

## [N.J.A.C. 5:34-4](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 56 No. 13, July 1, 2024

***NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 34. LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS > SUBCHAPTER 4. ADMINISTRATION OF COMPETITIVE CONTRACTING PROCESS***

### **Title 5, Chapter 34, Subchapter 4 Notes**

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#### **Statutory Authority**

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##### **AUTHORITY:**

[N.J.S.A. 40A:11-37.1](#) and [18A:18A-49.2](#).

#### **History**

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##### **SOURCE AND EFFECTIVE DATE:**

R.2002 d.17, effective January 22, 2002.

See: [33 New Jersey Register 1994\(a\)](#), [34 New Jersey Register 524\(a\)](#).

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## [N.J.A.C. 5:34-4.1](#)

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## **§ 5:34-4.1 Definitions**

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

"Administrator" means:

1. In the case of a municipality, a municipal administrator appointed pursuant to [N.J.S.A. 40A:9-136](#) and [N.J.S.A. 40A:9-137](#); a business administrator, a municipal manager or a municipal administrator appointed pursuant to the Optional Municipal Charter Law, P.L. 1950, c.210 ([N.J.S.A. 40:69A-1](#) et seq.); or a municipal manager appointed pursuant to the municipal manager form of government law. [N.J.S.A. 40:79-1](#) et seq.;
2. In the case of a county, an individual appointed pursuant to [N.J.S.A. 40A:9-42](#), 40:41A-42, 40:41A-47, or 40:41A-82;
3. In the case of an authority, as defined in the Local Authorities Fiscal Control Law, P.L. 1983, c. 313 (N.J.S.A. 40:5A-1 et seq.), a full-time professional employee of the authority found by the governing body to possess the experience and skill necessary to properly administer the competitive contracting process; or
4. In the case of a board of education, the administrator shall be defined pursuant to [N.J.S.A. 18A:18A-4.3.b](#).

"Authorized agent" means a duly-appointed qualified purchasing agent, legal counsel, or administrator of a contracting unit using competitive contracting in accordance with this subchapter.

## **History**

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### **HISTORY:**

Amended by R.2013 d.123, effective September 13, 2013.

See: [45 N.J.R. 1205\(a\)](#), [45 N.J.R. 2203\(a\)](#).

In definition "Administrator", in paragraph 2, deleted "or" from the end; in paragraph 3, inserted a comma following the first occurrence of "authority", and substituted "c. 313" for "c.313", "full-time" for "full time", and "; or" for a period at the end; and in paragraph 4, substituted "board of education" for "school district", and updated the N.J.S.A. reference; and in definition "Authorized agent", inserted "duly-appointed".

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## [N.J.A.C. 5:34-4.2](#)

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#### **§ 5:34-4.2 Model evaluation criteria**

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(a) The following, as appropriate to individual circumstances, shall be used as criteria for evaluating requests for proposals (RFPs) under the competitive contracting process described in *N.J.S.A. 40A:11-4.1* et seq. and [18A:18A-4.1](#) et seq. These criteria are not intended to be limiting or all-inclusive, and they may be adapted or supplemented in order to meet a contracting unit's individual needs as competitive contracting may dictate. No criteria shall unfairly or illegally discriminate or exclude otherwise capable vendors.

1. Technical criteria:

i. Proposed methodology:

- (1) Does the vendor's proposal demonstrate a clear understanding of the scope of work and related objectives?
- (2) Is the vendor's proposal complete and responsive to the specific RFP requirements?
- (3) Has the past performance of the vendor's proposed methodology been documented?
- (4) Does the vendor's proposal use innovative technology and techniques?

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:

## § 5:34-4.2 Model evaluation criteria

- (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?

## [N.J.A.C. 5:34-4.3](#)

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#### **§ 5:34-4.3 Opening and evaluating proposals and awarding competitive contracts**

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- (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) Vendors and the general public may be prohibited from physically attending a proposal opening if, during a state of emergency declared by the Governor for public health reasons, the emergency reasonably prevents the local unit from accommodating in-person attendance. In the event the contracting unit cannot accommodate in-person attendance at a proposal opening for public health reasons during a state of emergency declared by the Governor, the contracting unit must broadcast the proposal opening live at the contracting unit's facilities. Another local unit's facilities may be used for the public opening of proposals in the event that the local unit cannot use its facilities for said purpose.
1. The advertisement for proposals must include explicit instructions on how the public can remotely access the opening, along with a statement that in-person attendance is prohibited due to public health-related restrictions on public gatherings due to a declared state of emergency.
  2. The contracting unit shall use web-conference call or online livestreaming technology with both video and audio capability, with the video showing sufficient scope and coverage, so that the official opening the proposals can be clearly seen to be opening only the proposals timely submitted.
  3. At the opening, the title of the proposal must be clearly announced. If the contracting unit has solicited paper-based proposals, the contracting unit shall display each sealed proposal package, back and front, for the camera prior to opening the proposals. In addition to announcing the vendor name and price as required by (b) above, the presence of any documents required to be part of the proposal submission shall be noted for each proposal.
- (d) 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.

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- 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.

(e) 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.

(f) 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.

(g) 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.

## History

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### HISTORY:

Emergency amendment, R.2020 d.062, effective May 21, 2020 (to expire July 20, 2020).

See: [52 N.J.R. 1275\(a\)](#).

Section was "Opening and evaluating proposals and awarding competitive Contracts." Added new (c); and recodified former (c) through (f) as (d) through (g).

Concurrent adopted amendment, R.2021 d.031, effective April 5, 2021.

See: [52 N.J.R. 1275\(a\)](#), [53 N.J.R. 501\(a\)](#).

§ 5:34-4.3 Opening and evaluating proposals and awarding competitive contracts

Provisions of R.2020 d.062, adopted with one change: rewrote the introductory paragraph of (c).

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

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(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.

## **N.J.A.C. 5:34-4.5**

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### **§ 5:34-4.5. (Reserved)**

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### **History**

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#### **HISTORY:**

Repealed by R.2006 d.179, effective May 15, 2006.

See: [37 N.J.R. 4601\(a\)](#), [38 N.J.R. 2119\(b\)](#).

Section was "Use of competitive contracting for energy services".

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