

(b) Contracts entered into for the furnishing or performing of services of a professional nature, or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utility Commissioners of the State of New Jersey, shall not be subject to these regulations.

Amended by R.1982 d.446, effective December 20, 1982.
See: 14 N.J.R. 974(a), 14 N.J.R. 1464(d).

Hearings to be held by the Executive Director instead of the Chief Engineer. Arrangements for the hearing to be made by the Senior Attorney instead of the Chief Engineer.

19:9-2.2 Purchases for amounts requiring public advertising

(a) Rules concerning advertising and awards of bids:

1. Advertisement for competitive bids shall be placed in an appropriate newspaper or journal, having a large circulation in the State. Such advertisement shall be published not less than seven days preceding the date upon which the proposals are to be received and opened. All advertisements will contain:

- i. A brief description of the supplies, materials, equipment or services to be furnished or performed;
- ii. Notice of the place where proposal forms, specifications, terms and conditions may be obtained; and
- iii. The place, date and time when the sealed bids shall be publicly opened.

2. In addition to advertising, bids may be solicited from all known interested parties by mail. Such solicitations shall provide prospective bidders with at least the same information contained in the public advertisement.

3. In the event that amendment of any pertinent information supplied to prospective bidders becomes necessary, notice of the change(s) shall be given to all prospective bidders having requested specifications at least three days prior to the opening of the bids. If such notice is given orally, it shall be promptly confirmed by written addendum.

(b) Rules concerning terms and conditions applicable to submission of bids:

1. All bids must be properly signed and executed.
2. Any correction of an entry made on the proposal form should be initialed by a duly authorized representative of the bidder.
3. Bidders may withdraw bids, or withdraw and resubmit bids, at any time up to 15 minutes prior to the public opening, signed by a duly authorized representative of the bidding firm. Bids so withdrawn shall be returned to the bidders unopened.
4. In the case of inconsistencies or errors in unit prices, extensions and totals, the Authority shall have sole discretion to make determinations with regard to same.

If the total price is found to be incorrectly computed, discrepancies will be corrected by the Authority on the basis of the written unit prices, and determination of the low bidder will be made on the basis of the correct total price so determined. The Authority shall not be liable for any failure or error in determining or correcting errors or discrepancies.

5. In particular cases where permitted or required by the Authority in the particular bid specifications, bidders may be permitted to submit partial bids. The Authority reserves the right to accept any item or group of items of any bid.

(c) Rules concerning receipt, opening, and award of bids:

1. All bids solicited by advertising or by mail must be submitted in sealed envelopes provided by the Authority on the appropriately signed proposal forms furnished by the Authority on or before the time fixed for the public opening. Any bids received after the bidding has been closed shall be returned to the bidder unopened.

2. The purchasing or bid supervisor shall maintain a secured place for the purpose of receipt and securing bids. When sealed envelopes containing bids are received in the office of the Authority they shall be date-stamped and deposited (unopened) in the appropriate secure location.

3. Bids shall be opened publicly at the time and place designated in the Invitation for Bids or Advertisement for Proposals. The amount of each bid, the identity of each bidder, and such other information relevant to the bid shall be recorded in writing and the bid tabulation shall be open to public inspection.

4. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids or contract documents, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

5. Correction or withdrawal of inadvertently erroneous bids after opening, or cancellation of awards or contracts based on such mistakes, may be permitted in the sole discretion and determination of the Authority. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Authority or fair competition shall be permitted and a decision to permit the correction or withdrawal of bids, or to cancel awards or contracts, based on bid mistakes, shall be supported by a written determination made by the Director of Administrative Services and Technology or the Chief Engineer.

6. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids or other contract documents. The Authority retains the right to reject any or all bids, to waive informalities and minor irregularities, and to rebid the entire contract.

7. When it is determined impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids or Advertisement for Proposals may be issued requesting the submission of unpriced proposals to be followed by an Invitation for Bids or Advertisement for Proposals limited to those bidders whose unpriced proposals have been determined as qualified for the project by the Director of Administrative Services and Technology or the Chief Engineer.

