to restrict competition by limiting the number of vendors permitted to submit prices under the sealed auction process based on the volume level of the specific procurement. Her research examines the economic impact that such a decision would have on competition – given the restriction on the competition and the limitations that the governing body would place on receiving more cost effective bids.

Two other potential sources I thought could possibly provide research data about this subject were the International City/County Manager’s Association (ICMA) and the Government Finance Officers Association (GFOA). Both were explored thoroughly to determine whether useful information could be obtained about procurement practices in New Jersey, as well as in other states around the nation for comparative purposes.

Unfortunately, I was not able to locate any current information through either the ICMA or GFOA that I would be able to analyze to determine whether a relationship has been identified between procurement regulations and a decrease in sealed bids submitted in procurements processes. While MacManus utilizes some ICMA research data from the late 1980's in her book, the studies examined the issue and impact of privatization, and do not have any relationship to my own research.

In summary, my intensive review of the various published literature on the subject of the public procurement process and its impact on private sector competition has proven to be quite helpful. While I was not able to identify specific articles on subject of New Jersey's process specifically, I was able to gain significant insights from a number of scholars on the more general subject of public procurement and competition.

Without question, the goals of a superior procurement process are quite clear: to provide a level and competitive playing field in order to encourage as much private sector participation as possible to create the best possible business partnership to aid the public body. In order to achieve this, qualified potential vendors must feel that they have every reasonable opportunity to win the award as the next qualified competitor.

The literature suggests that to achieve a superior process, vendors must be informed about the procurement opportunities that exist through a myriad of avenues – legal notices, web-site listings, and through automatic receipt of bid packages either hard or soft copies. An agency's specifications and instructions must be made very clear and easy to follow so that potential private sector partners will know exactly what service or good the public body is seeking – so that they can bid sensible and correctly. In this way, potential change orders may be eliminated after the fact. Excessive bid paperwork

must be minimized by the agency in order to make the process more fluid and less onerous. Every effort must be made to identify those items that create the “red tape” and remove them from the procurement process. “Best Value” considerations must be incorporated into the bid process to reward those vendors that have previously provided quality goods and/or services to an agency – saving time and money in the process. In this way, both the public and private sector partners realize a win-win proposition.

Given the checks and balances measures that are in place for public agencies with respect to the disbursement of funds, every effort must be made to make the payment process as efficient as possible to encourage, not discourage, the private sector from doing business with the public. The literature clearly notes that the time it takes for a vendor to receive a payment from a public agency only serves to discourage them from coming back for more business.

Finally, low-ball bidders were a consistent theme throughout my study of the procurement literature. While it was a problem thirty years ago, it remains a problem in 2010. Absent a “Best Value” procurement system, every effort must be taken by governments to wean out those contractors that purposely submit a low bid in order to secure an award – only to seek additional funds from the agency in the future. Low-ball bidding has a tremendous impact the public sectors. The public sector agency is forced to pay even more money for a contract that was awarded at a lower price. Moreover, the agency runs the risk of losing quality vendors who do not want to compete against those competitors who are abusing the system for their own gain.

Having examined the findings of the scholars that have studied public procurement over the past several decades, I remain very confident that my survey results

will prove to support one or both of the hypotheses that I have set forth in this manuscript. The leaders in this field have noted the many hurdles within the procurement process that have created numerous difficulties for potential private sector partners from wanting to do business with the public sector. I, too, believe that my survey data will provide invaluable evidence that New Jersey's laws and regulations that govern public procurement create disincentives for companies to participate in the bidding process as well. In addition, other factors comprising my second hypothesis -- such as longer government payment schedules, the perceived bureaucracy, government inflexibility and low-ball bidders – items that have been detailed throughout this chapter as identified by the various scholars in the field, will also be noted by my surveys' respondents.



## **METHOD**

I studied this subject by utilizing two survey instruments that examined two different populations – 1) the purchasing professionals who administer New Jersey’s regulations and laws concerning public procurement and 2) the private sector business community.

The research hypotheses that I investigated via my survey tools were the following:

- Do New Jersey’s laws and regulations concerning the public procurement process create disincentives for private sector firms to participate in the bidding process?
- Is it possible that private sector firms just do not enjoy doing business with governmental agencies because of other reasons such as longer payment schedules, the perceived bureaucracy, government inflexibility, or even the impact of low-ball bidders receiving the work?

My hypothesis is that the public procurement process in the State of New Jersey is overly complex and creates too many obstacles for otherwise quality private sector enterprises to do business with the public agencies throughout the state. The lengthy and time-consuming process creates a burden for private sector participation, and as a result, serves as a significant disincentive for them to pursue public contracts. Consequently, with fewer private sector businesses participating in the process, fewer bids are submitted to public agencies, and thus competition for these contracts becomes less rigorous.

I also tested to see whether any other factors serve to convince companies to avoid public work, such as the problem of low-ball bidders, and the tendency of the public sector to have an extended process to pay a vendor for services rendered and commodities delivered. The data produced in response to the research questions provided a more solid understanding as to whether these issues play a significant role in the problem of decreasing vendor participation. Previous studies on public procurement have also actively explored these aspects, but once again, the studies were not New Jersey-specific. Without question, the possibility certainly exists that these two factors do play a much larger role in the process in New Jersey.

Despite the fact that there appears to be little, if any, research data available that has specifically examined the State of New Jersey's public procurement process and its impact on vendor participation in the process, the work that has been conducted by Susan MacManus, the Public Procurement Research Center at Florida Atlantic University in cooperation with the National Institute of Governmental Purchasing (NIGP), and David P. Gragan has offered encouragement about the value of conducting a parallel study of the two segments of New Jersey's public sector procurement process: public sector purchasing professionals (the purchasing agents) and private sector companies (the potential bidders). By collecting data from both camps, I believe that I gathered sufficient information necessary to determine whether my hypothesis had any validity, and if so, just how strong it was, given the information submitted from both the public and private sectors.

In order to determine the strength of my hypothesis, I employed two different but somewhat similar surveys to collect data. Some of the same questions were asked of both

groups in order to aid me in drawing conclusions about any possible correlations between the perceptions of the two groups with respect to New Jersey's public procurement process.

Throughout New Jersey, there are 566 municipalities, towns, cities and boroughs; 611 school districts; 190 authorities; and 121 fire districts (New Jersey Department of Community Affairs). As previously noted in this thesis, the public procurement laws and regulations for these local public agencies are governed by the New Jersey's Local Public Contracts Law. The exception, however, are the school districts which answer to N.J.S.A. 18A:18A-1 et seq. otherwise known as the Public Schools Contracts Law (New Jersey Department of Community Affairs).

Since public agencies range in size from the very small to the largest of counties and cities, the volume of procurement obviously varies as well as the manner in which it is handled. Public procurement in some of the larger counties, such as Bergen, is administered by a purchasing agent with a support staff of at least a dozen. In contrast, a borough administrator or manager would most likely handle procurements individually in one of New Jersey's small hamlets. In every case, at least one person has the critical responsibility of managing the procurement of all goods and services for his respective agency guided by the Local Public Contracts Law. Accordingly, I estimated that there are nearly 1500 public servants throughout the state who are handling the some level of responsibility of procurement for their respective agencies. Most of the individuals have at least one and sometimes numerous purchasing certifications from New Jersey including: Registered Public Purchasing Specialist (RPPS), Registered Public Purchasing Official (RPPO), Certified County Purchasing Official (CCPO), and

Qualified Purchasing Agent (QPA). The RPPS is the first certification a purchasing professional attains, while the QPA is the highest certification attainable in New Jersey.

Listings of the purchasing professionals throughout the state have been furnished by two different entities: the N.J. Division of Local Government Services and the National Institute of Governmental Purchasing (NIGP) Northern New Jersey Chapter. The N.J. Division of Local Government Services maintains a listing of all the purchasing professionals certified as Qualified Purchasing Agents (QPA's) throughout the years. Since QPA's do not have to re-certify, the list is clearly outdated in terms of those who are no longer working in public service and public procurement or are even still alive for that matter. Utilizing this list as a sample to gather survey data would have been quite fruitless and even problematic.

The NIGP – Northern New Jersey Chapter has been a major partner with me in this study. They readily provided an e-mail listing of its active membership to be utilized for my on-line survey when it was completed and ready to be released officially. In contrast to the list of QPA's offered by the State of New Jersey, the one furnished by the NIGP is comprised of those purchasing professionals who are currently active in public service. Individuals join this group to stay abreast of the changes taking place in the field, take advantage of courses and seminars that are provided, and even earn the required contact hours necessary to renew various certifications. Members must renew their memberships annually to remain an active member within these organizations. It should be noted that the NIGP is divided into two different geographic chapters – Northern New Jersey and South Jersey. The Northern New Jersey Chapter of NIGP, for instance, has approximately 80 active members comprised of all certification levels,

agency sizes, job titles, and types of government (Northern New Jersey Chapter of NIGP). Unfortunately the South Jersey chapter demonstrated no official interest in participating in this study – and thus was not included.

In addition to the NIGP, the Governmental Purchasing Association of New Jersey (GPANJ) – the largest New Jersey-based public purchasing organization -- decided to support the study and participated as well. Over 500 individuals are registered members of the GPANJ, a non-profit organization whose primary objectives are to “provide and encourage professionalism and to improve the competence of individuals who are responsible for procurement using public funds” (Governmental Purchasing Association). Not unlike the NIGP chapter, this group, too, has members that represent a cross-section of the public purchasing community. The leadership of GPANJ, in an effort to protect the privacy of its membership, decided not to provide me with the specific e-mail addresses but, instead, sent out a blast e-mail to its membership including the link to my on-line survey as well as the informed consent language. It was made perfectly clear that this survey was strictly voluntary and that all responses were completely anonymous. The responses provided by the participant were reported only as a part of the total data collection and in no way as separate and individual responses.

There is actually a fourth, albeit, smaller database that could also have been utilized. The N.J. Association of County Purchasing Officials (NJACPO) includes the purchasing agents of the twenty-one counties in the state. However each of the members is also found on the databases of at least one or more of the other organizations already noted, so I chose to leave this list out as it does not offer any additional members.

As I indicated above, it is distinctly possible – in fact highly probable – that a purchasing professional could be listed within three different categories – a member of the NIGP chapter, a member of the GPANJ, and also a member of NJACPO.

Consequently, I included a security measure through Survey Monkey to insure that a respondent is only able to respond once from his own computer. It is also important to note that there was no requirement that purchasing personnel belong to any of the three sets. Some purchasing agents are not QPA's, just as others do not belong to dues-paying organizations like NIGP or GPANJ. Moreover, there is no universal listing of those individuals responsible for purchasing for every public agency in the state.

My intention was to utilize a comprehensive web-based survey in order to gather the data from the purchasing professionals. For classification purposes, the first set of questions was general in nature. Accordingly the questions gathered the following information about the respondent and the respondent's agency: agency type respondent's title, certifications held, and estimate of contract values awarded.

The next section of the survey collected data about the activity within the purchasing agency – such as the number of bids advertised each year, number of bid submissions received and rejected, and the payment timetable. This, too, assisted me in comparing opinions among purchasing agencies based on their volume. Purchasing officials were then asked to share their impressions about New Jersey's purchasing regulations, the required paperwork, and the numbers of bids that they have to reject, and whether the agents perceived the process as too cumbersome. One question in particular listed twelve major documents required in a bid, and asked the purchasing agents to share their opinions about the difficulty that each document creates for vendors. I asked the

purchasing agents to respond to questions that look closely at the time frame vendors have to return a bid – ascertaining the average length of time that their agency leaves a bid out before the opening date.

Clearly one required document that has created the most difficulty for businesses is the Business Registration Certificate (BRC). A series of questions were directed at the purchasing professionals to obtain their thoughts about the BRC and the fact that many vendors throughout New Jersey have had bids rejected for failure to include this one document in the sealed package.

Lastly, a series of questions were posed to determine the officials' opinions of the New Jersey Legislature's actions and the impact that legislation has had on the public procurement process in New Jersey. These questions provided a clearer understanding of the perceptions that New Jersey's purchasing professionals have with respect to the process that they have to monitor and work with each and every day. New Jersey's purchasing professionals – those public servants who have the day-in and day-out responsibilities of procuring goods and services for their agencies while monitoring compliance with the Local Public Contracts law – have their fingers on the pulse of public procurement in the state. They have the clearest perspective of the impact that regulations and new laws have on the procurement process with respect to vendor participation and competition, and they are therefore able to make note of the trends that are taking place with vendors.

As noted previously, the work of Susan MacManus is regarded as the first real attempt in public administration to provide an assessment of the private sector with respect to its view on doing business with government. MacManus randomly selected

companies from a nationwide business directory and sent them her paper surveys. The surveys asked companies – regardless of whether they partnered with the public sector – to give their feelings about the public sector procurement process and the various procedures the process entailed. In her survey document, MacManus asked a series of questions to classify the businesses by structure, size, and type, and then offered a list of reasons for the businesses to consider as to why or why not they sought public work.

With my second web-based survey, I looked to mirror MacManus's work by first classifying the businesses and then gauging the opinions of the private sector leaders with respect to the public procurement process. Within the survey document, I utilized a few of MacManus's suggested questions in order to make a comparison of the responses seventeen years later. Since I am studying New Jersey's regulations in particular, my survey took the process a step further by asking business leaders to answer questions specific to the state's procurement process. The survey included a list of bid documents that are required by the laws and regulations in New Jersey, and asked the leaders of these companies to share their opinions as they relate to the difficulty in submitting a responsive bid to a public agency within the state.

The business leaders were then asked a series of demographic questions to better describe their company, including industry classification, type of business, corporate structure, age of company, numbers of public sector contracts currently held, and whether the company qualifies as a small business. Vendors were asked the question -- what discourages them from doing business with government? The issues of low-balling and accounts receivable receipt were also presented to the businesses to gather their thoughts on the matters.



While MacManus took her sample from a national business directory, I gathered my sample from vendor and business lists comprised of private sector entities that are somewhat familiar with public bidding and New Jersey's procurement process. In order to prevent any potential bias from vendors who are Bergen County data-base specific and are familiar with me in my official capacity as the Purchasing Agent for the County of Bergen, NJ -- these two lists included: the estimated 275 associate business members part of the New Jersey Association of School Business Official (NJASBO), 175 companies listed in the 2010 Construction Buyers Guide (Mid Atlantic BX), and a random sample of 100 members listed in the 2009 Blue Book Building and Construction -Northern New Jersey (Blue Book 2009) that actually had listed e-mail addresses to be utilized.

In terms of the sample size, my goal in both surveys was to achieve a 95% confidence level with a confidence interval of four. By surveying the purchasing professionals throughout New Jersey about the state's laws and regulations concerning public procurement, I gathered essential information from those individuals who are charged with the responsibility of conducting the procurements for their respective agencies. Since these individuals are responsible for monitoring and maintaining the bid process regulations, they are in a unique and important position to offer informed, educated opinions about the regulations they work with, and whether the regulations create impediments to competition and increase costs for governments and taxpayers.

Due to the fact that there is an overlap of purchasing officials who belong to several different purchasing organizations, I collected as many completed anonymous responses from the 530 to 550 members who received the link to the survey. Through

their memberships in the professional associations, these individuals were more likely to be aware of the ever-changing regulations and statutes that drive the industry. Thus I believed that many within the population took the opportunity to share their opinions and responded to my request to participate in the study.

With respect to the survey of private sector businesses for this thesis, the actual population of possible participants was infinite. Since businesses from throughout the country's fifty states are eligible to submit a bid for any New Jersey agency's procurement, the goal was to try and achieve the highest response rate possible – without having to send out the survey to 100,000 companies. I limited my focus to a group of 600 companies with the hopes of receiving as many completed responses back as possible to achieve a 95% confidence level. Although there were a number of business leaders who were quite zealous to participate in the study to share their opinions, in general -- I surmised that the overall population was slightly less motivated to participate than that of the public purchasing professionals. Consequently it took a longer period of time to actually reach a comfortable number of completed surveys to achieve the 95% confidence level.

Under New Jersey's Local Public Contracts Law, public agencies are free to contract with any business in the United States provided that they have been awarded the work through competitive means. Hundreds of thousands of businesses throughout the country are eligible to participate in the New Jersey bidding process. To remain on a level playing field, all businesses are required to complete the same paperwork and submit the same documentation, regardless of whether or not the business is based in New Jersey.

This factor was helpful in determining the businesses' perceptions of doing business with public sector agencies, as well as of the public bidding process. In this way, I was able to determine whether or not they feel that there are problems with the system that discourage businesses from stepping forward to seek this work.

The collection of data was best achieved through web-based surveys. Phone interviews and face-to-face interviews create logistical problems, extensive delays in the data collection process, and exorbitant costs to complete the research. One disadvantage of a mail survey is the challenge of getting representatives from the various companies to actually take the time to complete and actually return the survey.

Without question, a web-based survey available to the purchasing professionals enabled me to reach a large sample size and thus produced a large number of completed responses. Purchasing professionals tend to be extremely motivated about their occupations and tend to be very open about providing their opinions about the "State of Public Procurement" throughout New Jersey. Nearly all of the professionals would have some access to the internet to provide them the opportunity to complete the survey via the web. On the other hand, I felt that it was more challenging to reach the needed sample size with the private sector respondents. While most companies are technologically up to speed and would be able to complete an on-line survey, they were not as motivated to share their thoughts about the procurement process as the public sector counterparts. However, in the end, I was able to achieve the respective sample sizes necessary to begin to analyze the data with a high degree of confidence.

In testing the surveys, I used a three-pronged approach before a final product was made available online for respondents. First, I shared the purchasing professional study

with the senior members of my eleven-person division in order to gather their insights. The bid chief, senior buyer, buyers, and purchase order supervisor, in particular, have over forty years of public sector procurement experience between them and have worked closely with various vendors and user agents alike in the formation of the bids to be utilized for procurements. Once adjustments had been recommended, I analyzed them closely to see which items should be amended for the web. Likewise in the study of the private sector, I tested the survey with a dozen business contacts not participating in the research study to gather their opinions about the need for any survey adjustments. In each of the test groups, it was important to conduct a debriefing with those testing the surveys in order to hear their opinions about the questions asked and the specific recommendations that they may have to improve the final survey documents..

Upon approval of the University of Baltimore's IRB, my administrative plan and timeline for the studies was the following:

- 1) I e-mailed a link to the surveys, with the required informed consent notice, to the purchasing personnel in which I have a direct e-mail address and a link to the survey with the informed consent notice to the GPANJ leadership so they can distribute to their database via an e-mail blast. The recipients were notified that the survey would remain open for a period of three weeks.
- 2) In the survey for the private sector community, a random sample of e-mail addresses was inputted and a link to the survey was sent along with the informed consent notice. Recipients were also notified that the survey would be closing in roughly three weeks. Due to the perceived challenge of the more difficult task to capture more completed private sector responses as opposed to public sector

surveys, another e-mail was sent days later to all of those who received the initial invite to participate, reminding them that the survey was closing in less than one week.

3) Three and one half weeks later, both surveys were closed. The data was then collated and analyzed.

In reviewing the data that will be produced with my survey instruments, I must remain cognizant of the differences between those who actively participate in the public bidding process and those who have not or choose not to participate.

Both surveys for this study yielded invaluable information about the perceptions that New Jersey's businesses and public procurement professionals have about the process. This study was initiated as a result of my own observations about the lack of competition in public bidding in New Jersey. While New Jersey is home to thousands and thousands of private sector enterprises, a mere fraction take the time to submit sealed bid proposals in public procurement processes. I have hypothesized that some businesses may be discouraged either by the inflexible bidding process itself or with the idea of doing business with a governmental agency. In the case of the latter, I would argue that smaller businesses, in particular, cannot afford to wait the longer periods of time to receive their payments that are a byproduct of government contracting, and that this is a major disincentive.

As noted previously, in order to gather information on the public sector side of the equation, it was imperative that I surveyed New Jersey's purchasing professionals with a questionnaire tailored just for them. The questions were written to gather information

from those frontline professionals who put the bids together in concert with state laws and regulations, and reflect the particular issues they face.

In sum, I do believe that a tremendous public service can be accomplished with a comprehensive study of New Jersey's public procurement law and its effect on private sector competition. As noted previously in this paper's literature review, while there are a number of academic studies that have looked at the issue of competition and the perceptions the private community has about doing business with government, to date, my literature review has revealed only more generic research about public procurement behaviors and nothing specific to the laws of the State of New Jersey.

Since no relevant studies have been conducted, I moved forward with a two-pronged approach to examining this issue: 1) a survey of a segment of New Jersey's private sector community, and 2) a survey of New Jersey's local purchasing professionals. In both cases, I questioned the respondents about their knowledge, perceptions, experiences, and feelings about New Jersey's public procurement laws to determine whether there is a relationship between perceptions about the fairness of the bidding process and inflexibility of the specific laws and regulations, and willingness to participate in the bidding process.

