

Legislative, Regulatory & Procurement Update

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Div. of Local Government Services, Dept. of Community Affairs

NJAC 5:32 DLGS Licensed Officials

- ▶ N.J.A.C. 5:32, effective December 4, 2017, codify and clarify the Division's policies relating to Chief Financial Officers, Tax Collectors, Municipal Clerks, and Qualified Purchasing Agents.
 - ▶ N.J.A.C. 5:32-1: General Provisions
 - ▶ N.J.A.C. 5:32-2: Chief Financial Officers
 - ▶ N.J.A.C. 5:32-3: Tax Collectors (from 5:33)
 - ▶ N.J.A.C. 5:32-4: QPAs (from NJAC 5:34-5)
 - ▶ N.J.A.C. 5:32-5: Municipal Clerks
- ▶ Certified Public Works Managers are not currently covered by N.J.A.C. 5:32 but remain subject to existing law and Division certification policy.

NJAC 5:32 DLGS Licensed Officials

- ▶ N.J.A.C. 5:32 largely codifies existing Division policy concerning:
 - ▶ coursework, examination, certification
 - ▶ continuing education, and certification renewal requirements
 - ▶ including the Division's ability to waive, upon written application and good cause shown, the minimum number of contact hours in a subject area if an applicant has earned at least the overall minimum number of continuing education contact hours; provided that the applicant has earned at least one contact hour in the given subject area.
 - ▶ requirements for appointing and reappointing a temporary chief financial officer, temporary purchasing agent or acting municipal clerk

NJAC 5:32 DLGS Licensed Officials

- ▶ implements an up to six-month extension of the existing six-month grace period for earning the minimum number of continuing education credits for licensure renewal.
 - ▶ Established by P.L. 2015, c. 95, the grace period extension only applies if the Director determines that a certificate holder was prevented from earning the required continuing education units due to either or both of the following conditions:
 - ▶ A medical event or condition; and/or
 - ▶ A flood, hurricane, superstorm, tornado, or other natural disaster, and a state of emergency has been declared as a result thereof by the Governor (e.g. Sandy-cancelled League Conference in 2012)
 - ▶ An applicant for a grace period extension must demonstrate a good faith effort to earn the required continuing education units by no later than expiration of the existing six-month grace period.

NJAC 5:32 DLGS Licensed Officials

- ▶ N.J.A.C. 5:32-2.1 and 5:32-3.1 codify in regulation the respective duties of the chief financial officer (municipal and county) and tax collector positions.
- ▶ Duties of a municipal and county chief financial officer include items such as, but not limited to:
 - ▶ Serving as custodian of public funds;
 - ▶ assisting in preparing the annual budget and developing fiscal policy;
 - ▶ implementing internal controls;
 - ▶ ensuring the accurate maintenance and regular reconciliation of all books and ledgers
- ▶ N.J.A.C. 5:32-3.1 details the responsibilities of a tax collector as they pertain to billing, collection, reporting, and ensuring compliance

NJAC 5:32 DLGS Licensed Officials

Private Entity Temporarily Fulfilling Duties of Municipal Chief Finance Officer

- ▶ When a vacancy occurs in the office of chief financial officer following the appointment of a licensed CMFO to that office, N.J.A.C. 5:32-2.5 gives municipalities the option to seek Director approval to appoint a private entity to temporarily perform the duties of a chief financial officer.
 - ▶ The municipality may seek Director approval to appoint a private entity to fulfill chief financial officer duties for no more than two consecutive one-year terms, after which a licensed CMFO must be appointed.
 - ▶ Outside of this limited provision, a municipality cannot appoint a private entity to serve as chief financial officer (designated as “acting” or otherwise).

