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Local Finance Notice

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REVIEW OF NEW LOCAL PROCUREMENT LAWS – JANUARY 2010

Between the last half of 2009 and mid-January of 2010, new laws were enacted regarding public procurement. The laws affect contracting units operating under the Local Public Contracts Law ([N.J.S.A. 40A:11](#)), the Public School Contracts Law ([N.J.S.A. 18A:18A](#)), and several of them impact all state government agencies.

This and subsequent Local Finance Notices will review these new laws, provide guidance on their application to contracting units and will be covered in professional seminars over the next few months. In some cases, State agencies are reviewing the laws and developing formal guidance that will be issued soon.

All public procurement contracting unit staff should review these Notices. Questions concerning them can be e-mailed to lpcl@dca.state.nj.us.

In response to requests from local procurement officials, the Division has posted an updated compilation of the full Local Public Contracts Law, which includes the laws in this Notice. It is on the [Division's Public Contracts website](#) (www.nj.gov/dca/lgs/lpcl). A reprint of the Public School Contracts Law is being prepared and will be released shortly.

This Notice reviews the following enactments and the summary list, on the following page, shows the Chapter number, the original bill numbers, a synopsis, and effective date. Links are provided to the latest versions of the bills. At the time this Notice was prepared, most advance or pamphlet laws were not yet available. The online version of this Notice will be updated with the final pamphlet laws as they are made available.

As a reminder to local officials involved in purchasing, the Division's GovConnect system has established a role for local purchasing officials. Members receive e-mail that covers changes in contracting law and information about state contracts and access to a dedicated document library and comment forum. Individuals who have not signed up can do so at www.nj.gov/dca/surveys/ppsurvey.htm.

1. [P.L. 2009, c. 88 \(S-1421\)](#): Requires reporting of wage records under certain solid waste contracts. Effective July 15, 2009.
 2. [P.L. 2009, c. 166 \(A-1645\)](#): Redefines role and qualifications of purchasing agent in "Local Public Contracts Law." Effective January 1, 2011.
 3. [P.L. 2009, c. 292 \(A-3698/S-2782\)](#): Provides for base and alternate bids for public works contracts over \$500,000. Effective May 1, 2010.
 4. [P.L. 2009, c.284 \(A-3317/S-2427\)](#): Requires journeyman electricians or a civil service qualified electricians to perform electrical installation, repair and maintenance work done by public employees on public property. Effective August 1, 2010.
 5. [P.L. 2009, c.187 \(A-436/S-2833\)](#): Permits price adjustments in local public contracts for asphalt cement and fuel. Effective with contracts executed after May 1, 2010.
 6. [P.L. 2009, c.315 \(A-557/S2366\)](#): Reforms Business Registration Certificate Filing; permits filing prior to award of contracts if not filed with bid. Effective with bids received and contracts awarded after January 18, 2010.
 7. [P.L. 2009, c.313 \(A-4082/S-2730\)](#): Requires public bodies to provide funds (0.5% of capital project costs) for outreach and training programs for minority group members and women in connection with public construction contracts valued over \$1 million. Effective immediately.
 8. [P.L. 2009, c.249 \(A-4268/S-3095\)](#): Extends prevailing wage requirements to contracts for "maintenance-related projects" over \$50,000. Effective immediately.
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1. [P.L. 2009, c. 88 \(S-1421\)](#): Requires reporting of wage records under certain solid waste contracts. Effective July 15, 2009.

This law affects all public agency contracts for solid waste and recyclable collection and transportation. The law requires the contractor (or any subcontractor) to keep records and file with the public agency a wage payment report for employees under the contract that are engaged in solid waste or recyclable "collection and transportation." A separate Local Finance Notice on this will be issued shortly.

2. [P.L. 2009, c. 166 \(A-1645\)](#): Redefines role and qualifications of purchasing agent in "Local Public Contracts Law." Effective January 1, 2011.

The "QPA Law" makes a number of changes to existing law affecting contracting unit purchasing agents and the holding of a "qualified purchasing agent" (QPA) certificate. The new law was the result of intense lobbying by the Governmental Purchasing Association of New Jersey, and resulted in a Conditional Veto by Governor Corzine and subsequent legislative approval to avoid the implementation of a mandate on local units.

