

SUBCHAPTER 2. BIDDING PROCEDURES

17:12-2.1 Advertised bids

(a) When advertising is required, the advertisement for bids shall be placed in such newspaper or newspapers selected by the Director, Division of Purchase and Property as will give best notice thereof to bidders. Advertisements shall be made a minimum of 10 working days in advance of the bid opening in order to permit competitive bidding.

(b) If during the course of a purchase advertised pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such amendments shall be advertised a minimum of five working days in advance of the bid opening date and time.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.2 Bid security

(a) The Director or his designee may require bid security where, in his or her opinion, it is determined that security is warranted, based upon a review of market conditions and an evaluation of potential risk to the State.

(b) Bid security, in such amount as the Director or his designee deems necessary, shall consist of a certified or cashier check drawn to the order of the Treasurer of the State of New Jersey, an individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit shall be drawn naming the State Treasurer, State of New Jersey as beneficiary issued by a Federally insured financial institution.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), "bid security" replaced bid deposit and bond requirement; in (b), "irrevocable letter of credit" option added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.3 Performance security

(a) Performance security may be required by the Director, Division of Purchase and Property or his designee in such an amount on any award for a term contract or line item purchase in which the Director or his designee, at his discretion, feels that such security is warranted. The perfor-

mance security shall consist of a certified or cashier's check drawn to the order of the Treasurer of the State of New Jersey, an individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit shall be drawn naming the State Treasurer, State of New Jersey as beneficiary issued by a Federally insured financial institution.

(b) Failure to submit the required performance security may be sufficient cause for the Director to cancel the contract and assess the contractor for any costs incurred by the State.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), Director's "designee" and "irrevocable letter of credit" option added. Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.4 Information in bidding

(a) The Director reserves the right to waive any minor informalities not in compliance with the specifications, terms, and conditions of the invitations to bid, including, but not limited to:

1. Failure to attend a non-mandatory bidders' conference or site inspection;
2. Failure to submit bid samples or furnish sufficient product description when that information is not required to evaluate the bid;
3. Failure to return a certificate of insurance. This certificate of insurance may be accepted prior to issuance of a contract or purchase order provided that the vendor expresses his intent to do so in the bid proposal.

(b) The Director may make a stipulated award to a bidder when deemed to be in the best interest of the State, considering terms, conditions, specifications and cost. However, in no case shall the stipulated award be used to correct a deficient bid proposal.

As amended, R.1980 d.142, effective April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.5 Cause for automatic rejection of bids

(a) Pursuant to N.J.S.A. 52:34-12, the State Treasurer has determined that it is in the public interest to establish grounds for automatic rejection of bids which fail to con-

form with the requirements of the request for proposal in the following respects:

1. No signature in the bid document: If the vendor has not affixed his signature anywhere in the bid document, that is, on any of the documents he returns in response to a request for proposal. Signature on an enclosed bid deposit check (where bid security is required) will not suffice, since bid security is not considered part of the bid document. Signatures on the Stockholders Disclosure Form and the Affirmative Action Affidavit do not constitute a bid signature;

2. Bid not received on or before the time and date, and at the place specified on the bid request form;

3. If a bid fails to provide price information;

4. Failure to provide bid security when it is required and in the amount specified in the bid;

5. Failure to attend a mandatory bidders' conference or site inspection;

6. Failure to initial price alterations: If a unit price in the bid has been altered, the vendor's initials must appear adjacent to the alteration. Examples of alterations include, but are not limited to, cross-outs, erasures, etc., with reentered prices. If the alteration has not been so initialed, that particular item only in the bid will be automatically rejected, except as follows: If the extended price is correct and does not contain alterations, it shall be considered the bid price. If the extended total price does not contain alterations and the altered unit price is not initialed, the extended total price is considered as the bid price. In the event of an automatic rejection, and when the bid contains multiple items, the remainder of the bid will be evaluated;

7. If information essential to a bid evaluation, including but not limited to, price, terms, and product description is submitted in pencil; provided, however, that the bid may not be rejected if the same essential information appears elsewhere in the bid, either typewritten or printed, and provided further that the information is entirely consistent with the information submitted in pencil and does not invite any other interpretation;

8. Failure to comply with the State Affirmative Action guidelines promulgated pursuant to chapter 127, P.L. 1975; Stockholder Disclosure requirements promulgated pursuant to chapter 33, P.L. 1977; or foreign corporation registration requirements under N.J.A.C. 17:12-2.10 and N.J.S.A. 14A:13-1, et seq.;

9. Telephone, telefacsimile or telegraph bids will not be accepted for publicly advertised bid requirements which specify sealed bid submissions.

In (a)1, "Stockholders Disclosure Form" and "Affirmative Action Affidavit" included as non bid signatures; in (a)2, "at the place specified" added; in (a)4, "amount specified in the bid" added; (a)9 added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.6 Tie bids

(a) In the event that prices submitted by two or more vendors are identical, the Director shall award the contract based on a relative comparison of the following factors:

1. Delivery advantage, considering time, distance, convenience, and facilities of vendor;

2. History of vendor performance as evidenced by formal complaints or, if applicable, record of outstanding performance;

3. The fact that the vendor is a New Jersey based vendor.

(b) When none of the above distinguishable characteristics are available, the Director shall, if practicable, provide for contract award by splitting the award.

17:12-2.7 Bid errors

(a) If a bidder discovers after submitting his bid, but prior to bid opening, that he has made an error, he may request that his bid be withdrawn. Such requests must be made to the Supervisor, Purchase Bureau. If the request is granted, the bidder may submit a revised bid as long as the bid is received prior to the time for bid opening.

(b) If an error is discovered after bid opening but before contract award, the vendor may request that his bid be withdrawn. The decision to withdraw shall be at the discretion of the Director, Division of Purchase and Property. Evidence of vendor good faith shall be used by the Director in making this determination. Other essential conditions to relief may include: that the mistake is of so great a consequence that to enforce the contract as actually made would be unconscionable; that the matter as to which the mistake was made relates to a material feature of the contract; that the mistake occurred notwithstanding the exercise of reasonable care by the party making the mistake; and that the vendor get relief by way of cancellation without serious prejudice to the State.

(c) The Director may, under extraordinary circumstances, allow for a bid to be withdrawn after contract award. In these cases, however, the vendor requesting withdrawal of his bid and contract rescission will be liable for any administrative expenses incurred as a result of contract cancellation and subsequent re-award.

As amended, R.1980 d.142, effective April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 17:12-6.2 may be the basis for the imposition of a concurrent suspension by P and P, which may impose such suspension without the approval of the Attorney General or his designee.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.6.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.7 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by P and P:

1. P and P may suspend a person or his affiliates, provided that within ten days after the effective date of the suspension, P and P provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General or his designee determines that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth P and P's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by P and P, the latter shall note the fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be

imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.7.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.8 The extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension, or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of P and P including any contracts which utilize State funds. When it is determined by the Director of P and P to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract. A copy of said exception shall be filed with the Attorney General or his designee.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.8.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.9 Prior notice by P and P

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given to the Attorney General, or his designee, and the Treasurer.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.9.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.10 List of debarred, suspended or disqualified persons

P and P shall supply to the State Treasurer a monthly list of all persons having been debarred, suspended, or disqualified in accordance with the procedures prescribed herein. Such list shall at all times be available for public inspection.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.10.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.11 Director's authority to contract

Nothing contained herein shall be construed to limit the authority of the Director of P and P to refrain from contracting within the discretion allowed by law.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.11.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.
See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.