



# CIRCULAR

## STATE OF NEW JERSEY

### DEPARTMENT OF THE TREASURY

NO.: 18-14-DPP	ORIGINATING AGENCY: DIVISION OF PURCHASE AND PROPERTY	PAGE 1 OF 7
EFFECTIVE DATE: IMMEDIATE	EXPIRATION DATE: INDEFINITE	SUPERSEDES: 11-14-DPP
SUBJECT: REQUESTS FOR WAIVERS OF ADVERTISING		
ATTENTION: ALL DIRECTORS OF ADMINISTRATION		
FOR INFORMATION CONTACT: ASSISTANT DIRECTOR, CONTRACT COMPLIANCE AND AUDIT UNIT		PHONE: (609) 292-5400 FAX: (609) 292-5899 E-MAIL: <a href="mailto:CCAU.mailbox@treas.nj.gov">CCAU.mailbox@treas.nj.gov</a>

#### I. POLICY

The law and policy of this State is for all goods and services to be procured, to the extent feasible, through publicly advertised bidding. Waivers of Advertising, as an exception to law and policy, are expressly limited by statutory design. Thus, "waivers," which result in contractual commitments by the State, are strictly scrutinized and require substantial justification from the requesting agency. Therefore, it is essential that the agency contact the Contract Compliance and Audit Unit (CCAU) for pre-approval as soon as a procurement requirement is identified to determine if a Waiver of Advertising is the appropriate and legally justifiable procurement method.

Further, competition must be pursued by the agency for all waivers, except for sole source procurements, as required under N.J.A.C. 17:12-1A.2(c)(2), unless the agency can justify why competition is not reasonable because of circumstances or factors prohibiting or inhibiting the solicitation of competition.

Agencies are not permitted to direct the vendor to provide goods and/or services to the State before the Request for Waiver of Advertising form (CC-129) is signed by the Treasurer's Office [and without seeking prior permission for an Authorized Confirming Waiver.]

#### II. PURPOSE

To provide guidelines, instructions and criteria for submitting requests for State contracts when the requirement for advertising is waived because the request falls within the statutory exceptions to advertising set forth in N.J.S.A. 52:34-9 and N.J.S.A. 52:34-10.

**III. DEFINITIONS****A. The following terms and definitions apply to this policy:**

1. "Confirming Waiver" – State Contract created when a using agency directs a vendor to provide the goods and/or services to the State under the contract before the official Request for Waiver of Advertising Form (CC-129) has been signed by the Treasurer's Office. There are two types of confirming waivers: Authorized Confirming and Unauthorized Confirming.
2. "Authorized Confirming Waiver" – State contract created when a using agency directs a vendor to provide goods and/or services to the State after having been granted express, written approval by an authorized person at the Division of Purchase and Property (DPP) or the Treasurer's Office. This type of confirming waiver is to be requested only when there is a critical and immediate need to provide a service, or a product, that has a direct impact on the health and safety of the public. The vendor must agree to the State of New Jersey Standard Terms and Conditions, and the Waivered Supplement to the State of New Jersey Standard Terms and Conditions, and must also meet the requirements of P.L. 2005, c. 51, and Executive Order # 117 before approval will be granted. The formal Request for Waiver of Advertising Form (CC-129) and all supporting forms should be submitted to the CCAU, Waiver Coordinator, within three (3) business days of receipt of the written approval to proceed with the Authorized Confirming Waiver.
3. "Unauthorized Confirming Waiver" – State contract created when a using agency directs a vendor to provide goods and/or services to the State before the Request for Waiver of Advertising Form (CC-129) is signed by the Treasurer's Office and without seeking prior permission for an Authorized Confirming Waiver. Unauthorized Confirming Waivers are a serious departure from and violation of State procurement law, policy, and procedure.
4. Those employees responsible at the agency for the procurement can be held personally liable for the cost. In such cases, DPP notifies the employee's supervisor and the head of the agency, in writing, of the violation, with a copy to the State Auditor, Office of Legislative Services, and the State Treasurer.
5. "Sole Source Waiver" – State contract created without public advertisement pursuant to N.J.S.A. 52:34-10(c) because only one source of supply is available. The agency must be able to document, to the satisfaction of the Assistant Director of CCAU, and the Attorney General, that only one vendor can supply the required good or service.
6. "Public Exigency" – State contract procured when the life, safety, or health of the public must be sustained through the immediate performance of services, or delivery of products.
7. "Professional Services" - As defined at N.J.S.A. 52:34-10.8, services rendered, or performed by a person authorized by law to practice a recognized profession, the practice of which is regulated by law, or the performance of the 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 contracts shall also include those services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor, as well as extraordinary, unspecifiable services if, after evaluation and assessment, such services cannot reasonably be described by written specifications. This definition is strictly enforced by the Attorney General.
8. "Technical Services" - Services that require the application of a special skill or practical knowledge in such areas as information technology, telecommunications, electronics, or other applied sciences.