NJAC 5:32 DLGS Licensed Officials

Private Entity Temporarily Fulfilling Duties of Municipal Chief Finance Officer

- ▶ Any work performed by the private entity on behalf of the municipality shall be supervised by at least one employee who is a licensed CMFO
- ▶ Director approval to appoint or reappoint a private entity is contingent on:
 - ▶ the private entity being able fulfill the duties of a CMFO; and
 - ▶ the municipality demonstrating a good faith effort to obtain a licensed CMFO through avenues such as direct hiring and pursuing a shared service agreement with a neighboring municipality.
- ▶ Please review local Finance Notice 2018-03 issued in January, delves into much greater detail

Electronic Tax Lien Sales

- ▶ Newly adopted N.J.A.C. 5:33-1.1 provides a regulatory framework for online tax lien auctions
 - ▶ requirements for publication of notice
 - ▶ issuance of notice to the property owner
 - ▶ bidder registration
 - ▶ conducting the online tax lien sale
 - ▶ the receipt and processing of payments
 - ▶ procuring a vendor, limitations on vendor fees,
 - ▶ standard contractual provisions
 - ▶ minimum technological, cybersecurity, and internal control standards.

Electronic Tax Lien Sales

- ▶ For online tax sales, the tax collector shall continue to prepare the tax lien sale notice required pursuant to N.J.S.A. 54:5-25 for posting in 5 public places.
 - ▶ In addition to the statutorily required content, the notice of sale shall also contain a statement that:
 - ▶ the tax sale is being held through an online auction
 - ▶ that bidders should submit their bids no later than the date and time of the sale set forth in the notice
 - ▶ full link to the website where bidder instructions and registration can be accessed.
 - ▶ a copy of the tax sale notice shall also be posted on the municipality's website (if they have one) until the online sale concludes on the date of sale
 - ▶ No requirement to update tax sale notice in real time
 - ▶ it is recommended that tax collectors submit a copy of the tax sale notice to the webmaster for posting simultaneous to physically posting the five notices.

Electronic Tax Lien Sales

- ▶ With respect to newspaper advertisement of the sale, a municipality may publish a display ad in lieu of the current legal notice required for a live sale under N.J.S.A. 54:5-26.
- ▶ Display ad must be no less than two inches x three inches (2” x 3”) with a bold black border, and contain the following:
 - ▶ A statement that the municipality is announcing the sale of delinquent taxes and delinquent municipal charges;
 - ▶ A statement that the sale shall be conducted through an online auction;
 - ▶ A statement that the listing of all parcels and delinquencies and costs, along with bidding instructions, are available online for viewing at no cost;
 - ▶ The date and time of the sale; and
 - ▶ The full website link where the tax sale line items may be viewed.
- ▶ Can charge up to \$25 for up to two mailings in lieu of two newspaper publications, same as for live sales

Electronic Tax Lien Sales

- ▶ In order to contract with a third-party online tax sale vendor, that vendor shall:
 - ▶ Be presently conducting online tax sales in at least two states; or
 - ▶ Have conducted online tax sales in the past two years that have included bidders from more than one state; or
 - ▶ Be affirmatively marketing in more than one state a system for performing online tax sales.
- ▶ Third-Party Vendor must be competitively procured, can use competitive contracting upon resolution of governing body
- ▶ Any contract with an online tax sale vendor, regardless of the cost, must be awarded by the municipality's governing body.
- ▶ No contract can extend beyond one (1) year

Electronic Tax Lien Sales

- ▶ All contracts with an online tax sale vendor shall be in writing, executed by all parties, and contain:
 - ▶ Language making the vendor responsible for the errors and omissions of its employees and agents;
 - ▶ Adequate provisions to indemnify the municipality against any losses incurred as a result of the actions or inactions of the vendor;
 - ▶ Provisions for contract termination including, but not limited to, termination for failure to perform on the part of the vendor;
 - ▶ Procedures for dispute resolution between the parties, including language making any dispute subject to New Jersey law, and service of process (notice of legal action) to the vendor
 - ▶ Before the contract is awarded, the tax collector must review the contract as to its terms and be satisfied that the contract contains the standard terms required by regulation; such review should be done in consultation with legal counsel.

