

**DIVISION OF LOCAL GOVERNMENT SERVICES
INFORMATION FOR MUNICIPALITIES SEEKING TO HIRE
A PRIVATE FIRM TO SERVE AS CHIEF FINANCE OFFICER
N.J.A.C. 5:35-2.5**

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(b) When a vacancy occurs in the office of chief financial officer following the appointment of a certified municipal finance officer to that office, the municipality's governing body or chief executive officer, as appropriate to the form of government, may, in lieu of appointing a temporary municipal finance officer, appoint a private entity to perform the duties of a chief financial officer.

1. No private entity may fulfill the duties of a chief financial officer for more than two consecutive one-year terms. The professional services exception to public bidding set forth in N.J.S.A. 40A:11-5(1)(a)(i) shall apply to contracts with private entities to fulfill the duties of chief financial officer. Notwithstanding any law to the contrary, no contract to fulfill the duties of a chief financial officer shall have a duration of greater than one year.
2. Any work performed by the private entity on behalf of the municipality shall be supervised by at least one employee who is currently licensed by the Division of Local Government Services as a municipal finance officer. Any documents requiring the signature of the chief financial officer of the municipality shall be executed by an employee of the private entity holding a municipal finance officer certificate.
3. A municipality shall not appoint or reappoint a private entity to fulfill the duties of a chief financial officer without first making a written request to the Director for approval. Any contract with a private entity shall be conditioned upon Director approval. Before granting approval, the municipality must demonstrate a good faith effort to hire as chief financial officer an individual holding a municipal finance officer certificate issued pursuant to the provisions of N.J.S.A. 40A:9-140.1 et seq. The Director shall also be satisfied that the private entity can fulfill the duties of a chief financial officer. Any request to the Director shall provide, at minimum, information concerning:
 - i. The municipality's efforts to hire a certified municipal finance officer, including but limited to advertising and interviewing for the position. The municipality shall provide the salary range for the position, a list of all candidates submitting resumes and an explanation of the hiring and interview process;
 - ii. The private entity selected by the municipality, including the name and business address of all owners of any percentage interest;
 - iii. The name and license number of each certified municipal finance officer on the private entity's staff, all licenses and certifications held by same, their experience in municipal finance, and details concerning disciplinary proceedings and actions to which they may have been subject, whether by the Division of Local Government Services or any other administrative or licensing body;
 - iv. Whether any staff members who will be fulfilling the duties of chief financial officer have criminal records, or have any pending criminal or civil matters;



v. The results of any credit check or judgment search performed with respect to any staff members who will be fulfilling the duties of chief financial officer;

vi. Names of all other municipalities, if any, in the State with which the private entity has contracted to temporarily perform the duties of a chief municipal finance officer;

vii. Disclosure of any known or potential conflicts of interest under the Local Government Ethics Law (N.J.S.A. 40A:9-22.1 et seq.) on the part of the private entity; and

viii. For municipalities seeking approval to reappoint a private entity to a second consecutive one-year term, an explanation shall also be provided of any:

(1) Repeat comments on the most recent Annual Audit, attributable to the office of chief financial officer, and

(2) Complaints against the office of chief financial officer from a member of the public or other persons that are of a serious nature, such as those involving potential, ongoing, or prior litigation.

4. The Director may request from the municipality's governing body or chief executive officer, as appropriate, such other information as may be necessary to determine the private entity's ability to fulfill the duties of a chief financial officer.

5. The written request to approve a private entity to temporarily fulfill the duties of a chief municipal finance officer, and any documents submitted in support of said request, shall be exempt from disclosure under the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).

