



Division of Local Government Services

Department of Community Affairs

Lt. Governor Sheila Oliver
Commissioner

Melanie Walter
Director, Division of Local Government Services



League Procurement Update

March 4, 2020

New Jersey Department of Community Affairs

Division of Local Government Services

Michele E. Meade

Municipal Technical Advisor and Procurement Specialist

Topics

E-Procurement – LFN 2019-15

Changed Site Conditions

Public Works Contracting

National Cooperative Purchasing – LFN 2012-10

Miscellaneous



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E-Procurement

Key Concepts of Interim Guidance

1. Purchase of electricity and natural gas supply
 - a. E-procurement can be used.
 - b. No longer a list on LGS website for “approved” vendors.
 - c. LFN 2012-12 still in effect.

2. Sale of Surplus Personal Property
 - a. E-procurement can be used
 - b. Existing contracts may continue until expiration
 - c. No longer a list on LGS website for “approved” vendors.
 - d. New contracts for online platform providers are subject to quote and bid thresholds based on value of the contract to calculate the estimated fee to provider .
 - e. Can use state contracts
 - f. No longer need to send resolution authorizing sale to LGS



E-Procurement

Key Concepts of Interim Guidance

4. Sale of Solar Renewable Energy Certificates
 - a. E-procurement can be used.
 - b. Existing contracts may continue until expiration
 - c. No longer a list on LGS website for “approved” vendors.
 - d. New contracts for online platform providers are subject to quote and bid thresholds based on value of the contract to calculate the estimated fee to provider.
 - e. No longer need to send resolution authorizing sale to LGS

5. Bidding, quotes, competitive contracting, etc.
 - a. E-procurement cannot be used for goods and services until final regulations are adopted.
 - b. We are working with stakeholders to promulgate a regulatory framework for protecting integrity of bid results, bidder information, etc.



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Changed Site Conditions

What's happening?

- ❑ Change order regulations – N.J.A.C. 5:30-11.1 et seq.
- ❑ P.L. 2017, c. 317 and effective January 16, 2018 created 40A:11-16.7 “Changed conditions for certain local public contracts”
- ❑ Currently in the rule making process to amend N.J.A.C. 5:30-11.1 et seq.



Changed Site Conditions

Proposed Regulations

Definitions of:

- Bid proposal quantity
- Change in quantity of work
- Changed conditions
- Construction contract
- Differing site conditions
- Material change or material change in character of work
- Pay item
- Value engineering construction change order



Changed Site Conditions

Proposed Regulations

Separate sections for:

- Requirements and procedures for non-construction contract change orders
 - Substantially what is already existing in administrative code
 - Some additional detail for process to present change orders to the governing body by the chief executive and for approval by the governing body
 - Some additional detail for process for change orders over 20%
- Professional services and EUS change orders
- Open-ended contracts
- Requirements and procedures for construction contract change order



Changed Site Conditions

Proposed Regulations

Construction contract change orders:

- Law created four categories
 - Differing site conditions
 - Suspension of work
 - Material change in character of work
 - Change in quantity of work



Changed Site Conditions

Proposed Regulations

Construction contract change orders:

- Governing body can designate an individual to handle construction contract change orders
 - Overall authority or project by project
 - For change orders which increase a contract between 1% and 20% of original contract price (or a lesser amount at discretion of governing body)
 - These change orders must be memorialized by resolution of the governing body



Changed Site Conditions

Proposed general process for all types of construction changes orders

Contractor notices "changed site condition"	Contractor written certification	CEO investigates	Governing Body
<ul style="list-style-type: none">• Work is stopped in impacted area• Contractor provides written certification to contracting unit chief executive officer	<ul style="list-style-type: none">• Explanation of factual circumstances, costs, delays• Fair and equitable adjustment to price and/or contract completion date - can be a contract increase or decrease	<ul style="list-style-type: none">• Are differing site conditions present?• Negotiate a fair and equitable settlement with contractor• Either designated individual approves or goes to governing body	<ul style="list-style-type: none">• Review report• Passes resolution memorializing decision of designated individual• Or considers report and determines whether or not to pass change order resolution



