



*Understanding the Tricky World of
Municipal Insurance Brokerage &
Procurement*

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Today's Topics & Goals

Topics

- Procurement of Insurance
- Office of State Comptroller Review Process/Standards

Goals

- Understanding Applicable Standards & Procedures
- Obtaining a High-Level Overview of Best Practices

Purchase of Insurance

- Every municipality in NJ is responsible for obtaining insurance coverage for the municipality and its employees.
- Confusion often exists with respect to the procurement process.
 - Some municipalities treat insurance as a professional service.
 - Other municipalities treat insurance as an extraordinary unspecifiable service.
 - Some municipalities conduct a competitive procurement process.
 - Other municipalities use a non-competitive process.

Governing Law

- **Local Public Contracts Law (LPCL)** governs most contracts issues by local governments (municipalities, counties, and county and municipal boards, agencies, commissions) **N.J.S.A. 40A:11-1, et seq.**
- Under the LPCL, contracts must be publicly bid when the aggregate dollar amount for contract exceeds “bid threshold” (currently **\$44,000** with a Qualified Purchasing Agent).
- LPCL generally applies a “lowest, responsible bidder standard”.

Exemptions from Lowest, Responsible Bidder Standard

- Professional services or Extraordinary Unspecifiable Services (construed narrowly)
- Certain specific contracts (i.e. perishable foods, public utility contracts)
- No bids received / all bids rejected on 2 prior occasions
- Emergency affecting the public health, safety or welfare

Competitive Contracting

- Under certain circumstances, local contracting unit can use “competitive bidding” procedures.
 - Standard is more subjective than lowest, responsible bidder standard
 - Looks to the bid that is most advantageous, price & other factors considered
- May use competitive contracting for any services that are deemed exempt (such as professional services and extraordinary unspecifiable services).

Professional Services vs. Extraordinary Unspecifiable Services (“EUS”)

- Contracts with lawyers, engineers & architects fall with the “professional services” exception to the LPCL
- Insurance contracts – for the provision of insurance and for obtaining an insurance broker, fall within the “extraordinary unspecifiable services” exception to the LCPL - Local Finance Notice AU 2002-2 (February 26, 2002)
- Many municipalities make the mistake of treating insurance brokerage contracts as professional services

EUS Method of Award

- Insurance, including the purchase of insurance coverage and consultant services (i.e., an insurance broker), is a limited exception to the public advertising & bidding requirements of the LPCL (N.J.S.A. 40A:11-5(1)(a)(ii) and 40A:11-5(1)(m)).
- This statutory exception does not mean that a municipality can award a contract for an insurance broker or the purchase of insurance coverage however it wishes.
- A statutory process with specific procedural requirements must be followed.

EUS Method of Award

- The EUS process requires a documented effort to secure competitive quotations (the Division of Local Government Services has found that in most circumstances solicitations of quotations is practicable for insurance purposes).
- During the EUS process, a designated official must file a certification with the governing body that clearly states that:
 - The purchase is for insurance coverage or broker services; and
 - The LPCL permits the use of the EUS procurement method for such services

EUS Method of Award

- The final step in the EUS method of award is placing a legal notice of contract award in the governing body's official newspaper.
- The notice must 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
 - The resolution and contract are available for inspection at the Municipal Clerk's Office.
- The resolution awarding the contract must state that the contract is being awarded pursuant to the EUS process.

Utilization of Insurance Broker

- Many municipalities involve an Insurance Broker in the procurement process when obtaining insurance coverage.
- Regardless of whether a municipality involves an insurance broker in the solicitation of quotes for insurance coverage, the municipality must comply with all provisions of the LPCL.
- Thus, the utilization of a Broker does not alleviate the need to follow New Jersey procurement law standards.

Statutory Requirements

- When obtaining an insurance broker or coverage, the municipality must obtain the following as part of the procurement process:
 - Business Registration Certificate
 - Mandatory Equal Opportunity & Affirmative Action Requirements
 - Ownership Disclosure Form
 - Non-Collusion Affidavit
 - Disclosure of Investment Activities in Iran
 - OSC Record Retention Language
 - Pay-to-Play Certification and Disclosure Forms

Best Practices

- Utilize a competitive contracting process for the purchase of insurance or to hire a broker.
- Follow the Extraordinary Unspecifiable Services exception (not the professional services exception) under the LPCL.
- If your municipality has an insurance broker, it often makes sense to rely upon the broker's expertise and feedback with respect to evaluating the quality and cost of insurance.
- However, the procurement professionals within your municipality should still be responsible for running the procurement process in accordance with the LPCL.

OFFICE OF STATE COMPTROLLER

- Office of State Comptroller (“OSC”) was established by N.J.S.A. 52:15C-1 *et. seq.* in 2007
- Independent office established in the Executive Branch of State government created to bring greater efficiency and transparency to operation of all levels of government
- Its mission is to: (1) promote integrity and transparency of government operation by reviewing government contracts and conducting independent audits of government entities and programs in New Jersey; (2) investigate mismanagement of public funds; (3) improved efficiency and integrity of the Medicaid program

OFFICE OF STATE COMPTROLLER

- Four Divisions
 - Audit
 - Investigations
 - Medicaid Fraud
 - Procurement – reviews legality of public contracts of municipalities, school districts, counties, State agencies, State authorities, local authorities and public institutions of higher education.

