

Division of Local Government Services Procurement Update

Jacquelyn A. Suárez, Director
Division of Local Government Services
New Jersey Department of Community Affairs

Temporary CEU Renewal Cycle Extensions

- Expiration dates on or after May 15, 2020 were extended by one (1) year
- Impact on QPAs:
 - Statutory Term = three (3) years
 - Extended Term = four (4) years

	Current Statutory CEU Renewal Deadline (by Cycle)	Extended CEU Renewal Deadline (by Cycle)	Next CEU Renewal Deadline (by Cycle) Following Extension
Qualified Purchasing Agent	June 30, 2020	June 30, 2021	June 30, 2024
	December 31, 2020	December 31, 2021	December 31, 2024
	January 1, 2021	January 1, 2022	January 1, 2025
	June 30, 2021	June 30, 2022	June 30, 2025
	December 31, 2021	December 31, 2022	December 31, 2025
	January 1, 2022	January 1, 2023	January 1, 2026
	June 30, 2022	June 30, 2023	June 30, 2026
	December 31, 2022	December 31, 2023	December 31, 2026
	January 1, 2023	January 1, 2024	January 1, 2027

Rule Changes – CEU Contact Hours

- Carrying over CEU contact hours to the next license renewal cycle generally not permitted
- Temporary exception – New Rule N.J.A.C. 5:32-1.2
- Allows all DLGS-licensed officials to carry over surplus CEU contact hours earned during the renewal period extended pursuant to N.J.S.A. 52:27D-18.5 into the next following renewal cycle only
- Allows banking /carrying of up to 50% of the contact hours needed to renew from the extended certification term to immediate next certification term

QPA	CMFO/CCFO	CPWM	CTC	RMC
12.5	15	10	7.5	10

Contact Hour Carry Over (CMFO)



Extended Renewal Deadline	Next Renewal Deadline	Following Renewal Deadline
June 30, 2021	June 30, 2023	June 30, 2025
December 31, 2021	December 31, 2023	December 31, 2025
January 1, 2022	January 1, 2024	January 1, 2026
June 30, 2022	June 30, 2024	June 30, 2026
December 31, 2022	December 31, 2024	December 31, 2026
January 1, 2023	January 1, 2025	January 1, 2027

Rule Changes - QPA CEU Contact Hours

- Starting with license renewals due by December 31, 2022, and all renewal cycles thereafter, QPAs must:
 - earn a minimum of 25 CEU contact hours for certification renewal (increase from 20); and
 - earn a minimum of five (5) CEU contact hours under the “procurement procedures” category (increase from two (2) contact hours).
- New optional category “public works compliance” for QPAs
 - compliance matters relevant to public works projects that do not fit squarely within the scope of the “procurement procedures” subject area.
 - Examples include New Jersey prevailing wage laws, the federal Davis-Bacon Act, and equal employment opportunity and affirmative action (EEO/AA) laws specific to public works contracts.

Russia-Belarus List

Key Points:

- P.L. 2022, chapter 3 – signed March 9, 2022
- Requires Treasury to develop a list of persons and entities
- Cannot enter into, renew or extend a contract with anyone on the Treasury list
- Local Finance Notice to be issued once Treasury issues list

Russia-Belarus List

Goods and Services:

1. Wait for Treasury to promulgate Russia-Belarus list
 - Estimated debut in 30-60 days, likely closer to the former
2. Then, before goods and services contract:
 - Require a vendor certification – can request it at bid but not required to be submitted – need it before award, renewal, extension
 - Review Treasury's Russia-Belarus list
 - No award, renewal or extension if on the list

Construction:

1. Do nothing, business as usual
2. This will be picked up by the State when issuing / renewing PWCR

Russia-Belarus List

Where else does this apply?

1. Banking
2. Insurance
3. Redevelopers
4. PILOTS or other tax abatements

Russia-Belarus List

Model Certification

Prohibited Russia-Belarus Activities & Iran Investment Activities	
Person or Entity	
Part 1: Certification	
COMPLETE PART 1 BY CHECKING <u>ONE OF THE THREE BOXES BELOW</u>	
<p>Pursuant to law, any person or entity that is a successful bidder or proposer, or otherwise proposes to enter into or renew a contract, for goods or services must complete the certification below prior to contract award to attest, under penalty of perjury, that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list or Chapter 25 list as a person or entity engaging in prohibited activities in Russia, Belarus or Iran. Before a contract for goods or services can be amended or extended, a person or entity must certify that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list. Both lists are found on Treasury's website at <insert link here> and www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf. As applicable to the type of contract, the above-referenced lists must be reviewed prior to completing the below certification.</p>	

