Procurement Update

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Division of Local Government Services
Rutgers Public Purchasing Educational Forum – May 2, 2019

Topics:
- Prompt Payment Law – LFN 2019-02
- Public Private Partnership (P3) program
- Changed conditions for local public works contracts
- E-Procurement
Key Factors to Know:

- Effective February 1, 2019
- For goods and services
- Any dollar amount
- Doesn’t change prompt payment for construction contracts - LFN 2006-21
- Most goods and services vendors covered, even nonprofits
- Doesn’t apply to public utilities, government entities or national co-op contracts
- Goods or services received, then payment 60 days from receipt of properly executed invoice for municipal; 90 days for school districts
- Interest rate set by State Treasurer - 2% in SFY 2019
- All Governing Body meetings must allow for approval of bills

Prompt Payment Law - “Properly executed invoice”

- An invoice containing sufficient detail for payment to be made
- Includes bills, vouchers, warrants or whatever ‘term is used to describe vendor request for payment
- Includes a claimant certification (typically on a purchase order)
- If the contracting unit requires this

Prompt Payment Law - Tips

- "Unless otherwise specified in the contract"
- If no payment date in contract, payment is due 60 days from the date goods and services are received
- If a payment date in the contract, payment is due 60 days from the date goods and services are received
- A purchase order is a contract
- You can put a difference date in a contract, other than 60 or 90, must be in the contract so contractor is aware of terms before accepting the job
- "Date goods and services are received"
- Date received should be certified by a duly designated employee - put a process in place
- Look for a revision to the Local Finance Notice to clarify!
Topics:

Prompt Payment Law - LFN 2019-02

Public Private Partnership (P3) program

Changed conditions for local public works contracts

E-Procurement

Public Private Partnership (P3)

Law passed in 2018 which adds new sections to the LPCL and PSCL - also applies to State, NJIT, state and county colleges and authorities

Creates a new and distinct procurement process

Department of Treasury has oversight and regulatory control

What is P3?

- An agreement entered into between a local government unit and a private entity allowing the entity to "assume full financial and administrative responsibility for the development, construction, repair, alteration, improvement, extension, operation and maintenance of a project or, or for the benefit of, the local government unit."
- For building, roads, vertical structures, facilities acquired by the local government to operate local government functions.
- To operate local government functions.
- Qualifying projects shall include an expenditure of at least $10 million in public funds or any expenditure of solely private funds. Can be full private funding.
- Local unit must own the land upon which the project is located.
- Private entity develops, operates and maintains.
- Can include a lease with a shared revenue option for a revenue-producing public building, road, structure, infrastructure or facility in exchange for up front financing.
P3 Procurement
what may be included in regulations

- Rules will establish minimum qualifications and pre-qualifications of experts and professionals
- Attorney, Financial institutions, Other professionals, Sub-contractors and Financial review experts
- Current procurement methods do not apply
- Need to demonstrate that risks, liabilities and responsibilities transferred to private entity provide sufficient benefits to warrant not using other means of procurement.

Solicited proposals
Local unit initiates a P3 project:

1. Request for qualifications—public notice
2. Qualification process
3. Request for proposal from identified respondents
4. Public hearing and request for public notice
5. Governing body action of intent to enter P3 agreement

Submit to Treasury for approval.

Unsolicited proposals
Developer initiates a P3 project:

1. Proposal received
2. Local government evaluation based on pre-established criteria
3. Public hearing of proposal with comment period
4. Rank proposals based on evaluation criteria and other factors
5. Governing body action of intent to enter P3 agreement

Submit to Treasury for approval.
Other procurement requirements

Topics:

Prompt Payment Law
LFN 2019-02

Public Private Partnership (P3) program

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Changed Conditions for local public works contracts - Coming Soon
Amendments to NJAC 5:30-11 - Change Orders

Definitions of:
- Bid proposal quantity
- Change in quantity of work
- Changed conditions
- Construction contract
- Differing site conditions
- Material change or material change in character of work
- Pay item
Here’s what is being contemplated for the regulations

Four types of changed conditions:

1. Differing site conditions
2. Suspension of work
3. Material change
4. Change in quantity

General process for “differing site conditions”

Contractor notices
- Notice is given to the contractor
- Notice is given to the chief executive officer

Contractor written certification
- Written certification from contractor
- Explanation of factual circumstances, costs, delay
- Certified statement from contractor expert – engineer, architect

