



What is a Responsible Bidder?

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LOCAL PUBLIC CONTRACTS LAW

N.J.S.A. 40A:11-4. Contracts required to be advertised, disqualification of bidders

a. Every contract awarded by the contracting agent for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by resolution of the governing body of the contracting unit to the lowest responsible bidder after public advertising for bids and bidding . . .

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N.J.S.A. 40A:11-2. Definitions

(27) "Lowest responsible bidder or vendor" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.

LOCAL PUBLIC CONTRACTS LAW

This seminar is NOT about:

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- 1. Responsiveness**

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- 2. Material Defects in Bids**

LOCAL PUBLIC CONTRACTS LAW

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- 1. Responsiveness**
- 2. Material Defects in Bids**
- 3. Prior Negative Experience**

LOCAL PUBLIC CONTRACTS LAW

This seminar IS about:

1. Responsibility

LOCAL PUBLIC CONTRACTS LAW

Because. . .

LOCAL PUBLIC CONTRACTS LAW

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Being able to fill out a bid completely and properly does not guarantee that a bidder can perform the contract.

LOCAL PUBLIC CONTRACTS LAW

Question: What if a bidder provides all the required information, forms, and documents, but there is a question about whether the bidder is responsible (whether the bidder can actually perform the contract)?

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N.J.S.A. 40A:11-2. Definitions

(32) "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

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1. Experience,

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1. Experience,
2. Moral Integrity,

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1. Experience,
2. Moral Integrity,
3. Operating Capacity,

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1. Experience,
2. Moral Integrity,
3. Operating Capacity,
4. Financial Capacity,

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1. Experience,
2. Moral Integrity,
3. Operating Capacity,
4. Financial Capacity,
5. Credit,

LOCAL PUBLIC CONTRACTS LAW

1. Experience,
2. Moral Integrity,
3. Operating Capacity,
4. Financial Capacity,
5. Credit, and
6. Workforce, Equipment, and Facilities Availability.

STANDARD OF REVIEW

Municipal Action will be overturned by a court if it is arbitrary, capricious or unreasonable.

Bryant v. City of Atlantic City, 309 N.J. Super. 596, 610 (App. Div. 1998).

Responsibility Hearings

Responsibility Hearings:

“To reject the lowest bid there must be evidence of such character concerning the irresponsibility of the bidder as would cause fair-minded and reasonable men to believe it was not in the best interest of the municipality to award the contract to the lowest bidder.”

Arthur Venneri Co. v. Housing Auth. of City of Paterson, 29 N.J. 392, 402 (1959)

Responsibility Hearings:

Question: Who should perform the Responsibility Hearing?

Responsibility Hearings:

Responsibility Hearing requires Due
Process:

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1. Notice

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2. A Chance to Know Opposing Evidence

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3. Opportunity to Present Evidence (i.e. Documents or Testimony)

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Responsibility Hearing requires Due Process:

1. Notice
2. A Chance to Know Opposing Evidence
3. Opportunity to Present Evidence (i.e. Documents or Testimony)
4. Articulated Findings of Facts and Conclusions

Standard of review by Superior Court:

1. Arbitrary,
2. Capricious, or
3. Unreasonable

General Questions

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Question: How much investigation is required by the contracting entity regarding responsibility?

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Hypothetical: A competing bidder challenges the lowest bid alleging that the lowest bidder is not responsible because it does not have the financial capacity to complete the project at its bid price?

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Does the contracting entity have to investigate the lowest bidder's finances?

General Questions:

Question: Is there such a thing as a bid that is “too good to be true?”

General Questions:

Hypothetical: The low bidder's price is 80% lower than the next lowest bid.

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Can the contracting entity reject the low bid, because the lowest bidder does not have the financial capacity to actually perform at that price?

Experience

Experience:

Question: Is the difference between general experience and specialized experience a sufficient basis to reject a low bidder as not responsible?

Experience:

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Can the contracting agency reject the low bidder for lack of experience?

Moral Integrity

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It is settled that the legislative mandate that a bidder be “responsible” embraces moral integrity just as surely as it embraces a capacity to supply labor and materials.

The relevancy of moral responsibility is evident. It heads off the risk of collusive bidding. It assures honest performance. It meets the citizen's expectation that his government will do business only with men of integrity.

Trap Rock Industrial, Inc. v. Kohl, 59 N.J. 471, 481-482 (1959)

Moral Integrity:

Question: Whose moral integrity is at issue in examining a bidder's responsibility?

Moral Integrity:

Hypothetical: The lowest bidder on a construction project utilizes some of its labor force through a program that offers employment to people with criminal records.

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Can the contracting agency reject the low bid, because some of the bidder's labor force have criminal records?

Moral Integrity:

Question: Does the standard for moral integrity depend on the nature of the contract?

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Hypothetical: The lowest bidder on a contract to run a youth program utilizes some of its labor force through a program that offers employment to people with criminal records.

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Operating Capacity

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Question: In considering a bidder's operating capacity, should you also factor in the bidder's other contracts with other contracting entities?

Operating Capacity:

Hypothetical: For a contract for vehicle repairs, a bidder discloses that he has three (3) vehicle bays available to perform repairs. For the purposes of the contract, the three (3) vehicle bays would be sufficient, however, the bidder also has contracts with five (5) other municipalities.

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Can the contracting agency reject the bid for lack of operating capacity to perform all six (6) repair contracts?

Financial Capacity and Credit

Question: In light of N.J.S.A. 40A:11-13(f), how can a contracting agency determine whether a bidder has the financial capacity to perform a contract?

N.J.S.A. 40:11-13. Specifications

Specifications. Any specifications for the provision or performance of goods or services under this act shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specification under this act may: . . .

N.J.S.A. 40:11-13. Specifications

(f) Require that any bidder submit a financial statement if either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate is also required to be furnished by the bidder, unless any law or regulation of the United States imposes a condition upon the awarding of a monetary grant to be used for the purchase, contract or agreement, which condition requires that a financial statement be submitted

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Can the contracting agency compel the lowest bidder to produce financial records to investigate its financial capacity?

Workforce, Equipment, and Facilities Available

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Question: At what stage of the procurement process does a bidder's workforce, equipment and facilities determine a bidder's responsibility?

Workforce, Equipment and Facilities Available:

Hypothetical: The lowest bidder, at the time it submits its bid, does not have enough employees or equipment to perform the contract, but upon award of the contract plans on hiring additional employees and purchasing the necessary equipment to perform the contract.

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Is the lowest bidder responsible?

Audience Questions