Electronic Tax Lien Sales

- ▶ Municipalities who had previously received Division approval to conduct online tax sales under the pilot program may rely on that prior approval to conduct one more tax sale (and one more water/sewer lien sale if the municipality conducts such sales separately) under the pilot program so long as the tax sale is held on a date no later than June 30, 2018.
- ▶ All online tax sales held from July 1, 2018 on forward shall be conducted pursuant to the new rules.
- ▶ Any municipality that had not participated in the pilot program must hold an online tax sale pursuant to the new rules regardless of the date the tax sale is to be held.
- ▶ Further details in Local Finance Notice 2018-08

EFT & Claimant Certification

- ▶ Amendments to NJAC 5:30-9A; 5:31-4.1 & 4.2
- ▶ Implements 40A:5-16.5, signed by Governor Christie August 2016
- ▶ Comprehensive overhaul of regulations governing electronic payment of claims; allowing local units, county colleges, and school districts to utilize standard electronic funds transfer technologies
 - ▶ ACH
 - ▶ Wire Transfers
 - ▶ Commercial charge cards/accounts (except schools)
 - ▶ Procurement cards (except schools)

EFT & Claimant Certification

- ▶ Standard fiscal and operational controls, technological features and cybersecurity measures
- ▶ Local units must adopt policies and procedures governing EFT initiation and authorization
- ▶ CFO charged with ensuring proper controls are followed
 - ▶ Weekly review of activity reports, regular reconciliation
- ▶ Creation and maintenance of audit trail for transaction history and authorizations

EFT & Claimant Certification

▶ Key Cybersecurity System/Vendor Requirements

- ▶ Encryption of financial information and personal identification information
- ▶ Maintain only critical personal identification information. Social Security numbers shall not be utilized as identification numbers for system purposes;
- ▶ System must undergo regular and stress testing;
- ▶ Regular security updates on all software and devices;
- ▶ Back-up plans, information disposal, and disaster recovery procedures created and tested;
- ▶ Regular security risk assessments for detecting compromises, along with regular monitoring for vulnerabilities, with necessary patches and updates being implemented; and
- ▶ Vendor must develop a Cybersecurity Incident Response Plan

EFT & Claimant Certification

- ▶ Charge accounts/cards permitted (not schools):
 - ▶ Issued by specific vendor
 - ▶ Must be paid in full each month (no revolving)
 - ▶ monthly purchase order issued for each charge account authorizing maximum to be expended for month
 - ▶ ability to pay by invoice and receive itemized statements
 - ▶ place single-purchase dollar limits
 - ▶ Not permitted for travel/dining expenses

EFT & Claimant Certification

Procurement Cards (P-Cards)

- ▶ Electronic procurement systems incorporating access restrictions determined by the contracting unit in accordance with an agreement w/ issuer.
 - ▶ Under the new EFT regulations, a Qualified Purchasing Agent must be designated as a “program manager” when P-Cards are used in any dollar amount.
 - ▶ While local governments are authorized to use P-Cards, school districts are not

EFT & Claimant Certification

Procurement Cards (P-Cards)

- ▶ Any P-Card program must include the ability to institute the following controls:
 - ▶ Control limits and review current activity online and in real-time
 - ▶ Establish, change, or delete limits on each card individually
 - ▶ Restrict the use of individual cards to certain individuals and categories of items
 - ▶ Establish a cumulative limit for a specific period
 - ▶ Receive sorted or sortable detailed reports of activity by authorized card user, department or spending category
 - ▶ Interface with accounting software such that
 - ▶ vendor activity includes all transactions processed through the P-Card, as well as transactions where direct vendor payments are processed, and
 - ▶ internal controls are maintained concerning the integrity of vendor payments, accumulated costs for goods and services (aggregation)

EFT & Claimant Certification

Procurement Cards

- ▶ Before implementing a procurement card program, the local government must enact policies and procedures specific to procurement card usage
 - ▶ Designating who can use P-Cards, expenditure limits, permitted categories of vendors, consequences for misuse
 - ▶ As with policies and procedures governing electronic funds transfers generally, local units should incorporate P-Card policies and procedures into a payment of claims ordinance or resolution.
- ▶ All personnel connected with the local unit's program complete training on the P-Card system and the policies and procedures associated therewith.
 - ▶ program manager must organize training for each individual whose duties may at any time include the use of a procurement card, supervisory review or reconciliation of activity in the P-Card program, as well as the local unit's policies and procedures concerning P-Card usage.

