



PUBLIC SCHOOL CONTRACTS LAW EXTRAORDINARY UNSPECIFIABLE SERVICES

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REFRESHER FOR PROCURING INSURANCE AND BROKERS

Today's Agenda

- Extraordinary Unspecifiable Services (“EUS”)
 - Introduction
 - Common Misconceptions and Mistakes when utilizing EUS
- Hiring an Insurance Broker
- Procuring Health Insurance
- Chapter 271 and other required forms
- Best Practices



Disclaimer: While OSC hopes this presentation is helpful, it should not be a substitute for legal advice, which is based on specific factual situations. Always consult with your solicitor / board attorney for specific fact-sensitive legal advice!

EXTRAORDINARY UNSPECIFIABLE SERVICES

EUS definition:

N.J.S.A. 18A:18A-2

- Services which are specialized and qualitative in nature
- Requiring expertise and extensive training
- Proven reputation in the field of endeavor

Special statutory designation:

N.J.S.A. 18A:18A-5(a)(10)

- Insurance, including the purchase of insurance coverage and consulting services considered EUS by statute

Awarding the contract:

*N.J.S.A. 18A:18A-37(b), and
N.J.S.A. 18A:18A-37(d)*

- Obtain at least 2 competitive quotes
- Award to the proposal that is most advantageous, price and other factors considered

Insurance Contract Duration:

N.J.S.A. 18A:18A-42

- Initial three years
- May include one 2-year or two 1-year extensions
- Subject to availability and appropriation annually of sufficient funds
- May not exceed 5 years

EXTRAORDINARY UNSPECIFIABLE SERVICES – REQUIREMENTS

Certification by purchasing agent/designated official declaring EUS (use DCA form attached to LFN AU-2002-02)

- #1 Describe the nature of the work
- #2 Why it meets the EUS requirements: Permissible under *N.J.S.A.* 18A:18A-5(a)(10) as an insurance contract
- #3 Why the services cannot reasonably be described by written specifications: Not applicable. See #2
- #4 Describe the informal solicitation of quotes: brokers contacted, prices and terms provided

Documented effort to secure at least 2 competitive quotes

Award made to firm/carrier whose proposal is most advantageous, price and other factors considered

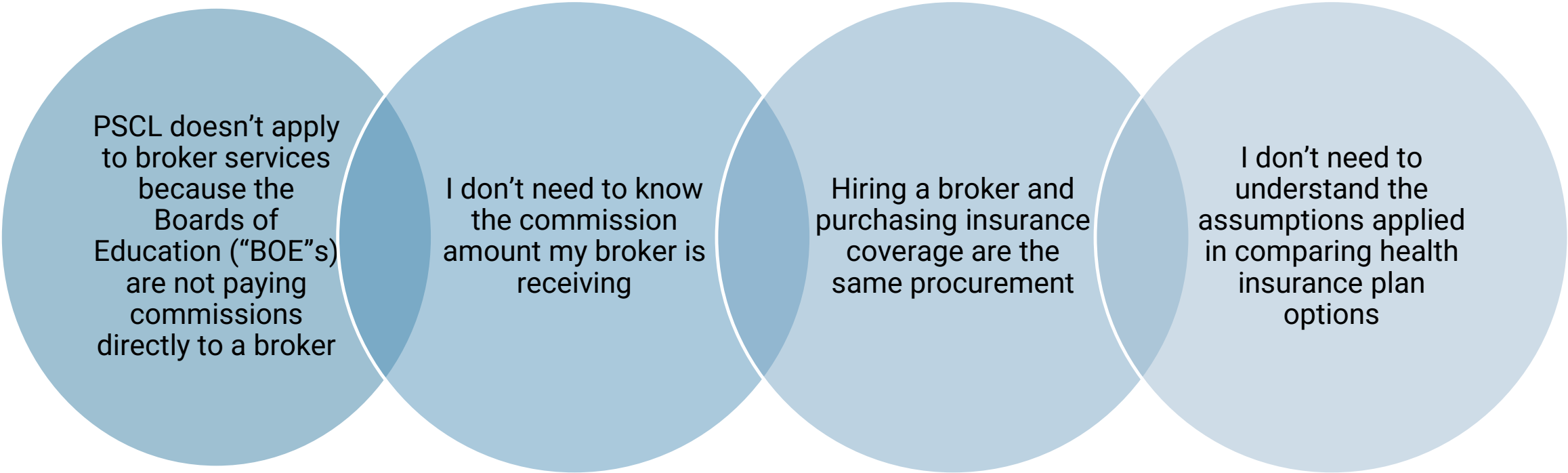
EXTRAORDINARY UNSPECIFIABLE SERVICES – REQUIREMENTS

N.J.A.C. 5:34-2.3

The governing body, in addition to stating the supporting reasons for its action in the resolution awarding the contract, shall place a notice of the action in an official newspaper.

