NJLM

New Jersey State League
of Municipalities

A Primer For Local Elected Officials

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Introduction

Thank you for ordering this primer. We hope that this publication helps provide you with some of the basics of being a locally elected official.

This is by no means an exhaustive document. We recommend that you come and attend our many League seminars to learn more about how municipalities work and to meet some of your colleagues.

The League also publishes a wide variety of helpful primers on a number of topics (visit www.njslom.org/publications/index.html). These can also be very useful and go into more detail and depth than can be provided in this document.

You should be aware that the law is fluid and constantly changing, either through legislative action, administrative rulemaking, or judicial interpretations. As such, you should view this primer as a snapshot in time of the current law and should be sure to check with your municipal attorney for updates and recent changes.

We extend the League's thanks to the authors whose articles add greatly to the material in this primer. Each author is acknowledged where their contribution appears. It is such sharing of knowledge that is the cornerstone of the League's mission.

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1. Leadership and Change: A Primer for Newly Elected Officials

By Bob Casey, Past Executive Director of the New Jersey Municipal Management Association

The following is a condensed version of a paper in the NJLM Foundation's "Friends of Local Government" series. The paper is the narrative of a presentation given by Robert Casey at the Newly Elected Officials seminars offered by the League of Municipalities. The entire narrative is available on the Foundation's website, njlmef.org.

As an elected official, you are expected to provide "leadership" both to the municipal organization and the community as a whole. Leadership is a great word, but what does it mean? According to the textbooks it includes: setting direction and tone; prioritizing goals; getting your goals enacted by other elected officials; and implementing the goals

These sound great, but the real question is: how you go about doing these things? How you can accomplish what you feel is necessary for the municipality? And most difficult of all, how you can get your fellow elected officials to join in the process?

SEVEN KEY POINTS TO MUNICIPAL EXECUTIVE LEADERSHIP

1. SET GOALS
You must have a clear understanding in your own mind of your long-term goals: where you want your municipality to go over the next year and your term of office. You were elected to accomplish certain goals and you should always remember them. You will quickly become bogged down in the mundane issues of the ongoing activities of your municipality. Do not allow these daily issues to cause you to ignore what you believe needs to be done to improve the municipal operations, to address one or more community issues or other concerns that you may have.

Some suggestions:

a. You may want to break down your goals into subgoals or implementation steps that will lead to addressing the larger goal you have and then to set time lines for these incremental steps.

b. Be open to modifying your goals as you become more knowledgeable about the organization and its capabilities—once in office, you may find things different from what you expected.

c. Write down your goals–post them in your office as a daily reminder.

d. Share your goals with others–become an advocate, use them as your guiding principles.

e. Hold an annual special meeting with the elected officials and key staff personnel to discuss everyone's goals and to develop common shared goals for implementation. This could be the most important meeting of the year.

2. WORK THROUGH OTHERS
There are two key processes that govern change municipal government: Co-Optation and Incrementalism. The implementation of your goals requires the involvement of others. To affect change you must, as a minimum, have the acceptance of your goals and processes by others, even if you do not have their full support or concurrence.

Co-optation is the process of involving those to be effected by a decision early in the process so that they "buy into" the process and the end result. This is especially true of those who may be in a position to throw a roadblock against accomplishing the goal.

Incrementalism is the realistic way local government works. Change seldom comes in one large process; rather you slowly inch toward change, one piece at a time, one sub goal at a time. Municipal change occurs normally through evolution and not revolution.

3. TO LEAD AN ORGANIZATION YOU MUST FIRST KNOW THE ORGANIZATION
You must have a good understanding of the actual functioning of your municipal government and what you can and cannot do as an elected official. You may find that the reality of the position to which you were selected, is far different than you were lead to believe.

You should discuss with your attorney, your administrator or key staff person and even your predecessor (assuming you are on speaking terms) as to what is the actual real world function of the municipality from a legal as well as a pragmatic standpoint, as well as the actual current condition of the municipality from a fiscal, policy and priority basis.

4. RECOGNIZE YOUR STAFF'S COMMITMENTS AND KNOWLEDGE
Your municipal staff is normally a neutral in the political process, in spite of what you may have heard from others who have not been in your position. Recognize that a good staff supports their elected leadership–regardless of who the elected leaders are. This is their job and responsibility. Do not blame them if you take exception to the discretionary policies of the prior administration. Their role is to provide the guidance for the policies and then to support the policies when they are finally established.

Enunciate clearly to the staff the goals and objectives of this new administration. You must tell them and periodically remind them of these and the organization's purposeful direction. Your staff serves as advocates for their particular function in the government and this is good. There are often disagreements amongst the staff especially in the competition for resources. Do not discourage this conflict but use it to further your knowledge of the total needs of the organization.

Your administrator or manager should be the person providing the overview to you on how to implement what you want to do. You should meet with this person on numerous occasions and keep that person in your loop as to what your thoughts are.

Don't be afraid to seek your staff s comments on your thoughts and plans. You need to know what they know, plus how they believe a particular issue can be handled. You serve as the catalyst to bring up the issue and to keep the discussions focused on the issue

You must appreciate the existing time and operational constraints on your employees. Find out what these are so you will have an understanding of the pressures on them as they may be pulled in two or more directions.

In sum, you goal is to co-opt the staff into buying into your goals and ideas. Make them a part of your team, your solution, and not your opposition.

5. CHANGE REQUIRES KNOWLEDGE OF THE EXISTING.
Your new ideas and goals may require a change in existing policy and procedures. Change is good and it is a strength of local government but not all movement is necessarily positive change.

Municipalities are constantly evolving local policies and programs and the way to operate. However, if you want to change an existing policy or procedure–remember this existing policy or procedure normally evolved over time and in response to various competing demands. Remember a camel is a horse designed by a committee to reflect all of their desires. The camel may be an ugly beast, but it is very good for the environment in which it is placed.

All municipal policies are camels in their design and maybe in their actual operation. To make change you must first know in depth how the existing systems operate and why they operated in that manner. Who is impacted? Why? When? How?

You must have a good idea of how you want to change the system. What you want to do. Meet with those most directly involved to discuss the present and the future. You need to know the obstacles to what you want to do before you start so you can anticipate these difficulties in your planning process.

Challenge them to overcome the identified problems with the existing or to implement what you want.

Recognize that change often requires compromise to reflect the competing demands that can affect even the simplest of issues. The greatest obstacle to implementing a great policy is the delay to seek a perfect policy–they don't exist!

6. DON'T MICROMANAGE
Break down your ideas into sub-goals or process and set deadlines for components to be reviewed, examined, implemented, etc. Have the staff agree to these target time lines and then meet periodically with the staff to see how things are going. If you become too directly involved you may lose the perspective you need to make changes/compromises, etc., needed to accomplish your long-term goal.

7. PERSEVERANCE
Most importantly, don't give up tilting at the wind mills that you want to change. You may have to nibble at its edges for some time to get to where you want to be, but be willing to recognize that even nibbles are progress. Don't initially oversell a change–let everyone know that change will come incrementally and methods could vary as the implementation processes impact existing realities.

Robert Casey is a former Municipal Administrator/Manager, who served in four municipalities on a full-time basis and provided consulting services or served as a temporary or interim Administrator on numerous occasions. He was appointed to the County and Municipal Government Study Commission, and is currently a member of the Local Government Alignment, Reorganization and Consolidation Commission.

2. Responsibilities of Municipal Elected Officials

This portion of the primer will give you an overview of *some* of the responsibilities that elected officials have as they direct policy in a municipality.

A. Overview of Local Government Power

In the United States, our system of government consists of a federal government and 50 separate state governments. But, when it comes down to it, the form of government that most citizens rely on a daily basis is their own local government or their municipality. New Jersey is made up of 565 municipalities. Each one has its own separate governing body with different forms of government, and its own ability to set policy.

The first step in any elected official's education is to understand the breadth of local government authority and power.

Municipalities are creatures of state government and that government's statutes. This means that, as political entities, they are created and imbued with only the powers and authorities given to them by state law.

To put it another way, when considering if a municipality can or cannot take a particular course of action or regulate a certain activity, the question should not be "is there a statute that says we can't do this?" BUT rather "is there a statute that says we can do this?"

Having said that, the New Jersey Constitution does give municipalities the authority and powers beyond what is explicitly granted by state law. Article 4, Section 7, Paragraph 11 of the New Jersey Constitution requires a "liberal construction" of New Jersey statutes in favor of local authority. This constitutional language makes New Jersey a "Home Rule State" and is responsible for the generally broad authorities that New Jersey municipalities have to make local policy.

i. Ordinances and Resolutions

When a municipality takes official action it must do so through either an ordinance or a resolution. The distinction between these two can be difficult to explicitly state but an ordinance usually deals with legislative acts (i.e., the setting of policy) and resolutions deal with administrative functions (i.e., paying bills, appointments, etc).

It is important to understand that while an ordinance stays in effect until it is modified by a future governing body, a resolution has much more limited life span. A resolution co-exists with the governing body that created it.

A notable exception of course is the municipal budget. This is passed by "resolution" but it actually follows the procedure for an ordinance.

One important distinction between resolutions and ordinances is the referendum. A referendum is a means by which voters can approve or disapprove of local government action. Generally, resolutions cannot be subject to referendum but ordinance can. For example, Faulkner Act municipalities (which will be discussed below) give voters the power to hold referenda on ordinances after the filing of a petition. Traditional forms of local government, such as townships and boroughs, do not give their residents the right to petition.

Another important distinction between resolutions and ordinance is the timing. A resolution is introduced and adopted at the same meeting. While an ordinance is introduced at a meeting with a public hearing and second recording at least 10 days after the introduction. The public hearing for the ordinance must be advertised in the official newspaper of the municipality.

ii. Forms of Municipal Government

There are a number of forms of municipal government in New Jersey, each with its own peculiarities. Here is a brief overview:

Township NJSA:40A:63-1 et. seq.	VOTERS ELECT Township Committee 3 or 5 members, elected at-large. Staggered, 3-year terms.
	ORGANIZATION OF GOVERNING BODY First week in January
	MAYOR Elected by Township Committee for 1-year term. Chairs Committee with voice and vote. Head of municipal government. Has all powers vested in mayor by general law.
	COMMITTEE Legislative body of municipality. Has all executive responsibilities of the municipality not placed in office of mayor.
	ADMINISTRATION Executive responsibility not vested in Mayor belongs to Township Committee. May delegate, by ordinance, all or a portion of executive responsibilities to an administrator. Township Committee may adopt an administrative code.

Borough NJSA:40A:60-1 et. seq.	VOTERS ELECT Mayor and 6 Council. Elected at-large. Mayor has a 4-year term. Council has staggered 3-year terms. Partisan.	
	ORGANIZATION OF GOVERNING BODY First week in January	
	MAYOR Head of municipal government. Sees that state laws and borough ordinances are faithfully executed. Presides over Council. Votes only to break ties. Can veto ordinances subject to override by 2/3 majority of Council. Appoints subordinate officers with Council approval; after 30 days or upon Council disapproval, Council fills posts.	
	COUNCIL Legislative body of municipality. Overrides mayor's veto by 2/3 majority of all members. Confirms Mayor's appointments. Gains appointment power upon failure to confirm Mayor's appointee or after office vacant for 30 days. Has all executive responsibility not placed in office of mayor.	
	ADMINISTRATION Mayor is head of municipal government and sees that state laws and borough ordinances are faithfully executed. Council has all executive responsibility not placed in office of mayor. Council may delegate, by ordinance, all or a portion of executive responsibility to an administrator. Council may adopt an administrative code.	

City NJSA:40A:61-1 et. seq.	VOTERS ELECT Mayor and Council.
	ORGANIZATION OF GOVERNING BODY First week in January
	MAYOR Chief Executive. May participate in Council deliberations. May vote to break ties on ordinances or resolutions. Can veto ordinances subject to a 2/3 override by Council. Heads police department. Appoints police chief, captains, and sergeants with Council approval.
	COUNCIL Legislative body of municipality. Overrides Mayor's veto by 2/3 majority of all members. Appoints subordinate officials of municipality, except as provided elsewhere by law.
	ADMINISTRATION Mayor is chief executive. City may delegate, by ordinance, all or a portion of executive responsibility to an administrator. City may adopt administrative code.

Village NJSA:40A:63-8	VOTERS ELECT Board of Trustees. 5 members, elected at-large. Staggered, 3-year terms.
	ORGANIZATION OF GOVERNING BODY First week in January
	VILLAGE PRESIDENT President of the Board. Elected by Board for 1-year term. Has voice and vote. Head of municipal government has all powers vested in Mayor by general law.
	BOARD OF TRUSTEES Legislative body of municipality. Has all executive responsibilities of the municipality not placed in office of Village President.
	ADMINISTRATION Executive responsibilities not vested in Village President belong to Board of Trustees. May delegate, by ordinance, all or a portion of executive responsibilities to an administrator. Board of Trustees may adopt an administrative code.

Town NJSA:40A:62-1 et. seq.	VOTERS ELECT Mayor and Council. Partisan
	ORGANIZATION OF GOVERNING BODY First week in January
	MAYOR Head of municipal government. Chairs Council with voice and vote. Can veto ordinances subject to a 2/3 override by Council.
	COUNCIL Legislative body of municipality. Overrides Mayor's veto by 2/3 majority of all members. Appoints all subordinate officers, except municipal clerk, tax assessor, and tax collector, who are appointed by Mayor and Council. Has all executive responsibility not placed in office of Mayor.
	ADMINISTRATION Mayor is head of municipal government and has all powers vested in Mayor by general law. Council has all executive responsibility of municipality not placed in office of Mayor. Council may delegate, by ordinance, all or a portion of executive responsibilities to an administrator. Council may adopt an administrative code.

Commission NJSA:40:70-1 et. seq.	VOTERS ELECT 3 or 5 Commissioners. At-large, nonpartisan, 4-year concurrent terms.
	ORGANIZATION OF GOVERNING BODY Third Tuesday of May following election.
	MAYOR Elected by Board of Commissioners for 4-year term. Presides over Board of Commissioners. No veto power.
	COUNCIL Board of Commissioners exercises legislative power of the municipality.
	ADMINISTRATION Each Commissioner acts as department head. No single chief executive.

Municipal Manager Act of 1923 NJSA:40:79-1 et. seq.	VOTERS ELECT 3, 5, 7, or 9 Council members. At-large nonpartisan. 4-year concurrent or staggered terms.
	ORGANIZATION OF GOVERNING BODY July 1
	MAYOR Elected by Council. Presides over Council. Serves 4-year term if concurrent elections. Serves 2-year term if staggered elections.
	COUNCIL Council exercises legislative and policy power of the municipality.
	ADMINISTRATION Manager is chief executive and administrative official of the municipality. Prepares budget. Manager appoints and removes department heads. Attends Council meetings with voice, but no vote. Manager appoints and removes department heads.

Faulkner Act (OMCL) Mayor-Council NJSA:40:69A-31 et. seq.	VOTERS ELECT Mayor and 5, 7, or 9 Council members. Council: All at-large or combination of wards and at-large. Partisan or nonpartisan. 4-year concurrent or staggered terms.
	ORGANIZATION OF GOVERNING BODY Partisan: January 1; Nonpartisan: July 1
	MAYOR Exercises executive power of the municipality, appoints department heads with Council approval. Removes department heads subject to Council disapproval by 2/3 of all members. Prepares budget. Has veto over ordinances subject to override by 2/3 of all members of Council.
	COUNCIL Exercises legislative power of municipality, approves appointment of department heads. Disapproves removal of department heads by 2/3 vote of all members. Overrides Mayor's veto by 2/3 of all members.
	ADMINISTRATION Mayor exercises executive power of the municipality. Up to 10 departments under Mayor's direction. Business Administrator assists Mayor in budget preparation and administers purchasing and personnel systems. By ordinance, Business Administrator may supervise administration of departments, subject to Mayor's direction.

Faulkner Act (OMCL) Council-Manager NJSA:40:69A-81 et. seq.	VOTERS ELECT 5, 7, or 9 Council members or Mayor and 4, 6, or 8 Council members. Mayor elected at-large. Council elected all at-large or combination of wards and at-large. Partisan or nonpartisan. 4-year concurrent or staggered terms.
	ORGANIZATION OF GOVERNING BODY Partisan: January 1; Nonpartisan: July 1
	MAYOR Elected by Council or voters. Presides over Council. Council-elected Mayor serves a term of 1, 2, or 4 years depending on whether elections are staggered or concurrent. Voter-elected Mayor serves 4-year term.
	COUNCIL Council exercises legislative and policy power of the municipality.
	ADMINISTRATION Manager is chief executive and administrative official of municipality. Prepares budget. Appoints and removes department heads. Attends Council meetings with voice, but no vote.

Faulkner Act (OMCL) Small Municipality NJSA:40:69A-115 et. seq.	VOTERS ELECT 3, 5, or 7 Council members or Mayor and 2, 4, or 6 Council members. Elected at-large. Council: 3-year concurrent or staggered term. Voter-elected Mayor serves 4-year term. Partisan or nonpartisan elections.
	ORGANIZATION OF GOVERNING BODY Partisan: January 1; Nonpartisan: July 1
	MAYOR Elected by voters or Council. Presides over Council with voice and vote, but no veto. Exercises executive power of the municipality. Appoints Council committees. Appoints municipal clerk, attorney, tax assessor, tax collector, treasurer with Council confirmation. Council-elected Mayor serves 1 or 3 years, depending on whether terms are staggered or concurrent.
	COUNCIL Exercises legislative power of the municipality. Approves Mayor's appointees for municipal clerk, attorney, tax assessor, tax collector, and treasurer.
	ADMINISTRATION Mayor exercises executive power of municipality. Council may create an administrator by ordinance.

Faulkner Act (OMCL) Mayor-Council-Administrator NJSA:40:69A-149 et. seq.	VOTERS ELECT Mayor and 6 council members. At-large, staggered terms, partisan elections. Mayor: 4-year term. Council: 3-year term.
	ORGANIZATION OF GOVERNING BODY January 1
	MAYOR Presides over Council. Exercises the executive power of municipality. Votes only to break ties. Has veto subject to override by 2/3 of all Council members. Appoints municipal clerk, administrator, attorney, tax collector, tax assessor, treasurer, and department heads with Council approval. May remove department heads upon written notice to Council.
	COUNCIL Exercises legislative power of the municipality. Approves Mayor's appointees for municipal clerk, administrator, attorney, tax collector, tax assessor, treasurer, and department heads. May remove department heads for cause after a hearing. Prepares budget with assistance of municipal administrator and treasurer.
	ADMINISTRATION Mayor exercises executive power of the municipality. Up to six departments may be created by ordinance. Administrator supervises administration of each department.

Special Charters

There are two types of special charters in New Jersey:

1) "Orphan" charters issued by the state legislature in the 19th century prior to the major constitutional revision of 1875, which prohibited "special" or locality specific legislation. Most "orphan" charters are a variation of the weak Mayor-Council type.

2) Special charters issued by the state legislature under the provisions of the State Constitution of 1947 and NJSA 1:6-10 et seq. These special charters defy simple classification, and include variations of the weak Mayor-Council form, Council-Manager form, Township Committee form, and the Village form.

iii. Executive versus Legislative Authority

One of the more important concepts for new officials is the difference between executive and legislative authority. Local government requires two separate but interlocking components: 1) policy to be set through ordinances or resolution; and 2) the carrying out of policy by a municipality's employees. The first component is legislative authority and it is exclusively wielded by the Municipal Council or Township Committee. The second component is executive authority and this is wielded by a municipality's Mayor, Manager, or Administrator.

In reality this means that a Councilperson has no authority to direct a municipal employee in the course of carrying out their duties in a chief executive form of government, that authority is vested in the Mayor, Manager, or Administrator. Likewise, the Mayor/Manager in a chief executive form of government does not draft and introduce ordinances (except through a Cooperative Council) but he/she does direct municipal employees to carry out policy crafted by the Council.

There are some wrinkles in this concept of course. In the Township form of government, the Mayor and other Committee Members sit on the Township Committee and act in both a legislative and executive capacities. Likewise, under the Commissioner form of government, each commissioner is in charge of different departments while retaining their legislative authority.

B. Managing Employees and Labor Negotiations

An elected official will make decisions regarding municipal employees. Much ink could be spilled on this issue. For the purposes of this general overview, it must suffice to say that public employment relations are in some ways similar, but in many ways, much more different than the private sector. Here are some things you should know.

Some employment positions are created by state statute and municipalities may be limited in their management abilities. For example, municipal clerks become tenured after their reappointment.

Nearly 200 municipalities have chosen to become "civil service" communities. This means that promotions and other employment actions are limited by certain "merit and fitness" standards set by New Jersey's Civil Service Commission.

Additionally, some municipalities have union employees. The New Jersey Constitution gives public employees the right to "collectively negotiate" over the terms and conditions of their employment. This means that municipalities must negotiate contracts with their union representatives. The Public Employee Relations Commission oversees these types of negotiations. In public safety negotiations between municipalities and their unions, the Legislature has determined binding interest arbitration as the terminal procedure. It is important to note that an employee can be covered by both Civil Service and a collective bargaining agreement.

C. Budgeting

The municipal budget is one of the most important documents that as an elected official you will adopt. The municipal budget will typical be your roadmap for the upcoming year. The budget will set forth the revenues and appropriations for the municipality's fiscal year.

For most municipalities the budget cycle is on a calendar year, January 1 to December 31. The municipal budget, which must have a vote of the majority of the full membership, must be introduced by February 10 and adopted by March 20. A public hearing on the municipal budget must be held no later than 28 days after introduction. Once the budget is adopted, transfers between line-items can only occur within the last two months of the year by resolution with a vote of the 2/3 of majority of the full membership.

Since the official budget for the fiscal year is not adopted prior to the beginning of the year, a temporary budget must be adopted covering the first quarter of the fiscal year. The temporary budget cannot exceed 26.25% of the total appropriation of the previous year's budget. The temporary budget must be adopted by resolution within the first 30 days of the beginning of the fiscal year with a vote of the majority of the full membership.

It is important to note that the municipal budget is subject to certain caps. There is an appropriation cap of 2.5%, with numerous exceptions, and a levy cap of 2%, with limited exceptions of debt service, pension increases, health benefit increases, and emergency appropriations. A public referendum can be held to exceed the 2% levy cap.

D. Ethics & Civility

Local elected officials are subject to New Jersey's Local Government Ethics Law, *N.J.S.A.* 40A:9-22.1. A copy of this law is in the appendix. This law is very important because it places a number of requirements on elected officials. It is advisable that you attend one of the League's many seminars on the topic.

Speaking in broad terms this law does three things. First, it prohibits a municipal official from using their office to benefit themselves or someone in their immediate family. Second, the law empowered the Local Finance Board (described below) as the state agency in charge of enforcing the law. Third, it requires that elected officials file an annual financial disclosure statement with the local finance board.

Civility is a separate but related issue to ethics. Conflicts often arise in local government and it is important to treat all parties with respect and uniformly. To that end, here are a few articles on the topic.

i. Conflict of Interest for Municipal Officials in New Jersey

By Deborah Kole, Former League Attorney

Some of the requirements of the Local Government Ethics Law, set forth at *N.J.S.A.* 40A: 9-22.1 et seq., are relatively straightforward and easy to understand. Local public officials must file financial disclosure statements under *N.J.S.A.* 40A:9-22.6, and members of independent authorities cannot do business with or appear before those authorities for a year after they leave the body under *N.J.S.A.* 40A:9-22.5(b).

However, perhaps the central concept of this law, enacted in 1991 to restore and preserve the public trust in local government, is far less clear. Exactly what type of interest must an official have in a given issue to create a conflict sufficient to prevent him or her from participating in any decisions concerning the matter?

The statutes are clear that it need not be the official's own interest that is in conflict with his or her duty to the public. If a member of the official's immediate family, defined as a spouse or dependent child living in the same household, or a business in which he or she has at least a 10% interest, has such a conflict, that conflict is attributed to the official.

This conflicting interest can be either a financial or a personal interest. It must also be an interest that the official, or the official's family member or business, does not share with the general public. Beyond these parameters, however, the standards are less clear. In most cases, it is the "practical feel of the situation" on a case-by-case basis that will determine the existence of a conflict.

It is not necessary to prove that the special interest actually influenced the official's decision, as long as it creates a possible conflict. Therefore, in the case of *Gunther v. Planning Board of Borough of Bay Head,* 335 N.J. Super 452(L.2000), seven members of the planning board who were also members of a private yacht club contiguous to the applicant's marina property were found to be in conflict with respect to his development application creating eight residential lots with a marina on the property. There was no proof that the board members were not impartial, and in fact they claimed that they could judge fairly. The court in this case noted that one member of the club had expressed the opinion that the applicant's parcel could be a valuable adjunct to yacht club property, and none of the seven members serving on the planning board denied that possibility in their certifications. Therefore, the court felt that the seven yacht club members on the planning board had a potential conflict that could taint their decision making.

Even when a valid objective reason exists for the decision, a special interest in the subject matter can taint a vote. In *Shapiro v. Mertz* (368 N.J. Super. 46, App. Div.2004), a member of a municipal board of adjustment, with many years' experience on the board and in the planning field, was up for reappointment. His wife had been elected recently to the five-person governing body of the municipality. Only two other members of the governing body supported his reappointment, even though he was the candidate with the most experience. The new council member voted for her husband, justifying the action on the basis of his objective qualifications.

The Court found that, whatever the council member's true motivation in voting for her husband, it was a conflict of interest for her to participate in the vote. The court noted that the marriage relationship between a governing body member and the individual being considered for appointment by that body could clearly be perceived by the public as impairing the member's objectivity and independent judgment in voting on the appointment. The Court also pointed out that that its holding was not an unfair result under these facts because, despite all of the board candidate's planning experience, if the governing body had unanimously agreed that he was the best candidate for the position, his spouse's disqualification from voting would not have interfered with the appointment.

The court decisions on this subject have emphasized the fact-sensitive nature of each potential conflict situation. An official may have an interest in the subject matter and still vote on the issue if that interest is not sufficient to exert undue influence on his or her decision. In *Hughes v. Monmouth University,* Docket No. A-2227-06T2 (App.Div.2007), a university located in the municipality had requested and obtained a number of variances from the board of adjustment for a new library building and parking lot on campus. The plaintiffs lived near the site of this planned new building and claimed that favoritism was shown to the university because several members of the board of adjustment were alumni of the school. The child of one of these alumni, furthermore, had received a merit-based tuition credit worth several thousand dollars from the institution. The plaintiffs asserted that the board members with these university connections should have recused themselves from the vote.

The Appellate Division ruled that recusal was not necessary under these facts, and the grant of the variances was proper. While being an alumnus of a university is clearly an "involvement" with the institution, said the court, in the case before it "…where the board members obtained their degrees many years ago, were not active alumni members, and did not substantially contribute to the University or otherwise evidence any special attachment to the school, no reasonable person could conclude that such involvement…" would have improperly influenced their actions on the board of adjustment. Furthermore, the past award by the university of a merit-based tuition credit to a board member's child while that child was a student there was "…available to all similarly situated students" and therefore did not disqualify the parent/board member from voting. The court also noted that none of the board members or any member of their immediate families was currently a student at the university.

Several cases have dealt with the interaction of two sections of the law that deal with the appearance of a local agency member before that agency. *N.J.S.A.* 40A:9-22.5h says:

"No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government…before any agency in the local government in which he serves". *N.J.S.A.* 40A:9-22.5k provides:

"Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests."

In *Jock v. Shire Realty,* 295 N.J. Super. 67(App.Div.1996), one of the members of the Board of Adjustment owned the controlling share of a corporation that was seeking several bulk variances for property it owned. The member appeared before the board to testify in support of the grant of these variances, and then voted for these variances as a board member. The court ruled that the grant of the variances was invalid because the testimony of the board member presented a possible conflict of interest.

In *Murtagh v. Borough of Park Ridge,* unreported (App. Div. 2006), 2006 WL 1541930, however, the Court found no conflict when a board member appeared before the board to object to the grant of a variance. The member lived within 200 feet of the property involved. The court explained that, under these facts, only the board member could explain the particular nature of his objection as a neighboring property owner. Furthermore, the board member/objector had recused himself from the vote on the variance, and he was supporting adherence to the zoning code, not requesting a deviation from it.

In one unreported Law Division case, the court held that the adoption of a zoning ordinance was invalid because the council president, who had a conflict, presided over the proceedings, even though he did not discuss or vote on the matter. (*Beacon Hill Farm, LLC. v. Marlboro,* unreported 2006, 2006 WL 1161361). Furthermore, in a recent unreported Appellate Division case, *Newark v. Mendham* (A-4857-05T1, 2007), the court held that recusal and absence from deliberations was still not enough to avoid the taint of conflict where the nonparticipating board member was the architect who prepared the plans for the subdivision and variance application submitted.

An important issue for municipal officials seeking guidance on conflict matters was the subject of *In re Zisa,* 385 N.J. Super. 188 (App. Div. 2006). The court in this case found that, if a municipal official seeks advice on a conflicts issue from the municipal attorney, and certain conditions are met, such reliance can be a defense for the official against a claim of conflict. In so ruling, the Court reversed the Local Finance Board's holding on this subject.

