

Statement of Imminent Peril to Public Health, Safety and Welfare Mandating Adoption of New Rules and Amendments Permitting Use of Electronic Procurement by Local Governments and School Districts and Codifying Procedures for Remote Openings of Bids and Proposals at N.J.A.C. 5:30-5.1 through 5.15; N.J.A.C. 5:34-8.5; and N.J.A.C. 5:34-4.3 by Emergency Procedures

The novel coronavirus, (“COVID-19”) is a severe, potentially fatal respiratory illness, which is transmitted from person-to-person contact. On March 9, 2020, Governor Murphy declared that a Public Health Emergency and State of Emergency existed in New Jersey because of COVID-19. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, the President of the United States declared a national emergency.

State and Federal public health experts, including those at the Center for Disease Control (“CDC”), believe COVID-19 will continue to spread at exponential rates unless aggressive action is taken to reduce person-to-person contact. The highly contagious and life-threatening nature of COVID-19 requires implementation of rigorous social distancing, including the closure of public places throughout the State to reduce the risk and rate of infection.

In recognition of these unprecedented conditions, local government units have severely curtailed the public aspects of their operations, maintaining essential services through alternative means whenever possible. Many local units’ buildings are closed or have significantly restricted public access. Many local officers and employees are working remotely to reduce the risk of virus transmission. Procurement is hindering these essential efforts. The existing local unit procurement process remains paper-based, requiring local unit personnel to physically interact with prospective vendors and contractors during bid package delivery. Moreover, existing rules expose all participants in the bid opening process to each other because they are conducted in person, in public, with direct examination of bid documents. Given the highly contagious nature of COVID-19, this poses an immediate health risk.

P.L. 2018, c.156 requires the Director of the Division of Local Government Services in the Department of Community Affairs to promulgate, in consultation with several State Agencies, regulations permitting and governing the use of electronic procurement by local units. While the Division originally intended to propose new rules N.J.A.C. 5:34-5.1 through 5.15 through a standard notice of proposal, the present circumstances constitute an imminent peril to the public health, safety and welfare that require their immediate effectiveness through an emergency adoption. The within regulations are necessary to allow local units the ability to procure goods and services and solicit bids for public works projects such as those involving critical infrastructure in a more safe and efficient manner given the ongoing COVID-19 outbreak. The use of internet-based electronic procurement platforms will allow local units to minimize otherwise unavoidable physical interaction with prospective vendors and contractors and will protect all participants in the bid opening from unnecessary person-to-person contact that could result in widespread exposure to COVID-19. Enabling local units to immediately utilize electronic procurement will also reduce the barriers to conducting competitive procurement under the present circumstances, facilitating economic activity by allowing vendors and contractors to compete for additional business and keeping workers employed during a period of record unemployment.

Additionally, on April 15, 2020, I approved the issuance of Local Finance Notice 2020-10, which sets forth guidance on the remote broadcast of public bid and proposal openings when a local unit cannot accommodate physical attendance by bidders and members of the general public for public health reasons. The guidance instructs local units on the steps necessary to conduct a transparent bid or proposal opening during the COVID-19 outbreak when utilizing remote meeting technology. Due to the emergency adoption of regulations permitting local units to utilize internet-based electronic procurement platforms, I find it necessary to adopt regulations codifying

appropriate elements of Local Finance Notice 2020-10 on an emergency basis to promote consistency and ensure the integrity of the procurement process.

For the above-referenced reasons, I therefore find that an imminent peril to the health, safety and welfare of the citizens of this State exists that justifies the adoption of emergency regulations pursuant to N.J.S.A. 52:14B-4(c).

5/19/2020
Date

Melanie R. Walter
Melanie R. Walter, Director
Division of Local Government Services
Department of Community Affairs