Once the data from the two surveys had been collected, I moved forward with the process of comparing similar questions between the two to see if there were any trends in which to take note. In particular, I closely examined those questions in which the respondents in both surveys were asked to provide their opinions with respect to the procurement process itself, the amount of required paperwork, the issue of efficiencies, accounts payable/receivables, and low-balling studies. I remained confident that the

research gathered would produce significant findings that will encourage further study and lead to the legislative reforms necessary to increase competition in the public procurement process in New Jersey. As I have stated previously, more competition from quality vendors in the bidding process leads to more competitive prices, better efficiencies, more effective procurements, and goods and/or services that will better assist public agencies in meeting the needs of their constituents in the most cost-effective and efficient ways possible.

## **RESULTS**

Two different surveys were conducted in order to gather information about the public purchasing process in New Jersey. The first survey was of the purchasing professionals in the public sector who manage the laws and regulations as set forth by state statute. The second survey polled those private sector business concerns who submit the bids to the public agencies. In each case the surveys were presented in a similar fashion -- 18 to 20 questions, delivered on-line and anonymously for a three and ½ week period. While survey questions were different, there are a number of them in each study that asks the respondent directly about the difficulties in the public procurement process. I will compare these questions carefully between the two surveys.

The first survey of the purchasing professionals was conducted between January 27<sup>th</sup>, 2010 and February 19<sup>th</sup>, 2010 and posed 18 questions including 2 with multiple parts. One hundred ninety one respondents started the survey and 165 individual provided surveys that were completely answered, a response rate of 86 percent.

Two purchasing organizations chose to “sponsor” and promote the survey to their memberships – the Northern New Jersey Chapter of the National Institute of Governmental Purchasing (NIGP) as well as the largest group in terms of membership -- the Governmental Purchasing Association of New Jersey (GPANJ) with roughly 400 members. Most members of NIGP North, about 80 individuals, belong to GPA as well. So there is a natural overlap of eligible respondents between the two groups. Choosing to protect the confidentiality of the members’ e-mail addresses, in both cases, the organizations agreed to send the survey link to their memberships via a blast e-mail.



The first group of questions in this survey (Questions 1 through 5) served to get a better idea of who took the time to complete the questionnaire. Question 1 indicates that the largest group of respondents represented New Jersey’s “municipalities” with a return which represented 40.3% of the total responses followed by “school districts” 23.6%, and “counties” 21.5%. Question 2 asks for the best description of their professional title – 28.8 % of those polled said “purchasing agent,” 20.9% answered “business administrator,” 11.5% replied “borough administrator,” 9.9% noted “purchasing assistant,” 9.4% indicated that they were their agency’s “director of purchasing.” While municipalities were the largest group to respond, most of the individuals completing the survey held one of 3 titles – borough administrator, purchasing agent, or even director of purchasing.

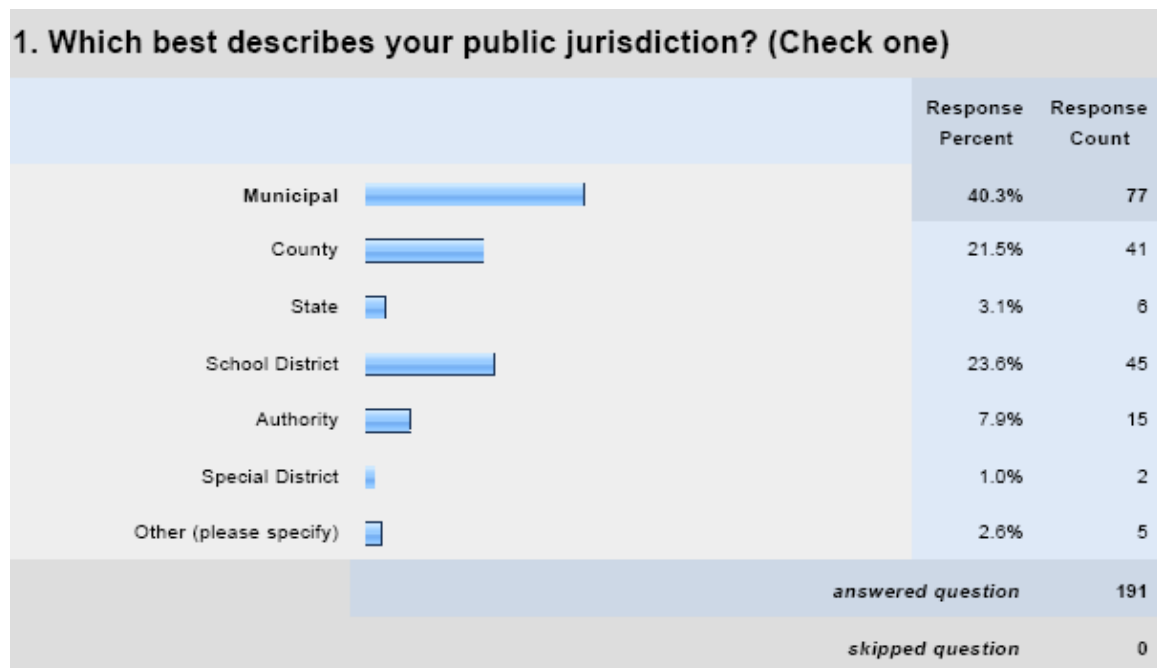


Figure 4.1. A breakdown of the respondents’ agencies

Question 3 indicates that nearly 70% (69.9%) of the respondents hold the highest level of state certification for public purchasing – the “Qualified Purchasing Agent

(QPA)” – with another 41% indicating that they are “Registered Public Purchasing Officials (RPPO’s)” – considered a level just below a QPA. Obviously some of the respondents held both certifications – achieving the RPPO certification first and then earning the title QPA later. This data shows that those who were providing their feedback were individuals who had completed the classroom training and the on-the-job experience for several years in order to achieve these certifications. As QPA’s, they would be responsible for managing the day-to-day operations of their purchasing unit for their agency and would be highly versed in the operation of the New Jersey procurement system.

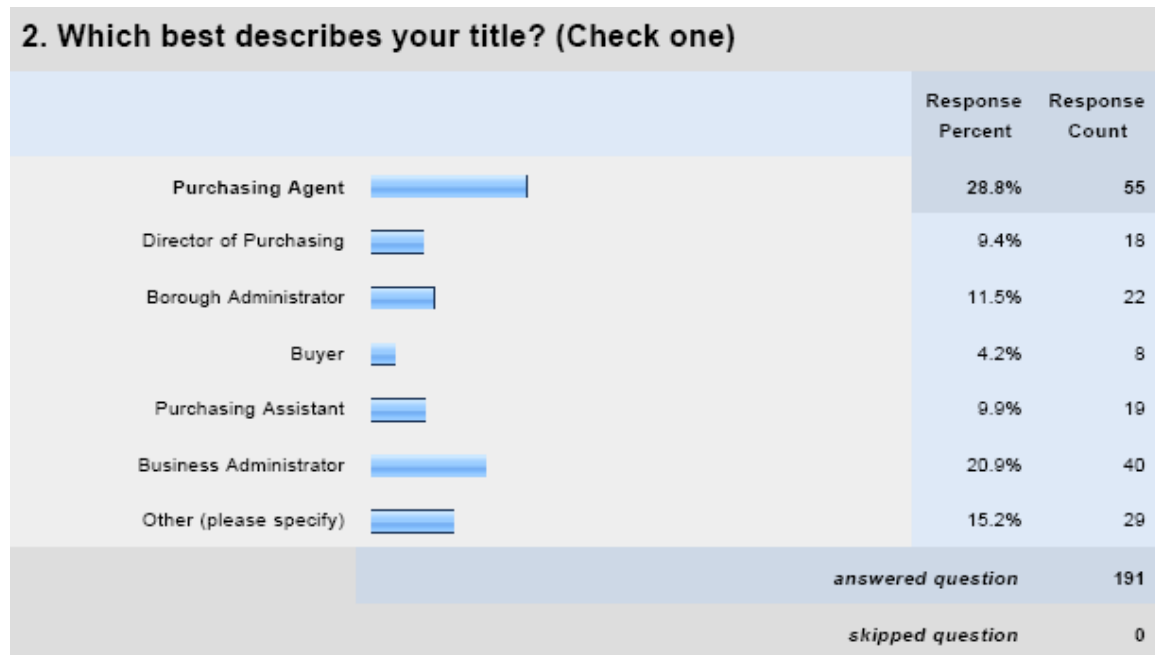


Figure 4.2. An analysis of respondents’ titles

Examining the total value of purchases made by a respondent’s agency – 56.4% of those who answered said that value fell between “\$1 and \$5,000,000 “during the course of 2009 (see Question 4). A smaller group (9.6%) answered by saying between

“\$5 million and \$10 million.” The percentage jumped again for the fourth choice of “\$10 million and above” – the largest answer 29.9%. The purchase amount for smaller municipalities and school districts would most likely fall up to \$5 million. Most counties, authorities, larger school districts, and cities would have a tendency to purchase in excess of \$10 million in order to manage and operate their respective operations.

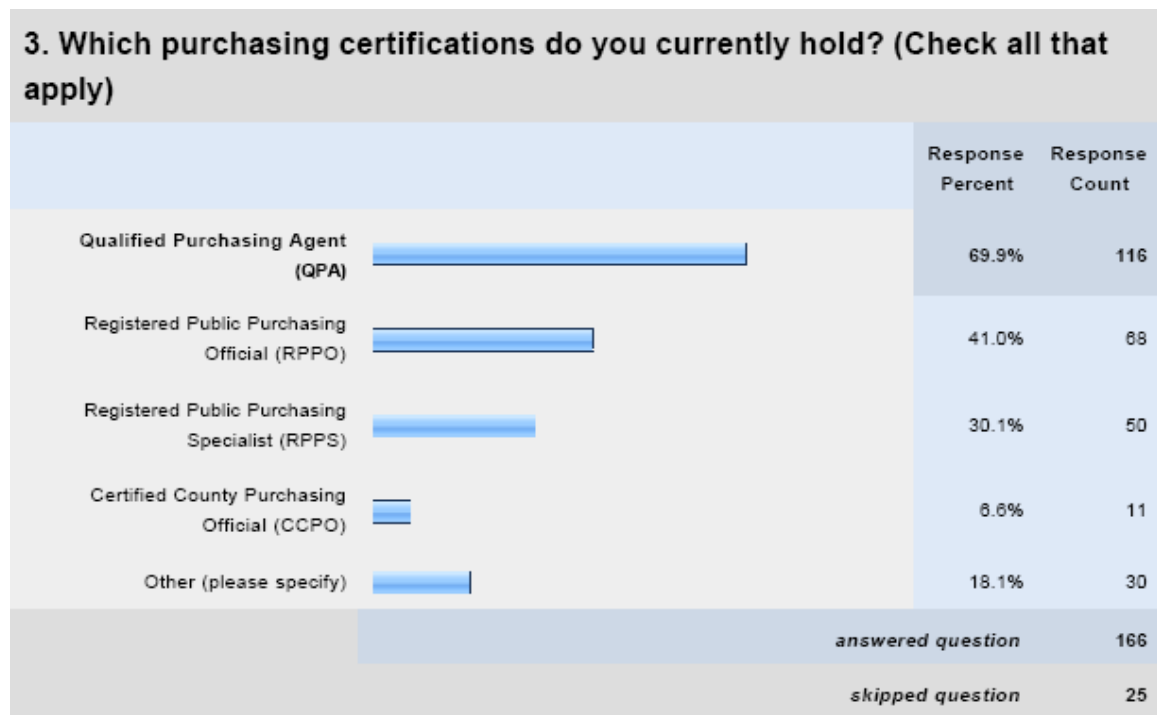


Figure 4.3. Purchasing certifications held by respondents

Question 5 examined the average number of bids/request for proposals (rfp’s) that the respondent’s agency handles in a year. A clear majority of 53.1% of those polled answered somewhere between “1 and 25.” Sliding up the scale at 14.7% is the answer “25 to 50. “ We see a dip in the middle “51 to 100 bids” with only 7.3% before the larger amounts “101 to 150 “(12.4%) and “over 150 bids” --11.3%. Once again this is reflective of the larger group of municipalities and school districts that have responded to

the survey. With 67.8% of those responding between 1 and 50 average bids on the year, municipalities and school districts would most likely fall in this category due to the smaller overall budgets for purchases, the use of state and county co-op contracts, and the fact that these agencies are smaller and may have less of a need for higher priced biddable goods and services.

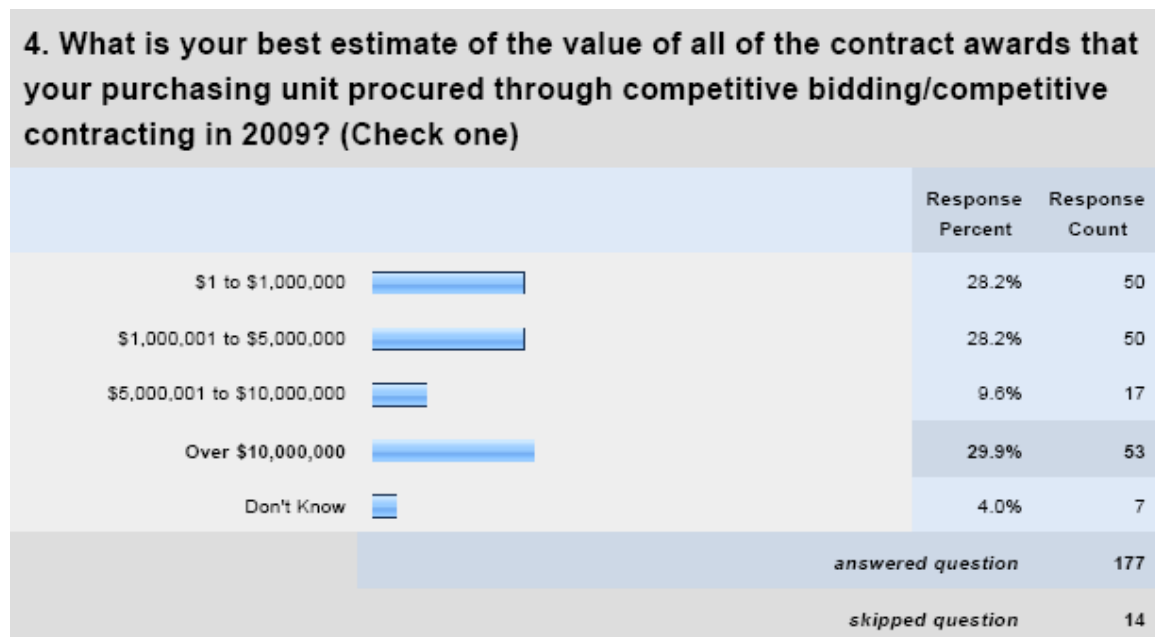


Figure 4.4. Estimate of contract value awarded by respondents' agencies

In review of the first five questions, it is clear that survey respondents represented a cross section of public agencies, served in several different capacities involved in public procurement, and held a myriad of professional purchasing certifications. Most of their agencies procured millions of dollars worth of goods and services on an annual basis and do so, in part, through formal bids and request for proposals (rfp's).

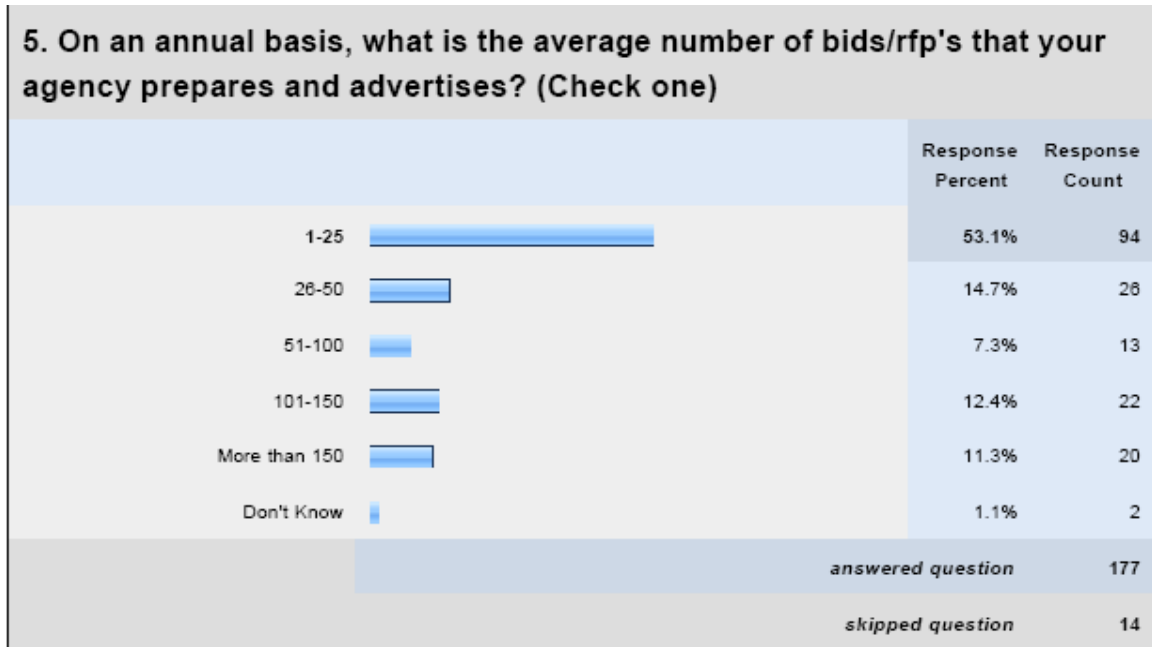


Figure 4.5. The average number of bids prepared

The remainder of the questions gather more specific information about the feelings that these purchasing professionals hold about the process itself. Question 6 begins to directly assess their assessment of the operation of the procurement system. The question is a simple one – “In days, how long does your agency advertise one of its bids?” With the legal minimum of 10 days, the responses point to a tendency to leave the bids out to advertisement for a minimal amount of time on average. 34.7% of those who responded indicated that their agency leaves bids out only “10 to 13 days.” The next highest percentage was those who answered “14 to 17 days” – 34.1%. Lengthening the time further, 21.6% responded by saying “18 to 21 days.” On the outer end, just 6.3% answered “22 to 25 days” and even smaller percentage (3.4) replied “over 25 days.”

Question 7 notes the average number of responses that agencies are receiving when they do put a bid out for action. The smallest percentages are those on the fringes – 2.8% for “9 or 10 responses” and 2.8% for “more than 10.” On the other end of the

spectrum, only 4.5% of the respondents said that they receive only “1 or 2” bid responses. An overwhelming 62.1 % of those polled said that their agency receives “3 to 5 bids” for a given procurement and an additional 27.7% indicated “6 to 8 bids.” This would suggest a generally manageable amount of bids to process in an individual procurement action.



Figure 4.6. Length of time to advertise a bid

To further examine the operations of the procurement system, purchasing professionals were asked to indicate for a given procurement, “On average -- how many of the received bids have to be rejected because they are non-responsive for one reason or another?” While 30.5% said “0,” a strong majority (63.8%) said either “1 or 2 “of the responses received. A much smaller group of 5.6% noted that “3 or more bids” are thrown out after each opening. To dovetail with the previous question, if 62.1 % of the respondents said that they received “3 to 5” responses for procurement and 63.8% said that they reject “1 or 2 bids” each time, the level of competition is diminished in the majority of the procurements.

