



Division of Local Government Services

Department of Community Affairs

Jacquelyn A. Suarez
Commissioner

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Competitive Contracting

New Jersey Department of Community Affairs
Division of Local Government Services

Michele E. Meade
Deputy Director

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Competitive Contracting – NJSA 40A:11-4.1

- Exception to bidding for specific purposes as outlined in the law
- Advance approval of governing body
- Contracts up to five years unless another law indicates otherwise
- Specific advertising and evaluation criteria in the law
- NJAC rules in 5:35-4.1 et seq include model evaluation criteria

Cost

Technical
criteria

Management
criteria



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Competitive Contracting – NJSA 40A:11-4.1

a. The purchase or licensing of proprietary computer software designed for contracting unit purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

- (1) the operation and management of a wastewater treatment system, a stormwater management system, or a water supply or distribution facility of the type described in subsection (37) of section 15 of P.L.1971, c.198 ([C.40A:11-15](#)), provided that competitive contracting shall not be used as a means of awarding contracts pursuant to P.L.1985, c.37 ([C.58:26-1](#) et al.) and P.L.1985, c.72 ([C.58:27-1](#) et al.);
- (2) the operation, management or administration of recreation or social service facilities or programs, which shall not include the administration of benefits under the Work First New Jersey program established pursuant to [P.L.1997, c.38 \(C.44:10-55 et seq.\)](#), or under General Assistance;
- (3) the operation, management or administration of data processing services; or
- (4) the operation and management of a county hospital pursuant to the "Local Hospital Authority Law," [P.L.2006, c.46 \(C.30:9-23.15 et al.\)](#);

c. (Deleted by amendment, [P.L.2009, c.4](#)).



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Competitive Contracting – NJSA 40A:11-4.1

- d.** Homemaker—home health services;
- e.** Laboratory testing services;
- f.** Emergency medical services;
- g.** Contracted food services;
- h.** Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities;
- i.** At the option of the governing body of the contracting unit, any good or service that is exempt from bidding pursuant to section 5 of P.L.1971, c.198 ([C.40A:11-5](#));
- j.** Concessions;
- k.** The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services;

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Competitive Contracting – NJSA 40A:11-4.1

- l.** Maintenance, custodial, and groundskeeping services;
- m.** Consulting services;
- n.** Emergency medical billing services;
- o.** Property appraisal services;
- p.** Reassessment or revaluation services;
- q.** Grant writing services;
- r.** Animal control services.

Any purpose included herein shall not be considered by a contracting unit as an extraordinary unspecifiable service pursuant to subparagraph (ii) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 ([C.40A:11-5](#)).

