Procurement Update

Presenter: Michele E. Meade, Municipal Technical Advisor and Procurement Specialist

NJSLOM - March 19, 2019
Topics:

- Prompt Payment Law - LFN 2019-02
- National Cooperative Contracts - LFN 2012-10
- Changed conditions for local public works contracts
- E-Procurement
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- Prompt Payment Law
  LFN 2019-02
- National Cooperative Contracts
  LFN 2012-10
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Prompt Payment Law
LFN 2019-02

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 - Deadlines Table

<table>
<thead>
<tr>
<th>Contracting Unit</th>
<th>If Payment Date Is Specified in the Contract</th>
<th>If Payment Date Is Not Specified in the Contract</th>
<th>Deadline for Separate Payment of Interest to Vendor (Late Payment)</th>
</tr>
</thead>
</table>
| Local Public Contracts Law            | 60 calendar days from date specified in the contract | The later of:  
  • 60 calendar days from receipt of properly executed invoice, or  
  • 60 calendar days from the date the goods or services were received (as certified by an officer or duly designated employee) | within 30 calendar days of the date the contracting unit made the late payment |
| Public School Contracts Law           | 90 calendar days from date specified in the contract | The later of:  
  • 90 calendar days from receipt of properly executed invoice, or  
  • 90 calendar days from the date the goods or services were received (as certified by an officer or duly designated employee) | within 30 calendar days of the date the contracting unit made the late payment |
Prompt Payment Law - Tips

➢ “Unless otherwise specified in the contract”
  ➢ If no payment date in contract, 60 days from receipt of goods or services
  ➢ If a payment date in the contract, payment is due 60 days from the relevant contract event - e.g. receipt of goods and properly executed invoice, acceptance of product, acceptance of report, acceptance of project, payment milestone event etc.
  ➢ A purchase order is a contract
  ➢ You can put a difference date in the 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 soon to clarify!
Topics:

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National Cooperative Contracts
LFN 2012-10

Key Reminders:

➢ READ the LFN - and the attached User’s Guide to Using National Cooperative Contracts

➢ Check with Division of Purchase and Property to determine if the contract was awarded as a state contract and is open to local governments.

➢ If so, don’t have to use provisions of National Cooperative Contracts, just use as a state contract
National Cooperative Contracts
LFN 2012-10

Key Reminders:

- National cooperative contracts are still subject to procurement laws and rules that apply to other contracts
  - Governing body approval over pay-to-play or bid thresholds
  - Affirmative action, statement of ownership, BRC, political disclosure, etc.
  - National co-op contract must have been awarded through a competitive process
  - Can only use national co-op contracts that were solicited by another “contracting unit” not a non-profit or private organization
  - Original bid must have been advertised as a national contract and not a local contract for the issuing agency
  - Publish a notice of intent to award - sample ad in LFN
National Cooperative Contracts
LFN 2012-10

Key Reminders:

➢ **Cost savings determination**
  ➢ Compare to state contract pricing
  ➢ Compare to local co-op contract pricing
  ➢ Compare to recent contracts from other public entities
  ➢ Cost avoidance of doing your own procurement
  ➢ Lower minimum purchase amounts at a lower price - no storage
  ➢ Are there administrative costs to participate?
  ➢ Shipping costs
  ➢ Rebates
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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”

<table>
<thead>
<tr>
<th>Contractor notices “changed site condition”</th>
<th>Contractor written certification</th>
<th>CEO investigates</th>
<th>Governing Body</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Work is stopped in impacted area</td>
<td>• Explanation of factual circumstances, costs, delays</td>
<td>• Are differing site conditions present?</td>
<td>• Review report</td>
</tr>
<tr>
<td>• Contractor must provide written certification to contracting unit chief executive officer</td>
<td>• Certified statement from contractor expert - engineer, architect etc</td>
<td>• Negotiate a fair and equitable settlement with contractor</td>
<td>• Determine whether a change order is required</td>
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<td>• Fair and equitable adjustment to price and/or contract completion date - can be a contract increase or decrease</td>
<td>• Basis of settlement corroborated by contracting unit expert - engineer, architect etc.</td>
<td>• If agree, adopt a change order resolution and enter into amendatory contract</td>
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<td>• Written report to governing body</td>
<td>• If disagree, designate official to negotiate</td>
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General process for “suspension of work”

**Contracting unit expects to be delayed 10 or more days**
- 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 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

**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 etc.
- Written report to governing body with conclusions

**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”**

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<th>Contractor believes there is a material change</th>
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<td>• Provide written notice to contracting unit</td>
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<td>• Contractor continues to work on project not subject to material change</td>
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<td>• Basis of settlement corroborated by contracting unit expert - engineer, architect etc.</td>
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<td>• Written report to governing body with conclusions on whether this constitutes a change order</td>
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## General process for “change in quantity”

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<th>Contracting unit may increase or decrease quantity</th>
<th>Minor change</th>
<th>Major increase</th>
<th>Major decrease</th>
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<td>• 20% or less is minor change</td>
<td>• Contracting unit pays for quantity change at bid price of item</td>
<td>• Contracting unit or contractor may request to negotiate with purpose to reduce the fair and equitable settlement sought&lt;br&gt;• If no agreement, contracting unit shall pay actual costs plus additional 10% for overhead and 10% for profit&lt;br&gt;• Unless otherwise specified in bid specs</td>
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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

*Approved software provided for local contracting units to receive online bids and quotes:
  - www.bidmanager.com (BidBld)
  - www.njbid.net
  - www.bidspress.com
  - www.bidsync.com
  - www.l2bid.com
  - www.gablesassociates.com
  - www.accounntinggroup.com
  - www.jactobidvat.com
  - www.commercialability.com
  - www.pricevector.com
  - www.reactor-equipment.com
  - www.taylorco.com
  - www.austenergy.com
  - www.meditec.com
  - www.goodenergy.com
  - www.propertytax.com
  - www.goldstar-energy.com
  - www.bidtron.com
  - www.energymarketexchange.com
  - www.ebtheppatible.com
  - www.preloopholdings.com
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
- Competitive contracting
- Reverse auctions

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

- Green option - saves time & money
- Easy vendor list maintenance
- 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