EFT & Claimant Certification

Procurement Cards

- ▶ All employees shall sign a statement acknowledging receiving training and understanding P-Card policies and procedures.
 - ▶ Further acknowledgement that violators of these rules may result in revocation of privilege of use and/or disciplinary action up to and including termination of employment.
- ▶ Main training topics:
 - ▶ Explanation of the regulations, as well as local policies and procedures established by the local unit's governing body, pertaining to P-Card usage
 - ▶ Expeditious submittal of receipts to the program manager.
 - ▶ Expeditious handling of returns to ensure the local unit receives credit or is not billed.
 - ▶ Explanation that users may only use cards at pre-approved vendors for pre-approved merchant codes, and that use for travel/dining/room and board is prohibited (except for the limited circumstances applicable to counties relating to extradition of inmates).
 - ▶ Prohibition on cash advances from P-Cards.

EFT & Claimant Certification

Claimant Certification

- ▶ Certification of a vendor or representative thereof that the bill or demand is correct
- ▶ N.J.A.C. 5:30-9A.6 and 5:31-4.1 significantly overhaul claimant certification requirement
- ▶ Applies only to entities subject to Local Fiscal Affairs Law, claimant certification for schools is governed by NJSA 18A:19-3 and Dept. of Education regulations
- ▶ Regulations are authorized by subsection (c) of N.J.S.A. 40A:5-16.

EFT & Claimant Certification

Claimant certification changes (40A:5-16(c)):

- ▶ Allows claimant certification to be executed via wet signature, fax signature, or electronic signature.
- ▶ Contracting unit does not need to require claimant certification from vendor if:
 - ▶ Payment made through an electronic transaction
 - ▶ the governing body adopts a policy that a cert not be required when not issued by vendor in normal course of business
 - ▶ Certain payments in advance (e.g. website hosting, educational courses/CEUs, non-profit conference registrations, membership in non-profit organization)
- ▶ However, still required for services provided exclusively by the individual seeking payment (i.e. sole proprietor), and for reimbursement of employee expenses
- ▶ P.L. 2015, c. 177 - Utility and telecom bills (entities regulated by BPU) no longer subject to claimant certification

National Cooperative Contracts

P.L. 2011, c. 139

- ▶ Local Finance Notice 2012-10
- ▶ Contracts issued by National Cooperative Pricing groups made up of local government contracting units in multiple states
- ▶ Only permitted where lead agent is a local government entity
 - ▶ cannot have been awarded by a non-profit or private organization, even if a member of the cooperative.
- ▶ Competitive bidding process is required:
 - ▶ open competition, or competition among those qualified or pre-qualified, submission of bids, and awarded pursuant to a “lowest responsible”, “most advantageous to the public entity, price and other factors considered”, or other similar standard employed by a public entity.
 - ▶ This excludes contract awards based on unadvertised, “invitation only,” negotiated, local preference, or sole source procurement practices.

National Cooperative Contracts

- ▶ NJ Business Registration Certificate
- ▶ Ownership Disclosure Statement
- ▶ Proof of NJ Public Contract EEO Compliance
- ▶ Compliance with Political Contribution Disclosure Laws (Pay-to-Play)
- ▶ Non-Collusion Affidavit
- ▶ NJ “Buy American” Law
- ▶ Americans with Disabilities requirements

National Cooperative Contracts

- ▶ Publication of “Notice of Intent to Award Contract under a National Cooperative Purchasing Agreement” in an official newspaper and on the Contracting Unit’s website.
 - ▶ Name of the entity that awarded the contract
 - ▶ Title of contract (description of the contract, i.e., office supplies)
 - ▶ A web link to where the contract can be viewed online
 - ▶ Length of contract (must be consistent with length of public contracts law regulating the contracting unit)
 - ▶ A statement naming the vendor to whom the contracting unit intends to award the contract
 - ▶ A statement of the authority under which the contract is being awarded; generally this will be N.J.S.A. 52:34-6.2(b)(3)
 - ▶ A notice of when the comment period ends
- ▶ Allow a minimum of ten (10) days between date of advertisement and award for affected providers to protest the award. Provide term and dates. Consider comments received prior to award and act accordingly. (Include any documentation revealing comments or requests for information, protests, etc.)