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Public Works Contracting

What's Happening

- ❑ Prevailing Wage
 - ❑ July 1, 2019 - \$16,263 for municipalities
 - ❑ Still \$2,000 for school and counties
 - ❑ Contractor debarment
 - ❑ Certified payrolls per DOL
- ❑ Public Works Contractor (and subcontractor) Registration
 - ❑ New apprenticeship requirements
- ❑ Federal Debarment
 - ❑ P.L. 2019, c.406 effective February 20, 2020
 - ❑ New guidance and a model form forthcoming
- ❑ EEO/AA
 - ❑ AA-201 – Initial Project Workforce Report - Construction
 - ❑ AA-202 – Monthly Project Workforce Report - Construction



Public Works Contracting

What's Happening

- Cooperative Purchasing
 - Some public works contracts permitted with Director approval for co-ops
 - None that require individual plans and specifications
 - National cooperative contracts
 - These cannot be used for public works projects!



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National Cooperative Contracts

Local Finance Notice 2012-10

Key Reminders:

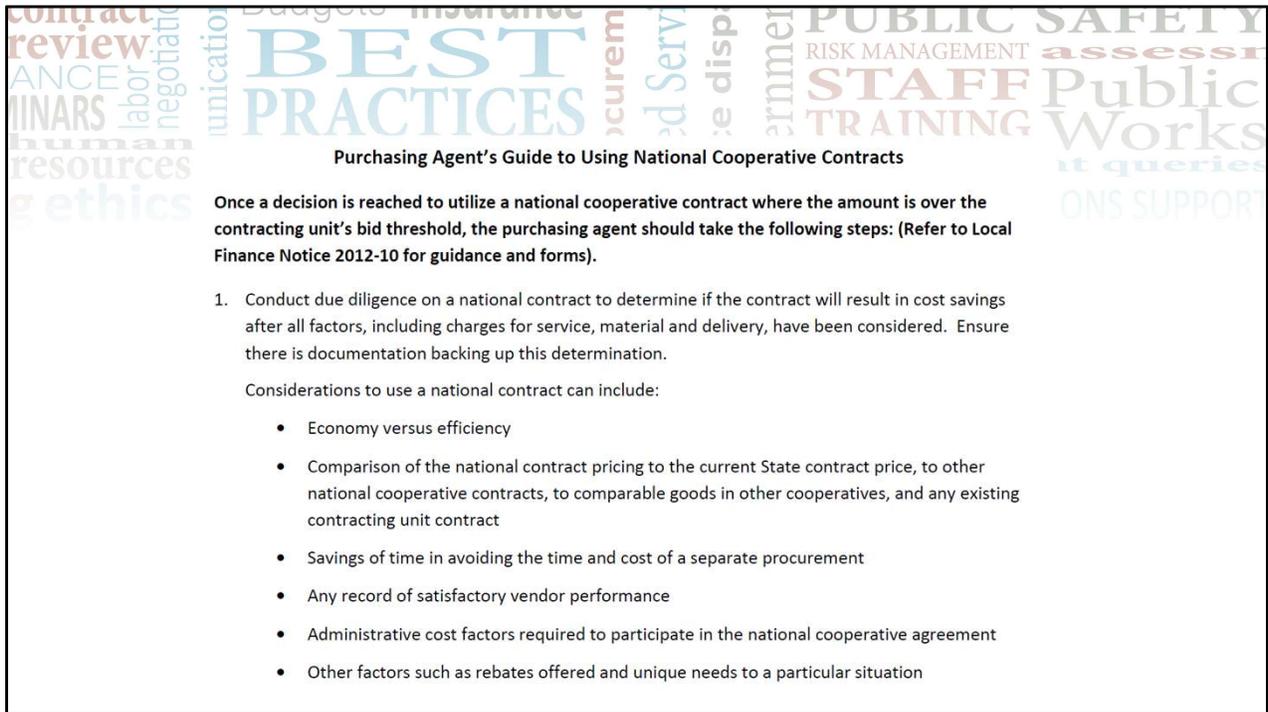
➤ **READ the LFN – and the attached User's Guide to Using National Cooperative Contracts.**

➤ **Check with Division of Purchase and Property to determine if the contract was awarded as a state contract and is open to local governments.**

➤ If so, don't have to use provisions of National Cooperative Contracts, just use as a state contract

The screenshot shows the header of the document: "NJ DEPARTMENT OF COMMUNITY AFFAIRS division of local government services". The title is "Local Finance Notice" dated "May 14, 2012". The subject is "Using National Cooperative Contracts: Application of P.L. 2011, c.139". It lists the Director's Office and various divisions with their contact information. The main text includes an introduction explaining that the new law allows local contracting units to use national cooperative contracts, and a list of subjects covered by the notice: General Statutory Authority, Contracting Unit Policy Considerations, Types of National Cooperatives, and Legal Interpretations Concerning National Cooperative Contracts.





