

Statement by New Jersey League of Municipalities

Presented to Lieutenant Governor Kim Guadagno and the Red Tape Review Committee

Government Contracting/Procurement

**Tuesday, July 17, 2012
College of New Jersey**

Lieutenant Governor Kim Guadagno and members of the Red Tape Review Committee thank you for giving us an opportunity to address you on Government Contracting/Procurement. The Local Public Contracting Laws and corresponding Regulations have been enacted to protect public tax dollars by increasing competition while eliminating non-competitive practices and enhancing public integrity. In New Jersey the public contracts laws date back to 1917, with a major revision in 1971, splitting off the boards of education in 1976, and a major revision again in 2000, with incremental changes since then. In the 2000 revisions, the Division of Local Government Services was asked to resolve the differences and to add compatibility to the Local Public Contracts Law, Public School Contracts Law, and County College Contracts Law while updating the laws in the process. Legislative proposals were made and considered by the Legislature, while the County Colleges pulled out, the law was finally passed in December 1999, signed in January 18, 2000 and became effective April 17, 2000.

The goal of the revisions in 2000 was to make the procurement process more understandable for vendors; provide administrative efficiency, balanced with added accountability, responsibility and authority; and encourage professionalism and sound practices. However, as the years passed and amendments are made piecemeal to not only the Local Public Contracts Law (LPCL) but laws that impact the LPCL, the procurement process has become burdensome and at times conflicts arise within the various procurement laws and those laws that impact the same.

1. Pay-to-Play Law (N.J.S.A. 19:44A-20.4 et seq.)

The Pay-to-Play law is an Election Law Enforcement Commission law that directly impacts the LPCL with no consideration for the law. When N.J.S.A. 19:44A-20.4 was enacted the LPCL bid threshold was \$17,500, therefore, the threshold in N.J.S.A. 19:44A-20.4 became \$17,500. What was not considered was that pursuant to N.J.S.A. 40A:11-3 (c) the LPCL bid threshold increases

every 5 years in direct proportion to the rise or fall of the index rate and rounded to the nearest \$1,000. The LPCL bid threshold has increased while the Pay-to-Play threshold remains the same. As a result, there are now times, when a local unit could solicit quotes for a particular good or service but because of the \$17,500 Pay-to-Play threshold there must be formal action by the governing body in the award of the quotation. **We recommend that the Pay-to-Play threshold be amended to be the same as the local contracting unit's bid threshold. In addition, we recommend that any future changes to the Pay-to-Play law not be done in a vacuum but consideration be given to the LPCL.**

2. Business Registration Certification (N.J.S.A. 52:32-44)

The Business Registration Certification (BRC) is a Treasury law, administered by the Division of Revenue, which directly impacts the LPCL. N.J.S.A. 52:32-44 requires that all business organizations that conduct business with a local contracting agency are required to be registered with the State and provide proof of that registration to the local unit before the award of contract. According to Local Finance Notice 2004-17, the purpose is "to ensure that all businesses and their subsidiaries receiving government contracts pay appropriate sales and use and other taxes." A BRC must be on file when 15% of the contracting unit's bid threshold, in the aggregate, is paid to a vendor. **We recommend that the BRC threshold be pursuant to the requirements of N.J.S.A. 40A:11-3.**

3. Prevailing Wage (N.J.S.A. 34:11-56.25 et seq.)

The Prevailing Wage Act is a Department of Labor and Workforce Development law that directly impacts the LPCL. The Act requires the payment of minimum rates of pay to laborers, craftsmen and apprentices employed on public works projects. Covered workers must receive the appropriate craft prevailing wage rate as determined by the Department's Commissioner. Prevailing wage rates are wage rates based on the collective bargaining agreements established for a particular craft or trade in the locality in which the public work is performed. In New Jersey, these rates vary by county and by the type of work performed.

Public works projects subjected to the Act are those funded in whole or in part with the funds of a public body. Pursuant to N.J.S.A. 34:11-56.26 (11), contracts awarded directly by municipal government must be valued at \$14,187 or more to be covered by the Act. For all other public entities, including counties, municipal utility authorities, boards of education and the State, the threshold is \$2,000. **We recommend that the Prevailing Wage threshold be pursuant to the requirements of N.J.S.A. 40A:11-3. We further recommend that the Prevailing Wage threshold be the same for all local contracting units.**

4. Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48 et seq.)

