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The purpose of this chapter is to provide guidance on how the bidding requirement is to be implemented while ensuring compliance with the uniform bid process and contractor relations.

Responsible Contractor: Each bidder for a contract to perform weatherization work shall state in its bid if it is a "Responsible Contractor". The Contractor shall certify on the "Responsible Contractor Certification," that the conditions to be considered a responsible contractor for doing business with WAP have been met.

WAP Agencies shall verify that the Justification for Selection of Contractor form is satisfactorily completed.

1. Contractors' Registration Act

New Jersey's Contractors' Registration Act, NJSA 56:8-136 et seq., requires that contractors engaged in the business of selling or making home improvements must be registered with the Division of Consumer Affairs.

Home improvements are defined as the remodeling, altering, renovating, repairing, restoring, modernizing, moving, demolishing or otherwise improving or modifying of the whole or any part of any residential or non-commercial property, insulation installation and the conversion of existing commercial structures into residential or non-commercial property.

The Act exempts from the registration requirement: any person performing a home improvement upon a residential or non-commercial property he owns, or that is owned by a family member, a bona fide charity, or other non-profit organization;

- any person who is in a profession (i.e., architect, engineer, plumber, electrician) requiring registration, certification or licensure by the State who is acting within the scope of his profession;
- any person employed by a community association or cooperative corporation;
- any public utility and home improvement retailer (Sears, Home Depot) with a net worth of $50,000,000 or employee of that retailer.

Construction code officials will not issue a construction permit to a contractor who is not in compliance with the Act.

Information about the registration requirements is available at the offices of local construction code officials and online at http://www.nj.gov/dep/exams/docs/contractor_reg_act.pdf.

2. Small Business Bidder

The Small Business Bidder (SBB) shall satisfy the qualifications for that designation at the time of the bid submission.

SBB shall submit a trained and qualified workforce compliance plan as part of the Bid Package Checklist.

3. Bid-Package Review Checklist and Other Required Bid Documents

In the Appendix you will find the required forms which must be completed and maintained on file at the WAP Agency to document procedural compliance with N.J.S.A. 40 A:11-1 et seq., "*Local Public Contracts Law*", as well as the Common Rule 2 CFR § 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and OMB Circular A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations .

All bids should be submitted on the contractor's letterhead.

The required forms shall be collectively referred to as the Bid Package and shall include the following documents, which can be found in the Appendix:

- Bid Package Review Checklist
- Justification for Selection of Contractor
- Non-Collusion Affidavit of Prime Bidder
- Contractor Registration Application
- Affirmative Action Affidavit

The Bid Package shall be completed and maintained on file whenever weatherization services and/or equipment are procured through a sealed bid procedure.

The Bid Package shall be maintained on file at the agency to document procedural compliance pursuant to N.J.S.A. 40A:11-1 et seq., Local Public Contracts Law, 2 CFR § 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and OMB Circular A-110, Uniform Administrative requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

4. Bidding Procedures

4.1. Posting

All WAP Agencies are required to publish bid requests for three consecutive days in a local newspaper with a bid opening conference date 10 days from the first day the ad was published. Copies of bids in PDF format must be submitted to OLIEC for posting on NJ WAP webpage prior to publishing in local newspapers. The following information must be provided for posting on webpage:

- **Post Date**

- **Bid Close Date**
- **Bid Opportunity**
- **Agency**

4.2. Bid Opening Procedures

Bids shall be opened by a WAP Agency representative only at the time and place specified in the bid request letter and published announcement, in the presence of an WAP Agency representative, interested contractors and a DCA WAP State Monitor.

If the WAP Agency rejects all the bids and intends to solicit additional proposals, contractors who originally submitted bids that were opened pursuant to the opening procedures shall be advised in writing that those projects will be re-bid.

4.3. Sole Bidder

For those instances where there is only one bidder for services or equipment valued at $17,500 or more, these forms and copies of supporting documentation must be submitted to the OLIEC for procedural approval of the contractor/vendor selection process. Do not submit originals of these documents when requesting this approval.

For OLIEC Sole Bidder Review, WAP Agencies must submit the following documents:

- Justification for Selection of Contractor
- List of Contractors who picked up the bid and/or were mailed bid packages
- Copy of newspaper ad and proof of publication (affidavit of ad).
- Copy of sign in sheet from Bid Opening
- Summary of minutes of bid opening. The summary must include the date and time of bid opening.
- List of labor and material costs per unit.
- Copy of Sole Bid

State Monitor will review the package for contents prior to its being sent to DCA for Sole Bidder review. Failure to submit any of the above documents may result in WAP agency having to rebid the package.