Water/Wastewater Privatization

Local Finance Notice 2017-11

- ▶ Operation & Management Contracts (Local Public Contracts Law)
 - ▶ Maximum 10 year duration
 - ▶ Competitive Contracting statutorily permitted
 - ▶ If comp. contracting used, any existing employees impacted by the contract award must be given opportunity to offer concessions re wages, hours, terms of employment
 - ▶ Employees/bargaining unit must be notified no later than date of advertisement soliciting responses to RFP

Water/Wastewater Privatization

- ▶ Water/Wastewater Public-Private Contracting Acts (NJSA 58:26-19 et seq.; 58:27-19 et seq.)
 - ▶ 40 year maximum duration
 - ▶ Only investor-owned utilities can enter into water supply public-private contract
 - ▶ Public authorities and investor-owned utilities can enter into wastewater public-private contracts.
 - ▶ Notice of intent to enter into public-private contract published no earlier than 60 days prior to date of public hearing
 - ▶ Must be published in both a newspaper of general circulation within the service area, and a newspaper of broad regional circulation
 - ▶ Responses to RFP must be submitted no less than 30 days from notice's publication date

Water/Wastewater Privatization

Water/Wastewater Public-Private Contracting Acts
(NJSA 58:26-19 et seq.; 58:27-19 et seq.)

- ▶ One qualified proposal must be selected, reason for selection in writing.
- ▶ Public hearing required, BPU and LFB approvals
- ▶ The Acts preempt the Local Public Contracts Law; however, pay-to-play laws still apply.

Water/Wastewater Privatization

- ▶ Sale or Long-Term Lease of a municipality's Water/Wastewater Utility (N.J.S.A. 40:62-3)
 - ▶ Subject to voter approval by referendum held at November general election
 - ▶ If system serves <5% of population, only BPU approval is required without a referendum needed
 - ▶ Any sale proceeds remaining after all liabilities of system satisfied must go toward defeasing municipality's debt
 - ▶ Solicitations for responses to RFPs must be advertised:
 - ▶ at least once a week for six weeks in newspaper circulating in municipality, and
 - ▶ once in a magazine or newspaper dedicated partly or wholly to municipal matters at least 30 days prior to receipt of proposals

Water/Wastewater Privatization

- ▶ Sale or Long-Term Lease of a municipality's Water/Wastewater Utility (N.J.S.A. 40:62-3)
 - ▶ Certified check or sufficient bond to ensure fulfillment of K if response is accepted
 - ▶ Award to “highest responsible bidder”, but solicitation of RFPs is acceptable
 - ▶ If sale is to another local unit (e.g. municipality, MUA), no competitive process or voter referendum is required

Water/Wastewater Privatization

- ▶ Water Infrastructure Protection Act (“WIPA”)
 - ▶ N.J.S.A. 58:30-1 et seq.
 - ▶ Sale or long-term lease of municipal water/wastewater system
 - ▶ Aimed at systems with substantial infrastructure needs
 - ▶ Complex law with several key deadlines
 - ▶ Allows for sale of system if “emergent conditions” are present as determined by DEP

Water/Wastewater Privatization

Water Infrastructure Protection Act (“WIPA”)

- ▶ RFP process open to “capable public & private entities”
 - ▶ Owns a system serving no less than the number of residential or commercial accounts as the system which the entity proposes to lease or purchase
 - ▶ Is not a significant noncomplier as defined under N.J.S.A. 58:10A-3 of the Water Pollution Control Act
 - ▶ Is not currently the subject of an NJDEP formal enforcement action to address a material violation
 - ▶ Is not substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement or judicial consent order entered into with the NJDEP.

Water/Wastewater Privatization

Water Infrastructure Protection Act (“WIPA”)

- ▶ Solicitation for qualified entities must be advertised for at least 30 days in a newspaper w/ municipal circulation and another w/ Statewide circulation, and municipality’s website
- ▶ RFP sent w/in 14 days to each vendor the municipality confirms is a capable private or public entity
- ▶ WIPA requires vendor proposals to be evaluated on the basis of several factors including:
 - ▶ Financial, managerial, and technical capabilities of respondent
 - ▶ Corrective measures proposed for system, including the proposed long-term asset management/improvement plan
 - ▶ Projected impact on customer rates

Water/Wastewater Privatization

Water Infrastructure Protection Act (“WIPA”)

