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# Local Finance Notice

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## New Prompt Payment Requirement for Goods and Services: Local Public & Public School Contracts Laws

P.L. 2018, c. 127 establishes a prompt payment requirement that applies to goods and services contracts a contracting unit awards to a "business concern" under the Local Public Contracts Law (LPCL) and Public School Contracts Law (PSCL). This Notice describes key elements of the new law and its impact on local governments and school districts.

The law applies to all goods and services contracts awarded on or after February 1, 2019 (the law's effective date) regardless of dollar amount and any contracts requiring either a single payment or multiple payments. The law does not change the prompt payment requirements for improvements to real property and structures as set forth in N.J.S.A. 2A:30A-1 et seq. and described in [Local Finance Notice 2006-21](#).

### Definition of a "Business Concern"

A contracting unit must now make prompt payment to most vendors a contracting unit does direct business with for goods and services. The law defines a "business concern" as:

[A]ny person engaged in a trade or business, including a private nonprofit entity operating as an independent contractor, providing goods or services directly to a contracting unit or to a designated third party and operating pursuant to a contract with a contracting unit which requires either a single payment or multiple payments, but shall not include a "public utility" as defined in [N.J.S.A.] 48:2-13.

Please note that "any person" includes corporate entities, limited liability companies, partnerships and other for-profit or non-profit business entities. The law does not apply to investor-owned public utilities (e.g. electric, gas, water) or contracts between government entities (e.g. shared services agreements, commodity resale agreements), and does not apply to third party contractors.

**Payment Deadlines & Late Payment Interest**

Unless otherwise specified in the contract, relevant prompt payment deadlines for goods and services contracts awarded under the Local Public and Public School Contracts Laws are as follows:

<i>Contracting Unit</i>	<i>If Payment Date Is Specified in the Contract</i>	<i>If Payment Date Is Not Specified in the Contract<sup>1</sup></i>	<i>Deadline for Separate Payment of Interest to Vendor (Late Payment)</i>
Local Public Contracts Law	60 calendar days from date specified in the contract.	<p><b>The later of:</b></p> <ul style="list-style-type: none"> <li>60 calendar days from receipt of properly executed invoice; or</li> <li>60 calendar days from the date the goods or services were received (as certified by an officer or duly designated employee)</li> </ul>	within 30 calendar days of the date the contracting unit made the late payment
Public School Contracts Law	90 calendar days from date specified in the contract.	<p><b>The later of:</b></p> <ul style="list-style-type: none"> <li>90 calendar days from receipt of properly executed invoice; or</li> <li>90 calendar days from the date the goods or services were received (as certified by an officer or duly designated employee)</li> </ul>	within 30 calendar days of the date the contracting unit made the late payment

Certifications that the goods or services have been received, as required by N.J.S.A. 40A:5-16(b) or 18A:19-3 should include the date of receipt; designated third-party recipients of goods and services should provide the contracting unit with similar notification.

In the Local Public Contracts Law and Public School Contracts Law context, the term “properly executed invoice” means an invoice containing sufficient detail for the payment to be made. The term “invoice” should be understood to encompass bills, vouchers, warrants, or whatever term the contracting unit uses to describe the document(s) a vendor submits to request payment. If the contracting unit challenges the invoice, it should reach a clear determination of what is not satisfactory and act accordingly to accept or reject all or portions of the invoice; any undisputed portions of the invoice should be paid based on the original date the contracting unit received the

<sup>1</sup> Although the relevant phrase in the law reads “or if no required payment is specified in the contract,” the word “date” should be inferred here. Subsection (b) of N.J.S.A. 52:32-34, from the State prompt payment law upon which P.L. 2018, c. 127 is substantially based, reads “or if no required payment date is specified in the contract.”

properly executed invoice. The contracting unit should provide prompt and timely notice to the vendor as to why the invoice was rejected and what is necessary to cure the defect. Where a vendor is required to provide a claimant certification, the claimant certification is a necessary component of a properly executed invoice<sup>2</sup>. See Local Finance Notice [2018-13](#) for further information on claimant certification regulations applicable to LPCL contracting units.

