

40A:11-6 Emergency contracts

6. Emergency contracts. Any contract may be negotiated or awarded for a contracting unit without public advertising for bids and bidding therefor, notwithstanding that the contract price will exceed the bid threshold, when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services; provided that the awarding of such contracts is made in the following manner:

- a. The official in charge of the agency wherein the emergency occurred, or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the governing body, as may be appropriate to the form of government, of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.
- b. Upon the furnishing of such goods or services, in accordance with the terms of the contract, the contractor furnishing such goods or services shall be entitled to be paid therefor and the contracting unit shall be obligated for said payment. The governing body of the contracting unit shall take such action as shall be required to provide for the payment of the contract price.
- c. The Director of the Division of Local Government Services in the Department of Community Affairs shall prescribe rules and procedures to implement the requirements of this section.
- d. The governing body of the contracting unit may prescribe additional rules and procedures to implement the requirements of this section.

N.J.A.C. 5:34-6.1 General requirements (edited as to applicability)

(a) The use of emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 shall be subject to the following requirements:

- 1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service; ...
- ...3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;
- 4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and
- 5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

(b) The governing body of each contracting unit shall adopt rules or regulations as appropriate to the contracting unit to ensure that there is a procedure for determining and confirming the existence of an emergency and that the provisions for emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 may be implemented. Such rules or regulations shall include such provisions that ensure that if initially designated individuals are not available, there is a designated chain of command to ensure that there are always appropriate individuals available to make such decisions.

18A:64A-25.6 Emergency purchases and contracts

6. Any purchase, contract, or agreement may be made, negotiated or awarded by a county college without public advertising for bids and bidding therefor, notwithstanding that the cost or contract price will exceed \$25,000* or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3), when an emergency affecting the health, safety or welfare of occupants of college property requires the immediate delivery of the materials or supplies or the performance of the work, provided that such purchases, contracts or agreements are awarded or made in the following manner:

- a. A written requisition for the performance of such work or the furnishing of materials or supplies, certified by the employee in charge of the building, facility or equipment where the emergency occurred, is filed with the contracting agent or his deputy in charge, describing the nature of the emergency, the time of its occurrence, and the need for invoking this section. The contracting agent, or his deputy in charge, being satisfied that the emergency exists, is hereby authorized to award a contract for said work, materials or supplies.
- b. Upon the furnishing of such work, materials or supplies in accordance with the terms of the contract or agreement, the contractor furnishing such work, materials or supplies shall be entitled to be paid therefor and the county college shall be obligated for said payment.
- c. The board of trustees may prescribe rules and procedures to implement the requirements of this section.

* This provision is superseded by the provisions of N.J.S.A. 19:44A-20.4 threshold of \$17,500

EMERGENCY PROCUREMENT REPORT

Public Exigencies Pursuant To N.J.S.A. 19:44A-20.12

Procedure

An Emergency Procurement Report is required when municipalities, counties, and their instrumentalities and agencies¹ (public agency) experience an emergency that warrants the immediate delivery of goods or services and in doing so, are unable to comply with the "Pay-to-Play" provisions of N.J.S.A. 19:44A-20.4 et seq. N.J.S.A. 19:44A-20.12 provides in pertinent part that:

"Nothing contained in this act shall be construed as prohibiting the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of emergency services as determined by the State Treasurer."

The State Treasurer² has determined that approval under this provision is automatically granted when:

1. A public agency finds the public's health, safety or welfare requires the immediate delivery of goods or the performance of services.
2. The award of any such contracts is made pursuant to the provisions of N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1 et seq., or for county colleges, N.J.S.A. 18A:64A-25.6.
3. Contracts are issued in response to a formal declaration of an emergency by the Governor.

Emergency Report Required

The Treasurer also requires that when a contracting agency uses these provisions, the agency's purchasing agent or other appropriate personnel shall file with Director of the Division of Local Government Services an "Emergency Procurement Report," within 30 days of the date the contract was issued. Contracts relating to a formal declaration of an emergency by the Governor are exempt from the reporting provision.

Certain information is necessary to address situations in which an exigency/emergency affecting the public's health, safety or welfare requires the immediate delivery of goods or the performance of services.

¹ This language has been interpreted by the State to include among others, local authorities, fire districts, and county colleges.

² The State Treasurer's directive can be seen at www.nj.gov/dca/lgs/p2p

N.J. Division of Local Government Services

EMERGENCY PROCUREMENT REPORT

This report is to be filed by the contracting agent of the public agency with the Director of the Division of Local Government Services within 30 days of the date the emergency contract was issued. Please provide the necessary information to satisfactorily complete the report. Refer to the Instructions accompanying this form and the statutory and regulatory citations on the reverse of this form.

This form is designed to be completed using Microsoft Word; if not completed that way, please print it out.

1. Name of Public Agency:		County:	
2. Date Emergency occurred:		Time emergency occurred:	
3. Date emergency declared:		Time emergency declared:	
4. Agency/department responsible for determining there was an emergency:			
5. Name and title of the official in charge of that agency:			
6. Describe the condition or circumstance pertaining to the emergency (attach additional sheets if necessary):			
7. Name and title of the individual who determined the matter was an emergency and authorized award of contract(s):			
8. The total (or estimated) cost of providing the goods or performing services was:		\$	
9. List the names the contractors/suppliers receiving 25% or more of the contracts awarded under the emergency:			
10. When was the notification reduced to writing and filed with the purchasing agent?			
11. Has the public agency adopted a "chain of command" procedure pursuant to N.J.A.C.5:34-6.1?			
This report was completed by (name and title):			
Name and Address of agency contact person:			
Signature:		Date:	

Submit by mail or fax to:

Director, Division of Local Government Services
P.O. Box 803
Trenton, New Jersey 08625-0803
Fax: 609-633-6243