

State of New Jersey
Executive Order #37

Governor Jon S. Corzine

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WHEREAS, the residents of New Jersey are entitled to a government that is effective, efficient, and free from corruption, favoritism, and waste; and

WHEREAS, there are numerous independent and quasi-independent governmental entities in this State commonly referred to as State authorities; and

WHEREAS, those State authorities have capital and operating budgets cumulatively amounting to billions of dollars, but operate outside of the standard structure of the executive branch of State government; and

WHEREAS, though operating outside the standard structure of the executive branch of State government, the State authorities are a part of the executive branch and thus are subject to the Governor's executive powers pursuant to Article V of the New Jersey Constitution; and

WHEREAS, greater coordination of the actions of the State authorities is necessary to ensure that State economic policy is implemented in a uniform and consistent manner, designed to achieve maximum gains in areas such as economic growth and job creation; and

WHEREAS, while strides have been made recently concerning ethics and governance reform at the State authorities, additional measures are needed to make authority operations more efficient, to bring greater transparency to the actions of the authorities, to provide greater clarity concerning the responsibilities of authority board members, and to ensure consistent adherence to appropriate financial controls; and

WHEREAS, it is imperative that when the State authorities award contracts to vendors, such contracts are awarded in a manner that is fair, transparent, and designed to ensure that the authorities are obtaining quality products and services at the best possible value; and

WHEREAS, awarding a contract to the lowest responsible bidder is, in many circumstances, the method of awarding contracts that produces the best economic results; and

WHEREAS, in other circumstances, including procurement of professional services for sophisticated or complex transactions, price is a factor, but is not always the only factor, that should be considered in determining what firm should be awarded a contract; and

WHEREAS, it is nonetheless vital that all contracts be awarded based on price and quality factors, as opposed to favoritism or other impermissible considerations; and

WHEREAS, further guidance in this area would help to ensure that those goals are reached; and

WHEREAS, ultimately, maximization of the potential of the State's authorities is dependent upon qualified, talented, and honest men and women agreeing to serve on authority boards and in authority management positions, and further steps must be taken to recruit such individuals;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Governor's Office shall conduct periodic policy coordination meetings with the executive directors and chairs of the State authorities. At those meetings, the Office of Economic Growth shall present the State's economic growth strategies and goals to the State authorities. The State authorities are hereby directed to incorporate those strategies and goals into their capital plan development processes. The authorities shall submit their proposed capital plans to the Office of Economic Growth and the Governor's Authorities Unit for review and discussion. Those presentations shall include

specific information as to how the authority's capital plan and other expenditures reflect the State's economic growth strategies.

2. On an annual basis, each State authority shall prepare a comprehensive report concerning the authority's operations. The report shall set forth the significant actions of the authority from the previous year, including a discussion of the degree of success the authority had in promoting the State's economic growth strategies and other policies. In addition, the report shall include authority financial statements and identify internal financial controls at the authority that govern expenditures, financial reporting, procurement, and other financial matters and transactions. The report shall contain a certification by the appropriate senior staff member(s) that during the preceding year the authority has, to the best of their knowledge, followed all of the authority's standards, procedures, and internal controls, or, where such certification is not warranted, shall set forth the manner in which such controls were not followed and a description of the corrective action to be taken by the authority. Following approval of the report by the board of directors, a copy of the report shall be submitted to the Governor's Authorities Unit and posted on the authority's web-site.
3. The Governor's Authorities Unit shall continue its ongoing monitoring and oversight of the State authorities, and shall continue to review minutes of authority proceedings for the purpose of recommending gubernatorial veto or approval of those minutes.
4. The boards of directors at the State authorities shall have the following responsibilities, among others, which are designed to ensure that each authority operates in an efficient, transparent, and ethical manner:
 - a. Exercise direct oversight over the chief executive officer, chief financial officer, and other senior management at the authority;
 - b. Ensure that appropriate financial controls are in place at the authority and that an audit committee has been appropriately impaneled to the extent required by Executive Order No. 122 (2004);
 - c. Maintain procurement policies and procedures that are consistent with the provisions of this Order and statutory law concerning competitive bidding;
 - d. Ensure compliance with all legislation that prohibits the awarding of contracts to businesses that have made disqualifying political contributions;
 - e. Establish policies concerning personnel matters, such as job qualifications, hiring practices, and compensation;
 - f. Establish all policies necessary to implement provisions of governing ethics laws, including but not limited to Executive Order No. 36 (2005) and Executive Order No. 41 (2005);
 - g. Require authority management to post notice of authority board meetings and agendas and a copy of meeting minutes on the authority's web-site; and
 - h. Disclose, on an annual basis, any outside business dealings that board members, their employers, or their immediate family members have had with the authority during the previous year, and require senior authority staff to do the same. The disclosures shall be made via certifications submitted by individual board members and senior staff to the board.
5. All procurement contracts to be awarded by State authorities are to be advertised in a way designed to ensure that potentially interested, qualified firms receive appropriate notice of the proposed contract and a fair opportunity to seek it. Each State authority shall promulgate standing procedures for the public advertising of such contracts, which typically would be expected to include advertisement in appropriate publications and on the authority's web-site.