The Court stated that while it was in agreement with the Board that the advice of counsel is not an absolute defense to violation of the Local Government Ethics Law, it was reasonable for the mayor to rely on such advice in this case. The Board's decision was based on the absence of a written notation or opinion setting forth the attorney's advice and on the mayor's status as a long time public official. The court did not find these factors persuasive.

Instead, the Court looked to the Opinion of the Executive Commission on Ethical Standards, *In re Howard,* 93 N.J.A.R. 2d (Vol. 5A) 1, aff'd as modified, 94 N.J.A.R. 2d (Vol. 5A) 1 (App. Div. 1994). It held that there were four requirements for reliance on the opinion of counsel defense. They were: 1) that the advice was received prior to the action taken; 2) that the individual who offered the advice possessed authority or responsibility with regard to ethical issues; 3) that the individual seeking advice made full disclosure of all pertinent facts and circumstances; and 4) that the individual complied with the advice, including all the restrictions contained in it. The Court found that the advice given to the mayor by the municipal attorney in this case met all of these requirements, and that therefore the mayor had the right to rely on the advice of counsel.

Sometimes, however, one or more officials with conflicts must vote anyway under the "doctrine of necessity." This doctrine applies to those situations where conflicts of interest of the members of a public body must be overlooked to permit that body to act. In the case of *Allen v. the Toms River Regional Board of Education,* 233 NJ Super. 642 (App. Div.1989), the Court considered this doctrine in the context of the certification of a defeated school district budget. Four of five governing body members had conflicts because their spouses were employed by the school district. The Court found that the conflicts should be overlooked so that the governing body could have a quorum and act.

In making this decision, the Court stated that the doctrine of necessity "will be invoked in those circumstances in which there is a pressing public need for action (that is, the matter cannot be laid aside until another date), there is no alternate forum which can grant the same relief and the body is unable to act without the members in conflict taking part." The Court noted that, in the case of a defeated school budget, review can take place before the Commissioner of Education, but doing so deprives the public of "additional participation before the governing body and board of education in reshaping the budget…" Therefore, the Court found that invoking this doctrine was appropriate in such a situation.

Similarly, in the case of *Gunther v. Planning Board of Borough of Bay Head,* supra., the Court found that, even though seven members of the Board had conflicts of interest in the matter before it, they must participate and vote because of the doctrine of necessity. Without these seven members, the board would not have a quorum and could not act, and therefore the conflicts would not invalidate the board's action.

While the Courts have given some guidance in the years since the Local Government Ethics Law went into effect, a slight twist in the facts can produce a different result. What should you do if you are unsure about whether a conflict exists in a particular situation? As with all legal issues, you should, of course, check with your municipal attorney. If you are still not certain, you can request an advisory opinion from the state Local Finance Board. These opinions are available to municipal officials who want to know if a proposed action of theirs would be a conflict of interest.

When deciding what to do in a given instance, remember that it is always a good idea to err on the side of caution when it comes to ethical questions. After all, as a local government official, your most valuable asset is your reputation.

ii. The Criminal Consequence of Public Office–DON'T CROSS THE LINE

By Edward J. Kologi, Esq., League Associate Counsel

Many individuals seek public office with the genuine intent of trying to effectuate positive change. Although only a small percentage of elected officials ever engage in actual criminal behavior, it is imperative that all officials remain aware of precisely what constitutes criminal conduct to ensure that they never cross over the line.

The New Jersey Criminal Code (N.J.S.A 2C:1-1 et seq.) contains a number of offenses which are specifically directed at public officials and/or employees. Although this article is not intended as an exhaustive treatment of all state law on this subject, it will hopefully provide a working knowledge of the major acts or omissions which may give rise to criminal culpability.

Official Misconduct (N.J.S.A. 2C:30-2) A public servant commits official misconduct if with a purpose to obtain a benefit for himself or herself or another (or to injure or deprive another of a benefit) he or she knowingly commits an act relating to his or her office constituting an unauthorized exercise of official functions: or knowingly refrains from performing a duty which is imposed by law and is clearly inherent in the nature of the office. The "benefit" obtained may be of minimal value. *Investigation Into Hamilton T.P. Board of Education* 205 N.J. Super. 248 (App. Div.1985). This also includes benefits not received by the public official but rather by a third party. *State v. Schenkolewski* 301 N.J.Super.115 (App. Div.), cert. den.151 N.J. Super. (1977). To violate this section, the individual must be a public servant and the act must relate to the office. *State v. Bullock* 136 N.J. 149 (1994).

A person who performs certain governmental functions may be guilty of an offense even though he is not a government "employee." *State v. Mason* 355 N.J. Super. 296 (App. Div. 2002). See e.g. *State v. Perez* 185 N.J. 204 (2005), an employee of a privately owned motor vehicle agency was considered a "public servant" for the purposes of this statute.

An individual who attempts to use his office to injure or deprive another of a benefit may also be in violation of *N.J.S.A.* 2C:30-2. Hence, the law may criminalize political vendettas or reprisal if done with the requisite intent.

Similarly, an omission may form the basis for a charge, such as in the case where a police officer witnesses another police officer engaged in illegal activity but fails to report it or take any other necessary action. The crime of official misconduct is a second degree offense if the benefit obtained or sought is in excess of $200. If the amount is below this threshold, it is a crime of the third degree. There is a seven year statute of limitations applicable to this crime.

Speculating or Wagering on Official Action or Information (N.J.S.A. 2C:30-3) Under this provision, which is largely an "insider trading" type of statute, a violation occurs if, in contemplation of official action by himself or herself or by a governmental unit with which he or she is or has been associated, or in reliance on information to which he or she has had access in an official capacity and which has not been made public, an individual (a) acquires a pecuniary interest in any property transaction or enterprise which may be affected by such information; (b) speculates or wagers on the basis of such information or official action; or (c) aids another in any of the foregoing while in or after leaving office. Clearly, what occurs in meetings of the governing body, including but not limited to documentation and information to which elected officials are privy and which the general public has not yet seen, requires confidentiality.

If, for example, the local city council is discussing the possibility of acquiring a parcel of property for redevelopment, a public official with knowledge of the discussion could not go out and directly or indirectly attempt to purchase all surrounding properties in the hope that if the municipal project moves forward, they would dramatically increase in value. Like official misconduct, a violation of this statute constitutes a crime of the second degree unless the amount involved is less than $200 in which case it is also a crime of the third degree. The statute of limitations is also seven years.

Disbursement of Money or Incurring Obligations by Public In Excess of Appropriations (N.J.S.A. 2C:30-4) This statute should be of considerable interest to all elected officials. A member of a governing body (including a Board of Education) commits a crime of the fourth degree if he or she purposely and knowingly votes for the disbursement of public monies in excess of the appropriation for that particular item; or incurs obligations in excess of the appropriation and limit of expenditure provided by law for that item. Consequently, prior to voting to expend funds, a public official must be satisfied through appropriate information or documentation that funds are in fact available for such purpose. The first section of this provision addresses voting for the disbursement of monies; the second section addresses the incurring of obligations in excess of available monies. For example, if a budget line item for tree removal services was $5,000 and a Mayor or Councilman directed the Contractor to continue to remove trees knowing that the $5,000 limit had already been reached, or voted to have the additional work performed, despite such knowledge, a violation of this section has occurred.

Deprivation of Civil Rights (N.J.S.A. 2C:30-6) This section makes it a crime for a public official purporting to act in an official capacity to deprive another individual of his or her civil rights. It requires knowledge that the conduct is unlawful and with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity through (1) unlawful arrest or detention including but not limited to motor vehicle investigative stops, searches and seizures; or (2) the denial or impeding of another's lawful exercise or enjoyment of any right, privilege, power or immunity. This is generally a crime of the third degree unless bodily injury results or if the conduct is attendant to certain other criminal activity such as murder, manslaughter, kidnapping, or aggravated sexual assault. A finding of bodily injury will raise the crime to that of a second degree and the latter provision concerning other crimes would elevate it to a crime of the first degree.

Crime of Pattern of Official Misconduct (N.J.S.A. 2C:30-7) A person commits such an offense if he or she commits two (2) or more acts that violate the provisions of *N.J.S.A.* 2C:30-2, supra, or *N.J.S.A.* 2C:30-6. This is a separate crime of the second degree if one of the acts committed is a first or second degree crime, otherwise, it is a crime of the third degree. However, it is treated more harshly in that the presumption of non-imprisonment for third degree offenses under N.J.S.A. 2C:44-1 is expressly inapplicable to such a violation.

Bribery in Official and Political Matters (N.J.S.A. 2C:27-2) A person commits the crime of bribery if he directly or indirectly offers, confers or agrees to confer or solicits, accepts or agrees to accept a benefit as consideration for official action. The statute defines "benefit as consideration" as any benefit not authorized by law. Under the definitional provision of *N.J.S.A.* 2C:27-1, a "public servant" means any officer or employee of government, including legislators, judges, jurors, advisors, consultants, or other individuals performing a governmental function. See *State v. Grimes* 235 N.J. Super.75 (App. Div. 1989). However, a person who "merely performs services pursuant to a government contract" is not a public servant for purposes of this provision. See *State v. Mason* 355 N.J. Super. 296 (App. Div. 2002). Further, the term "benefit" need not be of a particular value. It would include not only pecuniary consideration but any type of reward. *State v. Scirrotto* 115 N.J. 38 (1989).

Threats and Other Improper Influence in Official and Political Matters (N.J.S.A. 2C:27-3) Under this provision, a person commits a crime if he or she directly or indirectly threatens unlawful harm to any person with a purpose to influence official action or the performance of an official duty. A violation does not require a threat of "harm" in an injury or damage sense, but would, for example, include a threat to disclose embarrassing information. See *State v. Scirrotto,* supra.

Unlawful Business Transaction Where Interest Is Involved (N.J.S.A. 2C:27-9) A public servant violates this law if, while performing his or her official functions on behalf of a governmental entity, he or she knowingly transacts any business with him or herself, a member of his or her immediate family, or a business organization in which the public servant or an immediate family member has an interest. The term "business organization" shall not include aggregate familial ownership or control of one percent or less of an interest in the capital or equity of the business organization. Further, it is not a violation if the public servant's performance of official functions would not affect him or her, his or her family or business organization differently than such performance would affect the public generally.

Acceptance or Receipt of Unlawful Benefit by Public Servant for Official Behavior (N.J.S.A. 2C:27-10) If under color of office and in connection with any official act performed or to be performed, a public servant directly or indirectly knowingly solicits, accepts or agrees to accept any benefit for himself or another person to influence the performance of any official duty, a violation occurs. Further, the term "benefit" includes any benefit from or by reason of a contract or agreement for goods, property or services awarded by the public entity employing the public servant. There are three exceptions in the statute as to conduct not constituting a violation:

1. Fees or any other benefit prescribed by law to be received by the public servant to which he or she is otherwise legally entitled and if said fees or benefits are received in the manner legally prescribed and not bartered for another benefit to influence his or her official duties;
2. Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient if same are not bartered for another benefit to influence the performance of an official duty;
3. Trivial benefits which involve no risk that the public servant would perform official duties in a biased or partial manner. For grading purposes, this section is a crime of the second degree unless the benefit solicited or accepted is of a value of $200 or less, in which case it is a crime of the third degree. Hence, an occasional lunch or even perhaps a round of golf may not be problematic; however, using a vendor's condo in Florida on a regular basis may certainly raise problematic issues under this section.

Forfeiture of Public Office (N.J.S.A. 2C:51-2 et seq) In addition to prison terms and substantial fines, a person holding any public office, position or employment, whether elective or appointive, under the Government of New Jersey or any agency or political subdivision (including municipalities) thereof, forfeits his or her office or position if convicted of a crime or offense involving dishonesty; of the third degree or above under New Jersey or any other equivalent provision of law; or for a conviction of an offense involving or touching such office position or employment. A conviction for a violation of Federal law may be the basis for forfeiture. *McCann v. Clerk of City of Jersey City* 167 N.J. 311(2001): In Re: Vitacco 347 N.J. Super. 337 (App. Div 2002).

It would indeed be difficult to envision a situation where any of the preceding crimes or offenses would not be deemed to "touch" upon the official position, office or employment. In defining whether an offense "touches the office," our Courts have held that when "...the infraction casts such a shadow over the employee as to make his or her continued service appear incompatible with the traits of trustworthiness, honesty and obedience to law and order, then forfeiture is appropriate." *Moore v. Youth Correctional Institute* 119 N.J. 256 (1990).

In the case of a police officer, an offense may touch upon employment even if the officer is off duty and outside the territorial limits of the municipality where he or she is employed. *State v. Williams* 355 N.J. Super. 579 (App. Div. 2002); *State v. Gismondi* 353 N.J. Super. 178 (App. Div. 2002). In addition to forfeiture, any person convicted of a crime or offense involving or touching upon his or her public office, position or employment shall be forever disqualified from holding any office or position of honor, trust or profit under this state or any of its administrative or political subdivisions. (*N.J.S.A.* 2C:51-2). The only potential relief from this penalty is where a conviction is based upon a disorderly or petty disorderly persons offense. In such matters, the forfeiture or disqualification may be waived by the Court upon application of the County Prosecutor or the Attorney General and for good cause shown. *N.J.S.A.* 2C:51-2(2)(e). Further, a person convicted of an offense under *N.J.S.A.* 2C:27-2, *N.J.S.A.* 2C:27-4, *N.J.S.A.* 2C:27-6, *N.J.S.A.* 2C:27-7, *N.J.S.A.* 2C:29-4, and *N.J.S.A.* 2C:30-2 or *N.J.S.A.* 2C:30-3 shall be ineligible either directly indirectly for bidding on any public contract for a period of five to 10 years, depending upon the crime. This would include any business (a corporation, partnership, association or proprietorship in which the individual is a principal) which the individual owns or directly or indirectly controls 5% or more of the stock or equity interest therein.

Conclusion Public service carries with it a tremendous responsibility, as public officials and employees have long been recognized as repositories of the public trust. Consistent with this obligation, the New Jersey Legislature has enacted a comprehensive scheme of laws specifically designed to ensure compliance with this high level of responsibility. While an official who, after being elected, seeks revenge against a political opponent may simply view his or her conduct as "politics," such conduct may very well rise to the level of a criminal violation. If a police officer closes his or her eyes to a situation which would normally require action, the line may have been crossed into official misconduct. Should a Councilmember tell his or her relatives at Sunday dinner about private discussions at a Council Meeting involving potential municipal action on a project with the intent that the family members may take advantage of the information for their own pecuniary gain, the official has encroached into an area forbidden by law.

In sum, there is little room for error in terms of conduct which falls within any of the above categories. While the official may not be aware that such acts may constitute a criminal act, ignorance of the law continues to be no excuse, nor should it be. If an official has the slightest question as to whether a proposed action or course of conduct is illegal, appropriate advice from either the local public entity attorney or in appropriate cases, the County Prosecutor should be sought prior to acting. The career you save may be your own.

Edward J. Kologi, Esq. has represented public entities for 25 years and currently serves as Linden's Municipal Attorney and as Associate Counsel to the New Jersey State League of Municipalities.

iii. Civility at Council Meetings: Seven Rules for the Gatekeepers

By Jason Holt, Atlantic City Business Administrator, Former League Associate Counsel

Those of us who are charged with the job of making sure that the governing body has convened a meeting in compliance with the law and are further tasked with ensuring that public business is allowed to take place during the meeting are gatekeepers. Gatekeepers stand up under the stress of untoward circumstances, public criticism, unruly groups, protestors and even violence. They buffer your colleagues, elected officials, or the town itself. Their title doesn't matter; it could be Municipal Clerk, Council President, Municipal Attorney, Municipal Administrator, or support staff. But if you have experienced and survived any of those exasperating circumstances which have the potential to kick the municipal family into a frenzy, you understand the following maxim: It's not always what happens at a meeting, but what doesn't happen that makes a good meeting. Gatekeepers are truly frontline personnel in the mission to operate an effective and efficient government.

Each meeting of the governing body should be considered sacrosanct from the standpoint of conducting the affairs of the municipality. However, often times the sanctity of the meeting is challenged. The challenge may come from a municipal council gadfly, a vendor seeking a contract, a disgruntled employee, or even from within the governing body itself. The worst thing to happen is for your meeting to be disrupted to such an extent that the flow of council matters is interrupted. Gatekeepers are given the job of making sure that the meeting does not spin out of control. If you understand and follow the seven golden rules in this article, you will be in a much better position to ensure that the governing body conducts its affairs properly. Let's briefly examine each rule.

Rule 1: Understand Your Role As Gatekeeper
Municipal clerks, attorneys, administrators, and support staff are not politicians. You are technicians tasked with a professional job. Don't be confused. You do not have a vote even when you want one. This is true regardless of whether the elected officials from your standpoint are on the wrong side of an issue. Remember, the elected official who presides over a meeting is always at his or her best when focused on the business of the meeting. Give them every opportunity to do so.

Rule 2: Be Knowledgeable About the Fundamentals of the Law
This includes your municipal Charter and The Senator Byron N. Baer Open Public Meetings Act.1. Each municipality has a charter upon which its municipal code is based. The charter sets the standard from which all acts of the municipality are authorized. The official title of the "Sunshine Law" or the "Open Public Meetings Act" is "The Senator Byron N. Baer Open Public Meetings Act" at N.J.S.A. 10:4-6.

There is nothing more embarrassing than realizing after your governing body's legislative actions have been challenged that you haven't covered all the bases. An inadvertent mistake often comes to light when a meeting of the governing body is contested within the statutory time period by an "Action In Lieu of Prerogative Writ." N.JS.A. 10:4-15 provides that any action taken by a public body at a meeting is voidable in Superior Court if Action In Lieu of Prerogative Writ is filed within 45days. The governing body may take remedial action to correct deficiencies at another public meeting.

Perhaps you incorrectly advertised for a meeting. The meeting is set aside by the Court and now it has to be redone. Understand the fundamentals of the law and work as a team to avoid mistakes.

Rule 3: Respect and Understand the Meeting Process
Don't leave common sense behind. Keep your mindset simple. The purpose of the meeting is to transact public business. Everything that helps that happen is good, everything else is a distraction.

Rule 4: Embrace the Diversity of Personalities–Know Your Municipal Team
If you understand who you are working with–Council Members and Municipal Officials–it makes the job easier. You don't have to agree, but respecting a colleague's thought process or their idiosyncrasies adds to the plus column. One person alone cannot run a meeting. The most productive municipal governments understand that it's the team not an individual that pulls the wagon the easiest.

Rule 5: Familiarize Yourself With Hot-Button Issues and Keep Your Members and Municipal Attorney Informed
Every town has its own unique issues. Knowing what they are and when those issues are coming up at meeting helps in the planning process. It could be as simple as printing extra meeting agendas for the larger-than-normal influx of citizens who come out to protest a revaluation of properties. The extra agendas may take away a discussion issue on the floor and shave time off a difficult meeting. Everyone likes to be prepared and for those issues that only you see coming, don't keep them to yourself. Inform your team.

Rule 6: Follow the Law of Detachment–It's Not Personal, Just Business
It would be great if highly charged emotional issues would just go away. These issues usually don't and when they make it to the floor of the meeting of the municipal governing body it can be chaotic. Don't add to the chaos by being swept away with them. Stay emotionally detached and remember that the purpose of the meeting is to transact business and you are there to facilitate that purpose.

Rule 7: Know When to Call For Help
Once in a while fine distinctions have to be made in determining how to address disrespectful conduct of individuals at a public meeting. The official presiding over the meeting has the authority to expel from the chambers or compel the arrest of unruly individuals. Disrupting a meeting is a disorderly person's offense punishable by fine and incarceration of up to six months in jail. N.J.S.A. 2C:33-8 provides for a three prong test for conviction under the statute. The elements are: 1. Must be a lawful meeting; 2. Culpability-purpose of conduct was to disrupt or prevent meeting; 3. Actor must have obstructed or interfered with meeting physically.

The standard used for evaluating this type of conduct is typically considered a balancing test. It should be applied before taking any action which may abridge the constitutional rights of a citizen. This test balances the right of government to conduct orderly proceedings versus the right of individuals to free speech and assembly. You should discuss with your mayor, police department, chair of the governing body, and municipal attorney as to when this authority should be exercised. However, don't be afraid to call for help when necessary.

In conclusion, gatekeepers are typically not feted for the professional acumen that helps keep municipalities on track and allows public business to be conducted. However, if you try conducting a meeting without them, most assuredly the train will run off the track.

E. Running a Meeting and the Open Public Meetings Act (OPMA)

A well-run and efficient meeting of a municipality's local governing body that is compliant with the Open Public Meetings Act (OPMA) doesn't just happen. It requires planning and oversight.

OPMA is a state law which places a number of requirements on the way in which public meetings are run in order to promote openness in government. A full copy of this law can be found in the appendix.

The law does a number of things. First, it places notice requirement on meetings. Aside from certain emergency situations, the public must either be notified annually or at least 48 hours before a meeting takes place. Second, it requires that the public be given access to the meeting and a meaningful opportunity to participate. There are limited exceptions which allow the governing body to deliberate in private. This is called a closed session. There are several subject areas for which a closed session is permitted, such as litigation and appointments.

The term "Rice Notice" often comes up in the context of OPMA and disciplinary matters. If the Council intends on discussing an employee's job performance in closed session they must provide prior notice to that employee. The employee then has the option to attend the meeting or can request that the discussion take place at an open public meeting.

One final word about OPMA. The law requires that the public be able to see local government in action. It may be tempting to communicate through text messages during a meeting with other elected officials, but such an activity is likely a violation of OPMA because the communications are not open to the public.

Here are two articles dealing with OPMA and managing an effective meeting

i. Common Issues Concerning the Open Public Meetings Act

By Deborah Kole, Esq., and Matthew Weng, Esq. (Former League Staff Attorneys)

Questions concerning the Open Public Meetings Act, or OPMA, are frequently matters of concern for municipal officials in New Jersey. While some are unique to a certain fact pattern, certain issues recur with frequency.

A common point of confusion is the amount of detail to be included in the resolution that a municipal governing body must adopt before it enters into closed session. To determine if the resolution is sufficient, a Court will look to the section of the Open Public Meetings Act requiring the resolution, NJ.S.A. 10:4-13.

Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO, Local 2364 v. Trenton State College Board of Trustees, 284 NJ.Super. 108, (Law Div. 1995), gives some guidance on this subject. There the court held that the College board of trustee's notice of intent to hold closed session did not comply with statutory requirement where it the board stated it would hold a closed session "to consider personnel matters, labor relations, any pending litigations, and any other matters specifically exempted by the Open Public Meetings Act." The Court stated, "the statutory reference to general notice mandates more than a restatement of the statutory language and requires that the public be informed of the matters to be discussed, albeit in general terms rather than with the specificity required by the notice requirements for a public meeting."

An unpublished Law Division case, *Paff v. Monroe Township Board of Education,* has indicated that a resolution restating or quoting the section of the Open Public Meetings Act dealing with the subjects that can be discussed in such a session does not by itself comply with the statute.

In that case, the defendant board used a resolution that supported its need to meet in closed session by stating that it needed to "discuss personnel, negotiations, legal, and student matters." The question before the Court was the meaning of "general nature of the subject" in *N.J.S.A.* 10:4-13 a. The Court noted that the amount of information to be given to the public in closed session resolutions must balance the open government underpinnings of OPMA against the confidential nature of the subject matter discussed in the closed session. That is why the statute requires only that the general nature of the subject must be disclosed. However, more that the simple recitation of the subjects exempted under the law is required. The court therefore determined that "The Board's resolution, which simply parrots the statutory language and encompasses all possible justifications for proceeding in closed session, is improper."

To give some idea of what would be sufficient description of the subject matter of a closed session in the resolution, the Court stated that in many cases where litigation is being discussed, the name of the case can be divulged without harm. In certain situations, however, doing so might reveal confidential information, and in such a situation, the mere statement that litigation is being discussed could be sufficient. Similarly, the resolution could state that labor negotiations or personnel matters are being considered in the closed session.

Another area of confusion for some officials is the applicability of OPMA to "executive sessions" of the governing body where municipal matters are discussed, but no action or votes are taken. All of the requirements of OPMA for meetings of the municipal governing body apply to these sessions, including not only the notice and the requirements that minutes be kept, but the requirement of a public comment period at the session. Under the Act, if a meeting of governing body is open to the public, a comment period must be provided at that meeting.

The public comment period itself, a requirement added to the Act in 2002, is also a source of questions. *N.J.S.A.* 1 0:4-12(a) specifically states, "nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit, or regulate the act of participation of the public at any meeting." Thus, while OPMA does give the public the right to attend meetings, it does not give them any more participatory rights than they had before. A public body may limit the time set aside for public comment, and may limit the time each resident has to speak. Indeed, Courts have held that the chair of the meeting (usually the mayor or council president) has the ability to order the removal of someone who disrupts the meeting by not following these rules. The chair must give adequate warning to the speaker that they are being disruptive, and inform them that they will be removed if they continue. If they continue to be disruptive, the chair may order their removal. *State v. Brennan,* 344 NJ.Super. 136, (App. Div. 2001).

The application of the Open Public Meetings Acts to subcommittees of public bodies is another area of concern. It is common for municipal governing bodies to have subcommittees that study various issues and report to the council on their findings. The meetings of these subcommittees need not be open to the public under OPMA as long as there are not enough members of the governing body present to constitute a quorum, and as long as these subcommittees function only in a research and advisory capacity.

However, *N.J.S.A.* 10:4-7 states that the public has the right to be "present at all public bodies, and to witness ... all phases of the deliberation, policy formation, and decision making of public bodies." Furthermore, *N.J.S.A.* 10:4-11 provides that "No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this (Open Public Meetings) Act." Therefore, if subcommittees are used improperly in an effort to keep the public out of critical discussions, their meetings will be in violation of OPMA. All deliberation and decision-making must occur in public, and the public meeting can never operate as a mere "rubber stamp" on decisions made in private.

Municipal officials are often concerned about the videotaping of municipal meetings by the public, both because of the possible disruption of the meeting and because some residents attending the meetings do not want to be videotaped. New Jersey case law makes it clear that a member of the public cannot be prohibited from videotaping a municipal meeting. In the case of *Taros v. Pine Hill,* 189 NJ. 497, (2007), the New Jersey Supreme Court said "... we hold that, subject to reasonable restrictions, members of the public have a common law right to videotape municipal proceedings in New Jersey. Our conclusion is supported by an interwoven tapestry of jurisprudence and policy that demonstrates both the value of open government and the right to document governmental proceedings." As for concerns over the privacy of members of the public, the Court said "Although some citizens may be fearful of video cameras, we find that consideration insufficient to deny the right to videotape. Further, no right of privacy protects a citizen's public comments."

However, the Court did find that the common law right to videotape public meetings is neither absolute nor unqualified. A public body may impose reasonable guidelines to ensure the videotaping is not disruptive to the meeting or to the other citizens' right of access to and participation in that meeting. The court indicated that such guidelines can include restrictions on the number and positioning of cameras, lighting, and the location of the person operating the equipment. They can also include restrictions designed to control noise levels and prevent damage to public facilities. Any guidelines must be as narrow in scope as possible to accomplish these goals. Furthermore, they must be established and applied in a neutral fashion.

Finally, local officials are often curious if a member of the governing body may attend a meeting remotely, either through a computer or via speakerphone. Michael Pane, Jr., explained this in his treatise on Local Government Law:

"Another question frequently raised is whether member of a body who cannot be physically present may participate in or vote at a meeting or be part of a meeting by telephone. A member of a public body can participate in a meeting, even though she or he is not physically present, provided the following conditions are met:

1. The person, who is not physically present, is on a speaker phone so that the absent member may hear everything said in the room and everyone in the room, including the public, can hear everything the absent member says.

2. The absent member hears and can participate in the entire discussion on the subject at hand.

3. The procedural aspects to the meeting as to notice, etc., are regular in every other respect.

In such a circumstance, one absent member may be brought in to form a quorum as to a particular issue for which a greater number of votes is needed for passage, or may in fact, be considered present throughout the meeting if the telephone line is kept open for the entire meeting.

One should have a situation in terms of the absent member, and in terms of the public, and all the other members of the public body, in which it is as if the member were physically present in the room and participating either in that limited portion of the meeting or in the entire meeting. *Michael Pane, Jr., New Jersey Practice: Local Government Law § 11:4. Thompson/West 2007.*

Interpretations of the Open Public Meetings Act are constantly evolving. If a municipal official has questions about the requirements of the Act, he or she should consult with the municipal attorney.

ii. Public Meeting Agenda Planning: Chatham Borough Creates an Organized Approach

By Bruce A. Harris, Mayor & Robert J. Falzarano, Former Administrator, Chatham Borough

Especially in small communities, elected officials are frequently volunteers who have full-time jobs in addition to their duties as elected officials. One of the many challenges such elected officials face is knowing when to focus on the various matters that will come before the governing body for discussion or a decision. The more prepared elected officials are for, the more efficient those meetings will be. Also, the quality of the decisions will be better.