Refer to DCA LFN AU-2002-02 for additional DCA guidance about EUS use and examples of types of services that satisfy the criteria for its use.

DEMYSTIFYING HEALTH INSURANCE PROCUREMENTS: COMMON MISCONCEPTIONS



PSCL doesn't apply to broker services because the Boards of Education ("BOE"s) are not paying commissions directly to a broker

I don't need to know the commission amount my broker is receiving

Hiring a broker and purchasing insurance coverage are the same procurement

I don't need to understand the assumptions applied in comparing health insurance plan options

DEMYSTIFYING HEALTH INSURANCE PROCUREMENTS: COMMON MISTAKES

An insurance broker may not be hired through the professional services exception to PSCL

- Definition of professional services under the PSCL is narrow and does **not** include insurance brokers.
- Instead, the EUS exemption can be utilized.
- LFN AU-2002-02 provides detailed guidance on utilizing the EUS exemption.

BOEs are not properly documenting hiring a broker or purchasing insurance

- If using the EUS exception, the required certification must be filed; and/or
- The contract award must be published in the newspaper with the name of the broker/insurance carrier, amount, duration and nature of the contract, and where the contract is available for public inspection.

COMMON MISTAKE – MISUSE OF PROFESSIONAL SERVICES EXCEPTION UNDER PSCL

- Professional Services definition *N.J.S.A. 18A:18A-2(h)*:
 - services rendered or performed by a person authorized by law to practice a recognized profession; and
 - whose practice is regulated by law; and
 - the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.
- Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.
- Contract Duration Note: In addition to this exception being inappropriate for insurance related procurements, it is important to note that contracts awarded under the professional service exception are limited to one year without extensions. *N.J.S.A. 18A:18A-3*.

COMMON MISTAKE: PROFESSIONAL SERVICES EXCEPTION UNDER PSCL

Professional Service	Engineer	Architect	Attorney	Insurance Broker
Authorized by law to practice a recognized profession	✓	✓	✓	✓
Practice is regulated by law	✓	✓	✓	✓
Requires knowledge of an advanced type in a field of learning acquired by a prolonged course instruction and study	✓	✓	✓	✗
Distinguished from general academic instruction or apprenticeship and training	✓	✓	✓	✗

LESSONS LEARNED: OSC AUDITS THAT ADDRESS HEALTH INSURANCE

A Performance Audit of Selected Fiscal and Operating Practices of the Borough of Roselle, January 27, 2021

- The Borough relied on its health insurance broker's analysis when selecting health insurance carriers without undertaking any critical examination of the premiums used by the broker in the analysis. OSC determined the Borough would have saved \$1.9 million if it had enrolled in the State Health Benefits Program.

Buena Regional School District, A Performance Audit of Selected Fiscal and Operating Practices, July 10, 2020

- The District failed to file certifications with its Board stating that the contract met the EUS exception and the details of those awards were not published in the District's official newspaper as required by Public School Contracts Law.
- The broker failed to notify the District of any commission, service fee, brokerage, carrier incentive offers, or other valuable consideration received.

The Town of Harrison, Selected Fiscal and Operating Practices, March 20, 2014

- Harrison did not perform an analysis of its private insurance compared to joining SHBP. Such analysis could have saved tax payers money.

EXTRAORDINARY UNSPECIFIABLE SERVICES – REQUEST FOR QUOTES

Request for Quotes: Insurance Brokers

- Include the qualifications desired or required of the broker
- Fully describe the scope of work/deliverables
 - Each plan option should identify assumptions relied upon
 - Reassess plan options and assumptions annually during term of contract
- Require full disclosure of any and all fees, commissions, and customary compensation
 - *N.J.S.A. 17:22A-44.1* Insurance Producer disclosure for health insurance
 - Compliance with “No Surprises Act”
- Require full disclosure of any actual or potential conflicts of interest
- Fully define the contract duration, including any and all extensions or transition periods
- Comply with all statutory requirements, forms, and disclosures

EXTRAORDINARY UNSPECIFIABLE SERVICES – REQUEST FOR QUOTES

Request for Quotes: Insurance Carriers

- Obtain full disclosure of plan options from incumbent insurance carriers
- Involve union representatives early in the process to account for collective bargaining agreement requirements
- Compliance with “No Surprises Act”
- Contract duration: consider short term with annual reevaluation, subject to the three year limitation of PSCL
- Comply with all statutory requirements, forms, and disclosures
- Ask broker for a comparison to SEHBP
 - Ensure it is an “apples to apples” comparison of private plans v. SEHBP

