

***An Orientation for Municipal Officials that are Newly Elected,
Re-Elected, or Experienced***

Saturday, January 25, 2025

Location: Westin Hotel, 555 Fellowship Road, Mount Laurel, NJ 08054

OR

Saturday, February 1, 2025

Location: The Park Hotel at Meadowlands, 2 Meadowlands Plaza, East Rutherford, NJ 07073

**“Understanding Public Procurement:
Basic Procurement Information”**

Presented By
Nicola Reid
Qualified Purchasing Agent
Township of Stafford

I. Why A Local Public Contracts Law?

- A. A need to protect the public's business, funds, and records
- B. A need to administer the entire public procurement process, not just purchasing - public procurement is more than just buying!
- C. A need for consistency and uniformity in the application of processes, procedures, and practices for all local contracting units
 - 1. Lowest responsible bidder
 - 2. Competitive contracting - most advantageous, price and other factors considered (RFP)
 - 3. Request for qualifications (RFQ) - there is a need for uniformity, etc.
 - 4. Request for information (RFI) - no known statutory basis for its use
- D. Integrity to promote
 - 1. Fair and open competition - "level playing field" for potential contractors/vendors
 - 2. Policies and procedures to avoid favoritism and collusion
 - 3. Accountability for spending public dollars
 - 4. Proper use of authority and responsibility by elected and appointed officials
 - 5. Procurement ethics as a set of principles of "right conduct" as opposed to no-bid contracts and allegations of "insider deals," and "kickbacks"
- E. Protection against unscrupulous vendors
 - 1. Statement of ownership
 - 2. Bid guarantees, surety company certificates, performance bonds, maintenance bonds, payment and labor bonds, etc. - evaluation of exposure/risk
 - 3. Business registration certification
 - 4. **Prevailing wages (\$19,375/\$2,000)** and public works contractor registration (PWCR) Act with required active participation in a registered apprenticeship program are key requirements for public works/construction contracts

5. Federal Debarment
 6. Value engineering construction contracts
 7. Insurance coverages
- F. Achieve policy goals
1. Prompt payment - public works/construction
 2. Prompt payment - goods/services
 3. Project labor agreements
 4. Pay-to-Play
- G. Achieve social goals
1. Affirmative action requirements
 2. Establishment of set-aside programs

II. Public Procurement Principles

- A. Bid threshold - dictates when to publicly bid or use other statutory procedures
- B. Aggregation or contracts not to be divided (important) - "Aggravation"
1. Goods or services similar in character cannot be divided to avoid bidding
 2. All goods or services for completion of work must be in the same contract
- C. Lowest responsible bidder:
1. Lowest price
 2. Responsive - met all specifications' criteria
 3. Responsible - contractor's/vendor's ability to complete contract requirements pertaining to experience, workforce, operating capacity, etc., but financial statements have been repealed from the LPCL under certain situations
- D. The governing body awards all contracts when the contract price is over bid threshold

E. Procurement is tied to the budget

1. Certificate of availability of funds required from CFO for governing body contract awards, existing law prohibits purposeful and knowing overspending of public funds
2. Encumbrance accounting required for most purchases
3. “Management Decisions” - Are they made? Balance the “We have the funds, but do we need to buy it” concept
4. Planning and scheduling - procurement needs and inventory control, etc.
5. Authorization of bill payments by CFO

F. Change orders - be very careful

G. Standardized changed conditions clauses for construction/public works contracts

H. “Confirming orders” - be very, very careful, there is no statutory authorization to use them

III. What The Law Covers

- A. Basic process for awarding all contracts (including purchase orders) - authority and control is with governing body - must have a formal process, over bid and pay to play thresholds contracts can only be awarded by governing body - no delegation, under bid threshold an administrative official can be the purchasing agent if so designated by the governing body
 1. Public bidding - a formal process of public advertising, receiving bids, and awarding contract
 2. Electronic procurement – advertising/submission of public bids, competitive contracting (RFP), quotes, reverse auctions, sale of personal property. Law is accompanied with rules
 3. Bid exceptions
 - a) Professional services and other exceptions are controlled by Pay-to-Play (P2P) Law - Fair and Open or the Required Disclosure (Non-Fair and Open)