8. Bid or proposal guarantees or bid or proposal bonds may be required in such form and amount as deemed necessary by the Director of Administrative Services and Technology or Chief Engineer to insure faithful performance of the contract or for the payment of persons performing work on the project. In that event, the requirement of a bid or proposal guarantee or bond, and the form and amount thereof shall be set forth or specified in the bid specifications.

9. Performance bonds, contract bonds or consents of surety may be required in such form and amount as deemed necessary by the Director of Administrative Services and Technology or Chief Engineer to insure faithful performance of the contract or for the payment of persons performing work on the project. In that event, the requirement of a performance or contract bond or consent of surety, and the form and amount thereof shall be set forth or specified in the bid specifications. The bond shall be submitted by the successful bidder upon notification.

(d) Rules concerning dispensing with public bid procedure:

1. A contract may be awarded for a supply, service, or product without competitive sealed proposals when the Authority upon written recommendation of the Director of Administrative Services and Technology or the Chief Engineer determines and acts by appropriate resolution that there is only one source for the required supply, service or product.

2. When the Authority deems that there exists threat to the health, welfare or safety of the public or of property under emergency conditions, or the exigency of the situation does not allow sufficient time to advertise and award bids by public bidding, the Authority may, by appropriate resolution, acting on the written recommendation of Director of Administrative Services and Technology or Chief Engineer, waive the requirement of public bidding provided that such emergency requirements shall be made with such competition as is practicable under the circumstances.

Amended by R.1993 d.496, effective October 4, 1993.
See: 25 N.J.R. 2839(b), 25 N.J.R. 4605(a).

19:9-2.3 Purchases under amount requiring public advertising

(a) In the case of purchases of personal property or services, where the aggregate cost or amount involved is less than the minimum amount for which public advertising for bids is required, competitive bidding is not required. As determined in the discretion of the Director of Administrative Services and Technology or Chief Engineer, price quotations may be solicited from vendors to the extent determined appropriate by the Director of Administrative Services and Technology or Chief Engineer.

(b) Awards of bids may be to other than the lowest bidder for valid reasons, if specifically recommended by the Director of Administrative Services and Technology or Chief Engineer.

Amended by R.1993 d.496, effective October 4, 1993.
See: 25 N.J.R. 2839(b), 25 N.J.R. 4605(a).

19:9-2.4 Termination of contract

A contract awarded to the successful bidder may be terminated by the Authority at any time for inadequate or improper performance, or for breach of any terms, conditions, or obligations of the contract, as determined by the Authority, or if the vendor shall make an assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or if an involuntary petition in bankruptcy is filed against the vendor and the act of bankruptcy therein alleged is not denied by the vendor. Upon termination, the Authority shall be liable only for payment of goods or services properly performed in accordance with the contract. The Authority shall have the right to purchase non-delivered goods to replace defective goods and services on the open market and hold the vendor liable for the difference between the price set forth in the contract for such goods or services and the prices paid on the open market. Further, the Authority reserves the right to terminate any contract entered into provided written notice has been given to the contractor at least 15 days prior to such proposed termination date. In addition, the Authority shall have the right, without the necessity of court proceedings, to recover all equipment, material or supplies that are the property of the Authority and have been entrusted with the vendor to be used in the performance of said contract. Nothing in this section is intended to limit the Authority's right to legally pursue all costs which exceed the amount due and owing the vendor under said contract. The list of remedies in this section is not exclusive.

Amended by R.1993 d.496, effective October 4, 1993.
See: 25 N.J.R. 2839(b), 25 N.J.R. 4605(a).

19:9-2.5 Purchases under or in combination with State or other agency contracts

(a) When it is determined to be proper and in the best interest of the Authority, the Authority may purchase equipment, goods, materials and supplies directly, without advertising, from vendors who hold contracts with the State of New Jersey or other State or multi-state authorities or agencies.

(b) When it is determined to be proper and in the best interests of the Authority, the Authority may contract with and purchase by public bid procedure, services, equipment, goods, materials and supplies, in combination with the requirements of the State of New Jersey or other State or multi-state authorities or agencies.

