

24.2(a)2 and (b) shall not exceed 10 percent of that class of stock outstanding; and

8. The total amount of shares directly purchased or acquired of any one exchange-traded fund shall not exceed 10 percent of the total shares outstanding of such fund.

(b) If, subsequent to the time of initial presentation to the Board (or, for investments under \$50 million, the Investment Committee) in accordance with N.J.A.C. 17:4A-1.4(a) or purchase of publicly traded securities, the limitations at (a) above are exceeded, then the Board shall be notified at the next regularly scheduled meeting of the Board. The Chief Investment Officer or Investment Committee may authorize a six-month grace period to reduce the level of participation below the maximum levels, provided that:

1. The reduction shall be effected solely by the reduction of investments made directly by the eligible fund and shall not be applied to the eligible fund's proportionate interest in investments made through a common pension fund; and

2. The grace period may be extended for additional four-month periods with the approval of the Board, provided the extension is in the financial best interest of the fund.

(c) For investments in funds-of-funds, the limitations at (a) above shall apply to the underlying investments and not to the funds-of-funds themselves.

(a)

**DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION**

**Electronic Procurement of Public Works Construction Project Rules**

**Adopted New Rules: N.J.A.C. 17:19-6**

Proposed: January 19, 2021, at 53 N.J.R. 119(a).

Adopted: June 9, 2021, by Christopher Chianese, Director, Division of Property Management and Construction.

Filed: June 9, 2021, as R.2021 d.071, **with a non-substantial change** not requiring additional notice or public comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:34A-5, 52:34A-6, 52:34A-7, and 52:34A-8.

Effective Date: July 6, 2021.

Expiration Date: February 18, 2023.

**Summary of Public Comments and Agency Responses:**

1. Comment received from Associated Construction Contractors of New Jersey (ACCNJ) by letter dated March 19, 2021.

COMMENT: ACCNJ's response was positive and supportive of the proposed rules and did not express objections or proposed changes to the rules.

RESPONSE: The Division of Property Management and Construction (Division) thanked ACCNJ for its support.

2. Comment received from the Surety and Fidelity Association of America (F&S) by letter dated March 17, 2021.

COMMENT: While F&S was generally supportive of the proposed rules, it expressed a specific concern that N.J.A.C. 17:19-6.5, while referencing "bid security" (that is, bid bonds) as a category of documents that must be filed in electronic format, was silent as to whether performance and payment bonds would similarly have to be filed electronically. F&S has been a strong advocate for submission of all construction-related surety bonds in electronic format and sought assurance that the Division would accept performance and payment bonds electronically once the electronic procurement system was operational.

RESPONSE: The Division reassures F&S that it did not interpret either the proposed rules or the enabling legislation as precluding the Division's acceptance of performance and payment bonds in electronic format. N.J.A.C. 17:19-6.5 only refers to documents that must be submitted with a contractor's bid. This includes bid bonds, but not performance or payment bonds. In contrast, N.J.A.C. 17:19-6.4(b)6 specifically identifies "performance bond security where required by law" among the documents

to be submitted in electronic format. While this language does not specifically mention payment bonds, it is the Division's view that the enabling legislation covers payment bonds, and that the Division will require both performance and payment bonds to be submitted electronically once the procurement system is operational.

3. Comment received by the Utility and Contractors Association (UTCA) by email dated May 6, 2021.

COMMENT: The UTCA expressed concern about the language at N.J.A.C. 17:19-6.3(a), that it did not provide sufficient public notice of State contracting unit bid advertisements to advise subcontractors and material and equipment suppliers who do business with UTCA's member contractors.

RESPONSE: The Division will make the requested change at N.J.A.C. 17:19-6.3. The change requires the State contracting unit to list all pending bid advertisements on the State contracting unit's website. This is consistent with current Division practice and, for this reason, does not require additional notice or comment.

**Federal Standards Statement**

The adopted new rules do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. As a result, a Federal standards analysis is not required.

