

Notice Number

Date

LOCAL FINANCE NOTICECHRISTINE TODD WHITMAN
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DIRECTOR**Procurement Reform Law Is Signed - Public Contracting Law Update**(AU2000-1R (May 1, 2000) revisions in *bold italic*)

On January 18, 2000, Governor Whitman enacted P.L.1999, c.440, the first significant revision to local government and State contracting laws in many years. While it has been signed into law, it does not take affect until **90 days after the enactment date**, which will be April 17, 2000.

Originally known as Assembly Bill 30 (A-30), by the time the legislative process was concluded, its final reference was A-3519. With its origin in a State Treasury Task Force on Procurement in 1995, it evolved over the last five years into a comprehensive review of the Local Public Contracts Law, the Public School Contracts Law, amendments to State and State independent authority procurement laws, and changes to State criminal law regarding public procurement.

A major purpose of the law is to bring a common set of laws and rules to local government and public school procurement practices. To this end, N.J.S.A. 40A:11-1 (Local Public Contracts Law) and N.J.S.A. 18A:18A-1 (Public School Contracts Law) were revised to resolve differences and to add compatibility. One important element of this effort will be a common set of rules in the New Jersey Administrative Code that cover both laws. The rules will be promulgated by the Division of Local Government Services, with consultation from the Commissioner of Education. These rules are being drafted, will be reviewed by local government and public school procurement practitioners, and are expected to be proposed around the time the law takes effect.

To educate local and school officials about the law and rules, the Division of Local Government Services will be consulting with officials in the Department of Education to develop educational and explanatory information to inform local officials of the changes and intent of the law and to explain the new rules. This material will be mailed to local officials and be available on web sites. We are also developing ways to take advantage of the web and e-mail to facilitate answering questions and providing assistance.

To help educate local and school officials, over the next few months State personnel will be conducting a series of workshops and seminars sponsored by a number of professional organizations that will review the changes. A list of those program that have already been scheduled is attached. These groups will be promoting them through their regular channels. We strongly suggest that those involved in purchasing or advice related to it make every effort to attend at least one of the sessions to obtain the new information and material first hand.

It is important to remember that the law does not take affect until April 17. The Attorney General's office has advised us that local units cannot take advantage of the law until after that date – it is as if the changes do not presently exist. To assist in planning procurement activities after that date, as we get closer, we will provide information on how to deal with implementation issues.

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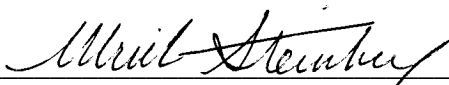
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Attending one of the educational programs and reviewing the written material that is being prepared will go far in promoting understanding of the law and rules.

Recipients of this Notice are asked to share this and other information concerning P.L.1999, c.440, with the appropriate administrative, purchasing, legal and financial personnel in their organizations. If you have any questions concerning this Notice or require additional information regarding P.L.1999,c.440, please call (609) 292-7842 or (609) 984-7765. For those officials that have e-mail, we urge use of a special Local Public Contracts Law address: *lpcl@dca.state.nj.us*.

The balance of this Notice summarizes key provisions of the law. Following the description of the changes, we have provided a "frequently asked question" sheet that provides additional immediate information.



Ulrich H. Steinberg, Jr., Director
Division of Local Government Services

Distribution: Municipal Clerks, Clerks to Boards of Chosen Freeholders, Municipal, County and Authority, Chief Financial Officers, Fire District Boards of Commissioners

Central Themes of Chapter 440

The key purposes of the legislation were to provide for improvements in and application of consistent and sound procurement practices within a certain statutory frame work. The changes were accomplished by:

- Balancing administrative efficiency verses public accountability and responsibility.
- Eliminating non-competitive practices that result in higher prices and uncertain contract delivery and/or performance.
- Promoting competition by having as much as possible a common set of standards, practices and procedures between the two local contracts laws.
- Encouraging professionalism and application of sound procurement principles to public purchasing.
- Enhancing public integrity.

Key Changes to the Laws

There are a number of important changes that were made to the laws. This section highlights the important ones. Copies of the law and additional information will be included in the material that will be sent to all local units and be available on Division of Local Government Services and Department of Education web sites.