While a detailed Local Finance Notice and formal rules will be issued prior to the effective date of January 1, 2011, the following are key elements of the new law:

- The law **does not** require contracting units to employ a Qualified Purchasing Agent. It provides instead, incentives for contracting units to employ a QPA (which can be accomplished through a shared service agreement). The primary incentive is that starting January 1, 2011 any contracting unit without a QPA will have its bid threshold fixed at \$17,500. Contracting units with a QPA will have the higher bid threshold as set by law, and adjusted every five years (currently \$29,000 and will be adjusted again, effective July 1, 2010).
- The law changes the way that School Business Administrators can receive a QPA certificate. The current law requires three years serving in the actual title of Business Administrator, Board Secretary, or Business Manager; the new law will require three years of public procurement experience and possession of a School Business Administrator certificate to qualify for the certificate.
- The law requires all QPAs (regardless of when the certificate was received) to obtain 20 hours of continuing public procurement education every three years. This requirement to take continuing education commences in 2011 for renewals taking effect in 2014.
- In addition to a series of courses, any QPA certificate issued after January 1, 2011 will require the individual to pass an examination administered by the Division of Local Government Services. Individuals possessing a QPA on December 31, 2010 will not have to take the examination. Individuals performing the duties of purchasing agent for at least three years prior to six months from the time implementing rules are adopted and do not possess a QPA certificate will be able to sit for the examination without taking the courses.
- The law also amends the section of [N.J.S.A. 40A:9-140.1\(d\)](#) that requires the Chief Financial Officer to oversee the Local Public Contracts Law. The amendment requires the Chief Financial Officer to oversee the LPCL **only** in those municipalities that have not appointed a purchasing agent (QPA).
- It is expected that the requirements for a course in “green purchasing” will be implemented at the same time the new QPA program takes effect.

The Division will be working with the Rutgers’ Center for Government Services to assist in implementing the program.

3. [P.L. 2009, c. 292 \(A-3698/S-2782\)](#): *Provides for base and alternate bids for public works contracts over \$500,000. Effective May 1, 2010.*

This new law amends the Local Public Contracts Law (and has implications for boards of education, discussed below) by specifying the procedure for contracting units to select the lowest responsible bidder in instances where alternates or base bids with options are used for public works projects. It requires the bid specification to set out clear criteria or a procedure the governing body will use to select the lowest responsible bidder, given the amount of funds available for the project. The law applies only to projects with a value of more than \$500,000. The new statute does not amend any laws regarding the disclosure of project estimates.

The law was enacted specifically to combat the practice of governing bodies using the process of selecting alternates or options so that the lowest responsible bidder is a contractor “preferred” by the

contracting unit. The law specifically finds that the use of that practice can result in the rejection of all bids, a rebidding, and the governing body paying the legal fees of a bidder who succeeds in making such a claim.

The law takes effect on May 1, 2010. While the law does not amend the Public School Contracts Law, boards of education are urged to follow its requirements to provide a higher level of contract award integrity. The Division will consult with engineering organizations and provide additional guidance prior to the effective date of May 1, 2010.

4. [P.L. 2009, c.284 \(A-3317/S-2427\)](#): *Requires journeyman electricians or civil service qualified electricians to perform electrical installation, repair and maintenance work done by public employees on public property. Effective August 1, 2010.*

This law eliminates from the definition of the types of work which must be performed by someone in the business of electrical contracting, the exemption for: “Installation, repair or maintenance (hereafter, electrical work) performed by regular employees of the State or of a municipality, county, or school district on the premises or property owned or occupied by the State, a municipality, county, or school district (hereafter, contracting unit, which includes local authorities and fire districts¹).”

The original employee exemption has been replaced with a new requirement: that electrical work must be done by a “regular employee.” The employee must be:

- 1) a registered, qualified journeyman electrician; or
- 2) an employee who holds any civil service title with a job description which includes electrical work pursuant to the “[Civil Service Act](#).”

The law provides a short-term exception for employees that have applied for journeyman status that permits them to continue working until the Board of Examiners of Electrical Contractors has acted on the application.

Contracting units that use employees to perform electrical work should review the law to assess its impact on their operations and, where necessary, make appropriate plans prior to the effective date of August 1, 2010.

5. [P.L. 2009, c.187 \(A-436/S-2833\)](#): *Permits price adjustments in local public contracts for asphalt cement and fuel. Effective with contracts executed after May 1, 2010.*

In today’s economy, the price of petroleum-based products can have a significant impact on construction contracts that involve large amounts of asphalt and those that use large amounts of gas or diesel fuel. Uncertainty in petroleum price fluctuations adds price risk to construction bid calculations. That uncertainty can cause bidders to increase costs to cover the price risk. This new law follows procedures historically used by the State Department of Transportation (DoT) to allow for increases and decreases in asphalt and fuel prices over the course of large construction contracts. See [2007 NJDOT Specifications – Division 150 Contract Requirements, Section 160.01 through 160.03](#).

¹ The Board of Examiners of Electrical Contractors interprets the phrase “municipalities and counties” to include not only the municipal and county governments, but subsidiary agencies such as local and regional authorities and fire districts.

