

FINANCE CENTER



OSC's Procurement Oversight for Health Insurance & Insurance Brokers

By Philip James Degnan, NJ State Comptroller

Perhaps best known for its audits and investigations of government entities, the Office of the State Comptroller (OSC) is also responsible for overseeing the procurement process for more than 1,900 state and local government entities. OSC's Procurement Division reviews a steady stream of bids, requests for proposals and other contracts over \$2 million. The Division has found that procuring health insurance benefits and insurance broker services can be troublesome.

Purchase of insurance is subject to OSC review

Health insurance, like any other procurement, is subject to OSC review when the total contract value exceeds \$2 million. If the contract is likely to exceed \$10 million, OSC must be notified at least 30 days before: (1) soliciting quotes if following the extraordinary unspecifiable services (EUS) process; or (2) advertising a request for proposals under competitive contracting or sealed bid.

We know that many government entities rely upon the advice of an insurance broker to procure health insurance. OSC recommends letting insurance brokers do what they do best: evaluate the quality and cost of insurance and make recommendations to the government entity. The procurement professional needs to be actively involved in whichever procurement process is used to ensure that Local Public Contracts Law (LPCL) is followed, including, at minimum, following the EUS process correctly.

Below are some common errors we see and ways to avoid them.

EUS applies to both insurance coverage and insurance brokerage services

Many entities incorrectly award insurance broker contracts under the professional services exception to public bidding. Rather, under the LPCL, broker contracts are considered "insurance consulting" contracts falling under the same exception as insurance coverage and therefore may be procured by following the EUS process.

The EUS process requires a documented effort to secure competitive quotations. Before a contract is awarded, a designated official (e.g., the business administrator or purchasing agent)

must file a certification with the governing body that clearly states that the purchase is for insurance coverage or broker services, as appropriate, and that LPCL permits such purchases to follow the EUS procurement method. The resolution awarding the contract must state that the contract is being awarded pursuant to EUS. Finally, a legal notice of the contract award must be placed in the governing body's official newspaper and state: the nature of the contract (insurance coverage or broker services); the amount of the contract; the duration of the contract; a description of the services, and that the resolution and contract are available for inspection in the county or municipal clerk's office.

OSC's record retention language must be in all public contracts:

"The (bidder/proposer/contractor) shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request." *N.J.A.C. 17:44-2.2.*

Health insurance procurements must follow all statutory requirements

The solicitation of quotes from insurance carriers often fails to comply with other provisions of New Jersey law. This includes the mandatory equal employment opportunity and affirmative action requirements, disclosure of corporate ownership, disclosure of investment activities in Iran, business registration certificate, and OSC's record retention language.

When purchasing professionals do not take an active role in conducting health insurance procurements, the result can be an undesirable or even illegal contract. For example, we recently reviewed an insurance contract in which the public entity agreed to allow Missouri law to govern contract disputes. Form contracts may also have other undesirable conditions such as limited vendor liability or indemnification provisions. Public entities should not sign these form contracts without reviewing them carefully, preferably with advice from counsel.