(c) In either event, the Director of Administrative Services and Technology or Chief Engineer will submit a written recommendation to the Authority which shall set forth the details of the proposed acquisition and shall state the reasons for proceeding under or in combination with such State or other State authority contract or requirements.

Amended by R.1993 d.496, effective October 4, 1993.
See: 25 N.J.R. 2839(b), 25 N.J.R. 4605(a).

19:9-2.6 Sale of surplus personal property

(a) Sales of surplus personal property, where the anticipated aggregate proceeds are estimated by the Director of Administrative Services and Technology or exceed the minimum amount requiring public advertising of purchases, shall be made after public advertisement and competitive bids. The advertising and bid procedures shall be basically as set forth in N.J.A.C. 19:9-2.2(a), (b) and (c). The Authority may by resolution waive the requirement of public advertising on a particular sale.

(b) In the case of sales of surplus personal property, where the anticipated aggregate proceeds are estimated by the Director of Administrative Services and Technology to be less than the minimum amount requiring public advertising or purchases, competitive bidding is not required. As determined in the discretion of the Director of Administrative Services and Technology, price quotations may be solicited from vendors to the extent determined appropriate by the Director of Administrative Services and Technology.

(c) Award of the sale will be made to the highest bidder meeting the terms and conditions of the bid.

(d) In the event no bids, or inadequate or low bids, in the determination of the Director of Administrative Services and Technology, are received, the Director of Administrative Services and Technology may in his discretion reject all bids, reoffer for sale, negotiate, trade-in or scrap the sale items.

(e) Upon determination by the Director of Administrative Services and Technology, surplus personal property or equipment may be sold in conjunction with or as part of an auction or sale proceeding conducted by the State of New Jersey or other State authorities.

Amended by R.1993 d.496, effective October 4, 1993.
See: 25 N.J.R. 2839(b), 25 N.J.R. 4605(a).

19:9-2.7 Procedure for prequalification and award of construction contracts

(a) All prospective bidders for construction in excess of \$50,000 shall be prequalified annually into classifications by the Chief Engineer. Prospective bidders will be classified according to the type of work and the amount of work on which they are entitled to bid as set out in the schedule of classifications set forth at Appendix A to this chapter, incorporated herein by reference. Proposals submitted by prequalified bidders who have received classification ratings as set forth in Appendix A within 10 percent of the total price of the proposal will be considered for award by the Authority. The Chief Engineer may, from time to time, add additional specialized work categories to the schedule of classifications.

(b) In order to prequalify in classification, prospective bidders shall submit annually or at least 21 calendar days prior to bid opening of a specific contract, proof of the following:

1. As to type of work, recent satisfactory experience as a contractor on a contract involving substantially the same or similar work to the classification being sought;
2. As to amount of work, recent satisfactory experience as a contractor on a single contract having a value of at least 60 percent of the maximum limit of the classification rating being sought; several contracts performed at or about the same time having a cumulative value of at least 60 percent of the said maximum limit;
3. Satisfactory financial condition of the prospective bidder;
4. Adequate facilities, including plant, equipment and experience of key personnel and officers of the prospective bidder;
5. That the bidder is not now, nor has been involved, directly or indirectly, in any proceeding, conduct or activity relating to, or reflecting upon, the moral integrity of the bidder by means of sworn affidavit; and
6. A Contractor's Qualifying Statement showing the prospective bidder's status at the end of the month prior to the date of the statement. When submitting a proposal, prequalified bidders may not submit another Qualifying Statement but will instead submit a prequalification recapitulation in such form as may be prescribed by the Authority.

(c) The Chief Engineer shall review the statement and other information submitted by the prospective bidder and shall notify the prospective bidder of the decision as to their classification by certified mail. The classification will be valid for a period of one year from the date of the Chief Engineer's decision, and the prospective bidder will be allowed to bid on all Authority contracts within its classification limits for this one year period without the need of additional prequalification, subject to subsections (d) and (g) below. At the end of this one year period, the prequalification of the bidder will expire, and to be renewed, the prospective bidder must meet the requirement of (b) above.