4. Other types of competition:

- a) Extraordinary unspecifiable services - requires application of Pay-to-Play
- b) Competitive contracting for certain services- where the emphasis is not just low price, where qualitative factors can be assessed as part of the selection of vendors
- c) Cooperatives - taking advantage of “nationally” recognized and accepted co-ops or State of New Jersey government contracts or contracts of other municipal or county governments or boards of education - Can only use such contracts in accordance with certain terms and conditions

5. Soliciting informal quotations

- 6. For low cost items...local choice, no competition required when less than 15% of your bid threshold, however must use “sound business practices” that reflect current market conditions, quantity and delivery requirements
- 7. Emergencies - affects public health, safety or welfare requiring the immediate delivery of goods or performance of services, “Chain of Command” - mandatory regulation

B. The statutory length of contracts – twenty-four (24) consecutive months is the normal standard, Professional Service Contracts are twelve (12) consecutive months, there are exceptions for up to five or seven years and in specific circumstances, up to 20 years or longer, no roll-over contracts, contracts end when they end

C. Allows governing body to adopt set-aside programs for small, women, minority and veteran businesses

D. Sale of public (personal property) assets - if the estimated fair market value of the property to be sold exceeds 15% of the bid threshold in any one sale - shall be sold by sealed bids, or at public sale (auction); Such sales require governing body approval

E. Concessions- private firm, making a private financial (consideration) gain, from a public situation, threshold based on estimated annual value of fees and payments

F. “Prior negative experience” - Who has the responsibility of documenting contractor/vendor’s performance?

IV. Procurement Oversight

A. Contract administration

1. Need a system in place to monitor performance problems
2. Contracts must be properly performed and completed on time and on budget
3. Contract compliance with bid specifications or a request for proposal's scope of services/work (application to both bid and non-bid contracts) is necessary
4. Performance benchmarks need to be established to assist local officials in reviewing contracts and evaluating contractor/vendor requests for bill payments
5. Does a governing body authorize full or partial payments; does it require submission of project "checklists" with each request for payment; does it require its own department heads and professionals (attorney, engineer, architect, etc.) to "validate" the work of "contracted" contractors/vendors?
6. Contactor/vendor exit review (in-house v. out-sourcing) should be used (Financial Audits - Corrective Action Plans)

B. Sample questions that can guide internal controls

1. Who is in charge of the procurement operation? What is their authority? What about accountability and responsibility? (P.A. v. QPA)
 - a) Spending by "advisory" local agencies - must have statutory authorization
2. Has the governing body addressed procurement procedures through the formal adoption of a resolution, ordinance or administrative code depending on type or form of government?
3. What are the basic financial and payment procedures used by the local contracting unit?
4. What are the procedures for award of contracts over and under the bid threshold?
5. Is the governing body ensuring the availability of funds pursuant to a purchase order-encumbrance procedure?

