

TREASURY-GENERAL

OFFICE OF THE STATE COMPTROLLER

Office of the State Comptroller Rules

Proposed New Rules: N.J.A.C. 17:44

Authorized By: Matthew Boxer, State Comptroller.

Authority: N.J.S.A. 52:15C-1 et seq., specifically 52:15C-8(a).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-369

Submit written comments by February 5, 2010 to:

Matthew Boxer

Comptroller

20 West State Street

PO Box 024

Trenton, New Jersey 08625

The agency proposal follows:

Summary

On September 1, 2007, an Act creating the independent Office of the State Comptroller (OSC) became effective as P.L. 2007, c. 52. N.J.S.A. 52:15C-1 et seq. The mission of OSC is to promote the integrity and transparency of government operations by conducting independent audits of public entities and reviewing public contracts. Pursuant to N.J.S.A. 52:15C-8a, the Comptroller is proposing new rules under N.J.A.C. 17:44 to explain the organization and function of OSC and the reporting requirements for entities subject to its oversight. Entities subject to OSC's oversight that impede audits or contract reviews or refuse to implement or fail

to implement recommended corrective action plans may be referred by OSC to the Governor who may withhold State funding to these entities or take other appropriate steps. In sum, the proposed new rules are as follows:

Proposed N.J.A.C. 17:44-1.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 17:44-1.2 sets forth the definitions of terms utilized in this subchapter.

Proposed N.J.A.C. 17:44-1.3 sets forth the mission of OSC and states the independence of the Office and its employees.

Proposed N.J.A.C. 17:44-1.4 sets forth the functions of the Audit Division.

Proposed N.J.A.C. 17:44-1.5 sets forth the functions of the Procurement Division.

Proposed N.J.A.C. 17:44-2.1 sets forth the requirement for covered entities to provide OSC with copies of periodic financial audits and requires State officials to notify OSC of any audits submitted to their agencies that reveal significant deficiencies.

Proposed N.J.A.C. 17:44-2.2 sets forth language that all covered entities and contracting units shall insert into their contracts.

Proposed N.J.A.C. 17:44-2.3 sets forth the record retention requirements for covered entities.

Proposed N.J.A.C. 17:44-2.4 sets forth the criteria for audit determination.

Proposed N.J.A.C. 17:44-2.5 sets forth that OSC audits are conducted in accordance with Generally Accepted Government Auditing Standards issued by the U.S. Government Accountability Office.

Proposed N.J.A.C. 17:44-2.6 sets forth the audit process.

Proposed N.J.A.C. 17:44-2.7 sets forth the requirements to follow for covered entities that choose to respond to draft audit reports and delineates how draft audit reports and final audit reports are distributed.

Proposed N.J.A.C. 17:44-2.8 sets forth OSC's dual obligation to ensure that corrective action plans are implemented by covered entities and to report findings of any covered entity's refusal or failure to comply with a corrective action plan to the Governor.

Proposed N.J.A.C. 17:44-3.1 sets forth the requirement that contracting units notify the Procurement Division of the award of certain contracts within certain time periods.

Proposed N.J.A.C. 17:44-3.2 sets forth the process by which contracting units shall determine the value of contracts and delineates when notice is required if the value of contracts changes.

Proposed N.J.A.C. 17:44-3.3 sets forth the documents and information required for contracts valued at more than \$2 million but less than \$10 million.

Proposed N.J.A.C. 17:44-3.4 sets forth the documents and information required for contracts valued at \$10 million or more.

Proposed N.J.A.C. 17:44-3.5 sets forth the process by which contracting units shall request a waiver of the 30-day review period.

Proposed N.J.A.C. 17:44-3.6 sets forth the notice, documents and information required of State agencies that procure through the Division of Purchase and Property (DPP).

Proposed N.J.A.C. 17:44-3.7 sets forth the notice, documents and information required for renewals of third party contracts valued at \$10 million or more.

Proposed N.J.A.C. 17:44-3.8 sets forth the additional documents and information required for cooperative purchasing, sole source provider or proprietary, emergency and professional services contracts valued at more than \$2 million.

Proposed N.J.A.C. 17:44-3.9 sets forth the confidentiality of documents and information submitted for contract review.

Proposed N.J.A.C. 17:44-3.10 sets forth the record retention requirements for contracting units.