6. The State's Office of Information Technology is hereby directed to develop and establish a single web-site to serve as an additional location at which all State authority procurement contracts shall be posted. Once the web-site is operational, each State authority shall post all proposed procurement contracts on this site. The Office of Information Technology shall develop procedures to facilitate such postings.
7. All procurement contracts are to be awarded by State authorities in accordance with pre-set, transparent procedures established by each authority and reviewed by the Governor's Authorities Unit. For every contract to be awarded, a description of the contract to be awarded as well as any project specifications and related information shall be made available in writing to interested parties. All proposals, bids, or other responses to an advertised contract shall be submitted in written or electronic form and, in cases where the contract is to be awarded to the low bidder, shall be sealed until opened with all other bids.
8. The State authorities may hold pre-bid conferences with interested parties to explain project specifications, to explain the factors on the basis of which the contract will be awarded, and/or to answer any questions. The location, time, and other information concerning the pre-bid conference shall be set forth with the advertised contract or otherwise appropriately advertised prior to the due date for responses.
9. Absent exceptional circumstances, contracts for the purchase of materials, products, supplies, and non-professional services shall be awarded to the lowest responsible bidder that submits a responsive bid. Where a State authority proposes to award such a contract to someone other than the low bidder, it must explain the exceptional circumstances justifying such a decision in the proposed resolution awarding the contract. Where, however, statutory law requires a state authority to award particular types of contracts to the lowest responsible bidder without exception, that law shall continue to apply.
10. The State authorities may award contracts for professional services or technical services on the basis of multiple factors as opposed to simply on the basis of cost. Each authority shall establish a fair and transparent process for awarding such contracts, including setting forth in writing the scoring factors and scoring procedures to be used. The Governor's Authorities Unit shall provide each State authority with sample numerical, quantitative scoring techniques that can be used to evaluate proposals. The scoring system may not be designed to improperly steer a contract or contracts to a particular firm or set of firms. Similarly, project specifications shall not be drafted in such a way as to steer a contract to a particular firm or set of firms. Each State authority shall review its ongoing and open-ended professional services contracts and establish a timetable for periodic advertising and re-evaluation of those contracts in accordance with the terms of this Order.
11. Factors that State authorities may use as a part of this scoring process include but are not limited to the following:
 - a. The background, qualifications, skills, and experience of the firm and its staff;
 - b. The firm's degree of expertise concerning the area at issue;
 - c. The rate or price to be charged by the firm;
 - d. The authority's prior experiences with the firm;
 - e. The firm's familiarity with the work, requirements, and systems of the State authority;
 - f. The firm's proposed approach to the issues raised in the project description or specifications;
 - g. The firm's capacity to meet the requirements of the project at issue;