In Chatham Borough, the Mayor and Councilmembers receive a brief memo from the Borough Administrator each Friday (we call it the "Friday Memo") and a chart that maps out the topics to be discussed and actions to be taken at the next four or five council meetings (the Agenda Planner). They also receive correspondence and reports on various matters. Our two- or three-page Friday Memo gives a concise overview of the key developments for the week. This article will describe the borough's Agenda Planner, a tool we have developed that helps the governing body and administration keep track of matters that are for decision and make sure that routine resolutions (such as approvals of annual festivals, annual fee reviews, etc.) are acted on in a timely manner. We have found this system to be extremely helpful, and believe a similar system would work well in both large and smaller municipalities.

The Agenda Planner is a communications and an organization tool. It is formatted to mirror the standard order of business for Council Meetings. For Chatham Borough, that standard order starts with the usual preliminary items, such as the Pledge of Allegiance, statement of adequate notice, and roll call, and continues with proclamations and commendatory resolutions, discussion items, public hearings on proposed ordinances, resolutions to be discussed and voted upon, a consent agenda, ordinance introductions and the closed session. The Agenda Planner lists the specific items to be addressed in each category for the next four meetings.

An example of the Agenda Planner is featured on the following page.

	23-Sep-17	28-Oct-17	11-Nov-17
Resolutions - Appointments			
Executive Session - Paid Professionals		1. Sale of Vacant Property	
Discussion Items	1. Recycling Contract 2. Capital Project Update	1. Leaf Collection 2. Art Craft Show 3. Kiwanis Fund Raiser	1. Strategic Financial Management Plan
REPORTS			
Ordinances - Second Reading		1. Summit Ave. Easement 2. Hazardous Substances 3. Joint Court 4. Hazardous Substances	
Resolutions - Non - Routine			
CONSENT AGENDA			
Appointments			
Contracts	1. Joint Court	1. White Lights	1. Sewer Rates 2. Water Rates 3. Parking Rates
Finance			
Law & Public Safety			
Boards, Commissions & Committees			
Arts		1. Sculpture Extension	
Shared Services		1. Parking Enforcement Officer	
Personnel			
Taxes			
Recreation			
Other		1. Sale of Borough Land	
Ordinances - First Reading	1. Joint Court 2. Hazardous Substances 3. Summit Ave. Easement		
Executive Session	**Contracts** 1. Telephone Audit 2. Energy Aggregation	**Contracts** 1. Park Mobile 2. Property Easement **Litigation** 1. Property Encroachments	**Personnel** 1. 2014 Salaries 2. Professional Service Provider Evaluations

As you know, there are many factors to consider when preparing a meeting agenda. You must consider when actions need to be taken and when decisions need to be made. What issues are likely to arouse significant public comment and input and the length of the meeting must also be taken into consideration. And, most importantly, you must determine whether the members of the governing body will have had adequate time to become knowledgeable about the matters to be addressed at the meeting.

The Agenda Planner provides an effective vehicle for the governing body and administration to communicate about the priorities of the various matters. More importantly, it allows the members of the governing body to know weeks in advance when matters will be discussed, so that they can prepare.

As new issues or emergencies arise, we frequently use the Agenda Planner as our guide for re-scheduling items for discussion. This way we avoid having meetings that become too long and ensure that enough time is allotted for a thorough discussion of all issues. Even some routine topics require more time to be discussed, and we are able to plan accordingly. For example, if budget items are on the agenda, we might limit the number of other items on the agenda to ensure that we have adequate time to discuss each matter.

Using the Agenda Planner, the administration and the governing body can make sure that necessary materials are provided in a timely manner. Now that we us it, our meetings are more balanced. More importantly, we have found that we are able to handle more topics at a given meeting because the governing body is more prepared to discuss each matter and that the discussion is more focused.

Another benefit is that administration and our Borough Attorney know when resolutions and ordinances need to be drafted and circulated for review and comment prior to being placed on the agenda. We distribute draft meeting agendas five to seven days prior to each meeting as well.

We also maintain an ongoing 12-month view version of the Agenda Planner. This allows us to schedule recurring annual resolutions that must be adopted to comply with statutory, regulatory or ordinance requirements. It also guides our long range planning and helps ensure that required resolutions are not missed.

In addition the Mayor and Borough Administrator maintain a "pending items" list to keep track of items that will need to be addressed but require further research and development before being brought before the governing body for discussion and/or action.

By using the Agenda Planner, setting meeting agendas has become more collaborative. The administration, the mayor, the governing body and the Borough Attorney work together as a team to ensure that, throughout the year, everyone remains focused on the orderly accomplishment of the yearly goals. We are also more confident that things are done right and that is an achievement

F. The Open Public Records Act (OPRA)

The Open Public Records Act, also known as OPRA, provides that government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest. Any limitations on the right of access shall be construed in favor of the public's right of access. Specifically, OPRA is intended to (1) expand the public's right of access to government records; (2) create an administrative appeals process if access is denied; and (3) define what records are and are not "government records."

As an elected official is important to know that:

1. All government records are public documents. A government record is any paper, written, or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically, or by sound-recording, or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business or that has been received in the course of his or its official business. Inter-agency or intra-agency advisory, consultative, or deliberative material is not considered a government record.

2. The Municipal Clerk is the Records Custodian for the municipality. The Municipal Clerk can be personally fined for knowingly and willfully violating OPRA. The civil penalty is $1,000 for an initial violation, $2,500 for a second violation that occurs within 10 years of an initial violation, and $5,000 for a third violation that occurs within 10 years of an initial violation.

3. The Records Custodian has seven (7) business days to respond to an OPRA request. However, immediate access ordinarily must be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information. The Records Custodian can request an extension from the requestor; however, the requestor does not have to grant the extension.

4. The fee for copies of the public records is $0.05 per page for letter size and $0.07 per page for legal size. If the request is for the document in a particular medium, if the agency maintains the record in the medium requested, the Record Custodian can only charge the actual cost of copying (such as the cost of the floppy disk or CD-ROM). However, a Records Custodian may impose a special service charge related to conversion for extensive use of technology and labor for programming, clerical, and supervisory assistance that may be required. The special service charge must be based on the cost of the technology and labor actually incurred. This may include charges incurred by an outside vendor.

A copy of the OPRA statute is located in the appendix.

G. Procurement

It should be obvious that, in order to operate, municipalities must buy different goods and services which run the gambit from paper clips to engineering surveys. What is less obvious is how they do the purchasing, or procurement to use the correct parlance.

The law which controls this area of governance is the Local Public Contracts Law (LPCL). A copy of this law is in the appendix. This sets the requirements and procedures for bidding on public contracts. Based on the value of the purchase a different procurement process is followed. Each municipality has a purchasing agent in charge of procurement. A purchasing agent can receive additional training and pass a written test administered by the state to become a Qualified Purchasing Agent (QPA). The critical different between these two types of procurement professionals is that a purchasing agent can only award contracts up to $17,500 before bidding is required but a QPA can award contracts up to $36,000 without having to go to bid.

Another law which deals with procurement is New Jersey's Pay-to-Play law. In many ways this law mirrors the LPCL, but it does cause some wrinkles. For the purposes of this primer it suffices to say that Pay-to-Play prohibits vendors from receiving municipal contracts if they have made political contributions to an elected official from the municipality, unless the municipality uses a "fair and open process."

The League is releasing a number of primers focused on the LPCL and one in particular on pay-to-play. We recommend, if you are interested in the details of public procurement, that you order one of these primers.

H. Police Department Leadership

One of the most important services that municipalities can provide is policing. The organization of a municipality's police department is determined by the local governing body by ordinance within parameters established by statue and Attorney General guidelines.
Here is an article dealing with leading police departments.

i. Police Department Leadership: Who's the Boss?

By Wayne S. Fisher, Ph.D., Director, Police Institute, Rutgers School of Criminal Justice

Police departments in New Jersey operate under state statutes which unfortunately underlie sometimes protracted disputes over who is in charge.

The chief of police in our state's largest city was suspended by the police director in the same city in 2014. Who then was the boss in the Newark Police Department? In a profession which seems so reliant on a "chain of command" one would assume the answer to be self-evident. In police departments throughout the country the answer would be obvious; in police departments throughout New Jersey the answer can be quite confusing.

Police departments in New Jersey operate under state statutes which unfortunately underlie sometimes protracted disputes over who is in charge. State law gives municipalities the authority to establish police departments. If a municipality chooses to have a police department it must do so by enacting an ordinance. State law requires that the ordinance designate an "appropriate authority" that is responsible for establishing the policies, rules and regulations under which the police department functions. That same state statute says that municipalities may (not must) create the position of chief of police. If there is a chief of police, state law reserves for the chief, and only the chief, specific responsibilities and duties regarding the operation of the police department.

State law creates a distinction between the appropriate authority's prerogative to set policy for the police department and the police chief's authority to run the day-to-day operations of the department. The distinction was drawn for good reason; it was drawn to balance two fundamental, guiding principles. An "appropriate authority" is appointed to provide the civilian oversight of police agencies so fundamental to our democracy at all levels of government. The appropriate authority's oversight is balanced by insulating chiefs of police from inappropriate political interference in their efforts to enforce the law and run police departments. State law seeks the optimum balance between appropriate oversight by elected officials and the need for police chiefs to carry out their duties free of inappropriate influence or interference.

In many of our state's larger municipalities the role of appropriate authority is filled by a full-time police director. In most municipalities, however, the function is carried out on a part-time basis by an administrator, manager, or some other official or group of officials designated consistent with the municipality's form of government. Disputes arise when an appropriate authority believes a chief of police has exceeded his or her authority, or alternatively when a police chief thinks the same is true of the appropriate authority. These disputes are not everyday occurrences, but they do occur more than occasionally in police departments of all sizes across this state. The substance of the disputes range from the far too often undisputedly petty to those which involve generally acknowledged matters of importance. Many are resolved internally or with the assistance of the County Prosecutor or the Attorney General, but some result in lawsuits or administrative actions resolved only after considerable cost to the public.

By whatever means they are resolved, experience has taught that the damage done by "police chief / appropriate authority" disputes will run deeper and last longer than the very issues underlying the dispute in the first place. Even in the short term, attention and resources which should be directed to address public safety objectives throughout a municipality are diverted to address matters of contention confined within the walls of police headquarters and town hall.

There is a better way to structure the management of our local police departments. A way which will eliminate "who's the boss" fights, and at the same time preserve the necessary balance between civilian oversight of police agencies and the insulation of police executives from inappropriate political interference. These ends are best served when one person, and only one person, is responsible for the operation of the police department and is accountable to elected officials for the performance of the police department. That one person is best called a chief of police. Every municipal governing body which creates a police department should be required to provide for the appointment of a chief of police.

Qualification standards regarding the training and professional experience of those appointed to be chiefs of police should be legislatively established. Police chiefs should be appointed for a specified term within legislatively prescribed parameters, with removal only for cause; police chiefs should not serve in positions of lifetime tenure. Finally, municipalities should not be limited to appointing chiefs from within the ranks of their respective departments as is now the case. Rather, they should be able to recruit qualified police chief candidates from other police departments throughout the state or even from other states.

While the intentions are sound, the current distinction between policy authority and day-to-day operational authority is artificial and ultimately unworkable. Under current law, an appropriate authority can establish policy for the deployment of officers for a given purpose, but only the chief of police can say which officers are so deployed. Such a bifurcation does not promote accountability, it undermines accountability. A single police executive, ultimately responsible for both policy and implementation, will be more readily accountable to elected officials for delivery of the entire range of police services. At the same time, a single official, so authorized, will be better positioned to more effectively and efficiently utilize public safety resources.

Eligibility requirements for the police chief position will ensure that only qualified law enforcement professionals can be appointed as a police department's chief executive. Currently, a police chief must be a sworn officer who has satisfied state training requirements, but there are no training or experience requirements for those appointed as the "appropriate authority". A fixed term of office, as is the case now for county prosecutors appointed by the governor, will provide the police chief the necessary insulation from inappropriate political interference in the operation of the department. A fixed term of office will also provide for periodic review of a police chief's performance, a process now limited to one time vetting at the time of the chief's initial appointment. Widening the pool of eligibles for the chief of police position beyond personnel within the department will enable municipalities to recruit the best candidate available. It will also provide an avenue of advancement for our state's most capable police professionals whose advancement to the position of chief is now constrained by the timing of vacancies in the department with which they happened to begin their careers.

The approach here suggested calls for a fresh look at long-standing beliefs and practices about the management of local police departments in New Jersey. Experience has demonstrated that the current statutory configuration will give rise to more unnecessary, distracting and corrosive "who's the boss" disputes like that played out recently in Newark. State law should not impose on municipalities a police leadership and management structure under which no-win, inside the stationhouse disputes arise again and again in municipalities large and small. We can structure the municipal police function in a way which better positions police executives and elected leaders to concentrate their focus on the delivery of public safety services to the citizens and communities they serve.

3. Interacting with the Public

Local government is able to operate most effectively when it is able to communicate with the people it serves. Municipalities interact with the public through the press, through their websites and through social media.

A. Dealing with the Media

Locally elected officials must deal with the media on a daily basis. Some municipalities have press officers who are responsible for dealing with media inquiries. Other municipalities do not. It is important for municipal officials to become comfortable with the idea of speaking to a reporter and having their words put into print.

Here is an article relating to elected official's interactions with the media.

i. Ten Rules of Dealing with the Media

By Joseph E. Ryan Public Information Director, City of Bayonne

After 17 years in municipal government, I have learned from experience that there are rules that municipal officials should follow when dealing with the media.

1. Tell the Truth Always answer truthfully. Unless someone's life would be endangered by the truth, don't lie to the press. If you lie once, they never will believe you again.

2. Answer Media Questions Unless the issue is a confidential personnel matter, an issue for the lawyers, or the subject of negotiations, give a response. If this is the case, try to explain why you can't talk about something, at least not at the moment. Never say "no comment." It looks as though you have something bad to hide. "No comment" is a signal to the reader that you are evil or guilty of something.

3. The Medium Is the Message Before you deal with a reporter from a particular medium, try to remember the main way in which that medium conveys the story. In the print media, the radio, and the internet, words matter most. For these media, choose your words very carefully. On television, visuals matter most. For TV, try to think of something that would offer good images. You don't get a second chance to make a first impression. The negative words printed in a story never go away. The images videotaped for a TV news story cannot be erased from the viewer's mind. They will also end up on YouTube.

About the worst thing you can do is to slam a door in a reporter's face while the cameras are running. Door-slamming is a signal to the viewer that you are guilty and have something bad to hide. This door-slamming activity is guaranteed to be shown repeatedly through multiple news cycles and on the internet. Unless you want to become an infamous figure for millions of TV viewers in New Jersey and surrounding states, don't ever slam the door in a reporter's face while the TV cameras are running. For TV, remember that dramatic is bad and boring is better. Fortunately, most municipal employees have no interest in becoming the evil stars of the nightly news.

4. Use the Internet Post your press releases on your municipal website and/or government access cable TV station. If your website can email your statements directly to subscribers free of charge, do it. In that way, your message is out there to counter negative bloggers.

If you don't have electronic media available, get them. Offer free email subscriptions to the announcements posted on the website, so that people can receive news directly from you. Use your cable provider's community bulletin board to issue emergency announcements to people who do not watch your municipal station.

In carefully chosen situations, such as during natural disasters, you may need to use robo-calls to get your message directly to the public. Take advantage of such social media as Twitter and Facebook, and remember to think before you post.

5. Designate a Spokesperson Municipalities need to have clearly designated spokespeople and a system for responding to media inquiries or referring them to the appropriate parties.

6. Learn the Deadline Always ask reporters what their deadlines are and then tell them you will call them back. In that way, you will know how much time you have to develop responses to their questions. Knowing how much time you have gives you the opportunity to consult with your municipal colleagues about an appropriate response to media inquiries.

7. Expect the Unexpected The most likely unexpected thing to happen is that someone in municipal government will leak a story to the media. When this happens, use all of the above tips. Just remember that you will have to use all of them quickly and suddenly.

It is not the reporter's fault that he or she has received leaked information. It's the fault of one of your colleagues who is either trying to look important or trying to advance a personal agenda. You have to understand that reporters receive leaks on a regular basis.

8. Respond Quickly to Errors If you see something wrong and outrageous in the media, and you want to respond, do so quickly. Call the reporter or the editor responsible within 24 hours. Explain to him or her why the headline or story was wrong. Ask for a correction and/or demand a rapid right of reply in the paper, on the web, or on the next broadcast, depending on the medium in which the problem appeared.

9. Be Polite In an emergency, journalists will generally share an interest in getting your information out to the public. Stay cool. It's not attractive to get cranky with the media. Remember you will have to deal with these reporters again and must retain their good will.

10. Be Prepared Stay well-informed throughout a crisis. Do not become isolated. Make sure that the local cable TV company provides your office with a free cable hook-up, so that you can watch live coverage of the emergency. Be sure that your municipal building has a back-up generator. Also keep an eye on Internet-based news services. You need to know at least as much as your best-informed constituents.

Expect the next crisis to come sooner rather than later. Do not be lulled into a false sense of security. Managing emergencies is a crucial part of our responsibilities as public officials, as Hurricane Sandy reminded us.

Dealing with the media is a constant responsibility. The bad news is that there will always be negative headlines to overcome. The good news is that each day brings another news cycle and a chance for a new beginning.

If you follow the rules outlined above, you will increase your chances for success. You must remember, though, that there is never a guarantee of success. We are often at the mercy of events, need a lot of luck, and must always learn from experience.

B. Website Design

For many, if not most citizens, the internet has become a "go to" source for information on local events. A well-designed and efficient website can go a long way in helping a municipality communicate with the public.
Here are two articles relating to website design.

i. You and Your Website: Part 1 How to Manage Your Website

There's a lot to look at on New Jersey's municipal websites. With over 70% of municipalities having a site, it is not surprising to find great diversity in how municipalities manage their sites and the information and features presented to the public. This article looks at the ways municipalities can choose to manage their websites.

How to Manage Your Website

While many municipalities had their original site develop more or less spontaneously ("Let's put up a website!"), the importance of the web as a management and public communications tool have local officials reconsidering how they manage this resource.

There are primarily five different ways to manage a website:

- Commercial Content Management System
- Vendor Managed Systems–government focus
- Local vendor developed and managed systems
- Self-hosted and volunteer systems
- Community/Business oriented sites

In considering these options, several general thoughts apply in most cases (of course, everyone's circumstances are different–this is a general guide). First, "you get what you pay for," in that there is a direct correlation between what you invest in your site, be it staff or volunteer time, or payments to a contractor, in the design, content, and features on your site. Be prepared to set a resource budget (money and time) and make the investment.

The second guide is that someone needs to decide what kind of site you'll have: relatively static, news-based, interactive with community, or a combination of approaches. And along with that, set an approach to make decisions: an advisory committee, a single individual, or whatever works for the organization.

Once those decisions are made, and regardless of the approach, the third guide is to assign a staff member to manage and coordinate the site. A single staff member needs to be in charge of coordinating staff input, changes, new content, editorial consistency, and any relationship with a vendor.

Fourth, own your domain name and content yourself; don't let a third party or a volunteer have ownership of your content or web address. There have been many horror stories of websites gone awry when volunteers got mad, or an employee or elected official left, and the municipality realized it didn't own its own website It may have then become unusable at best, or turned in to a porn site at worst. Fifth, regardless of whatever type of services you buy from a vendor, review the contract–know what you are getting and paying for–and have your attorney review it as well.

Finally, consider designing the site using web accessibility standards. Good web design means your web site will let people with visual impairments and other disabilities access the site using specialized web programs - but the site needs to accommodate those programs. Web standards are the way to get there. For more information on what accessibility means, go to www.w3.org/wai/intro/accessibility.php.

The Five Ways to Manage Websites

The following is a brief description of the five ways to manage websites When investigating pricing, in all cases, be sure to get rates for any custom or hourly work.

Commercial Content Management System

- Vendors offer standard templates to control look and design or will design to your needs
- Several vendors focus on serving local governments
- Content management systems can permit local staff to update the site independently of vendor involvement
- Highly flexible content capability
- Can have higher start-up costs, but offset by lower ongoing costs

Vendor Managed Systems - Government Focused

- Custom designed or designed from templates
- Developer makes changes–but timeliness can be a factor
- Can meet specific needs better than any other option
- More personal attention from developer

- Higher cost can be offset with greater attention to detail–trades off routine staff to make changes

Local Vendor Developed and Managed Systems

- Local businesses in the web site management business
- Not necessarily government focused
- May be very responsive to local officials
- Can be costly to make updates; may not be time sensitive

Self-Hosted & Volunteer Systems

- Need to dedicate sufficient staff time to do it well
- Can build community support
- May not keep up on latest technology
- Can be limited on design capability
- Inherent concern about controlling volunteer management and hosting
- Risk of loss of editorial and design control, or even the site itself
- The risks mean it should be avoided where possible

Commercial, Community Oriented Sites

- Part of and managed by an outside commercial or community web site organization
- Can be good community relations builder
- Government may not be primary focus - ad sales become important and could be controversial
- Be sure to keep your site separate and reachable separately
- Similar issues to local vendor managed

About Hosting and Domain Names

Regardless of who manages the site, it has to be connected to the Internet. Most website managers will contract with a commercial hosting service to handle this function due to the highly technical aspects of hosting, security, backup, and reliability. The municipal website coordinator should be sure to understand who is hosting it, where the system the hosted, how to move it and run it elsewhere (in the event your provider goes out of business), and ensure that the municipality is the owner of the domain name.

Question the service provider. Find out about:

- Quality of service–get quality guarantee of site availability into at least 99.999% plus (i.e., a guarantee of 99% uptime is equal to over three and a half days of downtime a year).
- Talk to other clients–get input on responsiveness and uptime

When it comes to your domain name, consider purchasing a multi-year license, or acquire lifetime assignment of the domain name. There have been too many times when a name expired and was not renewed because the email address of the person who registered it changed, and web squatters bought the name and linked it to a porn or other objectionable site. Also consider buying domains of similar sounding or spelling sites, including .com, .us, .gov sites, and even .net, or .org sites to avoid potential squatter abuse.

Procuring Website and State Contracting Laws

Whenever a commercial service is used for website management and hosting is used, municipal officials have to take into account laws regulating procurement of services. This includes compliance with the Local Public Contracts and Pay-to-Pay laws. Under current law, the primary concerns are the extent of competition used in procuring the service, which also affects the length of the contract.

After conducting research, if the cost of services over the life of the contract is estimated to exceed the municipality's bid threshold under the LPCL, the following options can be considered in the procurement process.

- Bid the service according to the normal bid process
- Procure without formal bidding as a professional (artistic) service for one year contract, or as an Extraordinary Unspecifiable Service for a 2-year contract. An EUS can have an option to extend it for an additional two years, a professional service is limited to one year.
- Use the formal competitive contracting process for up to five years with DLGS approval. Given the nature of these services, upon the submission of a proper request, the Division will routinely approve web site design and management services (not standalone hosting) for competitive contracting.

If the estimated cost of the services over the life of the contract is less than the bid threshold, the municipality must solicit more than one proposal and then contract with the vendor they find to be most advantageous, price and other factors considered. In this case a two-year contract, with the option to extend for up to two more years is allowed (extensions are not considered in the decision to use a formal process or obtain quotes).

In the case where the value of the contract for the service is expected to exceed $17,500, the municipality must apply the Pay-to-Play provisions of *N.J.S.A.* 19:44A-20.4 et seq. or a local Pay-to-Play ordinance

In Brief: Managing Your Website

- Decide what you want your site to be
- Review options
- Look at other sites–find out how they are managed
- Consider and evaluate price alternatives
- Assign responsibility to research, develop and manage it
- Allow sufficient time–it will take twice as long

ii. You and Your Website: Part 2

Managing Web Content and Innovations
This article discusses the basic features found on websites and the innovations that are leading the charge to provide services and information over the web and starting to show up on municipal sites.

Basic features found on most websites include: listings (with photos and sometimes bios) of elected officials and some senior administrative officials, and sometimes, email links to them; listings and links to more information about departments, boards, committees, and commissions; governing body meeting agendas and minutes; a news section of upcoming government and community events, often displayed in a (sometimes downloadable) calendar format; an email and telephone directory of staff and officials, downloadable forms, such as permit forms, licenses, and various applications; and in many cases, photos of local events.

More sophisticated municipalities take additional steps assisting the public by providing: search engines to help people find information on their site, privacy statements (describing if "cookies" or other tracking information is used), registration for mailing lists; access to the Municipal Code (usually a link to the web site of the company maintaining the codebook), emergency information (listings of shelters and support organizations), and information about public bids and requests for proposals.

Moving into the area of innovations, a good number of municipalities are seeing how an investment in expanding their web site into providing services can make a difference in serving the public. These organizations are providing access to geographic information systems (GIS); permitting online payment of taxes and utility bills, running online registration and payment for recreation programs (usually done through a third party provider), create online polls and questionnaires permitting the public to express their views on local issues; and information about public auctions of property no longer needed by the government.

One of the most challenging services that are being tried experimentally by a few are guest books, message boards, forums, and blogs. These services can provide a new level of public participation by providing an opportunity for local officials or community members to post their thoughts and opinions on line, with the opportunity for the public to comment on them. These are challenging services as they can open the door for vociferous public debate, and can, depending on the situation, degrade into name calling. Caution must be used when deploying these resources and it should be made clear to the public how these activities are to be used.

Municipalities are integrating their website and communication activities with their local cable TV public access channel, providing live or recorded video of public meetings, and using

"RSS" technology to permit new postings of information to be received directly by those using RSS or blog technology.

It's also important to consider the use of web standards to facilitate access by visually and physically disabled individuals, and foreign language translation tools. Designing websites using disability standards does not take away anything from use by those without disabilities, but results in broader access to information by individuals with visual or physical limitations.

Also, government cannot forget that more and more of the population are not native English speakers, and providing links to a service (usually free) that will translate the webpage to another language gives people greater access to government information

Website Innovation Management Challenges

Municipalities manage their websites in many ways: from citizen volunteers to part-time or full-time staff, private servicers, to consultants. Regardless of who manages the site, there are some basic management techniques that apply to managing innovation on websites

The first rule in managing innovation is: take care of the basics. Don't try to add everything at once. The second rule is, have a plan! Create a Website Innovation Map that identifies what you want to do. The plan should:

- Identify specific functions to add
- Establish realistic time frames
- Create a website enhancement budget
- Identify resources (internal and vendor)

Regardless of how and who adds services, keep in mind several rules:

- RULE 1: Check references of the technology or vendor you use (and one reference is not enough!). Ask about cost, satisfaction before and after implementation, how long it took, and describe the working relationship. The higher the cost and more complex the implementation, the more important reference checks become.
- RULE 2: Message Boards and Forums should not be open-ended. They should have identified time frames. Spell out the rules for language, etiquette, and requirement that comments are on topic. Make it so comments that do not follow the rules may be deleted.
- RULE 3: Guest books and blog responses should not allow advertising. Spell out the rules for language and on topic up front.

When dealing with any tool that allows public comments, be sure to allow staff time to manage the site to ensure they are meeting the established standards and to eliminate spam and other inappropriate entries.

Networking for Technology Coordinators

Up until recently, there were few opportunities for municipal website managers and technology coordinators generally to communicate with others doing the same things. Those involved in providing or managing technology have a need to share information with their peers–and in doing so, can learn from the successes and mistakes of others and save time and money while doing it.

New Jersey now has an organization dedicated to managers of government technology: NJ GMIS, the recently formed New Jersey Chapter of Government Management Information Sciences. The municipal government section of NJ GMIS supports municipal technology managers, whoever they are, and at whatever level of expertise they bring to the job.

Our members-only list serve provides a way to immediately contact fellow NJ technology managers with questions about technology policy, services, hardware, and software. And the NJ GMIS list serve goes beyond municipal government, it also reaches members of the county, public school, and state government sections, bringing a single municipal technology manager far greater New Jersey resources then they can get locally.

As a chapter of GMIS International, the support lines extend beyond New Jersey. A network of hundreds of local and state government technology experts from all over the country are available to answer questions and provide support with the send of an e-mail. Plus there is a national conference, monthly magazine, access to RFP's, and more.

To join, go to www.gmis.org and take a look at what the association offers and join online.

C. Social Media

Social media has also really taken off over the last few years. Many municipalities use Twitter or Facebook to communicate with their residents.

There are two issues which one should keep in mind when dealing with social media. The first is the OPRA and whether posts and comments should be considered "government records" under the law. There is no firm consensus on this point, but the general rule has been that posts and comments would be government records. Second, municipalities must be careful to respect the first amendment rights of citizens who express themselves on the internet, including on comments sections of public websites or social media pages. Recent case law has been instructive in how municipal governments and officials must treat comments on their social media pages. While different rules apply for personal or campaign social media pages, when an official municipal government's page blocks an individual or individuals from commenting, this may be a violation of First Amendment rights.

It is important to review any social media policy your municipality may have with your municipal attorney, and to review this policy before blocking or preventing any one from commenting on your municipal governments official social media pages.

Here is an article relating social media.

i. Taming the Wild West: Bay Head Puts Social Media Guidelines in Place

By Bill Curtis, Mayor, Borough of Bay Head

For many, social networking seems to have been around forever. But, for many businesses large and small, for governmental agencies and municipalities, it is a brand new phenomenon that has to be contended with.