**Full text** of the adopted new rules follows (addition to proposal indicated in boldface with asterisks **\*thus\***):

SUBCHAPTER 6. ELECTRONIC PROCUREMENT OF PUBLIC WORKS CONSTRUCTION PROJECT RULES

17:19-6.1 Purpose

The purpose of this subchapter is to promulgate standards for the implementation and use of electronic procurement technologies that ensure the integrity and procedural protections of sealed public bidding and competitive contracting in an electronic environment.

17:19-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Electronic construction procurement" means, for the purposes of public works construction projects, the use of computer technology and the Internet for: the advertising and submission of public bids, providing notice of revisions or addenda to advertisements or bid documents, the receipt of proposals and quotations, and related practices to assist in determining the lowest responsible bidder or other agency-appropriate bid or proposal procurement standard.

"Public works construction" means any project that is subject to the New Jersey Prevailing Wage Act, P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.), and is contracted for by a State or local public contracting unit for the purposes of construction, reconstruction, demolition, alteration, custom fabrication, repair work, or for maintenance work, including painting and decorating, done under contract and paid for, in whole or in part, out of the funds of a public body. Public works construction also means construction, reconstruction, demolition, alteration, custom fabrication, repair work, or maintenance work, done on any property or premises, whether or not the work is paid for from public funds if at the time of the entering into the contract, the property or premises is owned by the government entity.

"State contracting unit" means a government entity that contracts for the procurement of goods, services, or the construction of public works pursuant to the State College Contracts Law, P.L. 1986, c. 43 (N.J.S.A. 18A:64-52 et seq.); P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.); or Chapter 32, 33, or 34 of Title 52 of the New Jersey Revised Statutes.

17:19-6.3 Advertisement of public works construction projects

(a) The DPMC, and other State contracting units shall advertise for bids on public works construction projects, whenever the project requires advertisement, through the use of an electronic construction procurement process **\*and the State contracting unit's website\***. Additionally, it may solicit bids in one or more of the following methods as necessary:

- 1. In newspapers;

- 2. By use of direct mailings to classified firms;
- 3. In design and construction publications and trade journals covering the construction industry in New Jersey; or
- 4. By written notice to New Jersey professional societies and associations.

17:19-6.4 Procedure for the advertisement, bidding, and award of contracts for public works construction by State contracting units through electronic construction procurement

(a) Whenever a State contracting unit is required by law to publicly advertise a contract for public works construction, the advertisement, issuance of bidding documents to interested bidders, public notice of revisions, addenda, or bulletins to bidding documents, submission and receipt of bid proposals, and notice of contract award shall be administered through an electronic construction procurement process as required by the Electronic Construction Procurement Act, N.J.S.A. 52:34A-1 et seq.

(b) Contracts to be awarded for State construction projects through the use of an electronic procurement process shall contain the following bid components:

- 1. General conditions of the contract;
- 2. Plans and specifications of the public works construction project;
- 3. Competitive bidding for the contract, if appropriate;
- 4. Classification of firms submitting bids, if required;
- 5. A statement of corporate ownership of the entity or entities submitting bids;
- 6. A bid bond and performance bond security, where required by law;
- 7. Execution of the contract;
- 8. Certification of financial ability to complete the work;
- 9. Commencement of the work;
- 10. A prevailing wage mandate;
- 11. An acknowledgement of addenda and bulletins;
- 12. The naming of prime subcontractors, where required by law, or the bidding documents;
- 13. Specified alternates;
- 14. A non-collusion affidavit; and
- 15. A political contribution disclosure.

(c) In submitting bids for State public construction projects through an electronic procurement process, bidders and vendors shall use the bid proposal form or format, which shall be available on the DPMC website.

(d) All contractors or vendors seeking a contract for public works construction pursuant to N.J.S.A. 52:34A-6.c shall be classified, as required, with DPMC, as provided in this subchapter or prequalified by the Department of Transportation, NJTransit, or the New Jersey Turnpike Authority, prior to submitting a bid to those agencies.