- h. The firm's references;
 - i. Interviews with prospective firms; and
 - j. Geographical location of the firm's offices.
12. In accordance with State policy, and particularly Executive Order No. 34 (2006), the procurement process shall include efforts to ensure equal opportunity for minority-owned, women-owned, and small business enterprises.
 13. Prior to the receipt of any proposals or qualifications concerning a professional services or technical services contract, the State authority shall establish an appropriately qualified Evaluation Committee to review and score the proposals submitted. The authority shall screen the members of the committee for conflicts of interest and for the appearance of such a conflict. Similarly, members of the authority's board of directors shall not participate, either directly or indirectly, in the procurement process where such a member has a conflict of interest or there is an appearance of such a conflict.
 14. The analysis of relevant factors that leads the State authority to award the contract to a particular firm shall be memorialized, in summary form, in the proposed resolution awarding the contract.
 15. For professional services rendered in connection with bond sales, related financial instruments, and litigation matters, where similar services are expected to be required on numerous occasions over a period of time, the procedures and criteria set forth herein may be used to create a prequalified group or "pool" of potential contract partners for a term not to exceed two years. The establishment of such a pool may not be used to circumvent a genuine competitive process that ensures that quality service is being obtained at the best possible value. The request for proposals/qualifications or similar document advertising the formation of the pool shall make clear the basis on which individual firms will be selected from the pool to perform particular services. That selection may be based, for example, on the price to be charged by the pool member on the particular transaction and the relative strengths of each pool member in view of the particular transaction, through a process of alternating firms, or other justifiable approaches.
 16. The above provisions concerning public advertisement and competitive processes shall not apply in the following limited circumstances:
 - a. Where the contract price is below the bid threshold set forth by the State Treasurer pursuant to N.J.S.A. § 52:34-7(b), unless other state law sets forth a lower bid threshold in a particular case, in which case the lower threshold shall apply. An authority may not divide a contract into multiple proposed contracts in order to take advantage of this exception and must, if invoking this exception, certify that it has not done so and must maintain a record of that certification. Although this exception permits a State authority to avoid the formal procedures promulgated in accordance with this Order, it is expected that each State authority will advertise and employ a competitive process of some type even for small-dollar contracts to the extent it is feasible and economical to do so. That less-formal process may include obtaining telephonic quotations or obtaining written quotations following more limited advertising. The process used shall be memorialized in the certification referred to above.
 - b. In cases of unforeseen life, safety, or health emergencies where the public exigency requires that services or products be purchased immediately, as demonstrated by the memorialized concurrence of three authority officials who have been pre-designated to make such determinations. This exception is a limited one; the State authorities shall make efforts to contract in advance to deal with the types of emergencies that typically arise. In addition, the emergency contract must be limited to purchasing those services or products necessary to mitigate the emergency situation.

- c. Sole-source awards made when there is only one vendor capable or available to provide the goods or services. Sole-source procurements should be used only in exceptional circumstances and only when necessary. When an authority invokes this exception, the designated authority officer shall write and sign a memorandum of sole-source justification.
 - d. Contracts with the federal or any state government or any agency or political subdivision thereof.
 - e. Where a firm has brought an innovative idea to the authority, a request for proposals cannot be constructed without communicating the new idea, and the procurement would not benefit from a competitive selection process.
 - f. Where State or federal statutory law requires a different process than that set forth herein.
 - g. Where the authority has received authorization from the Governor's Authorities Unit.
17. Where one of the above exceptions is invoked, the proposed resolution concerning the contract shall set forth the justification for invoking the exception and the authority's executive director shall certify that circumstances warrant application of the exception.
18. Senior management at each authority shall annually review authority operations with the specific goal of identifying waste and inefficiencies, and take appropriate remedial steps that shall be reported to the Governor's Authorities Unit.
19. This Order shall apply to all State authorities, namely, all independent State authorities, any board, commission, or agency that is organized in but not of a principal department of State government, and all State authorities that are required to submit their minutes, resolutions, or actions for gubernatorial approval or veto.
20. In view of this Order, the Office of the Attorney General of New Jersey shall conduct a review of the procedures that that office uses in instances when it has a role in the appointment of counsel for the State's authorities.
21. Nothing in this Order is intended to affect the prescribed method of bond sales set forth in Executive Order No. 26 (1994).
22. State authorities shall continue to comply with the audit requirements of Executive Order No. 122 (2004). Aside from this paragraph, nothing in this Order is intended to affect the provisions of Executive Order No. 122. However, that Order is hereby amended to add the following requirements:
- a. The required audit shall be conducted annually;
 - b. The audit shall be submitted to the board of directors for its review and, if accepted, approval;
 - c. The audit shall be accompanied by a written certification from both the chief executive officer and the chief financial officer that the financial information provided to the auditor in connection with the audit is, to the best of their knowledge, accurate and that such information, to the best of their knowledge, fairly represents the financial condition and operational results of the authority for the year in question; and
 - d. The final, approved audit shall be posted on the authority's web-site and submitted to the State Treasurer and the Governor's Authorities Unit.
23. It is the policy of this administration to seek candidates for membership on State authority boards from all sectors, including academia, business, and labor. All interested New Jersey residents are invited to send their qualifications to the Governor's Appointments Office, 125 West State Street, Trenton, NJ 08625, for inclusion in the "Talent Bank" being compiled by that office. That office shall

continue to seek out qualified, experienced, and honest individuals interested in serving their State in this capacity, while carefully screening applicants for any actual, perceived, or potential conflicts of interest.

24. This Order shall take effect 60 days from the date of its execution, although State authorities are instructed to begin complying immediately with the terms of this Order to the extent possible.

GIVEN, under my hand and seal this day of 26th day
of September, Two Thousand and Six, and of the
Independence of the United States, the Two Hundred
and Thirty-First.

/s/ Jon S. Corzine

Governor

[seal]

Attest:

/s/ Stuart Rabner

Chief Counsel to the Governor