Should the contracting unit not pay the amount owed on or before the payment due date, the contracting unit shall pay interest on the amount beginning on the day after the required payment date and ending on the date on which the check or electronic payment is drawn. **However, the contracting unit shall not pay a late payment penalty unless the goods or services have been rendered.**

Interest shall be paid at the rate specified by the State Treasurer for State late payments pursuant to N.J.S.A. 52:32-35, which, for non-construction business concerns, is [2.0% for State Fiscal Year 2019](#). The Department of Treasury updates this interest rate annually. All updates will be posted on the Division's website. Contracting units may pay the interest as a separate payment to the business concern, which shall be made within 30 calendar days of the date the contracting unit made the late payment.

A contracting unit may waive making the interest payment where the delinquency was due to "circumstances beyond the control of the contracting unit, including but not limited to a strike or natural disaster." Contracting units should always consult with counsel before declining to pay any late-payment interest demanded by a vendor.

### **Impact on Bill Approval**

N.J.S.A. 40A:5-17 establishes procedures local units (except schools) must follow for payment of bills; the law requires governing bodies to approve all bills unless the local unit adopts other procedures that permit payments without governing body approval. Appendix B of this notice sets forth the statute in full. Many local units have exercised this authority to permit the chief financial officer to pay bills between governing body meetings and submit a list of bills paid to the governing body at its next meeting for inclusion in the official minutes.

N.J.S.A. 18A:19-1 et seq. and the associated rules at N.J.A.C. 6A:23-2.11(a)1 establish corresponding procedures for public schools.

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<sup>2</sup> LPCL contracting units are required to obtain a certification from the vendor that the bill or demand is correct, except where the contracting unit has established a policy pursuant to N.J.A.C. 5:30-9A.6 waiving this requirement (services provided solely by an individual cannot be exempted from claimant certification). For PSCL contracting units, N.J.S.A. 18:19-3 generally requires all claims and demands equaling or exceed 15 percent of the bid threshold to be verified by affidavit or a signed declaration stating that the claims and demands are correct in all particulars.

Contracting units that require governing body approval before paying bills must arrange their meeting agendas and internal review procedures to ensure that the governing body can approve bills at any meeting. As required by the prompt payment law for construction-related contracts, a governing body that approves all bills should be prepared to approve bill payment at any public meeting of the governing body, not just traditional meetings where formal action is taken. This includes “workshop,” “agenda,” 48-hour notice, or special meetings (but not closed/executive sessions or emergency meetings). The law does not permit a contracting unit to restrict bill approval to only those public meetings where “formal action” is routinely taken, to the extent that such a policy may conflict with the statutory payment deadline<sup>3</sup>. Approval for paying late payment interest shall follow the contracting unit’s procedure for approving bills.

P.L. 2018, c. 127 does not alter existing requirements for certifying available funds and disbursing funds, and such requirements should be factored into a contracting unit’s bill payment timeline. See Local Finance Notices [2017-10](#) and [2018-13](#) for further information on certification of available funds and electronic funds transfers. Likewise, the receipt of goods or services shall be certified before a contracting unit can pay a vendor. N.J.S.A. 40A:5-16(b) or 18A:19-3.

### **Applicability to Cooperative Purchasing**

Cooperative purchasing system contracts awarded under the LPCL or PSCL (i.e. DLGS-registered cooperative purchasing systems) are subject to the requirements of P.L. 2018, c.127. Commodity resale agreements are the only exception from this rule. They are excepted because these agreements involve the contracting unit purchasing directly from a local government or school district. Unless the master contract states otherwise, a contracting unit ordering directly from a vendor shall follow the prompt payment deadline that would apply had it not used the cooperative contract (60 days for LPCL contracting units vs. 90 days for PSCL contracting units). Joint purchasing agreements should be reviewed to ensure the payment schedule for all registered members allows the lead agency to make prompt payment. See N.J.A.C. 5:34-7.14(d)5.

P.L. 2018, c. 127 does not extend to national cooperative goods and services contracts unless the contracting unit and the vendor so agree; contracting units should consult the underlying bid specifications and contract for any specified payment deadlines. For State goods and services contracts extended to local governments and school districts, contracting units are subject to N.J.S.A. 52:32-34 which mirrors the LPCL prompt payment deadlines for goods and services.

