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# Local Finance Notice

Chris Christie  
Governor

Kim Guadagno  
Lt. Governor

Charles A. Richman  
Commissioner

Timothy J. Cunningham  
Director

## Contact Information

### Director's Office

V. 609.292.6613  
F. 609.292.9073

### Legislative and Regulatory Affairs

V. 609.292.6110  
F. 609.292.9073

### Financial Regulation and Assistance

V. 609.292.4806  
F. 609.984.7388

### Local Finance Board

V. 609.292.0479  
F. 609.633.6243

### Mail and Delivery

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

### Web:

[www.nj.gov/dca/divisions/dlgs](http://www.nj.gov/dca/divisions/dlgs)

E-mail: [dlgs@dca.nj.gov](mailto:dlgs@dca.nj.gov)

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## Update on Recent Procurement-Related Laws

This Notice surveys recently enacted laws that impact several aspects of local government and/or school procurement. These include bidder ownership disclosure, competitive contracting, contracts for asphalt work, claimant certification for utility bills, federal military equipment surplus (1033 program) and cooperative purchasing,

### Bidder Ownership Disclosure – Update to Form; SEC Disclosure In Lieu of Form

[P.L. 2016, c.43](#), signed into law on August 31, 2016, amends [N.J.S.A. 52:25-24.2](#) to clarify how the ownership disclosure law applies to bidders (a term encompassing RFP respondents) whose direct or indirect parent entity is publicly traded. The law also expressly requires limited liability companies to comply with the ownership disclosure law.

Bidders with publicly traded parent entities can now comply with the ownership disclosure law by submitting the name and address of the parent entity and each person holding a 10% or greater beneficial interest in the parent entity as of the last annual filing with the federal Securities and Exchange Commission or foreign equivalent. If any person holds a 10% or greater beneficial interest in the publicly-traded parent entity, the bidder shall provide a link to the website containing the last annual filing with the SEC (or foreign equivalent) and the relevant page number of the filing containing the information on each person holding a 10% or greater interest.

An [updated model ownership disclosure form](#), applicable to both local governments and boards of education, is now available on the Division's Local Public Contracts Law webpage (under the "Standard Bid Forms" heading).

### Competitive Contracting under Local Public Contracts Law: Additional Services Permitted without Prior Director Approval

Section 25 of [P.L. 2015, c. 95](#), part of the "Division of Local Government Services Modernization and Local Mandate Relief Act of 2015" enacted on

August 10, 2015, amended N.J.S.A. 40A:11-4.1 to list several new services as not requiring prior Director approval in order to utilize competitive contracting. These include:

- Maintenance, custodial, and grounds keeping services
- Consulting services
- Emergency medical billing services
- Property appraisal services
- Reassessment or revaluation services
- Grant writing services
- Animal control services

Please note that [N.J.S.A. 18A:18A-4.1\(k\)](#) was not amended by P.L. 2015, c. 95. As such, a board of education or charter school board of trustees still need Director approval to utilize competitive contracting for those above-listed services relevant to schools.

### **Contracts for Asphalt Work under Local Public Contracts Law**

[P.L. 2015, c. 201](#) amends [N.J.S.A. 40A:11-13](#) of the Local Public Contracts Law to

- require the inclusion of a pay item<sup>1</sup> for an asphalt price adjustment (to reflect changes in the cost of asphalt cement) for any bid specification that includes the purchase or use of 1,000 or more tons of hot mix asphalt, not just specs for the construction, alteration or repair of a public building. The asphalt price adjustment is to be calculated based on the [asphalt price index](#) published by the New Jersey Department of Transportation (NJDOT) for the month preceding the month in which the bids are opened (the “basic asphalt price index”).
  - As before, all invoices for payment shall be accompanied by the calculation of any asphalt price adjustment and a display of both the current month’s asphalt price index and the basic asphalt price index.
- Apply a “fuel price adjustment” to all bid specifications, not just those for the construction, alteration or repair of a public building, where a pay item is eligible
  - As before, pay items shall not be eligible for a fuel price adjustment that are either 1) not determined by NJDOT to be eligible, or 2) eligible but call for less than 500 gallons of fuel. Items eligible for a fuel price adjustment are set forth under [Contract Requirements](#) (Section 160.03.01) for NJDOT’s Standard Specifications for Road and Bridge Construction. Fuel price adjustments shall not be made in those months for which the NJDOT’s monthly [fuel price index](#) has changed by less than five percent (5%) from the basic fuel price.
- require that, for contracts issued for more than 1,000 tons of hot mix asphalt, the price adjustment pay item be applied to each ton of hot mix asphalt purchased and used, not just the tonnage exceeding the 1,000 ton threshold