- ▶ 2/3 of full membership of municipality’s governing body must designate one of the proposals as most advantageous to the public pursuant to the evaluation criteria.
- ▶ Contract negotiations may commence once a designated respondent is selected.
- ▶ BPU must approve proposed contract; DLGS approves proposed use of sale proceeds

Standard “Changed Condition” Clauses: LPCL Construction Contracts

- ▶ P.L. 2017, c. 317 - Establishes standardized changed condition clauses for construction contracts awarded under the Local Public Contracts Law
- ▶ Clauses apply even if not expressly included in the contract.
- ▶ The specific clauses required by the amended bill cover differing site conditions, suspensions of contract work, changes in the character of the contract work, and changes in the quantity of work to be performed by a contractor.
- ▶ Establishes a standard process for the handling of changed conditions on local public construction projects.
- ▶ Applies to all construction contracts first advertised after January 16, 2018 (effective date of law)

Standard “Changed Condition” Clauses: LPCCL Construction Contracts

Differing Site Conditions

- ▶ physical conditions at the contract work site that are subsurface or otherwise concealed and which differ materially from those indicated in the contract documents or are of such an unusual nature that the conditions differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract.
- ▶ Contractor must provide specific written notice to contracting unit
- ▶ The contracting unit shall make a fair and equitable adjustment to the contract price and contract completion date for increased costs and delays resulting from agreed upon differing site conditions encountered by the contractor; detailed written instructions to contractor on how to proceed

Standard “Changed Condition” Clauses: LPCCL Construction Contracts

Differing Site Conditions

- ▶ If the contracting unit determines that no differing site conditions are present that would result in additional costs or delays, the contracting unit shall so advise the contractor, in writing, and the contractor shall resume performance of the contract, and shall be entitled to pursue a differing site conditions claim against the contracting unit for additional compensation or time attributable to the alleged differing site conditions
- ▶ Execution of the contract by the contractor shall constitute a representation that the contractor has visited the site and is generally familiar with the local conditions under which the work is to be performed.

Standard “Changed Condition” Clauses: LPCL Construction Contracts

Suspension of work

- ▶ The contracting unit shall provide written notice to the contractor in advance of any suspension of work lasting more than 10 calendar days of the performance of all or any portion of the work of the contract.
- ▶ If the performance of all or any portion of the work of the contract is suspended by the contracting unit for more than 10 calendar days due to no fault of the contractor or as a consequence of an occurrence beyond the contracting unit’s control, the contractor shall be entitled to compensation for any resultant delay to the project completion or additional contractor expenses, and to an extension of time
 - ▶ provided that, to the extent feasible, the contractor, within 10 calendar days following the conclusion of the suspension, notifies the contracting unit, in writing, of the nature and extent of the suspension of work.

Standard “Changed Condition” Clauses: LPCL Construction Contracts

Suspension of Work

- ▶ The notice shall include available supporting information, which information may thereafter be supplemented by the contractor as needed and as may be reasonably requested by the contracting unit.
- ▶ Contracting unit shall promptly evaluate and respond to the contractor’s notice
- ▶ Failure of the contractor to provide timely notice of a suspension of work shall result in a waiver of a claim if the contracting unit can prove by clear and convincing evidence that the lack of notice or delayed notice by the contractor actually prejudiced the contracting unit’s ability to adequately investigate and defend against the claim.

Standard “Changed Condition” Clauses: LPCL Construction Contracts

Suspension of Work

- ▶ If the contracting unit determines that the contractor is entitled to additional compensation or time, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date.
- ▶ If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall proceed with the performance of the contract work, and shall be entitled to pursue a suspension of work claim against the contracting unit for additional compensation or time attributable to the suspension.
- ▶ Whenever a work suspension exceeds 60 days, upon seven days’ written notice, either party shall have the option to terminate the contract for cause and to be fairly and equitably compensated therefor.

Standard “Changed Condition” Clauses: LPCL Construction Contracts

Material Change to Character of Work- a character change which increases or decreases the contractor’s cost of performing the work, increases or decreases the amount of time by which the contractor completes the work in relation to the contractually required completion date, or both.

