

# Certification of Available Funds (NJAC 5:30-5.3 to 5.5)

- ▶ Amendments effective June 5, 2017
- ▶ Local Finance Notice 2017-10
- ▶ All governing body resolutions awarding or authorizing entering into a contract must display the maximum dollar value of the contract being awarded
  - ▶ Can add caveat that the displayed maximum dollar value is based on a reasonable estimate of the goods or services required over the contract term, with the contracting unit not obligated to spend that amount
  - ▶ established maximum dollar value of a professional services contract (e.g. attorney, engineer), or an open-end contract generally, at the time of award would be based on a reasonable estimate of the goods or services needed over the contract term.

# Certification of Available Funds (NJAC 5:30-5.3 to 5.5)

- ▶ The certification of available funds must also reference the maximum dollar value of the contract **UNLESS** a special situation set forth in N.J.A.C. 5:30-5.5 permits the certification of either no amount, or an amount less than the maximum dollar value of the contract.
  - ▶ Open-ended contracts
  - ▶ Multi-year contracts
  - ▶ Contracts awarded when municipality or county is operating on temporary budget
  - ▶ contracts of up to 12 months not coinciding w/ fiscal year

# Certification of Available Funds (NJAC 5:30-5.3 to 5.5)

- ▶ Amendments permit certification to be displayed on contract award resolution
  - ▶ If displayed on the resolution, a boilerplate statement can state that the maximum dollar value of pending contract is as set forth in the award resolution (in lieu of the actual dollar amount)
- ▶ local unit may now make the secretary of its governing body (i.e. Freeholder Board Clerk), in lieu of its attorney, responsible for ensuring that the certification of available funds has been provided to the governing body.

# NJAC 5:32 DLGS Licensed Officials

- ▶ Recodification of Qualified Purchasing Agent Regulations
- ▶ N.J.A.C. 5:32-4 (from 5:34-5)

## Key Highlights:

- implements Director approval to extend grace period (up to an additional 6 months) for recertification if licenseholder prevented from obtaining CEUs due to
  - ▶ natural disaster for which Governor has declared State of Emergency; or
  - ▶ a medical event or condition
- ▶ Must show good faith effort to obtain requisite CEUs by expiration of the 6 month grace period; and
- ▶ demonstrate it was impossible to obtain requisite CEUs as a result of either of the above-referenced conditions
- ▶ Codifies process for Director approval of Temporary Purchasing Agent reappointment
  - ▶ questionnaire and documents in support of responses therein exempt from OPRA

# NJAC 5:32 DLGS Licensed Officials

- ▶ Private Entity Temporarily Fulfilling Duties of Municipal Chief Finance Officer
  - ▶ Maximum two consecutive one-year terms
  - ▶ Director approval
  - ▶ Regulations permit use of Professional Services bid exception (Pay-to-Play still applies)

# Pending Rule Proposal: EFT Regulations

- ▶ Amendments to NJAC 5:30-9A; 5:31-4.1 & 4.2
- ▶ Implements 40A:5-16.5, signed by Governor Christie August 2016
- ▶ Comprehensive overhaul of existing regs on electronic payment of claims; allowing local units, county colleges, and school districts to utilize standard electronic funds transfer technologies
  - ▶ ACH
  - ▶ Wire Transfers
  - ▶ Commercial charge cards/accounts (except schools)
  - ▶ Procurement cards (except schools)

# Pending Rule Proposal: EFT Regulations

- ▶ Standard fiscal and operational controls, technological features and cybersecurity measures
- ▶ Local units must adopt policies and procedures governing EFT initiation and authorization, roles must be segregated
- ▶ CFO charged with ensuring proper controls are followed
- ▶ Creation and maintenance of audit trail for transaction history and authorizations