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<sup>1</sup> The term “pay item”, as defined by [N.J.S.A. 40A:11-13\(f\)](#), means a “specifically described item of work for which the bidder provides a per unit or lump sum price in a bid specification determined and published by the New Jersey Department of Transportation.”

- require that, when a bid specification includes the purchase or use of less than 1,000 tons of hot mix asphalt, the bid spec must include a pay item for an asphalt price adjustment applicable to any quantity of hot mix asphalt over 1,000 tons in the event that the performance of the work, including change orders, requires more than 1,000 tons of hot mix asphalt
- clarify that the term “hot mix asphalt” include equivalent asphalt cement-based products (e.g. warm mix asphalt)
- specifically prohibit the disaggregation of quantities hot-mix asphalt or equivalent for the purpose of avoiding compliance with the provisions of P.L. 2015, c.201.

### **Utility Bills Are No Longer Statutorily Subject to Claimant Certification**

[P.L.2015, c.177](#) amends [N.J.S.A. 40A:5-16](#) of the Local Fiscal Affairs Law, which requires vendors or claimants to certify that the bill or demand is correct, to state that claimant certification shall not be required for the following utility services:

- Telecommunications or basic cable service provided by a company under jurisdiction of the Board of Public Utilities
- Electric, gas, water, or sewer utility service provided by a public utility regulated by the Board of Public Utilities
- Any services provided under a contract between a public utility and a governing body that is approved by the Board of Public Utilities under which rates for service are controlled by the terms of the contract

A similar amendment was made impacting boards of education.

**Note:** [P.L. 2016, c.29](#), signed into law on August 18, 2016, requires the Local Finance Board to promulgate regulations (in consultation with the Department of Education and the Office of the Secretary of Higher Education) permitting local governments, boards of education and county colleges to use standard electronic funds transfer technologies subject to specified internal controls. The Division is presently working with stakeholders in crafting these regulations, which may also impact the claimant certification requirement for local government entities.

### **Department of Defense Surplus Property (1033 Program): Governing Body Approval Required**

Municipal and county law enforcement agencies are eligible for free surplus Department of Defense property through the 1033 program. Such equipment includes but is not limited to armored vehicles, automatic weapons, and night vision equipment. [P.L. 2015, c. 23](#), signed into law on March 16, 2015, requires a municipal or county governing body to approve, by resolution of the majority of its full membership, both a law enforcement agency’s application for enrollment in a 1033 program and the acceptance by a law enforcement agency of any surplus equipment from a 1033 program. The term “county or municipal law enforcement agency” includes, but is not limited to, police departments, a county corrections departments, and county sheriff’s offices.

## Cooperative Purchasing: Additional Entities Authorized to Participate

### State and County Colleges

[P.L.2013, c.207](#) and [P.L. 2016, c.50](#) together authorize a State university, State college or county college to join a cooperative purchasing system registered with the Division of Local Government Services. In order to serve as a lead agent in such a system, however, these entities would need to comply with the Local Public Contracts Law and corresponding regulations when issuing bids or RFPs.

### Nonpublic Schools

[P.L.2013, c.262](#) amends N.J.S.A. 18A:18A-11 to permit a joint purchasing agreement between the boards of education of two or more school districts to include, as additional participating bodies, nonpublic schools located within the municipalities comprising those school districts. The term “nonpublic school” is defined as a private elementary and/or secondary school wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. s.200d et seq.). The joint purchasing agreement can be any cooperative purchasing system (joint purchasing, cooperative pricing, commodity resale) so long as the system includes only those entities defined as a “board of education” under the Public School Contracts Law. Nonpublic schools cannot serve as lead agents in a cooperative purchasing system.