**IV. STATUTORY EXCEPTIONS PERMITTING WAIVERED CONTRACTS****A. N.J.S.A. 52:34-9(a)**

Services to be performed by the contractor are of a technical and professional nature. See definition of "Professional Services" and "Technical Services" set forth in III. (A.) (6.) and III. (A.) (7.) above.

**B. N.J.S.A. 52:34-9(b)**

The purchase of perishable foods or subsistence supplies. Perishable or subsistence foods are those which spoil or deteriorate rapidly, i.e., fresh vegetables, meats, fish, dairy products and bread items.

**C. N.J.S.A. 52:34-9(c)**

The lease of such office space, office machinery, specialized equipment, buildings, or real property as may be required for the conduct of the State's business.

**D. N.J.S.A. 52:34-9(d)**

The acquisition of any real property by gift, grant purchase or any other lawful manner in the name of and for the use of the State for the purpose of State business in accordance with appropriations made when monies are required for the acquisition. This citation is reserved solely for use by the DPP.

**E. N.J.S.A. 52:34-9(e)**

Supplies or services for which the prices after advertised bidding are not reasonable or have not been independently determined in open competition. This citation is reserved for use by the DPP only.

**F. N.J.S.A. 52:34-10(a)**

The purchase is to be made from, or the contract to be made with, the Federal or any State Government or any agency or political subdivision thereof.

**G. N.J.S.A. 52:34-10(b)**

Public exigency requires the immediate delivery of the goods or performance of the service. Waivers are granted for public exigency when the following conditions prevail and are documented by the using agency:

- A potential health or safety hazard exists;
- Homeland Security or other purchases of goods and services, which cannot be publicly advertised because of an overriding State safety or security concern; and
- A critical agency mandate, statutory or operational requirement must be fulfilled immediately.

**POOR PLANNING DOES NOT CONSTITUTE PUBLIC EXIGENCY.**

**H. N.J.S.A. 52:34-10(c)**

Only one (1) source of supply is available. The agency must document thoroughly why the recommended contractor is the only available source that can provide the item or services required, and why seemingly comparable products do not satisfy the documented needs of the agency. A thorough explanation must be included as to what attempts were made to obtain competition and the results. Sole source justification is a legal determination subject to the review and approval of the Attorney General's office.

I. N.J.S.A 52:34-10(d)

More favorable terms can be obtained from a primary source of supply. This citation should be used in cases where the intended procurement will be made directly from the prime manufacturer or supplier at a reduced cost, which results from the elimination of intermediaries, i.e., distributors, dealers, and wholesalers. This citation can also be used when special or spot purchases are attainable at reduced cost or with more favorable delivery schedules.

J. N.J.S.A. 52:34-10(e)

Articles of wearing apparel that are styled or seasonal in character. This citation is reserved for use solely by DPP.

K. N.J.S.A. 52:34-10(f)

Commodities traded on a national commodity exchange are to be purchased and market fluctuations require immediate action. This citation is reserved for use solely by DPP.