The State Monitor will conduct reviews of the adequacy of the procurement process for other transactions as part of the regular monitoring process. Any questions regarding these forms should be directed to the assigned State Monitor.

5. List of Suspended and Debarred Contractors

Local contracting agencies utilizing federal funds are expected to access the GSA Debarred Lists and verify eligibility for all prime contractors prior to contract award. Although subcontractor clearance is the responsibility of the prime contractor, it is wise to check the subcontractor eligibility at the same time to ensure compliance. The GSA's Lists of Parties Excluded From Federal Procurement or Non-procurement Programs (AKA Debarred List) is available on the Internet. The direct address is: https://www.gpo.gov/fdsys/pkg/CFR-2002-title48-vol1/xml/CFR-2002-title48-vol1-sec9-404.xml.

The New Jersey Prevailing Wage Act requires public bodies to obtain a list of contractors or subcontractors who failed to pay prevailing wage rates. No contract is to be awarded to such contractor or subcontractor. The New Jersey Consolidated Department Report is available through INFOBANK on the Garden State Network. The report is also available on the Internet at the following address: https://www.nj.gov/treasury/revenue/debarment/

6. Procurement of Insulation Products Containing Recovered Materials

Bidders shall utilize insulation products which contain the highest practicable percentage of recoverable materials, pursuant to federal funding mandates for WAP agencies.

Federal Environmental Protection Agency regulations, Section 6002 of the Resource Conservation and Recovery Act, require that WAP Agencies who annually procure $10,000 or more of insulation with Federal funds must institute an affirmative procurement program to ensure that procurement of those insulation products which contain the highest practicable percentage of recoverable materials.

Section 6002 of the Solid Waste Disposal Act, as amended by the Resources Conservation and Recovery Act of 1976 (RCRA), states that such items must be composed of the highest percentage of recovered materials practicable. On February 17, 1989, the Federal Environmental Protection Agency (EPA) promulgated the final rule applicable to the procurement of building insulation products.

The EPA final guideline states that by February 20, 1990, those agencies using Federal funds to procure building insulation products must put into effect an affirmative procurement program to insure the procurement of insulation products composed of the highest percentage of recoverable materials practicable, taking into consideration competition, availability, technical performance and cost.

The insulation products covered by the final rule include cellulose, fiberglass, perlite composite board, plastic foams and boards, and rock wool. Only those agencies which procure $10,000 or more of these products annually are required to put into effect an affirmative action program.

The EPA guideline does not require any agency to shift from the use of one insulation product to another. The intent of the guideline is to encourage agencies in the selection of their preferred insulation products to procure those with the highest practicable percentage of recovered materials.

Please see the Additional Resources for the "Comprehensive Guideline for Procurement of Products Containing Recovered Materials."

7. Pollution Occurrence Insurance and Lead Safe Work Practices

DOE no longer requires Pollution Occurrence Insurance (POI) for WAP Agencies and contractors, but it still strongly recommends POI. The costs of POI can be charged to the grant as part of the Liability Insurance. If a WAP agency chooses not to hold POI coverage and damage occurs, the cost to do remediation, cleanup, relocation, medical expenses or any other resulting costs may not be charged to DOE Annual, LIHEAP Weatherization or Heating Improvement grants and must be covered by another funding stream. Refer to WPNs 02-6, 09-06 and 12-1 for more information.

WAP Agencies must submit copies of the required insurance with contracts. WAP Agencies (crew workers) and contractors must include a copy of the Lead-Safe Work Practices Certificate with bid packages.

8. Prompt Payment Requirement

WAP Agencies shall compensate weatherization contractors and suppliers for services rendered within thirty (30) days of invoice receipt and satisfactory WAP Agency's final inspection.

9. Payment to Contractors for Weatherization Materials Not Installed

Payments to contractors for weatherization materials not installed are permitted only under specific and limited circumstances. WAP Agencies and their contractors must work together to avoid this situation whenever possible. Payment to contractors for uninstalled materials may only be made with advance written approval from OLIEC. This approval will only be granted when the reason for the non-installation is neither agency nor contractor related. Uninstalled weatherization materials which are paid for with grant funds become the property of the WAP Agency, with a lien held by the New Jersey Department of Community Affairs, Office of Low-Income Energy Conservation (OLIEC). The ultimate disposition of this property is subject to OLIEC approval.

Weatherization contracts provide specific authority for WAP Agencies to subcontract for weatherization services (Program Provisions Section VIII). Section A.11 of this part requires that, "All materials must be installed in accordance with the procedures and priorities outlined

in the New Jersey Weatherization Field Guide, EA-QUIP, the DOE approved waiver audit, or any energy audit specified by the Department".