Proposed N.J.A.C. 17:44-3.11 sets forth the procedure followed by the Procurement Division for notifying contracting units of any deficiencies found in procurement processes or contracts.

As OSC has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules establish a regulatory framework for the audit and review of covered entities and the review of the procurement methods used by contracting units subject to OSC oversight pursuant to N.J.S.A. 52:15C-1 et seq. The proposed new rules should have a beneficial social impact on citizens who should gain from greater efficiency and transparency in the operation of all levels of New Jersey's government.

Economic Impact

OSC expects that the ability to exercise oversight through audits and contract reviews will have a positive economic impact on taxpayers who should benefit from savings obtained through audits and contract reviews. OSC estimates that associated administrative costs of the covered entities and contracting units subject to OSC oversight will be minimal.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rules are not expected to create or reduce jobs in the State of New Jersey. Specifically, OSC does not anticipate that covered entities and contracting units will need to hire additional personnel for compliance requirements imposed by these proposed new rules.

Agriculture Industry Impact

The proposed new rules will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules impose minimal recordkeeping requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that contract with government units. The exact number of small businesses is not quantifiable but examples of the types of small businesses that contract with government units include vendors of goods and services and construction companies. The proposed new rules require these businesses to maintain certain documentation related to their contracts with government units for a period of five years and to make such records available to OSC upon request. These recordkeeping requirements are minimal because these records are likely already required to be maintained for other purposes and small businesses can utilize the least burdensome means to maintain these records. Thus, it is highly unlikely that small businesses who contract with government units will incur any significant additional costs or need to retain any professional services to comply with these recordkeeping requirements.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rules will not have an impact on the average cost of housing. The proposed new rules explain the organization and function of OSC and the reporting requirements for entities subject to its oversight.

Smart Growth Development Impact

The proposed new rules will not have an impact on the availability of affordable housing or affect new construction within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed new rules explain the organization and function of OSC and the reporting requirements for entities subject to its oversight.

Full text of the proposed new rules follows:

CHAPTER 44

STATE COMPTROLLER

SUBCHAPTER 1. OFFICE OF THE STATE COMPTROLLER

17:44-1.1 Purpose and scope

(a) The rules in this chapter set forth the organization and function of OSC, explain the audit process and specify the documents and information required of contracting units subject to contract review.

(b) The provisions of this chapter apply to all covered entities and contracting units as defined in N.J.A.C. 17:44-1.2.

17:44-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Bid protest” means any written challenge to a contract specification, to a bid for a contract or to a contract award.

“Contract” means an agreement supported by consideration and enforceable at law. Examples include, but are not limited to: grants, purchases of goods or services, leases, concession agreements, agreements for sale, loan agreements, agreements with entities to indemnify or insure, agreements to join certain shared service agreements including joint insurance funds, brokerage agreements, land transactions (excluding land condemnations), certain memoranda of understanding, purchase orders and third party contracts.

“Contract partner” means any contractor, vendor, lessee or lessor, buyer or seller, concessionaire, grantee or other party to a contract.

“Contracting unit” means any entity subject to contract review pursuant to N.J.S.A. 52:15C-10. Contracting units include, but are not limited to: the principal departments in the Executive Branch of State government, any independent State authority, commission, instrumentality and agency and any State or county college or university and any unit of local government including, but not limited to, a county, municipality and board of education. The definition also includes any board, commission, committee, authority or agency that such entities have created or to which the entities have delegated any power to enter into contracts. For example, if any covered entity has created a non-profit corporation that exercises delegated powers to enter into a contract, the non-profit corporation shall comply with these regulations when exercising delegated powers.

“Cooperative purchasing agreement” means the extension of a contract entered into by a contracting unit for the use and benefit of other contracting units, such as pursuant to N.J.S.A. 52:34-6.2 or 40A:11-11(6).

“Covered entity” means any entity subject to audit pursuant to N.J.S.A. 52:15C-8 and includes, but is not limited to: all units in the Executive Branch of State government and any entity exercising executive branch authority, public institution of higher education, independent State authority, unit of local government and board of education.

“Emergency procurement” means a contract entered into under an emergency condition that is a threat to public health, welfare or safety.

“Evaluation committee” means those persons appointed to evaluate the merits of a response to a solicitation for bid, request for proposals (RFP), request for qualifications (RFQ), expression of interest (EOI) or other competitive solicitation for a contract when the formation of such a committee is required by the procurement process, by law, regulation, Executive Order or internal operating procedure of the contracting unit.

