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The purpose of this chapter is to provide guidance on how the bidding requirement is to be implemented while ensuring compliance with the uniform bid process and contractor relations.

Responsible Contractor: Each bidder for a contract to perform lead assistance work shall state in its bid whether or not it is a “Responsible Contractor”. The Contractor shall certify on the “**Responsible Contractor Certification**” that the conditions to be considered a responsible contractor for the purpose of doing business with the Lead Assistance Programs have been met.

Lead Assistance Program Agency, hereafter known as the “Agency”, shall verify that the Justification for Selection of Contractor form is satisfactorily completed.

1. Contractors’ Registration Act

New Jersey's Contractors’ Registration Act, NJS 56:8-136 et seq., requires that contractors engaged in the business of selling or making home improvements must be registered with the Division of Consumer Affairs.

Home improvements are defined as the remodeling, altering, renovating, repairing, restoring, modernizing, moving, demolishing or otherwise improving or modifying of the whole or any part of any residential or non-commercial property, insulation installation and the conversion of existing commercial structures into residential or non-commercial property.

The Act exempts from the registration requirement: any person performing a home improvement upon a residential or non-commercial property he owns, or that is owned by a family member, a bona fide charity, or other non-profit organization;

- any person who is in a profession (i.e., architect, engineer, plumber, electrician) requiring registration, certification or licensure by the State who is acting within the scope of his profession;
- any person employed by a community association or cooperative corporation;
- any public utility and home improvement retailer such as Lowes or Home Depot with a net worth of \$50,000,000 or employee of that retailer.

Construction code officials will not issue a construction permit to a contractor who is not in compliance with the Act.

Information about the registration requirements is available at the offices of local construction code officials and online at <http://www.nj.gov/oag/ca/laws/ContractorsRegistrationLaw.pdf>.

2. Small Business Bidder

The Small Business Bidder (SBB) shall satisfy the qualifications for that designation at the time of the bid submission.

SBB shall submit a trained and qualified workforce compliance plan as part of the Bid Package Checklist.

3. Lead Hazard Evaluation and Abatement Code N.J.A.C. 5:17

In accordance with New Jersey's Lead Hazard Evaluation and Abatement Code (N.J.A.C. 5:17) any company offering to perform lead hazard evaluation or lead abatement in New Jersey must be certified by the New Jersey Department of Community Affairs (DCA). N.J.A.C. 5:17. Contractors that are not NJDCA certified can only perform lead remediation services and must have EPA Firm Certification (RRP).

Lead hazard evaluation is defined as "a surface-by surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation". The contractor who conducts the lead hazard evaluation is known as the "lead evaluator".

Lead abatement is defined as "a set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner in compliance with standards promulgated by the appropriate Federal agencies. Such term includes:

- The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and
- All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures."

The DCA Lead Evaluator cannot be the same firm and/or associated with the Lead Contractor on a project.

A list of DCA Certified Lead Evaluators can be found at and a list https://www.nj.gov/dca/codes/publications/pdf_lead/ld_eval_contrs.pdf

A list of DCA Certified Lead Abatement Contractors can be found at https://www.nj.gov/dca/codes/publications/pdf_lead/ld_abat_c.pdf

4. Bid-Package Review Checklist and Other Required Bid Documents

In the Appendix you will find the required forms which must be completed and maintained on file at the Agency to document procedural compliance with N.J.S.A. 40 A:11-1 et seq., "*Local Public Contracts Law*", as well as the Common Rule 45 CFR 46 and 2 CFR 200 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

All bids should be submitted on the contractor's letterhead.

The required forms shall be collectively referred to as the Bid Package and shall include the following documents, which can be found in the Appendix:

- **“Bid Package Review Checklist”**
- **“Justification for Selection of Contractor”**
- **“Non-Collusion Affidavit of Prime Bidder”**
- **“Contractor Registration Application”**
- **“Affirmative Action Affidavit”**

The Bid Package shall be completed and maintained on file whenever lead-safe remediation/lead abatement services and/or equipment are procured through a sealed bid procedure.

The Bid Package shall be maintained on file at the Agency to document procedural compliance pursuant to N.J.S.A. 40A:11-1 et seq., Local Public Contracts Law, 2 CFR 200, Uniform Administrative requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

5. Bidding Procedures

5.1 Procurement Methods for Contractors

Request for Qualifications (RFQ)

An RFQ is used to select a pool of qualified contractors. Once the pool of contractors has been selected, contractors can be selected for a lead remediation or abatement job through one of the following methods:

1. **Mini-Bids:** A mini bid process consists of inviting the pool of qualified contractors to submit bids for specific projects. The bids are evaluated, and the contract/job is awarded to the **lowest responsible bidder**.
2. **Round Robin Process:** The Round Robin process rotates work among the pool of qualified contractors selected through the RFQ. Contractors are selected for a contract/job in a rotational manner without requiring competitive bidding for each. Agencies using the Round Robin process, have to ensure the selected pool of contractors agree to a standard pricing for services provided at the time of qualification.