With "pay to play" rules, the increased litigiousness of our society, and social networking showing no signs of going away, municipalities, like businesses, have to find a way to deal with the ethical changes that come along with this medium of communication.

Having your employees involved in the community where they live and/or work can be a good thing–so long as the networking is done correctly. You can't just give your employees a free rein and hope for the best. But, in all fairness to them, you can't blame them for violating rules that don't officially exist. You need a social networking policy that clearly spells out what is and isn't allowed, both at work and outside of work if they represent the borough, city, township, or village.

Bay Head recognized that doing nothing and hoping for the best was not acceptable. In fact, it is irresponsible. We recognized we needed a social networking policy in place.

To get this done, we assigned the task to Councilwoman Barnes who researched what should be covered, how it would best fit Bay Head, reviewed it with borough employees and our legal counsel, wrote it and rewrote it, then presented it to Mayor and Council for their approval.

Following are 10 criteria we looked at when formulating a written social networking policy for Bay Head. These are the criteria we suggest all municipalities look at when developing policies.

1. Develop a Clear Philosophy What is your overall attitude toward social networking? Should it be strictly forbidden for personal use? May it be used for municipal business? All sites are different; how do you restrict its use?

2. Clearly Define "Social Networking" The term means different things to different people. You may want to name specific sites in your written policy. However, since new sites are always popping up, be clear that your policy is not limited to only the sites identified therein.

3. Identifying Oneself If employees identify themselves as employees of the municipality they become, to some degree, a representative of the municipality. If you allow network users to identify themselves as employees of the municipality, require that personal blogs and personal posts contain a disclaimer that clearly states the opinion(s) expressed there are theirs and not those of the municipality.

4. Endorsements Some sites provide an opportunity to write recommendations or referrals for others. If users do this as a representative of the municipality, it could give the impression your municipality endorses the individual being recommended. For that reason alone, you should not allow it.

5. Referring to Municipal Employees, Constituents, Residents, or Vendors This is never a good idea. Don't allow it without the express, written consent by the party and even then it is not good policy.

6. Proprietary or Confidential Information Because social networking is somewhat informal and sites have varying levels of security, breaches are possible. Make it clear to your users that proprietary information is not to be discussed, ever. You may want to define what information is off limits (i.e. financial and personnel information and information about residents).

7. Terms of Service (ToS) Most sites require users, upon signing up, to agree to abide by a ToS document. You should hold employees responsible for reading, understanding and complying with the ToS of the sites they use. One such requirement prohibits users from giving false names or false information, so don't require your users to give a pseudonym when signing up.

8. Copyright and Other Legal Issues Require your employees to comply with copyright/plagiarism laws, libel and defamation issues.

9. Productivity Impact Make it clear that social networking activities are not to interfere with the employee's stated job responsibilities.

10. Disciplinary Action Your policy must include consequences for infractions.

With these 10 points in mind, we formulated Bay Head's Social Media Networking Policy which is as follows:

1. Personal blogs, social networking websites, and multi-media websites (including, but not limited to, websites such as Facebook, LinkedIn, and Twitter) should have clear disclaimers that the views expressed by the author in the blog are the author's alone and do not represent the views of the Borough of Bay Head. Be clear and write in the first person. Make your writing clear that you are speaking for yourself and not on behalf of the borough.

2. Information published on your aforementioned blog(s) should comply with the borough's confidentiality and disclosure of proprietary data policies. This also applies to comments posted on other blogs, forums, and social networking sites.

3. Be respectful of the borough, other employees, residents, constituents, vendors, and independent contractors.

4. Social media activities should not interfere with work commitments, priorities and responsibilities.

5. Your online presence reflects the Borough. Be aware that your actions captured via images, posts, or comments can reflect that of the borough.

6. Do not reference or cite borough employees, residents, constituents, vendors, or independent contractors without their express consent.

7. The Borough of Bay Head logo may not be used without written consent.

8. Recognize that you are legally liable for anything you write or present online. Employees can be disciplined by the borough for commentary, content, or images that are defamatory, pornographic, proprietary, harassing, libelous, or that can create a hostile work environment. You can also be sued by borough employees, residents, constituents, vendors, or independent contractors, and individual or entity that views your commentary, content, or images as defamatory, pornographic, proprietary, harassing, libelous or creating a hostile work environment.

We strongly encourage you to formulate a policy for you municipality if you haven't already done so. Consider each of the 10 points in our guidelines and tailor a policy to suit your municipality. The social media network phenomenon is going to continue to grow. It isn't going away. We are going to continually monitor our policy for appropriateness.

4. Some State Entities that Local Elected Officials Should be Familiar With

It's always good to know who does what and where to go if you have a question. Here is a list of some state entities you should be aware of. If you would like more detail, please order a copy of the League's yearly legislative directory. It's an excellent resource!

A. The Governor's Office

The Governor is the Chief Executive of the State of New Jersey. Aside from having the authority to sign or to veto bills into law, the Governor runs the apparatus of state government.
www.state.nj.us/governor/

B. Your Local State Senator and Assembly Representatives

Your municipality is located within one of New Jersey's 40 legislative districts. Each district has one senator and two assembly representatives. These individuals represent you and your municipality in Trenton. They help set the State's policy on many issues which affect municipalities. Therefore, the League recommends that you get to know them better.
www.njleg.state.nj.us/

C. Department of Community Affairs

The Department of Community Affairs (DCA) is a state agency with a wide breadth of responsibilities which include overseeing local government in the State of New Jersey. While the Commissioner of the DCA is in charge of the entire department, there are a number of sub-entities within the DCA with which you should be familiar.
www.state.nj.us/dca/

i. Division of Local Government Services

The Division of Local Government Services (DLGS) is the entity with which municipalities deal with the most. Municipalities have numerous reporting requirements to the DLGS, not the least of which is the yearly submission of their municipal budget for approval. The DLGS releases helpful Local Finance Notices (LFNs) on different issues and can be viewed as reliable guidance on new laws or regulations.
www.nj.gov/dca/divisions/dlgs/

ii. Local Finance Board

The Local Finance Board (LFB) has two distinct jobs. First, it is tasked with overseeing the fiscal health of New Jersey municipalities. For example, a municipality must receive LFB approval before they can bond (go into debt). Additionally, they have been tasked to oversee the local government ethics law. Consequently, they decide ethics complaints lodged against local officials.
www.state.nj.us/dca/divisions/dlgs/programs/lfb.html

iii. Division of Codes and Standards

This Division oversees the administration of the Uniform Construction Code (UCC) which serves as a state-wide building code and the Residential Site Improvement Standards (RSIS) which sets minimum standards for residential public improvements such as street width and grade, www.state.nj.us/dca/divisions/codes/

iv. Council on Affordable Housing

The Council on Affordable Housing (COAH) is an entity located within DCA which oversees municipalities' affordable housing requirements. In *Southern Burlington County NAACP v. Mt. Laurel Twp.* and its progeny, the New Jersey Supreme Court has determined that municipalities have an obligation to: 1) not discriminate against lower income individuals through their housing policies; and 2) through affirmative action, give lower income individuals a realistic opportunity to reside in their municipality.
www.state.nj.us/dca/affiliates/coah/index.html

D. Department of Environmental Protection

The Department of Environmental Protection (DEP) is in charge of protecting New Jersey's environmental resources. Municipalities most often deal with the DEP in regards to its zoning authorities where municipalities and the DEP share responsibility for building approval. Additionally, municipalities are tasked with creating stormwater plans under DEP guidance. Finally, municipalities often must receive permits from the DEP for their water or wastewater treatment plants.
www.nj.gov/dep/

i. Highlands and Pinelands Councils

The Highlands and Pinelands Councils are two separate state entities which were created by state statute to oversee development in two areas considered to be "natural resources" by the State of New Jersey. Both councils may preempt certain aspects of a municipality's zoning powers.
www.state.nj.us/njhighlands/
www.state.nj.us/pinelands/

E. Public Employees Relations Commission

The Public Employees Relations Commission (PERC) is a state entity tasked with overseeing the labor relations between public entities and their employees' unions. PERC oversees dispute resolution regarding collective bargaining agreements and is the entity to which municipalities or unions can file unfair labor practice complaints regarding perceived violations of the Employee-Employer Relations Act. The Commission's staff also provides representation, mediation, fact finding, conciliation, and arbitration services.
www.state.nj.us/perc/

F. Civil Service Commission

The New Jersey Civil Service Commission (CSC) serves as the state's department of personnel for state employees. The Local service section is the state entity tasked with overseeing the merit and fitness system which controls many of the promotional and employment decisions for some municipalities which are civil service communities.
www.nj.gov/csc/

APPENDIX

A. The Open Public Records Act
B. The Open Public Meetings Act
C. Local Public Contracts Law
D. Local Government Ethics Law

A. The Open Public Records Act

47:1A-1. Legislative findings and declarations

The Legislature finds and declares it to be the public policy of this State that:

government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law, federal regulation, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

47:1A-1.1. Definitions
As used in P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented:

"Biotechnology" means any technique that uses living organisms, or parts of living organisms, to make or modify products, to improve plants or animals, or to develop micro-organisms for specific uses; including the industrial use of recombinant DNA, cell fusion, and novel bioprocessing techniques.

"Custodian of a government record" or "custodian" means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented:

information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;

any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the medical examiner at the scene of death or in the course of a post mortem examination or autopsy made by or caused to be made by the medical examiner except:

when used in a criminal action or proceeding in this State which relates to the death of that person,

for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,

for use in the field of forensic pathology or for use in medical or scientific education or research, or

for use by any law enforcement agency in this State or any other state or federal law enforcement agency;

criminal investigatory records;

victims' records, except that a victim of a crime shall have access to the victim's own records;

personal firearms records, except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice;

personal identifying information received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name, address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee;

trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure;

any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege;

administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security;

emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;

security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

information which, if disclosed, would give an advantage to competitors or bidders;

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position;

information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office;

information which is to be kept confidential pursuant to court order;

any copy of form DD-214, or that form, issued by the United States Government, or any other certificate of honorable discharge, or copy thereof, from active service or the reserves of a branch of the Armed Forces of the United States, or from service in the organized militia of the State, that has been filed by an individual with a public agency, except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records; and that portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c. 188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor.

A government record shall not include, with regard to any public institution of higher education, the following information which is deemed to be privileged and confidential:

pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to research, development information, testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available;

test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination;

records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication;

valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access;

information contained on individual admission applications; and

information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

"Personal firearms record" means any information contained in a background investigation conducted by the chief of police, the county prosecutor, or the Superintendent of State Police, of any applicant for a permit to purchase a handgun, firearms identification card license, or firearms registration; any application for a permit to purchase a handgun, firearms identification card license, or firearms registration; any document reflecting the issuance or denial of a permit to purchase a handgun, firearms identification card license, or firearms registration; and any permit to purchase a handgun, firearms identification card license, or any firearms license, certification, certificate, form of register, or registration statement. For the purposes of this paragraph, information contained in a background investigation shall include, but not be limited to, identity, name, address, social security number, phone number, fax number, driver's license number, email address, social media address of any applicant, licensee, registrant or permit holder.

"Public agency" or "agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

"Law enforcement agency" means a public agency, or part thereof, determined by the Attorney General to have law enforcement responsibilities.

"Constituent" means any State resident or other person communicating with a member of the Legislature.

"Member of the Legislature" means any person elected or selected to serve in the New Jersey Senate or General Assembly.

"Criminal investigatory record" means a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.

"Victim's record" means an individually-identifiable file or document held by a victims' rights agency which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records.

"Victim of a crime" means a person who has suffered personal or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime, or if such a person is deceased or incapacitated, a member of that person's immediate family.

"Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board, established pursuant to P.L.1971, c. 317 (C.52:4B-1 et seq.).

47:1A-1.2. Access to biotechnology trade secrets by state and local agencies available only as allowed by federal law

a. When federal law or regulation requires the submission of biotechnology trade secrets and related confidential information, a public agency shall not have access to this information except as allowed by federal law.

b. A public agency shall not make any biotechnology trade secrets and related confidential information it has access to under this act available to any other public agency, or to the general public, except as allowed pursuant to federal law.

47:1A-1.3. Handgun and firearms purchasers; scope of data available

Notwithstanding the provisions of any other statute or regulation to the contrary, government record as defined in section 1 of P.L.1995, c. 23 (C.47:1A-1.1) shall include aggregate information regarding the total number of permits to purchase a handgun and firearms purchaser identification cards, without any personal identifying information, that have been issued by the Superintendent of State Police or the Chief of Police of a municipal police department.

47:1A-2. Repealed by L.2001, c. 404, § 17, eff. July 7, 2002

47:1A-2.1. Repealed by L.2001, c. 404, § 17, eff. July 7, 2002

47:1A-2.2. Access to public records by inmates; victim's personal identifying information

a. Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) or the provisions of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented shall be denied.

b. A government record containing personal identifying information which is protected under the provisions of this section may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.

c. Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, or any other law to the contrary, a custodian shall not comply with an anonymous request for a government record which is protected under the provisions of this section.

47:1A-3. Records of investigations in progress

a. Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.).

b. Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;

if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;

if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or court rule;

information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;

information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;

information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and

information as to circumstances surrounding bail, whether it was posted and the amount thereof.

Notwithstanding any other provision of this subsection, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision.

47:1A-4. Repealed by L.2001, c. 404, § 17, eff. July 7, 2002

47:1A-5. Custodian of government records to permit inspection, examination and copying; certain information to be redacted; purchase of records; immediate access in certain circumstances

a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or in the case of a municipality having a population of 5,000 or fewer according to the most recent federal decennial census, a board of education having a total district enrollment of 500 or fewer, or a public authority having less than $10 million in assets, during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less; unless a government record is exempt from public access by: P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c. 188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor. Except where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

b. A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be$0.05 per letter size page or smaller, and $0.07 per legal size page or larger. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.

c. Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The requestor shall have the opportunity to review and object to the charge prior to it being incurred.

d. A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

f. The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following: (1) specific directions and procedures for requesting a record; (2) a statement as to whether prepayment of fees or a deposit is required; (3) the time period within which the public agency is required by P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, to make the record available; (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if the request is fulfilled or denied. The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of $5 to reproduce.

g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the requestor and shall make arrangements to promptly make available a copy of the record. If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.

h. Any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.

i. Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor. If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor, the custodian shall not be required to respond until the requestor reappears before the custodian seeking a response to the original request. If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.

j. A custodian shall post prominently in public view in the part or parts of the office or offices of the custodian that are open to or frequented by the public a statement that sets forth in clear, concise and specific terms the right to appeal a denial of, or failure to provide, access to a government record by any person for inspection, examination, or copying or for purchase of copies thereof and the procedure by which an appeal may be filed.

k. The files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.

47:1A-6. Proceeding to challenge access denial; hearing

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or

in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c. 404 (C.47:1A-7).

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

47:1A-7. Government Records Council; powers and duties; jurisdiction

a. There is established in the Department of Community Affairs a Government Records Council. The council shall consist of the Commissioner of Community Affairs or the commissioner's designee, the Commissioner of Education or the commissioner's designee, and three public members appointed by the Governor, with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The three public members shall serve during the term of the Governor making the appointment and until the appointment of a successor. A public member shall not hold any other State or local elected or appointed office or employment while serving as a member of the council. A public member shall not receive a salary for service on the council but shall be reimbursed for reasonable and necessary expenses associated with serving on the council and may receive such per diem payment as may be provided in the annual appropriations act. A member may be removed by the Governor for cause. Vacancies among the public members shall be filled in the same manner in which the original appointment was made. The members of the council shall choose one of the public members to serve as the council's chair. The council may employ an executive director and such professional and clerical staff as it deems necessary and may call upon the Department of Community Affairs for such assistance as it deems necessary and may be available to it.

b. The Government Records Council shall:

establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;

receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;

issue advisory opinions, on its own initiative, as to whether a particular type of record is a government record which is accessible to the public;

prepare guidelines and an informational pamphlet for use by records custodians in complying with the law governing access to public records;

prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access, which records custodians shall make available to persons requesting access to a government record;

prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records;

make training opportunities available for records custodians and other public officers and employees which explain the law governing access to public records; and

operate an informational website and a toll-free helpline staffed by knowledgeable employees of the council during regular business hours which shall enable any person, including records custodians, to call for information regarding the law governing access to public records and allow any person to request mediation or to file a complaint with the council when access has been denied;

In implementing the provisions of subsections d. and e. of this section, the council shall: act, to the maximum extent possible, at the convenience of the parties; utilize teleconferencing, faxing of documents, e-mail and similar forms of modern communication; and when in-person meetings are necessary, send representatives to meet with the parties at a location convenient to the parties.

c. At the request of the council, a public agency shall produce documents and ensure the attendance of witnesses with respect to the council's investigation of any complaint or the holding of any hearing.

d. Upon receipt of a written complaint signed by any person alleging that a custodian of a government record has improperly denied that person access to a government record, the council shall offer the parties the opportunity to resolve the dispute through mediation. Mediation shall enable a person who has been denied access to a government record and the custodian who denied or failed to provide access thereto to attempt to mediate the dispute through a process whereby a neutral mediator, who shall be trained in mediation selected by the council, acts to encourage and facilitate the resolution of the dispute. Mediation shall be an informal, nonadversarial process having the objective of helping the parties reach a mutually acceptable, voluntary agreement. The mediator shall assist the parties in identifying issues, foster joint problem solving, and explore settlement alternatives.

e. If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the council shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. Otherwise, the council shall notify the records custodian against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The custodian shall have the opportunity to present the board with any statement or information concerning the complaint which the custodian wishes. If the council is able to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. If the council is unable to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, the council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable. The council shall, by a majority vote of its members, render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented. If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c. 404 (C.47:1A-11). A decision of the council may be appealed to the Appellate Division of the Superior Court. A decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to section 7 of P.L.2001, c. 404 (C.47:1A-6). All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

f. The council shall not charge any party a fee in regard to actions filed with the council. The council shall be subject to the provisions of the "Open Public Meetings Act," P.L.1975, c. 231 (C.10:4-6), except that the council may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

g. The council shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches.

47:1A-8. Common law right of access

Nothing contained in P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency.

47:1A-9. Construction with other laws

a. The provisions of this act, P.L.2001, c. 404 (C.47:1A-5 et al.), shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.); any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

b. The provisions of this act, P.L.2001, c. 404 (C.47:1A-5 et al.), shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

47:1A-10. Personnel or pension records not considered government records; exceptions

Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

47:1A-11. Violations

a. A public official, officer, employee or custodian who knowingly and willfully violates P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty of $1,000 for an initial violation, $2,500 for a second violation that occurs within 10 years of an initial violation, and $5,000 for a third violation that occurs within 10 years of an initial violation. This penalty shall be collected and enforced in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.), and the rules of court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section.

Appropriate disciplinary proceedings may be initiated against a public official, officer, employee or custodian against whom a penalty has been imposed.

47:1A-12. Court rules

The New Jersey Supreme Court may adopt such court rules as it deems necessary to effectuate the purposes of this act.

47:1A-13. Funding

The Commissioner of Community Affairs shall include in the annual budget request of the Department of Community Affairs a request for sufficient funds to effectuate the purposes of section 8 of P.L.2001, c. 404 (C.47:1A-7).

B. The Open Public Meetings Act

10:4-1 to **10:4-5.** Repealed by L.1975, c. 231, § 17, eff. Jan. 19, 1976

10:4-6. Short title; Senator Byron M. Baer Open Public Meetings Act

This act shall be known and may be cited as the "Senator Byron M. Baer Open Public Meetings Act."

10:4-7. Legislative findings and declaration

The Legislature finds and declares that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and hereby declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

The Legislature further declares it to be the public policy of this State to insure that the aforesaid rights are implemented pursuant to the provisions of this act so that no confusion, misconstructions or misinterpretations may thwart the purposes hereof.

The Legislature, therefore, declares that it is the understanding and the intention of the Legislature that in order to be covered by the provisions of this act a public body must be organized by law and be collectively empowered as a multi-member voting body to spend public funds or affect persons' rights; that, therefore, informal or purely advisory bodies with no effective authority are not covered, nor are groupings composed of a public official with subordinates or advisors, who are not empowered to act by vote such as a mayor or the Governor meeting with department heads or cabinet members, that specific exemptions are provided for the Judiciary, parole bodies, the State Commission of Investigation, the Apportionment Commission and political party organization; that to be covered by the provisions of this act a meeting must be open to all the public body's members, and the members present must intend to discuss or act on the public body's business; and therefore, typical partisan caucus meetings and chance encounters of members of public bodies are neither covered by the provisions of this act, nor are they intended to be so covered.

10:4-8. Definitions

As used in this act:

a. "Public body" means a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds including the Legislature, but does not mean or include the judicial branch of the government, any grand or petit jury, any parole board or any agency or body acting in a parole capacity, the State Commission of Investigation, the Apportionment Commission established under Article IV, Section III, of the Constitution, or any political party committee organized under Title 19 of the Revised Statutes.

b. "Meeting" means and includes any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

c. "Public business" means and includes all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business.

d. "Adequate notice" means written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) prominently posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegrammed, or hand delivered to at least two newspapers which newspapers shall be designated by the public body to receive such notices because they have the greatest likelihood of informing the public within the area of jurisdiction of the public body of such meetings, one of which shall be the official newspaper, where any such has been designated by the public body or if the public body has failed to so designate, where any has been designated by the governing body of the political subdivision whose geographic boundaries are coextensive with that of the public body and (3) filed with the clerk of the municipality when the public body's geographic boundaries are coextensive with that of a single municipality, with the clerk of the county when the public body's geographic boundaries are coextensive with that of a single county, and with the Secretary of State if the public body has Statewide jurisdiction. For any other public body the filing shall be with the clerk or chief administrative officer of such other public body and each municipal or county clerk of each municipality or county encompassed within the jurisdiction of such public body. Where annual notice or revisions thereof in compliance with section 13 of this act set forth the location of any meeting, no further notice shall be required for such meeting.

10:4-9. Meeting of public body; adequate notice to public; necessity; exceptions

a. Except as provided by subsection b. of this section, or for any meeting limited only to consideration of items listed in section 7. b. no public body shall hold a meeting unless adequate notice thereof has been provided to the public.

b. Upon the affirmative vote of three quarters of the members present a public body may hold a meeting notwithstanding the failure to provide adequate notice if:

(1) such meeting is required in order to deal with matters of such urgency and importance that a delay for the purpose of providing adequate notice would be likely to result in substantial harm to the public interest; and

(2) the meeting is limited to discussion of and acting with respect to such matters of urgency and importance; and

(3) notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same in the public place described in section 3. d. above, and also by notifying the two newspapers described in section 3. d. by telephone, telegram, or by delivering a written notice of same to such newspapers; and

(4) either (a) the public body could not reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided; or (b) although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.

10:4-9.1. Notice of public meetings through the Internet

In addition to the notice requirements of the "Open Public Meetings Act," P.L.1975, c. 231 (C.10:4-6 et seq.), a public body may provide electronic notice of any meeting of the public body through the Internet.

As used in this section, "electronic notice" means advance notice available to the public via electronic transmission of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken at such meeting.

As used in this section, "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

10:4-9.2. Electronic notice not a substitute for adequate notice requirements

Nothing in this act shall be construed as affecting or superseding the adequate notice requirements that are imposed by the "Open Public Meetings Act," P.L.1975, c. 231 (C.10:4-6 et seq.) and no electronic notice issued pursuant to this act shall be deemed to substitute for, or be considered in lieu of, such adequate notice.

10:4-10. Statement in minutes of meeting on adequate notice

At the commencement of every meeting of a public body the person presiding shall announce publicly, and shall cause to be entered in the minutes of the meeting, an accurate statement to the effect:

a. that adequate notice of the meeting has been provided, specifying the time, place, and manner in which such notice was provided; or

b. that adequate notice was not provided, in which case such announcement shall state (1) the nature of the urgency and importance referred to in subsection 4. b. (1) and the nature of the substantial harm to the public interest likely to result from a delay in the holding of the meeting; (2) that the meeting will be limited to discussion of and acting with respect to such matters of urgency and importance; (3) the time, place, and manner in which notice of the meeting was provided; and (4) either (a) that the need for such meeting could not reasonably have been foreseen at a time when adequate notice could have been provided, in which event, such announcement shall specify the reason why such need could not reasonably have been foreseen; or (b) that such need could reasonably have been foreseen at a time when adequate notice could have been provided, but such notice was not provided, in which event the announcement shall specify the reason why adequate notice was not provided.

10:4-11. Failure to invite portion of members to circumvent provisions of act; prohibition

No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act.

10:4-12. Meetings open to public; exclusion of public; subject matter of discussion

a. Except as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times. Nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit, or regulate the active participation of the public at any meeting, except that a municipal governing body and a board of education shall be required to set aside a portion of every meeting of the municipal governing body or board of education, the length of the portion to be determined by the municipal governing body or board of education, for public comment on any governmental or school district issue that a member of the public feels may be of concern to the residents of the municipality or school district.

b. A public body may exclude the public only from that portion of a meeting at which the public body discusses any:

(1) matter which, by express provision of federal law, State statute, or rule of court shall be rendered confidential or excluded from the provisions of subsection a. of this section;

(2) matter in which the release of information would impair a right to receive funds from the Government of the United States;

(3) material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance, and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by an institution or program, including but not limited to, information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress, or condition of any individual, unless the individual concerned (or, in the case of a minor or an incapacitated individual, the individual's guardian) shall request in writing that the material be disclosed publicly;

(4) collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body;

(5) matter involving the purchase, lease, or acquisition of real property with public funds, the setting of banking rates, or investment of public funds, if it could adversely affect the public interest if discussion of the matters were disclosed;

(6) tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair that protection, or investigations of violations or possible violations of the law;

(7) pending or anticipated litigation or contract negotiation other than in subsection b. (4) herein in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer;

(8) matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting; or

(9) deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility.

10:4-13. Exclusion of public; resolution; adoption; contents

No public body shall exclude the public from any meeting to discuss any matter described in subsection 7. b. until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted:

a. Stating the general nature of the subject to be discussed; and

b. Stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public.

10:4-14. Minutes of meetings; availability to public

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act.

10:4-15. Proceeding in lieu of prerogative writ to void action at nonconforming meeting; parties; limitation; corrective or remedial action

a. Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person within 45 days after the action sought to be voided has been made public; provided, however, that a public body may take corrective or remedial action by acting de novo at a public meeting held in conformity with this act and other applicable law regarding any action which may otherwise be voidable pursuant to this section; and provided further that any action for which advance published notice of at least 48 hours is provided as required by law shall not be voidable solely for failure to conform with any notice required in this act.

b. Any party, including any member of the public, may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any action taken by a public body on the grounds that such action is void for the reasons stated in subsection a. of this section, and if the court shall find that the action was taken at a meeting which does not conform to the provisions of this act, the court shall declare such action void.

10:4-16. Injunctive orders or other remedies to insure compliance

Any person, including a member of the public, may apply to the Superior Court for injunctive orders or other remedies to insure compliance with the provisions of this act, and the court shall issue such orders and provide such remedies as shall be necessary to insure compliance with the provisions of this act.

10:4-17. Violations; penalty; statement at meeting of nonconformance; inclusion in minutes

Any person who knowingly violates any of the foregoing sections of this act shall be fined \$100.00 for the first offense and no less than \$100.00 nor more than \$500.00 for any subsequent offense, recoverable by the State by a summary proceeding under “the penalty enforcement law” (N.J.S. 2A:58-1 et seq.). The Superior Court shall have jurisdiction to enforce said penalty upon complaint of the Attorney General or the county prosecutor. Whenever a member of a public body believes that a meeting of such body is being held in violation of the provisions of this act, he shall immediately state this at the meeting together with specific reasons for his belief which shall be recorded in the minutes of that meeting. Whenever such a member's objections to the holding of such meeting are overruled by the majority of those present, such a member may continue to participate at such meeting without penalty provided he has complied with the duties imposed upon him by this section.

10:4-18. Schedule of regular meetings of public body; publicity; revision; procedure

At least once each year, within 7 days following the annual organization or reorganization meeting of a public body, or if there be no such organization or reorganization meeting in the year, then by not later than January 10 of such year, every public body shall post and maintain posted throughout the year in the place described in subsection 3. d. (1), mail to the newspapers described in subsection 3. d. (2), submit to the persons described in subsection 3. d. (3), for the purpose of public inspection a schedule of the regular meetings of the public body to be held during the succeeding year. Such schedule shall contain the location of each meeting to the extent it is known, and the time and date of each meeting. In the event that such schedule is thereafter revised, the public body, within 7 days following such revision, shall post, mail and submit such revision in the manner described above.

10:4-19. Requests for notices of meetings; annual renewal

Any person may request that a public body mail to him copies of any regular meeting schedule or revision described in section 13 of this act and any advance written notice described in subsection 3. d. of this act of any regular, special or rescheduled meeting of such body, and upon prepayment by such person of a reasonable sum, if any has been fixed by resolution of the public body to cover the costs of providing such notice, the public body shall mail to such person written advance notice of all of its meetings within the time prescribed by subsection 3. d. herein, subject only to the exceptions set forth in subsection 4. b. herein. Such resolution may provide that notice requested by the news media shall be mailed to such news media free of charge. All requests for notices made under this section shall terminate at midnight on December 31 of each year, but shall be subject to renewal upon a new request to the public body.