“OSC” means the New Jersey Office of the State Comptroller.

“Performance audit” means an audit conducted in accordance with Generally Accepted Government Auditing Standards issued by the U.S. Government Accountability Office to evaluate the performance and operations of a covered entity, reduce costs and facilitate decision making by parties with the responsibility to oversee or initiate corrective action.

“Procurement process” means any method used to obtain goods or services, land, leaseholds or concessions and includes, but is not limited to: bidding, competitive contracting, negotiations, request for proposals, expressions of interest, request for qualifications, requests for offerings or quotes.

"Proprietary" means goods or services of a specialized nature that are protected by trademark, patent or copyright or made, produced or distributed by one vendor or manufacturer. Specifications are proprietary if they are restricted to a brand name product.

"Shall" denotes the imperative.

"Sole source provider contract" means a contract awarded for goods or services when the provider is the only available source of the goods or services.

"Third party contract" means a contract between two or more parties, the performance of which is intended to benefit directly a third party. Examples include Department of Human Services (DHS) third party contracts and Department of Corrections (DOC) third party contracts.

17:44-1.3 Independent Office of the State Comptroller

(a) OSC is in, but not of, the New Jersey Department of the Treasury. As such, it operates as an independent Office that promotes the integrity and transparency of government operations by, among other things, reviewing public contracts and conducting independent audits of covered entities in accordance with Generally Accepted Government Auditing Standards.

(b) The State Comptroller is the administrator of OSC and is appointed by the Governor, with the advice and consent of the Senate.

(c) OSC coordinates audit functions, investigations and performance reviews with the following entities: Office of the Inspector General, Department of Law and Public Safety, Department of Education, Department of the Treasury, Department of Transportation, Division of Local Government Services in the Department of Community Affairs, Local Finance Board and Office of the State Auditor.

(d) All assistants, employees and personnel of OSC are confidential employees for purposes of the New Jersey Employer-Employee Relations Act, N.J.S.A 34:13A-1 et seq. and shall serve in the unclassified service of the Civil Service.

17:44-1.4 Establishment and functions of the Audit Division

(a) There is established within OSC an Audit Division. The Audit Division, among other functions, conducts research and performs preliminary evaluations which may lead to recommendations regarding the need for an audit; conducts performance audits of the Executive Branch of State government, including all entities exercising executive branch authority, public institutions of higher education and independent State authorities; and conducts performance audits of local government units and boards of education.

(b) The Audit Division conducts audits that assess the performance and management of the programs of covered entities. The Audit Division also provides guidance concerning the procurement of auditors by covered entities.

(c) OSC is a recognized sponsor of continuing professional education by the National Registry of Continuing Professional Education Sponsors and provides training through in-house programs and outside conferences in accord with the Generally Accepted Government Auditing Standards promulgated by the U.S. Government Accountability Office. OSC training qualifies toward auditors' bi-annual mandatory 80 hours of continuing professional education credits.

17:44-1.5 Establishment and functions of the Procurement Division

(a) There is established within OSC a Procurement Division. The Procurement Division monitors and reviews the solicitation and award process for contracts under OSC's jurisdiction to ensure that those processes comply with applicable public contracting laws, rules, regulations

and policies. The Procurement Division provides guidance, in the context of its reviews, to contracting units regarding appropriate procurement processes.

(b) In response to specific complaints, audit referrals or contract reviews, OSC may investigate to gather additional information regarding the procurement process, contract award process and financial management and performance of contracting units.

SUBCHAPTER 2. AUDIT DIVISION

17:44-2.1 Timely notice of certain audits required

(a) Covered entities shall provide OSC with copies of their periodic financial audits upon their receipt.

(b) State officials, including the Commissioner of Education and the Director of the Division of Local Government Services in the Department of Community Affairs, shall notify OSC of any local audits submitted to their agencies that reveal significant deficiencies as determined by the head of each covered entity as required by N.J.S.A. 52:15C-9.

17:44-2.2 Authority to audit or review contract records

(a) Relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).

(b) As of (the effective date of these rules), all covered entities shall insert the following language in any new contract:

“(The contract partner) 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.”

17:44-2.3 Requirements for record retention and production

Where applicable, all covered entities shall comply with record retention schedules as established by the State Records Committee pursuant to the Public Records Law, N.J.S.A. 47:3-20 et seq. If a covered entity is not subject to N.J.S.A. 47:3-20 et seq., then relevant records shall be maintained for a period of no less than five years after contract completion. When requested, any covered entity shall produce any record for audit or review by OSC.