- ▶ If the contractor believes that a change directive by the contracting unit results in a material change to the contract work, the contractor shall so notify the contracting unit in writing. The contractor shall continue to perform all work on the project that is not the subject of the notice.
- ▶ Upon receipt of the contractor’s change in character, the contracting unit shall promptly evaluate the contractor’s notice and promptly advise the contractor of its determination on how to proceed in writing.

Standard “Changed Condition” Clauses: LPCL Construction Contracts

Material Change to Character of Work

- ▶ If the contracting unit determines that a change to the contractor’s work caused or directed by the contracting unit materially changes the character of any aspect of the contract work, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date.
- ▶ The basis for any such price adjustment shall be the difference between the cost of performance of the work as planned at the time of contracting and the actual cost of such work as a result of its change in character, or as otherwise mutually agreed upon by the contractor and the contracting unit prior to the contractor performing the subject work.
- ▶ If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall continue the performance of all contract work, and shall be entitled to pursue a claim against the contracting unit for additional compensation or time attributable to the alleged material change.

Standard “Changed Condition” Clauses: LPCL Construction Contracts

Change in Quantity of Work

- ▶ “bid proposal quantity” means the quantity indicated in the bid proposal less the quantities designated in the project plans as “if and where directed.”
- ▶ Minor Change in Quantity: If the quantity of a pay item is cumulatively increased or decreased by 20 percent or less from the bid proposal quantity
- ▶ Major Change in Quantity- If the quantity of a pay item is cumulatively increased or decreased by more than 20 percent from the bid proposal quantity

Standard “Changed Condition” Clauses: LPCL Construction Contracts

Change in Quantity of Work

- ▶ For any minor change in quantity, the contracting unit shall make payment for the quantity of the pay item performed at the bid price for the pay item.
- ▶ For a major increase in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity in excess of 120 percent of the bid proposal quantity.
 - ▶ If a mutual agreement cannot be reached on a negotiated price for a major quantity increase, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit unless otherwise specified in the original bid.
- ▶ For a major decrease in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity of work performed.
 - ▶ If a mutual agreement cannot be reached on a negotiated price for a major quantity decrease, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit unless otherwise specified in the original bid; provided, however, that the contracting unit shall not make a payment in an amount that exceeds 80 percent of the value of the bid price multiplied by the bid proposal quantity.

November Fire District Elections

P.L. 2017, c.206, effective January 1, 2019

- ▶ Allows fire districts to move their annual elections to November starting with the 2019 general election.
 - ▶ Process must be initiated by Board of Fire Commissioners
 - ▶ The soonest a board of fire commissioners election can be shifted to November is for the 2019 general election.
 - ▶ Once moved to the November general election, fire district annual elections cannot be changed back to February
- ▶ If the boundaries of the fire district do not coincide with existing election districts, the county board of elections may revise or adjust the boundary lines of any election district to coincide with the fire district's boundaries.

November Fire District Elections

- ▶ Subject to the adoption of an authorizing municipal ordinance, the Board of Fire Commissioners may also revise or adjust the boundaries of the fire district to coincide with election district boundaries.
- ▶ Any fire district whose boundaries have been adjusted to facilitate November elections shall notify the Division of Local Government Services of the boundary change.
- ▶ The subdivision of a single fire district into multiple districts, or the consolidation of multiple fire districts into a single district, to facilitate a November fire district election is subject to prior Local Finance Board approval.
- ▶ If the annual fire district election has been shifted to November, the terms of the fire commissioners then in office would be extended to until 12 Noon on the first Tuesday in December of the years in which their terms expire.

November Fire District Elections

- ▶ For fire districts moving their annual elections to the November general:
 - ▶ there will be no public vote on the district budget.
 - ▶ referendums to exceed 2% levy cap and release restricted fund balance will be held on the third Saturday in February.
 - ▶ special meetings to approve capital appropriations for inclusion in the next succeeding annual budget (N.J.S.A. 40A:14-84) will have more stringent notice requirements (two publications w/in 21 days of vote), but will only require a 2/3 majority vote of the board of fire commissioners' full membership in lieu of a public vote.