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Approved: Melanie R. Walter, Director

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<sup>3</sup> If the required payment were specified in the contract, an example of a circumstance beyond the control of the contracting unit (and thus reason to waive late payment interest) could be where the goods or services were rendered beyond 60 or 90 calendar days from the contractual payment date, and the vendor must wait for the governing body’s next public meeting for payment authorization. However, a governing body cannot restrict bill payment to regularly scheduled meetings as a means of delaying payment beyond the prompt payment deadline.

<b>Document</b>	<b>Internet Address</b>
P.L. 2018, c. 127	<a href="https://www.njleg.state.nj.us/2018/Bills/PL18/127_.PDF">https://www.njleg.state.nj.us/2018/Bills/PL18/127_.PDF</a>
State Dept. of Treasury – SFY2019 Prompt Payment Interest Rate	<a href="https://www.state.nj.us/infobank/circular/cir1907_omb.pdf">https://www.state.nj.us/infobank/circular/cir1907_omb.pdf</a>
LFN 2018-13	<a href="https://www.nj.gov/dca/divisions/dlgs/lfns/18/2018-13.pdf">https://www.nj.gov/dca/divisions/dlgs/lfns/18/2018-13.pdf</a>
LFN 2017-10	<a href="https://www.nj.gov/dca/divisions/dlgs/lfns/17/2017-10.pdf">https://www.nj.gov/dca/divisions/dlgs/lfns/17/2017-10.pdf</a>
LFN 2012-10	<a href="https://www.nj.gov/dca/divisions/dlgs/lfns/12/2012-10.pdf">https://www.nj.gov/dca/divisions/dlgs/lfns/12/2012-10.pdf</a>
LFN 2006-21	<a href="https://www.nj.gov/dca/divisions/dlgs/lfns/06/2006-21.doc">https://www.nj.gov/dca/divisions/dlgs/lfns/06/2006-21.doc</a>

**APPENDIX A****40A :5-16 - Local unit, requirements for paying out moneys (LPCL Contracting Units)**

The governing body of any local unit shall not pay out any of its moneys:

a. unless the person claiming or receiving payment first presents a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that the bill or demand is correct. The governing body may, by resolution, require an affidavit in lieu of the certification, and the clerk or disbursing officer of the local unit may take the affidavit without cost; and

b. unless the payment carries a written or electronic certification of some officer or duly designated employee of the local unit having knowledge of the facts that the goods have been received by, or the services rendered to, the local unit.

c. Notwithstanding the provisions of subsection a. of this section, upon adoption by the Local Finance Board of rules adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) that provide for procedures to be followed by local units and under those circumstances deemed appropriate by the Local Finance Board, a local unit shall be permitted to pay out its moneys without requiring a certification of the party claiming payment as otherwise required by subsection a. of this section. Those circumstances may include, but shall not be limited to:

(1) when payment to vendors is required in advance of the delivery of certain materials or services that cannot be obtained from any other source at comparable prices;

(2) when ordering, billing, and payment transactions for goods or services are made through a computerized electronic transaction; or

(3) when the claim or demand is less than a threshold set by the Local Finance Board and the certification is not readily obtainable by the contracting unit; but the exceptions shall not include reimbursement of employee expenses or payment for personal services.

d. The provisions of subsection a. of this section shall not apply to payments made by a governing body of a local unit for the provision of:

(1) telecommunications or basic cable service provided by a telecommunications or cable television company under the jurisdiction of the Board of Public Utilities;

(2) electric, gas, water, or sewer utility service provided by a public utility, as that term is defined pursuant to R.S.48:2-13, that is regulated by the Board of Public Utilities pursuant to Title 48 of the Revised Statutes; or

(3) a service that is provided under a contract between a public utility, as that term is defined pursuant to R.S.48:2-13, and a governing body that is approved by the Board of Public Utilities under which rates for service are controlled by the terms of the contract.

amended 2000, c.126, s.21; 2015, c.177, s.6.