17:44-2.4 Criteria for audit determination

OSC determines the frequency with which performance audits shall be conducted of covered entities through the analysis of objective criteria as set forth in N.J.S.A. 52:15C-8(c).

17:44-2.5 Audit standards

OSC audits are conducted in accordance with Generally Accepted Government Auditing Standards issued by the U.S. Government Accountability Office.

17:44-2.6 Audit process

The audit process typically includes an opening conference, an audit survey, field work, review of preliminary findings with the covered entity's officials, an exit conference and the issuance of the audit report.

17:44-2.7 Audit reports

(a) The head of the audited covered entity is provided a draft audit report for their formal response. If it chooses to do so, the audited covered entity may respond formally with its official position concerning the audit findings and recommendations. This response is typically included as an appendix to the final audit report.

(b) Final audit reports are public documents and are posted on OSC's website. Final audit reports are issued to the Governor, the President of the Senate and the Speaker of the General Assembly.

17:44-2.8 Corrective action plan and monitoring of covered entities post-audit

(a) Following the distribution of the final audit report, the head of the audited covered entity shall report to OSC within 90 days stating the corrective action taken or underway to implement the recommendations contained in the report and, when not implemented, the reason therefore. The Audit Division may follow-up to review the implementation of the corrective action plan.

(b) OSC shall report to the Governor if a covered entity refuses to cooperate in proposing corrective action or fails to comply with a recommended corrective action plan. The Governor may withhold State funding to the covered entity or take other appropriate steps pursuant to N.J.S.A. 52:15C-11(d).

SUBCHAPTER 3. PROCUREMENT DIVISION

17:44-3.1 Timely notice of certain contracts required

(a) Contracting units shall notify the Procurement Division of the award of contracts valued at more than \$2 million but less than \$10 million no later than 20 business days after the contract award. The form for notice is provided on OSC's website at www.state.nj.us/comptroller.

(b) Contracting units shall notify the Procurement Division of anticipated contracts valued at \$10 million or more during the initial planning stages of the procurement process and before the contracting unit begins to draft the solicitation, request for proposals, concession offering, proposal to purchase, sell or lease real estate or similar contract-related documents, and in no event less than 30 days prior to any advertisement, negotiation or other solicitation.

(c) For procurements valued at \$10 million or more, OSC's 30-day review period commences when the contracting unit provides or otherwise makes available all requested documents and information as prescribed in N.J.A.C. 17:44-3.4. The form for notice is provided on OSC's website at www.state.nj.us/comptroller.

(d) For procurements in which multiple contracting units are involved, such as joint agreements for goods or services pursuant to N.J.S.A. 40A:11-10 et seq., the contracting units shall designate an individual to represent all of the contracting units involved. The designated individual shall notify the Procurement Division of the procurement and provide all necessary documents and information.

(e) Contracting units shall provide the required documents and information electronically, if possible, to contracts@osc.state.nj.us or via mail to State of New Jersey, Office of the State Comptroller, 20 West State Street, P.O. Box 024, Trenton New Jersey 08625-0024. If documents are too large to send electronically or via mail, contracting units may provide the staff of the Procurement Division with the location at which the documents may be inspected.

17:44-3.2 Process by which contracting units shall determine the value of contracts; notice required when the value of contract changes

(a) When the exact value of a contract is uncertain, contracting units shall act in good faith to ascertain an estimated value using the following guidelines:

1. The individual(s) responsible for the procurement shall use professional judgment based on, but not limited to, prior procurements made by the contracting unit for similar goods or services.
2. The contract value is calculated as a whole, that is, the number of years times the yearly amount. Although potential contract extensions are not included in calculating the contract value at the time of estimating total contract value or at the time of the award, if an extension itself exceeds \$2 million, then notice is required at the time of extension.
3. Notice is required for change orders if the value of the particular change order exceeds \$2 million.