The law requires that paving contracts involving more than 1,000 tons of hot mix asphalt include a contract provision that allows for price adjustments in the cost of asphalt. Fuel price adjustments are based on DoT standards for the type of construction equipment and the work done by different equipment. For fuel price adjustments, at least 500 gallons of fuel based on the DoT equipment standards are required for a price adjustment, and then, only in those months when the price fluctuated more than five percent.

DoT maintains a [web site of index rates for asphalt and fuel](#) that are adjusted monthly. The law provides that when the quantity or equipment use thresholds are reached, fuel price adjustments are made, using the change in index rate from the time of bidding to when the work was performed. The change is treated as a “pay item” in construction contracts.

This practice is not new to most engineers that prepare bid specifications. The law provides price risk protection to bidders, allowing better bids using “sharper pencils,” reduces the risk of change orders that may be intended to cover price increases, and allows the contracting unit to take advantage of reductions in pricing over the life of a contract.

The Division will consult with engineering and other affected organizations and provide additional guidance on this prior to the effective date of May 1, 2010.

6. [P.L. 2009, c.315 \(A-557/S2366\)](#): *Reforms Business Registration Certificate Filing; permits filing prior to award of contracts if not filed with bid. Effective with bids received and contracts awarded after January 18, 2010.*

This law removed the requirement of the Local Public Contracts Law ([N.J.S.A. 40A:11-23.2](#)) that required a bid to be rejected if the bidder failed to include a BRC with the bid, even though it may have been the otherwise lowest responsible bid. The law now allows the BRC to be filed anytime prior to award of the contract and the bidder had to have obtained the BRC prior to receipt of bids. This permits the BRC to be required with a bid, or submitted subsequently. If a BRC is required in a bid, but not submitted with the bid, it would be an immaterial defect; curable by being filed prior to award of the contract.

The law codified various BRC practices into law and modified others. A separate Local Finance Notice on the law is being prepared and will be released shortly.

7. [P.L. 2009, c.313 \(A-4082/S-2730\)](#): *Requires public bodies to provide funds (0.5% of capital project costs) for outreach and training programs for minority group members and women in connection with public construction contracts valued over \$1 million. Effective immediately.*

This law requires all public agencies (except for statewide authorities that run their own programs) to contribute one-half of one percent of the project cost of construction projects valued at over \$1 million to a state fund for outreach and job training programs. The Department of Labor and Workforce Development is reviewing the law and will provide specific guidance on the law shortly.

8. **P.L. 2009, c.249 (A-4268/S-3095)**: *Extends prevailing wage requirements to contracts for “maintenance-related projects” over \$50,000. Effective immediately.*

This law is currently under review by the Department of Labor and Workforce Development to provide guidance on the meaning of “maintenance-related projects” with regard to contracts over \$50,000. Once completed, guidance will be provided to all contracting units.

Approved: Susan Jacobucci, Director

Table of Web Links

Page	Shortcut text	Internet Address
1	N.J.S.A. 40A:11	http://tinyurl.com/ybydhvn
1	N.J.S.A. 18A:18A	http://tinyurl.com/y89gltld
1	DLGS Public Contracts website	www.nj.gov/dca/lgs/lpcl
2	P.L. 2009, c. 88 (S-1421)	http://www.njleg.state.nj.us/2008/Bills/AL09/88_.PDF
2	P.L. 2009, c. 166 (A-1645)	http://www.njleg.state.nj.us/2008/Bills/AL09/166_.PDF
2	P.L. 2009, c. 292 (A-3698/S-2782)	http://www.njleg.state.nj.us/2008/Bills/A4000/3698_R3.PDF
2	P.L. 2009, c.284 (A-3317/S-2427)	http://www.njleg.state.nj.us/2008/Bills/A3500/3317_R3.PDF
2	P.L. 2009, c.187 (A-436/S-2833)	http://www.njleg.state.nj.us/2008/Bills/A0500/436_R2.PDF
2	P.L. 2009, c.315 (A-557/S2366)	http://www.njleg.state.nj.us/2008/Bills/A1000/557_R2.PDF
2	P.L. 2009, c.313 (A-4082/S-2730)	http://www.njleg.state.nj.us/2008/Bills/S3000/2730_R3.PDF
2	P.L. 2009, c.249 (A-4268/S-3095)	http://www.njleg.state.nj.us/2008/Bills/A4500/4268_I1.PDF
3	N.J.S.A. 40A:9-140.1(d)	http://tinyurl.com/yamctqt
4	Civil Service Act	http://www.nj.gov/dca/lgs/lfns/09lfns/2009-24.doc
5	2007 NJDOT Specifications	http://www.nj.gov/transportation/eng/specs/2007/spec150.shtm#s160
5	Asphalt & Fuel Index Rates	http://www.state.nj.us/transportation/business/trnsport/PriceIndex.shtm
5	N.J.S.A. 40A:11-23.2	http://tinyurl.com/y8j5qcq