**APPENDIX B****N.J.S.A. 40A :5-17 Approval and payment of claims and required general books of account**

Approval and payment of claims and required general books of account. a. Approval of claims. The governing body shall approve or disapprove all claims. In the case of a county, other than a county which has adopted a form of government pursuant to the "Optional County Charter Law," P.L. 1972, c. 154 (C. 40:41A-1 et seq.), the governing body may, by resolution, designate one person who may approve claims between meetings of the governing body. The specified designee shall be chosen from the following positions: the certified financial officer, chief fiscal officer, county administrator, director of finance, treasurer or comptroller. Any approval by the designated person shall be presented to the county governing body at its next meeting for ratification, except that, prior to being paid, such vouchers shall be brought to the attention of the freeholder who has responsibility for the designee. The county governing body may establish a maximum dollar amount for which payment may be approved without prior approval of the governing body. Claims shall be approved or disapproved in the manner prescribed by rules made and promulgated by the bureau unless the governing body adopts an ordinance or resolution, as may be appropriate, in the case of a county, or an ordinance, in the case of a municipality, including the following provisions:

- (1) Designating an approval officer with the title of certifying and approval officer;
- (2) Prescribing the duties of the approval officer, including the making of certifications required by 40A:5-16b., ascertaining the existence of proper and sufficient appropriations for the payments to be made and determining that there is legal authority for the payments, evidenced by action of a purchasing department or agent or officer in respect to the goods or services ordered and the incurring of the expense therefor;
- (3) Prescribing the procedure for approving and certifying to the proper officer claims for payments and drawing checks therefor;
- (4) Prescribing the procedure for certifying approved claims to the governing body and regulating its action of approval or disapproval thereon.

b. Payment of claims. A resolution or an ordinance adopted pursuant to this section may also provide a method of disbursing moneys or payment of claims approved, but if it does not so provide the method shall be as follows:

(1) In the case of a county organized pursuant to the provisions of the "Optional County Charter Law" (P.L. 1972, c. 154; C. 40:41A-1 et seq.), by check issued upon the requisition of and signed by the chief executive officer and countersigned by the treasurer, and in all other counties by check issued upon requisition of the clerk of the board of chosen freeholders, signed by the county treasurer and countersigned by such other officer or officers as are designated by ordinance or resolution of the governing body;

(2) In the case of a municipality, by check drawn on the municipality, signed by the mayor or other chief executive officer and the municipal clerk and countersigned by such other officer or officers as are designated by ordinance.

c. Required general books of account. The bureau shall prescribe the kind and manner of keeping of general books of account for the financial officers of the local units and said officers shall be required to keep and maintain said books.

**APPENDIX C****18A :19-3 Verification of claims, demands (PSCL Contracting Units)**

18A :19-3 . Except as provided in subsection b. of N.J.S.18A:19-4, all claims and demands, that equal or exceed 15 percent of the bid threshold amount established pursuant to N.J.S.18A:18A-3, except for payrolls and debt service, shall be verified by affidavit, or by a signed declaration in writing, contained therein or annexed thereto, to the effect that the claims and demands are correct in all particulars, that the articles have been furnished or the services rendered as stated therein, and that no bonus has been given or received on account thereof.

amended 1991, c.37; 2007, c.42, s.3; 2015, c.177, s.3.

**18A :19-4 Audit of claims; warrants for payments; exemptions (PSCL Contracting Units)**

18A :19-4. a. All claims and demands against the board of education, except those which are to be paid from funds derived from athletic events or other activities of pupil organizations, shall, unless otherwise provided by resolution of the board of education, be examined, audited, and certified in writing by the secretary and presented by the secretary to the board of education for its approval at a regularly called meeting, and if found to be correct, shall be ordered paid by the board of education, whereupon the secretary and the president of the board of education and the chief school administrator shall issue and sign a warrant in payment therefor. In a district which has a treasurer of school moneys, the secretary thereupon shall forward the warrant to the treasurer of school moneys.

b. The provisions of subsection a. of this section shall not apply to payments made by a board of education for the provision of:

(1) telecommunications or basic cable service provided by a telecommunications or cable television company under the jurisdiction of the Board of Public Utilities;

(2) electric, gas, water, or sewer utility service provided by a public utility, as that term is defined pursuant to R.S.48:2-13, that is regulated by the Board of Public Utilities pursuant to Title 48 of the Revised Statutes; or

(3) a service that is provided under a contract between a public utility, as that term is defined pursuant to R.S.48:2-13, and a board of education that is approved by the Board of Public Utilities under which rates for service are controlled by the terms of the contract.

amended 1979, c.98, s.2; 1981, c.174, s.12; 1982, c.196, s.3; 2010, c.39, s.16; 2015, c.177, s.4.