17:44-3.3 Documents and information required for contracts valued at more than \$2 million but less than \$10 million

(a) Contracting units shall notify the Procurement Division of contracts valued at more than \$2 million but less than \$10 million no later than 20 business days after the contract award. The form for notice is provided on OSC's website at www.state.nj.us/comptroller. The following documents and information shall be required:

1. The name of the contracting unit and the contract number, if applicable;
2. A description of the goods, services or other subject procured;
3. The cost of the goods, services or other subject procured;
4. The source(s) of funding for the contract;
5. A list of all State and Federal grant funds used for the contract and a brief description of any conditions and/or requirements of the grant funds, if applicable;
6. A description of the procurement process utilized to select the contract partner;
7. Citations to all relevant statutory, administrative and other sources of governing law and internal procurement policies;
8. The name and address of the contract partner awarded the contract and a brief justification for the award; and
9. The name, phone number and e-mail address of the employee of the contracting unit capable of responding to questions pertaining to the contract.

(b) The following documents and information are to be produced only if specifically requested by OSC:

1. A copy of the signed, executed contract, addenda to the solicitation and the resolution awarding the contract or minutes approving the contract award, if applicable;

2. A complete list of bids or proposals received and the name and address of each bidder, vendor or competitor;
3. Any documents explaining and approving a waiver from bidding requirements and documents explaining and approving the use of proprietary items;
4. Copies of any pre-award or post-award bid protests and any decisional documents that arise as a result of the protests; and/or
5. Standard specifications, technical specifications, special terms and conditions and standard terms and conditions, for example, affidavits and affirmative action documents.

17:44-3.4 Documents and information required for contracts valued at \$10 million or more

(a) Contracting units shall notify the Procurement Division of contracts valued at \$10 million or more at least 30 days prior to any advertisement, negotiation or solicitation. The form for notice is provided on OSC's website at www.state.nj.us/comptroller. The following documents and information shall be required:

1. The name of the contracting unit and contract number, if applicable;
2. A description of the goods, services or other subject to be procured;
3. The estimated cost of the goods, services or other subject to be procured and any documents evidencing how the estimated cost was obtained, such as a construction cost estimate or other cost analysis;
4. The estimated date of advertisement, negotiation or other solicitation;
5. The source(s) of funding for the contract;
6. A list of all State and Federal grant funds to be used for the contract and a brief description of any conditions and/or requirements of the grant funds, if applicable;
7. A description of the procurement process to be utilized to select the contract partner;

8. Citations to all relevant statutory, administrative and other sources of governing law and internal procurement policies;
9. A copy of the draft procurement documents such as the solicitation or request for proposals and any subsequent addenda or clarification that would change the bid or award process;
10. Any documents explaining and approving a waiver from bidding requirements and documents explaining and approving the use of proprietary items;
11. Standard specifications, special terms and conditions and standard terms and conditions, for example, affidavits and affirmative action documents; technical specifications only when specifically requested by OSC; and
12. The name, phone number and e-mail address of the employee of the contracting unit capable of responding to questions pertaining to the contract.

(b) Upon the completion of the bidding process and the award of a contract valued at \$10 million or more, contracting units shall provide the following additional documents and information to the Procurement Division within 20 business days of the award, notwithstanding OSC review prior to the advertisement, negotiation or other solicitation. The form for notice is provided on OSC's website at www.state.nj.us/comptroller. The following documents and information shall be required unless otherwise noted:

1. The name of the contracting unit and the contract number, if applicable;
2. The final cost of the goods, services or other subject procured;
3. The name and address of the contract partner awarded the contract and a brief justification for the award;
4. A copy of the signed, executed contract, any addenda to the solicitation and the resolution awarding the contract or minutes approving the contract award, if applicable;

5. A complete list of the bids or proposals received and the name and address of each bidder, vendor or competitor;
6. Copies of any pre-award or post-award bid protest and any decisional documents that arise as a result of the protest; and
7. The name, phone number and e-mail address of the employee of the contracting unit capable of responding to questions pertaining to the contract.

17:44-3.5 Process by which contracting units may request a waiver of the 30-day review period and OSC response

(a) Contracting units seeking to proceed with an advertisement before the expiration of the 30-day review period shall request a waiver of the time period in writing. Such contracting units shall provide any information required in N.J.A.C. 17:44-3.4 at the time the waiver is requested and the reason for the waiver request. Other documents shall be supplied as requested.

(b) Contracting units shall notify OSC of any subsequent addendum or clarification which would change the bid or award process from the process set forth in the documents presented to OSC in support of any waiver request, even if a waiver has been granted.

(c) OSC shall respond to waiver requests in writing.