NOTIFICATION OF COMMISSION OR OTHER FEES FROM BROKER FOR HEALTH INSURANCE

N.J.S.A.
17:22A-41.1

Dept. of
Banking and
Insurance
NJ Bulletin No.
2008-16

- Disclosure by broker to insurance purchaser:
 - Of any valuable consideration, including but not limited to commissions or service fees
 - Consideration must be disclosed even if amount cannot be calculated or estimated
 - Should be made at the time of proposal for insurance, but no later than the effective date of the contract
 - Broker must use DOBI form

**DISCLOSURE OF A FINANCIAL INTEREST
IN THE SALE OF HEALTH INSURANCE POLICIES**

New Jersey law (N.J.S.A. 17:22A-41.1) requires disclosure of the compensation a licensed agent or broker (producer) receives from your purchase or renewal of health coverage. Compensation may be in the form of a commission, fee(s), or possibly other valuable consideration, or a combination of all three.

The per employee dollar amount(s) or percentage(s) of premium are in the table below. All amounts and/or percentages are additive. If something does not apply, it is marked "None" or "NA". If there is compensation, whether or not in addition to the compensation shown, whose amount cannot be determined, enter "CBD" (cannot be determined) on the appropriate line. Use the "Other" line for all other compensation, whether or not the amount is determinable.

	Agent/Producer	
	Percentage (%)	Amount in Dollars (\$) (per employee basis)
Commission of Issuing Agent		
Commission of General Agent		
Consultant Fee		
Brokerage Fee		
Other:		

PRODUCER INFORMATION

Agent Name: _____

General Agent Name: _____

CARRIER INFORMATION

Company Name: _____

Date

Agent/Producer Signature]¹

¹Carriers: omit this signature block if sending the disclosure form directly to the purchaser.

FEDERAL DISCLOSURE REQUIREMENT

“No Surprises Act”

Consolidated Appropriations
Act, 2021 Pub. L. No 116-260,
134 Stat. 1182 (2020)

- Federal law
- Effective January 1, 2022
- Requires carriers to disclose to enrollees any direct or indirect compensation to be paid to an agent or broker PRIOR to plan selection
- Disclosure must be included on enrollment documentation
- See Bulletin No. 21-14, New Jersey Department of Banking and Insurance

PUBLIC SCHOOL CONTRACTS LAW: INAPPLICABILITY OF *N.J.S.A. 19:44A-20.1 ET SEQ.* APPLICABILITY OF PAY TO PLAY REQUIREMENTS PER *N.J.A.C. 6A:23A-6.3*

- Unlike local governments, Public Schools must comply with *N.J.A.C. 6A:23A-6.3* disclosure requirements.
- Pursuant to *N.J.A.C. 6A:23A-6.3*, Schools are required to have a Pay to Play policy that:
 - Prohibits the School from entering into a contract valued over \$17,500 if during the preceding one-year period the vendor has made a reportable contribution to a member of the school board;
 - Prohibits a vendor (and spouse or child) from making a reportable contribution during the term of the contract;
 - Requires the vendor to submit a Chapter 271 disclosure even if the contract is required by law to be publicly advertised for bids
- These regulations do not apply when the contract is awarded under an emergency which requires the immediate delivery of goods or service.

CHAPTER 271 INSTRUCTIONS

Use DCA's standard Chapter 271 disclosure template form.

Include the contractor instruction section when provided to potential contractors.

Standard template form should be amended to account for the appropriate legislative districts and elected officials applicable to your contracting unit.

The completed form must be received from the contractor and on file at least 10 days prior to award of the contract. Resolutions of award should reflect that the disclosure has been received and is on file.

The standard template form can be found on the DLGS website.

EUS REQUEST FOR QUOTES – STATUTORY REQUIREMENTS

Include in the RFP/RFQ	References
OSC Record Retention Language	<i>N.J.A.C. 19:70-1.6; N.J.S.A. 52:15C-14(d)</i>
Mandatory EEO/AA language Exhibit A	<i>N.J.S.A. 10:5-31 et seq.; N.J.A.C. 17:27</i>
Anti-Discrimination Provisions	<i>N.J.S.A. 10:2-1</i>
Chapter 271 Disclosure Form	<i>N.J.A.C. 6A:23A-6.3</i>
Broker contracts: Notification of commission or other fees	<i>N.J.S.A. 17:22A-41.1</i>
No Surprises Act	Consolidated Appropriations Act, Pub. L. No 114-260 (2020)