It is also possible for WAP Agencies to make payments to contractors for weatherization materials which are not installed under specific and limited circumstances. WAP Agencies must first receive advance written approval from the OLIEC before making any payment to contractors for uninstalled weatherization materials.

This approval will only be granted when the reason for the non-installation is neither agency- nor contractor-related. It is anticipated that this situation will be a rare occurrence. OLIEC will evaluate each WAP Agency's request to pay a contractor for uninstalled materials individually, as the cause for the non-completion of the weatherization work will be different in each case. For example, a building owner may decide to withdraw from participation in the program after the contractor has received the materials designated for that building. Similarly, a building scheduled for weatherization may be substantially damaged by fire, flood or storm before the materials are installed.

Prior to requesting OLIEC permission to pay the contractor, the WAP Agency and the contractor should seek a mutually satisfactory solution which does not involve a payment for uninstalled materials. At a minimum, the contractor should seek to return the materials to the supplier for a refund, and the WAP Agency and contractor should determine if the materials can be used on another weatherization service or another project.

When seeking OLIEC approval for this type of payment, the WAP Agency should submit a detailed narrative report describing the circumstances of the particular case. The report should also include the material specifications, a copy of the supplier's invoice for the material, and a notarized statement from the contractor concerning the contractor's inability to return or find an alternate use for the material.

If the request to pay the contractor is approved, the OLIEC will make the necessary adjustments when calculating allowable expenditures and reimbursements.

10. Contractor Non-Cooperation

WAP Agencies who are experiencing difficulty with contractors who are refusing to do retrofits and/or replacements in certain areas, particularly urban areas, should take the following action:

1. Request specific reasons from the contractor for refusing the job. Contractors have the right to refuse a job that they believe cannot be completed successfully for health and safety reasons, or because it is not their regular service territory.

2. Follow-up in writing to the contractor and send a copy to the OLIEC office.

3. If it is determined that a contractor is "redlining" or refusing to work in low income areas, that may constitute a violation of the non-discrimination clause in the grant contract.

11. Contractor Fines

Pursuant to terms of agreement between WAP Agency and contractor, the agency has the option to impose a fine, determine how the fine amount will be calculated, and under what circumstances or types of circumstances it shall be enforceable.

Funds may accrue to a WAP Agency as the result of a fine levied by the agency on a contractor. Funds which accrue to agencies from these fines shall be expended in the same manner as the contractual funds which generated the fines. The contractor shall maintain production and accounting records concerning the disposition of fined funds, and said records shall be made a part of the annual agency financial audit.

12. Bidding and Contractor Requirement for Heating Systems

12.1 Bidding Procedures for Heating System Upgrades

Heating System Upgrades (HSU) include but are not limited to hot water tank replacement, upgrades and repair.

A minimum of three (3) bids must be requested by the WAP Agency for each non-emergency project. The bid request by the WAP Agency shall be by letter advising the contractor to submit a sealed bid and shall provide a cut-off date for submission of said sealed bid.

Heating system replacement requests received from October 1st through May 1st are to be considered emergencies because of the correlation of these dates to the need for heat. WAP Agencies must solicit 3 requests for proposals from three different heating contractors with a deadline for submission of 24 hours during the week and 48 hours during the weekends.

For a no heat and/or hot water situation, one bid is acceptable only if the WAP Agency has demonstrated that it requested bids from a minimum of three heating contractors.

Copies of all bid letters shall be placed in the client file.

Projects which require a heating system upgrade, replacement or repair with a total cost of at least $17,500 shall be awarded pursuant to the procedures in the Local Public Contract Law http://www.state.nj.us/dca/divisions/dlgs/programs/lpcl_docs/njac5_34_1_etseq.pdf.

OLIEC recommends that an ad be placed in the local newspaper at the beginning of each grant period inviting area heating contractors to submit the documentation required to be included in the bidding process.

12.2. Required Permits and Documentation

12.2.1. Heating System Permits and Permit Applications

Contractors must apply for a permit before starting a heating system upgrade, unless the installation is an emergency that occurs outside of business hours, in which case, the contractor will apply for the permit the next business day after the emergency occurs.

The contractor will submit either a copy of the permit, or if the permit has not been provided to the contractor at the conclusion of the work, a copy of the application must be provided.

The application will not be deemed acceptable unless all the following information is included:

1. The control number and permit number
2. The application date and the permit fee
3. The name of the contractor and homeowner
4. Work to be covered by the permit and location of the work
5. Total cost of the work

If the application does not include the information listed above, the agency may not accept the application, and the contractor may not be paid until the actual permit is received.