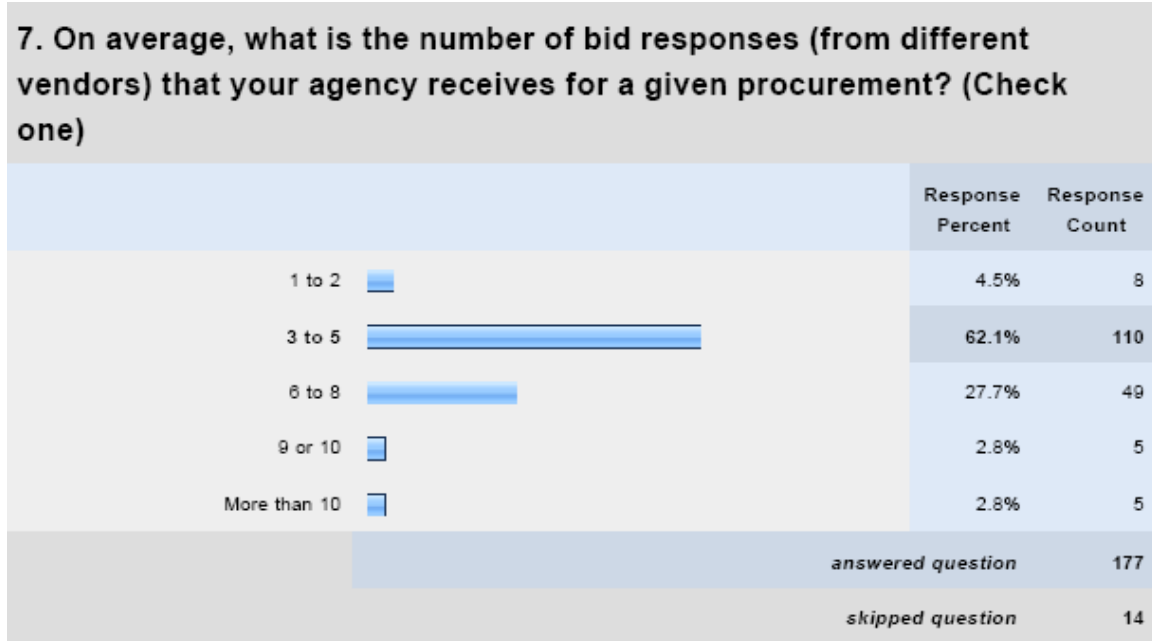


Figure 4.7. The number of bids received

In an effort to see if there has been any drop-off in the number of bids responses received comparing the years 2009 with 2005, the data clearly indicates that there has been no decline. In fact, 43.7% of those polled said that they are receiving “more bids” than 4 years ago. 31% responded that bid response numbers have remained “constant” and only 13.2% believe that they are receiving “fewer bids.” With this question, I was attempting to determine if there was a pattern whereby vendors have become more discontented over the years with over regulation and more stringent purchasing statutes and regulations – thus submitting less bids in the public arena. Yet, this potential trend may have been offset by the great recession over the past 2 years. Many more businesses, hungry for opportunities, may be turning to the public sector during these difficult economic times. As a result, bids received in 2009 may be higher than those counted in 2005.

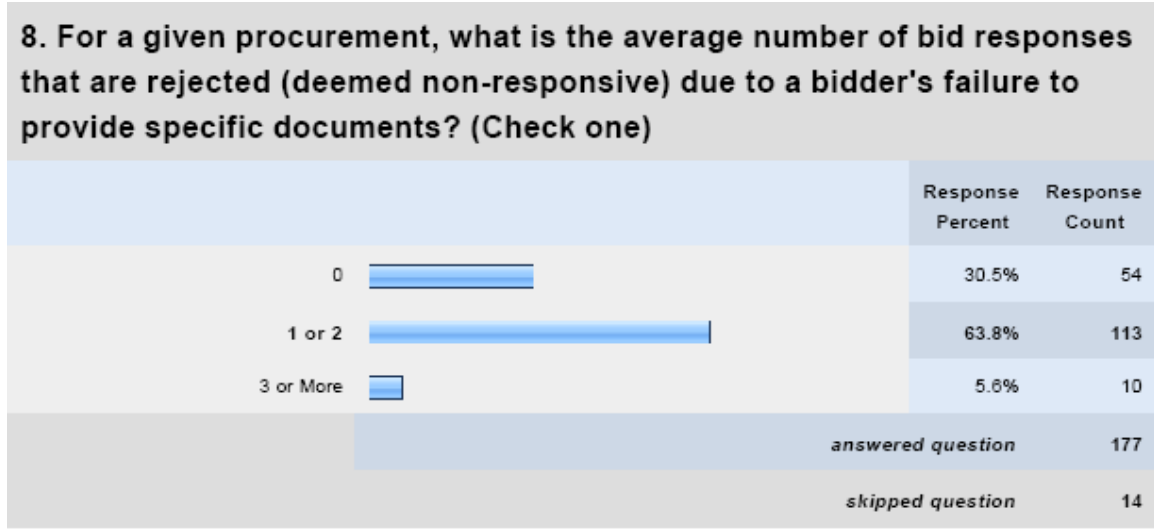


Figure 4.8. Bid responses rejected for cause

As noted earlier in this thesis, those who have studied the problems with the public procurement process also note that vendors sometimes are unhappy with the timeframe in which they are paid by the public agency. In order to examine more closely this potential problem in New Jersey, I asked a related question in both of the surveys. For the public purchasing professionals, Question 10 asks them to describe their agency's average payment timetable. As expected the largest percentages fall on the longer payment scale. 44.8% of those polled said that their agency pays within "net 26 to net 30." Under New Jersey's "Prompt Payment" statute, agencies must pay within thirty days of receiving an invoice from a vendor that has provided a construction-related service satisfactorily (Public Law 2006, c.96). Moreover an additional third (33.3%) of the respondents said that the timetable was even longer – "net 31 or more." Thus 78.1% of those polled have agencies that pay anywhere from "net 26 Days and higher." In contrast, the smallest percentages are matched with the fastest payment timetables – "net 5 to net 15," 1.1%; "net 16 to net 20," 6.9% and "net 21 to net 25," just 8%.



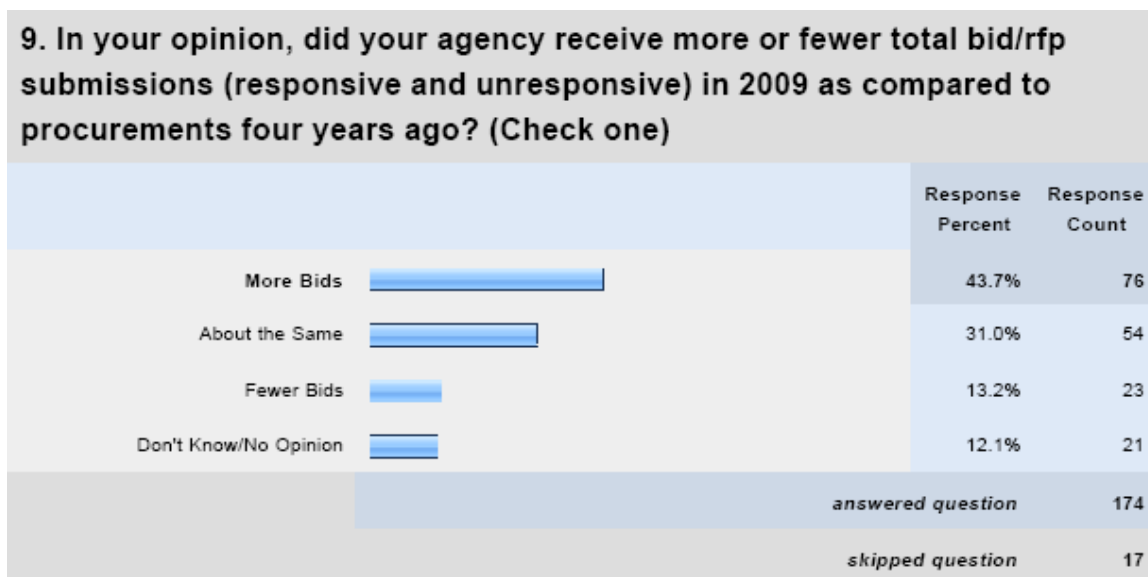


Figure 4.9. Comparison of bid submissions

The largest percentage of vendors submitting bids and request for proposals (rfp's) were in-state businesses (see Question.11). A majority (54%) of the purchasing professionals said that only "0 to 10%" of the bidders were from out-of-state. 22.4% replied that "11% to 20%" of those bidding were from outside of New Jersey. The percentages became smaller as the scale moved upward – just 9.2% estimated that "21% to 30%" of the vendors were out-of-state; only 4.0% said "31% to 40%" of the bidders and lastly a very small 2.3% projected that "more than 41%" of their bidders were from beyond New Jersey's borders.

The last group of questions posed to the purchasing professionals was designed to ascertain their sentiments with respect to the process itself and what, if any, impact they believe the process has on potential public sector partners. Individuals were asked a host of questions about the amount of paperwork included in a bid packet and the specific documents that are included or asked to be provided by potential vendors. Specifically,

public servants were asked about the issue of the Business Registration Certificate (BRC) and the impact that this document has had on vendors and the process itself.

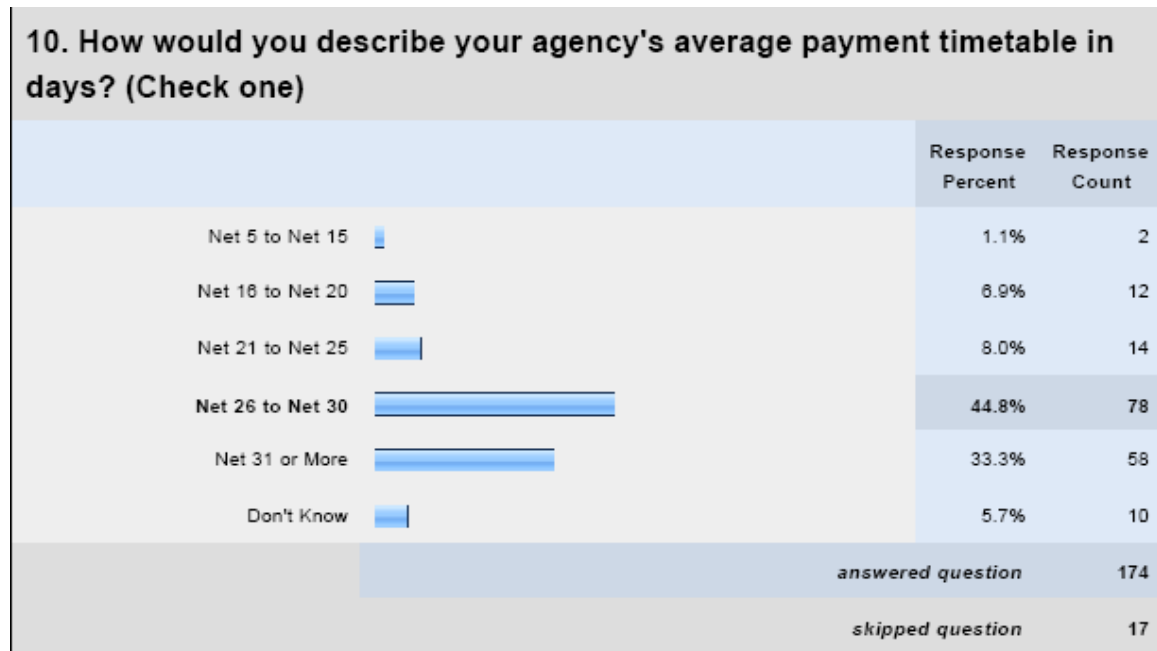


Figure 4.10. Agency payment timetable

Question 12 asks: “How much do you agree or disagree with the following statement: New Jersey’s purchasing laws, rules, regulations and requirements discourage private sector companies from doing business with public agencies?” More than two-thirds (67.2%) of those who responded to this question answered either “Strongly Agree” (21.6%) or “Agree”(45.6%). 19.3% of those polled – “neither agree nor disagree” -- and 11.7% “disagree or strongly disagree.” This is clear evidence of a significant concern from purchasing professionals about the very nature of New Jersey’s procurement process.

The next question specifically addresses a particular problem that can occur in the operation of the process – the amount of required paperwork to submit a responsive bid.

When asked: “Do you believe that there is too much required paperwork for vendors to complete and/or submit in order to present a responsive bid?” – the level of concern was significant. In this case, 63.7% of the respondents said “Yes,” 22.8% answered “No,” and 12.3% responded “Maybe.”

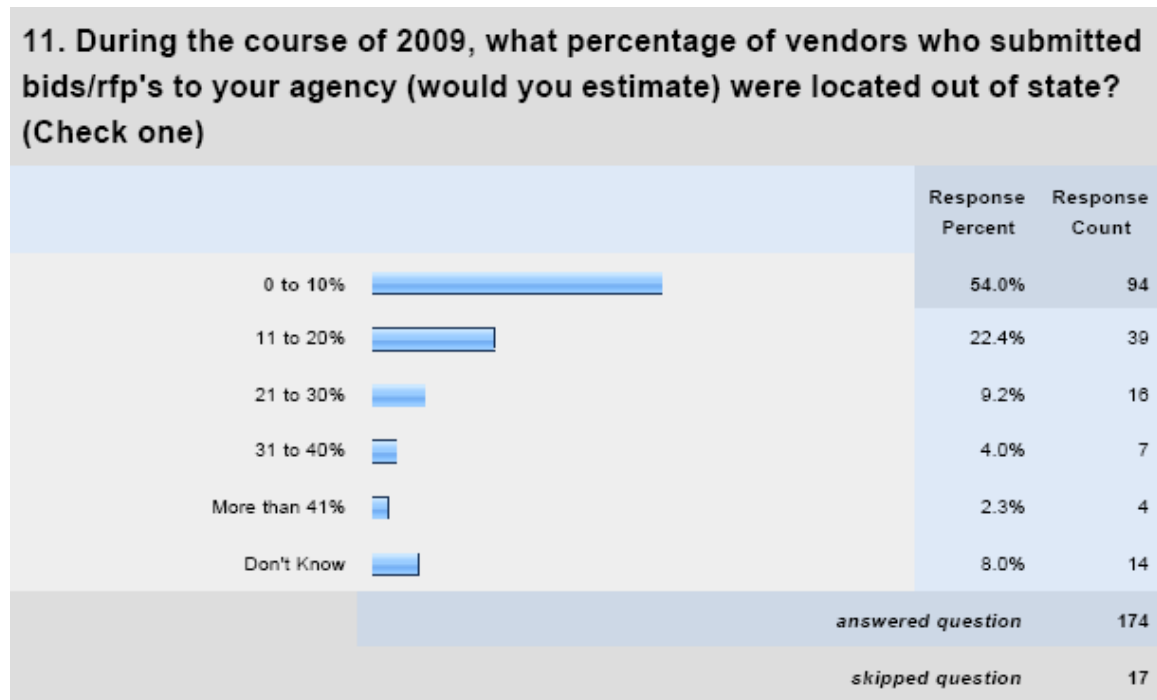


Figure 4.11. The number of bidders located outside of New Jersey

With the host of documents that are typically included in a New Jersey bid or request for proposal, the next question was posed to purchasing professionals to obtain a better understanding of their feelings about the specific documents that create the biggest challenges for vendors in submitting a responsive bid. With 12 documents listed, a majority (50.9%) of the purchasing professionals indicated that the biggest challenge was the controversial Business Registration Certificate (BRC) – a free certificate distributed by the State of N.J. to all vendors who register with the Department of Treasury/Division of Revenue. All vendors who wish to do business with a public agency in New Jersey –

both New Jersey and non-New Jersey vendors – must have a copy of this certificate.

Under the original BRC statute, if a vendor did not submit its copy of the BRC within its sealed bid, the bid must be automatically rejected without the ability to cure the defect.

Other documents noted by respondents included: Disclosure of Named Sub-contractors in Construction bids (39.2%), Performance Bonds/Surety (35.1%), Affirmative Action/EEO Evidence (32.2%), Bids Guarantee (29.8%), Public Works Contractor Registration Act (28.7%), Insurance requirements (23.4%), ADA Compliance (13.5%), Acknowledgement of Addenda (11.7%), Disclosure Statement 9.9%, Statement of Corporate Ownership (9.4%), and Non-Collusion Affidavit (4.1%).



Figure 4.12. Respondents' feelings about New Jersey discouraging companies

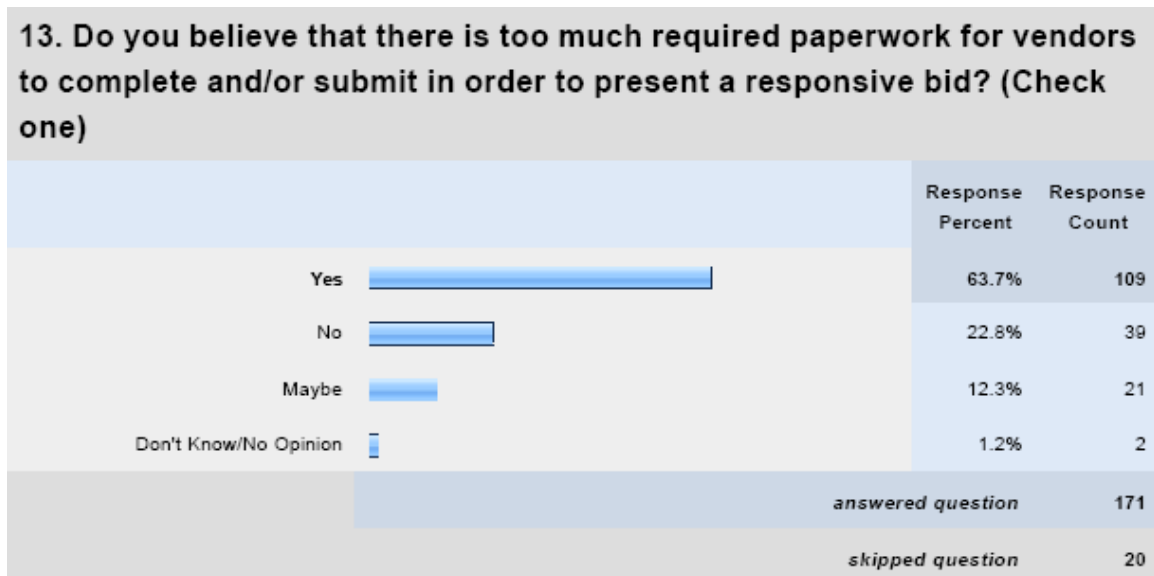


Figure 4.13. Opinions about required paperwork

Several of the documents that were mentioned most frequently in the poll cause automatic fatal defects to a bid if they are not included in a sealed bid envelope when opened. In addition to the BRC, the following fall under this ruling – Disclosure of Named Subcontractors, Performance Bonds/Surety, and Bids Guarantee. In addition, the Affirmative Action/EEO Compliance documentation must be presented at time of award and the Public Works Contractor Registration Act requires that vendors be registered with the state at the time that bids are opened – otherwise the bid has to be rejected.

It's important to re-emphasize that procurement laws and requirements differ greatly from state to state. While there may be some similarities in required documentation between or among two or three, there are other states whose laws are much more lax. However it is important to note that vendors from beyond New Jersey's borders are still subject to the requirements imposed by state law on vendors from within New Jersey's borders. If an affirmative action certificate is required for a specific

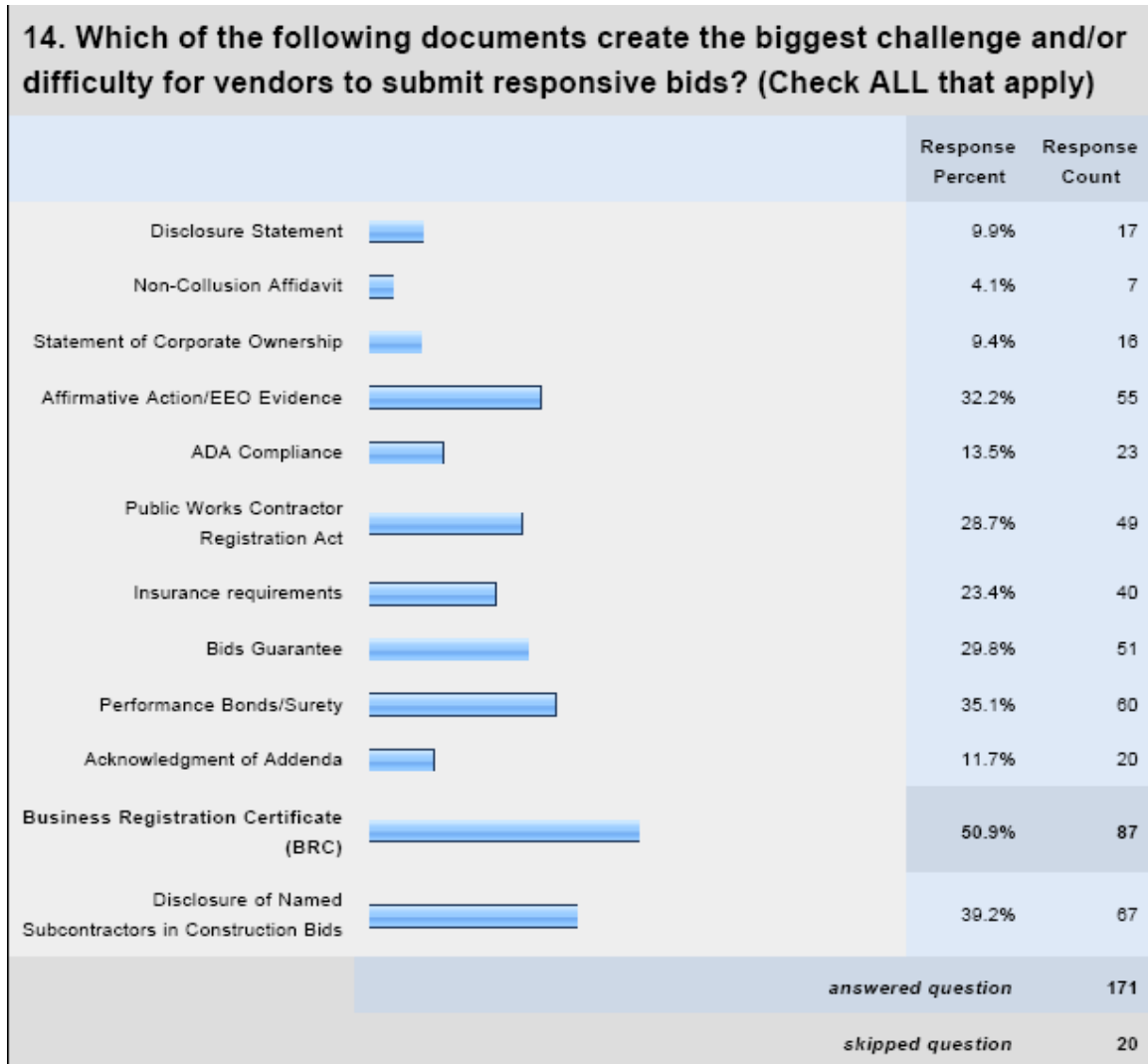


Figure 4.14. Procurement documents that create the most difficulty

procurement, all vendors will be responsible for submitting that paperwork. The drawback for the out-of-state vendor is the fact that the documentation required to be submitted in New Jersey's procurement must be obtained from a New Jersey agency. Thus if a vendor from Maine has proof of affirmative action compliance from its own state, that documentation would not be sufficient to meet New Jersey's requirements. That vendor from Maine would need to make application to the specific New Jersey agency and pay the appropriate fee (if required). Only after receiving the proper

documentation from the State of New Jersey would it then be possible be in compliance with a specific request for documentation in the New Jersey public agency's procurement. In the next three questions, I polled the respondents more specifically on issues dealing with the BRC. In question 15, respondents were asked how many different vendors' bids had to be rejected in 2009 for failure to submit a BRC. An overwhelming percentage (79.8%) answered that "0 to 10 bids" were thrown out. The rest of the percentages were as follows: 8.9% replied that "11 to 20 bids" were rejected, just 3.6% noted that "21 to 30 bids" were tossed, 1.2% said that "31 to 40 bids" were eliminated and 3.6% of the individuals polled said that "41 or more" were rejected.