10:4-20. Severability

If any section, subsection, clause, sentence, paragraph, or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act.

10:4-21. Liberal construction

This act shall be liberally construed in order to accomplish its purpose and the public policy of this State as set forth in section 2.

C. Local Public Contracts Law

40A:11-1. Short title; citation

This act shall be known and may be cited as the "Local Public Contracts Law."

40A:11-2. Definitions

As used herein the following words have the following definitions, unless the context otherwise indicates:

(1) "Contracting unit" means:

(a) Any county; or

(b) Any municipality; or

(c) Any board, commission, committee, authority or agency, which is not a State board, commission, committee, authority, except as provided pursuant to P.L.2013, c. 4, or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, including functions exercised in relation to the administration and oversight of a tourism district located in a municipality in which authorized casino gaming occurs, and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services.

The term shall not include a private firm that has entered into a contract with a public entity for the provision of water supply services pursuant to P.L.1995, c. 101 (C.58:26-19 et al.).

"Contracting unit" shall not include a private firm or public authority that has entered into a contract with a public entity for the provision of wastewater treatment services pursuant to P.L.1995, c. 216 (C.58:27-19 et al.).

"Contracting unit" shall not include a duly incorporated nonprofit association that has entered into a contract with the governing body of a city of the first class for the provision of water supply services or wastewater treatment services pursuant to section 2 of P.L.2002, c. 47 (C.40A:11-5.1).

"Contracting unit" shall not include a duly incorporated nonprofit entity that has entered into a contract for management and operation services with a municipal hospital authority established pursuant to P.L.2006, c. 46 (C.30:9-23.15 et al.).

(2) "Governing body" means:

(a) The governing body of the county, when the purchase is to be made or the contract or agreement is to be entered into by, or in behalf of, a county; or

(b) The governing body of the municipality, when the purchase is to be made or the contract or agreement is to be entered into by, or on behalf of, a municipality; or

(c) Any board, commission, committee, authority or agency of the character described in subsection (1) (c) of this section.

(3) "Contracting agent" means the governing body of a contracting unit, or appointed membership of a State authority authorized to enter into a cooperative purchasing agreement pursuant to P.L.2013, c. 4, or its authorized designee, which has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by this act, to make awards for the contracting unit in connection with purchases, contracts or agreements.

(4) "Purchase" means a transaction, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.

(5) (Deleted by amendment, P.L.1999, c. 440.)

(6) "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

(7) "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

(8) (Deleted by amendment, P.L.1999, c. 440.)

(9) "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a contracting unit.

(10) "Homemaker--home health services" means at home personal care and home management provided to an individual or members of the individual's family who reside with the individual, or both, necessitated by the individual's illness or incapacity. "Homemaker--home health services" includes, but is not limited to, the services of a trained homemaker.

(11) "Recyclable material" means those materials which would otherwise become municipal solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(12) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

(13) "Marketing" means the sale, disposition, assignment, or placement of designated recyclable materials with, or the granting of a concession to, a reseller, processor, materials recovery facility, or end-user of recyclable material, in accordance with a district solid waste management plan adopted pursuant to P.L.1970, c. 39 (C.13:1E-1 et seq.) and shall not include the collection of such recyclable material when collected through a system of routes by local government unit employees or under a contract administered by a local government unit.

(14) "Municipal solid waste" means, as appropriate to the circumstances, all residential, commercial and institutional solid waste generated within the boundaries of a municipality; or the formal collection of such solid wastes or recyclable material in any combination thereof when collected through a system of routes by local government unit employees or under a contract administered by a local government unit.

(15) "Distribution" (when used in relation to electricity) means the process of conveying electricity from a contracting unit that is a generator of electricity or a wholesale purchaser of electricity to retail customers or other end users of electricity.

(16) "Transmission" (when used in relation to electricity) means the conveyance of electricity from its point of generation to a contracting unit that purchases it on a wholesale basis for resale.

(17) "Disposition" means the transportation, placement, reuse, sale, donation, transfer or temporary storage of recyclable materials for all possible uses except for disposal as municipal solid waste.

(18) "Cooperative marketing" means the joint marketing by two or more contracting units of the source separated recyclable materials designated in a district recycling plan required pursuant to section 3 of P.L.1987, c. 102 (C.13:1E-99.13) pursuant to a written cooperative agreement entered into by the participating contracting units thereof.

(19) "Aggregate" means the sums expended or to be expended for the provision or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the same contract year through a contract awarded by a contracting agent.

(20) "Bid threshold" means the dollar amount set in section 3 of P.L.1971, c. 198 (C.40A:11-3), above which a contracting unit shall advertise for and receive sealed bids in accordance with procedures set forth in P.L.1999, c. 440 (C.40A:11-4.1 et al.).

(21) "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A

contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.

(22) “Contract year” means the period of 12 consecutive months following the award of a contract.

(23) “Competitive contracting” means the method described in sections 1 through 5 of P.L.1999, c. 440 (C.40A:11-4.1 thru 40A:11-4.5) of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or administrator; and the governing body awards a contract to a vendor or vendors from among the formal proposals received.

(24) “Goods and services” or “goods or services” means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to N.J.S.12A:2-101 et seq.

(25) “Library and educational goods and services” means textbooks, copyrighted materials, student produced publications and services incidental thereto, including but not limited to books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials, and specialized computer software used as a supplement or in lieu of textbooks or reference material.

(26) “Lowest price” means the least possible amount that meets all requirements of the request of a contracting agent.

(27) “Lowest responsible bidder or vendor” means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.

(28) “Official newspaper” means any newspaper designated by the contracting unit pursuant to R.S.35:1-1 et seq.

(29) “Purchase order” means a document issued by the contracting agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the contracting unit, which, when fulfilled in accordance with the terms and conditions of a request of a contracting agent and other provisions and procedures that may be established by the contracting unit, will result in payment by the contracting unit.

(30) “Purchasing agent” means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity of the contracting unit, and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit, pursuant to P.L.1971, c. 198 (C.40A:11-1 et seq.) and who possesses a qualified purchasing agent certificate.

(31) "Quotation" means the response to a formal or informal request made by a contracting agent by a vendor for provision or performance of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the contracting agent.

(32) "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

(33) "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.

(34) "Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a contracting unit to house local government functions or provide water, waste disposal, power, transportation, and other public infrastructures.

(35) "Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

(36) "Administrator" means a municipal administrator appointed pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business administrator, a municipal manager or a municipal administrator appointed pursuant to the "Optional Municipal Charter Law," P.L.1950, c. 210 (C.40:69A-1 et seq.); a municipal manager appointed pursuant to "the municipal manager form of government law," R.S.40:79-1 et seq.; or the person holding responsibility for the overall operations of an authority that falls under the "Local Authorities Fiscal Control Law," P.L.1983, c. 313 (C.40A:5A-1 et seq.).

(37) "Concession" means the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit.

(38) "Index rate" means the rate of annual percentage increase, rounded to the nearest half-percent, in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed and published quarterly by the United States Department of Commerce, Bureau of Economic Analysis.

(39) "Proprietary" means goods or services of a specialized nature, that may be made or marketed by a person or persons having the exclusive right to make or sell them, when the need for such goods or services has been certified in writing by the governing body of the contracting unit to be necessary for the conduct of its affairs.

(40) "Service or services" means the performance of work, or the furnishing of labor, time, or effort, or any combination thereof, not involving or connected to the delivery or ownership of a specified end product or goods or a manufacturing process. Service or services may also include

an arrangement in which a vendor compensates the contracting unit for the vendor's right to operate a concession.

(41) "Qualified purchasing agent certificate" means a certificate granted by the director pursuant to section 9 of P.L.1971, c. 198 (C.40A:11-9).

(42) "Mistake" means, for a public works project, a clerical error that is an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor, material, or both, from the final bid computation.

40A:11-2.1. Certification on bid or proposal as to investment activities in Iran; false certifications

a. A local contracting unit as defined in and subject to the provisions of the "Local Public Contracts Law," P.L.1971, c. 198 (C.40A:11-1 et seq.), shall implement and comply with the provisions of P.L.2012, c. 25 (C.52:32-55 et al.), except that the contracting unit shall rely on the list developed by the State Department of the Treasury pursuant to section 3 of P.L.2012, c. 25 (C.52:32-57).

b. If the local contracting unit determines that a person or entity has submitted a false certification concerning its engagement in investment activities in Iran pursuant to section 4 of P.L.2012, c. 25 (C.52:32-58), the local contracting unit shall report to the New Jersey Attorney General the name of that person or entity, and the Attorney General shall determine whether to bring a civil action against the person to collect the penalty prescribed in paragraph (1) of subsection a. of section 5 of P.L.2012, c. 25 (C.52:32-59). The local contracting unit may also report to the municipal attorney or county counsel, as appropriate, the name of that person, together with its information as to the false certification, and the municipal attorney or county counsel, as appropriate, may determine to bring such civil action against the person to collect such penalty.

40A:11-3. Purchases, contracts or agreements not required to be advertised; adjustment of threshold amount

a. When the cost or price of any contract awarded by the contracting agent in the aggregate does not exceed in a contract year the total sum of $17,500, the contract may be awarded by a purchasing agent or other employee so designated by the governing body when so authorized by ordinance or resolution, as appropriate to the contracting unit, without public advertising for bids, except that the governing body of any contracting unit may adopt an ordinance or resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. If a purchasing agent has been appointed, the governing body of the contracting unit may establish that the bid threshold may be up to $25,000 or the threshold amount adjusted by the Governor pursuant to subsection c. of this section. Such authorization may be granted for each contract or by a general delegation of the power to negotiate and award such contracts pursuant to this section.

b. Any contract made pursuant to this section may be awarded for a period of 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c. 198 (C.40A:11-5) may be awarded for a period not exceeding 12 consecutive months. The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the contracting unit's fiscal year.

c. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of every fifth year beginning in the fifth year after the year in which P.L.1999, c. 440 takes effect, adjust the threshold amount , in direct proportion to the rise or fall of the index rate as that term is defined in section 2 of P.L.1971, c. 198 (C.40A:11-2), and shall round the adjustment to the nearest $1,000. The Governor shall, no later than June 1 of every fifth year, notify each governing body of the adjustment. The adjustment shall become effective on July 1 of the year in which it is made.

40A:11-4. Contracts and agreements required to be advertised

a. Every contract awarded by the contracting agent for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by resolution of the governing body of the contracting unit to the lowest responsible bidder after public advertising for bids and bidding therefor, except as is provided otherwise in this act or specifically by any other law . The governing body of a contracting unit may, by resolution approved by a majority of the governing body and subject to subsections b. and c. of this section, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder, if the governing body finds that it has had prior negative experience with the bidder.

b. As used in this section, "prior negative experience" means any of the following:

(1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with the contracting unit;

(2) the bidder defaulted on a contract, thereby requiring the local unit to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract;

(3) the bidder defaulted on a contract, thereby requiring the local unit to look to the bidder's surety for completion of the contract or tender of the costs of completion; or

(4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with the contracting unit.

c. The following conditions apply if the governing body of a contracting unit is contemplating a disqualification based on prior negative experience:

(1) The existence of any of the indicators of prior negative experience set forth in this section shall not require that a bidder be disqualified. In each instance, the decision to disqualify shall be made within the discretion of the governing body and shall be rendered in the best interests of the contracting unit.

(2) All mitigating factors shall be considered in determining the seriousness of the prior negative experience and in deciding whether disqualification is warranted.

(3) The bidder shall be furnished by the governing body with a written notice (a)stating that a disqualification is being considered; (b) setting forth the reason for the disqualification; and (c) indicating that the bidder shall be accorded an opportunity for a hearing before the governing body if the bidder so requests within a stated period of time. At the hearing, the bidder shall show good cause why the bidder should not be disqualified by presenting documents and testimony. If the governing body determines that good cause has not been shown by the bidder, it may vote to find the bidder lacking in responsibility and, thus, disqualified.

(4) Disqualification shall be for a reasonable, defined period of time which shall not exceed five years.

(5) A disqualification, other than a disqualification pursuant to which a governing body is prohibited by law from entering into a contract with a bidder, may be voided or the period thereof may be reduced, in the discretion of the governing body, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as reversal of a judgment, or actual change of ownership, management or control of the bidder.

(6) An opportunity for a hearing need not be offered to a bidder whose disqualification is based on its suspension or debarment by an agency or department of the executive branch of the State of New Jersey. The term of such a disqualification shall be concurrent with the term of the suspension or debarment by the State agency or department.

40A:11-4.1. Competitive contracting; use in lieu of public bidding

Notwithstanding the provisions of any law, rule or regulation to the contrary, competitive contracting may be used by local contracting units in lieu of public bidding for procurement of specialized goods and services the price of which exceeds the bid threshold, for the following purposes:

a. The purchase or licensing of proprietary computer software designed for contracting unit purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

(1) the operation and management of a wastewater treatment system or a water supply or distribution facility of the type described in subsection (37) of section 15 of P.L.1971, c. 198 (C.40A:11-15), provided that competitive contracting shall not be used as a means of awarding contracts pursuant to P.L.1985, c. 37 (C.58:26-1 et al.) and P.L.1985, c. 72 (C.58:27-1 et al.);

(2) the operation, management or administration of recreation or social service facilities or programs, which shall not include the administration of benefits under the Work First New Jersey program established pursuant to P.L.1997, c. 38 (C.44:10-55 et seq.), or under General Assistance; or

(3) the operation, management or administration of data processing services;

c. (Deleted by amendment, P.L.2009, c. 4.)

d. Homemaker--home health services;

e. Laboratory testing services;

f. Emergency medical services;

g. Contracted food services;

h. Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities;

i. At the option of the governing body of the contracting unit, any good or service that is exempt from bidding pursuant to section 5 of P.L.1971, c. 198 (C.40A:11-5);

j. Concessions;

k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services.

Any purpose included herein shall not be considered by a contracting unit as an extraordinary unspecifiable service pursuant to paragraph (a)(ii) of subsection (1) of section 5 of P.L.1971, c. 198 (C.40A:11-5).

40A:11-4.2. Five year term for certain contracts

Unless an exception is provided for under section 15 of P.L.1971, c. 198 (C.40A:11-15) permitting a longer contract duration, contracts awarded pursuant to section 5 of P.L.1999, c. 440 (C.40A:11-4.5) may be for a term not to exceed five years.

40A:11-4.3. Resolution authorizing use of competitive contracting; process

a. In order to initiate competitive contracting, the governing body shall pass a resolution authorizing the use of competitive contracting each time specialized goods or services enumerated in section 1 of P.L.1999, c. 440 (C.40A:11-4.1) are desired to be contracted. If the desired goods or services have previously been contracted for using the competitive contracting process then the original resolution of the governing body shall suffice.

b. The competitive contracting process shall be administered by a purchasing agent qualified pursuant to subsection b. of section 9 of P.L.1971, c. 198 (C.40A:11-9), or, by legal counsel of the contracting unit, or by an administrator of the contracting unit. Any contracts awarded under this process shall be made by resolution of the governing body of the contracting unit, subject to the provisions of subsection e. of section 5 of P.L.1999, c. 440 (C.40A:11-4.5).

40A:11-4.4. Request for proposals documentation

The competitive contracting process shall utilize request for proposals documentation in accordance with the following provisions:

a. The purchasing agent or counsel or administrator shall prepare or have prepared a request for proposal documentation, which shall include: all requirements deemed appropriate and necessary to allow for full and free competition between vendors, but no financial statement shall be required of vendors if either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate is also required to be furnished by the bidder, unless any law or regulation of the United States imposes a condition upon the awarding of a monetary grant to be used for the purchase, contract or agreement, which condition requires that a financial statement be submitted; information necessary for potential vendors to submit a proposal; and a methodology by which the contracting unit will evaluate and rank proposals received from vendors.

b. The methodology for the awarding of competitive contracts shall be based on an evaluation and ranking, which shall include technical, management, and cost related criteria, and may include a weighting of criteria, all developed in a way that is intended to meet the specific needs of the contracting unit, and where such criteria shall not unfairly or illegally discriminate against or exclude otherwise capable vendors. When an evaluation methodology uses a weighting of criteria, at the option of the contracting unit the weighting to be accorded to each criterion may be disclosed to vendors prior to receipt of the proposals. The methodology for awarding competitive contracts shall comply with such rules and regulations as the director may adopt, after consultation with the Commissioner of Education, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.).

c. At no time during the proposal solicitation process shall the purchasing agent or counsel or administrator convey information, including price, to any potential vendor which could confer an unfair advantage upon that vendor over any other potential vendor. If a purchasing agent or counsel or administrator desires to change proposal documentation, the purchasing agent or counsel or administrator shall notify only those potential vendors who received the proposal documentation of any and all changes in writing and all existing documentation shall be changed appropriately.

d. All proposals and contracts shall be subject to the provisions of section 1 of P.L.1977, c. 33 (C.52:25-24.2) requiring submission of a statement of corporate ownership and the provisions of P.L.1975, c. 127 (C.10:5-31 et seq.) concerning equal employment opportunity and affirmative action.

40A:11-4.5. Competitive contracting proposals; solicitation process

Competitive contracting proposals shall be solicited in the following manner:

a. A notice of the availability of request for proposal documentation shall be published in an official newspaper of the contracting unit at least 20 days prior to the date established for the submission of proposals. The contracting unit shall promptly reply to any request by an interested vendor by providing a copy of the request for proposals. The contracting unit may charge a fee for the proposal documentation that shall not exceed $50.00 or the cost of reproducing the documentation, whichever is greater.

b. Each interested vendor shall submit a proposal which shall include all the information required by the request for proposals. Failure to meet the requirements of the request for proposals may result in the contracting unit disqualifying the vendor from further consideration. Under no circumstances shall the provisions of a proposal be subject to negotiation by the contracting unit.

c. If the contracting unit, at the time of solicitation, utilizes its own employees to provide the goods or perform the services, or both, considered for competitive contracting, the governing body shall, at any time prior to, but no later than the time of solicitation for competitive contracting proposals, notify affected employees of the governing body's intention to solicit competitive contracting proposals. Employees or their representatives shall be permitted to submit recommendations and proposals affecting wages, hours, and terms and conditions of employment in such a manner as to meet the goals of the competitive contract. If employees are represented by an organization that has negotiated a contract with the contracting unit, only the bargaining unit shall be authorized to submit such recommendations or proposals. When requested by such employees, the governing body shall provide such information regarding budgets and the costs of performing the services by such employees as may be available. Nothing shall prevent such employees from making recommendations that may include modifications to existing labor agreements in order to reduce such costs in lieu of award of a competitive contract, and agreements implementing such recommendations may be considered as cause for rejecting all other proposals.

d. The purchasing agent or counsel or administrator shall evaluate all proposals only in accordance with the methodology described in the request for proposals. After proposals have been evaluated, the purchasing agent or counsel or administrator shall prepare a report evaluating and recommending the award of a contract or contracts. The report shall list the names of all potential vendors who submitted a proposal and shall summarize the proposals of each vendor. The report shall rank vendors in order of evaluation, shall recommend the selection of a vendor or vendors, as appropriate, for a contract, shall be clear in the reasons why the vendor or vendors have been selected among others considered, and shall detail the terms, conditions, scope of services, fees, and other matters to be incorporated into a contract. The report shall be made available to the public at least 48 hours prior to the awarding of the contract, or when made available to the governing body, whichever is sooner. The governing body shall have the right to reject all proposals for any of the reasons set forth in section 21 of P.L.1999, c. 440 (C.40A:11-13.2).

e. Award of a contract shall be made by resolution of the governing body of the contracting unit within 60 days of the receipt of the proposals, except that the proposals of any vendors who consent thereto, may, at the request of the contracting unit, be held for consideration for such longer period as may be agreed.

f. The report prepared pursuant to subsection d. of this section shall become part of the public record and shall reflect the final action of the governing body. Contracts shall be executed pursuant to section 14 of P.L.1971, c. 198 (C.40A:11-14).

g. The clerk or secretary of the contracting unit shall publish a notice in the official newspaper of the contracting unit summarizing the award of a contract, which shall include but not be limited to, the nature, duration, and amount of the contract, the name of the vendor and a statement that the resolution and contract are on file and available for public inspection in the office of the clerk or secretary of the municipality, county, local public authority or special district of the governing body.

h. All contract awards shall be subject to rules concerning certification of availability of funds adopted pursuant to section 3 of P.L.1971, c. 198 (C.40A:11-3) and section 15 of P.L.1971, c. 198 (C.40A:11-15).

i. The director, after consultation with the Commissioner of Education, may adopt additional rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), as may be necessary to effectuate the provisions of sections 1 through 5 of P.L.1999, c. 440 (C.40A:11-4.1 through C.40A:11-4.5).

40A:11-4.6. Energy savings improvement program; scope of contractual authority; eligibility; financing; energy audit; energy savings guarantee; definitions; regulations

a. (1) A contracting unit, as defined in P.L.1971, c. 198 (C.40A:11-1 et seq.), may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a contracting unit may enter into an energy savings services contract with an energy services company to implement the program or the contracting unit may authorize separate contracts to implement the program. The provisions of P.L.1971, c. 198 (C.40A:11-1 et seq.) shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

(2) A contracting unit facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of an energy savings services contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the energy services company performing the energy savings services contract if:

(a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and

(b)(i) the improvement is necessary to conform to a law, rule, or regulation, or order, or (ii) an analysis within an approved proposal, or the contracting unit, at the time of the award of the proposal, demonstrates that there is an economic advantage to the contracting unit implementing the improvement as part of the energy savings services contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A contracting unit may determine to enter into an energy savings services contract either through public advertising for bids and the receipt of bids therefor or through competitive contracting in lieu of public bidding in the manner provided by sections 1 through 5 of P.L.1999, c. 440 (C.40A:11-4.1 et seq.).

(2)(a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(3)(a) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed in accordance with the procedures and requirements set forth pursuant to the public bidding requirements of the contracting unit. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan; the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(b) All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C.34:11-56.25 et seq.). All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c. 238 (C.34:11-56.48 et seq.). Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.

(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a contracting unit may designate or appoint an employee of the contracting unit with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the contracting unit.

(4) Except as provided in paragraph (5) of this subsection, a subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

(5) When the energy services company is the manufacturer of direct digital control systems and contracts with the contracting unit to provide a guaranteed energy savings option pursuant to subsection f. of this section, the specification of such direct digital control systems may be treated as proprietary goods and if so treated, the bid specification shall set forth an allowance price for its supply by the energy services company which shall be used by all bidders in the public bidding process. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Each contract to be entered into pursuant to this section between a contracting unit and an energy services company that is the manufacturer of direct digital control systems where such direct digital control systems are treated as proprietary goods as part of the contract, shall first be reviewed and approved by the Board of Public Utilities for the purpose of affirming the reasonableness of such allowance price. If the board does not disapprove of the contract within 14 days of receipt thereof, the contract shall be deemed approved.

c. An energy savings improvement program may be financed through a lease-purchase agreement or through the issuance of energy savings obligations pursuant to this subsection.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a contracting unit and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or

improved facilities shall pass to the contracting unit when all lease payments have been made. Notwithstanding the provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c. 23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

(2) Any lease-purchase agreement entered into pursuant to this subsection, may contain: a clause making it subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation; and a non-substitution clause maintaining that if the agreement is terminated for non-appropriation, the contracting unit may not replace the leased equipment or facilities with equipment or facilities that perform the same or similar functions.

(3) A contracting unit may arrange for incurring energy savings obligations to finance an energy savings improvement program. Energy savings obligations may be funded through appropriations for utility services in the annual budget of the contracting unit and may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et seq., including the issuance of bond anticipation notes as may be necessary, provided that all such bonds and notes mature within the periods authorized for such energy savings obligations. Energy savings obligations may be issued either through the contracting unit or another public agency authorized to undertake financing on behalf of the unit.

(4) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures. Lease-purchase agreements and energy savings obligations may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Notwithstanding any law to the contrary, lease-purchase agreements and energy savings certificates shall not be excepted from any budget or tax levy limitation otherwise provided by law. Maturity schedules of lease-purchase agreements or energy savings obligations shall not exceed the estimated average useful life of the energy conservation measures.

d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the contracting unit or by a qualified independent third party retained by the governing body for that purpose. It shall not be conducted by an energy services company subsequently hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement an energy savings improvement program, a contracting unit shall develop a plan that consists of one or more energy conservation measures. The plan shall:

(a) contain the results of an energy audit;

(b) describe the energy conservation measures that will comprise the program;

(c) estimate greenhouse gas reductions resulting from those energy savings;

(d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;

(e) include an assessment of risks involved in the successful implementation of the plan;

(f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;

(g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;

(h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and

(i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee.

All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan, the contracting unit shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the contracting unit maintains its own website, it shall also post the plan on that site. The board may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall not be financed as a lease-purchase or through energy savings obligations authorized by subsection c. of this section. Nothing herein is intended to prevent financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the contracting unit who is properly trained and qualified to perform such work.

e. (1)(a) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state which party has made application for rebates and credits and how these applications translate into energy savings.

(b) During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c. 23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the contracting unit then in effect, and not a blended rate that aggregates, combines, or restates in any manner the distinct demand and energy components of the public utility tariff rate into a single combined or restated tariff rate. If an energy services company submits a proposal to a contracting unit that does not calculate projected energy savings in the manner required by this subsection, such proposal shall be rejected by the contracting unit.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the contracting unit the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by a separate vote of the governing body of the contracting unit, shall insure that the energy savings resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the contracting unit for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

(3) When an energy services company is awarded an energy savings services contract to provide or perform goods or services for the purpose of enabling a contracting unit to conserve energy through energy efficiency equipment, including a "combined heat and power facility" as that term is defined pursuant to section 3 of P.L.1999, c. 23 (C48:3-51), on a self-funded basis, such contract shall extend for a term of up to 15 years for energy efficiency projects, and for up to 20 years for a combined heat and power facility after construction completion. If a contracting unit shall elect to contract with an energy services company for an energy savings guarantee in connection with a contract awarded pursuant to this section, such guarantee may extend for a term of up to 15 years for energy efficiency projects, or up to 20 years for a combined heat and power facility after construction completion.

g. As used in this section:

"direct digital control systems" means the devices and computerized control equipment that contain software and computer interfaces that perform the logic that control a building's heating, ventilating, and air conditioning system. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy saving obligation" means a bond, note or other agreement evidencing the obligation to repay borrowed funds incurred in order to finance energy saving improvements;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a contracting unit to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public works activities" means any work subject to the provisions of P.L.1963, c. 150 (C.34:11-56.25 et seq.); and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

h. (1) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.

(2) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under this section, except that notwithstanding any provision of P.L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c. 410 (C.52:14B-1 et seq.).

40A:11-5. Exceptions

Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body if:

(1) The subject matter thereof consists of:

(a) (i) Professional services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in the official newspaper, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating such contracting unit; or (ii) Extraordinary unspecifiable services. The application of this exception shall be construed narrowly in favor of open competitive bidding, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed, in the manner set forth in subsection (1) (a) (i) of this section, a brief notice of the award of such contract;

(b) The doing of any work by employees of the contracting unit;

(c) The printing of legal briefs, records and appendices to be used in any legal proceeding in which the contracting unit may be a party;

(d) The furnishing of a tax map or maps for the contracting unit;

(e) The purchase of perishable foods as a subsistence supply;

(f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;

(g) The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation;

(h) The printing of bonds and documents necessary to the issuance and sale thereof by a contracting unit;

(i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;

(j) The publishing of legal notices in newspapers as required by law;

(k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;

(l) Those goods and services necessary or required to prepare and conduct an election;

(m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;

(n) The doing of any work by handicapped persons employed by a sheltered workshop;

(o) The provision of any goods or services including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;

(p) (Deleted by amendment, P.L.1999, c. 440.)

(q) Library and educational goods and services;

(r) (Deleted by amendment, P.L.2005, c. 212).

(s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products;

(t) (Deleted by amendment, P.L.1999, c. 440.)

(u) Contracting unit towing and storage contracts, provided that all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c. 101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor;

(v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of such steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C.s.796;

(w) The purchase of electricity or administrative or dispatching services directly related to the transmission of such purchased electricity by a contracting unit engaged in the generation of electricity;

(x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances;

(y) An agreement for the purchase of an equitable interest in a water supply facility or for the provision of water supply services entered into pursuant to section 2 of P.L.1993, c. 381 (C.58:28-2), or an agreement entered into pursuant to P.L.1989, c. 109 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no later than six months after the effective date of P.L.1993, c. 381;

(z) A contract for the provision of water supply services entered into pursuant to P.L.1995, c. 101 (C.58:26-19 et al.);

(aa) The cooperative marketing of recyclable materials recovered through a recycling program;

(bb) A contract for the provision of wastewater treatment services entered into pursuant to P.L.1995, c. 216 (C.58:27-19 et al.);

(cc) Expenses for travel and conferences;

(dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;

(ee) The management or operation of an airport owned by the contracting unit pursuant to R.S.40:8-1 et seq.;

(ff) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(gg) A contract for the provision of water supply services or wastewater treatment services entered into pursuant to section 2 of P.L.2002, c. 47 (C.40A:11-5.1), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c. 198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c. 198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c. 198 (C.40A:11-15);

(hh) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit.