L. N.J.S.A. 52:34-10(g)

The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

M. N.J.S.A. 52:34-10.6

Any purchase by the State of equipment, goods, or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, from vendors participating in a federal procurement program established by a federal department or agency or the purchase has been approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. The Director of the Division of Purchase and Property may also enter into or participate in procurement agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods, or services to meet the domestic preparedness and homeland security needs of this State.

**V. PROCEDURE**A. Pre-approval

Pre-approval to use the waiver process must be requested from the DPP before proceeding with any waived contract. The agency must forward an e-mail to the DPP at [waiverpreapproval@treas.nj.gov](mailto:waiverpreapproval@treas.nj.gov) setting forth:

1. That the agency has conducted a thorough search of State contracts and that the good or service is not available under State contract. Minor differences in product specification are not justification for an agency to bypass existing State contracts to obtain certain products.
2. The specific commodity or service that the agency seeks to procure by way of a waived contract;
3. The statutory citation the agency will use to justify the proposed waived contract and the facts to support that justification;
4. How competition will be sought (unless the product or service is to be supplied by a "sole source," or is a public exigency that requires immediate procurement of the good or service);

5. The amount of the proposed waived contract;
6. The term of the proposed waived contract, i.e., its start and end dates;
7. The funding source. A Certificate of Funding is only acceptable for agencies whose expenditure is not tracked in MACS-E; and
8. OMB and OIT approvals, when required (see V.B. below).

**B. OMB and OIT Approvals**

Procurement of professional and consultant(s) services, telecommunications, information technology equipment, hardware and software, as well as Non-IT Equipment, can only be made with the express approval of the appropriate State agencies, as required under Circulars 14-07-DPP/OMB/OIT and 18-03-OMB/DPP/OIT. **Failure to provide the required approval documents with the waiver pre-approval request will result in automatic rejection.**

**1. Consultants and Professional Services, and Non-IT Equipment**

All requests to hire consultants to perform professional services that exceed \$250,000 must be approved by the Office of Management and Budget (OMB) pursuant to Circular 14-07-DPP/OMB/OIT. Approval documents must be submitted with the waiver pre-approval request. The requests should be sent to [Catherine.nonamaker@treas.nj.gov](mailto:Catherine.nonamaker@treas.nj.gov).

Phone: (609) 633-7426

Additionally, all Non-IT equipment over \$40,000 must be approved by OMB pursuant to Circular 18-03-OMB/DPP/OIT. These requests should be sent to [equipment@sp3.treas.state.nj.us](mailto:equipment@sp3.treas.state.nj.us).

A copy of the contractually required final report(s) for consultant services must be submitted to OMB. Please do not submit the reports to the DPP.

**2. Telecommunications and Information**

Technology Consultant Services, Equipment, IT Hardware, Software, Subscription-Based Solutions and Related Services

All waivers for services and equipment acquisitions for telecommunications and/or information technology must be approved by OIT, as well as OMB, if required, prior to submission to DPP for processing and must comply with Circulars 14-07-DPP/OMB/OIT and 18-03-OMB/DPP/OIT. Approval documents must be submitted with the waiver pre-approval request. Proposed software/license agreements must be reviewed and approved by the Attorney General's Office. The contact for OIT approval is the Project Management Office/External Procurement Unit, [Oitprocurement@oit.nj.gov](mailto:Oitprocurement@oit.nj.gov).

Phone: (609) 777-3773 Fax: (609) 633-0115

IT approval requests require the following forms:

- OIT Security Checklist (Required for all cloud solutions – I/P/SaaS)
- [http://www.nj.gov/it/ps/09-11-P1-NJOIT\\_0182\\_Security\\_Controls\\_Assessment\\_Checklist\\_Appendix\\_D.pdf](http://www.nj.gov/it/ps/09-11-P1-NJOIT_0182_Security_Controls_Assessment_Checklist_Appendix_D.pdf)
- NJOIT Procurement Technical Approval form: <http://www.state.nj.us/it/dobusiness/index.shtml>

**C. State Contract Manager**

For each waiver submitted by the agency to DPP, the agency shall designate a State Contract Manager for the procurement. The State Contract Manager is the State employee responsible for the overall management and administration of the contract. Upon approval of the waiver by the Treasurer, the State Contract Manager shall provide the contractor under the waiver with their name, department, division, agency, address, telephone number, fax number, and email address. The State Contract Manager is responsible for coordinating all aspects of the use of the contract by the agency, and for resolving minor disputes between the contractor and the State, in accordance with Circular 14-08-DPP.

