

- ii. Are sound environmental practices such as recycling, energy efficiency, and waste reduction used?
- 2. Management criteria:
 - i. Project management:
 - (1) How well does the proposed scheduling timeline meet the contracting unit's needs?
 - (2) Is there a project management plan?
 - ii. History and experience in performing the work:
 - (1) Does the vendor document a record of reliability of timely delivery and on-time and on-budget implementation?
 - (2) Does the vendor demonstrate a track record of service as evidenced by on-time, on-budget, and contract compliance performance?
 - (3) Does the vendor document industry or program experience?
 - (4) Does the vendor have a record of moral integrity?
 - iii. Availability of personnel, facilities, equipment and other resources:
 - (1) To what extent does the vendor rely on in-house resources vs. contracted resources?
 - (2) Are the availability of in-house and contract resources documented?
 - iv. Qualification and experience of personnel:
 - (1) Documentation of experience in performing similar work by employees and when appropriate, sub-contractors?
 - (2) Does the vendor make use of business capabilities or initiatives that involve women, the disadvantaged, small and/or minority owned business establishments?
 - (3) Does the vendor demonstrate cultural sensitivity in hiring and training staff?
- 3. Cost criteria:
 - i. Cost of goods to be provided or services to be performed:
 - (1) Relative cost: How does the cost compare to other similarly scored proposals?
 - (2) Full explanation: Is the price and its component charges, fees, etc. adequately explained or documented?
 - ii. Assurances of performance:
 - (1) If required, are suitable bonds, warranties, or guarantees provided?

(2) Does the proposal include quality control and assurance programs?

iii. Vendor's financial stability and strength:

(1) Does the vendor have sufficient financial resources to meet its obligations?

5:34-4.3 Opening and evaluating proposals and awarding competitive Contracts

(a) The request for proposals document shall state the time and place for receiving and opening the proposals, and shall specify the criteria that will be used to evaluate proposals.

(b) At the time and place proposals are due, the names of all the vendors and the price of their respective proposals shall be announced in public. Prior to opening such proposals, the authorized agent shall, if not provided as part of the request for proposals document, describe the specific weighting of any evaluation criteria, which may be used for evaluating the proposals.

(c) The evaluation of request of proposals shall be subject to the following requirements:

1. The request for proposals document shall state the criteria for evaluating the proposals.

2. Where not otherwise required to do so by other applicable Federal, State and local regulations, the authorized agent may appoint a committee to assist in the evaluation of the proposals. Committees shall be subject to the following requirements:

i. If a committee is to be used, the names of the individuals who serve as committee members shall not be publicly disclosed until the evaluation report is presented to the governing body. Committee members shall be familiar with the need for the goods to be provided or the services to be performed in the request for proposals.

ii. Committee members may conduct their work separately or together.

iii. While a member of the governing body is not required to be a committee member, no more than one less than the majority of the current membership of the governing body may serve on a committee.

iv. The committee may use advisors, as it deems necessary to give opinions on evaluating proposals, except that the advisors shall be subject to the provisions of (e) below. The names of such advisors shall be included in the report submitted to the governing body.

v. Meetings of the committee are advisory in nature and are not subject to the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

3. At the option of the contracting unit, the request for proposals document may, after proposals are received

and opened, but prior to completing the evaluation of the proposals, provide the opportunity for vendors to provide clarification regarding their submission. The presentation shall address only those matters specified by the contracting unit. The presentation shall not be used for negotiation of a contract contrary to law.

(d) The process of establishing weighting criteria and evaluating proposals shall result in a finding that a specific proposal is the most advantageous, price and other factors considered, or that all proposals should be rejected.

(e) Before reviewing any proposals, each person evaluating a proposal shall assess their own affiliations and financial interest and those of their families that relate to their duties as someone evaluating a proposal to ensure they do not have a conflict of interest. For these purposes, a person has a conflict of interest with a proposal if that person or spouse, parent, or child would be in violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., or the School Ethics Act, N.J.S.A. 18A:12-21 et seq. as appropriate. Any person with a conflict of interest related to the competitive contracting proposal shall not participate in the evaluation process.

(f) Prior to evaluating the proposals, each individual participating in the evaluation of a proposal shall execute a statement in accordance with (e) above certifying they do not have a conflict of interest. Such statement shall reflect the provisions at (e) above, which relate to possible conflict of interest situations. This statement shall be filed with the authorized agent, prior to the beginning of the evaluation process. The certification shall be as follows:

I hereby certify that I have reviewed the conflict of interest standards in the Local Government Ethics Law or the School Ethics Act, as appropriate, and that I do not have a conflict of interest with respect to the evaluation of this proposal. I further certify that I am not engaged in any negotiations or arrangements for prospective employment or association with any of those submitting proposals or their parent or subsidiary organization.

5:34-4.4 Use of competitive contracting for non-listed services

(a) The authorized agent shall apply to the Director for approval to use the provisions of N.J.S.A. 40A:11-4.1k and 18A:18A-4.1k requesting the use of competitive contracting for the operation, management, or administration of services not otherwise listed in N.J.S.A. 40A:11-4.1a through j and 18A:18A-4.1a through j. The application shall be in letter form and shall provide the information reasonably required for the Director to respond to the request. If the Director finds that the subject matter of the application is consistent with the intent of the statutory provisions encouraging competitive contracting, then the Director shall approve the request. The Director may consider the level and characteristics of the service and competition in the market. Prior to submitting an application, an applicant may request to consult with the Director or designee to review issues regarding a potential application.

(b) Services that meet the requirements for procurement through competitive contracting may not be combined or included in a contract with other services which are required to be procured through competitive bidding so as to avoid the statutory obligation for the procurement of such other services through competitive bidding.

5:34-4.5 Use of competitive contracting for energy services

(a) For the purposes of N.J.S.A. 40A:11-4.1c and 18A:18A-4.1c, the "provision or performance of the physical improvements that result in energy services" for which competitive contracting shall not be used, includes the following:

1. The replacement or upgrading of lighting fixtures;
2. The replacement or upgrading of windows;
3. Outside and/or inside doors;
4. The replacement or upgrading of toilets and sinks;
5. The replacement or upgrading of roofs;
6. New boilers;
7. Electrical box upgrades;
8. Cafeteria equipment (that is, freezers and fryers, etc); and
9. Any combination of the above mentioned equipment or work in a single contract.

(b) The work described in (a) above shall be permitted as competitive contracting under the energy services company exemption of N.J.S.A. 40A:11-4.1c and 18A:18A-4.1c only if the goods and services are part of a comprehensive energy services design, plan or specification for which a single contractor will be responsible for the performance of the work.

Petition for Rulemaking.
See: 37 N.J.R. 533(a), 1233(a).

SUBCHAPTER 5. QUALIFIED PURCHASING AGENTS AND INCREASING THE BID THRESHOLD

Authority

N.J.S.A. 40A:11-37.1 and 18A:18A-49.2.

Source and Effective Date

R.2002 d.17, effective January 22, 2002.
See: 33 N.J.R. 1994(a), 34 N.J.R. 524(a).

Law Reviews and Journal Commentaries

Bidding on Public Construction Contracts. Michael S. Simon, 217 N.J.L.J. 30 (2002).