(2) It is to be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, agency or authority thereof or any other state or subdivision thereof.

(3) Bids have been advertised pursuant to section 4 of P.L.1971, c. 198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract; provided, however, that:

(i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit;

(ii) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c. 198 (C.40A:11-4); and

(iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c. 198 (C.40A:11-4), shall be stated in the resolution awarding such contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services.

Whenever a contracting unit shall determine that a bid was not arrived at independently in open competition pursuant to subsection (3) of this section it shall thereupon notify the county prosecutor of the county in which the contracting unit is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

(4) The contracting unit has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c. 198 (C.40A:11-12), and the lowest responsible quotation is at least 10% less than the price the contracting unit would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit at a meeting thereof authorizing such a contract. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of such contracts on local contracting and shall consult with the State Treasurer on the impact of such contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of

contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.

(5) Notwithstanding any provision of law, rule or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products, provided that in lieu of engaging in such public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing said services. Within 30 days after receipt of the written description the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section, "collection" means the physical removal of recyclable materials from curbside or any other location selected by the contracting unit.

(6) Notwithstanding any provision of law, rule or regulation to the contrary, the contract is for the provision of electricity by a contracting unit engaged in the distribution of electricity for retail sale, or for the provision of administrative or dispatching services related to the transmission of such electricity, provided that in lieu of engaging in public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing such services. Such process shall be designed in a way that is appropriate to and commensurate with industry practices, and the integrity of the government contracting process. Within 30 days after receipt of the written description, the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process, as submitted to the director pursuant to this section, shall be deemed approved.

40A:11-5.1. Contracts with nonprofit associations for the provision of water supply services

The Legislature finds and declares it to be in the public interest and to be the public policy of the State to foster and promote by all reasonable means the collection, storage and distribution of an adequate supply of water for the inhabitants and businesses of the counties and municipalities of this State and to foster and promote the public health by providing for the collection and treatment of sewerage through adequate sewerage facilities.

To further promote these interests, and notwithstanding the provisions of any other law, rule or regulation to the contrary, the governing body of a city of the first class may enter into a contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c. 198 (C.40A:11-15), or for the provision of wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c. 198 (C.40A:11-15), or both, as the case may be.

The governing body of a city of the first class that has entered into a contract with a duly incorporated nonprofit association pursuant to this section shall obtain the written opinion of bond counsel as to the effect of the contract on the tax exempt status of existing and future financing instruments executed by the parties given the terms of the contract and the federal laws or regulations concerning this matter.

Any concession fee or monetary benefit paid by a duly incorporated nonprofit association to the governing body of a city of the first class shall be used for the purposes of reducing or off-setting property taxes, reducing water supply services or wastewater treatment services charges, rates or fees, one-time nonrecurring expenses or capital asset expenditures related to water supply facilities or wastewater treatment systems.

Upon executing such contract, the duly incorporated nonprofit association shall be deemed to be providing essential governmental functions on behalf of the city of the first class and, to the extent permitted in the contract, shall exercise all powers and responsibilities of the city of the first class related to the provision of water supply services and wastewater treatment services now or hereinafter provided under law.

The authorization provided in this section shall be subject to the provisions of sections 3 through 6 of P.L.2002, c. 47 (C.58:28-4 through 58: 28-7).

40A:11-5.2. Expenditure of funds derived from public moneys for capital improvements to, or construction of, water supply facilities

Notwithstanding the provisions of P.L.2002, c. 47 (C.40A:12-17.1 et al.) to the contrary, any expenditure of funds by a duly incorporated nonprofit association that has entered into a contract with the governing body of a city of the first class pursuant to sections 1 and 2 of P.L.2002, c. 47 (C.40A:12-17.1 and 40A:11-5.1) for any capital improvements to, or construction of, water supply facilities or wastewater treatment systems shall be subject to the provisions of the "Local Public Contracts Law," P.L.1971, c. 198 (C. 40A:11-1 et seq.) whenever the funds have been derived from the proceeds of obligations or other available public moneys of any public entity including, but not limited to, debt issued by the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c. 334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c. 224, or a city of the first class.

40A:11-6. Emergency purchases and contracts

Emergency contracts. 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.

40A:11-6.1. Award of purchases, contracts or agreements

All contracts enumerated in this section shall be awarded as follows:

a. For all contracts that in the aggregate are less than the bid threshold but 15 percent or more of that amount, and for those contracts that are for subject matter enumerated in subsection (1) of section 5 of P.L .1971, c. 198 (C.40A:11-5), except for paragraph (a) of that subsection concerning professional services and paragraph (b) of that subsection concerning work by employees of the contracting unit, the contracting agent shall award the contract after soliciting at least two competitive quotations, if practicable. The award shall be made to a vendor whose response is most advantageous, price and other factors considered. The contracting agent shall retain the record of the quotation solicitation and shall include a copy of the record with the voucher used to pay the vendor.

b. When in excess of the bid threshold, and after documented effort by the contracting agent to secure competitive quotations, a contract for extraordinary unspecifiable services may be awarded upon a determination in writing by the contracting agent that the solicitation of competitive quotations is impracticable. Any such contract shall be awarded by resolution of the governing body.

c. If authorized by the governing body by resolution or ordinance, all contracts that are in the aggregate less than 15 percent of the bid threshold may be awarded by the contracting agent without soliciting competitive quotations.

d. Whenever two or more responses to a request of a contracting agent offer equal prices and are the lowest responsible bids or proposals, the contracting unit may award the contract to the vendor whose response, in the discretion of the contracting unit, is the most advantageous, price and other factors considered. In such a case, the award resolution or purchase order documentation shall explain why the vendor selected is the most advantageous.

40A:11-7. Contracts not to be divided

a. No contract in the aggregate which is single in character or which necessarily or by reason of the quantities required to effectuate the purpose of the contract includes the provision or performance of additional goods or services, shall be divided, so as to bring it or any of the parts thereof under the bid threshold, for the purpose of dispensing with the requirement of public advertising and bidding therefor.

b. In contracting for the provision or performance of any goods or services included in or incidental to the provision or performance of any work which is single in character or inclusive of the provision or performance of additional goods or services, all of the goods or services requisite for the completion of such contract shall be included in one contract.

40A:11-7.1. Rules concerning determinations of aggregation

For the purpose of ensuring consistency between the "Local Public Contracts Law," P.L.1971, c. 198 (C.40A:11-1 et seq.), and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., the Director of the Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education and pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), shall adopt rules concerning determinations of aggregation for the purposes of whether a contract is subject to public bidding as set forth in sections 3, 4 and 7 of P.L.1971, c. 198 (C.40A:11-3, 40A:11-4 and 40A:11-7)and N.J.S.18A:18A-3, N.J.S.18A:18A-4, and N.J.S.18A:18A-8.

40A:11-8. Periodic solicitation for proposals of work or materials and supplies required

Every contracting agent shall, at intervals to be fixed by the governing body, solicit by public advertisement the submission of bids for the provision or performance of goods or services which are and which under section 4 of P.L.1971, c. 198 (C.40A:11-4) can be contracted to be provided or performed only after public advertisement for bids and bidding therefor and all contracts for the provision or performance of such goods or services shall be awarded only in that manner.

40A:11-9. Designation of purchasing agent; enumerated duties and authority; qualifications and certification; renewal of certificate; revocation or suspension of certificate; regulations

a. The governing body of any contracting unit may by ordinance, in the case of a municipality, by ordinance or resolution, as the case may be, in the case of a county, or by resolution in all other cases, designate an individualto serve as the contracting unit's purchasing agent. The individual designated as the purchasing agent pursuant to this subsection shall be assigned the authority, responsibility, and accountability for the purchasing activity for the contracting unit, to prepare public advertising for bids and to receive bids for the provision or performance of goods or services on behalf of the contracting unit and to award contracts permitted pursuant to subsection a. of section 3 of P.L.1971, c. 198 (C.40A:11-3) in the name of the contracting unit, and conduct any activities as may be necessary or appropriate to the purchasing function of the contracting unit as its contracting agent. The individual designated to serve as the purchasing agent of a contracting unit pursuant to this subsection shall possess a qualified purchasing agent certificate pursuant to this section. The individual designated as the purchasing agent pursuant to this subsection may be a part-time or full-time employee of the contracting unit, an independent contractor, or an individual employed by another contracting unit through a shared services agreement.

b. The Director of the Division of Local Government Services, after consultation with the Commissioner of Education, shall establish criteria to qualify individuals who have completed appropriate training and possess such purchasing experience as deemed necessary to serve as a purchasing agent, and, when determined to be necessary by the director, have passed an examination administered by the director pursuant to this section. The criteria established by the director shall include, but are not limited to, the following:

(1) is a citizen of the United States;

(2) is of good moral character;

(3) is a high school graduate or equivalent;

(4) has at least two years of higher education, and two years of full time governmental experience performing duties relative to those of public procurement provided, however, that additional years of experience may be substituted for years of higher education, on a one to one basis;

(5) has successfully received certificates indicating satisfactory completion of a series of training courses in public procurement as determined by the director and provided by either the Division of Local Government Services, or, with the approval of the director, by a county college or Rutgers, The State University of New Jersey, all under the supervision of instructors who meet criteria established by the director;

(6) has submitted completed application forms, including proof of education and experience, as set forth in this subsection, accompanied by a fee in the amount of $150 payable to the State

Treasurer, to the Director of the Division of Local Government Services at least 30 days prior to the administration of a State examination;

(7) has successfully passed a State examination for a qualified purchasing agent certificate. The director shall hold examinations semi-annually or at such times as the director may deem appropriate. An individual shall be eligible to take the State examination for a qualified purchasing agent certificate without having taken the courses required pursuant to paragraph (5) of this subsection if the individual has been certified by the division as a certified municipal finance officer, a certified county finance officer, or a certified county purchasing officer.

The director shall issue a qualified purchasing agent certificate to an individual who passes the examination upon payment to the director of a fee of $25 which shall be payable to the State Treasurer.

c. The criteria established by the director to authorize purchasing agents, pursuant to subsection b. of this section, shall include, but are not limited to, completion of a course in green product purchasing, as established by the director pursuant to regulation. Any person qualified pursuant to subsection b. of this section prior to the establishment of the course in green product purchasing, shall in order to continue to be qualified, take and successfully complete the course within four years from the date the course is established. For the purposes of this subsection and section 2 of P.L.2007, c. 332 (C.40A:11-9.1), “green product” means any commodity or service that has a lesser or reduced negative effect on human health and the environment when compared with competing commodities or services. Items considered in this comparison may include, but are not limited to: raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, recycled content resource use, transportation, and durability.

d. (1) Renewal of the qualified purchasing agent certification shall be required every three years, subject to the applicant's fulfillment of continuing education requirements, the submission of an application for renewal, and the payment of a renewal fee, all as determined by the director.

(2) In the event that an individual holding a qualified purchasing agent certificate allows the certificate to lapse by failing to renew the certificate, the individual shall be required to apply to take the qualifying examination required pursuant to subsection b. of this section and pay a fee as determined by the director, except that when an individual applies within six months of the expiration of the certificate, the application may be made in the same manner as renewal.

e. (1) An individual who obtained a qualified purchasing agent certificate prior to enactment of P.L.2009, c. 166 (C.40A:11-9a et al.) shall be exempt from taking the State qualifying examination, but shall adhere to all requirements for renewal pursuant to subsection d. of this section. If such a qualified purchasing agent certificate expires due to the failure of the holder to renew the certificate as prescribed in subsection d. of this section, that individual shall be required to pass the qualifying examination as provided pursuant to subsection b. of this section in order to be issued a new qualified purchasing agent certificate.

(2) An individual who has been certified by the Department of Education as a school business administrator and has performed duties relative to public procurement for at least three years shall be exempt from taking the courses required pursuant to paragraph (5) of subsection b. of this section and the state qualifying examination, and upon application to the director and the payment of the fee imposed pursuant to subsection b. of this section, shall be issued a qualified purchasing agent certificate.

f. Those persons who have been performing the duties of a purchasing agent for a contracting unit pursuant to P.L.1971, c. 198 (C.40A:11-1 et seq.), or school board pursuant to N.J.S.18A:18A-1 et seq. for at least three continuous years, prior to the first day of the sixth month following the promulgation of rules and regulations to effectuate the purposes of P.L.2009, c. 166 (C.40A:11-9a et al.), and did not possess a qualified purchasing agent certificate at that time, may take the State qualifying examination, if not otherwise exempt under subsection e. of this section, without the courses required in subsection b. of this section.

g. Following the appointment of a purchasing agent for a contracting unit pursuant to subsection a. of this section, if the person appointed no longer performs such duties, the governing body or chief executive officer, as appropriate to the form of government, may appoint, for a period not to exceed one year commencing from the date of the vacancy, a person who does not possess a qualified purchasing agent certificate to serve as a temporary purchasing agent. Any person so appointed may, with the approval of the director, be reappointed as a temporary purchasing agent for a maximum of one additional year following the end of the first temporary appointment. No contracting unit shall employ a temporary purchasing agent for more than two consecutive years.

h. The director may revoke or suspend a qualified purchasing agent certificate for dishonest practices or willful or intentional failure, neglect, or refusal to comply with the laws relating to procurement, or for other good cause. The governing body, together with the chief executive officer of any contracting unit, or a board of education, may request the director to review the behavior or practices of a person holding a qualified purchasing agent certificate. Prior to taking any adverse action against a person, the director or the director's designee shall convene a hearing, upon due notice, affording the person an opportunity to be heard. If the qualified purchasing agent certificate held by a person serving as a purchasing agent is revoked, the director shall order that person to no longer perform the duties of purchasing agent, and the person shall not be eligible to serve as a purchasing agent or to make application for recertification for a period of five years from the date of revocation.

i. The director may adopt and promulgate rules and regulations to effectuate the purposes of this act. Notwithstanding any provision of P.L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, any such regulations shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 365 days and may thereafter be amended, adopted or readopted by the director in accordance with the requirements of P.L.1968, c. 410. In order to better manage the workload of implementing the provisions of this act, the director may establish a transition process for administering an examination for individuals serving as purchasing agents on the effective date of this act, issuing and renewing qualified purchasing agent certificates to eligible individuals, prescribing a schedule by which such certificates will be issued and renewed, and such other matters as the director determines to be necessary to the implementation of this act.

40A:11-9a. Uncertificated purchasing agents as of January 2011; limitations upon bid threshold

An individual who is the duly authorized purchasing agent of a contracting unit and does not possess a qualified purchasing agent certificate on the date of enactment of P.L.2009, c. 166 may continue to be referred to as the purchasing agent, but the bid threshold for that contracting unit shall be set at $17,500 until such time as that individual obtains a qualified purchasing agent certificate. A contracting unit exercising this authority shall file a letter to this effect with the director.

40A:11-9.1. List of sources for green product purchasing

The State Treasurer, through the Division of Purchase and Property, in consultation with the Department of Environmental Protection and any other appropriate State agencies, shall develop a list of sources for green product purchasing by contracting units, and provide regular revisions of the list, on the Internet web page of the Department of the Treasury and shall have the authority to specify appropriate and reasonable standards for the identification of a list of sources for green products.

40A:11-10. Authority to provide by joint agreement for provision and performance of goods and services; cooperative marketing of recyclable materials; resolution; expenditures

(a)(1) The governing bodies of two or more contracting units may provide by joint agreement for the provision and performance of goods and services for use by their respective jurisdictions.

(2) The governing bodies of two or more contracting units providing sewerage services pursuant to the "sewerage authorities law," P.L.1946, c. 138 (C.40:14A-1 et seq.), the "municipal and county utilities authorities law," P.L.1957, c. 183 (C.40:14B-1 et seq.), R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint agreement for the purchase of goods and services related to sewage sludge disposal.

(3) The governing body of two or more contracting units providing electrical distribution services pursuant to and in accordance with R.S.40:62-12 through R.S.40:62-25, may provide by joint agreement for the provision or performance of goods or services related to the distribution of electricity.

(4) The governing bodies of two or more contracting units may provide for the cooperative marketing of recyclable materials recovered through a recycling program.

(5) The governing bodies of two or more contracting units may provide by joint agreement for the purchase of the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent for the provision of cable television

service pursuant to R.S.40:48-1 et seq. and the "Cable Television Act," P.L.1972, c. 186 (C.48:5A-1 et seq.) as amended and supplemented.

(6) The governing bodies of two or more contracting units may provide by joint agreement for the purchase of fire equipment.

(b) The governing body of any contracting unit may provide by joint agreement with the board of education of any school district or any State or county college for the provision and performance of goods and services for use by their respective jurisdictions.

(c) Such agreement shall be entered into by resolution adopted by each of the participating bodies and boards, which shall set forth the categories of goods or services to be provided or performed, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating body and board, and other matters deemed necessary to carry out the purposes of the agreement.

(d) Each participating body's and board's share of expenditures for purchases under any such agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the participating body and board.

40A:11-11. Additional matters regarding contracts for the provision and performance of goods and services

(1) The contracting units entering into a joint agreement pursuant to section 10 of P.L.1971, c. 198 (C.40A:11-10) may designate a joint contracting agent.

(2) Contracts made pursuant to a joint purchasing agreement shall be subject to all of the terms and conditions of this act.

(3) Any contracting unit serving as a joint contracting agent pursuant to this section , may make an appropriation to enable it to perform any such contract and may anticipate as revenue payments to be made and received by it from any other party to the agreement. Any items so included in a local budget shall be subject to the approval of the Director, Division of Local Government Services, who shall consider the matter in conjunction with the requirements of chapter 4 of Title 40A of the New Jersey Statutes. The agreement and any subsequent amendment or revisions thereto shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs.

(4) Any joint contracting agent so designated pursuant to a joint purchasing agreement shall have the sole responsibility to comply with the provisions of section 23 of P.L.1971, c. 198 (C.40A:11-23).

(5) The governing bodies of two or more contracting units or boards of education or for purposes related to the distribution of electricity, the governing bodies of two or more contracting units providing electrical distribution services pursuant to R.S.40:62-12 through R.S.40:62-25, may by resolution establish a cooperative pricing system as hereinafter provided. Any such resolution

shall establish procedures whereby one participating contracting unit in the cooperative pricing system shall be empowered to advertise and receive bids to provide prices for all other participating contracting units in such system for the provision or performance of goods or services; provided, however, that no contract shall be awarded by any participating contracting unit for a price which exceeds any other price available to the participating contracting unit, or for a purchase of goods or services in deviation from the specifications, price or quality set forth by the participating contracting unit.

(6) The governing body of a county government may establish a cooperative pricing system for the voluntary use of contracting units within the county.

No vendor shall be required or permitted to extend bid prices to participating contracting units in a cooperative pricing system unless so specified in the bids.

No cooperative pricing system and agreements entered into pursuant to such system, or joint purchase agreements established pursuant to this act, the "Interlocal Services Act," P.L.1973, c. 208 (C.40:8A-1 et seq.) or any other provision of law, shall become effective without prior approval of the Director of the Division of Local Government Services and said approval shall be valid for a period not to exceed five years.

The director's approval shall be based on the following:

(a) Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration, and

(b) Adequacy of public disclosure of such actions as are taken by the participants, and

(c) Adequacy of procedures to facilitate compliance with all provisions of the "Local Public Contracts Law" and corresponding regulations, and

(d) Clarity of provisions to assure that the responsibilities of the respective parties are understood.

Failure of the Director of the Division of Local Government Services to approve or disapprove a properly executed and completed application to establish a cooperative pricing system and agreements entered into pursuant to such system or other joint purchase agreement within 45 days from the date of receipt of said application by the director shall constitute approval of said application, which shall be valid for a period of five years, commencing from the date of receipt of said application by the director.

The Director of the Division of Local Government Services is hereby authorized to promulgate rules and regulations specifying procedures pertaining to cooperative pricing systems and joint purchase agreements entered into pursuant to this act, the "Interlocal Services Act," P.L.1973, c. 208 (C.40:8A-1 et seq.) and any other provision of law.

40A:11-12. Purchases through State agency

a. Any contracting unit under this act may without advertising for bids, or having rejected all bids obtained pursuant to advertising therefor, purchase any goods or services under any contract or contracts for such goods or services entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury.

b. A contracting unit may also use, without advertising for bids, or having rejected all bids obtained pursuant to advertising, the Federal Supply Schedules of the General Services Administration or schedules from other federal procurement programs promulgated by the Director of the Division of Purchase and Property in the Department of the Treasury pursuant to section 1 of P.L.1996, c. 16 (C.52:34-6.1), subject to the following conditions:

(1) the price of the goods or services being procured is no greater than the price offered to federal agencies;

(2) (Deleted by amendment, P.L.2006, c. 10);

(3) the contracting unit receives the benefit of federally mandated price reductions during the term of the contract ;

(4) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under the State contract, unless the contracting unit determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules or schedules from other federal procurement programs would be more advantageous to the contracting unit;

(5) a copy of the purchase order relating to any such contract, the requisition or request for purchase order, if applicable, and documentation identifying the price of the goods or services under the Federal Supply Schedules or schedules from other federal procurement programs shall be filed with the Director of the Division of Purchase and Property in the Department of the Treasury within five working days of the award of any such contract by the contracting unit.

c. Whenever a purchase is made, the contracting unit shall place its order with the vendor offering the lowest price, including delivery charges, that best meets the requirements of the contracting unit. Prior to placing such an order, the contracting unit shall document with specificity that the goods or services selected best meet the requirements of the contracting unit.

40A:11-12.1 to **40A:11-12.6**. Repealed by L.1999, c. 440, § 108, eff. April 17, 2000

40A:11-13. Specifications

Specifications. Any specifications for the provision or performance of goods or services under this act shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the contract is awarded; or

(b) Require that any bidder be a resident of, or that the bidder's place of business be located in, the county or municipality in which the contract will be awarded or performed, unless the physical proximity of the bidder is requisite to the efficient and economical performance of the contract; except that no specification for a contract for the collection and disposal of municipal solid waste shall require any bidder to be a resident of, or that the bidder's place of business be located in, the county or municipality in which the contract will be performed; or

(c) Discriminate on the basis of race, religion, sex, national origin, creed, color, ancestry, age, marital status, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality; or

(d) Require, with regard to any contract, the furnishing of any "brand name," but may in all cases require "brand name or equivalent," except that if the goods or services to be provided or performed are proprietary, such goods or services may be purchased by stipulating the proprietary goods or services in the bid specification in any case in which the resolution authorizing the contract so indicates, and the special need for such proprietary goods or services is directly related to the performance, completion or undertaking of the purpose for which the contract is awarded; or

(e) Fail to include any option for renewal, extension, or release which the contracting unit may intend to exercise or require; or any terms and conditions necessary for the performance of any extra work; or fail to disclose any matter necessary to the substantial performance of the contract; or

(f) Require that any bidder submit a financial statement if either a guarantee, by certified check, cashier's check or bid bond, or a surety company certificate is also required to be furnished by the bidder, unless any law or regulation of the United States imposes a condition upon the awarding of a monetary grant to be used for the purchase, contract or agreement, which condition requires that a financial statement be submitted.

Any specification which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect and shall be readvertised for receipt of new bids, and the original contract shall be set aside by the governing body.

Any specification for a contract for the collection and disposal of municipal solid waste shall conform to the uniform bid specifications for municipal solid waste collection contracts established pursuant to section 22 of P.L.1991, c. 381 (C.48:13A-7.22).

Any specification may include an item for the cost, which shall be paid by the contractor, of creating a file to maintain the notices of the delivery of labor or materials required by N.J.S.2A:44-128.

Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the contracting agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract.

40A:11-13.1. Payment for goods or services; payment utilizing a bequest, legacy or gift

Goods or services, the payment for which utilizes only funds received by a contracting unit from a bequest, legacy or gift, shall be subject to the provisions of P.L.1971, c. 198 (C.40A:11-1 et seq.), except that if such bequest, legacy or gift contains written instructions as to the specifications, manufacturer or vendor, or source of supply of the goods or services to be provided or performed, such instructions shall be honored, provided that the bequest, legacy or gift is used in a manner consistent with N.J.S.40A:5-29.

40A:11-13.2. Rejection of bids by a contracting unit

A contracting unit may reject all bids for any of the following reasons:

a. The lowest bid substantially exceeds the cost estimates for the goods or services;

b. The lowest bid substantially exceeds the contracting unit's appropriation for the goods or services;

c. The governing body of the contracting unit decides to abandon the project for provision or performance of the goods or services;

d. The contracting unit wants to substantially revise the specifications for the goods or services;

e. The purposes or provisions or both of P.L.1971, c. 198 (C.40A:11-1 et seq.) are being violated;

f. The governing body of the contracting unit decides to use the State authorized contract pursuant to section 12 of P.L.1971, c. 198 (C.40A:11-12) .

F. Contracts, Form and Contents (Refs & Annos)

40A:11-14. Form and execution of contracts and bonds

All contracts for the provision or performance of goods or services shall be in writing. The governing body of any contracting unit may, subject to the requirements of law, prescribe the form and manner in which contracts shall be made and executed, and the form and manner of execution and approval of all guarantee, indemnity, fidelity and other bonds.

40A:11-15. Duration of certain contracts

All contracts for the provision or performance of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c. 198 (C.40A:11-5) shall be awarded for a period not to exceed 12 consecutive months. Contracts may be awarded for longer periods of time as follows:

(1) Supplying of:

(a) (Deleted by amendment, P.L.1996, c. 113.)

(b) (Deleted by amendment, P.L.1996, c. 113.)

(c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;

(2) (Deleted by amendment, P.L.1977, c. 53.)

(3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;

(4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c. 39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L. 1971, c. 198 (C.40A:11-5);

(5) Data processing service, for any term of not more than seven years;

(6) Insurance, including the purchase of insurance coverages, insurance consulting or administrative services, claims administration services and including participation in a joint self-insurance fund, risk management program or related services provided by a contracting unit insurance group, or participation in an insurance fund established by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund established pursuant to P.L.1983, c. 372 (C.40A:10-36 et seq.), for any term of not more than three years;

(7) Leasing or servicing of automobiles, motor vehicles, machinery and equipment of every nature and kind, for a period not to exceed five years; provided, however, such contracts shall be awarded only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a company providing voice, data, transmission or switching services for a term not exceeding five years;

(9) Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

(10) The providing of food services for any term not exceeding three years;

(11) On-site inspections and plan review services undertaken by private agencies pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C.52:27D-119 et seq.) for any term of not more than three years;

(12) (Deleted by amendment, P.L.2009, c. 4).

(13) (Deleted by amendment, P.L.1999, c. 440.)

(14) (Deleted by amendment, P.L.1999, c. 440.)

(15) Leasing of motor vehicles, machinery and other equipment primarily used to fight fires, for a term not to exceed ten years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c. 37 (C.58:26-1 et al.), except that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (30), (31), (34), (35) or (43) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its portability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal

property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

(17) The provision of resource recovery services by a qualified vendor, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the residual ash generated at a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, or the design, financing, construction, operation or maintenance of a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, and the Department of Environmental Protection pursuant to P.L.1985, c. 38 (C.13:1E-136 et al.); and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c. 39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production; and "residual ash" means the bottom ash, fly ash, or any combination thereof, resulting from the combustion of solid waste at a resource recovery facility;

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c. 39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c. 72 (C.58:27-1 et al.), except that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (36) or (43) of this section. For the purposes of this subsection,

"wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of goods or services for the purpose of lighting public streets, for a term not to exceed five years;

(21) The provision of emergency medical services for a term not to exceed five years;

(22) Towing and storage contracts, awarded pursuant to paragraph u. of subsection (1) of section 5 of P.L.1971, c. 198 (C.40A:11-5) for any term not exceeding three years;

(23) Fuel for the purpose of generating electricity for a term not to exceed eight years;

(24) The purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from a supplier of electricity subject to the jurisdiction of a federal regulatory agency, from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or from any supplier of electricity within any regional transmission organization or independent system operator or from such organization or operator or their successors, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24, 1991, for a term not to exceed 40 years, or by a contracting unit engaged solely in the distribution of electricity for retail sale for a term not to exceed ten years, except that a contract with a contracting unit, engaged solely in the distribution of electricity for retail sale, in excess of ten years, shall require the written approval of the Director of the Division of Local Government Services. If the director fails to respond in writing to the contracting unit within 10 business days, the contract shall be deemed approved;

(25) Basic life support services, for a period not to exceed five years. For the purposes of this subsection, "basic life support" means a basic level of prehospital care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization;

(26) (Deleted by amendment, P.L.1999, c. 440.)