- Definitions: key terms have been standardized and definitions provided where there were none before. We believe these changes will eliminate a good deal of uncertainty that has existed up until now.
- Contracting Process: the requirement to publicly bid (bid threshold) is now set at \$17,500 for all covered local units. Those organizations who have a “qualified” purchasing agent, one experienced in New Jersey public procurement practices (to be defined in the rules) will be able to set their threshold at a maximum of \$25,000.
- Awards of all contracts are under the jurisdiction of governing body. All contracts over the bid threshold must be awarded by formal action of the local unit’s governing body.
- A new form of contracting, “Competitive Contracting,” can be used in lieu of public bidding for the procurement of an itemized list of specialized goods and services which were exempt from receipt of formal bids, or were identified as impractical to specify, yet suitable for competition. It permits a less detailed specifications with a request for proposals (RFP) approach and uses evaluation criteria and ranking of proposals to determine the contractor who is the “most advantageous, price and other factors considered,” instead of an award to the “lowest responsible bidder.” To provide precedents, it follows practices employed by State government that have been codified in statutory and case law.
- The law also rationalizes bid exemptions, making common items the same in the two laws. It also provides that for items between 15% of the bid threshold and the bid threshold, the attempt to solicit and receive at least *two competitive* quotations, *if practicable* is required. Special provisions are made for those items where the local unit can obtain a state contract item for at least 10% less than the State contract. *The law contains specific steps that must be taken to use this provisions, which include obtaining three formal quotations and approval by the governing body (N.J.S.A. 40A:11-5(4) and 18A:18A-5(e)).*
- Intergovernmental cooperation in procurement is encouraged by permitting county governments to create a cooperative pricing system for voluntary use by local contracting units within the county.

- Actions of the courts were recognized by codifying circumstances under which a local unit can reject all bids, and clarifies the law when buying goods that are patented or copyrighted.
- Contract length standards are made common in the two laws, including a default maximum length of 24 months for most contracts (professional services remain at 12 months). In addition, service contracts for three years or less may include provisions for contract extensions of one 2 year, or two 1 year extensions, but not to exceed a total of 5 consecutive years.
- Changes to State law on issues of public integrity include:
 - Clarification of criminal laws regarding standards of conduct and enhances deterrence of crime
 - Makes submission of false claims or false representations subject to criminal penalties
 - A public servant may be convicted of a crime if the person illegally accepts benefits stemming from: an act taken, or violates the law on behalf of someone, or acts to benefit his/her family or business interest.
 - Clarifies that violations of government ethics laws are in addition to all other criminal and civil remedies.

Chapter 440 Frequently Asked Questions

When can I use the new \$17,500 bid threshold?

The new threshold can be used for all procurements made after April 17, 2000. That means bids can be advertised after that date using the new threshold.

When can I use the \$25,000 threshold?

It will take several weeks after the law goes into effect for the Division of Local Government Services to make application forms for the Qualified Purchasing Agent program available. Until a purchasing agent receives their certificate from the Division, all local units must use the \$17,500 threshold.

When will the rules be adopted?

It is expected that the rules will be proposed by the time the law goes into effect. A summary of the rule will be provided to all local units. Once published, public comment will be accepted, they are subject to amendment, and not law until formally adopted. The formal adoption process is expected to be completed by July 1. While the proposed rules can be used as informal guidance, they have no binding authority and are subject to change based on comments that are received.

When the law takes affect, I'm in the middle (or at the end) of my fiscal year. How do I use the new bid thresholds for aggregating purchases?

As always, use of the aggregation threshold requires local judgment. The rule proposal will, for the first time, provide some definitive guidance on how aggregation can be interpreted. April 17 is the date the threshold increases to \$17,500, and is the date after which aggregation can be calculated at the higher level.

Knowing the law takes affect on April 17, can I plan bid awards for April 18 using the new threshold?

NO! The Attorney General's office has advised us that for the purposes of public bidding, it is the bid advertisement date that is affected by the effective date. Bids advertised prior to April 17 must be based on the existing threshold. Procurements *advertised* on or after April 17 can take advantage of the \$17,500 limit.

What will the requirements be to obtain a Qualified Purchasing Agent (QPA) certification?

The specifics will be contained in the rule proposal. The law requires that the rules "shall establish criteria to qualify individuals who have completed appropriate training and possess such purchasing experience as deemed necessary." Generally, training will include, at a minimum, completion of Rutgers Professional Public Purchasing Official Program and the course material required for qualification as a Certified School Business Administrator. Other professional certifications and course experience will also be considered. Along with the education will be a requirement for actual purchasing experience (the activity of only supervising purchasing agents will not qualify). The various professional organizations will be consulted as we move to establish the final criteria.