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Contact Information

Director's Office

V. 609.292.6613
F. 609.633.6243

Local Assistance Bureau

V. 609.292.6858
F. 609.633.6243

**Financial Regulation
and Assistance**

V. 609.292.4806
F. 609.984.7388

Local Finance Board

V. 609.292.0479
F. 609.633.6243

Administrative Services Unit

V. 609.292.6126
F. 609.633.6243

Mail and Delivery

101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803

www.nj.gov/dca/divisions/dlgs

E-mail: dlgs@dca.nj.gov

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Local Finance Notice

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Governor

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Commissioner

Melanie R. Walter
Director

Coronavirus Response: Emergency Procurement & Use of Storm Recovery Reserves

Governor Murphy has declared a state of emergency via [Executive Order 103](#) in response to the coronavirus outbreak. This Local Finance Notice is being issued to provide emergency procurement guidance as well as guidance on the use of storm recovery reserves for coronavirus response. Please be aware that Executive Order 103 only addresses State-level procurement.

Emergency Procurement on Local Level

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 (Local Public Contracts Law); N.J.S.A. 18A:18A-7 (Public School Contracts Law) 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, emergency contracts awarded for purposes of coronavirus response 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 to Pay-to-Play are no longer required to file an "emergency procurement report" with the State.

The Department of Treasury's Division of Purchase and Property [website](#) lists all State cooperative purchasing contracts available to local governments.

Contracting units may enter into emergency contracts without first obtaining a vendor's or contractor's Business Registration Certificate (BRC), but the contracting unit cannot make a payment until a copy of the BRC is provided to the contracting agency. The contacting unit should inform the vendor or contractor of the BRC requirement upon awarding an emergency contract.

Contractors awarded public works contracts under emergency procedures must be notified of applicable Public Works Contractor Registration (PWCR) and prevailing wage requirements at the time of award. The contracting unit shall confirm compliance prior to making payment for completed work.

Many contracting units have expressed concerns about hand delivery of bids and conducting public bid openings. The Division strongly recommends cancellation of bid openings for non-essential goods and services. In cases of bid openings for essential time-sensitive projects (e.g. summer roadwork), the Division recommends establishing a protocol for hand delivery of bids that limits exposure to pathogens; the contracting unit should affirmatively communicate this protocol to prospective bidders. One potential measure could include offering bidders use of a document lockbox if the building is closed or outside access restricted. Because N.J.S.A. 40A:11-23 and N.J.S.A. 18A:18A-21 require bid openings to be public, any such bid openings should be done in a location and manner that enables adequate social distancing amongst all participants. In addition to, but not in lieu of, the physical bid opening, contracting units may wish to offer bidders and the public the ability to witness the bid opening through an online livestream. Contracting units shall affirmatively communicate all measures taken for the bid opening in accordance with bid specification/RFP amendment and notice of amendment statutes and rules.

Use of Storm Recovery Reserves for Coronavirus Response

Municipalities and counties with storm recovery reserves may use those funds for the coronavirus response. N.J.S.A. 40A:4-62.1 permits a municipality or county to adopt a resolution authorizing storm recovery reserve funds to be used for "any purpose necessary to protect the safety, security, health, and welfare, of its citizens from the damage caused by an emergency declared by the Governor or the President of the United States." Any reimbursement of these expenditures shall be deposited back into the reserve. To establish a storm recovery reserve or convert a preexisting snow removal reserve to storm recovery, the governing body shall adopt a resolution establishing the reserve and submit the resolution to the Division. Municipalities and counties need not have had a snow removal reserve to establish a storm recovery reserve.

Approved: Melanie R. Walter, Director

Document	Internet Address
Exec. Order 103	https://nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf
1/17/06 Treasurer Public Exigency Directive	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/public_exigencies.pdf
11/4/16 Treasurer Directive	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/treasurer_scudder_directive_re_public_exigencies.pdf
State Contracts List	https://www.nj.gov/treasury/purchase/coop_purchase_contracts.shtml

Appendix

Emergency Procurement References

N.J.S.A. 40A:11-6. Emergency contracts (Local Public Contracts Law)

Any contract may be negotiated or awarded for a contracting unit without public advertising for bids and bidding therefor, notwithstanding that the contract price will exceed the bid threshold, when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services; provided that the awarding of such contracts is made in the following manner:

- a. The official in charge of the agency wherein the emergency occurred, or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the governing body, as may be appropriate to the form of government, of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.
- b. Upon the furnishing of such goods or services, in accordance with the terms of the contract, the contractor furnishing such goods or services shall be entitled to be paid therefor and the contracting unit shall be obligated for said payment. The governing body of the contracting unit shall take such action as shall be required to provide for the payment of the contract price.
- c. The Director of the Division of Local Government Services in the Department of Community Affairs shall prescribe rules and procedures to implement the requirements of this section.
- d. The governing body of the contracting unit may prescribe additional rules and procedures to implement the requirements of this section.

18A:18A-7 Emergency contracts. (Public School Contracts Law)

Any contract may be negotiated or awarded for a board of education without public advertising for bids and bidding therefor, notwithstanding that the contract price will exceed the bid threshold when an emergency affecting the health or safety of occupants of school property requires the immediate delivery of goods or the performance of services, provided that the contracts are awarded in the following manner:

- a. The official in charge of the building, facility or equipment wherein the emergency occurred or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent or a supervisor of the purchasing agent of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.

b. Upon the furnishing of such goods or services, in accordance with the terms of the contract, the contractor furnishing such goods or services, shall be entitled to be paid therefor and the board of education shall be obligated for said payment. The board of education shall take such action as shall be required to provide for the payment of the contract price.

c. The Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education, shall prescribe rules and procedures to implement the requirements of this section.

d. The board of education may prescribe additional rules and procedures to implement the requirements of this section.

N.J.A.C. 5:34-6.1 Emergency Purchases/General requirements

(a) The use of emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 shall be subject to the following requirements:

1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service;
2. As soon as reasonably possible, but within three days of declaring the emergency, the chief school administrator of a board of education shall notify the superintendent of education for the county of the nature of the emergency and the estimated needs for goods and services necessary to respond to it;
3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;
4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and
5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

(b) The governing body of each contracting unit shall adopt rules or regulations as appropriate to the contracting unit to ensure that there is a procedure for determining and confirming the existence of an emergency and that the provisions for emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 may be implemented. Such rules or regulations shall include such provisions that ensure that if initially designated individuals are not available, there is a designated chain of command to ensure that there are always appropriate individuals available to make such decisions.