New Prevailing Wage Requirements

- P.L. 2021, c. 301 requires a contractor submitting the lowest bid for a contract that is subject to the Prevailing Wage Act, if that bid is 10 percent or more lower than the next lowest bid, to certify to the public body that the prevailing wage rates required by the Act shall be paid. If the bidder does not provide the certification prior to the award of the contract, the public body shall award the contract to the next lowest responsible and responsive bidder.
- Further, P.L. 2021, c. 301 also amended N.J.S.A. 34:11-56.27 to require that any contract for public work expressly stipulate that workers performing work under the contract shall not be paid less than the required prevailing wage rate. Contractors and their sureties shall be liable to the public body, any lessee to whom the public body is leasing a property or premises or to any lessor from whom the public body is leasing or will be leasing a property or premises, for any excess costs occasioned by the termination of their right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages.

New Prevailing Wage Requirements

- The New Jersey Department of Labor and Workforce Development (NJDOL) is proposing new rules at N.J.A.C. 12:60-9.1 and 9.2 and N.J.A.C. 12:60-9 Appendix, in order to establish standard language for both the contractor certification and the prevailing wage contractual provision.
- Although those rules have not yet been finally adopted, as the law is currently in effect, contracting units should begin inserting prevailing wage language into their contracts for public work, and requiring contractors coming in 10 percent or more lower than the next lowest bid to complete the required certification.
- The language and form of certification in the rule proposal may be instructive when drafting contracts for public works and advising public works contractors on the new requirement.
- The NJDOL rule proposal was published in the June 6, 2022 New Jersey Register at https://www.nj.gov/labor/assets/PDFs/Legal%20Notices/Notices%20of%20Proposal/54_NJR1009a_June62022.pdf.

New Prevailing Wage Requirements

LOWEST BIDDER PREVAILING WAGE CERTIFICATION

In the matter of an award) STATE OF NEW JERSEY
of a)
contract for public work for) DEPARTMENT OF LABOR AND
a)
project described as:) WORKFORCE DEVELOPMENT
) DIVISION OF WAGE &
)
[Enter project description) HOUR COMPLIANCE
here])
)
)
) Certification of Lowest Bidder

_____, of full age and under oath, duly provides the following sworn statement:

- (1). I am the owner and/or highest-ranking official or officer of a company or firm named _____, which holds a currently valid public works contractor registration pursuant to the New Jersey Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., certificate number _____.
- (2). I submitted a bid for a contract award in the above identified project and the public body has informed me that I am the lowest bidder by 10 percent or more as compared to the next lowest bid submitted.

New Prevailing Wage Requirements

- Duct cleaning now within the prevailing wage definition of “public work”
- P.L. 2022, c. 113 signed September 22, 2022 – effective immediately

Review Local Finance Notice 2021-20 for in-depth review of contracting unit responsibilities under

Design-Build for Public Works Construction

- P.L. 2021, chapter 71
- Created new sections of the LPCL – 40A:11-53 through 60
- DCA required to create rules
 - Adapted from School Development Authority, competitive contracting and other parts of the LPCL, and RFQ's used for water and wastewater public-private contracting
- Rules in effect under special adoption on May 27, 2022, and concurrent proposal for final adoption
 - New section NJAC 5:34-10
 - Reviewing comments submitted on the rules
 - Action to be taken before November 23, 2022

Design-Build for Public Works Construction

- “Design-build contract” means a contract between a contracting unit and a design-builder to provide labor, materials, and other construction services for a public project. A design-build contract may be conditional upon subsequent refinements in scope and price and may permit the contracting unit to make changes in the scope of the project without invalidating the design-build contract.

vs.

- “Design-bid-build” means the delivery system used in public projects in which a licensed design professional or designated employee develops the project design in its entirety; the contracting unit then solicits bids and awards the contract to the lowest responsible bidder that demonstrates the ability to complete the project specified in the design.

Design-Build for Public Works Construction

Eligible projects:

- Construction projects that can be reasonably, and in good faith, estimated to have a cost equal to or exceeding \$5,000,000. Design-build project delivery shall not be utilized for projects that cannot be reasonably, and in good faith, estimated to have a cost equal to or exceeding \$5,000,000.
- "Design-build project" means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or rehabilitation of all or any part of a facility or right-of-way, or of any other personal property necessary for, or ancillary to, any facility or right-of-way, and shall include fixtures, furnishings, and equipment, and shall also include, but is not limited to, site acquisition, site development, architectural and engineering services, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.
 - Vertical construction
 - Highways, bridges and other transportation and infrastructure projects (inc. underground water/sewer)

Design-Build for Public Works Construction

Beginning a design build project:

- Governing body to adopt resolution authorizing design-build as method of project delivery
 - must determine that, when compared to the design-bid-build process, design-build project delivery will facilitate a shorter overall design and construction process including, but not limited to, reducing the likelihood of work stoppages and change orders that would increase project costs
- Hiring the design professional for architectural, engineering and/or surveying services – will also provide technical advice, construction review services and professional expertise on behalf of contracting unit
- May also hire a construction manager to serve as on-site representative for duration of project
- Establish a technical review committee to evaluate statements of qualifications (phase 1) and design builder proposals (phase 2)
 - QPA, contracting unit's design professional, project manager, perhaps others such as business administrator, CFO
 - Regulations contain provisions against conflicts of interest

Design-Build for Public Works Construction

RFQ process – Phase 1:

- "Request for qualifications" or "RFQ"
 - Used to prequalify bidders to submit proposals
 - Must be crafted in such a way as to encourage free, fair and open competition without unfairly or illegally discriminating against otherwise capable design-builders (similar to LPCL design-bid-build)
 - If project \$12,500,000 or over, must obtain State Comptroller approval prior to advertising.
 - Advertise no less than 30 days prior to date on which responses to RFQ are due.
- At minimum, a request for qualifications shall contain the following:
- A scope of work statement including:
 - i. project type, size, and scope;
 - ii. preliminary design documents;
 - iii. general budget parameters, if any; and
 - iv. general schedule or delivery requirements
- 2. Relevant classifications and aggregate rating limits to which the bidder must be assigned by either DPMC or NJDOT, as relevant to the project.

Design-Build for Public Works Construction

RFQ process – Phase 1:

3. Qualification evaluation factors:

- i. experience level and degree of technical competence;
- ii. training of, and certifications held by, the professional and field workforce;
- iii. principal location of the bidder and key team members (to the extent that it would materially impact project delivery);
- iv. performance capability;
- v. certifications, classifications and ratings possessed by the team as relevant to the project;
- vi. past performance of the individual members of the design-builder's team;
- vii. measures taken to promote workforce diversity with respect to women and minorities; and
- viii. other technical factors as may be relevant to the project.

4. The maximum number of bidders (min. of 2, max. of 6) to be prequalified to submit a proposal.

5. If applicable, a statement that the contract will be subject to

- one or more LPCL set-aside goals
- project labor agreement

6. Details on the stipend being offered by the contracting unit (optional).

Design-Build for Public Works Construction

Bidder Statement of Qualifications

Among the requirements are:

1. An organizational chart of the bidder, and the key team members of the proposed design build team.
2. PWCR Registration, certification of non-debarment State & Federal (design-build team)
3. A list of current construction projects, and construction projects completed within the last 5 years, that are of similar size, scope, and complexity to the contracting unit's project, regardless of method of project delivery.
4. A listing of all the contracting unit's public works projects on which the design-builder and proposed design-build team have performed work within the past five years.
5. For transportation projects, the minimum classifications and aggregate rating limits to which the bidder and key team members and other subcontractors have been assigned by the New Jersey Department of Transportation, as applicable to the project. When a transportation project includes the installation, replacement, or rehabilitation of associated water, sewer, or stormwater infrastructure, the design-build team shall also possess classifications and aggregate rating limits issued by the DPMC that are relevant to such work.

Design-Build for Public Works Construction

- Bidder Statement of Qualifications:
 6. For all projects other than transportation projects, documentation that the bidder and, to the extent necessary for the project, key team members and other subcontractors have a current DPMC design build classification and such other DPMC classifications and ratings as may be necessary for the project.
 7. A listing of all public works projects for which a contracting unit has made a determination of prior negative experience with respect to the design-builder or members of its proposed design-build team within the past five years pursuant to LPCL. ***Can be other contracting units' negative experience!***
 8. Training certification of the bidder's professional and field workforce, along with that of the members of the proposed design-build team.
 9. Safety experience modification rating (EMR) of the bidder and construction members of its proposed design-build team.
 10. Measures taken by the bidder and members of the proposed design-build team to promote workforce diversity with respect to women and minorities.

Design-Build for Public Works Construction

Bidder Statement of Qualification evaluation process (prequalification for RFPs)

Technical review committee:

1. Verify PWCR's
2. Verify no state or federal debarment
3. Review of all aspects of the bidder statement of qualifications
4. Review of any applicable prior performance.
5. Select no fewer than 2, nor more than 6 bidders who shall be prequalified.

Requests for proposal:

The contracting unit shall issue a request for proposals to each bidder qualified no fewer than 14 days prior to the date established for submission of statements of proposal. The date fixed for receiving the proposals shall not fall on a Monday or any day directly following a State or federal holiday.

A request for proposals shall be prepared by the contracting unit using a design professional or design official and must be crafted in such a way as to encourage free, fair, and open competition without unfairly or illegally discriminating against otherwise capable design-builders. No RFP shall contain the elements prohibited for RFQs pursuant to N.J.A.C. 5:34-10.6(d).