(27) The provision of transportation services to elderly, disabled or indigent persons for any term of not more than three years. For the purposes of this subsection, "elderly persons" means persons who are 60 years of age or older. "Disabled persons" means persons of any age who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. "Indigent persons" means persons of any age whose income does not exceed 100 percent of the poverty

level, adjusted for family size, established and adjusted under section 673(2) of subtitle B, the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C.s.9902 (2));

(28) The supplying of liquid oxygen or other chemicals, for a term not to exceed five years, when the contract includes the installation of tanks or other storage facilities by the supplier, on or near the premises of the contracting unit;

(29) The performance of patient care services by contracted medical staff at county hospitals, correction facilities and long term care facilities, for any term of not more than three years;

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c. 381 (C.58:28-2), or a contract entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no later than January 7, 1995, for any term of not more than forty years;

(31) The provision of water supply services or the financing, construction, operation or maintenance or any combination thereof, of a water supply facility or any component part or parts thereof, by a partnership or copartnership established pursuant to a contract authorized under section 2 of P.L.1993, c. 381 (C.58:28-2), for a period not to exceed 40 years;

(32) Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three years;

(33) The supplying of any product or the rendering of any service, including consulting services, by a cemetery management company for the maintenance and preservation of a municipal cemetery operating pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

(34) A contract between a public entity and a private firm pursuant to P.L.1995, c. 101 (C.58:26-19 et al.) for the provision of water supply services may be entered into for any term which, when all optional extension periods are added, may not exceed 40 years;

(35) A contract for the purchase of a supply of water from a public utility company subject to the jurisdiction of the Board of Public Utilities in accordance with tariffs and schedules of charges made, charged or exacted or contracts filed with the Board of Public Utilities, for any term of not more than 40 years;

(36) A contract between a public entity and a private firm or public authority pursuant to P.L.1995, c. 216 (C.58:27-19 et al.) for the provision of wastewater treatment services may be entered into for any term of not more than 40 years, including all optional extension periods;

(37) The operation and management of a facility under a license issued or permit approved by the Department of Environmental Protection, including a wastewater treatment system or a water supply or distribution facility, as the case may be, for any term of not more than ten years. For the purposes of this subsection, "wastewater treatment system" refers to facilities operated or maintained for the storage, collection, reduction, disposal, or other treatment of wastewater or

sewage sludge, remediation of groundwater contamination, stormwater runoff, or the final disposal of residues resulting from the treatment of wastewater; and "water supply or distribution facility" refers to facilities operated or maintained for augmenting the natural water resources of the State, increasing the supply of water, conserving existing water resources, or distributing water to users;

(38) Municipal solid waste collection from facilities owned by a contracting unit, for any term of not more than three years;

(39) Fuel for heating purposes, for any term of not more than three years;

(40) Fuel or oil for use in motor vehicles for any term of not more than three years;

(41) Plowing and removal of snow and ice for any term of not more than three years;

(42) Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the Department of the Treasury for use by counties, municipalities or other contracting units pursuant to section 3 of P.L.1969, c. 104 (C.52:25-16.1), for a term not to exceed the term of that contract;

(43) A contract between the governing body of a city of the first class and a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of this section, or wastewater treatment services as defined in subsection (19) of this section, may be entered into for a period not to exceed 40 years;

(44) The purchase of electricity generated through class I renewable energy or from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contacting unit for any term not exceeding 25 years;

(45) The provision or performance of goods or services for the purpose of producing class I renewable energy or class II renewable energy, as those terms are defined in section 3 of P.L.1999, c. 23 (C.48:3-51), at, or adjacent to, buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 15 years; provided, however, that such contracts shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings and energy generation costs.

Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. The contract shall be awarded by resolution of the governing body upon a finding by the governing body that the services are being performed in an effective and efficient manner; b. No such contract shall be extended so that it runs for more than a total of five consecutive years; c. Any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. The terms and conditions of the contract remain substantially the same.

All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts for the provision or performance of goods or services or the supplying of equipment to promote energy conservation through the production of class I renewable energy or class II renewable energy authorized pursuant to subsection (45) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35), (37) or (43) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36), (37) or (43) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (24) above and contracts for the purchase of electricity generated from a power production facility that is fueled by methane gas authorized pursuant to subsection (44) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services in the Department of Community Affairs shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Local Public Contracts Law," P.L.1971, c. 198 (C.40A:11-1 et seq.), except that a contract may be extended by mutual agreement of the parties to the contract when a contracting unit has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

40A:11-15.1. Insurance to fund pension system

Notwithstanding the provisions of subsection (6) of section 15 of P.L.1971, c. 198 (C. 40A:11-15) to the contrary, a county or a municipality in which a pension fund has been established pursuant to P.L.1943, c. 160 (C. 43:10-18.1 et seq.), R.S.43:10-1 through R.S. 43:10-18, P.L.1948, c. 310 (C. 43:10-18.50 et seq.), or P.L.1954, c. 218 (C. 43:13-22.3 et seq.), may enter into an insurance contract to fund the actuarial liability of its pension system, for a term which may not exceed the term of the actuarial liability covered by the contract.

40A:11-15.2. Purchase of electricity; new county correction facilities

In the case of construction of a new county correction facility, in addition to the purchase of thermal energy, contracts for the purchase of electricity shall be permitted pursuant to subsection (1)(c) of section 15 of P.L.1971, c. 198 (C.40A:11-15).

40A:11-15.3. Contracts for marketing recyclable materials recovered through recycling programs

a. Notwithstanding the provisions of section 15 of P.L.1971, c. 198 (C.40A:11-15) to the contrary, a county government contracting unit may enter into or extend a contract for the marketing of recyclable materials recovered through a recycling program subject to the following conditions:

(1) The program includes one or more interlocal services agreements with municipalities in that county for the delivery of recyclable materials to a contractor; and

(2) The contract for the marketing of recyclable material includes fixed or formula based fees for the marketing services so provided and the contractor owns the buildings and equipment necessary to perform the contract.

b. Whenever an existing contract satisfies the conditions contained in subsection a. of this section, the contract may be extended for a period of up to 10 years; however, the length of the existing contract together with any extension thereof shall not exceed a total of 12 years. A new contract for the marketing of recyclable materials shall not exceed 10 years. Notwithstanding the provisions of section 5 of P.L.1971, c. 198 (C.40A:11-5) to the contrary, a new contract for the marketing of recyclable materials for a term exceeding five years shall be entered into pursuant to public bidding or competitive contracting.

40A:11-16. Separate plans for various types of work; bids; contracts

a. (1) In the preparation of plans and specifications for the construction, alteration or repair of any public building by any contracting unit, when the entire cost of the work will exceed the bid threshold, the architect, engineer or other person preparing the plans and specifications may prepare separate plans and specifications for branches of work in the following categories:

(1) The plumbing and gas fitting and all kindred work;

(2) Steam power plants, steam and hot water heating and ventilating and refrigeration apparatus and all kindred work;

(3) Electrical work, including any electrical power plants, tele-data, fire alarm, or security system;

(4) Structural steel and ornamental iron work; and

(5) General construction, which shall include all other work required for the completion of the project.

(2) With regard to the branch work categories in paragraph (1) of this subsection, the contracting agent shall advertise for and receive, in the manner provided by law, either (a) separate bids for each of said categories, or (b) single bids by general contractors for all the work, goods and services required to complete the public building to be included in a single overall contract, or (c) both. In the case of separate bids under (a) or (c) of this paragraph, contractors for categories (1) through (4) shall not be required to name subcontractors in their bid. In the case of a single bid under (b) or (c), there shall be set forth in the bid the name or names of all subcontractors to whom the general contractor will subcontract for categories (1) through (4). Subcontractors who furnish general construction work pursuant to category (5), or subcontractors who furnish work to named subcontractors pursuant to categories (1) through (4) shall not be named in the bid. Notwithstanding the foregoing provisions of this paragraph, a contracting unit may choose to require in its bid specification that a subcontractor shall be named in a bid when, in the case of (a) of this paragraph, separate bids for each category, the work of that subcontractor exceeds 35 percent of the contracting unit's estimated amount of value of the work, which shall be set forth in the bid specification.

(3) The contracting unit shall require evidence of performance security to be submitted simultaneously with the bid. Evidence of performance security may be supplied by the bidder on behalf of himself and any or all subcontractors, or by each respective subcontractor, or by any combination thereof which results in evidence of performance security equaling, but in no event exceeding, the total amount bid.

b. Whenever a bid sets forth more than one subcontractor for any of the categories (1) through (4) in paragraph (1) of subsection a. of this section, the bidder shall submit to the contracting unit a certificate signed by the bidder listing each subcontractor named in the bid for that category. The certificate shall set forth the scope of work, goods and services for which the subcontractor has submitted a price quote and which the bidder has agreed to award to each subcontractor should the bidder be awarded the contract. The certificate shall be submitted to the contracting unit simultaneously with the list of the subcontractors. The certificate may take the form of a single certificate listing all subcontractors or, alternatively, a separate certificate may be submitted for each subcontractor. If a bidder does not submit a certificate or certificates to the contracting unit, the contracting unit shall award the contract to the next lowest responsible bidder.

c. Contracts shall be awarded to the lowest responsible bidder. In the event that a contract is advertised for both separate bids for each branch of work and for bids for all work, goods, and services, said contract shall be awarded in the following manner: If the sum total of the amounts bid by the lowest responsible bidder for each branch is less than the amount bid by the lowest responsible bidder for all the work, goods and services, the contracting unit shall award separate contracts for each of such branches to the lowest responsible bidder therefor, but if the sum total of the amounts bid by the lowest responsible bidder for each branch is not less than the amount bid by the lowest responsible bidder for all the work, goods and services, the contracting unit shall award a single overall contract to the lowest responsible bidder for all of such work, goods and services. In every case in which a contract is awarded for a single overall contract, all payments required to be made under such contract for work, goods and services supplied by a subcontractor shall, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor.

d. Any bid specification prepared pursuant to this section that includes the use of 1,000 or more tons of hot mix asphalt, shall include a pay item for any asphalt price adjustment reflecting changes in the cost of asphalt cement. Any bid specification prepared pursuant to this section that includes the use of less than 1,000 tons of hot mix asphalt, shall include a pay item for an asphalt price adjustment for any quantity of hot mix asphalt exceeding 1,000 tons that may be used in the work in the event that performance of the work, including change orders, requires more than 1,000 tons of hot mix asphalt.

The asphalt price adjustment shall be calculated in accordance with the formula and relevant instructions published in the most recent edition of the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction as revised by the "Standard Inputs" periodically issued by the department. All invoices for payment shall be accompanied by the calculation of any asphalt price adjustment and a showing of the current month's Asphalt Price Index, the Basic Asphalt Price Index.

e. (1) Every bid specification prepared pursuant to this section may be eligible for a fuel price adjustment. Fuel that is eligible for a fuel price adjustment shall be the sum of the quantities of the eligible pay items in the contract times the fuel usage factors as determined by the Department of Transportation. The types of fuel furnished shall be at the option of the contractor.

(2) The fuel requirement for items not determined by the Department of Transportation to be eligible, and for pay items in the bid specifications calling for less than 500 gallons of fuel, shall not be eligible for a fuel price adjustment. If more than one pay item has the same nomenclature but with different thicknesses, depths, or types, each individual pay item must require 500 gallons or more of fuel to be eligible for a fuel price adjustment. If more than one pay item has the exact same nomenclature, similar pay items shall be combined and this combination must require 500 gallons or more of fuel to be eligible for the fuel price adjustment.

(3) Fuel price adjustments shall not be made in those months for which the monthly fuel price index has changed by less than five percent from the basic fuel price.

f. As used in subsections d. and e. of this section:

"Asphalt Price Index" means the Asphalt Price Index as determined and published by the New Jersey Department of Transportation.

"Basic Asphalt Price Index" means the Basic Asphalt Price Index as published by the New Jersey Department of Transportation in its "Standard Specifications for Road and Bridge Construction," as revised by the "Standard Inputs" periodically issued by the New Jersey Department of Transportation.

"Fuel Price Index" means the Fuel Price Index as determined and published by the New Jersey Department of Transportation.

"Pay Item" means a specifically described item of work for which the bidder provides a per unit or lump sum price in a bid specification as determined and published by the New Jersey Department of Transportation.

40A:11-16.1. Contracts over $100,000 for improvement to real property; requirement for withholding of payment of percentage of amount; agreement by contractor or in lieu deposit; disposition of interest

Whenever any contract, the total price of which exceeds $100,000.00, entered into by a contracting unit, for the construction, reconstruction, alteration or repair of any building, structure, facility or other improvement to real property, requires the withholding of payment of a percentage of the amount of the contract, the contractor may agree to the withholding of payments in the manner prescribed in the contract, or may deposit with the contracting unit registered book bonds, entry municipal bonds, State bonds or other appropriate bonds of the State of New Jersey, or negotiable bearer bonds or notes of any political subdivision of the State, the value of which is equal to the amount necessary to satisfy the amount that otherwise would be withheld pursuant to the terms of the contract. The nature and amount of the bonds or notes to be deposited shall be subject to approval by the contracting unit. For purposes of this section, "value" shall mean par value or current market value, whichever is lower.

If the contractor agrees to the withholding of payments, the amount withheld shall be deposited, with a banking institution or savings and loan association insured by an agency of the Federal government, in an account bearing interest at the rate currently paid by such institutions or associations on time or savings deposits. The amount withheld, or the bonds or notes deposited, and any interest accruing on such bonds or notes, shall be returned to the contractor upon fulfillment of the terms of the contract relating to such withholding. Any interest accruing on cash payments withheld shall be credited to the contracting unit.

40A:11-16.2. Contracts over $100,000 for improvement to real property; partial payments

Any contract , the total price of which exceeds $100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the contracting unit pursuant to P.L.1979, c. 152 (C.40A:11-16.1).

40A:11-16.3. Withholding of payment from partial payment; release within 45 days of final acceptance date; maintenance security

a. With respect to any contract entered into by a contracting unit pursuant to section 1 of P.L.1979, c. 464 (C .40A:11-16.2) for which the contractor shall agree to the withholding of payments pursuant to P.L.1979, c. 152 (C.40A:11-16.1), 2% of the amount due on each partial payment shall be withheld by the contracting unit pending completion of the contract .

b. Upon acceptance of the work performed pursuant to the contract for which the contractor has agreed to the withholding of payments pursuant to subsection a. of this section, all amounts being withheld by the contracting unit shall be released and paid in full to the contractor within 45 days of the final acceptance date agreed upon by the contractor and the contracting unit, without further withholding of any amounts for any purpose whatsoever, provided that the contract has been completed as indicated. If the contracting unit requires maintenance security after acceptance of the work performed pursuant to the contract , such security shall be obtained in the form of a maintenance bond. The maintenance bond shall be no longer than two years and shall be no more than 100% of the project costs.

40A:11-16.4. Partial payments for materials; conditions; limitations

Any contract entered into by a contracting unit pursuant to section 1 of P.L.1979, c. 464 (C.40A:11-16.2) may also provide for partial payments at least once in each month with respect to all materials placed along or upon the site, or stored at secured locations, which are suitable for use in the execution of the contract , if the person providing the materials furnishes releases of liens for the materials at the time each estimate of work is submitted for payment. The total of all the partial payments shall not exceed the cost of the materials.

40A:11-16.5. Contracts for disposal of solid waste; renegotiation to reflect increase in costs

Any person entering into a contract with a contracting unit pursuant to the provisions of P.L.1971, c. 198 (C.40A:11-1 et seq.), which contract requires the contractor to provide for the disposal of solid waste, shall have the right to renegotiate the contract to reflect any increase in solid waste disposal costs whenever:

a. the increase occurred as a result of compliance with an order issued by the Department of Environmental Protection, in conjunction with the Board of Public Utilities, directing the solid waste be disposed at a solid waste facility other than the facility previously utilized by the person to whom the contract has been awarded; or

b. the increase in solid waste disposal costs occurred as a result of lawful increases in the rates, fees or charges imposed on the disposal of solid waste at the solid waste facility utilized by the person to whom the contract has been awarded.

40A:11-16.6. Value engineering construction change orders for certain contracts; definitions

a. For the purpose of this act:

"Construction" means the construction, reconstruction, demolition, erection, alteration, or repair of a structure or other improvement to real property, other than the construction, reconstruction, demolition, or renovation of a public building.

"Value engineering construction change order" means a change order that results in cost reductions to a project or any portion of the work from the original bid specifications after a construction contract is awarded.

"Value engineering construction proposal" means a cost reduction proposal based on analysis by a contractor of the functions, systems, equipment, facilities, services, supplies, means and methods of construction, and any other item needed for the completion of the contract consistent with the required performance, quality, reliability, and safety.

b. All construction contracts issued by a contracting unit when the total price of the originally awarded contract equals or exceeds $5,000,000, shall allow for value engineering construction change orders to be approved after the award of the contract.

c. Value engineering construction change orders shall be subject to the following provisions:

(1) Value engineering construction change orders shall not be used to impair any of the essential functions, or characteristics of the project, or any portion of the work involved.

(2) The contractor shall submit a value engineering construction proposal that completely describes the changes to the original specifications or proposal, impact on other project components, advantages and disadvantages of the proposed change, cost estimates and calculations on which they are based, any impact on the contract time schedule, and any other relevant information that the contracting unit may require in order to review the value engineering construction proposal. The contractor's cost for developing the value engineering construction proposal shall not be eligible for reimbursement by the contracting unit.

(3) The contractor shall be liable for all reasonable costs incurred by the contracting unit for the technical evaluation and engineering review of a value engineering construction proposal presented by the contractor.

(4) The contracting unit's engineer shall prepare a written report for the governing body that shall evaluate the value engineering construction proposal, make a recommendation on whether or not it should be accepted, rejected, or modified, and state to the contracting unit and contractor the amount of any projected cost savings.

(5) The proposal shall not be approved unless the engineer reports to the governing body that the proposal appears consistent with the required performance, quality, reliability, and safety of the project and does not impair any of the essential functions, or characteristics of the project, or any portion of the work involved.

(6) The contracting unit shall have the sole discretion to approve or disapprove a value engineering construction proposal.

(7) The contractor and the contracting unit shall equally share in the cost savings generated on the contract as a result of an approved value engineering construction change order. Once the project is completed, the contracting unit's engineer shall verify the cost savings to reflect the

actual cost of the work, and such verified cost saving shall be the basis for the savings shared equally with the contractor.

(8) The contractor shall have no claim against the contracting unit as a result of the contracting unit's disapproval of a value engineering construction proposal.

(9) A contracting unit shall include in its bid specifications and contract documents procedures to regulate the value engineering construction change order process. Such procedures shall be based on procedures established by the New Jersey Department of Transportation, or any other appropriate State agency, or rules adopted by the director of the Division of Local Government Services.

d. This section shall not invalidate or impair rules regarding change orders adopted by the director of the Division of Local Government Services prior to the effective date of this act. Notwithstanding any provision of P. L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the director may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the director deems necessary to implement the provisions of P.L.2005, c. 67 (C.40A:11-16.6) which shall be effective for a period not to exceed 12 months. The regulations shall thereafter be amended, adopted or readopted in accordance with the provisions of P.L.1968, c. 410 (C.52:14B-1 et seq.).

40A:11-17. Number of working days specified

All specifications for the doing of any public work for a contracting unit shall fix the date before which the work shall be completed, or the number of working days to be allowed for its completion; and every such contract shall contain a provision for a deduction, from the contract price, or any wages paid by the contracting unit to any inspector or inspectors necessarily employed by it on the work, for any number of days in excess of the number allowed in the specifications.

40A:11-18. American goods and products to be used where possible

Each local unit shall provide, in the specifications for all contracts for county or municipal work or for work for which it will pay any part of the cost, or work which by contract or ordinance it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available, be used in such work.

40A:11-19. Liquidated damages

Any contract made pursuant to P.L.1971, c. 198 (C.40A:11-1 et seq.) may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract in accordance with its terms and conditions, or the terms and conditions of P.L.1971, c. 198 (C.40A:11-1 et seq.). Notwithstanding any other provision of law to the contrary, it shall be void, unenforceable and against public policy for a provision in a contract entered into under P.L.1971, c. 198 (C.40A:11-1 et seq.) to limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct, or other reasons uncontemplated by the parties that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. For the purposes of this section, "contractor" means a person, his assignees or legal representatives with whom a contract with a contracting unit is made.

40A:11-20. Certificate of bidder showing ability to perform contract

There may be required from any bidder submitting a bid on public work to any contracting unit, duly advertised for in accordance with law, a certificate showing that he owns, leases, or controls all the necessary equipment required by the plans, specifications and advertisements under which bids are asked for and if the bidder is not the actual owner or lessee of any such equipment, his certificate shall state the source from which the equipment will be obtained, and shall be accompanied by a certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.

40A:11-21. Guarantee to accompany bid; amount

A person bidding on a contract for the erection, alteration or repair of a public building, structure, facility or other improvement to real property, the total price of which exceeds $100,000, shall furnish a guarantee as provided for herein. A contracting unit may provide that a person bidding on any other contract , advertised in accordance with law, shall furnish a guarantee as provided for herein. The guarantee shall be payable to the contracting unit so that if the contract is awarded to the bidder, the bidder will enter into a contract therefor and will furnish any performance bond or other security required as a guarantee or indemnification. The guarantee shall be in the amount of 10% of the bid, but not in excess of $20,000.00, except as otherwise provided herein, and may be given, at the option of the bidder, by certified check, cashier's check or bid bond. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any contracting unit, which condition requires the depositing of a guarantee in an amount other than 10% of the bid or in excess of $20,000.00 the provisions of this section shall not apply and the requirements of the law or regulation of the United States shall govern.

40A:11-22. Guarantee or surety company; certificate

a. A person bidding on a contract for the erection, alteration or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds $100,000, shall furnish a certificate from a surety company, as provided for herein. A contracting unit may provide that a person bidding on any other contract shall furnish a certificate from a surety company, as provided for herein.

b. When a surety company bond is required in the advertisement or specifications for a contract , every contracting unit shall require from any bidder submitting a bid in accordance with plans, specifications and advertisements, as provided for by law, a certificate from a surety company stating that it will provide the contractor with a bond in such sum as is required in the advertisement or in the specifications.

This certificate shall be obtained for a bond--

(1) For the faithful performance of all provisions of the specifications or for all matters which may be contained in the notice to bidders, relating to the performance of the contract , and

(2) If any be required, for a guarantee bond for the faithful performance of the contract provisions relating to the repair and maintenance of any work, project or facility and its appurtenances and keeping the same in good and serviceable condition during the term of the bond as provided for in the notice to bidders or in the specifications, or

(3) In such other form as may be provided in the notice to bidders or in the specifications.

If a bidder desires to offer the bond of an individual instead of that of a surety company, the bidder shall submit with the bid a certificate signed by such individual similar to that required of a surety company.

The contracting unit may reject any such bid if it is not satisfied with the sufficiency of the individual surety offered.

40A:11-23. Advertisements for bids; bids; general requirements

a. All advertisements for bids shall be published in an official newspaper of the contracting unit sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than 10 days prior to such date; except that all advertisements for bids on contracts for the collection and disposal of municipal solid waste shall be published in an official newspaper of the contracting unit circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but not less than 60 days prior to that date. For all contracts, the date fixed for receiving the bids shall not fall on a Monday, or any day directly following a State or federal holiday.

b. The advertisement shall designate the manner of submitting and the method of receiving the bids and the time and place at which the bids will be received. If the published specifications provide for receipt of bids by mail, those bids which are mailed to the contracting unit shall be sealed and shall only be opened for examination at such time and place as all bids received are unsealed and announced. At such time and place the contracting agent of the contracting unit shall publicly receive the bids, and thereupon immediately proceed to unseal them and publicly announce the contents, which announcement shall be made in the presence of any parties bidding or their agents, who are then and there present, and shall also make proper record of the prices and terms, upon the minutes of the governing body, if the award is to be made by the governing body of the contracting unit, or in a book kept for that purpose, if the award is to be made by other than the governing body, and in such latter case it shall be reported to the governing body of the contracting unit for its action thereon, when such action thereon is required. No bids shall be received after the time designated in the advertisement.

c. Notice of revisions or addenda to advertisements or bid documents shall be provided as follows:

1) For all contracts except those for construction work and municipal solid waste collection and disposal service, notice shall be published no later than seven days, Saturdays, Sundays, and holidays excepted, prior to the date for acceptance of bids, in an official newspaper of the contracting unit and be provided to any person who has submitted a bid or who has received a bid package, in one of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

2) For all contracts for construction work, notice shall be provided no later than seven days, Saturdays, Sundays, or holidays excepted, prior to the date for acceptance of bids, to any person who has submitted a bid or who has received a bid package in any of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

3) For municipal solid waste collection and disposal contracts, notice shall be published in an official newspaper of the contracting unit and in at least one newspaper of general circulation published in the State no later than seven days, Saturdays, Sundays, and holidays excepted, prior to the date for acceptance of bids.

d. Failure of the contracting unit to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the contracting unit from accepting the bids and require the readvertisement for bids pursuant to subsection a. of this section. Failure to obtain a receipt when good faith notice is sent or delivered to the address or telephone facsimile number on file with the contracting unit shall not be considered failure by the contracting unit to provide notice.

40A:11-23.1. Plans, specifications and bid proposal documents for certain real property contracts; bid contents

All plans, specifications and bid proposal documents for the erection, alteration, or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c. 198 (C.40A:11-3), shall include:

a. a document for the bidder to acknowledge the bidder's receipt of any notice or revisions or addenda to the advertisement or bid documents; and

b. a form listing those documentary and informational forms, certifications, and other documents that the contracting agent requires each bidder to submit with the bid. The form shall list each of the items to be submitted with the bid proposal and a place for the bidder to indicate, by initialing each entry, that the bidder has included those required items with the completed bid proposal. Each bidder shall complete this form and submit it with the bid proposal in addition to those documentary and informational forms, certifications, and other documents that are listed on the form; and

c. a statement indicating whether uniformed law enforcement officers will be required for the project. The statement shall include a line item allowance, which shall be a good faith effort on the part of the contracting unit, to reasonably estimate the total cost of traffic control personnel, vehicles, equipment, administrative, or any other costs associated with additional traffic control requirements required by the contracting unit, or any other public entity affected by the project, above and beyond the bidder's traffic control personnel, vehicles, equipment, and administrative costs. The individuals responsible for the assignment of uniformed law enforcement officers for any municipalities affected by a project shall be required to determine where traffic safety control is needed for a project, and calculate the number and placement of all necessary personnel, equipment, and the costs associated with these, including hourly rates, and submit this information to the contracting unit.

The contracting unit shall not be responsible for additional traffic control costs beyond the number of working days specified in the construction contract in accordance with section 17 of P.L.1971, c. 198 (C.40A:11-17), when such a delay is caused by the contractor and liquidated damages have been assessed.

The statement prescribed under this subsection shall not be required if the contracting unit will provide for the direct payment of uniformed law enforcement officers and any additional costs directly associated with the provision of those officers; and

d. at the option of the contracting unit, specified alternate proposals in addition to a base specification. When the contracting unit specifies alternate proposals, the determination of which bidder's response to a request for bids offers the lowest price shall be made on the basis of the price of: (i) the base specification plus the price of any selected specified alternate proposals; or (ii) a choice of specified alternative proposals within the limit of funds that may be made available for a project. If a contracting unit provides for more than one specified alternate proposal, the contracting unit shall specify in the bid specification the criteria or ranked order by which specified alternate proposals shall be selected and included in the award of the contract by the governing body, provided that this requirement shall only apply to a project with a total estimated cost, including specified alternate proposals, of greater than $500,000. The aggregate dollar value of accepted specified alternative proposals shall not exceed 50 percent of the base bid. If a contracting unit is found in a court of law to have chosen specific alternative proposals in a manner intended to award a contract to a specific vendor, the bids shall be voided, the contracting unit shall rebid the project, and a plaintiff who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

For the purposes of this subsection:

"Specified alternate proposal" means a requirement of the bid specification for bidders to submit prices for reduced, modified or supplemental work in addition to the base proposal which may include, but not be limited to, a change in project scope or the use of alternative materials or methods of construction;

"Base specification" means the plans and specifications for the erection, alteration or repair of the building, structure, facility or other improvement to real property that are required to be met by all bidders without exception; and

e. in the case of a project that includes the removal of soil from the site, disclosure of any documentation relative to the known soil conditions at the site including, but not limited to, any test results specifying the level of contamination, if any, of the soil that has been found at the site of the project, or if a project is located on a site with historical or suspected contamination, a line item allowance or minimum unit price line item for soil testing and contaminated soil disposal, which shall be a good faith effort on the part of the contracting unit to reasonably estimate the total cost of testing the soil and disposing of it.

40A:11-23.1a. Plans, specifications and bid proposal documents for certain real property contracts; projects with no suspected soil contamination or allowance for soil testing; reimbursement for subsequent discovery of contamination

In the case of a project for the erection, alteration, or repair of a building, structure, facility or other improvement to real property, the total price of which exceeds the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c. 198 (C.40A:11-3), that does not have historical or suspected soil contamination, or for which the plans, specifications and bid proposal documents for the project do not include a line item allowance or minimum unit price line item for soil testing and contaminated soil disposal pursuant to subsection e. of section 1 of P.L.1999, c. 39 (C.40A:11-23.1), and contaminated soil from the site cannot be disposed of pursuant to the plans, specifications and bid proposal documents due to the contaminated soil being found to be different from the type or quality originally disclosed, the contracting unit shall approve, consistent with and subject to the "Local Public Contracts Law," P.L.1971, c. 198 (C.40A:11-1 et seq.), and any rules or regulations adopted pursuant thereto, a change order to reimburse the contractor for the additional reasonable costs, as determined by the contracting unit, required to test and dispose of the contaminated soil.