The Public Works Contractor Registration Act is a Department of Labor and Workforce Development law that directly impacts the Local Public Contracts Law. N.J.S.A. 34:11-56.48 requires that all contractors, subcontractors and sub-subcontractors register with the Department of Labor prior to bidding or engaging on certain public works contracts that exceed the prevailing wage threshold. According to N.J.S.A. 34:11-56.50, public works projects are any construction, reconstruction, demolition, alteration, repair or maintenance of a public building regularly open to and used by the general public or a public institution. As noted above, the threshold for Prevailing Wage Act as of 2012 is \$14,187 for any public work paid with municipal funds and \$2,000 for any public work paid with other than municipal funds. Therefore, in addition to complying with the Prevailing Wage Act, a contractor demolishing a public building would also have to have a Public Works Contractor Registration. **We recommend that the Public Works Contractor Registration Act threshold be pursuant to the requirements of N.J.S.A. 40A:11-3. We further recommend that the Public Works Contractor Registration Act threshold be the same for all local contracting units.**

5. Project Labor Agreements (N.J.S.A. 52:38-1 et seq.)

As the League has stated previously, on numerous occasions, Project Labor Agreements are anti-competitive and restricts normal bidding procedures. The result is public project contracts are limited to union only contracts. This can inflate the cost of public contracts. The practical effect of Project Labor Agreements is to shut out non-union competition thereby reducing the number of potential bidders. Consequently, local units are forced to accept higher bids from a limited pool of union-only contractors rather than being able to choose from all responsible bidders. **We recommend that N.J.S.A. 52:38-1 et seq. be repealed.**

6. Buy American (N.J.S.A. 40A:11-18)

The “Buy American” law was enacted in 1933 and not amended since. N.J.S.A. 40A:11-18 specifically states “each local unit shall provide, in the specifications for all contracts for county or municipal work or for work for which it will pay any part of the cost, or work which by contract or ordinance it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available, be used in such work.” This provision of law is usually used by the second lowest bidder in an attempt to disqualify the lowest bidder, especially in difficult economic times.

However, there is much confusion in applying the law. Does a product in which the parts are made in Germany but assembled in United States qualify under N.J.S.A. 40A:11-18? Or does a product owned by an American company but assembled in Germany qualify under N.J.S.A. 40A:11-18? Is the law more concerned with the product or the jobs created? With the globalization of the “world economy” clarification is necessary.

We recommend that “Buy American” be clarified.

7. Prompt Payment (N.J.S.A. 2A:30A-1 et seq.)

N.J.S.A. 2A:30A-1 et seq. establishes timing standards for the payment of bills by both public and private sector organizations for a wide range of construction-related contractors. It affects construction-related contracts of all local units - municipalities, schools, counties, fire districts, local authorities, etc. The law intends to ensure that contractors submitting bills for completed work are paid on a timely basis through an established schedule, and that the full chain of subcontractors receive timely payments from their hiring contractor. When payments are not made pursuant to the schedule, the law allows contractors to receive interest on the outstanding balance and, under certain circumstances, to halt work without being subject to breach of contract clauses.

N.J.S.A. 2A:30A-2a requires that the payment be made within 30 calendar days of receipt of the bill, except if an alternate procedure is defined in the bid specifications and contract documents. We have found that the 30 calendar days is too short of a time period to properly process the paperwork. **We recommend that the Prompt Payment law be amended to 45 calendar days to allow for enough time to process the payment.**

8. Creation of a Review Board

We are recommending that a review board similar to the Pension and Health Benefits Review Commission be established. There are many laws that impact the LPCL that when drafted or amended do not take into consideration the LPCL as well as the other local procurement laws (Public Schools Contract Law and County College Contract Law). The Commission should be given the responsibility to review any bill, joint resolution or concurrent resolution introduced in either Senate or Assembly which establishes or modifies public contracting or bidding in this State. Such a review shall include, but not be limited to, an analysis of the bill's or resolution's impact on the LCPL, Public School Contracts Law, and/or County College Contracting Law, any comments upon or recommendations concerning the legislation, and any alternatives to the legislation which the commission may wish to suggest. **We recommend a Local Public Contracts Law Review Commission be established with representatives from the public and private sectors who have practical experience with New Jersey local public contracting laws.**