Design-Build for Public Works Construction

Request for proposals (continued):

The request for proposals shall include, without limitation:

1. The technical proposal and price proposal forms (evaluated separately)
2. Proposed terms and conditions of the design-build contract
3. Instructions to bidders - submitting and receiving the statement of proposal.
4. Evaluation factor criteria, including the relative importance assigned to the factors and sub-factors with respect to the technical proposal and the price proposal. The evaluation factors may include, but need not be limited to, experience, design concepts, management approach, diversity, proposed technical solutions, plans for quality assurance and control, and the design-builder's understanding of the means and methods needed to complete the project on time and within budget.
5. A description of the drawings, specifications, or other submittals to be provided, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;
6. Site development requirements, including but not limited to parking, lighting, equipment, and landscaping;
7. Description of physical relationships between site elements;
8. Specific architectural style or concept;

Design-Build for Public Works Construction

Request for proposal content (continued):

9. Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs and known environmental issues;
10. Engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment);
11. Any documentation relative to the known soil conditions at the site including, but not limited to, any test results specifying the level of contamination, if any, of the soil that has been found at the site of the project;
12. If a project is located on a site with historical or suspected contamination, a line-item allowance or minimum unit price line item for soil testing and contaminated soil disposal, which shall be a good faith effort on the part of the contracting unit to reasonably estimate the total cost of testing and disposing of the soil;
13. Assignment of responsibility for obtaining required approvals and permits;
14. Budget limits for the work, if any;
15. Insurance requirements, and bonding or guarantees as may be required for public works projects under the LPCL;
16. A schedule for planned commencement and completion of the design-build contract;

Design-Build for Public Works Construction

Request for proposals content (continued):

17. Amount of the stipend, if any;

- At the discretion of the contracting unit, a stipend of no more than 3% of the design-build project's estimated costs may be paid to eligible bidders who submit responsive but unsuccessful proposals in response to the RFP.
- The decision to issue such a stipend shall be based on the contracting unit's analysis of the design-build project's size, scope and complexity, and the anticipated degree of competition during the procurement process.
- purpose of the stipend is to encourage competition by offering to compensate responsive, but unsuccessful bidders, for a portion of the estimated proposal development costs.
- Proposals deemed incomplete or non-responsive not entitled to stipend.

18. A statement pursuant to LPCL, N.J.S.A. 40A:11-23.1c indicating whether uniformed law enforcement officers will be required for the project;

19. A form listing all documentary and informational forms, certifications, and other documents required to submit with statement of proposal, along with a means by which the bidder can indicate their inclusion of said items with the statement of proposal; documents to be submitted upon notice of award.

Design-Build for Public Works Construction

Request for proposals – award of contract by governing body

Governing body's options:

- Governing body may award contract as recommended without change
- May issue a preliminary award, with final award made upon further negotiation
 - Successful proposal price is set as the maximum cost
 - Parties may agree to further modifications of the contract prior to a final contract award.
- If parties fail to reach a negotiated agreement, or the successful bidder fails to execute contract or submit pre-award documents/certifications within time period specified by contracting unit, governing body may authorize a notice of award to be issued to next highest ranked bidder.
- Or, the governing body can reject all proposals.
 - If governing body wants to start process over, must use same qualifications, evaluation factors, and budget constraints unless there has been a material change in circumstances affecting the needs of the contracting unit (e.g. environmental issues, natural disaster, unseen fiscal constraint)

Design-Build for Public Works Construction

Post award evaluation of design-builder:

- Every design-builder is subject to evaluation in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out.
- The design-builder's performance evaluations will be used by the contracting unit in evaluating and scoring bidders as to their prior experience on contracting unit projects, in accordance with the provisions of this chapter.
- Evaluation of construction performance will use the following evaluation ratings:
 - 1. Outstanding (O) or 100 percent--far exceeds the contract requirements by consistently exhibiting excellent performance. Always meets, and almost always exceeds the contract requirements;
 - 2. Very Good (VG) or 90 percent--often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;
 - 3. Satisfactory (S) or 80 percent--provides an acceptable level of performance consistently meeting the contract requirements;
 - 4. Marginal (M) or 70 percent--performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and
 - 5. Unsatisfactory (U) or 60 percent--fails to meet important contract requirements, resulting in a negative impact on the entire project.

References

Local Finance Notice 2022-15 (Certification Unit Update)

<https://www.nj.gov/dca/divisions/dlgs/lfns/22/2022-15.pdf>

Design-Build Regulations (N.J.A.C. 5:34-10)

https://www.nj.gov/dca/divisions/dlgs/resources/rules_reg.html

Local Finance Notice 2021-20

<https://www.nj.gov/dca/divisions/dlgs/lfns/21/2021-20.pdf>