17:44-3.6 Notice, documents and information required of State agencies that procure through the Department of the Treasury, Division of Purchase and Property (DPP)

(a) For procurements valued at \$10 million or more, State agencies that procure through the Department of the Treasury, Division of Purchase and Property (DPP) shall notify the Procurement Division in writing that they intend to send a request for procurement to DPP as soon as the agency begins preparing specifications or a request for proposals.

(b) DPP shall submit a notice of the planned procurement to the Procurement Division at least 30 days before advertising in accordance with N.J.A.C. 17:44-3.4.

(c) The Procurement Division shall notify both DPP and the applicable State agency if the proposed procurement is irregular and the advertisement cannot proceed.

(d) For contracts valued at more than \$2 million but less than \$10 million, DPP shall notify the Procurement Division no later than 20 business days after the contract award in accordance with N.J.A.C. 17:44-3.3.

17:44-3.7 Notice, documents and information required for renewals of third party contracts valued at \$10 million or more

(a) For renewals of third party contracts valued at \$10 million or more, notice shall be provided by the contracting unit to the Procurement Division no later than 60 days prior to the annual renewal date. Notice shall include the following:

1. A determination in accord with the contracting unit's guidelines that the vendor has performed in a satisfactory manner;
2. All information supplied by the vendor related to contract renewal;
3. A comparison of the contract terms for the renewal year and the prior year; and
4. A copy of the original contract, if available. If the original contract is not available, then a brief, written history of the contract.

17:44-3.8 Additional documents and information required for cooperative purchasing, sole source provider or proprietary, emergency and professional services contracts valued at more than \$2 million

(a) Contracting units that plan to enter into, or have entered into, a cooperative purchasing agreement valued at more than \$2 million shall submit an award recommendation or briefly

explain the reasons for using cooperative purchasing and provide documents evidencing any cost analysis conducted. Governments using the cooperative purchasing requirements of a state contract need not provide such information.

(b) Contracting units that plan to enter into, or have entered into, a sole source provider contract or proprietary contract valued at more than \$2 million shall provide documents evidencing the justification for the award including an explanation addressing the lack of other vendors that can provide comparable products or services, any resolution of the governing body authorizing the use of proprietary goods and any completed waiver documentation. When determining if goods or services are sole source, contracting units shall abide by existing laws and rules limiting the use of the sole source exception, such as N.J.A.C. 5:34-2.2. Contracting units using a waiver from public bidding for contracts valued at \$10 million or more shall provide OSC with a copy of the waiver or resolution prior to contract award or execution.

(c) Contracting units that have entered into emergency contracts valued at more than \$2 million shall provide a brief explanation as to why the procurement was classified as an emergency, any related resolution from the governing body and any completed waiver.

(d) In any type of procurement for which an evaluation committee is appointed, including procurements for professional services and procurements using competitive contracting, a contracting unit shall maintain the list of persons participating on the evaluation committee, each person's qualifications, original documents evidencing the scoring by the evaluation committee, the committee's evaluation of the successful and unsuccessful vendors and any award recommendation. OSC may request such documents following award notice.

17:44-3.9 Confidentiality of documents and information submitted for contract review

(a) Information communicated for notice and review by or between contracting units and OSC is considered advisory, consultative or deliberative material for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., as amended and supplemented.

(b) Pursuant to N.J.S.A. 52:15C-10b(5), the Procurement Division may, within its discretion and after notifying the contracting unit, determine that information submitted for contract review should be part of a written determination designated as a public record for reasons of transparency, providing guidance or other public purpose.

17:44-3.10 Requirements for record retention and production

Where applicable, all contracting units shall comply with record retention schedules as established by the State Records Committee pursuant to the Public Records Law, N.J.S.A. 47:3-20 et seq. If a contracting unit is not subject to N.J.S.A. 47:3-20 et seq., then relevant records shall be maintained for a period of no less than five years after contract completion. When requested, any contracting unit shall produce any record for audit or review by OSC.

17:44-3.11 Completion of the contract review process and notification of any deficiencies found in procurement process or contracts

(a) For contracts valued at \$10 million or more, the Procurement Division shall notify the contracting unit in writing if the proposed procurement process is irregular and the advertisement cannot proceed.

(b) For contracts valued at more than \$2 million but less than \$10 million of which OSC was notified post-award, the Procurement Division may provide information to the contracting unit on ways in which the procurement process or contract award process could be improved and any deficiencies cured, or take other appropriate action.