November Fire District Elections

- ▶ The law also amended N.J.S.A. 40A:14-84 to expand the categories of structures for which fire district can make capital appropriations, regardless of when a fire district holds its annual elections.
 - ▶ Effective January 1, 2019, the new law permits capital appropriations for buildings other than firehouses, such as those for administrative, communications, training, and fire apparatus maintenance purposes. Please note that fire districts cannot begin the process of approving a capital appropriation under the provisions of the new law until January 1, 2019.
- ▶ Any necessary implementing regulations will be incorporated into the re adoption of N.J.A.C. 5:31, the chapter dealing with authority budgets
- ▶ Please review Local Finance Notice 2017-23 for further details

Certification of Compliance w/ EEOC Guidance

- ▶ P.L. 2017, c.183
- ▶ Amends the Local Budget Law to require municipal and county governing bodies to certify compliance with certain Federal civil rights requirements when submitting their approved budgets with DLGS
- ▶ Must certify that the municipality's or county's hiring practices comply with the United States Equal Employment Opportunity Commission's 2012 "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964,"

Certification of Compliance w/ EEOC Guidance

- ▶ EEOC's Enforcement Guidance discusses how an employer's use of criminal history records when deciding whether to select, promote, and retain employees may in some instances violate Title VII's prohibition against employment discrimination on the basis of race or national origin.
- ▶ Disparate Treatment
 - ▶ when an employer treats criminal history information differently for different applicants or employees based on their race or national origin.
- ▶ Disparate Impact
 - ▶ when an employer's neutral policy (e.g. excluding all applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title VII and the policy is not job related and consistent with business necessity.

Investment in Local Government & School District Short-Term Notes

P.L. 2017, c.310 - signed Jan. 16, 2018

- ▶ Permits local governments and school districts to purchase short-term notes issued by local governments and school districts
- ▶ Maturity date no later than 397 days
- ▶ Must be authorized by cash management plan
- ▶ Subject to certain restrictions, local government investment pools and government money market mutual funds may also invest in these short-term notes

Referendum to Increase Municipal Library Tax

P.L. 2017, c. 260 - signed 1/8/18

- ▶ Referendum to raise library tax above 1/3 of a mil.
- ▶ General Election Question can be submitted by:
 - ▶ Governing body; or
 - ▶ Petition signed by municipality's registered voters equal to 15% of total voting in prior general election
- ▶ Submission deadline is 90 days prior to general election

Referendum to Increase Municipal Library Tax

- ▶ If successful, higher library tax rate expires:
 - ▶ after 10 years; or
 - ▶ after the tax year in which a new proposition establishing a different tax rate is approved
- ▶ A library tax referendum shall not be submitted to voters more than once in any three-year period
- ▶ One or more municipalities in a joint municipal library system may do same; but could trigger renegotiation of underlying agreement

Parking Authority as Redevelopment Entity

P.L. 2017, c.253 - effective Jan. 8, 2018

- ▶ Municipality may authorize its parking authority to serve as a redevelopment entity under “Local Redevelopment & Housing Law (40A:12A-1 et seq.)
- ▶ Subject to Local Finance Board approval
- ▶ Revenues from parking fees shall be used solely to construct & maintain parking structure
- ▶ Executive director & commissioners shall be required to undergo training similar to that for similar positions in a redevelopment authority or housing authority

Special Assistance Registry

P.L. 2017, c. 266 - signed 1/8/18

- ▶ For public safety purposes, municipalities may require municipal clerk to maintain a list containing the names and addresses of residents who identify themselves as being in need of special assistance in an emergency
- ▶ Identifies special circumstance of each individual
- ▶ Resident must request to be placed on the list
- ▶ List solely for use by police, fire, first aid
- ▶ List must be updated monthly; exempt from OPRA
- ▶ If list created, notice of list and how to get on it shall be distributed w/ annual tax bill
- ▶ Municipal clerk shall provide each landlord filing a certificate of registration with the notice to pass on to their tenants

Best Practices CY2017

- ▶ 88 questions in 2010, 50 questions 2011-2015; 30 questions in 2016
- ▶ Fiscal and managerial practices, greater emphasis over years on statutory compliance
- ▶ 25 questions (all repeat from 2016), minimum score 21 to avoid withholding of CMPTRA and/or ETR
- ▶ Out of 556 Calendar Year municipalities, 16 had aid withheld for a total of \$215,375.51