

## **N.J.A.C. 5:37-7.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 56 No. 13, July 1, 2024

**NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 37. MUNICIPAL, COUNTY AND AUTHORITY EMPLOYEES DEFERRED COMPENSATION PLANS > SUBCHAPTER 7. THE CONTRACTOR**

### **§ 5:37-7.1 Award of service agreements**

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(a) In seeking a contractor, the employer, notwithstanding the existence of one or more service agreements with other contractors, shall solicit written proposals from two or more contractors offering prototypical plans or service agreements. After reviewing the proposals, a service agreement shall be awarded by resolution of the governing body. The resolution shall include a written description of the method used to solicit proposals, identify the responding vendors and state the rationale for selecting a specific contractor.

(b) The term of the service agreement shall be determined by the employer and the contractor.

### **History**

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#### **HISTORY:**

Amended by R.1997 d.371, effective September 2, 1997.

See [29 New Jersey Register 2743\(a\)](#), [29 New Jersey Register 3805\(a\)](#).

In (a), added the clause regarding service agreements with other contractors, and provided for a written description in the resolution.

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## **N.J.A.C. 5:37-7.2**

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### **§ 5:37-7.2 Ban on solicitation prior to award of contract**

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An organization seeking a contract shall not solicit employee participation in any deferred compensation plan or solicit employees to support the efforts of the organization to secure such a contract. A representative of an organization under contract shall not communicate with any prospective participant without the expressed consent and knowledge of the employer.

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## **N.J.A.C. 5:37-7.3**

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### **§ 5:37-7.3 Insurance companies**

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An insurance company offering deferred compensation plans or investment options to local governments shall be authorized by the Commissioner of Insurance to do business in the State of New Jersey.

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## **N.J.A.C. 5:37-7.4**

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### **§ 5:37-7.4 Mutual fund companies**

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An entity offering a mutual fund or other type of security as part of a deferred compensation plan shall be registered with the Security and Exchange Commission and shall submit to the Director a copy of a "Certification of Good Standing" from the New Jersey Secretary of State.

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## **N.J.A.C. 5:37-7.5**

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### **§ 5:37-7.5 Non-profit corporations**

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A non-profit, tax-exempt corporation offering deferred compensation plans to local governments shall provide to the Director a copy of their Internal Revenue Service tax exemption certification.

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## **N.J.A.C. 5:37-7.6**

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### **§ 5:37-7.6 Banking institutions**

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A banking institution serving as a depository for local government controlled program funds or offering deferred compensation plans to local governments shall be a New Jersey State-chartered bank, savings bank, or savings and loan or Federally-chartered bank, savings bank, or savings and loan located in New Jersey; hereinafter referred to as "banking institution." Such banking institution shall be in compliance with capital requirements for State-chartered banking institutions as set forth in [N.J.A.C. 3:4](#), or capital requirements for Federally-chartered banking institutions as set forth in *12 CFR Part 325*.

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## **N.J.A.C. 5:37-7.7**

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### **§ 5:37-7.7 Non-discrimination**

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An organization, person, company, corporation, partnership, or other entity offering deferred compensation plans to local governments shall be in full compliance with all Federal and State laws regarding discrimination in its employment or investment policies and practices and shall so certify to the Director.

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## **N.J.A.C. 5:37-7.8**

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### **§ 5:37-7.8 Contractor disclosure**

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- (a)** A potential contractor shall fully disclose to the employer in writing at the time a proposal is submitted for consideration, any arrangement it may have to pay endorsement fees to organizations whose membership includes local public employees of the employer.
- (b)** A potential contractor shall disclose to the employer and to the employees the fees charged, the fee and commission structure, the investment plan offered, and any other pertinent information which the employer may need in evaluating the contractor's fee and service.
- (c)** All service agreements shall contain termination clauses with respect to transfers of assets or responsibility under the plan.

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## **N.J.A.C. 5:37-7.9**

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### **§ 5:37-7.9 Bonding and evidence of insurance--prototypical service agreement**

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- (a) A contractor who provides a prototypical service agreement shall post a bond obtained from an organization duly authorized and licensed to provide such bond in the State of New Jersey, to protect the plan and the employer from any loss resulting from fraud or dishonesty by such contractor. Evidence of such bond or ability to obtain such bond if the service agreement is awarded shall be provided to the employer and to the Director.
- (b) The amount of bond shall not be less than 100 percent of the amount of funds managed by such contractor.
- (c) A contractor providing services in accordance with these rules shall provide the employer and Director with evidence of appropriate liability insurance and errors and omissions insurance.

### **History**

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#### **HISTORY:**

Amended by R.1997 d.371, effective September 2, 1997.

See [29 New Jersey Register 2743\(a\)](#), [29 New Jersey Register 3805\(a\)](#).

Changed the section name and in (a), substituted "prototypical service agreement" for "prototypical plan".

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## **N.J.A.C. 5:37-7.10**

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### **§ 5:37-7.10 Provisions for rule to be part of service agreement**

A service agreement entered into by an employer shall contain a provision that the service agreement is subject to the rules of the Division of Local Government Services and the rules are made a part thereof.

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## **N.J.A.C. 5:37-7.11**

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### **§ 5:37-7.11 Responsibilities of the contractor**

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The contractor shall be responsible for the proper performance of the duties it has agreed to assume under the terms of its service agreement. Every service agreement made subject to this chapter shall be construed to require, to the extent that a participant's or beneficiary's plan account is comprised of an investment issued or placed by the contractor, the applicable contractor to perform each service necessary to the proper administration of the plan except as expressly provided otherwise by a prototypical plan approved by the Director pursuant to [N.J.A.C. 5:37-3.1](#). Every service agreement made subject to this chapter shall be deemed to incorporate by such reference a provision that the contractor is bound to perform its services required under the service agreement to the same standard of care that would be required of a fiduciary governed by New Jersey law.

### **History**

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#### **HISTORY:**

New Rule, R.1999 d.58, effective March 1, 1999.

See: [30 New Jersey Register 3989\(a\)](#), [31 New Jersey Register 673\(b\)](#).

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## **N.J.A.C. 5:37-7.12**

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### **§ 5:37-7.12 Quarterly report--prototypical plan**

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The contractor shall make available, at least quarterly, a report to each participant which shall indicate the value or balance of each participant's account, as well as, the value or balance of the entire plan. This report shall indicate for each participant the balance of the participant's account as of the last accounting date, the amount of compensation deferred and any return on investment credited to the participant's account since the last report or accounting date.

### **History**

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#### **HISTORY:**

New Rule, R.1999 d.58, effective March 1, 1999.

See: [30 New Jersey Register 3989\(a\)](#), [31 New Jersey Register 673\(b\)](#).

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## **N.J.A.C. 5:37-7.13**

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### **§ 5:37-7.13 Credit to accounts**

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The contractor shall credit to the plan and to each participant's account the return or loss on investment no less than once per month, except for annuity programs.

### **History**

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#### **HISTORY:**

New Rule, R.1999 d.58, effective March 1, 1999.

See: [30 New Jersey Register 3989\(a\)](#), [31 New Jersey Register 673\(b\)](#).

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