### Educational Research and Service Corporations

[P.L. 2015, c.140](#) authorizes the creation of “educational research and services corporations” (ERSCs), nonprofit 501(c)(3) corporations operating exclusively for charitable, scientific and educational purposes whose voting members are public research universities, State colleges, county colleges, public institutions of higher education primarily located in New Jersey, and nonprofit independent institutions of higher education that receive direct State aid.

An ERSC may act as a lead agency for the procurement of educational technology systems and related services for not only the types of entities that may comprise such a corporation, but also on behalf of school districts, municipalities, counties, and local authorities subject to the Local Authorities Fiscal Control Law (including fire districts). Agreements between an ERSC and a local government or school district are governed by the Uniform Shared Services Act ([N.J.S.A. 40A:65-1 et seq.](#)) as well as by all applicable requirements under State and local procurement laws; this includes pay-to-play.

Before a cooperative purchasing system created by an educational research and services corporation can include a school district, municipality, county, or local authority, said system must be approved by the Director of DLGS and registered with the Division. If the above-referenced entities are to participate in the ERSC’s cooperative purchasing system, the system’s procurement must be performed in compliance with the Local Public Contracts Law and corresponding regulations.

The law also allows the Council of County Colleges to act as a lead agent for the procurement of goods and services by county colleges pursuant to the County College Contracts Law (N.J.S.A. 18A:64A-25.1 et seq.). Entities governed by the Local Public and Public School Contracts Laws cannot participate in such a system.

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Approved: Timothy J. Cunningham, Director

Document	Internet Address
P.L. 2016, c.43	<a href="http://www.njleg.state.nj.us/2016/Bills/PL16/43_.PDF">http://www.njleg.state.nj.us/2016/Bills/PL16/43_.PDF</a>
Updated Model Bidder Ownership Disclosure Form	<a href="http://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/ownership_disclosure_statement_yellowbook.docx">http://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/ownership_disclosure_statement_yellowbook.docx</a>
P.L.2015, c.95	<a href="http://www.njleg.state.nj.us/2014/Bills/PL15/95_.PDF">http://www.njleg.state.nj.us/2014/Bills/PL15/95_.PDF</a>
P.L.2015, c.201	<a href="http://www.njleg.state.nj.us/2014/Bills/PL15/201_.PDF">http://www.njleg.state.nj.us/2014/Bills/PL15/201_.PDF</a>
NJDOT Asphalt and Fuel Index	<a href="http://www.state.nj.us/transportation/business/trnsport/PriceIndex.shtm">http://www.state.nj.us/transportation/business/trnsport/PriceIndex.shtm</a>
Items Eligible for Fuel Price Adjustment (See Sect. 160.03.01)	<a href="http://www.state.nj.us/transportation/eng/specs/2007/spec150.shtm">http://www.state.nj.us/transportation/eng/specs/2007/spec150.shtm</a>
P.L.2015, c.177	<a href="http://www.njleg.state.nj.us/2014/Bills/PL15/177_.PDF">http://www.njleg.state.nj.us/2014/Bills/PL15/177_.PDF</a>
P.L. 2016, c.29	<a href="http://www.njleg.state.nj.us/2016/Bills/PL16/29_.PDF">http://www.njleg.state.nj.us/2016/Bills/PL16/29_.PDF</a>
P.L.2015, c.23	<a href="http://www.njleg.state.nj.us/2014/Bills/PL15/23_.PDF">http://www.njleg.state.nj.us/2014/Bills/PL15/23_.PDF</a>
P.L.2013, c.207	<a href="http://www.njleg.state.nj.us/2012/Bills/PL13/207_.PDF">http://www.njleg.state.nj.us/2012/Bills/PL13/207_.PDF</a>
P.L. 2016, c.50	<a href="http://www.njleg.state.nj.us/2016/Bills/PL16/50_.PDF">http://www.njleg.state.nj.us/2016/Bills/PL16/50_.PDF</a>
P.L.2013, c.262	<a href="http://www.njleg.state.nj.us/2012/Bills/PL13/262_.PDF">http://www.njleg.state.nj.us/2012/Bills/PL13/262_.PDF</a>
P.L.2015, c.140	<a href="http://www.njleg.state.nj.us/2014/Bills/PL15/140_.PDF">http://www.njleg.state.nj.us/2014/Bills/PL15/140_.PDF</a>