# Pending Rule Proposal: EFT Regulations

- ▶ Charge accounts/cards permitted:
  - ▶ Must be paid in full each month (no revolving)
  - ▶ monthly purchase order issued for each charge account authorizing maximum to be expended for month
  - ▶ ability to pay by invoice and receive itemized statements
  - ▶ place single-purchase dollar limits
  - ▶ Not permitted for travel/dining expenses

# Pending Rule Proposal: EFT Regulations

- ▶ Existing P-Card regulations largely similar to current regs
  - ▶ Clarifies CFO role as far as monitoring internal control implementation
  - ▶ In order to use procurement cards, QPA still required to fulfill role of program manager

# Pending Rule Proposal: EFT Regulations

- ▶ Claimant certification changes (40A:5-16.c):
  - ▶ Contracting unit does not need to require claimant certification from vendor if:
    - ▶ Payment made through an electronic transaction
    - ▶ the governing body adopts a policy that a cert shall not be required when not issued by vendor in normal course of business
    - ▶ Certain payments in advance (e.g. website hosting, educational courses/CEUs, non-profit conference registrations, membership in non-profit organization)
  - ▶ However, still required for services provided exclusively by the individual seeking payment (i.e. sole proprietor), and for reimbursement of employee expenses
  - ▶ P.L. 2015, c. 177 - Utility and telecom bills (entities regulated by BPU) no longer subject to claimant certification

# Pay-to-Play & Emergency Procurement

- ▶ Fair and Open” requirements waived when a public exigency exists
  - ▶ “Public exigency” presumed to exist when a public agency finds the public health, safety and welfare require immediate delivery of goods/performance of services. Emergency procurement provisions of LPCL must be followed (N.J.S.A. 40A:11-6; N.J.A.C. 5:34-6.1)

# Pay-to-Play & Emergency Procurement

- ▶ Emergent Public Exigency
  - ▶ Health, safety or welfare requires immediate delivery of goods, performance of services, or
  - ▶ Contract issued in response to a formal declaration of an emergency by the Governor

“Emergency Procurement Reports” no longer required to be filed w/ Division, but be sure to thoroughly document emergency purchases , compliance w/ LPCL emergency purchase requirements

# Pay-to-Play & Emergency Procurement

- ▶ Non-Emergent Public Exigency
  - ▶ where the public agency has determined that the requirements of N.J.S.A. 19:44A-20.4 et seq. cannot be followed for goods or services that:
    - ▶ Must be provided by a specific vendor;
    - ▶ The timing or other circumstances of the procurement does not make compliance with the Chapter 19 fair and open procurement process (N.J.S.A. 19:44A-20.4) practical or possible; and,
    - ▶ The procurement is otherwise consistent with the intentions of pay-to-play laws.
  - ▶ Contracting unit must request Chapter 19 waiver from State Treasurer through DLGS

# Professional Services and CDBG Grant Funds (HUD)

- ▶ Professional services paid for out of CDBG Grant Funds must be competitively procured
  - ▶ When above the bid threshold, professional services paid for out of CDBG Grant Funds must be procured through competitive contracting
    - ▶ Clearly written scope of services
    - ▶ Objective evaluation criteria
    - ▶ Technical evaluation of proposals
- If below bid threshold, three competitive quotes

# Water/Wastewater Privatization

- ▶ Operation & Management Contracts (Local Public Contracts Law)
  - ▶ Maximum 10 year duration
  - ▶ Competitive Contracting statutorily permitted
  - ▶ If comp. contracting used, any existing employees impacted by the contract award must be given opportunity to offer concessions re wages, hours, terms of employment
    - ▶ Employees/bargaining unit must be notified no later than date of advertisement soliciting responses to RFP

# Water/Wastewater Privatization

- ▶ Water/Wastewater Public-Private Contracting Acts (NJSA 58:26-19 et seq.; 58:27-19 et seq.)
  - ▶ 40 year maximum duration
  - ▶ Only investor-owned utilities can enter into water supply public-private contract
  - ▶ Public authorities and investor-owned utilities can enter into wastewater public-private contracts.
  - ▶ Notice of intent to enter into public-private contract published no earlier than 60 days prior to date of public hearing
    - ▶ Must be published in both a newspaper of general circulation within the service area, and a newspaper of broad regional circulation
  - ▶ Responses to RFP must be submitted no less than 30 days from notice's publication date

# Water/Wastewater Privatization

Water/Wastewater Public-Private Contracting Acts  
(NJSA 58:26-19 et seq.; 58:27-19 et seq.)