The State Contract Manager shall have the following additional duties:

1. Attend required training as established by the CCAU and pass the required State Contract Manager test.
2. If the State Contract Manager determines that the contractor has failed to perform the work of the contract, and is unable to resolve that failure to perform directly with the contractor, the State Contract Manager shall file a Formal Complaint with the CCAU and request the CCAU to assist in the resolution of the contract performance problem with the contractor.
3. The State Contract Manager is responsible for obtaining permission from the Director of DPP to reduce the scope of work, amend the contract, or add work, or special projects, to the contract after contract award.
4. The State Contract Manager is responsible for completion of the Project Performance Assessment Form for submission to CCAU, with a copy to the Deputy Director of OMB; the Project Performance Assessment Form shall be submitted annually for multi-year contracts and upon completion of the contract. For contracts of one (1) year or less, the Project Performance Assessment Form shall be submitted within six (6) months of signing and at project completion.
5. For Professional Service contracts, the State Contract Manager is responsible for submitting the final report to the Deputy Director of OMB.
6. The State Contract Manager is also responsible to formally report, to the Assistant Director of CCAU, using the CC-36 Formal Complaint form, all instances when deliverables, i.e., commodities and/or services, including pricing and/or billing, are not in accordance with the contract specifications or scope of work.

**D. Competition**

Agencies are required to seek as much competition, as reasonable and practical, under the circumstances for each waiver requested. Agencies are reminded that regulations require the agency to obtain competition for many of the statutory waiver exceptions. (See N.J.A.C. 17:12-1A.2.) When competition is required, the agency shall attempt to obtain at least three (3) written quotations for the service(s) and/or product(s) contemplated under the waiver.

The competitive process employed by the agency must be:

1. Fair and provide all vendors solicited with the same opportunity to bid; and
2. Provide bidders with the same information concerning the work to be performed and the terms and conditions of the proposed contract to ensure that all vendors are treated fairly and have the same opportunity to bid on the same work requirements under the same terms and conditions.

For all waivers, the agency must provide a thorough evaluation and analysis of the pricing and technical proposals submitted by all bidders to support the award of the contract to the selected vendor.

DPP strongly recommends that communications with vendors throughout the procurement process, including the initial solicitation, be conducted in writing. The preferred method for soliciting competition for waivers is through use of a Request for Quotation (RFQ). (An example of a RFQ may be obtained from the Assistant Director of CCAU.) The process employed to retain a vendor under the waiver must be fully detailed and described in the waiver submission.

## VI. SUBMISSION OF COMPLETE WAIVER PACKAGE

A. Required documentation that must be included in all waivers of advertising packages submitted to the CCAU includes:

- CC-129 Request for Waiver of Advertising
- CC-129C Certification of Waiver Funding Availability
- Vendor Quote and/or Agreement
- State of New Jersey Standard Terms and Conditions
- Waivered Contracts Supplement to the State of New Jersey Standard Terms & Conditions
- Ownership Disclosure
- Disclosure of Investigations & Other Actions Involving Vendor/Bidder
- Disclosure of Investment Activities in Iran
- MacBride Principles
- Public Law 2005, Chapter 271
- Source Disclosure (not required for Commodities procurements)
- Proof of Chapter 51/EO117 Compliance, or Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form
- Proof of Business Registration Compliance
- Proof of AA/EEO Compliance
- Acord Certificate of Insurance
- Evidence of Price Negotiation

The attached Information Sheet & Checklist for Waivers and Delegated Purchasing Authority (DPA) contains links to many of the forms listed above. The Checklist and other forms can be found at: <http://www.nj.gov/treasury/purchase/forms.shtml>.