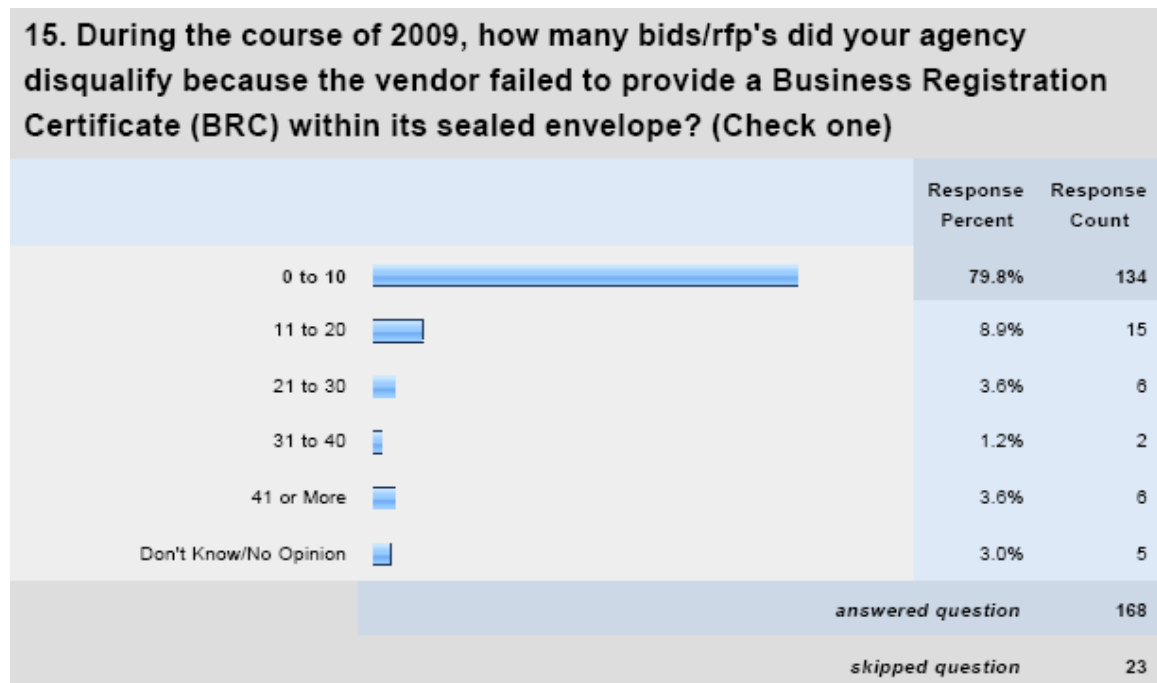


Figure 4.15. The number of disqualified bids due to BRC

Purchasing professionals were also asked just how many of the vendors who should have been thrown out for failing to submit a BRC would have been awarded a bid

for being the lowest, responsive bidder otherwise. Over two-thirds (69%) indicated that “0 to 5” of their bids would have been awarded to these vendors. From there, the percentages drop off dramatically. For the “6 to 10” range, 8.9% said yes. The other three ranges “11 to 15,” “16 to 20,” and “21 and more” all garnered no higher percentage than 1.8%. It should be noted that 17.3% of the respondents indicated that they “didn’t know’ nor had “no opinion.”

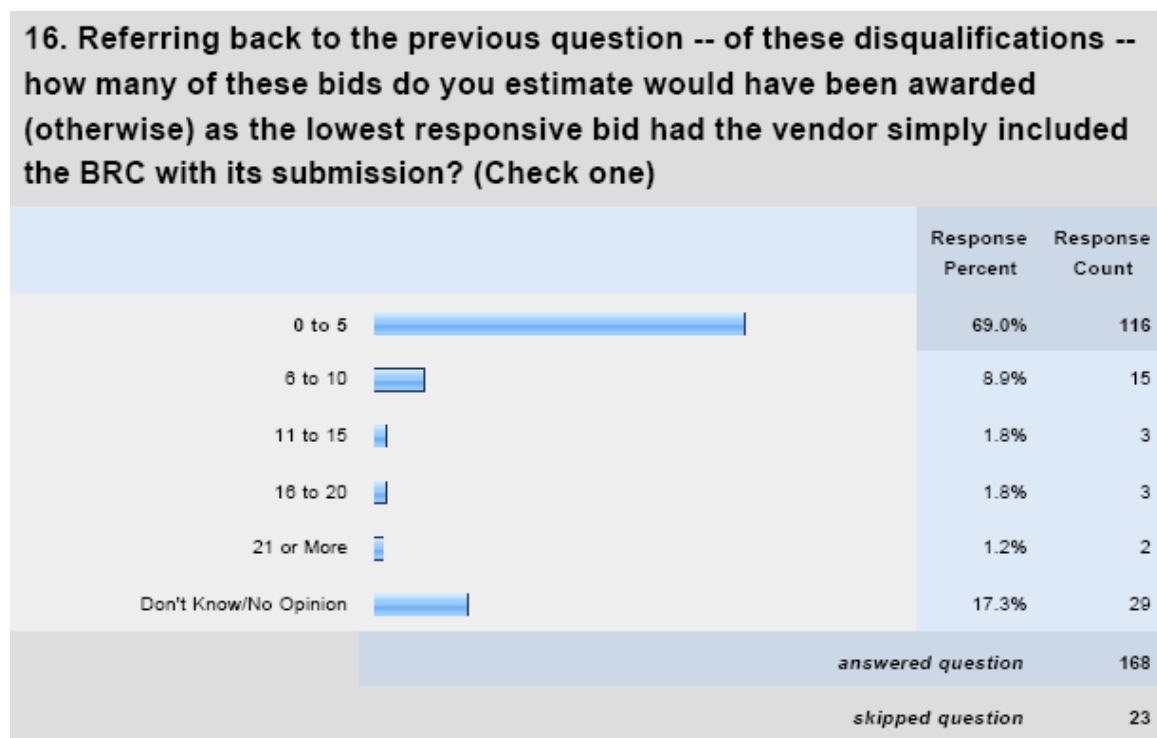


Figure 4.16. Vendors that would have been awarded with BRC included

Building on the previous 2 questions, the third and final question related to the BRC in this section asks the question – given the fact that many have had to reject otherwise low and responsive bidders for failing to provide the BRC, how much more money did your agency have to spend to award the next highest bidder? Over 40%



(40.5%) indicated that their agency had to spend an additional “\$1 to \$30,000” to make another award, with 25% noting “\$1 to \$15, 000,” and 15.5% -- “\$15,001 to \$30,000.” 10.1% polled responded by noting “Over \$75,000.” A smaller combined total of 8.4% professionals answered between “\$30,001 and \$75,000.”

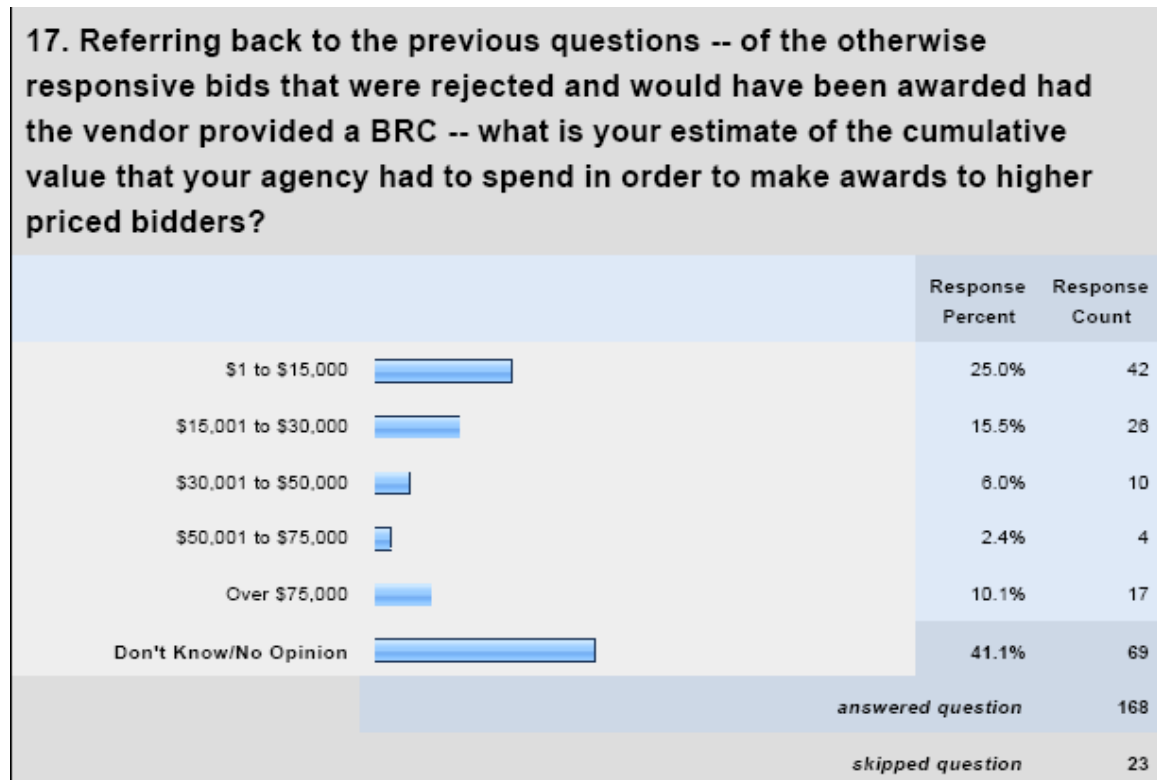


Figure 4.17. Estimated value of awards made to higher priced bidders

The purpose of including these three previous questions was to achieve a better understanding of the extent of the problem with the BRC in terms of the rejection of otherwise responsive bids, and to get an assessment as to the financial burden that this may have placed on the public agencies. The numbers are relative based on the size of the agency. Clearly a small municipal government or school district that is forced to spend an additional \$20,000 or \$30,000 over the course of the year for the “next lowest

bidders” will certainly face a larger financial challenge than that of a large county government with a \$500 million budget.

Question 18 is comprised of five parts – asking purchasing professionals how they feel about given statements concerning the laws and regulations that govern public procurement in New Jersey. Without question, the items presented to the respondents in questions 18 through 20 should prove to be invaluable when making a determination about the feelings in the public sector arena about the procurement system.

<b>18. How do you feel about the following statements? (Check ONE answer for each statement)</b>							
	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Rating Average	Response Count
New Jersey should permit vendors the ability to cure all fatal bid defects within a 72-hour period	17.1% (28)	32.3% (53)	9.8% (16)	28.7% (47)	12.2% (20)	2.87	164
Vendors should be permitted to cure the following defect: Failure to Submit a BRC	51.5% (84)	31.3% (51)	3.7% (6)	7.4% (12)	6.1% (10)	1.85	163
New Jersey's purchasing laws, rules and regulations are effective in attracting top quality vendors to compete for awards	1.8% (3)	12.1% (20)	41.2% (68)	33.3% (55)	11.5% (19)	3.41	165
New Jersey's purchasing laws, rules, and regulations are fair and impartial	4.9% (8)	36.6% (60)	33.5% (55)	20.7% (34)	4.3% (7)	2.83	164
New Jersey's purchasing laws, rules, and regulations result in government purchases of quality goods and services at the lowest costs	2.4% (4)	16.4% (27)	14.5% (24)	47.3% (78)	19.4% (32)	3.85	165
<i>answered question</i>							165
<i>skipped question</i>							26

Figure 4.18. Purchasing professionals share their feelings about New Jersey’s laws

In the first part, when asked if New Jersey should permit vendors the ability to cure all fatal bid defects within a 72-hour period, the percentages were rather close. While 32.3% said that they “agreed” and another 17.1 % indicated that they “strongly agree” for a total of 49.4%, another 40.9% answered that they either “disagree” (28.7%) or “strongly disagree” (12.2%). Thus, there is a clear division of procurement official opinion on this issue.

The second part had a more significant response. When asked whether vendors should be able to cure the defect of failure to submit a BRC – 51.5% of the respondents said that they “strongly agree.” An additional 31.3% said that they “agree.” Thus 82.8% believe that a change is necessary with respect to this part of the law. On the flipside, just 13.4% said that they either “disagree or strongly disagree” with this change. It is clear that purchasing professionals remain frustrated with this piece of the law dealing with the BRC and its inflexibility with respect to the responsiveness of the vendors’ bids.

The third section of question 18 asks individuals if they believe that New Jersey’s purchasing laws, rules, and regulations are effective in attracting top quality vendors to compete for awards. The largest percentage (41.2%) of those polled said that they “neither agreed nor disagreed” with the question – in other words, they felt neutral. However by a thin margin, 44.8% of those questioned said that they either “disagreed” (33.3%) or “strongly disagreed” (11.5%) with the statement. Only 13.9% of those polled “agreed or strongly agreed” with the statement.

When asked if New Jersey’s purchasing laws were fair and impartial, 36.6% “agreed” with the statement, 33.5% were “neutral,” and 20.7% “disagreed.” Despite the fact that folks may feel that the purchasing laws may be tedious, cumbersome, and a

burden for those trying to submit a response, the feeling also remains that these laws may produce generally a level playing field for all participating vendors.

Of those who responded to the fifth and final part of this question as to whether New Jersey's purchasing laws, rules and regulations result in government purchases of quality goods and services at the lowest costs, 66.7% "disagreed or strongly disagreed" with this statement. Just 18.8% said that they "agreed or strongly agreed" and the balance 14.5% remained "neutral." It appears that purchasing professionals don't see the multi layers of procurement procedures and paper work as actually assisting them in receiving the very best of deals for goods and services at the lowest cost – the very best value for that specific procurement.

The potential problem of low-balling has long been noted by several authorities studying procurement processes. Low-balling can cause otherwise respectable vendors from participating in the public procurement process because they feel that they have little chance to win an award fair and square. If another vendor is putting in an artificially low bid in order to win the award and then possibly seek a change order at a later date, it makes it very difficult for others to compete because New Jersey's system is based on the premise that the low-bidder must receive the procurement award. In the survey, when asked about the prevalence of low-balling in New Jersey's bidding process, 63% of those polled answered that low-balling was either "somewhat prevalent" (33.3%), "prevalent" (21.2%), or "very prevalent" (8.5%) in the process. 25.5% indicated that they believed that it "was not very prevalent" and a very small group (2.4%) said that it was "not a problem at all."

In the seven-part question 20, the first question asks for more specific information concerning low-balling. When asked if the practice discourages quality vendors from participating in the process, a majority (50.9%) said that they Strongly Agreed (10.9%) or

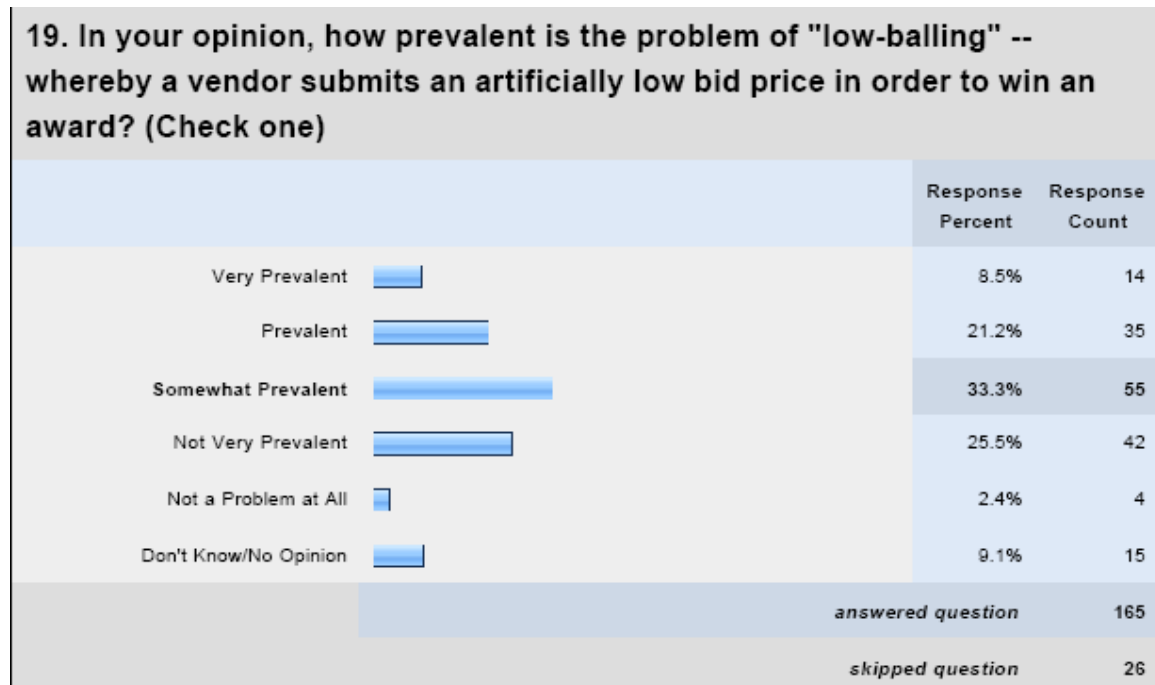


Figure 4.19. The prevalence of low-balling in the process

Agreed (40%). 35.2% of those polled remained neutral (Neither Agree nor Disagree) and a minority (13.9%) either Disagreed (12.1%) or Strongly Disagreed (1.8%). We will come back to issue of low-balling when we analyze the results of a similar question posed to the business leaders.

In addition to low-balling, payment terms – the amount of time a company has to wait to receive a payment from a government agency – also comes into question as to whether or not the prolonged period of time creates a disincentive for businesses to partner with the public sector. Many businesses complain that it is easier to get paid more quickly when they are doing business with a private sector entity. Over the past

several years, a “Prompt Payment” statute has been in place designed to force public agencies to pay their bills more quickly. Subsequently purchasing professionals were asked to share their viewpoints about Prompt Payment and payment delays. The second part of question 20 asks – Despite a “Prompt Payment” statute and regulations, more companies avoid doing business with New Jersey’s agencies due to a longer wait for payment. 44.9% said that they “strongly agree” (8.5%) or “agree” (36.4%) with the statement, 28.5% remained “neutral” and 26.6% either “disagreed” (24.2%) or “strongly disagreed” (2.4%). Once again those who felt neutral finished as the second highest percentage. The difference between those who “agree” and those who “disagree” with the statement (44.9% to 26.6%) is rather substantial.

The next four questions in the survey ask specific statements about the actions taken by the New Jersey Legislature with respect to public purchasing in the state. The first of these questions asks whether the legislature’s actions over the past several years have aided procurement units in securing the purchase of quality goods and services at the lowest cost. Once again a majority of the respondents (56.8%) said that they “disagreed” (40.9%) or “strongly disagreed” (15.9%) with the statement. 25.6% of those polled remain “neutral” and only 17.7% said that they “agreed” (17.1%) or “strongly agreed” (.6%). This question can obviously be taken two different ways – did they not take any substantive action to assist the public purchasing units or did they pass legislation that contributed even more regulations to the process?