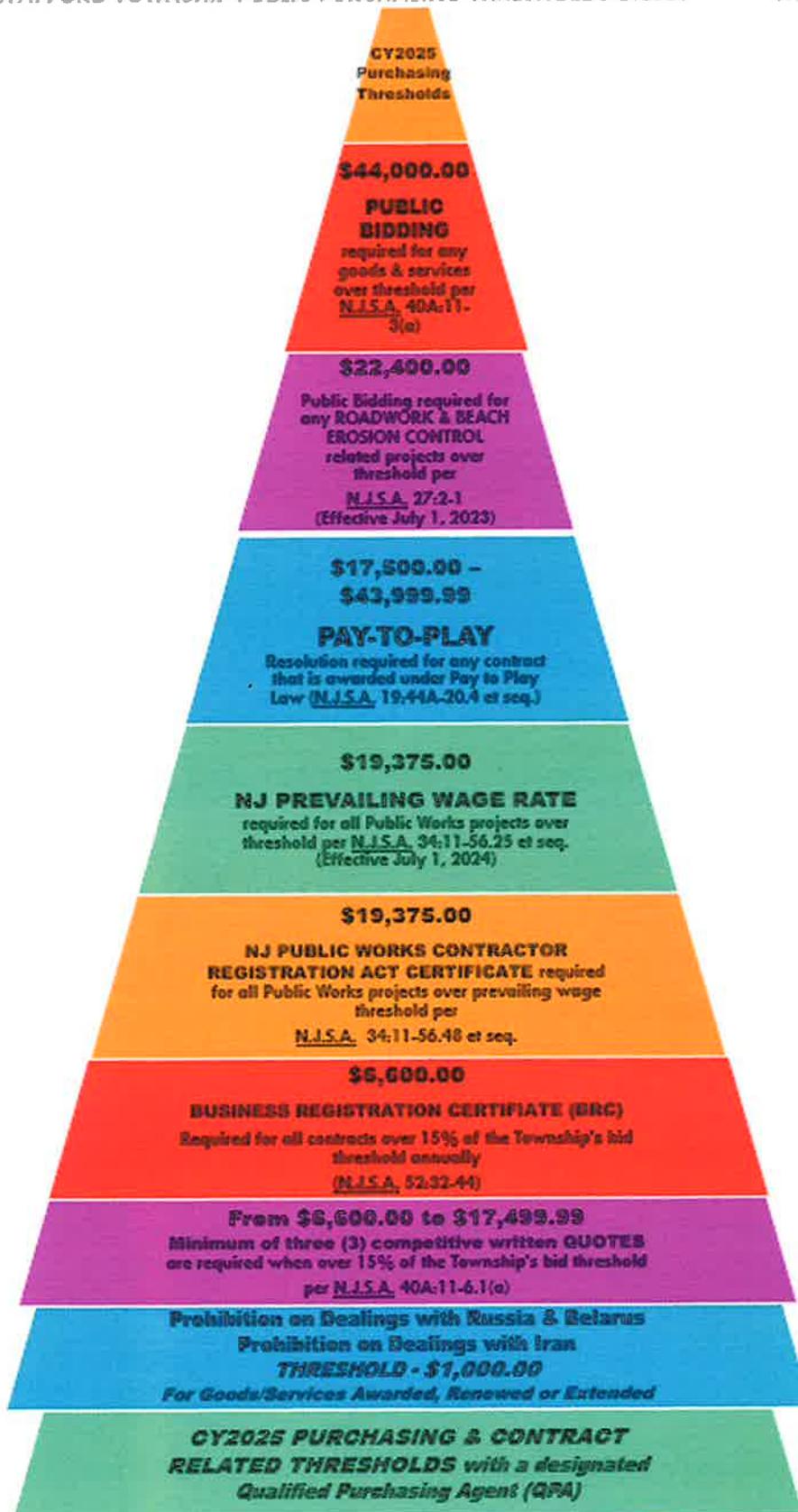
6. Are administrative officials carefully reviewing all vouchers/invoices for the correct dollar amounts and descriptions of the purchases before processing payments?
 7. Are vendors'/contractors' requests for payment being processed and paid in a proper and timely fashion?
- C. Selected management tools and procedures that can guide internal controls
1. Procurement procedures and vendor manuals
 2. Computer generated reports for "tracking" contract progress and payments (year to date)
 3. Completion of a receiving report
 4. Submission of a properly and fully executed invoice/voucher - not packing slips
 5. Preparation for and conduct of a fixed asset inventory of personal property - When was your last one?
 6. Monitoring contract performance
 7. Preparation of a written contract- contract provisions holding contractor/vendor accountable is a must

V. What Can You Do?

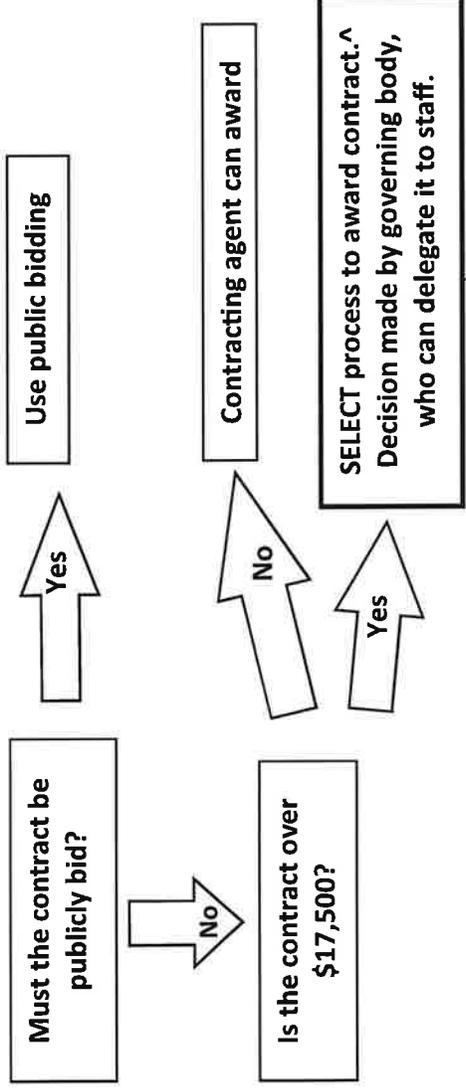
- A. Work with your Administrator/Manager and Attorney for legal guidance
- B. Contact the Division of Local Government Services for Technical guidance, but your own attorney provides you with legal advice
 - Division web site: www.nj.gov/dca/dlgs/index.shtml

VI. Summation

- A. Making it work - procurement is both a management tool and a financial control mechanism
- B. Procurement/Purchasing is part of an overall governmental operation - Where is yours located?