WAP Agencies are expected to work with the local code officials to ensure that inspections are completed in a timely fashion and to determine if delays in producing the required permits are backlogs at the local government level or due to late application filing on the part of the installing contractor.

WAP Agency's final approval of a heating system installation does not relieve the installing contractor of the requirement to make any corrections or repairs that may be required as a result of local code inspections. Permit must be on file prior to State Monitor issuing final inspection sign off.

12.2.2 Contractors' Assurances Form and Documentation

Contractors must complete a Contractors' Assurances Form when providing heating system improvement services, other than oil burner retrofits. The form can be found in the Appendix.

It is not mandatory to have a copy of the contractors' assurances form and certificates of insurance in each individual client or facility file. For additional information on required insurance, see Chapter 5, Section 7, Pollution Occurrence Insurance and Lead Safe Work Practices.

It is recommended that WAP agencies verify that insurance is valid with the contractor's insurance company.

WAP agencies are permitted to maintain a separate master file for originals of these documents, which are to be available on demand for inspection by the State Monitor.

WAP agencies have the discretion to only require contractors to sign the assurances form once to cover all furnace and boiler replacements.

Although the contractors' insurance certificates may be kept in a separate file, WAP Agencies are reminded that these documents must be renewed annually for the contractor to remain in active status.

Although individual client/facility files need not contain the contractor administrative documentation, WAP Agencies should be aware that it remains their responsibility to have in their possession original and properly executed, currently effective, contractors' assurances forms and certificates of insurance for each contractor assigned heating system work.

12.3. Heating System and Hot Water Heater Replacements

All heating systems replacements and hot water tank replacements must be documented by pre- and post-pictures.

The client file must have a picture showing the existing heater and hot water tank prior to replacement, and another picture showing new installation.

WAP Agencies are reminded that any heating system upgrades with costs exceeding maximum allowable must be approved by OLIEC before authorization.

13. Bidding and Contractor Requirements for Electrical Upgrades

13.1 Bidding Procedures for Electrical Upgrades

Electrical upgrades include but are not limited to exhaust fans, upgrades, and repair. A minimum of three (3) bids must be requested by the WAP Agency for each non-emergency project. The bid request by the WAP Agency shall be by the letter advising the contractor

to submit a sealed bid and shall provide a cut-off date for submission of said sealed bid. Copies of all bid letters shall be placed in the client file.

For emergency upgrades, WAP Agencies must solicit 3 requests for proposals from three different electrical contractors with a deadline for submission of 24 hours during the week and 48 hours during the weekends. For electrical upgrades dealing with a no heat and/or hot water situation, one bid is acceptable only if the WAP Agency has demonstrated that it requested bids from a minimum of three heating contractors.

13.2 Required Permits and Documentation

Contractors must apply for a permit before starting any electrical upgrade. The contractor will submit either a copy of the permit, or if the permit has not been provided to the contractor at the conclusion of the work, a copy of the application must be provided.

The application will not be deemed acceptable unless all the following information is included:

1. The control number and permit number
2. The application date and permit fee
3. The name of the contractor and homeowner
4. Work to be covered by the permit and location of the work
5. Total cost of the work

If the application does not include the information listed above, the agency may not accept the application, and the contractor may not be paid until the actual permit is received. WAP Agencies are expected to work with the local code officials to ensure that inspections are completed in a timely fashion and to determine if delays in producing the required permits are backlogs at the local government level or due to late application filing on the part of the installing contractor.

WAP Agency's final approval of an electrical installation does not relieve the installing contractor of the requirement to make any corrections or repairs that may be required as a result of local code inspections. Permits must be on file prior to State Monitors issuing final inspection sign off.

13.3 Contractors' Assurances Form and Documentation

Contractors must complete an Electrical Assurance Form when providing electrical improvement services. The form can be found in the Appendix at: http://www.nj.gov/dca/divisions/dhcr/offices/wap.html. It is not mandatory to have a copy of the contractors' assurance form or certificates of insurance in each individual client or facility file. For additional information on required insurance, see Chapter 5, Section 7,

Pollution Occurrence Insurance and Lead Safe Work Practices. WAP Agencies are permitted to maintain a separate master file for originals of these documents, which are to be available on demand for inspection by the State Monitor. WAP Agencies have the discretion to only require contractors to sign the assurance form once a year to cover electrical work performed.

Although the contractors' insurance certificates may be kept in a separate file, WAP Agencies are reminded that these documents must be renewed annually for the contractor to remain in active status.

Although individual client/facility files need not contain the contractor administrative documentation, WAP Agencies should be aware that it remains their responsibility to have in their possession original and properly executed, currently effective, contractors' assurance forms and certificates of insurance for each contractor assigned heating system work.