40A:11-23.2. Mandatory requirements

When required by the bid plans and specifications, the following requirements shall be considered mandatory items to be submitted at the time specified by the contracting unit for the receipt of the bids; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the bid proposal unresponsive and that cannot be cured by the governing body:

a. A guarantee to accompany the bid pursuant to section 21 of P.L.1971, c. 198 (C.40A:11-21);

b. A certificate from a surety company pursuant to section 22 of P.L.1971, c. 198 (C.40A:11-22);

c. A statement of corporate ownership pursuant to section 1 of P.L.1977, c. 33 (C.52:25-24.2);

d. A listing of subcontractors pursuant to section 16 of P.L.1971, c. 198 (C.40A:11-16);

e. A document provided by the contracting agent in the bid plans, specifications, or bid proposal documents for the bidder to acknowledge the bidder's receipt of any notice or revisions or addenda to the advertisement or bid documents.

f. (Deleted by amendment, P.L.2009, c. 315.)

40A:11-23.3. Public works contracts; withdrawal of bid due to mistake; procedural requirements

a. In the case of a bidding process for a public works contract, a bidder may request withdrawal of a bid, due to a mistake on the part of the bidder, within five business days after a bid opening. As used in this section, "mistake" shall have the same meaning as provided in paragraph 42 of section 2 of P.L.1971, c. 198 (C.40A:11-2).

b. To request the withdrawal of a public works bid, a bidder shall submit a request for withdrawal in writing by certified or registered mail to the address to which the bid was submitted. The request shall be effective upon mailing. The request shall include evidence, including any pertinent documents, demonstrating that a mistake was made and was of so great a consequence that:

(1) the enforcement of the contract, if actually made, would be unconscionable;

(2) the mistake relates to a material feature of the bid;

(3) the mistake occurred notwithstanding the fact that the bidder exercised reasonable care in preparation of the bid; and

(4) the bidder making the mistake is able to get relief by way of withdrawing the bid without serious prejudice to the contracting unit, except for the loss of the bargain to the contracting unit.

c. A purchasing agent qualified pursuant to subsection b. of section 9 of P.L.1971, c. 198 (C.40A:11-9), or legal counsel for the contracting unit, or the chief administrative officer of the contracting unit, shall review the request for bid withdrawal. No later than the next meeting of the governing body of the contracting unit following receipt of the withdrawal request, the individual responsible for reviewing the request shall make a recommendation to the governing body of the contracting unit concerning the disposition of the request. The governing body of the contracting unit shall act upon the request to withdraw the bid no later than at its next regular meeting.

d. The purchasing agent, legal counsel, or chief administrative officer responsible for reviewing the request pursuant to subsection b. of this section, shall act in good faith in reviewing the request and in making a recommendation to the governing body concerning the disposition of a request to withdraw a bid.

e. A contracting unit whose governing body grants a request to withdraw a bid shall return the bid guarantee to the bidder. Once the decision to approve the withdrawal is made, the contracting unit shall continue the award process with the remaining bids.

f. If a bidder withdraws a bid, the bidder shall be disqualified from future bidding on the same project, including whenever all bids are rejected pursuant to section 21 of P.L.1999, c. 440 (C.40A:11-13.2).

40A:11-23.4. Internet database to be established; Bulletin NJ

a. The Division of Local Government Services in the Department of Community Affairs, in consultation with the Office of Information Technology, shall design, develop, and maintain a single, searchable Internet database, to be known as "Bulletin NJ," that contains and displays information on requests for proposals and other government procurement opportunities published by a contracting unit or a board of education, as defined by N.J.S.18A:18A-2.

b. Each entry in the Internet database shall include information as required pursuant to rules and regulations adopted by the Division of Local Government Services.

c. In addition to the requirements specified in subsection a. of this section, the Internet database shall:

(1) be accessible from the Division of Local Government Services Internet website;

(2) display all of the information required by subsection b. of this section;

(3) be searchable by the name of the contracting unit or board of education publishing the request for proposals;

(4) be reviewed and updated at least once per month or more frequently as new information becomes available or changes are necessary; and

(5) provide an opportunity for the public to submit input and feedback concerning the utility of the Internet database and recommendations for its improvement.

d. All contracting units and boards of education, as defined by N.J.S.18A:18A-2, are directed to submit information as required pursuant to rules and regulations adopted by the Division of Local Government Services.

e. Nothing in this section shall require the disclosure of information deemed confidential by State or federal law.

f. Nothing in this section shall be interpreted to invalidate or otherwise impact an otherwise valid contract entered in to pursuant to the "Local Public Contracts Law," P.L.1971, c. 198 (C.40A:11-1 et seq.) or the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.

40A:11-23.5. Rules and regulations relative to Bulletin NJ

The Division of Local Government Services in the Department of Community Affairs shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations to effectuate the purposes of this act.

40A:11-24. Time for making awards; deposits returned

a. The contracting unit shall award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than 60 days, except that the bids of any bidders who consent thereto may, at the request of the contracting unit, be held for consideration for such longer period as may be agreed. All bid security, except the security of the three apparent lowest responsible bidders, shall be returned, unless otherwise requested by the bidder, within 10 days after the opening of the bids, Sundays and holidays excepted, and the bids of such bidders shall be considered as withdrawn. Within three days, Sundays and holidays excepted, after the awarding and signing of the contract and the approval of the contractor's performance bond, the bid security of the remaining unsuccessful bidders shall be returned to them.

b. The contract shall be signed by all parties within the time limit set forth in the specifications, which shall not exceed 21 days, Sundays and holidays excepted, after the making of the award; provided, however, that all parties to the contract may agree to extend the limit set forth in the specifications beyond the 21 day limit required in this subsection. The contractor, upon written request to the contracting unit, is entitled to receive, within seven days of the request, an authorization to proceed pursuant to the terms of the contract on the date set forth in the contract for work to commence, or, if no date is set forth in the contract, upon receipt of authorization. If for any reason the contract is not awarded and the bidders have paid for or paid a deposit for the plans and specifications to the contracting unit, the payment or deposit shall immediately be returned to the bidders when the plans and specifications are returned in reasonable condition within 90 days of notice that the contract has not been awarded.

I. Qualification of Bidders (Refs & Annos)

(1) in General

40A:11-25. General power to provide qualification for bidders

The governing body of any contracting unit may establish reasonable regulations appropriate for controlling the qualifications of prospective bidders upon contracts to be awarded on behalf of the contracting unit, by the class or category of goods or services to be provided or performed, which may fix the qualifications required according to the financial ability and experience of the bidders and the capital and equipment available to them pertinent to and reasonably related to the class or category of goods or services to be provided or performed in the performance of any such contract, and may require each bidder to furnish a statement thereof; and if such governing body is not satisfied with the qualifications of any bidder as founded upon such statement, it may refuse to furnish the bidder with any plans or specifications for any public contract or consider any bid made by the bidder for any contract.

Prior to the adoption of any such regulations, a contracting unit shall submit them to a public hearing. Notice of the hearing and a general description of the subject matter of the regulations to be adopted shall be published in not less than two newspapers circulating in the county or municipality in which the contracting unit is located. Publication shall precede by at least 20 days the date set in the notice for the hearing. The clerk or secretary of the governing body of the contracting unit shall keep a record of the proceedings and of the testimony of any citizen or prospective bidder. Within 10 days after the completion of the hearings, the proposed regulations and a true copy of the hearings shall be forwarded to the Director of the Division of Local Government Services for the director's approval. This approval shall be indicated by a letter from the director to the governing body of the contracting unit. If the director fails to approve or disapprove the regulations within 30 days of their receipt by the director, they shall take effect without the director's approval. The director may disapprove such proposed regulations only if the director finds that:

(a) They are written in a manner which will unnecessarily discourage full, free and open competition; or

(b) They unnecessarily restrict the participation of small businesses in the public bidding process; or

(c) They create undue preferences; or

(d) They violate any other provision of this act, or any other law.

If the director disapproves such proposed regulations within the 30-day period prescribed, they shall be of no force and effect and may not be required as a condition to the acceptance of a bid on any public contract by the contracting unit. Any appeal from a decision of the director to the Local Finance Board shall be subject to the provisions of the "Local Government Supervision Act (1947)", P.L.1947, c. 151, (C.52:27BB-1 et seq.).

No qualification rating of any bidder shall be influenced by the bidder's race, religion, sex, national origin, nationality or place of residence or business.

Nothing contained in this act shall limit the right of any court to review a refusal to furnish any such plans or specifications or to consider any bid on any contract advertised.

Any such governing body may adopt a standard form of statement or questionnaire for bidders on public works contracts, and in such case their action shall be governed as provided herein.

(2) Standard Form of Questionnaire

40A:11-26. Standard questionnaire; effect of unsatisfactory answers

The governing body of any contracting unit may adopt a standard form of statement or questionnaire for bidders and may require from any person proposing to bid upon any such contract a statement or answers showing the bidder's financial ability and experience in performing public sector work and describing the equipment available to such bidder in the performance of such contract, and if not satisfied with the sufficiency of this statement or answers may refuse to furnish plans and specifications to the bidder.

40A:11-27. Standard statements and questionnaires; prospective bidders; responses

Such statements and questionnaires shall be standardized for like classes of goods or services to be submitted to prospective bidders who may be required to respond to questions under oath. The statement or answer shall disclose fully the financial ability, adequacy of plant and equipment, organization and prior experience of the prospective bidder, and such other pertinent and material facts as may be required.

40A:11-28. Classification of prospective bidders; notice

Prospective bidders shall be classified as to the character and amount of goods or services contracts as to which they shall be qualified to submit bids, and bids shall be accepted only from persons so qualified. The classification shall be made and an immediate notice thereof shall be sent to the prospective bidders by certified or registered mail within 8 days after the date of receipt of the responsive statement or answers.

40A:11-29. Reclassification of prospective bidders; request for; time limit

If any person, after being notified of a classification, shall be dissatisfied therewith or with the classification of other bidders, that person may request in writing a hearing before such governing body, and may present such further evidence with respect to the financial responsibility, organization, plant and equipment, or experience of that person or other prospective bidders as might tend to justify a different classification.

Where a request is made for the change of classification of another prospective bidder, the applicant therefor shall notify such other bidder by certified or registered mail of the time and place of hearing, as fixed by the governing body, and at the hearing shall present satisfactory evidence that the notice was served as herein required, before any matters pertaining to a change of classification of such other bidder shall be taken up. After hearing such evidence the governing body may, in its discretion, by appropriate action, change or retain the classification of any bidder.

No change in classification to be effective for any contract where bidding therefor has been duly advertised, shall be made unless the written request therefor shall have been received at least 20 days before the final day for submission of bids.

All requests for change in classification and notice of any action sent by certified or registered mail to the parties directly affected thereby, shall be acted upon by the governing body concerned at least eight days prior to the date fixed for the next opening of bids on any contract or contracts for which such persons might be qualified to bid as a result of the reclassification.

40A:11-30. Board of review upon classification; membership, et cetera

There is hereby established a board of review upon classification and reclassification of prospective bidders. This board shall consist of one member of the governing body of the contracting unit concerned and two citizens of the county or municipality to be designated by such governing body. In all counties having a county supervisor, he shall be a member of the board of review instead of one of the citizens. The clerk of the contracting unit shall be the secretary of the board of review and shall keep a complete record of its proceedings and decisions. The members of the board shall serve without compensation.

40A:11-31. Reconsideration by board of review; request for; time limit

Any prospective bidder who is dissatisfied with an original classification or reclassification may upon receipt of notice thereof, request in writing a hearing of the matter before the board of review. The request shall be filed with the contracting agent and the secretary of the board.

The board shall hold a hearing at which the prospective bidder shall be entitled to be heard and to submit additional information.

The board shall review the responsibility of all prospective bidders who have filed statements or answers, considering both the statement, answers and any additional information given at the hearing, and shall certify to the contracting unit concerned, its decision as to the original classifications or reclassifications, if any. The decisions shall be made by a majority vote.

In order for any change in classification by the board to be effective for a contract previously advertised, the request shall be filed not less than five days prior to the final day for submission of bids, and the board shall hold a hearing and act upon the request not less than two days prior to the date fixed for the next opening of bids on any public works contract for which such prospective bidders might be qualified to bid as a result of the reclassification.

40A:11-32. Rejection of bids after qualification of bidder; hearing

Nothing herein contained shall be construed as depriving any governing body of the right to reject a bid at any time prior to the actual award of a contract, where the circumstances of the prospective bidder have changed subsequent to the qualification and classification of the bidder, which in the opinion of the awarding contracting unit would adversely affect the responsibility of the bidder. Before taking final action on any such bid, the contracting agent concerned shall notify the bidder and afford the bidder an opportunity to present any additional information which might tend to sustain the existing classification.

No person shall be qualified to bid on any contract unless that person shall have submitted a statement or answers as herein required within a period of 6 months preceding the date of opening of bids for the contract, if the bidders thereon are required to be classified hereunder. In any case where the contracting unit shall require classification of the bidders in compliance with these sections, each bidder on any contract shall be required to submit a statement listing the changes in the statement or answers herein required as part of the bidder's bid submission.

40A:11-33. Forfeiture of deposit in certain cases

A deposit made by any person who makes or causes to be made a false, deceptive or fraudulent statement or answers in response to a questionnaire or in the course of a hearing hereunder may be caused to be forfeited, as liquidated damages by and to the contracting unit.

(3) Penalties

40A:11-34. Penalties for false statements

Any person who makes or causes to be made, a false, deceptive or fraudulent statement in the statement or answers in response to the questionnaire, or in the course of any hearing hereunder, shall be guilty of a misdemeanor, and upon conviction shall be punishable by a fine of not less than $100.00 nor more than $1,000.00, and shall be permanently disqualified from bidding on all public work or contracts of the contracting unit which submitted the questionnaire; or, in the case of an individual or an officer or employee charged with the duty of responding to the questionnaire for a person, firm, copartnership, association or corporation, by such fine or by imprisonment, not exceeding 6 months, or both.

40A:11-35. Indemnity agreements; Federal projects for benefit of municipality

Any contracting unit may enter into an agreement indemnifying the United States of America, or any board, body, officer or agency thereof, from loss or damage to the property of others resulting from the furtherance of any project, undertaken or to be undertaken by the Federal Government for the benefit of such contracting unit where the cost or any part thereof is to be paid out of Federal funds.

40A:11-36. Sale or other disposition of personal property

Any contracting unit by resolution of its governing body may authorize by sealed bid or public auction the sale of its personal property not needed for public use.

(1) If the estimated fair value of the property to be sold exceeds 15 percent of the bid threshold in any one sale and it is neither livestock nor perishable goods, it shall be sold at public sale to the highest bidder.

(2) The contracting unit need not advertise for bids when it makes any such sale to the United States, the State of New Jersey, another contracting unit , any body politic to which it contributes tax raised funds, any foreign nation which has diplomatic relations with the United States, or any governmental unit in the United States.

(3) Notice of the date, time and place of the public sale together with a description of the items to be sold and the conditions of sale shall be published in an official newspaper. Such sale shall be held not less than seven nor more than 14 days after the latest publication of the notice thereof.

(4) If no bids are received the property may then be sold at private sale without further publication or notice thereof, but in no event at less than the estimated fair value; or the contracting unit may if it so elects reoffer the property at public sale. As used herein, "estimated fair value" means the market value of the property between a willing seller and a willing buyer less the cost to the contracting unit to continue storage or maintenance of any personal property not needed for public use to be sold pursuant to this section.

(5) A contracting unit may reject all bids if it determines such rejection to be in the public interest. In any case in which the contracting unit has rejected all bids, it may readvertise such personal property for a subsequent public sale. If it elects to reject all bids at a second public sale, pursuant to this section, it may then sell such personal property without further publication or notice thereof at private sale, provided that in no event shall the negotiated price at private sale be less than the highest price of any bid rejected at the preceding two public sales and provided further that in no event shall the terms or conditions of sale be changed or amended.

(6) If the estimated fair value of the property to be sold does not exceed the applicable bid threshold in any one sale or is either livestock or perishable goods, it may be sold at private sale without advertising for bids.

(7) Notwithstanding the provisions of this section, by resolution of the governing body, a contracting agent may include the sale of personal property no longer needed for public use as part of specifications to offset the price of a new purchase.

40A:11-37. Division of Local Finance to assist contracting units

The Division of Local Government Services in the Department of Community Affairs is hereby authorized to assist contracting units in all matters affecting the administration of this law.

40A:11-37.1. Rules

Pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), the Director of the Division of Local Government Services after consultation with the Commissioner of Education may adopt rules implementing the provisions of the "Local Public Contracts Law," P.L.1971, c. 198 (C.40A:11-1 et seq.) and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.

40A:11-39. Effective date

This act shall take effect July 1, 1971 but any action, purchase, sale, contract or agreement taken, made or entered into prior to this date pursuant to any of the acts, amendments and supplements hereby repealed are hereby validated and confirmed, provided that in no event shall a lease entered into prior to the effective date of this act be renewed or extended, except in accordance with the terms and provisions of this act.

40A:11-40. Specific materials; limitation on price; resolution; filing; procedure; report

Notwithstanding any provisions of the "Local Public Contracts Law," P.L.1971, c. 198 (C. 40A:11-1 et seq.), to the contrary, the governing body may by resolution authorize the purchasing agent of the contracting unit to purchase specific materials at auction for a price not to exceed 85% of the price of equivalent materials as determined pursuant to this section. Such resolution shall be adopted at least 10 days prior to the auction and shall be filed with the Director of the Division of Local Government Services within 3 days of its adoption. Any such auction shall be open to any person to attend and bid on such materials, shall be conducted pursuant to N.J.S. 12A:2-328 , and shall be conducted by a licensed auctioneer. Prior to adoption of the resolution, the purchasing agent shall solicit at least three written quotations of prices for which new materials equivalent to those to be purchased at auction were actually sold within the previous year. The lowest of the three prices so quoted shall be the determining price quotation for the authorization to purchase at auction for a price not to exceed 85% thereof. The authorizing resolution adopted by the governing body shall set forth the three price quotations so quoted and the sources thereof, and shall state that the expenditure of money for the purchase is not made in violation of N.J.S. 40A:4-57, and has been properly certified by the chief finance officer of the local unit.

Any purchasing agent who shall purchase materials at auction pursuant to this section shall, within 14 days of the occurrence of such auction, file a report with the clerk of the governing body and the director, setting forth: the nature, quantity and price of the materials so purchased; the three price quotations solicited prior to such auction, and the sources thereof; and, the name and license number of the auctioneer who conducted such auction.

40A:11-41. Definitions

As used in this act:

a. "County or municipal contracting agency" shall mean the governing body of a county or municipality or any department, board, commission, committee, authority or agency of a county or municipality but shall not include school districts;

b. "Minority group members" shall mean persons who are black, Hispanic, Portuguese, Asian-American, American Indian or Alaskan natives;

c. "Qualified women's business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by women and is qualified pursuant to section 25 of P.L.1971, c. 198 (C.40A:11-25);

d. "Qualified minority business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by minority group members and is qualified pursuant to section 25 of P.L.1971, c. 198 (C.40A:11-25);

e. "Qualified small business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated and meets all other qualifications as may be established in accordance with P.L.1981, c. 283 (C.52:27H-21.1 et seq.);

f. "Set-aside contracts" shall mean (1) a contract for goods, equipment, construction, or services which is designated as a contract for which bids are invited and accepted only from qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, (2) a portion of a contract when that portion has been so designated, or (3) any other purchase or procurement so designated;

g. "Total procurements" shall mean all purchases, contracts or acquisitions of a county or municipal contracting agency, whether by competitive bidding, single source contracting, or other method of procurement, as prescribed or permitted by law;

h. "Veteran" shall have the same meaning as set forth in subsection b. of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of a record of service and receive a determination of status no later than the date established for the submission of bids; and

i. "Qualified veteran business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by a veteran or that wherein at least twenty five percent of the required workforce for the contract are veterans, including new hires if additional workers are required to perform the contract, and is qualified pursuant to section 25 of P.L.1971, c. 198 (C.40A:11-25). The business shall also submit forms quarterly to the contracting agency showing proof of veteran status for all the veteran employees.

40A:11-42. Qualified minority, veteran, women, or small business set-aside programs; establishment

a. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified minority business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified minority business enterprises.

b. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified women's business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified women's business enterprises.

c. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified small business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified small business enterprises.

d. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified veteran business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified veteran business enterprises.

40A:11-43. Award of contracts or subcontracts

a. Any goal established pursuant to section 2 of this act may be attained by requiring that a portion of a contract be subcontracted to a qualified small business enterprise, qualified veteran business enterprise, qualified minority business enterprise or qualified women's business enterprise, in addition to designating entire contracts to these enterprises.

b. Each contracting agency shall make a good faith effort to attain any goal established by its governing body. The governing body shall evaluate each contracting agency's efforts by comparing the percentage of the dollar value of a contracting agency's total procurements awarded to qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, to the percentage of the dollar value of the county's or municipality's total procurements awarded to qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate.

40A:11-44. Application of Local Public Contracts Law

All provisions of the "Local Public Contracts Law," P.L.1971, c. 198 (C. 40A:11-1 et seq.) and any supplements thereto, shall apply to purchases, contracts and agreements made pursuant to this act unless otherwise superseded by the provisions of this act.

40A:11-45. Bidding for contracts or subcontracts; advertisements; publication

Notwithstanding the provisions of any law to the contrary, a contracting agency of a county or municipality which has established a qualified small business enterprise set-aside program, a qualified veteran business enterprise set-aside program, a qualified minority business enterprise set-aside program or a qualified women's business enterprise set-aside program shall designate that a contract, subcontract or other means of procurement of goods, services, equipment, or construction be awarded to a qualified small business enterprise, a qualified veteran business enterprise, a qualified minority business enterprise or a qualified women's business enterprise, if a contracting agency is likely to receive bids from at least two qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, at a fair and reasonable price.

Such designations shall be made prior to any advertisement for bids, if required. Once designated, the advertisement for bids, if necessary, shall indicate that the contract to be awarded is a qualified small business enterprise set-aside contract, qualified veteran business enterprise set-aside contract, a qualified minority business enterprise set-aside contract or a qualified women's business enterprise set-aside contract, as appropriate. All advertisements for bids shall be published in at least one newspaper which will best provide notice thereof to qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or to qualified women's business enterprises, as appropriate, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but shall not be published less than 10 days prior to that date.

40A:11-46. Cancellation of set-aside contracts; notice; resolicitation of bids

a. If the contracting agency determines that two bids from qualified small, qualified veteran, qualified minority or qualified women's businesses cannot be obtained, the contracting agency may withdraw the designation of the set-aside contract and resolicit bids on an unrestricted basis pursuant to the provisions of P.L.1971, c. 198 (C.40A:11-1 et seq.). The cancelled designation shall not be considered in determining the percentage of contracts awarded pursuant to subsection b. of section 3 of this act.

b. If the contracting agency determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the contracting agency shall reject all bids and withdraw the designation of the set-aside contract. Qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, shall be notified in writing of the set-aside cancellation, the reasons for the rejection and the agency's intent to resolicit bids on an unrestricted basis pursuant to the provisions of P.L.1971, c. 198 (C.40A:11-1 et seq.). The cancelled bid solicitation shall not be considered in determining the percentage of contracts awarded pursuant to subsection b. of section 3 of this act.

40A:11-47. Award of contract based on false information; penalties; hearing

Where the governing body of a county or municipality determines that a business has been classified as a qualified small business enterprise, qualified veteran business enterprise, qualified minority business enterprise or qualified women's business enterprise on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this act, the governing body shall have the authority to:

a. Assess against the business any difference between the contract and what the governing body's cost would have been if the contract had not been awarded in accordance with the provisions of this act;

b. In addition to the amount due under subsection a., assess against the business a penalty in an amount of not more than 10% of the amount of the contract involved; and

c. Order the business ineligible to transact any business with the governing body or contracting agency of the governing body for a period to be determined by the governing body.

Prior to any final determination, assessment or order under this section, the governing body shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalties set forth in subsection a., b. or c. of this section.

40A:11-48. Report; publication of agency's attainments

Each contracting agency of a county or municipality which has established a qualified small business enterprise set-aside program, a qualified veteran business enterprise set-aside program, a qualified minority business enterprise set-aside program or a qualified women's business enterprise set-aside program shall submit a report to its governing body by January 31 of each year describing the agency's efforts in attaining the set-aside goals and the percentage of the dollar value of total procurements awarded pursuant to subsection b. of section 3 of this act. The governing body shall publish a list of each agency's attainments in the immediately preceding local fiscal year, to include the county or municipal average, in at least one newspaper circulating in the county or municipality, as appropriate, by March 1 of each year.

40A:11-49. Rules and regulations

The Director of the Division of Local Government Services in the Department of Community Affairs may adopt rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) as he may deem necessary to effectuate the purposes of this act.

40A:11-50. Construction contracts; alternative dispute resolution; joinder of parties

All construction contract documents entered into in accordance with the provisions of P.L.1971, c. 198 (C.40A:11-1 et seq.) after the effective date of P.L.1997, c. 371 (C.40A:11-50) shall provide that disputes arising under the contract shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication. Nothing in this section shall prevent the contracting unit from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, bid withdrawal, or to the formation of contracts or subcontracts to be entered into pursuant to P.L.1971, c. 198 (C. 40A:11-1 et seq.).

Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator or person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the arbitrator or person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

For the purposes of this section, the term "construction contract" means a contract involving construction, or a contract related thereto concerning architecture, engineering or construction management.

40A:11-51. Limits on award of public contracts to entities making political contributions authorized; construction; filing with Secretary of State

a. A county, municipality, independent authority, board of education, or fire district is hereby authorized to establish by ordinance, resolution or regulation, as may be appropriate, measures limiting the awarding of public contracts therefrom to business entities that have made a contribution pursuant to P.L.1973, c. 83 (C.19:44A-1 et seq.) and limiting the contributions that the holders of a contract can make during the term of a contract, notwithstanding the provisions and parameters of sections 1 through 12 of P.L.2004, c. 19 (C.19:44A-20.2 et al.) and section 22 of P.L.1973, c. 83 (C.19:44A-22).

b. The provisions of P.L.2004, c. 19 shall not be construed to supersede or preempt any ordinance, resolution or regulation of a unit of local government that limits political contributions by business entities performing or seeking to perform government contracts. Any ordinance, resolution or regulation in effect on the effective date of P.L.2004, c. 19 shall remain in effect and those adopted after that effective date shall be valid and enforceable.

c. An ordinance, resolution or regulation adopted or promulgated as provided in this section shall be filed with the Secretary of State.

D. Local Government Ethics Law

40A:9-22.5. Code of ethics for local government officers or employees under jurisdiction of local finance board

Local government officers or employees under the jurisdiction of the Local Finance Board shall comply with the following provisions:

a. No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

b. No independent local authority shall, for a period of one year next subsequent to the termination of office of a member of that authority:

(1) award any contract which is not publicly bid to a former member of that authority;

(2) allow a former member of that authority to represent, appear for or negotiate on behalf of any other party before that authority; or

(3) employ for compensation, except pursuant to open competitive examination in accordance with Title 11A of the New Jersey Statutes and the rules and regulations promulgated pursuant thereto, any former member of that authority.

The restrictions contained in this subsection shall also apply to any business organization in which the former authority member holds an interest.

c. No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;

d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

e. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

f. No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties;

g. No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

h. No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities;

i. No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group;

j. No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly, in return therefor; and

k. Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.

New Jersey State League of Municipalities

E. New Jersey State League of Municipalities Contact List

LEAGUE OFFICE	609-695-3481
LEAGUE FAX	609-695-0151
LEAGUE LEGISLATIVE FAX	609-695-5156

After hours, you can leave a voice message for most staff members by dialing their extension, or leave a general message by following the prompts.

Michael J. Darcy, CAE, Executive Director	Ext. 116
Michael Cerra, Assistant Executive Director	Ext. 120
Suzanne Allen, Executive Assistant/Publications	Ext. 129
Donna Bijou, Secretary/Administrative Assistant, Joblines	Ext. 111
Ciara Bradley, Legislative Administrator	Ext. 128
Lori Buckelew, Senior Legislative Analyst	Ext. 112
Shirley Cade, Legislative & Administrative Support	Ext. 114
Suzanne DeLany, Contract Administrator	Ext. 127
Tom Fratticcioli, Magazine & Legislative Bulletin Subscriptions	Ext. 117
Johniffer Harris, Assistant Financial Administrator	Ext. 119
Danielle Holland, Continuing Education/Special Programs Manager	Ext. 118
Marie Johnson, Financial Administrator	Ext. 113
Dee Kotch, Municipal Directory & Administrative Support	Ext. 115
Kristin Lawrence, Exhibit Manager	Ext. 125
Jon Moran, Senior Legislative Analyst	Ext. 121
Frank Marshall, League Associate Counsel-Staff Attorney	Ext. 137
Taran Samhammer, Marketing & Digial Media Manager; Research & Innovation Manager	Ext. 124
Amy Spiezio, Managing Editor	Ext. 123

League Website	NJLM.ORG
NJLM Education Foundation Website	NJLMEF.ORG