Local Public Contracts Law Political Contribution Disclosure Compliance* (Pay To Play) Decision Tree



EXIGENCY

Emergencies (affecting public health, safety and welfare): follow LPCL law and rule requirements; adopt resolution. Filing with DLGS not required (as of 12/16).

REQUIRED DISCLOSURE (aka, Non-Fair and Open)

- Choose contractor and obtain fee proposal
- Contractor submits Political Contribution Disclosure 10 days in advance of award date (c.271*) and Statement of Ownership
- Contractor submits Business Entity Disclosure Certification prior to award (c.19*)
- Review documents to ensure no apparent conflicts
- Governing body makes public award; including all cooperative purchasing contracts over \$17,500 *

FAIR AND OPEN

- Draft Request for Proposals/ Quotations with criteria for award
- Publicize in paper or on website at least ten days prior to opening
- Publicly open and announce contents
- Review proposals and recommend award
- Governing body makes public award; including all cooperative purchasing contracts over \$17,500*

For more details see:
www.nj.gov/dca/divisions/dlgs/resources/poli_contri_discl.html

*LFN#2023-14 - Pay-to-Play Updates - "Window" Contracts between Pay-to-Play & QPA Bid Thresholds

*N.J.S.A. 19:44A-20.4 et seq. (P.L. 2004, c. 19) and N.J.S.A. 19:44A-20.26 (P.L. 2005, c.271, s.2). Does not apply to boards of education.
^ In all cases, using public bidding complies with all Contribution Disclosure requirements. It serves as an alternative to Fair and Open and Required Disclosure procedures.

LFN 2023-14

August 8, 2023

Contact Information

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Philip D. Murphy
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Lt. Governor Sheila Y. Oliver
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Jacquelyn A. Suárez
 Director

Pay-to-Play Law Updates for Local Governments

P.L. 2023, c. 30, known as the “Elections Transparency Act,” (the Act) made various significant changes to New Jersey’s pay-to-play laws. This Notice identifies key changes relevant to local government pursuant to N.J.S.A. 19:44A-20.4 and 20.5.

The term “business entity,” used in this Notice as an umbrella term for vendors or contractors, is defined by N.J.S.A. 19:44A-20.7 as “any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association, or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction.”

Section 13 of the Act amended the definition of “fair and open process” in N.J.S.A. 19:44A-20.7 to expressly include contracts awarded under a public bidding or competitive contracting process pursuant to the Local Public Contracts Law.

Campaign Contribution Reporting Threshold; Non-Fair and Open Contract Awards

Although the statutory pay-to-play threshold remains in excess of \$17,500, Section 4 of the Act amended N.J.S.A. 19:44A-8 to reduce the Election Law Enforcement Commission (ELEC) contribution reporting threshold from over \$300 to over \$200. Please note that cash contributions of any size by business entities are prohibited.

Pursuant to N.J.S.A. 19:44A-20.4 and 20.5, a county (or any agency or instrumentality thereof) may now award a non-fair and open contract over \$17,500 to a business entity making reportable contributions under N.J.S.A. 19:44A-8 toward any county committee of a political party in that county. Likewise, a municipality (or any agency or instrumentality thereof) may now award a non-fair and open contract over \$17,500 to a business entity making reportable contributions under N.J.S.A. 19:44A-8 toward any municipal committee of a political party in that municipality. Business entities being awarded non-fair and open contracts are no longer prohibited from making reportable contributions under N.J.S.A. 19:44A-8 toward a political party’s county or municipal committee during the term of their contract.

The award of non-fair and open contracts to business entities making reportable contributions toward candidate committees remains **prohibited**, and business entities having been awarded non-fair and open contracts are still barred from making reportable contributions toward candidate committees during the contract term.