OSC PROCUREMENT DIVISION

- Has statutory jurisdiction to review and monitor the process of soliciting proposals for an awarding contracts valued at \$2 million or more N.J.S.A. 52:15C-10
- This includes brokerage consulting and coverage

NOTICE REQUIREMENTS

- All government units are required to provide notice to OSC as follows:
 - For contracts expected to be greater than \$12.5 million, notice must be submitted to OSC and **Pre-Advertisement Review** is required at least 30 days prior to advertisement;
 - Includes contract amendments valued at \$12.5 million or greater
 - For contracts greater than \$2.5 million but less than \$12.5 million, **Post-Award Notice** must be submitted to OSC no later than 20 business days after award
 - Includes contract amendments valued at \$2 million or greater
 - For emergency contracts greater than \$2.5 million, **Post-Award Notice**, must be submitted to OSC no later than 30 business days after award

Valuing a Contract

- What will contracting unit spend?
- If exact value of the contract is uncertain, estimate using good faith professional judgment based on:
 - Value on prior procurements for similar goods and services
 - Estimate a price increase or decrease to reflect market changes

For multi-year contracts, multiply the length of the contract by the yearly contractual amount

OSC SUBMISSION PROCESS

- OSC Notification Forms are available on website: Electronic submission
- Email completed appropriate OSC Notification Form and required documents to contracts@osc.nj.gov
- Staff attorney will be assigned.

OSC SUBMISSION PROCESS

- Form B1 – Pre-Advertisement Notice for Contracts Valued at \$12.5 million or more
 - Must submit proposed bid/procurement package 30 days before anticipated advertisement in final form
- Form B2 – Post Award Notice for Contracts Valued at \$12.5 million or more
 - Must submit final “contract’ within 20 business days of award
 - List of bidders and bids received
 - Documents related to any protest

OSC SUBMISSION PROCESS

- Form A – Post Award Notice for Contracts Valued at More than \$2.5 million but less than \$12.5 million
 - Notice to OSC required within 20 business days of award
- Form D – Post Award Notice for Emergency Contracts Valued at More than \$2.5 million
 - Notice to OSC required within 30 business days of award

OSC SUBMISSION FORMS

- Required information
 - Name of Municipality or authority/government entity
 - Description of goods/project/service
 - Cost or estimated cost
 - Source of funding
 - Procurement process – Local Public Contracts Law, Competitive Contracting or statutory exception
 - Assigned Case number
 - Contact listed must be from government entity

PRE-ADVERTISEMENT REVIEW

- Review for contracts valued at more than \$10 million
 - OSC has 30 days to review contracts before they can be advertised
 - Must consider this time period in bid planning
 - Submit entire bid package including:
 - Invitation to Bid or Request for Proposal
 - Specifications
 - Scope of Work
 - Bidder Forms

POST-AWARD REVIEW

- Contracting entities should submit:
 - Final Request for Proposal or other bid solicitation
 - Successful bidder's proposal
 - Bid tabulation or evaluation report
 - Resolution of governing body awarding the contract
 - Documents related to any bid protest and resulting decisions and related documents
 - For exceptions from bidding/competition, identify the statutory exception and justification

PURPOSE OF POST-AWARD REVIEW

- Ensure the process was legally compliant
- Review evaluation process
- Ensure correct award process was followed
- Provide guidance for future procurements
- Update bid templates to comply with statutes

OSC CHECKLIST ALL CONTRACTS

- OSC RECORD RETENTION LANGUAGE *N.J.A.C. 17:44-2.2*
- STATEMENT OF CORPORATE OWNERSHIP *N.J.S.A. 52:25-24.2*
- BUSINESS REGISTRATION CERTIFICATE *N.J.S.A. 52:32-44*
- EEO/ANTI-DISCRIMINATION - Exhibit A – Goods and Services; Exhibit B – Construction *N.J.S.A. 10:2-1*
- INVESTMENT IN IRAN DISCLOSURE *N.J.S.A. 40A:11-2.1*
- ANNUAL POLITICAL CONTRIBUTION DISCLOSURE *N.J.S.A. 19:44A-20.27*
- PAY TO PLAY (NON FAIR AND OPEN) *N.J.S.A 19:44A-20.4* (Counties) or *N.J.S.A. 19:44A-20.5* (Municipalities)

OSC DOCUMENT RETENTION NOTICE

- Include OSC document retention language in all contracts
- Maintain documentation for a period of 5 years and shall be made available to OSC on request
- *N.J.A.C. 17:44-2.2*
- Add required language in invitation for bids and request for proposals

BEST PRACTICES

- Remember insurance broker contracts fall under the same exception as insurance coverage and are evaluated under the extraordinary unspecifiable services (EUS)
- Designated official must file certification with governing body that states the purchase is for insurance coverage or broker and the LCPL permits such purchases under the EUS method
- Legal notice of contract award must be placed in appropriate place and state: (1) nature of contract; (2) amount of the contract; (3) duration; (4) description of services; (5) resolution and contract are available for inspection
- Record retention language and all statutory requirements
- Determine whether and when contract documents need to be submitted to OSC for review

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