5.2 Posting

All Agencies are required to publish bid requests for three consecutive days in a local newspaper with a bid opening conference date 10 days from the first day the ad was published. Copies of bids in PDF format must be submitted to OLIEC for posting on NJ Lead Assistance Programs webpage prior to publishing in local newspapers. The following information must be provided for posting on webpage:

- Post Date
- Bid Close Date
- Bid Opportunity
- Agency

5.3. Bid Opening Procedures

Bids shall be opened by an Agency representative only at the time and place specified in the bid request letter and published announcement, in the presence of an Agency representative, interested contractors and a DCA State Monitor.

Prior to publishing an advertisement in the newspaper, the Agency is required to consult with the designated State Monitor to ensure that they are available to attend the Bid Opening. The designated State Monitor, an Agency Staff Representative, or Secondary Monitor shall always be present at a Bid Opening; state monitor may attend virtually.

Please note that this bid opening procedure does not apply to mini-bids/quotes solicited from the Agency's pool of lead evaluators, and/or lead remediation/abatement contractors since a bid opening was already held to qualify those evaluators/contractors.

If the Agency rejects all the bids and intends to solicit additional proposals, contractors who originally submitted bids that were opened pursuant to the opening procedures shall be advised in writing that those projects will be re-bid.

5.4 Sole Bidder

For those instances where there is only one bidder for services or equipment valued at \$17,500 or more, these forms and copies of supporting documentation must be submitted to the OLIEC for procedural approval by the state monitor prior to the contractor/vendor being selected. Do not submit originals of these documents when requesting this approval.

The State Monitor will conduct reviews of the adequacy of the procurement process for other transactions as part of the regular monitoring process. Any questions regarding these forms should be directed to the assigned State Monitor.

5.5 Mini-Bids from Pool of Qualified Lead Evaluators and Contractors

When the Agency requests mini-bids for specific projects from their pool of qualified contractors, the mini-bids can either be delivered via mail or emailed to the Agency. If mini-bids are being emailed to the Agency, the emails must not be opened until the date and time of the submission. The Agencies are also strictly forbidden to share any information pertaining to one bidder's price with another bidder prior to the mini-bid submission deadline.

6. List of Suspended and Debarred Contractors

The New Jersey Prevailing Wage Act requires public bodies to obtain a list of contractors or subcontractors who failed to pay prevailing wage rates. No contract is to be awarded to such contractor or subcontractor. The New Jersey Consolidated Department Report is available at the following address:

<https://www.nj.gov/treasury/revenue/debarment/debarsearch-construction.shtml>

7. Pollution Occurrence Insurance and Lead-Safe Work Practices Certification

Pollution and Occurrence Insurance (POI) is required for contractors and strongly recommended for grantees. The costs of POI can be charged to the grant as part of the Liability Insurance. If an Agency chooses not to hold POI coverage and damage occurs, the cost to do remediation, cleanup, relocation, medical expenses or any other resulting costs may not be charged to the Lead Assistance Program grant and must be covered by another funding stream.

The Agencies must submit copies of the required insurance with contracts. Agencies and Contractors must hold current U.S Environmental Protection Agency (EPA) Firm Certification. To obtain said certification employee(s) must receive Renovation, Repair and Painting (RRP) an 8 hour course/exam. Copies of the Lead-Safe Work Practices Certification must be submitted with bid packages

8. Prompt Payment Requirement

The Agency shall compensate lead-safe remediation and NJDCA Certified Lead Abatement contractors and suppliers for services rendered within sixty **(60) days** of invoice receipt and satisfactory Agency's final inspection.

9. Contractor Non-Cooperation

Agencies who are experiencing difficulty with contractors who are refusing to provide lead assistance work in certain areas, particularly urban areas, should take the following action:

1. Request specific reasons from the contractor for refusing the job. Contractors have the right to refuse a job that they believe cannot be completed successfully for health and safety reasons, or because it is not their regular service territory.
2. Follow-up in writing to the contractor and send a copy to the OLIEC office.
3. If it is determined that a contractor is "redlining" or refusing to work in low income areas, that may constitute a violation of the non-discrimination clause in the grant contract.

10. Contractor Fines

Pursuant to terms of the agreement between the Lead Agency and contractor, the agency has the option to impose a fine, determine how the fine amount will be calculated, and under what circumstances or types of circumstances it shall be enforceable. Funds may be accrued by the Lead Agency as the result of a fine levied by the agency on a contractor. Funds that are accrued from these fines shall be expended in the same manner as the contractual funds which generated the fines. The contractor shall maintain production and accounting records concerning the disposition of fined funds, and said records shall be made a part of the annual agency financial audit.