6. All contracts between a municipality and a private entity shall contain the following:

i. Adequate provisions to indemnify the municipality against any losses incurred as a result of the actions or inactions of the private entity;

ii. A requirement that the private entity be responsible for the errors and omissions of its employees or agents, including penalties, fines, interest, and damages;

iii. A requirement that the private entity maintain adequate general liability, automobile, and workers compensation insurance if applicable, as well as maintain adequate insurance to cover such losses as may arise as a result of errors, omissions, failure to perform or dishonesty in an amount at least equal to the recommended calculation for chief financial officer surety bond coverage pursuant to N.J.A.C. 5:30-8.2;

iv. A requirement that the private entity have a written complaint procedure in existence. At a minimum, the complaint procedure shall require that a complaint log be maintained, which shall be available to the municipality for inspection;

v. A provision that all disputes between the parties and disputes concerning the contract or its operation shall be in writing and forwarded to the other party via registered mail. All contracts shall have appropriate provisions for:

- (1) Dispute resolution between the parties;
- (2) The service of process to the private entity in New Jersey;
- (3) Application of New Jersey law; and
- (4) Termination of the contract, including, but not limited to, termination for failure to perform on the part of the private entity, and a provision allowing termination of the private entity's appointment if a certified municipal finance officer commences employment with the municipality before the expiration of the private entity's one-year term.

vi. If a dispute over contract compliance, performance or termination cannot be resolved by the municipality and the private entity pursuant to the procedures set forth in the contract, either party to the contract may file with the Superior Court which has appropriate jurisdiction.

vii. Copies of notices, memoranda, complaints or other correspondence received by the private entity regarding municipal accounts shall be forwarded to the municipality within 48 hours of receipt.

7. The private entity shall have a New Jersey office.

8. All contracts entered into between municipalities and private entities to fulfill the duties of chief financial officer shall be in writing and executed by all parties.

9. A private entity performing the duties of a temporary chief municipal finance officer shall make best efforts to adhere to the following cybersecurity best practice framework:

i. Any system utilized by the private entity shall:

- (1) Be hosted on dedicated servers or in a FedRAMP Moderate Impact Level Authorized Cloud;
- (2) Encrypt stored and transmitted financial information and personal identification information;
- (3) Maintain only critical personal identification information;
- (4) Employ a resilient password policy;
- (5) Undergo regular and stress testing;

- (6) Ensure regular security updates on all software & devices are being carried out;
- (7) Have back-up plans, information disposal & disaster recovery procedures created and tested;
- (8) Undergo regular security risk assessments for detecting compromises, along with regular monitoring for vulnerabilities, with necessary patches and updates being implemented;
- (9) Have a Cybersecurity Incident Response Plan developed; and
- (10) The private entity shall:
 - (A) Check provider credentials & contracts when using cloud services;
 - (B) Educate staff in good security measures & perform employee background checks; and
 - (C) Create a Computer Security Incident Response Team, generally called a CSIRT.

10. The municipality shall be responsible for establishing appropriate security and access control protocols with respect to the private entity's access to and use of the municipality's systems.

- (c) All private entity officers and employees temporarily fulfilling the duties of chief municipal finance officer on behalf of a municipality shall be subject to the Local Government Ethics Law (N.J.S.A. 40A:9-22.1 et seq.). Prior to the municipality seeking Director approval to contract with the private entity, the private entity shall disclose to the municipality any known or potential conflicts of interest arising under the Local Government Ethics Law. The private entity's disclosure obligation shall continue through the term of the contract. Any individual holding a chief municipal finance officer certificate that is supervising the temporary fulfillment of chief financial officer duties for a municipality shall be considered a "chief financial officer" pursuant to N.J.A.C. 5:35-2.1, and thus would be required to complete and submit an annual financial disclosure statement pursuant to N.J.S.A. 40A:9-22.3.
- (d) Another officer of the municipality, such as the municipality's chief administrative officer, shall be designated by the governing body to authorize and monitor any transfer of funds to the private entity.
- (e) If a private entity is fulfilling the duties of a chief financial officer, even if an individual holding a chief municipal finance officer certificate is appointed by a municipality as a chief finance officer at nominal salary while affiliated with the private entity, the private entity shall be considered to be temporarily fulfilling the duties of a chief municipal finance officer, with that individual and the private entity being subject to the provisions of this section.