CEO investigates
- Are differing site conditions present?
- Negotiate a fair and equitable settlement with contractor
- Basis of settlement corroborated by contracting unit expert – engineer, architect
- Written report to governing body

Governing Body
- Review report
- Determine whether a change order is required
- If agree, adopt a change order resolution and enter into amendatory contract
- If disagree, designate official to negotiate

General process for “suspension of work”

Contracting unit expects delay
- Provide written notice to contractor
- If no fault of contractor, they are entitled to compensation and/or a time extension

Contractor written certification
- Within 10 calendar days of notice from contractor
- Explanation of factual circumstances, costs, delay
- Certified statement from contractor expert – engineer, architect

CEO investigates
- Is contractor entitled to additional compensation and/or time?
- May negotiate a fair and equitable settlement with contractor
- Basis of settlement corroborated by contracting unit expert – engineer, architect
- Written report to governing body

Governing Body
- Review report
- Determine whether contractor is entitled to additional compensation and/or time
- If agree, adopt a change order resolution and enter into amendatory contract
- If disagree, designate official to negotiate
**General process for “material change”**

1. **Contractor believes there is a material change**
   - Provide written notice to contracting unit
   - Contractor continues to work on project not subject to material change

2. **Contractor written certification**
   - Within 10 calendar days of notice from contracting unit
   - Explanation of factual circumstances, costs, delays
   - Certified statement from contractor expert - engineer, architect etc.
   - Fair and equitable adjustment to price and/or contract completion date
   - Failure to provide written cert may waive claim

3. **CEO investigates**
   - Determine whether contractor is entitled to additional compensation and/or time
   - May negotiate with purpose to reduce the fair and equitable settlement sought
   - Basis of settlement corroborated by contracting unit expert - engineer, architect etc.
   - Written report to governing body with conclusions on whether this constitutes a change order

4. **Governing Body**
   - Review report
   - Determine whether contractor is entitled to additional compensation and/or time
   - If agree, adopt a change order and enter into amendatory contract
   - If disagree, designate official to negotiate

**General process for “change in quantity”**

- **Contracting unit may increase or decrease quantity**
  - 20% or less is minor change
  - 20% or more is major change

**Minor change**
- Contracting unit pays for quantity change at bid price of item

**Major increase**
- Contracting unit or contractor may request to negotiate with purpose to reduce the fair and equitable settlement sought
- If no agreement, contracting unit shall pay actual costs plus additional 10% for overhead and 10% for profit
- Unless otherwise specified in bid specs

**Major decrease**
- Contracting unit or contractor may request to negotiate with purpose to reduce the fair and equitable settlement sought
- If no agreement, contracting unit shall pay actual costs plus additional 10% for overhead and 10% for profit
- Unless otherwise specified in bid specs

**Topics:**
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- E-Procurement
Changing the way we do procurement!

- That was then...
- This is now...

E-Procurement - Regulations Coming Soon

- Currently e-procurement pilot program
- Limited oversight
- List of vendors on LGS website
- Local Unit Electronic Procurement Act
- Permissive use of e-procurement
- In the process of promulgating regulations

What is E-Procurement under the new law?

**Use of computer technology and the Internet for:**
- Advertising
- Submission of public bids
- Providing notice of revisions or addenda
- Receipt of proposals & quotes
- Electronic contract management
- Release notices

**Can be used for:**
- Goods and services
- Sale of personal property
- Public Works construction
- Other public procurement related activities and services
Key components of law:

- Converting law, principals, safeguards & procedures related to sealed bidding to an e-procurement environment
- Protect against collusion and bid rigging
- Ensure privacy and security of electronic transmissions
- Published advertisements of bids will not be eliminated
- Contracts requiring a seal and signature of professional may be included in electronic file as long as original document contains physical seal and signature

NJDOT is using E-Procurement!

NJ DPP is using E-Procurement!
E-Procurement Pricing

Contracting Unit pays:
• Buys platform
• Pays through software as a service

Vendor pays:
• Free to view and print specifications for paper submission
• Flat fee per bid
• Monthly subscription to service with unlimited bids

Benefits of E-Procurement

- Easy vendor list maintenance
- Green option saves time & money
- Increases competition
- Reminders to vendors on missing documents
- Secure delivery of bids
- Vendor forms on file
- Promotes transparency
- Central control

Procurement Support

- Resources: https://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html
- Email: LPCL@dca.nj.gov
- Phone: 609-292-6613