- ▶ One qualified proposal must be selected, reason for selection in writing.
- ▶ Public hearing required, BPU and LFB approvals
- ▶ The Acts preempt the Local Public Contracts Law; however, pay-to-play laws still apply.

# Water/Wastewater Privatization

- ▶ Sale or Long-Term Lease of a municipality's Water/Wastewater Utility (N.J.S.A. 40:62-3)
  - ▶ Subject to voter approval by referendum held at November general election
  - ▶ If system serves <5% of population, only BPU approval is required without a referendum needed
  - ▶ Any sale proceeds remaining after all liabilities of system satisfied must go toward defeasing municipality's debt
  - ▶ Solicitations for responses to RFPs must be advertised:
    - ▶ at least once a week for six weeks in newspaper circulating in municipality, and
    - ▶ once in a magazine or newspaper dedicated partly or wholly to municipal matters at least 30 days prior to receipt of proposals

# Water/Wastewater Privatization

- ▶ Sale or Long-Term Lease of a municipality's Water/Wastewater Utility (N.J.S.A. 40:62-3)
  - ▶ Certified check or sufficient bond to ensure fulfillment of K if response is accepted
  - ▶ Award to “highest responsible bidder”, but solicitation of RFPs is acceptable
  - ▶ If sale is to another local unit (e.g. municipality, MUA), no competitive process or voter referendum is required

# Water/Wastewater Privatization

- ▶ Water Infrastructure Protection Act (“WIPA”)
  - ▶ N.J.S.A. 58:30-1 et seq.
  - ▶ Sale or long-term lease of municipal water/wastewater system
  - ▶ Aimed at systems with substantial infrastructure needs
  - ▶ Complex law with several key deadlines
  - ▶ Allows for sale of system if “emergent conditions” are present as determined by DEP

# Water/Wastewater Privatization

## Water Infrastructure Protection Act (“WIPA”)

- ▶ RFP process open to “capable public & private entities”
  - ▶ Owns a system serving no less than the number of residential or commercial accounts as the system which the entity proposes to lease or purchase
  - ▶ Is not a significant noncomplier as defined under N.J.S.A. 58:10A-3 of the Water Pollution Control Act
  - ▶ Is not currently the subject of an NJDEP formal enforcement action to address a material violation
  - ▶ Is not substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement or judicial consent order entered into with the NJDEP.

# Water/Wastewater Privatization

## Water Infrastructure Protection Act (“WIPA”)

- ▶ Solicitation for qualified entities must be advertised for at least 30 days in a newspaper w/ municipal circulation and another w/ Statewide circulation, and municipality’s website
- ▶ RFP sent w/in 14 days to each vendor the municipality confirms is a capable private or public entity
- ▶ WIPA requires vendor proposals to be evaluated on the basis of several factors including:
  - ▶ Financial, managerial, and technical capabilities of respondent
  - ▶ Corrective measures proposed for system, including the proposed long-term asset management/improvement plan
  - ▶ Projected impact on customer rates

# Water/Wastewater Privatization

## Water Infrastructure Protection Act (“WIPA”)

- ▶ 2/3 of full membership of municipality’s governing body must designate one of the proposals as most advantageous to the public pursuant to the evaluation criteria.
- ▶ Contract negotiations may commence once a designated respondent is selected.
- ▶ BPU must approve proposed contract; DLGS approves proposed use of sale proceeds