

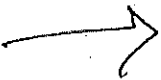
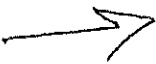
The certification must also include a discussion of whether the product is of a specialized nature or has a patented feature necessary for operational performance.

To purchase proprietary goods according to the New Jersey Local Public Contracts Law, either the specialized nature or patented feature must be considered and must meet one of the following definitions:

- The proprietary good or service is of a “specialized nature” because:
 - The use of the non-proprietary one will undermine the functionality or operational performance of existing facilities; or
 - The good or service is patented and the patented feature is essential for operational performance

- The proprietary good or service is “necessary for the conduct of affairs” of the Subrecipient because:
 - The Subrecipient has a substantial investment in facilities, training, replacement parts, or complimentary items that warrants reliance on a specific manufacturer or vendor to maintain the value of the investment; or
 - Unique circumstances as to a facility or environment preclude the use of other goods or services.

This certification shall be signed and sealed by a New Jersey Licensed Professional Engineer and must be provided for review by the DEP and the Subrecipient’s Chief Executive Officer prior to bid advertisement. Upon review and approval by both the DEP and the Chief Executive Officer, the certification shall be placed in the bid package. Prior to advertising the bid package, a resolution of the governing body shall describe the rationale for non-competitive procurement and describe why the goods or services are specialized in nature and necessary for the conduct of the affairs of the governing body.



BID SPECIFICATIONS AND BRAND NAMES

Specifications listing brand names should be avoided if possible to ensure maximum free and open competition. DEP anticipates many projects may require multidiscipline designs that may include civil, mechanical, and/or electrical components. The New Jersey Licensed Professional Engineer in charge of the project may select multidiscipline designs which may be impractical or uneconomical for the engineer to design themselves. Under these circumstances, the engineer may instead provide a performance criteria/expectation in a specification. In these situations, the engineer may find it advantageous to specify a brand name or equivalent along with a description of the specific performance or other salient requirements of the infrastructure component (see 2 CFR 200.319 (c)(1)).

The following example format should be included in bid specifications for components when brand names are utilized:

Brand X, Brand Y, or equivalent meeting A, B, and C performance requirements and including features, D, E, and F.

The bid specification should also include a process for the bidder to request that a product be reviewed for equivalency by the Subrecipient's engineer prior to the bid with the approval or rejection discussed in a bid addendum available to all bidders.

If two equivalent products do not exist, non-competitive procurement requirements (see 2 CFR 200.320 (f)(1)) and the purchase of proprietary goods requirements (N.J.A.C. 5:34-9.1) apply. The New Jersey Licensed Professional Engineer, on behalf of the subrecipient, must certify the use of the Brand Name or Proprietary good or service.

This certification must include a discussion of the circumstance that necessitates non-competitive procurement, specific to the circumstances, as set forth in N.J.A.C. 5:34-9.1. 2 CFR Non-competitive procurement, as specified in A 2 CFR 200.320(f), requires that one of the following circumstances must apply :

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- DEP expressly authorizes noncompetitive proposals in response to a written request from the Subrecipient; or
- After solicitation of a number of sources, competition is determined inadequate.

AND