(d) The Chief Engineer shall reserve the right to require a prospective bidder to submit such additional evidence of qualifications as deemed necessary, and shall consider any evidence available of the financial, technical, and other qualifications and ability of the bidder. The Chief Engineer may change or revoke at any time the classifications of any bidder upon any evidence that said bidder does not meet the financial, technical, moral or other qualifications of the classification.

(e) The Chief Engineer may deny prequalification of any bidder who fails to comply with the provisions of subsection (b) above and, further, may recommend to the Authority rejection of any bid where the bidder, at such time, has failed to comply with the provisions of this section.

(f) The Authority reserves the right to waive the prequalification procedures and requirements in contracting in an emergency situation.

(g) A bidder may be disqualified from future bidding on any Authority project if such bidder claims, whether successfully or not, its right to withdraw its bid because of a unilateral mistake. Such qualification may be effective for a period of up to six months from the date of opening the bid sought to be withdrawn. Only in cases where the withdrawing bidder did not act in a commercially reasonable manner would the Authority choose to disqualify the bidder, unless the bidder previously sought to withdraw a bid within the 12 months preceding the date of opening of the bid sought to be withdrawn, in which event the bidder may be disqualified regardless of whether the second mistake was commercially reasonable.

(h) Bidders on all other contracts not requiring prequalification shall, however, comply with the provisions of subsections (b)3, 4 and 5 above.

Amended by R.1984 d.447, effective October 1, 1984.
See: 16 N.J.R. 2075(a), 16 N.J.R. 2689(b).

(b): "seven working days" changed to "21 calendar days".

Amended by R.1993 d.326, effective July 6, 1993.

See: 25 N.J.R. 62(b), 25 N.J.R. 2906(d).

Amended by R.1993 d.496, effective October 4, 1993.

See: 25 N.J.R. 2839(b), 25 N.J.R. 4605(a).

19:9-2.8 Procedure to resolve protested solicitations and awards

(a) Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract or its prequalification status or classification may protest to the Authority. The protest shall be submitted in writing within five business days after such aggrieved person knows or should have known of the facts giving rise thereto. Failure to file a timely protest shall bar any further action. The written protest shall set forth in detail the facts upon which the protestant bases its protest.

(b) Upon the filing of a timely protest, the Authority's Executive Director shall have the authority to conduct a hearing, to settle and resolve a protest of an aggrieved bidder, offeror or contractor concerning the solicitation or award of contract or prequalification status or classification. This authority shall be exercised in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) If the protest is not resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing. The decision shall state the determination made and reasons for the action taken. The decision shall be mailed or furnished promptly to the protestant and any other interested party.

(d) A decision under subsection (c) above shall be final and conclusive, unless any person adversely affected by the decision commences an action in court.

(e) In the event of a timely protest under (a) above, the Authority shall not proceed further with the solicitation, or with the award of the contract until the decision is rendered under subsection (c) above, or until the Executive Director after consultation with the Director of Administrative Services and Technology or Chief Engineer makes a written determination that the continued solicitation or award of the contract without delay is necessary to protect the interests of the Authority or the public.

Amended by R.1993 d.496, effective October 4, 1993.

See: 25 N.J.R. 2839(b), 25 N.J.R. 4605(a).

19:9-2.9 Licenses to cross

(a) A license to cross is a formal agreement with the Authority granting permission to cross and/or access any Turnpike property of any nature or description. This normally pertains to public and private utilities which must cross the Turnpike roadway in order to provide service to the public. In addition, licenses to cross are utilized by adjacent property owners to the Turnpike roadway that must utilize the Turnpike property for drainage and access purposes. Before seeking a license to cross, applicants are strongly advised to first consult with the Authority's Director of Law to ascertain what information will be required as part of the application and to meet with representatives of appropriate departments of the Authority. Said consultation may be arranged in the discretion of the Director of Law upon the applicant's request.

(b) In order to apply for a license to cross, an original and 11 copies of a letter containing the location of the Turnpike property affected, the purpose of the crossing and such other information as may be required by the Authority, along with 12 copies of the engineering plans in such form as may be required by the Authority shall be submitted to:

Director of Law
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, New Jersey 08903