EUS REQUEST FOR QUOTES – STATUTORY FORMS

REQUIRED FORM	REFERENCE	WHEN FORM IS DUE
Ownership Disclosure Form	<i>N.J.S.A. 52:25-24.2</i>	With Bid Submission
Chapter 27I Disclosure Form	<i>N.J.A.C. 6A:23A-6.3</i>	Within 10 days Prior to Contract Award
Business Registration Certificate	<i>N.J.S.A. 52:32-44</i>	Prior to Contract Award
<u>Prohibited Activities: Russia / Belarus</u>	<i>N.J.S.A. 52:32-60.1</i>	Prior to Contract Award
Disclosure of Investments in Iran	<i>N.J.S.A. 18A:18A-49.4; N.J.S.A. 52:32-58</i>	Prior to Contract Award
EEO/AA Form AA-302 or Letter of Federal Approval or Certificate of Employee Information Report	<i>N.J.S.A. 10:5-32; N.J.A.C. 17:27-3.1</i> <i>N.J.A.C. 17:27-4.2</i>	After Notice of Award, Prior to Signing Contract

EXTRAORDINARY UNSPECIFIABLE SERVICES – BRIEF SUMMARY

Standard of award:

- Most advantageous to the local unit/BOE, price and other factors considered
- Document the evaluation process

Board of Education - resolution must state:

- Awarded pursuant to EUS with supporting reasons
- Remember this is not a professional services contract
- Resolution should include the items required to be placed in the Notice of award.

Notice of award published in official newspaper - Must include:

- Nature of the contract
- Duration
- Description of the service
- Amount of the contract
- Where the contract can be inspected by the public

BEST PRACTICES FOR HEALTH INSURANCE PROCUREMENTS

- Solicit proposals for broker services.
- When soliciting broker services, compare a flat fee to percentage-based commissions to minimize conflicts of interest and make sure any commission is disclosed before the insurance coverage is selected.
- Require a disclosure of any conflicts of interest from your broker.
- If using a broker to solicit insurance quotes, stay involved in every step of the process.
- Ask your broker to include a comparison to the SEHBP and quotes from at least 3 other insurance carriers.
- Ask questions to ensure that the plan and rate comparisons are “apples to apples” and make sure you understand the assumptions applied when making comparisons.
- When considering plan options, involve union representation as early as possible to account for “equal or better” collective bargaining agreement requirements.

OSC THRESHOLDS AND SUBMISSION REQUIREMENTS: SUBMISSION RESOURCES AND FORMS

OSC Homepage: <https://nj.gov/comptroller/>

Pre-advertisement Notification for contracts valued at \$12.5 million or more (Forms B1 and B2)

Form B1: Due At least 30 days before advertisement

Form B2: Due Within 20 days after award

Pre-Advertisement Notification (Form B1)

https://nj.gov/comptroller/about/work/contracting/docs/osc_compliance_form_b1_pre.pdf

Post-Award Notification (Form B2)

https://nj.gov/comptroller/about/work/contracting/docs/osc_compliance_form_b2_post.pdf

Post-award Notification for contracts valued at \$2.5 million or more but less than \$12.5 million (Form A)

Due Within 20 business days after award

https://nj.gov/comptroller/about/work/contracting/docs/osc_compliance_form_a_post.pdf

Post-award Notification for emergency contracts valued at \$2.5 million or more (Form D)

Due: Within 30 business days of award

https://nj.gov/comptroller/about/work/contracting/docs/osc_compliance_form_d_emergency.pdf



QUESTIONS?



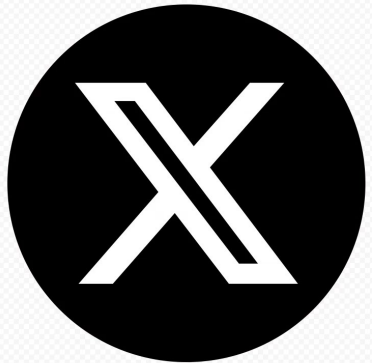
REPORTING FRAUD, WASTE, AND ABUSE

If you have any information about the fraud, waste, or abuse contact the New Jersey Office of the State Comptroller through:

- Online complaint form found at www.nj.gov/comptroller
- By email at ComptrollerTips@osc.nj.gov
- By calling the toll-free hotline, 1-855-OSC-TIPS



KEEP IN TOUCH



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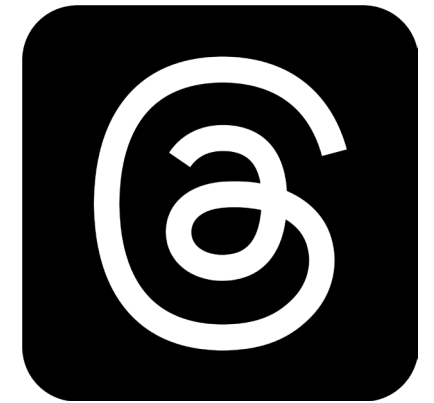
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