17:19-6.5 Criteria required for electronic procurement processes

(a) The electronic procurement processes employed in the advertisement, bidding, and award of contracts for State public works construction shall meet the following:

- 1. Allow for a business or company that creates or provides software to effectuate electronic procurement to provide those services pursuant to N.J.S.A. 52:34-1 et seq., if the business or company has prior experience providing electronic procurement services to the State and to other public entities including, but not limited to, experience prior to the effective date of N.J.S.A. 52:34A-1 et seq.;
- 2. Allow State contracting units to advertise bids and distribute bidding documents, including plans and specifications;
- 3. Be a closed loop system that allows contractors, vendors, and bidders, to receive bid solicitations and documentation, as well as submit bids electronically;
- 4. Provide a digital lockbox that ensures bid information cannot be accessed by a third-party before the bid deadline, including an electronic bidding servicer or the State;
- 5. Allow bids to be encrypted upon submission and when in the digital lockbox;
- 6. Use digital signature technology and provide for identity verification;
- 7. Allow for electronic bid validation;
- 8. Allow bids to be withdrawn and resubmitted by the vendor or bidder at any point up to the published bid deadline;

- 9. Allow addenda and bulletins to be issued electronically with addenda and bulletins automatically applied to the online bid form;
- 10. Provide capabilities to create and edit templates of bid forms;
- 11. Provide the means for the State to require data types including, but not limited to, numeric prices;
- 12. Alert contractors, vendors, and bidders of missing required data;
- 13. Provide email notification to contractors, vendors, and bidders of issuance of bid advertisement, bulletins, and addenda;
- 14. Identify classification or commodity codes, as required by the contracting agency to allow for targeted notifications to contractors, vendors, and bidders;
- 15. Provide system implementation services and training to State contracting units at no cost; and
- 16. Offer scheduled training webinars for contractors, vendors, and bidders at no cost.

(b) To the extent required to implement the electronic procurement requirements set forth at N.J.S.A. 52:34A-1 et seq., all current statutory, regulatory, and policy procedures related to public bidding shall be converted to an electronic procurement environment.

1. Any document that by operation of statute, rule, or policy is required to be included with a bid or proposal submitted in a public works construction procurement, the form of which requires an affidavit, notarization, or physical seal or the signature or certification of a third-party not covered by, or subject to, the identity verification process or digital signature technology in an electronic procurement process for a public works construction project, shall be submitted as a scanned electronic image or other electronic file; and shall be deemed acceptable by the State contracting unit, as long as the original document from which the electronic file is derived contains the required affidavit, notarization, physical seal, certification, and/or signature as otherwise required by law.

2. A party submitting an electronic file version of a document described at (b)1 above shall retain the original document from which the electronic version is derived, and shall produce the original document, upon request by the State contracting unit, at, or after, the time of bid opening, contract award, or other relevant time as specified in the advertisement or solicitation documents.

(c) State contracting units are hereby authorized to accept commercial standards for electronic forms of bid security.

(d) Advertising, bidding, and award of contracts for goods and services including, but not limited to, information technology services, hardware, and software, in connection with the acquisition, implementation, or maintenance of all or any part of an electronic procurement process system shall be administered under existing statutes and rules governing procurement by the State for goods and services.

**OTHER AGENCIES**

**(a)**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION  
Negotiations and Impasse Procedures; Mediation,  
Fact-Finding, Super Conciliation, and Grievance  
Arbitration**

**Redoption with Amendments: N.J.A.C. 19:12**

**Adopted New Rules: N.J.A.C. 19:12-6.5 and 8**

Proposed: February 16, 2021, at 53 N.J.R. 234(a).

Adopted: May 27, 2021, by the Public Employment Relations Commission, Joel M. Weisblatt, Chair.

Filed: June 7, 2021, as R.2021 d.069, **without change**.

Authority: N.J.S.A. 34:13A-5.4.e, 34:13A-6.b, 34:13A-11, 34:13A-39, 34:13A-5.13.h, 34:13A-46, and 40A:14-211.b.

Effective Dates: June 7, 2021, Redoption;

July 6, 2021, Amendments and New Rules.

Expiration Date: June 7, 2028.