B. The following must also be included in the waiver package:

1. Email from CCAU granting authorization to proceed with the waiver process (reference "Pre-approval" in V. A. above).
2. OMB/OIT approvals if required (reference V. B. above).
3. Name of Contract Manager pursuant to N.J.S.A. 52:34-10.7.

**NOTE:** IT IS THE USING AGENCY'S RESPONSIBILITY TO ENSURE THAT ALL VENDORS SOLICITED ARE IN RECEIPT OF THESE MANDATORY FORMS PRIOR TO THE VENDOR(S) SUBMISSION OF WAIVER QUOTATIONS TO YOUR AGENCY. ANY WAIVER OF ADVERTISING PACKAGE, WHICH DOES NOT CONTAIN ALL OF THE ABOVE-LISTED FORMS, SHALL BE RETURNED TO THE REQUESTING AGENCY.

  
Maurice A. Griffin, Acting Director  
Division of Purchase and Property



**STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 236  
TRENTON, NEW JERSEY 08625-0039**

**INFORMATION SHEET AND CHECKLIST FOR WAIVERS  
AND DELEGATED PURCHASING AUTHORITY (DPA) TRANSACTIONS**

**VENDOR NAME:** \_\_\_\_\_

**THIS CHECKLIST IS ONLY A GUIDE TO ASSIST VENDORS IN LOCATING AND COMPILING ALL REQUIRED COMPLIANCE FORMS FOR WAIVERS AND DPA TRANSACTIONS. VENDORS ARE REQUIRED TO ENSURE THAT ALL COMPLIANCE REQUIREMENTS HAVE BEEN MET.**

	<b>VENDOR HAS INCLUDED THE FORM</b>
<u><a href="#">STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS</a></u> (For Waivers and DPAs)	<input type="checkbox"/>
<u><a href="#">WAIVERED CONTRACTS SUPPLEMENT TO THE STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS</a></u> (For Waivers only)	<input type="checkbox"/>
<u><a href="#">OWNERSHIP DISCLOSURE FORM</a></u>	<input type="checkbox"/>
<u><a href="#">DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING VENDOR</a></u>	<input type="checkbox"/>
<u><a href="#">DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM</a></u>	<input type="checkbox"/>
<u><a href="#">TWO-YEAR CHAPTER 51/EXECUTIVE ORDER 117 VENDOR CERTIFICATION AND DISCLOSURE OF POLITICAL CONTRIBUTIONS</a></u>	<input type="checkbox"/>
<u><a href="#">CHAPTER 271 VENDOR CERTIFICATION AND POLITICAL DISCLOSURE FORM</a></u>	<input type="checkbox"/>
<u><a href="#">MACBRIDE PRINCIPLES FORM</a></u>	<input type="checkbox"/>
<u><a href="#">PROOF OF BUSINESS REGISTRATION</a></u>	<input type="checkbox"/>
CERTIFICATE OF INSURANCE / ACORD	<input type="checkbox"/>
<u><a href="#">SOURCE DISCLOSURE FORM</a></u> (To be used only where the contract is primarily for services)	<input type="checkbox"/>
<b>AFFIRMATIVE ACTION COMPLIANCE (Submit one of the following)</b>	
NEW JERSEY CERTIFICATE OF EMPLOYEE INFORMATION REPORT	<input type="checkbox"/>
FEDERAL LETTER OF APPROVAL VERIFYING A FEDERALLY APPROVED OR SANCTIONED AFFIRMATIVE ACTION PROGRAM (Dated within 1 year of the submission)	<input type="checkbox"/>
<u><a href="#">AFFIRMATIVE ACTION EMPLOYEE INFORMATION REPORT (AA-302)</a></u>	<input type="checkbox"/>