On the contrary, the next question asks if the legislature’s actions have aided businesses with the public procurement process – making it easier for companies to navigate the process to submit a responsive bid. The numbers remain quite similar to the

previous question. With this statement, those who said that they “disagree” (48.2%) or “strongly disagree” (12.2%) reached a total of 60.4%. The “neutral” number remains exactly the same at 25.6% while those “strongly agree” (.6%) and “agree” (13.4%) drops to a total of 14%. As a result, it is clear that the purchasing agents feel that on both sides – procurement units and the private sector companies – the New Jersey Legislature’s actions have not effectively improved the public procurement process.

The next statement in the sequence asks if the legislature’s actions over the past few years have made the job of the purchasing professional more difficult. Without question, those responding in this poll registered strong opinions on this question. 84.8% of those polled either “strongly agreed” (44.8%) or “agreed” (40%). A much smaller “neutral” group of (12.7%) responded accordingly while a miniscule (3%) said that they “disagreed” with the statement. Clearly the many new laws and regulations that have been put in place by the New Jersey Legislature have created challenges for the purchasing professional and their agencies. Some of the laws are difficult to understand as written, provide an extended period of time to actually produce written rules to follow for implementation, and must be worked into the process in order to remain in compliance with the law.

One such example is the legislation that was signed into law several years ago that banned agencies from opening bids on Mondays or the day following a legal holiday. The statute – nicknamed the “Lazy Bidder” bill – has automatically removed nearly sixty days in the calendar year in which a purchasing unit can conduct its business – the simple opening of bids (P.L. 2007, c.4). The end result is that purchasing units now have even

less days available within which to open bids.

20. How do you feel about the following statements? (Check ONE answer for each statement)							
	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Rating Average	Response Count
The problem of "low-balling" discourages quality vendors from participating in New Jersey's public procurement process	10.9% (18)	40.0% (66)	35.2% (58)	12.1% (20)	1.8% (3)	2.54	165
Despite a "Prompt Payment" statute and regulations, more companies avoid doing business with New Jersey's governmental agencies due to a longer wait to receive payment for services rendered or goods supplied	8.5% (14)	36.4% (60)	28.5% (47)	24.2% (40)	2.4% (4)	2.76	165
The New Jersey Legislature's actions over the past several years have aided governmental procurement units in securing the purchase of quality goods and services at the lowest cost	0.6% (1)	17.1% (28)	25.6% (42)	40.9% (67)	15.9% (26)	3.54	164
The New Jersey Legislature's actions over the past several years have aided businesses with the public procurement process	0.6% (1)	13.4% (22)	25.6% (42)	48.2% (79)	12.2% (20)	3.58	164
The New Jersey Legislature's actions over the past several years have made the job of the purchasing professional more difficult	44.8% (74)	40.0% (66)	12.1% (20)	3.0% (5)	0.0% (0)	1.73	165
The New Jersey Legislature's actions over the past several years have been designed to decrease over regulation of the public purchasing process	6.1% (10)	6.7% (11)	19.0% (31)	44.2% (72)	23.9% (39)	3.73	163
The "Pay-to-Play" statute and its lower threshold (\$17,500) have created more bureaucratic challenges for purchasing professionals as well as for private sector businesses	46.7% (77)	33.3% (55)	12.7% (21)	5.5% (9)	1.8% (3)	1.82	165

Figure 4.20. Purchasing professionals share thoughts about various statements



A further dimension of Question #20 noted that New Jersey Legislature's actions have not decreased over regulation of the public purchasing process. Once again more than two-thirds of those responding (68.1%) answered that they "disagree" (44.2%) or "strongly disagree" (23.9%) with the statement that New Jersey's legislative actions have helped reduce. Just 19% remained neutral -- "neither agree nor disagree" -- which still outnumbered the combined total of those who said that they "agreed or strongly agreed" (12.8%).

The final question in this public sector survey asks respondents to provide their opinions about the "Pay-to-Play" statute that was implemented several years ago in an effort to "restrict" the process whereby a vendor that receives an award from a government agency and is still permitted to provide campaign donations to those elected officials serving that agency. Among other things, the law requires agencies to post Request for Qualifications (RFQ's) for all non-bid services over a new threshold of \$17,500, qualify those who answer the RFQ via a governing body resolution, and then place an additional resolution before the governing body for the regular award. In addition, those who choose not to participate in the RFQ process but receive an award from an agency must complete a state-designed campaign contribution disclosure form limiting them to a \$300 donation per election cycle.

The question states: the Pay-to Play statute and its lower threshold (\$17,500) have created more bureaucratic challenges for purchasing professionals as well as for private sector businesses. Once again the numbers are extraordinarily strong. 80% of those polled said that they "strongly agree" (46.7%) or "agree" (33.3%) with the

statement. Only 12.7% of the respondents remained “neutral” while a smaller group -- 7.3% -- said that they either “disagreed or strongly disagreed” with the statement.

After a careful review of the answers provided by purchasing professionals for the twenty questions in this first survey, the data provides some very strong evidence of potential problems with the current procurement process employed in public agencies throughout New Jersey. The perception of “too much paperwork” in a bid package is substantiated in Question 13 with a significant majority of those polled saying that they believed that there was. Those responding to the poll stated that vendors should be permitted to cure fatal defects, that New Jersey’s purchasing laws are ineffective in attracting quality vendors to compete, or providing quality goods and services at the lowest cost. Moreover purchasing professionals believe that low-balling is a significant enough problem in New Jersey procurement process whereby it discourages quality vendors from participating.

In review of the final set of questions concerning the New Jersey Legislature’s actions over the past several years, those polled agreed that the legislature has not aided purchasing agencies and businesses alike with the procurement process – actions have not helped public agencies. in securing quality goods and services at the lowest cost, as well as aiding businesses with the procurement process itself. In addition, purchasing professionals agree that the legislature has made their job more difficult and that actions taken have not lessened over regulation of the process.

A second survey was implemented to assess the private sector’s perspectives of New Jersey’s public procurement process. This survey was open from February 23, 2010 through March 19, 2010 and collected partially completed surveys totaling 168 surveys.

Ultimately 154 individuals representing the business community submitted completed surveys. Since the potential population for this survey is infinite, I sought e-mail lists of vendors who may have some knowledge and interest in submitting bids to public agencies throughout New Jersey. As a result, a sample of e-mail addresses were taken from business list contained on-line in the New Jersey Association of School Business Official (NJASBO) website, the 2010 Mid Atlantic BX Construction Buyers Guide, as well as the 2009 Blue Book for Building and Construction (Northern New Jersey). In addition, the study's survey link for businesses was posted on the blog for the New Jersey Small Business Development Centers' website. As with the first survey, all responses were completely anonymous.

The first several questions posed to the respondents were most general in nature in order to determine the types of businesses that were participating. The first question asked: "Which best describes the structure of your company?" Nearly three-quarters (72.6%) of the respondents noted that their company was a "corporation." The second most popular answer was "limited liability corporation (LLC)" at 14%. "Sole proprietors" tallied 7.9% with "partnerships" representing just 3% and "non-profits" 2.4%. Question 2 asked, "How long has your company been in business?" A clear majority (54.2%) of those polled indicated that they had been in business for "more than 20 years." The others were grouped fairly closely together – "0 to 5 years" and "11 to 15 years" at 12%, "16 to 20 Years" at 11.4%, and "6 to 10 Years" at 10.2%.

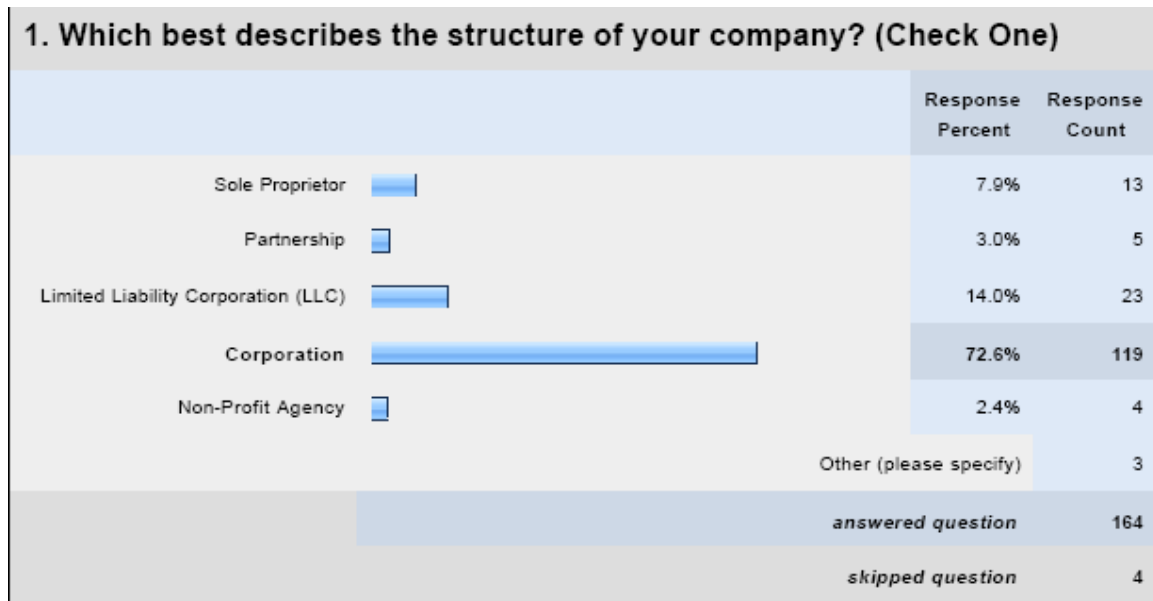


Figure 4.21. Structures of companies participating in study

More than half (60.1%) of the companies responding to the survey were “based in New Jersey” while 39.3% were located “outside the state” according to (Question #3). According to the next question (#4), almost 7 out of 10 (69.9%) of those answering the survey indicated that their company was considered a “small business” and 26.5% said that they were not. 3.6% answered that they did not know if they were or not. It appears that a fair percentage of the respondents are older corporations based in New Jersey that qualify as small businesses.

Question 5 asks respondents to describe their type of business. The results illustrate that there is a fairly diverse group of businesses represented with “service providers” (25%) leading the way, followed by “construction trades” (16.7%) , “professional services” (14.6%), “technology” and “manufacturing” both at (13.9%), with smaller numbers for “consultants” (6.3%), “wholesalers” (4.9%) , “retail goods” (3.5%), and “transportation” (1.4%).



Figure 4.22. Companies' age

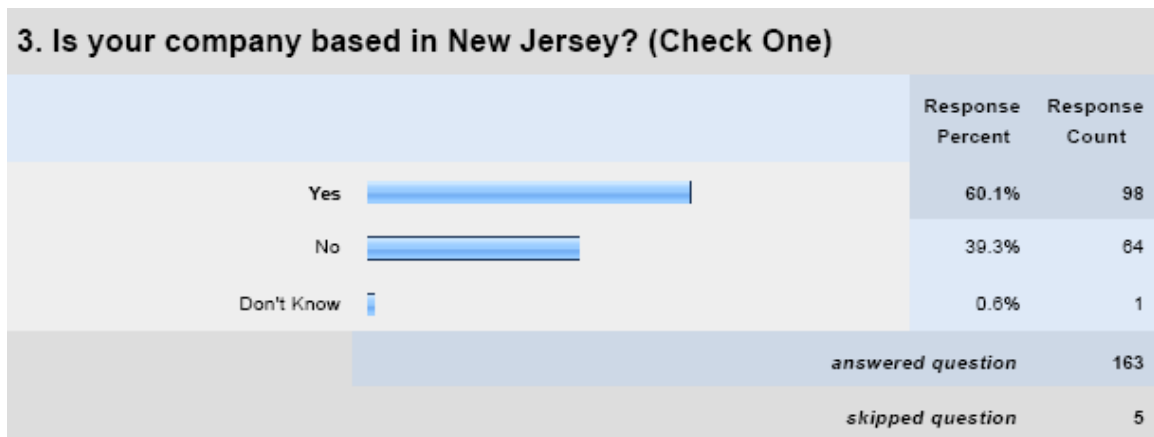


Figure 4.23. Companies based in New Jersey

Of the individuals who responded to the survey, nearly half (43.3%) in Question 6 noted that they served as the “president” of their company, 21.7% identified themselves as working in “sales,” 14.6% were “vice presidents,” 12.1% identified as “bid coordinators,” 11.5% said that they were the “owners” of their companies, 10.8% said that they were the “managing members” of their LLC’s.



Figure 4.24. Companies identified as a small business

Looking at one of the first questions matched with a question in the public sector survey, Question 7 asks the company leaders to describe their payment policy on accounts receivable. A majority (51.5%) of those polled noted that the policy was “net 26 to 30 days” and another 27% indicated that the period was longer – “net 31 days or more.” So more than three-quarters of the respondents fell into the “net 26 and more” category. On the other end of the spectrum, 8.6% answered that their company’s policy was just “net 10 to 15 days” and even less (3.7%) said “net 21 to 25 days” -- only 1.2% said “net 16 to 20 days.” It is also worth noting that 8% indicated that they “don’t know.” This data may suggest that late payments may begin to be problematic when payments are made on a net 31 day or more schedule.

Question 8 indicates that 76.6% of those who responded currently hold “at least 1 public sector contract” – with the largest percentage (34%) stating that their companies hold “10 or more contracts.” 24.7% of those responding noted that they hold “1 to 3 contracts,” 10.5% said “4 to 6 contracts,” and 7.4 % answered “7 to 9 contracts.” 16.7 % said that their company’s currently “hold no public contracts” while 6.8% said that they “don’t know.” The data in this question gives us a better identification of the experience

level that the company's polled have with the public bidding process. With three-quarters of those indicating that they hold at least 1 contract, it appears that many of the respondents in the poll have a considerable familiarity with the procurement process and the challenges that face businesses who want to participate in the process for an award. Subsequently these businesses would have first-hand experience in the process as a whole and would be cognizant of any specific impediments in the procurement system.



Figure 4.25. Companies' chief business

Question 9 detailed the volume of respondent participation in the bid process within New Jersey's borders. The percentage of participation was extremely high –

80.2%. Nearly 40% of those polled said that their company had submitted “between 1 to 8 bids, written quotes, or request for proposals (rfp’s) during the course of 2009.” 17.3% replied that their company submitted “more than 26 times,” 15.4% said “9 to 17 times,” and another 8% answered “18 to 26 times.” 17.3% indicated that that had not submitted any procurement paperwork in New Jersey during the previous year.

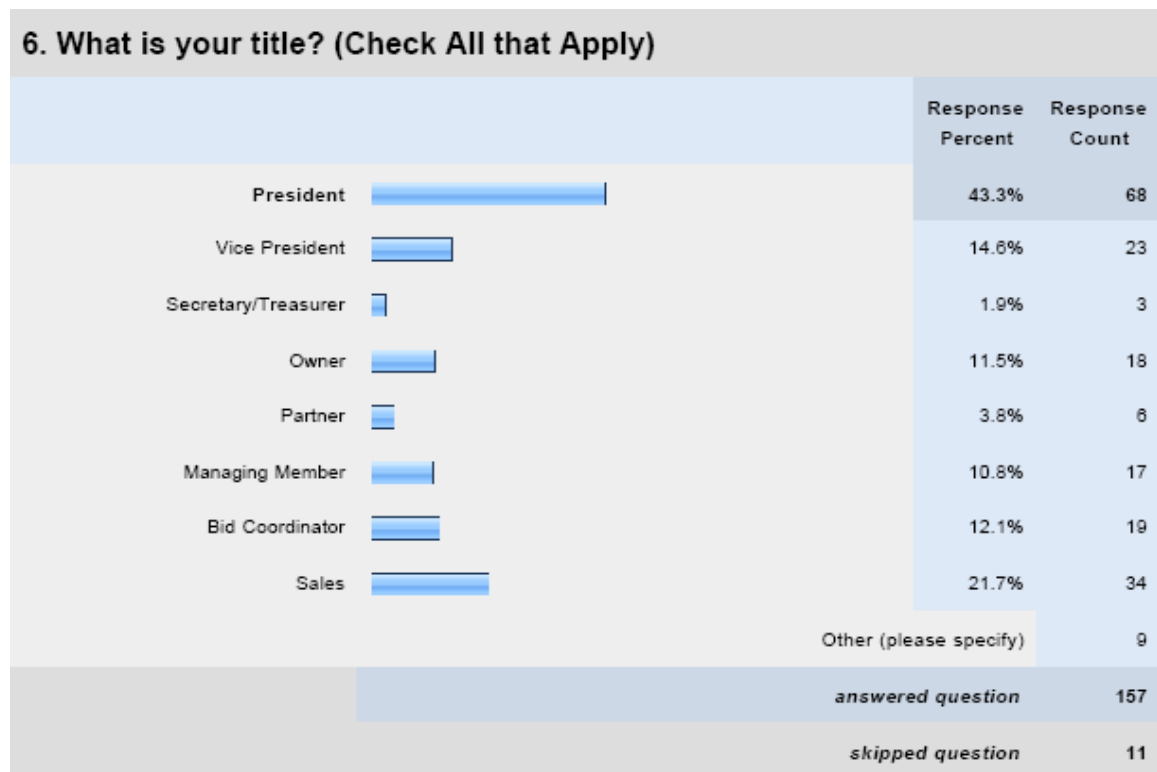


Figure 4.26. Business title of respondent

Question 10 began a series of questions to ascertain procurement problems for bidders. Vendors were asked, “How does your company receive information about various bid opportunities.” Since an agency’s only responsibility is to advertise a bid just once in the “official newspaper” for the governing body, the question sought to determine how companies were gathering their information about opportunities in other



fashions, not solely depending on the one advertisement. The polling data confirms that vendors are finding out about opportunities through a number of different avenues. Some 58.8% of vendors indicated that they “automatically receive bids from public agencies” – which is perfectly legal in New Jersey provided that the bids are not mailed to vendors until the advertisement appears in the official newspaper. 52.3% said that they receive bid information via a “third party service provider.” There are a number of bid information companies that simply gather a listing of procurement opportunities and share them with their client lists for a fee. Another 51% said that they receive bid information “directly from an agency’s website.” Although not yet required by the state, a great number of public agencies post bid advertisements on their homepages in order to provide more exposure for their procurement opportunities. 32% of those polled indicated that they utilize the “newspaper legal notice” and another 28.8% said that they will find a listing of bid opportunities “through other publications.”

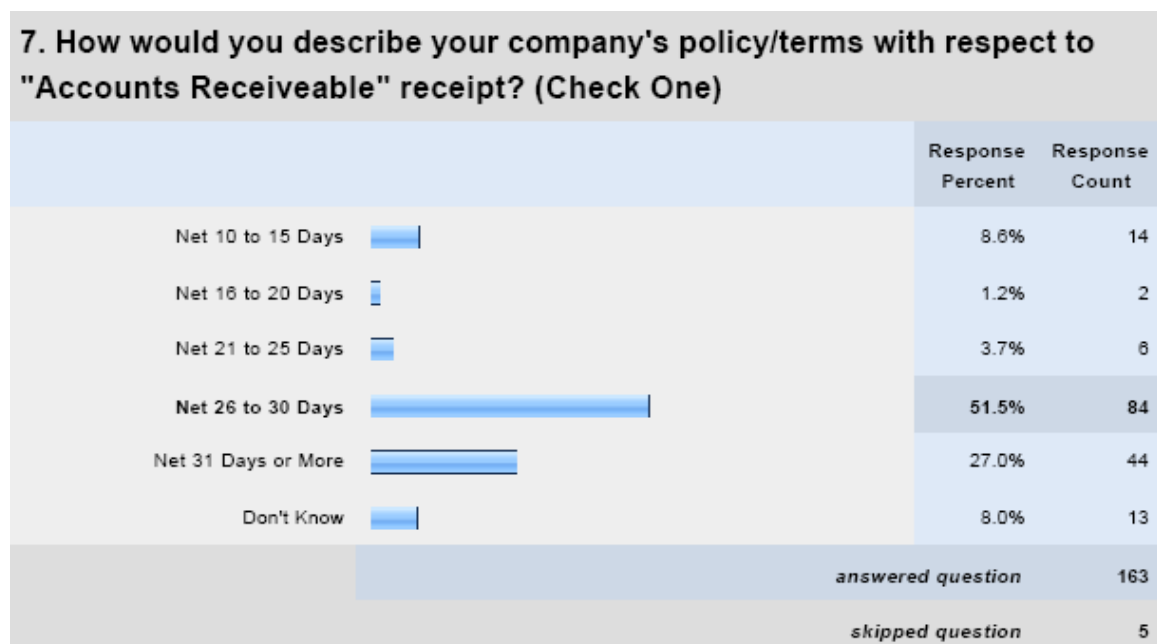


Figure 4.27. Companies’ accounts receivable policy

Upon further review of the aforementioned data, there doesn't appear to be a problem for companies to actually find out about the opportunities because of the sole requirement to advertise in the one paper. The data demonstrates that companies are using a myriad of means to hunt down these potential procurement opportunities – thus competition is probably not suffering from this particular part of the procurement process.