Purchasing Agent's Guide to Using National Cooperative Contracts

Once a decision is reached to utilize a national cooperative contract where the amount is over the contracting unit's bid threshold, the purchasing agent should take the following steps: (Refer to Local Finance Notice 2012-10 for guidance and forms).

1. Conduct due diligence on a national contract to determine if the contract will result in cost savings after all factors, including charges for service, material and delivery, have been considered. Ensure there is documentation backing up this determination.
Considerations to use a national contract can include:
 - Economy versus efficiency
 - Comparison of the national contract pricing to the current State contract price, to other national cooperative contracts, to comparable goods in other cooperatives, and any existing contracting unit contract
 - Savings of time in avoiding the time and cost of a separate procurement
 - Any record of satisfactory vendor performance
 - Administrative cost factors required to participate in the national cooperative agreement
 - Other factors such as rebates offered and unique needs to a particular situation

2. Review any national contract under consideration to determine if it meets New Jersey standards:

- That the contract was based on a publicly advertised request for bids (or proposals) that stated that the contract would be made available to other government agencies that would have included New Jersey contracting units.
- It was awarded under a competitive bidding process that met NJ “fair and open” criteria
- Obtain the statutorily required forms or determine related compliance matters as necessary, including but not limited to:
 - ✓ New Jersey Business Registration Certificate
 - ✓ Statement of Corporate Ownership disclosure statement (Chapter 33)
 - ✓ Proof of New Jersey Public Contract EEO compliance
 - ✓ Compliance with Political Contribution Disclosure Laws (Pay-to-Play)
 - ✓ Non-collusion Affidavit (if required)
 - ✓ New Jersey’s “Buy American” Law
 - ✓ Americans with Disabilities requirements
 - ✓ If the contract to be issued by the contracting unit is over \$10 million, report the proposed award to the Office of the State Comptroller thirty days prior to the anticipated award date



3. Publish a "Notice of Intent to Award Contract under a National Cooperative Purchasing Agreement" in the official newspaper, on your official website, and on "Bulletin NJ" when available.
 - Allow a minimum of ten days between the advertisement and award for affected providers to protest the award.
 - Consider comments received prior to the award and act accordingly.
4. Prepare a contract and related documents (i.e., Certificate of Availability of Funds, etc.) for governing body action. Include the State Comptroller's language requiring the vendor to maintain records for five years in the contract document.
5. Execute contract pursuant to routine practices. If the contract is above two million dollars but below ten million dollars, report the contract to the Office of the Comptroller within twenty business days of award.
6. Keep documentation of award on file for audit purposes, as with any other contract award.

National Cooperative Contracts

Key Reminders:

➤ **National cooperative contracts are still subject to procurement laws and rules that apply to other contracts**

- Governing body approval over pay-to-play or bid thresholds
- Affirmative action, statement of ownership, BRC, political disclosure, etc.
- National co-op contract must have been awarded through a competitive process
- Can only use national co-op contracts that were solicited by another “contracting unit” not a non-profit or private organization
- Original bid must have been advertised as a national contract and not a local contract for the issuing agency
- Publish a notice of intent to award – sample ad in LFN



National Cooperative Contracts

Key Reminders:

➤ ***National cooperative contracts cannot be utilized for public works or construction projects!***



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LFN 2018-20 - Storm Response and Recovery: Emergency Appropriations and Procurement

Emergency Procurement

In circumstances where an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services, a contract may be awarded without public bidding regardless of the bid threshold. N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1 are annexed as an appendix to this Notice. Pursuant to N.J.S.A. 19:44A-20.12, contracts awarded under such circumstances are excepted from Pay-to-Play due to public exigency. Please note that, pursuant to a November 4, 2016 directive of the State Treasurer, contracting units awarding contracts that fall under the "public exigency" exception are no longer required to file an "emergency procurement report" with the State.



Miscellaneous

Off-duty traffic safety control costs

QPA's



THANK YOU

Questions and Answers New Jersey Department of Community Affairs Division of Local Government Services

Michele Meade

lpcl@dca.nj.gov

michele.meade@dca.nj.gov

609-292-7068