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Competitive contracting

40A:11-4.6(b)(1)
ESIP – energy savings
services contract
with an ESCO

NJAC 5:34-5.1(3)e
E-procurement
platforms

LFN 2009-10
PPAs

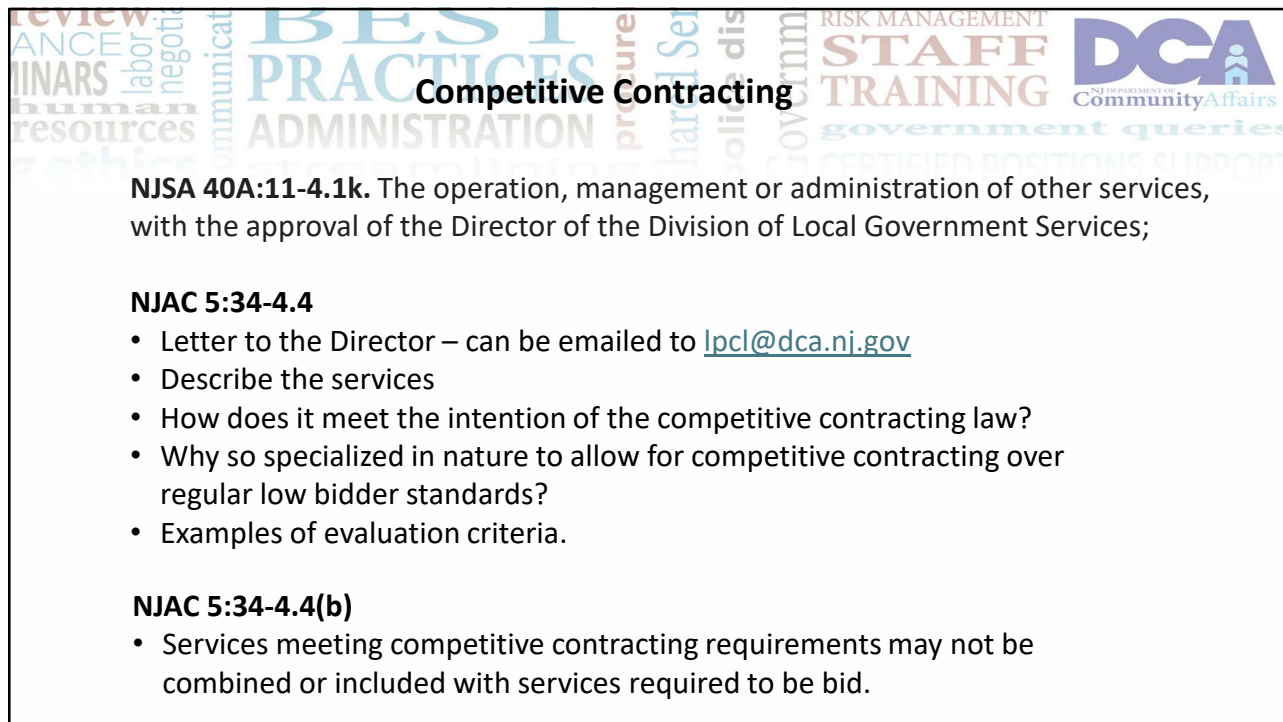


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Third Party Agencies

- **A573 signed into law – permits competitive contracting**
- **N.J.A.C. 5:23-4.12 et seq.** Already allows contracts with private agencies for particular UCC subcode inspections in accordance with these rules
- **New section of LPCL - N.J.S.A. 40A:11-4.1.s** - Private on-site inspection agency services, as may be authorized by rules and regulations adopted by the Department of Community Affairs - can use competitive contracting for these services without Director approval

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Competitive Contracting

NJSA 40A:11-4.1k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services;

NJAC 5:34-4.4

- Letter to the Director – can be emailed to lpcl@dca.nj.gov
- Describe the services
- How does it meet the intention of the competitive contracting law?
- Why so specialized in nature to allow for competitive contracting over regular low bidder standards?
- Examples of evaluation criteria.

NJAC 5:34-4.4(b)

- Services meeting competitive contracting requirements may not be combined or included with services required to be bid.

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Competitive Contracting – Director approval

Examples of services approved by Director – 40A:11-4.1k

- Recruitment services
- Cyber security services
- Operation and management of a financial empowerment center
- Administration of off-duty police program
- Banking services
- Golf course management
- Peer support program management

There is no blanket approval for these services. Every local contracting unit must apply independently and receive their own approval.



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Competitive Contracting – Director denials

Examples of services denied by Director – 40A:11-4.1k

- Snow plowing
- Curbside recycling
- Sludge removal
- Installing water meters
- Golf simulators
- Leaf disposal

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Concessions 40A:11-2(37)

“Concession” means the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit.

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Concession Rules NJAC 5:34-9.4

L Concessions are specifically deemed to include, but are not limited to, the following:

1. The right to publish a map, newsletter, directory, or calendar containing the meeting schedules and other information about contracting unit services or activities where the contractor sells advertising as full or partial payment for providing the service;
2. Installation of "welcome to (name of entity)" signs on public property where a local organization pays a fee to the sign manufacturer, who may or may not make a payment to the contracting unit, and includes the name of the local organization on the sign;
3. Use of public space or facilities (such as scoreboards, bus shelter or facility advertising) for advertising in exchange for fees or services, or discounts on services;
4. Installation of vending machines in public facilities (except for vending machines in schools);
5. The donation, sale, installation, or maintenance of equipment or facilities for use of the contracting unit;
6. The choice of a local or long-distance telephone service for pay phones on public property;
7. Copying machines in a government or library facility made available for public use;
8. The right to sell goods or services on public property; or
9. Other services, rights or use as may meet the definition of concession.