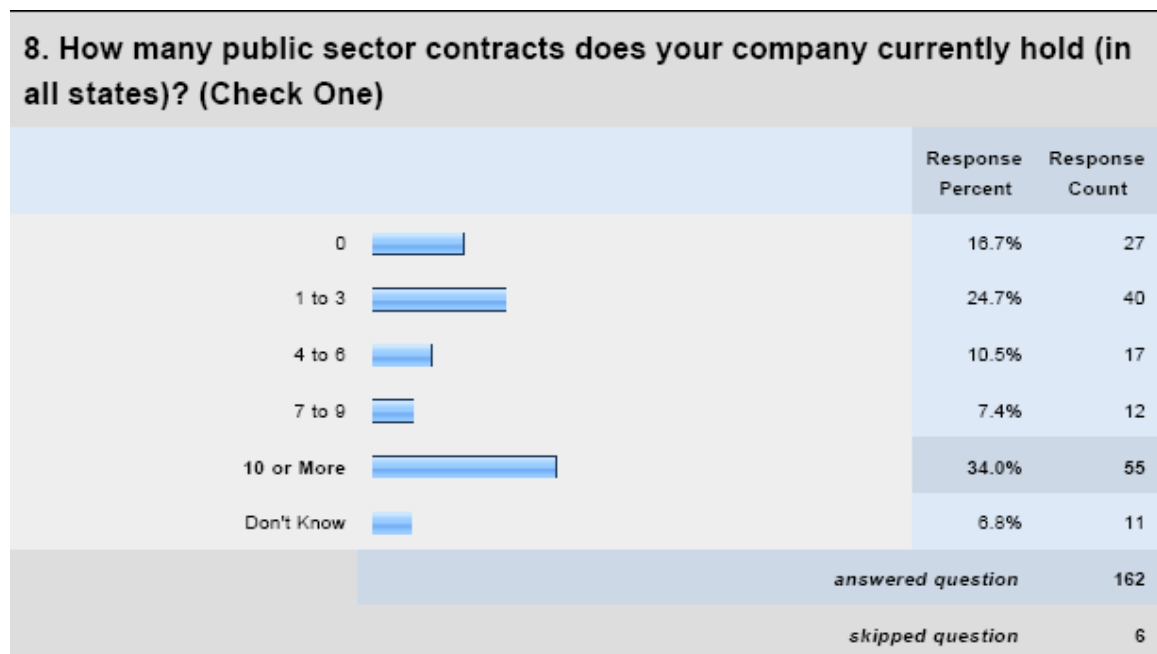


Figure 4.28. The number of contracts held with the public sector

As stated previously, bids in New Jersey must have been advertised at least 10 days before an opening can take place. The question remains that if a public agency decides to follow the letter of the law and open on 10 or eleventh day – does that create problems for potential vendors to receive the information, complete it, and return it before the deadline? Question 11 asks vendors – “What do you believe is adequate time

for vendors to receive, complete and then return a bid package to the public agency?”

The majority of the vendors (54.6%) responded by saying “21 to 25 days “(33.5%) and “more than 25 days“(21.1%). Another 25.5% of those polled said “16 to 20 days.”

Thus 80.1% of those polled in this survey believe that the adequate time period would range from “16 days to more than 25 days.” On the lower end, 17.4% of those vendors said that time should be “10 to 15 days.” This data clearly shows that a majority of vendors believe that more time is needed to complete the process from start to finish.

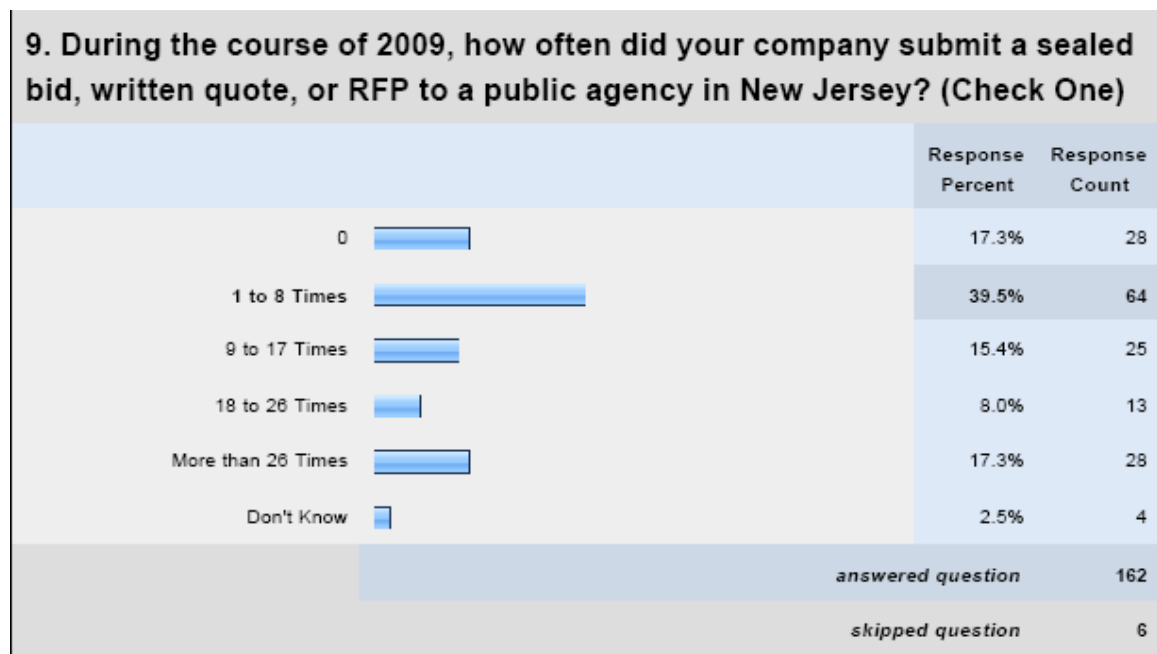


Figure 4.29. Frequency of submitting a bid in New Jersey

Question 12 surveys vendors about their views on automatic rejection of bids that did not contain specific documents. The question as posed – “In certain cases (in New Jersey), if a specific document is NOT included in your sealed bid package, the bid will be automatically rejected (without the ability to correct or “cure the defect”). What is your opinion of this?” 43.4% of those polled said that they either “agree” (23.9%) or

“strongly agree” (19.5%) with the statement. Those who “disagree” (31.4%) or “strongly disagree” (18.2%) with the statement totaled 49.6%. Another 6.9% choose the neutral answer neither “neither agree nor disagree.” Despite the smaller margin between those that “disagree” or “agree” (6.2%), nearly 50% of those polled believe that the laws go too far in terms of flatly dismissing bidders for the failure to provide a specific item.

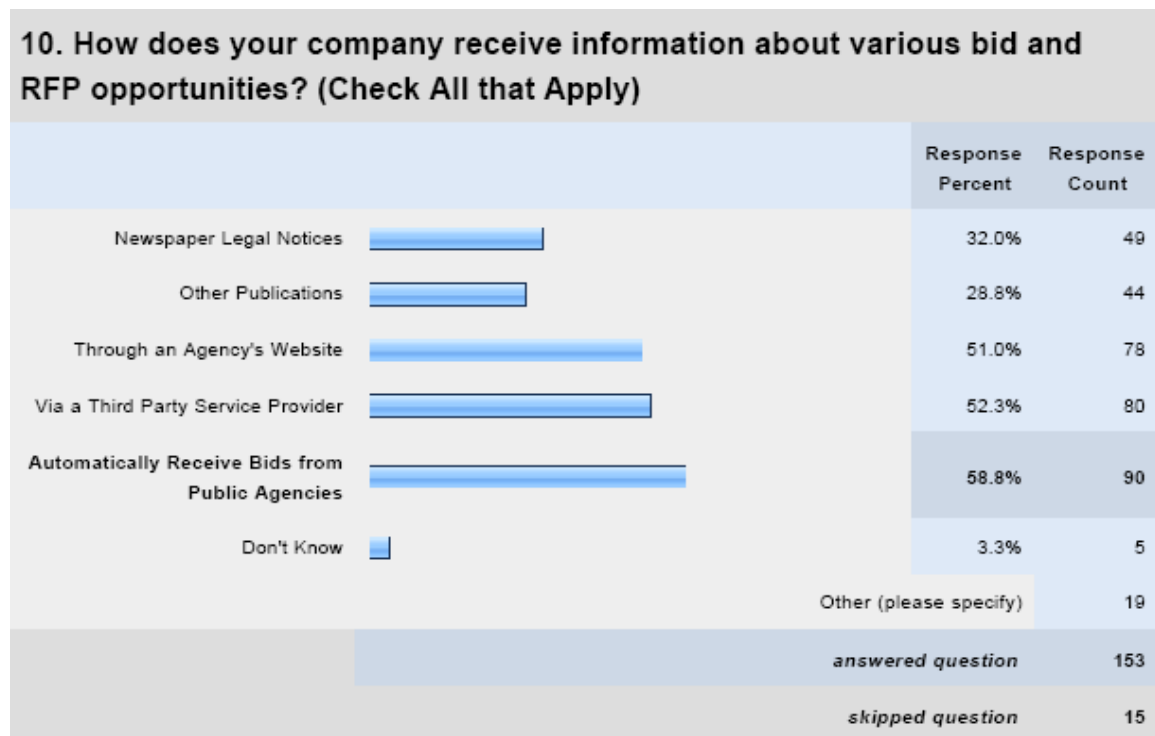


Figure 4.30. Avenues to receive information about bid opportunities

As previously noted, eleven different documents and forms that may be found in a typical New Jersey bid were listed for the respondents to review. Question 13 asked vendors to check the items that they believe create the most difficulty for them to submit a responsive bid. A majority of those polled (50.9%) answered with the “Performance Bond/Consent of Surety.” Finishing second was a related item, -- “Bid Guarantee” -- at

29.6%. “Insurance requirements” finished third at 20.1 % Another item – “Affirmative Action/EEO (evidence)” was chosen by 14.5% of the respondents. A host of other documents fell below the 10% range – “ADA Compliance” (8.8%), “Public Works Contractor Registration Act Certificate” (7.5%), “BRC “(6.3%), “Acknowledgement of Addenda” (6.3%), both “Non-Collusion Affidavit” and “Statement of Ownership” were selected by 5% and 4.4% noted the “Disclosure Statement.” It should be pointed out that a sizable percentage (25.2) – indicated that they “don’t know.”

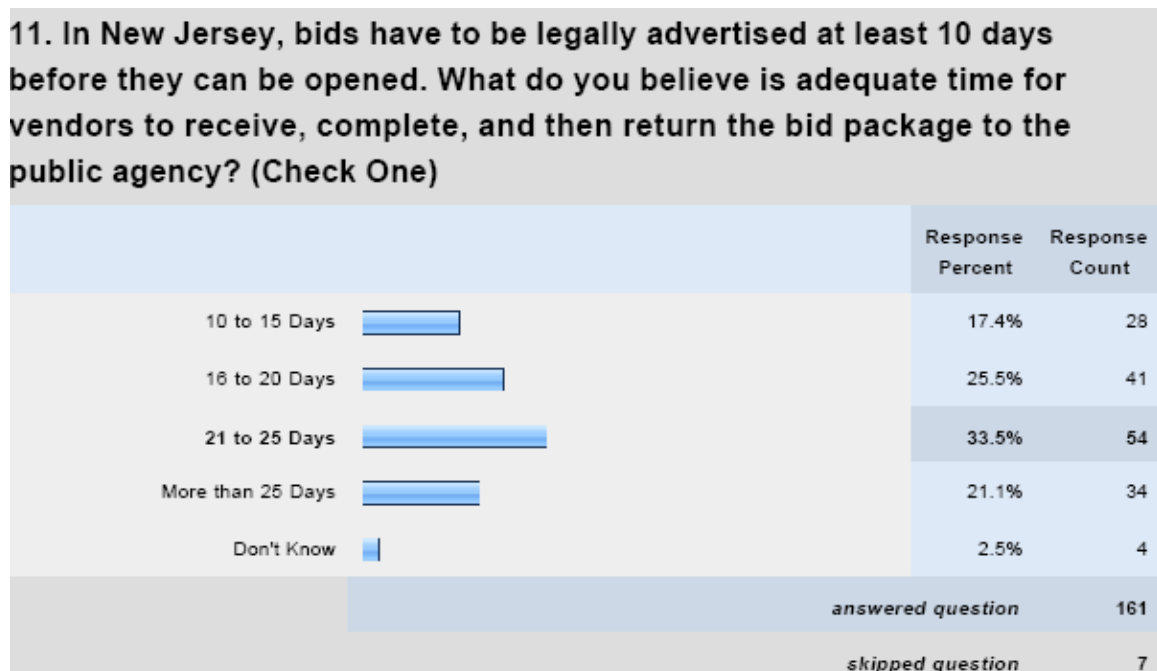


Figure 4.31. Opinions on the adequate length of time to advertise a bid

In the case of the three highest selections -- the performance bond, bid guarantee, and insurance – all require a vendor to go out to a third party – such as an insurance broker – and pay money to have the documents supplied or the coverage put in place. In most cases, performance bonds and bids guarantee are not supplied over night. The agent

would need to examine the application to see if the client is worthy of such coverage. Thus – as a result – there is definitely a time constraint which makes compliance with the bid specifications that much more difficult. Moreover in order to be in compliance with the Affirmative Action and EEO regulations, a vendor must submit an application the State of New Jersey (with payment) and await the arrival of certificate. The same holds true with the Public Works Contractor Registration Act (PWCRA). As a side note, while only 7.5% of those polled included the PWCRA on their list – it is because most vendors do not need to have this certificate. It mostly applies to those who are engaged in repairs, rehabilitation and trade work on public property. For example, a vendor who won an award to furnish and deliver chairs is not going to need to supply this certificate in a bid.

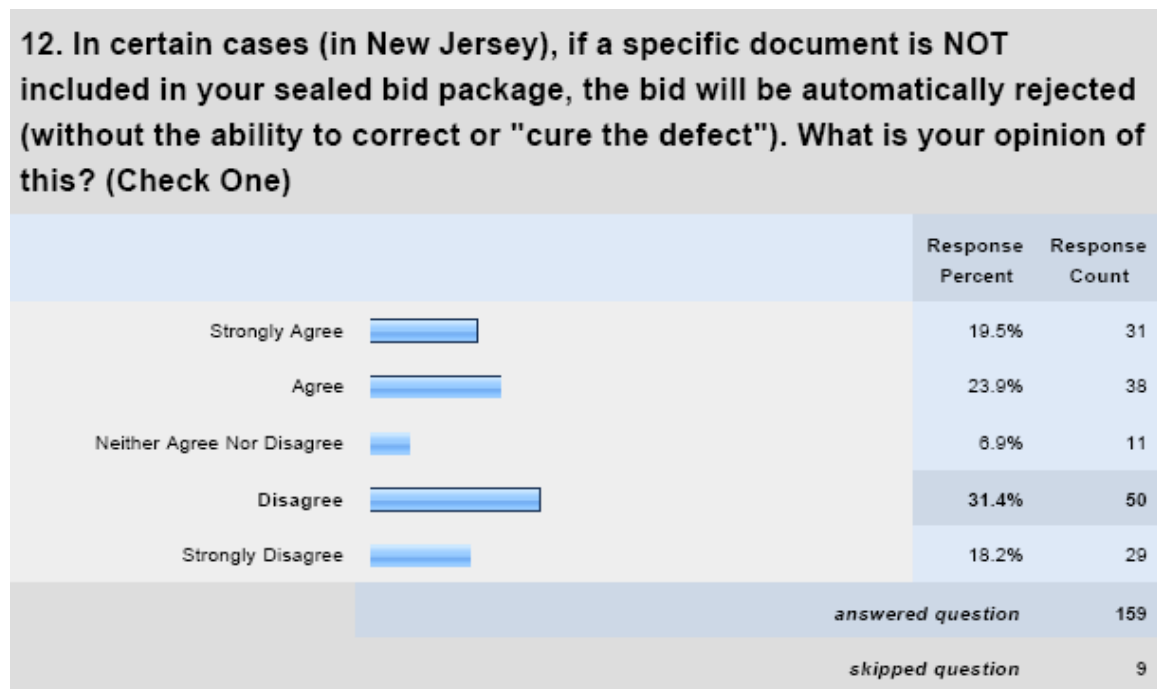


Figure 4.32. Opinions on automatic rejection of bids

Question 14 sought vendor views as to whether the public procurement process in New Jersey was “Fair and Open.” The percentages in Question 14 were extremely close. 33.7% of the vendor polled said that they “strongly agreed” (4.5%) or “agreed” (29.2%) with the statement that the Public Procurement Process in New Jersey is “Fair and Open.” Meanwhile 33.1% said that they “disagreed” (20.1%) or “strongly disagreed” (13%) with the same statement.

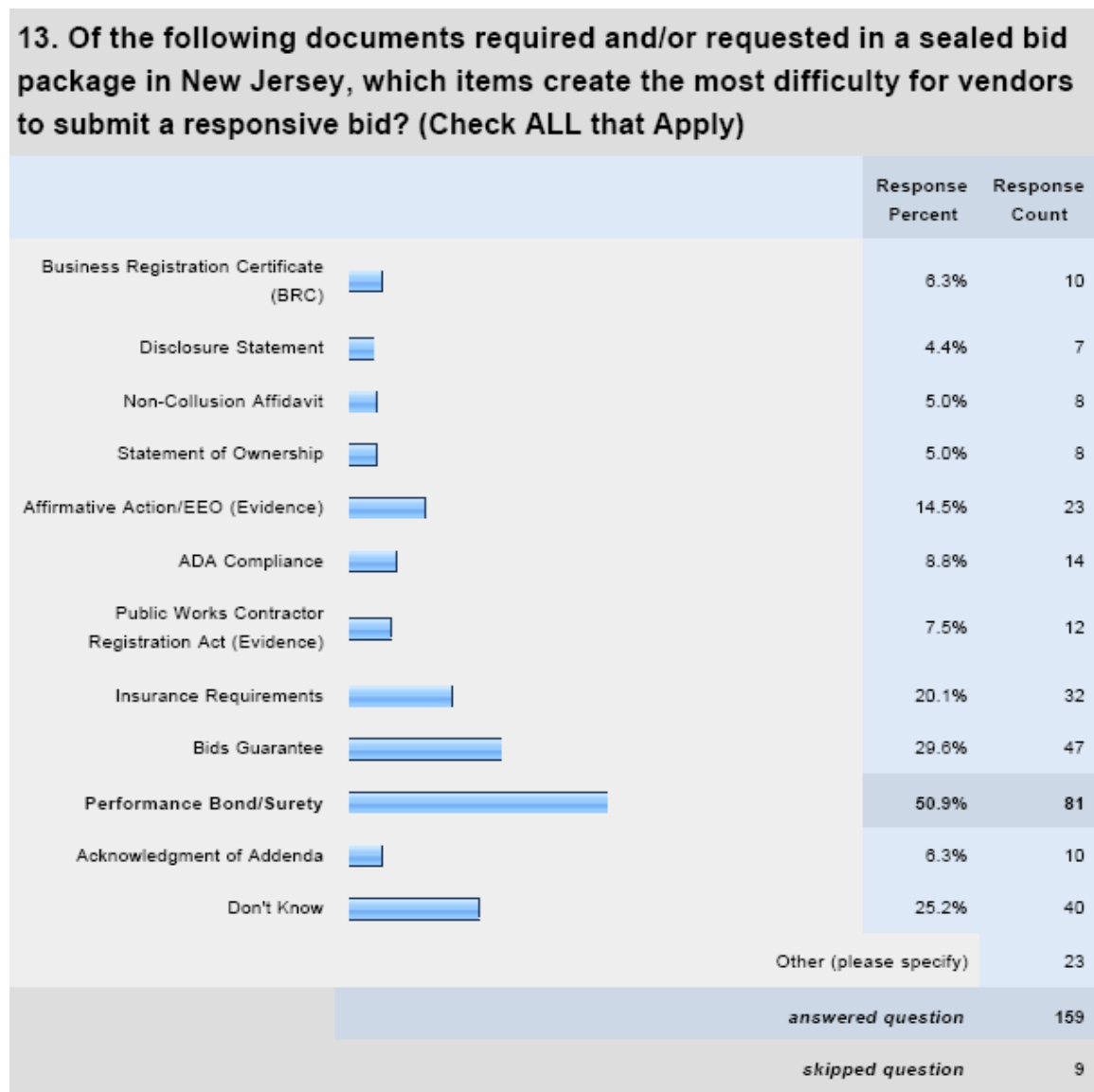


Figure 4.33. Companies identify bid items that create the most difficulty

An equal amount of those questioned answered as a neutral (33.1%) “neither agree nor disagree.” Since two-thirds “agree” or are not negative about fairness and openness -- one might surmise that vendors tend to believe that the procurement process itself provides an open opportunity for those who wish to participate

Next, vendors were asked if they had any public purchasing experience outside of New Jersey. Question 15 indicates that 72.1 % of those companies polled submit bids/rfp’s to public agencies in states other than New Jersey and 27.6% do not.