Here are some examples of permissible and non-permissible contributions in the context of a non-fair and open contract award:

Business entity contributes over \$200 to the Democratic Party Committee of XX County during the preceding one-year period.	The County (or any agency or instrumentality thereof) is allowed to award a non-fair and open contract to the business entity.
Business entity contributes over \$200 to the Republican Party Committee of XX Municipality during the preceding one-year period.	The Municipality (or any agency or instrumentality thereof) is allowed to award a non-fair and open contract to the business entity.
Business entity contributes over \$200 to the Committee to Elect Smith & Jones to the Board of County Commissioners during the preceding one-year period.	The County (or any agency or instrumentality thereof) cannot award a non-fair and open contract to the business entity.
Business entity contributes over \$200 to the Committee to Elect Smith & Jones to Borough Council during the preceding one-year period.	The Municipality (or any agency or instrumentality thereof) cannot award a non-fair and open contract to the business entity.

Section 20 of the Act further amends the Chapter 271 Political Contribution Disclosure (N.J.S.A. 19:44A-20.26) that is required of all business entities having been awarded a non-fair and open contract to eliminate the obligation to disclose reportable contributions made to any State, county, or municipal committee of a political party, or any legislative leadership committee. An updated model of the Political Contribution Disclosure Form can be found on the Division's Pay-to-Play webpage. The new form still requires business entities to disclose reportable contributions (i.e. over \$200) made to:

- Any continuing political committee (PAC); and
- Any candidate committee of a candidate for, or holder of, an elected office of:
 - the local unit;
 - of that county in which that local unit is located;
 - of another local unit within that county; and
 - of a legislative district in which that local unit is located (when the local unit is a county, this includes any legislative district that encompasses all or part of the county).

The [Business Entity Disclosure Certification](#) (N.J.S.A. 19:44A-20.8) is required to be filed by business entities prior to the award of a non-fair and open contract, along with the model [Non-Fair and Open Contract Award Resolution](#), [Non-Fair and Open Contract Contribution Prohibition sample contract language](#) and Lists of Agencies with Elected Officials Required for Political Contribution Disclosure (N.J.S.A.19:44A-20.26), which have been similarly updated to reflect the Act's changes. Broken down by county, updated agency lists are on the [Division's Pay-to-Play webpage](#) and the Appendix to this Notice. The Business Entity Annual Statement is available on the [ELEC Pay-to-Play webpage](#).

"Window" Contracts between Pay-to-Play and Qualified Purchasing Agent Bid Thresholds

Sections 11 and 12 of the Act amend N.J.S.A. 19:44A-20.4 and 20.5, respectively, to clarify that the governing body of a municipality or county (or any agency or instrumentality thereof) may delegate the authority to award a contract having an anticipated value in excess of \$17,500 but below the increased bid threshold of a Local Public Contracts Law contracting unit with a qualified purchasing agent (i.e. a "window contract") to the QPA. This delegation of authority should be incorporated into the resolution adopted pursuant to N.J.S.A. 40A:11-3 increasing the bid threshold

State Pay-to-Play Law Now Preempts Local Pay-to-Play Restrictions

Local government entities are now prohibited from imposing pay-to-play provisions that are more restrictive than those in State law. Section 37 of the Act repealed N.J.S.A. 40A:11-51, the law that previously authorized counties, municipalities, independent authorities, fire districts, and boards of education to adopt additional local pay-to-play restrictions to further limit the award of public contracts to business entities making political contributions, and limited the contributions that individuals or entities awarded a contract can make during the term of the contract. The repeal is effective retroactive to January 1, 2023. As a matter of housekeeping, any local pay-to-play ordinances or resolutions originally authorized or grandfathered by N.J.S.A. 40A:11-51 that are currently in effect should be repealed.

Approved: Jacquelyn A. Suárez, Director

Document	Internet Address
Electons Transparency Act (P.L. 2023, c. 30)	https://pub.nileg.state.nj.us/Bills/2022/PL23/30_PDF
DLGS Pay-to-Play webpage	https://www.nj.gov/dca/divisions/dlgs/programs/pay_2_play.html
ELEC Pay-to-Play webpage	https://www.elec.nj.gov/pay2play/p2p.html
c. 271 Political Contribution Disclosure Form	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/polit_contrib_disc_form.doc
Business Entity Disclosure Certif.	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pbusentdisccert.doc
Non-Fair & Open Contract Award Resolution	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pnfoawardres.doc
Sample Contract Language - Non-Fair and Open	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pcontractlanguage.doc