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Concessions

Municipal Property Tax Rewards Programs

"As the law requires an operator to be compensated through an administrative fee charged to a participating business, the procurement of a program operator fits within the Local Public Contracts Law definition of a concession.

Therefore, a contract with a program operator is subject to public bidding even though the municipality is not paying the operator. Procurement of property tax reward program software or software services do not fit within the Local Public Contract Law's definition of "proprietary" and thus do not come under the bid exception established under N.J.S.A. 40A:11-5(1)(dd) for "provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software..." Municipalities may use competitive contracting for concessions without having to obtain prior Division approval. Due to the difficulty of estimating the amount of revenue the operator may collect over the life of the contract, the Division recommends that municipalities in all instances procure an operator through standard bidding or competitive contracting."



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Concession Rules NJAC 5:34-9.4

(c) A concession shall not be deemed to include:

contributions of goods, services, or financial support for the sponsorship of the celebration of public events where the contributions offset in full or in part the cost of the specific event. For the purpose of providing examples, such public events include, but are not limited to, seasonal recreation programs, concert series, holiday celebrations, and tourism related programs. In addition, vending machines in public facilities that are considered as protected speech under the United States Constitution, such as newspapers, or facilities used for collection of material being sent through a pickup and delivery service are not deemed to be a concession.

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Competitive Contracting & Cooperative Purchasing

Competitive Contracting – N.J.S.A. 40A:11-4.1 and N.J.A.C. 5:34-4.1 et seq.

- Exception to bidding for specific purposes as outlined in the law
- Evaluation criteria, commonly referred to as “price and other factors”

Cooperative Purchasing – NJAC 5:34-7.1 et seq.

- Cooperative Pricing System is defined as a purchasing system in which a local contracting unit advertises for **bids** and awards a master contract to a successful vendor for its own quantities and the estimated quantities submitted by the individual registered members
- N.J.A.C. 5:34-7.10 establishes requirements for bids applicable to cooperative pricing systems. There are also references to “**lowest bidder**” which is not the standard used to determine the successful vendor under competitive contracting. Competitive contracting allows the use of “price and other factors” and not “lowest bidder”

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Competitive Contracting process

1. Governing body resolution needed first time
2. Administered by purchasing agent qualified under 40A:11-9 or legal counsel or administrator
3. Award of contract
 - By resolution of the governing body
 - Within 60 days of receipt of proposals
 - Up to five years
 - Clerk places notice of award in paper
 - Subject to availability of funds

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Competitive Contracting process

Proposal process:

- Competitive contracting request for proposals
 - Ad published in official newspaper 20 days before submission with time and place for receiving & opening proposals
 - May charge a fee not to exceed \$50 or cost of copying, whichever is less
 - Contain all requirements – including statement of corporate ownership & EEO and affirmative action
 - No financial statement if proposal requires a bid guarantee
 - Specify criteria used for evaluation
- No negotiations on any provisions
- If the service currently performed by employees, they must be notified in advance and allowed to submit recommendations and proposals about wages, hours and other terms of employment

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Competitive Contracting process

Evaluation process:

- Evaluation criteria in NJAC 5:34-4.2
 - Technical
 - Management
 - Cost
 - Can modify for contracting unit needs if no unfair or illegal criteria that would discriminate or exclude otherwise capable vendors
- Opening proposals
 - Describe weighting of criteria if not included in RFP
 - Names of vendors and price announced

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Competitive Contracting process

Evaluation process:

- May use a committee to evaluate proposals
 - Names not disclosed until after evaluation & report to governing body
 - Evaluate on their own or in a group
 - No more than one less than a majority of governing body members may serve
 - May use advisors
 - All must sign certification per NJAC 5:34-4.3(g) regarding conflicts of interest
- May allow vendors to clarify after proposal submission but before evaluation – no negotiation
- Specific proposal is most advantageous, price and other factors

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THANK YOU!

Questions and Answers

New Jersey Department of Community Affairs
Division of Local Government Services

lpcl@dca.nj.gov

Download the LPCL Reference Guide