Figure 4.34. Companies’ opinions about a “Fair and Open” process

Question 16 asked those vendors that were multi-state vendors “Do you believe that it is easier to submit bids/rfp’s to public agencies in states other than New Jersey?” 38.3% of those polled answered “yes” while 7.8% said “no.” An additional 19.5% replied with the answer – “sometimes.” While the difference between the “yes” and “no” is substantial, the 19.5% of those who said “sometimes” gives us some pause. I speculate



that the “sometimes” answers were generated for two different reasons – 1) perhaps New Jersey’s process is more stringent than let’s say New York but is less stringent than that of Pennsylvania. Thus companies that are actively submitting bids in multiple states may have altogether different experiences with those specific processes in those jurisdictions. The second possible explanation for the answer “sometimes” may have to do with the items that are being included in the specific bid. As we noted in a previous question, vendors responded overwhelmingly that certain paperwork requirements create a more difficult bid process. However if a New Jersey agency is requesting a performance bond on a project and Pennsylvania is not on a similar bid, all other things being equal, the New Jersey bid may be considered more difficult because of this requirement.

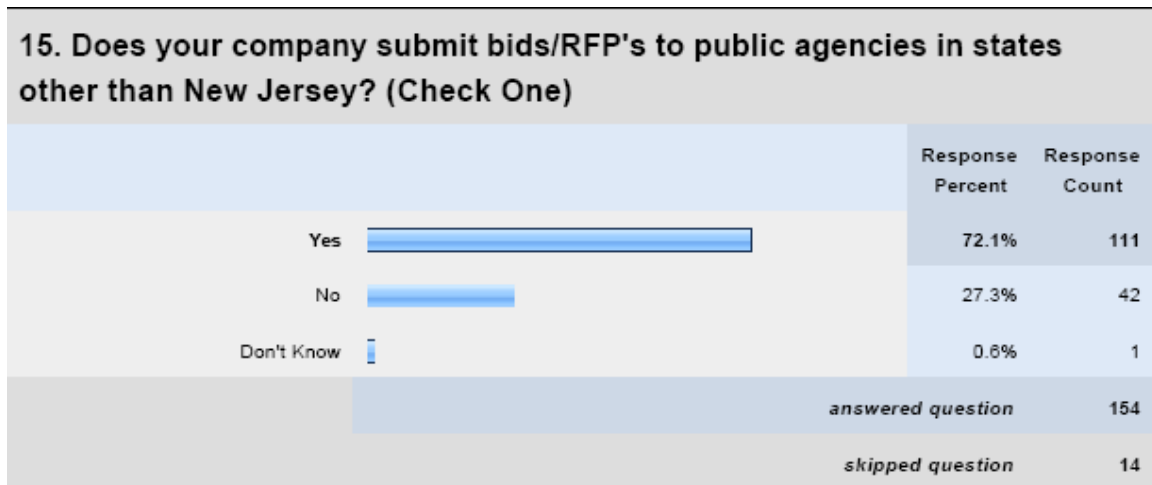


Figure 4.35. Companies participation in the public bid process outside of New Jersey

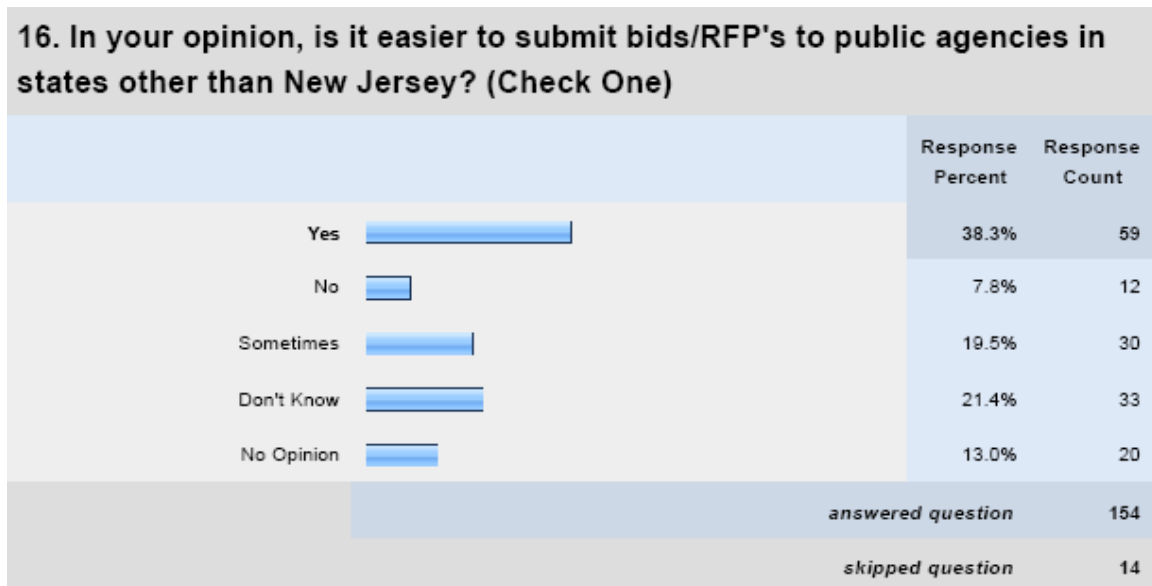


Figure 4.36. The easier procurement process: New Jersey v. other states

Question 17, similar to the first survey, asked the vendors to answer a several part question as to their opinions on how strongly they feel about given statements about the public procurement process. Several findings are suggested by this question.

<b>17. Thinking about New Jersey's public procurement process, how do you feel about the following statements? (Check One for Each Statement)</b>						
	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	Response Count
There is too much required paperwork in a bid package	29.6% (45)	41.4% (63)	25.0% (38)	3.9% (6)	0.0% (0)	152
Government agencies pay too slowly	25.5% (38)	26.2% (39)	36.2% (54)	12.1% (18)	0.0% (0)	149
New Jersey's purchasing laws, regulations, and rules are effective in attracting more quality vendors to compete for contracts	3.3% (5)	12.4% (19)	35.9% (55)	28.1% (43)	20.3% (31)	153
New Jersey's purchasing laws, regulations, and rules help create competition which assists agencies in securing quality goods and/or services at the lowest cost	2.0% (3)	20.9% (32)	27.5% (42)	30.7% (47)	19.0% (29)	153
My company prefers to do business with other private sector companies as opposed to public agencies	17.1% (26)	17.8% (27)	36.8% (56)	18.4% (28)	9.9% (15)	152
Public purchasing procedures are efficient and easy to follow	2.0% (3)	8.7% (13)	26.0% (39)	41.3% (62)	22.0% (33)	150
<b>answered question</b>						<b>154</b>
<b>skipped question</b>						<b>14</b>

Figure 4.37. Companies' opinions about New Jersey's process

First -- there is too much required paperwork in a bid package -- A strong majority of 71% polled said that they either Strongly Agreed (29.6%) or Agreed (41.4%). Only 3.9% said that they Disagree with no respondent selecting Strongly Disagree. A

full 25% provided the neutral answer neither “Neither Agree nor Disagree” This question provides insightful evidence the private sector companies believe that New Jersey agency’s bids are too paper heavy.

Second, -- Government Agencies pay too slowly – again a majority (51.7%) – albeit a smaller one -- either Strongly Agree (25.5%) or Agree (26.2%) with the statement. While no one once again said that they Strongly Disagreed, 12.1% of those polled said that they Disagree. Again in this case, a large percentage (36.2) selected the neutral answer “Neither agree nor Disagree.” The large difference between those that Agree 51.7% and those that Disagree 12.1% cannot be understated.

Third, -- New Jersey’s purchasing laws, regulations and rules are not effective in attracting more quality vendors to compete for contracts -- 48.4% of those polled said that they either Disagree (28.1%) or Strongly Disagree (20.3%) with the statement. 35.9% remained neutral “Neither Agree nor Disagree” and a smaller percentage (15.8%) said that the either Strongly Agreed (3.3%) or Agreed (12.4%) Once again looking strictly at those who committed an answer in disagreement or agreement, the difference was quite stark -- 48.4% to 15%. What may be taken from this data is the fact that the private sector feels that New Jersey’s public procurement process may be creating a disincentive for good, best value-type companies to step forward and pursue public contracts.

Moreover, New Jersey’s purchasing laws, regulations and rules do not help create competition which assists agencies in securing quality goods and/or services at the lowest cost. A near majority (49.7%) of those polled said that they either “disagree” (30.7%) or “strongly disagree” (19%) with the statement. 27.5% choose the neutral response

“neither agree nor disagree” and 22.9% replied that they “agree” (20.9%) or “strongly agree” (2%) with the statement. Yet again nearly 50% of those polled said that they disagreed with the statement that New Jersey’s procurement laws and regulations were actually assisting public agencies in securing quality goods/services and at the lowest costs possible.

A substantial segment of vendors prefer to do business with other private sector companies as opposed to public agencies – 34.9% of those polled indicated that they “strongly agree” (17.1%) or “agree” (17.8%) with the statement. 36.8% of those provided a neutral answer “neither agree nor disagree” and 28.3% said that they either “disagree” (18.4%) or “strongly disagree” (9.9%). Thus, there is a somewhat even distribution of responses to this question. I speculate that the answers are spread due to several factors. Companies who prefer to do business with other private companies will do so because they are not held to the bid process restrictions under New Jersey’s Local Public Contracts Law. The movement of the actual transactions would proceed at a faster pace, and more than likely, the payment will be made more quickly as well.

Conversely, those who favor doing business with the public sector realize that there are a large number of agencies that may be looking for their service or product. The sheer number of dollars that are spent annually from the public sector across the country makes it a very lucrative proposition. In addition, while payment terms may be longer in duration, companies can be assured that the checks that they receive from public sector entities will be good and thus they do not have to worry about collecting money in the future as a result of a bad check.

Finally, probably one of the most telling sets of data from this group of questions is when vendors were asked to respond the following – “Public purchasing procedures are efficient and easy to follow.” Once again there was a clear difference in opinion. 63.3% of those polled indicated that they “disagree” (41.3%) or “strongly disagree” (22%) with the statement. On the flipside, just 10.7% said that they “strongly agree” (2%) or “agree” (8.7%). A larger segment of 26% selected the neutral answer “neither agree nor disagree.” The difference between 63.3% and 10.7% is substantial. According to this question, on overwhelming number of vendors polled believe that public purchasing procedures are either cumbersome and/or difficult to comprehend.

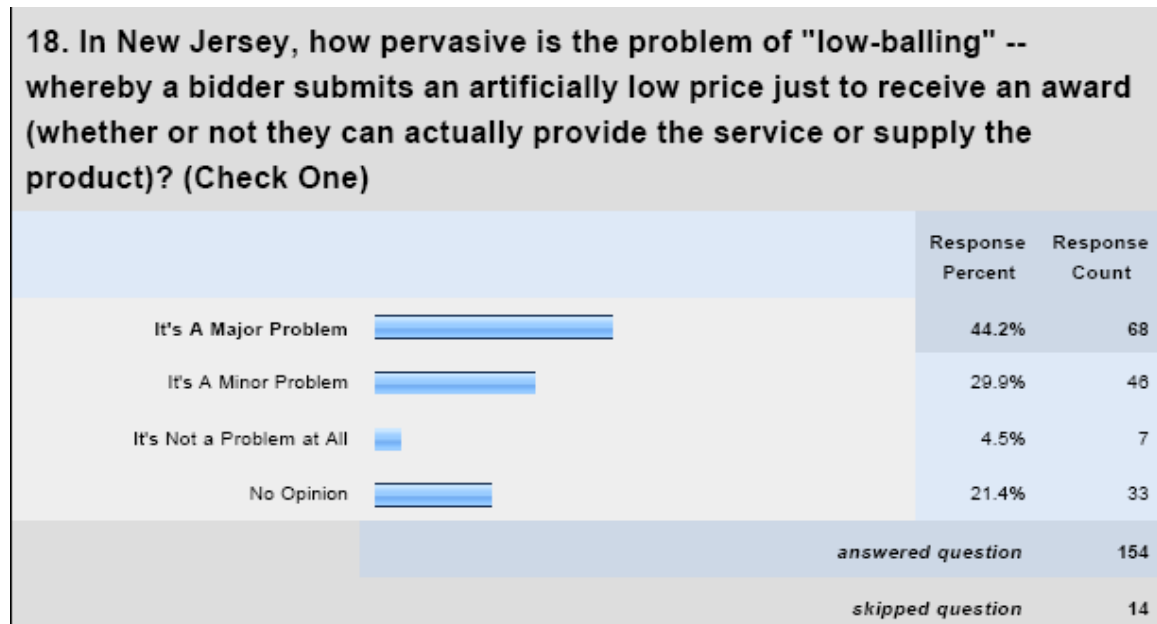


Figure 4.38. Companies opinions about low-ball bidding in New Jersey

Referring back to the concept of low-balling that we addressed earlier in the public sector survey, the private sector community was asked a similar question – “How pervasive is the problem of low-balling in New Jersey?” Nearly half (44.2%) of those

polled said that low-balling is a “major problem” followed by those who believe that it is a “minor problem” (29.9%). 4.5% of those who responded said that they “didn’t believe that it was a problem at all” and 21.4% offered “no opinion” on the matter. With over 75% (75.1%) of the respondents admitting that it is some kind of problem within New Jersey’s procurement system, leads one to believe that a closer look at this matter must be taken in order to correct this potential flaw in the system.

By examining the results of the two surveys, several issue areas are noted that have caused some potential disincentives for private sector companies to do business with New Jersey’s public agencies.

First, the time to complete a bid process (Question 6 in the Public Sector Survey) gathered information about the typical length of time an agency advertises a bid. 90.4% of those polled indicated that on average they advertise a bid for “10 to 21 days.” In Question 11 (Private Sector Survey), 54.6% said that adequate time to receive, complete and then return a bid package to an agency should be “at least 21 days or more.”

With respect to the required paperwork, Question 17 (Part 1) (Private Sector Survey) indicates that 71% of those who responded “agreed” that there is too much required paperwork in a bid package. Purchasing professionals also agree. In Question 13 (Public Sector Survey) 63.7% of the respondents said that they, too, believed that there was too much paperwork in a bid package.

Examining payment timetables, remarkably there seems to be a discrepancy in payment timetable when you examine the questions presented in both surveys. At first glance, it appears that the two groups are in sync when it comes to a similar timetable on the payment of receivables. The data in Question 10 -- (Public Sector Survey) states that

the average payment time is “net 26 to net 30” according to 44.8% of those polled. Moreover 33.3% said that the period is “net 31 or more.” By comparison, Question 7 -- (Private Sector Survey), indicates similar numbers on the receivables policy – “net 26 to 30 days” (51.5%) and 27% for “net 31 days or more.” So payment schedules seemed to be relatively the same thought process. However when one examines Question 17 – Part 2 (Private Sector Survey) a majority of the respondents (51.7%) indicated that “government agencies pay too slowly.”

The question of attracting quality vendors was also included in both survey documents to determine how effective New Jersey’s purchasing laws, regulations, and rules in attracting quality vendors to compete for contract awards. Question 18 – Part 3 (Public Sector Survey) 44.8% said that they either “disagreed or strongly disagreed.” A similar number resulted from the private sector side Question 17 – (Part 3) when 48.4% of those polled answered the same way. In both cases, those who were in agreement with the statement polled in the mid-teens (Public Sector Survey) 13.9% and (Private Sector Survey) 15.7%.

Are New Jersey’s public agencies attracting Quality Goods and Services at the Lowest Cost? Here’s another case where the data generated from surveys was similar. In Question 18 (Part 5) – (Public Sector Survey) 66.7% stated that they “disagree” or “strongly disagree” that New Jersey’s purchasing laws, rules and regulations result in government purchases of quality goods and services at the lowest cost. While the percentage was lower, nearly 50% (49.7%) (Private Sector Survey) Question 17 (Part 4) of those polled said that they “disagree” or “strongly disagree” with the statement.



The prevalence of low-balling -- one of the side issues that we have examined in this thesis is the impact of low-balling on the public procurement process. Subsequently questions were included in both surveys in order to determine the perception that individuals have about the problem of low-balling in New Jersey's public procurement process. In the private sector survey Question 18 -- 74.1% of those who responded replied that low-balling was either a problem of some degree (either major or minor). Likewise the (Public Sector Survey) contained two different questions addressing this issue. In Question 19, when asked how prevalent the problem was -- 63% of the purchasing professionals said that it was "very prevalent," "prevalent," or "somewhat prevalent." In addition, Question 20) -- (part 1) took the issue a step further by stating -- the problem of low-balling discourages quality vendors from participating in New Jersey's public procurement process. Almost 51% (50.9%) noted that they "strongly agreed" or "agreed" with the statement.

## **DISCUSSION**

The concept about doing a study of the public procurement process in New Jersey was born several years ago after my first appointment as the purchasing agent for the largest county government in the state. I often wondered how private companies felt about the process itself as well as their views on the many laws, regulations and rules which governed the process. I wished to determine how companies viewed doing business with government and whether or not procurement politics and operations discouraged them from participating in the process. Was New Jersey's procurement process creating a disincentive for quality private sector vendors from even wanting to do business with the public sector?

Given the past history of corruption in the New Jersey's public sector, there is an obvious need to protect the public procurement process and ultimately taxpayer dollars from criminal fraud. There is no question that the need for a stringent Local Public Contracts Law coupled with specific rules and regulations is needed. Yet, the question remains whether or not more regulations and rules are inhibiting the competition for public contract awards.

Over the years, many experts within the public administration field have taken a closer examination of public procurement and have come away with many very interesting conclusions as a result. Susan A. MacManus -- noted as one of the very first to produce a very large and cutting edge study of the field. Her concern was the fact that since the amount of public dollars spent each year across our country was so staggering, she wanted to know whether or not it was being performed efficiently, fairly, and with as

much competition as possible. She, too, was concerned with the very same issues that were raised in this manuscript, namely – the vast amount of bid paperwork, slow payment processes, excessive bureaucratic procedures, and generally the very unfriendly environment for potential private sector partners. MacManus was one of the first individuals to confront the issue of low-balling in the process and the impact that it has on encouraging competition to participate in the process.

In his study of defense-related firms, David Lamm also notes similar issues of the heavy paperwork, inefficiencies, and governmental delays. Steven Kelman makes the point that a bidding process should provide for equal access for all that want to participate. Jacques Gansler concludes quite succinctly that the work to make a government purchase is too long, costs the public agencies way too much, and then one has to worry about the actual quality of the good or service that was purchased through this process.

Given what the aforementioned experts have found and concluded in the past, the time was right to conduct a new study, in 2010, of the procurement process in New Jersey. I wanted to see if the conclusions raised in the past studies had any relevance in today's procurement world. And in my judgment, they do indeed.

This public procurement official and private sector vendor study indicates that the State of New Jersey may have created a cumbersome procurement process and created a system whereby vendors need to complete a myriad of paperwork in too short amount of time and return it to a specific public agency with multiple documents just in order to have their bid remain in contention. The requirement concept that the lowest bidder is automatically to be preferred -- despite the fact that their price may be so artificially low

and impractical – also creates a host of problems. Quality vendors who are providing a more honest and realistic prices are disadvantaged by the process. This establishes a very unfriendly market environment for high quality vendors.

Given the financial challenges that government agencies are feeling throughout the United States, it is imperative that the public sector spend its procurement dollars in the most cost effective and cost efficient manner as possible. Given the volume of spending that takes place through the public bidding process, it is important that the process remain as efficient as possible and as welcoming as possible for potential private sector partners.

In order to get a better understanding of the perceptions that individuals hold regarding New Jersey's public procurement process, two different surveys were utilized to poll those who are closest to the situation: public purchasing professionals throughout New Jersey as well as private sector business leaders that either pursue public contracts or attempt to do so. Thus both buyers and sellers were apprised of their views on the state of the procurement system.

The public purchasing professionals are charged with the responsibility of managing the procurement process for their respective public agencies. They are most familiar with the Local Public Contracts Law which governs the public procurement process in New Jersey. They are most familiar with the pages of required paperwork that are included in bid package documents. And ultimately, these are the public officials that are attempting to get as much competition for their agency's procurements in order to save their taxpayers' dollars.

Since the private sector business leaders have a different mission, creating transactions for their entity, they have to remain astute as to the business environment and specifically what it takes to capture an award. Subsequently they will know that there are vast differences between doing business with a fellow private sector enterprise and that of a public agency – that is governed by all of those laws and regulations. So as a result, private sector business leaders will have strong opinions as to the practicality of engaging in the government process to attempt to secure an award.

After fully examining both survey documents, we now have a stronger understanding of the perceptions that both sides have about New Jersey's public procurement process. Consequently, this thesis has provided a good start for fellow public administrators to consider substantive revisions in the New Jersey procurement process.

A comparison of the two surveys has generated some interesting points that can benefit from further detailed study.

- 1) There is a general opinion that there is too much paperwork in a bid document. A bid package must be made less cumbersome for businesses to complete. Vendors get discouraged when they see a thick packet to be completed in order to submit a bid price. The bid process must become more flexible in this regard in order to encourage vendors to complete a document and participate in procurement.
- 2) The timetable to receive, complete, and return a bid is not long enough. Given the time it may take to receive a hard copy of a bid packet, the volume of documents that need to be completed, and the time to return the sealed

envelope on schedule, vendors do not have nearly enough time to complete this entire process. Moreover if a public agency sets the bid timetable to the legal minimum ten days, the challenge for the vendor becomes that much more difficult to overcome.

- 3) Private sector entities believe that government pays too slowly. Due to the size of their operations and the need for quicker cash flow, many smaller enterprises hold a much shorter timeframe for their accounts receivables. However government entities are required to have strict standards as to a system of checks and balances to make a payment of public dollars – thus several steps may be included in the protocol before a check can be cut and mailed to a vendor. If an item needs the approval of a government body, the delay could be made even longer because some jurisdictions may only meet once or twice per month.
- 4) Low-balling remains a problem in New Jersey procurement. Low-balling creates difficulties for both buyers and sellers in the procurement process. Governmental entities are faced with the prospect of having to make an award to a vendor with an artificially low price in order to be in compliance with the law. In the end, they may wind up paying more to the vendor in the form of change orders or having to go through the time and expense of having to re-bid the procurement because the low-baller realizes that they cannot perform the service or provide the product at the price they quoted. On the flipside, legitimate vendors who are offering fair and honest pricing, become even

more disillusioned with the public procurement process because they see low-bidders receive awards dishonestly – but legally.

- 5) The procurement process is not efficient and easy to follow. Due to ever-changing state regulations, voluminous paperwork, delays in contract awards and the receipt of purchase orders, the procurement process continues to demonstrate that it is cumbersome and not flexible to meet market conditions. In order for public agencies to receive the best overall value from businesses, it must have the ability to create a market place of its own to enable the highest level competition possible among vendors striving to be good and reliable private sector partners.

As a result of this study, a number of recommendations surface that may be helpful to others who want to examine these issues further. Some of these suggestions would need the legislative action in order to move forward. Pertinent policy recommendations are as follows:

First, remove all of the less essential documents from the bid package and just keep the minimum – title page, boiler plate language, the actual specifications, and the price page. After the bids have been opened, the focus should remain on the three lowest bidders. The bidders could be then approached to complete remaining procurement documents in a reasonable amount of time. Those who do not complete the paperwork will be deemed to be non-responsive and those that do remain in contention from the bid award. The lowest bidder who has completed the additional paperwork receives the award. In this way, the advertisement timetable can remain closer to the minimum 10

days because the work to complete the package has been diminished – and essentially pushed until after the opening for the three lowest bidders.

Second, absent the removal of paperwork to be completed in advance of the opening, the minimum advertisement time must be doubled to at least 20 days from the present 10. While this may not assist in our goal of making the award process more efficient, the data clearly has indicated that if the amount of paperwork remains at status quo – then additional time is needed for vendors to complete the bid packages.

Third, low-ball vendors must be rooted out of the system and placed on debarment lists. The survey data from both populations was very clear about the problem of low-balling. Low-balling corrupts the system and discourages quality vendors from wanting to participate. Vendors that have been proven to be “low-ballers” and have consequently walked away from contracts in mid-stream or have discontinued working until they receive a change order approved should be placed on a state-wide debarment list for a period of five years whereby they cannot receive any award from a New Jersey public agency until their removal from that list.

Finally, New Jersey should adopt a “best value” contract award system similar to that employed by United States government. Best value considerations would include the company’s past vendor history with a particular public agency. However, at present, a best value system would not be permitted in New Jersey because a vendor’s past positive experience with an agency cannot be considered during an evaluation for an award. Under the Local Public Contracts Award, consideration of this past performance would create an unlevel playing field for other vendors that are new to that agency. They



would consider this to be discriminatory because they are not receiving stronger consideration because they do not have a history with the agency.

There are many very positive components to the introduction of a best value procurement system in New Jersey. Public agencies would be in a better position to receive the most competitive pricing from a better quality of vendors. Vendors would realize that the lowest bid isn't always the best value for the agency and that their bid will be evaluated in greater detail for past efficiencies. While a government may have paid a little more in previous procurements, a savings going forward may be realized because they are dealing with a vendor that perhaps has not saddled the agency with unnecessary change orders and additional costs. Ultimately, in order for best value type of system to operate in New Jersey, it is going to take a change in the mindset of those legislators that think that the concept "low-bid takes all" is the only way to operate. As agencies have learned time and time again, sometimes the lowest bid isn't the best bid.

This thesis has demonstrated that there are notable flaws in the New Jersey procurement system. Both public purchasing professionals and private sector companies alike have noted these flaws. Further detailed study and consequent concrete adjustments are necessary in order to create a more effective competitive New Jersey procurement process. While this process of improvement may be slow, it can result especially if the State of New Jersey works closely with its various purchasing associations throughout its borders. These associations, comprised of the public purchasing professionals, can work even more closely with legislative committees to discuss the possible amendments to New Jersey's Local Public Contracts Law. Moreover perhaps a commission can be established to look more closely at the various procurement processes and laws from the

other fifty states to determine which jurisdictions are achieving better responses with their systems, higher levels of private sector competition and, ultimately, the best possible value for public agencies in the procurement process.

In the end, the New Jersey legislature should consider positive revisions to the public procurement process. The legislature has to find a way to safeguard the system against corruption while at the same time creating a more effective and efficient means of procuring goods and services. As more and more vendors become discouraged and turn away from public/private partnerships, less competition will occur. In turn, less competition means even more money will be required of governments to spend in order to purchase goods and services that help them in providing services to their constituents.

## APPENDIX A

### The Procurement Process in New Jersey: A Survey of the Public Sector

Thank you for taking the time to complete this short survey. This survey is part of my comprehensive doctoral research study examining public sector procurement in the New Jersey and the impact that the state's laws and regulations have on private sector participation in the bid process.

This survey should only take about 8 minutes to 10 minutes of your time. ALL of your answers will remain completely ANONYMOUS.

In order to progress through the survey, please use the following navigation buttons:

- \* Click the Next button to continue to the next page.
- \* Click the Previous button to return to the previous page.
- \* Click the Done button to submit your survey.

If you should have any questions or comments about the survey, please contact me at dom.novelli@gmail.com or 201-245-6345.

Once again, thank you for your assistance with this project.

-Dominic J. Novelli, CCPO, QPA

## The Procurement Process in New Jersey: A Survey of the Public Sector

### 1. Which best describes your public jurisdiction? (Check one)

- ☐ Municipal
- ☐ County
- ☐ State
- ☐ School District
- ☐ Authority
- ☐ Special District
- ☐ Other (please specify)

### 2. Which best describes your title? (Check one)

- ☐ Purchasing Agent
- ☐ Director of Purchasing
- ☐ Borough Administrator
- ☐ Buyer
- ☐ Purchasing Assistant
- ☐ Business Administrator
- ☐ Other (please specify)

### 3. Which purchasing certifications do you currently hold? (Check all that apply)

- ☐ Qualified Purchasing Agent (QPA)
- ☐ Registered Public Purchasing Official (RPPO)
- ☐ Registered Public Purchasing Specialist (RPPS)
- ☐ Certified County Purchasing Official (CCPO)
- ☐ Other (please specify)

## The Procurement Process in New Jersey: A Survey of the Public Sector

**4. What is your best estimate of the value of all of the contract awards that your purchasing unit procured through competitive bidding/competitive contracting in 2009? (Check one)**

- ☐ \$1 to \$1,000,000
- ☐ \$1,000,001 to \$5,000,000
- ☐ \$5,000,001 to \$10,000,000
- ☐ Over \$10,000,000
- ☐ Don't Know

**5. On an annual basis, what is the average number of bids/rfp's that your agency prepares and advertises? (Check one)**

- ☐ 1-25
- ☐ 26-50
- ☐ 51-100
- ☐ 101-150
- ☐ More than 150
- ☐ Don't Know

**6. On average, how long does your agency advertise a BID? (Check one)**

- ☐ 10 to 13 days
- ☐ 14 to 17 days
- ☐ 18 to 21 days
- ☐ 22 to 25 days
- ☐ Over 25 days

**7. On average, what is the number of bid responses (from different vendors) that your agency receives for a given procurement? (Check one)**

- ☐ 1 to 2
- ☐ 3 to 5
- ☐ 6 to 8
- ☐ 9 or 10
- ☐ More than 10

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**8. For a given procurement, what is the average number of bid responses that are rejected (deemed non-responsive) due to a bidder's failure to provide specific documents? (Check one)**

☐ 0

☐ 1 or 2

☐ 3 or More

## The Procurement Process in New Jersey: A Survey of the Public Sector

**9. In your opinion, did your agency receive more or fewer total bid/rfp submissions (responsive and unresponsive) in 2009 as compared to procurements four years ago?**

**(Check one)**

- ☐ More Bids
- ☐ About the Same
- ☐ Fewer Bids
- ☐ Don't Know/No Opinion

**10. How would you describe your agency's average payment timetable in days? (Check one)**

- ☐ Net 5 to Net 15
- ☐ Net 16 to Net 20
- ☐ Net 21 to Net 25
- ☐ Net 26 to Net 30
- ☐ Net 31 or More
- ☐ Don't Know

**11. During the course of 2009, what percentage of vendors who submitted bids/rfp's to your agency (would you estimate) were located out of state? (Check one)**

- ☐ 0 to 10%
- ☐ 11 to 20%
- ☐ 21 to 30%
- ☐ 31 to 40%
- ☐ More than 41%
- ☐ Don't Know

## The Procurement Process in New Jersey: A Survey of the Public Sector

**12. How much do you agree or disagree with the following statement: New Jersey's purchasing laws, rules, regulations and requirements discourage private sector companies from doing business with public agencies? (Check one)**

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neither Agree or Disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't Know/No Opinion

**13. Do you believe that there is too much required paperwork for vendors to complete and/or submit in order to present a responsive bid? (Check one)**

- ☐ Yes
- ☐ No
- ☐ Maybe
- ☐ Don't Know/No Opinion

**14. Which of the following documents create the biggest challenge and/or difficulty for vendors to submit responsive bids? (Check ALL that apply)**

- ☐ Disclosure Statement
- ☐ Non-Collusion Affidavit
- ☐ Statement of Corporate Ownership
- ☐ Affirmative Action/EEO Evidence
- ☐ ADA Compliance
- ☐ Public Works Contractor Registration Act
- ☐ Insurance requirements
- ☐ Bids Guarantee
- ☐ Performance Bonds/Surety
- ☐ Acknowledgment of Addenda
- ☐ Business Registration Certificate (BRC)
- ☐ Disclosure of Named Subcontractors in Construction Bids



## The Procurement Process in New Jersey: A Survey of the Public Sector

**15. During the course of 2009, how many bids/rfp's did your agency disqualify because the vendor failed to provide a Business Registration Certificate (BRC) within its sealed envelope? (Check one)**

- ☐ 0 to 10
- ☐ 11 to 20
- ☐ 21 to 30
- ☐ 31 to 40
- ☐ 41 or More
- ☐ Don't Know/No Opinion

**16. Referring back to the previous question -- of these disqualifications -- how many of these bids do you estimate would have been awarded (otherwise) as the lowest responsive bid had the vendor simply included the BRC with its submission? (Check one)**

- ☐ 0 to 5
- ☐ 6 to 10
- ☐ 11 to 15
- ☐ 16 to 20
- ☐ 21 or More
- ☐ Don't Know/No Opinion

**17. Referring back to the previous questions -- of the otherwise responsive bids that were rejected and would have been awarded had the vendor provided a BRC -- what is your estimate of the cumulative value that your agency had to spend in order to make awards to higher priced bidders?**

- ☐ \$1 to \$15,000
- ☐ \$15,001 to \$30,000
- ☐ \$30,001 to \$50,000
- ☐ \$50,001 to \$75,000
- ☐ Over \$75,000
- ☐ Don't Know/No Opinion

## The Procurement Process in New Jersey: A Survey of the Public Sector

**18. How do you feel about the following statements? (Check ONE answer for each statement)**

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
New Jersey should permit vendors the ability to cure all fatal bid defects within a 72-hour period	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Vendors should be permitted to cure the following defect: Failure to Submit a BRC	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New Jersey's purchasing laws, rules and regulations are effective in attracting top quality vendors to compete for awards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New Jersey's purchasing laws, rules, and regulations are fair and impartial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New Jersey's purchasing laws, rules, and regulations result in government purchases of quality goods and services at the lowest costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**19. In your opinion, how prevalent is the problem of "low-balling" -- whereby a vendor submits an artificially low bid price in order to win an award? (Check one)**

- ☐ Very Prevalent  
☐ Prevalent  
☐ Somewhat Prevalent  
☐ Not Very Prevalent  
☐ Not a Problem at All  
☐ Don't Know/No Opinion

## The Procurement Process in New Jersey: A Survey of the Public Sector

**20. How do you feel about the following statements? (Check ONE answer for each statement)**

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
The problem of "low-balling" discourages quality vendors from participating in New Jersey's public procurement process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Despite a "Prompt Payment" statute and regulations, more companies avoid doing business with New Jersey's governmental agencies due to a longer wait to receive payment for services rendered or goods supplied	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The New Jersey Legislature's actions over the past several years have aided governmental procurement units in securing the purchase of quality goods and services at the lowest cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The New Jersey Legislature's actions over the past several years have aided businesses with the public procurement process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The New Jersey Legislature's actions over the past several years have made the job of the purchasing professional more difficult	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The New Jersey Legislature's actions over the past several years have been designed to decrease over regulation of the public purchasing process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The "Pay-to-Play" statute and its lower threshold (\$17,500) have created more bureaucratic challenges for purchasing professionals as well as for private sector businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## APPENDIX B

### The Procurement Process in New Jersey: A Survey of the Private Sector

Thank you for taking the time to complete this short survey. This survey is part of my comprehensive doctoral research study examining public sector procurement in New Jersey and the impact that the state's laws and regulations have on private sector companies' participation in the bid process.

This survey should only take about 8 to 10 minutes of your time. ALL of your responses will remain completely ANONYMOUS.

In order to progress through the survey, please use the following navigation buttons:

- \* Click the Next button to continue to the next page.
- \* Click the Previous button to return to the previous page.
- \* Click the Done button to submit your survey.

Should you have any questions or comments concerning this survey, please contact me at [dom.novelli@gmail.com](mailto:dom.novelli@gmail.com).

Once again, thank you for your assistance with this project.

Dominic J. Novelli  
Doctoral Candidate  
University of Baltimore

## The Procurement Process in New Jersey: A Survey of the Private Sector

### 1. Which best describes the structure of your company? (Check One)

- ☐ Sole Proprietor
- ☐ Partnership
- ☐ Limited Liability Corporation (LLC)
- ☐ Corporation
- ☐ Non-Profit Agency

Other (please specify)

### 2. How long has your company been in business? (Check One)

- ☐ 0 to 5 years
- ☐ 6 to 10 years
- ☐ 11 to 15 years
- ☐ 16 to 20 years
- ☐ More than 20 Years
- ☐ Don't Know

### 3. Is your company based in New Jersey? (Check One)

- ☐ Yes
- ☐ No
- ☐ Don't Know

### 4. Is your company classified as a "small business?" (Check One)

- ☐ Yes
- ☐ No
- ☐ Don't Know

## The Procurement Process in New Jersey: A Survey of the Private Sector

### 5. Which of the following best describes your company's chief business? (Check One)

- ☐ Retail Goods
- ☐ Wholesale Goods
- ☐ Manufacturing
- ☐ Service Provider
- ☐ Consulting
- ☐ Professional Services
- ☐ Construction
- ☐ Technology
- ☐ Transportation

Other (please specify)

### 6. What is your title? (Check All that Apply)

- ☐ President
- ☐ Vice President
- ☐ Secretary/Treasurer
- ☐ Owner
- ☐ Partner
- ☐ Managing Member
- ☐ Bid Coordinator
- ☐ Sales

Other (please specify)

## The Procurement Process in New Jersey: A Survey of the Private Sector

**7. How would you describe your company's policy/terms with respect to "Accounts Receivable" receipt? (Check One)**

- ☐ Net 10 to 15 Days
- ☐ Net 16 to 20 Days
- ☐ Net 21 to 25 Days
- ☐ Net 26 to 30 Days
- ☐ Net 31 Days or More
- ☐ Don't Know

**8. How many public sector contracts does your company currently hold (in all states)? (Check One)**

- ☐ 0
- ☐ 1 to 3
- ☐ 4 to 6
- ☐ 7 to 9
- ☐ 10 or More
- ☐ Don't Know

**9. During the course of 2009, how often did your company submit a sealed bid, written quote, or RFP to a public agency in New Jersey? (Check One)**

- ☐ 0
- ☐ 1 to 8 Times
- ☐ 9 to 17 Times
- ☐ 18 to 26 Times
- ☐ More than 26 Times
- ☐ Don't Know

## The Procurement Process in New Jersey: A Survey of the Private Sector

### 10. How does your company receive information about various bid and RFP opportunities? (Check All that Apply)

- ☐ Newspaper Legal Notices
- ☐ Other Publications
- ☐ Through an Agency's Website
- ☐ Via a Third Party Service Provider
- ☐ Automatically Receive Bids from Public Agencies
- ☐ Don't Know

Other (please specify)

### 11. In New Jersey, bids have to be legally advertised at least 10 days before they can be opened. What do you believe is adequate time for vendors to receive, complete, and then return the bid package to the public agency? (Check One)

- ☐ 10 to 15 Days
- ☐ 16 to 20 Days
- ☐ 21 to 25 Days
- ☐ More than 25 Days
- ☐ Don't Know



## The Procurement Process in New Jersey: A Survey of the Private Sector

**\* 12. In certain cases (in New Jersey), if a specific document is NOT included in your sealed bid package, the bid will be automatically rejected (without the ability to correct or "cure the defect"). What is your opinion of this? (Check One)**

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

**\* 13. Of the following documents required and/or requested in a sealed bid package in New Jersey, which items create the most difficulty for vendors to submit a responsive bid? (Check ALL that Apply)**

- ☐ Business Registration Certificate (BRC)
- ☐ Disclosure Statement
- ☐ Non-Collusion Affidavit
- ☐ Statement of Ownership
- ☐ Affirmative Action/EEO (Evidence)
- ☐ ADA Compliance
- ☐ Public Works Contractor Registration Act (Evidence)
- ☐ Insurance Requirements
- ☐ Bids Guarantee
- ☐ Performance Bond/Surety
- ☐ Acknowledgment of Addenda
- ☐ Don't Know

Other (please specify)

## The Procurement Process in New Jersey: A Survey of the Private Sector

**\* 14. Which of the following responses best describes your opinion of the following statement: The Public Procurement Process in New Jersey is "Fair and Open." (Check One)**

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

**15. Does your company submit bids/RFP's to public agencies in states other than New Jersey? (Check One)**

- ☐ Yes
- ☐ No
- ☐ Don't Know

**\* 16. In your opinion, is it easier to submit bids/RFP's to public agencies in states other than New Jersey? (Check One)**

- ☐ Yes
- ☐ No
- ☐ Sometimes
- ☐ Don't Know
- ☐ No Opinion

## The Procurement Process in New Jersey: A Survey of the Private Sector

**\* 17. Thinking about New Jersey's public procurement process, how do you feel about the following statements? (Check One for Each Statement)**

	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
There is too much required paperwork in a bid package	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government agencies pay too slowly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New Jersey's purchasing laws, regulations, and rules are effective in attracting more quality vendors to compete for contracts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New Jersey's purchasing laws, regulations, and rules help create competition which assists agencies in securing quality goods and/or services at the lowest cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My company prefers to do business with other private sector companies as opposed to public agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public purchasing procedures are efficient and easy to follow	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 18. In New Jersey, how pervasive is the problem of "low-balling" -- whereby a bidder submits an artificially low price just to receive an award (whether or not they can actually provide the service or supply the product)? (Check One)**

- ☐ It's A Major Problem
- ☐ It's A Minor Problem
- ☐ It's Not a Problem at All
- ☐ No Opinion

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