

Parsippany-Troy Hills' Improper Emergency Contracting

INVESTIGATIONS DIVISION REPORT



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I. Introduction

An Office of the State Comptroller (OSC) investigation has found that the Township of Parsippany-Troy Hills (Parsippany or the Township) improperly utilized the emergency exception to public bidding requirements and failed to comply with state procurement law when it hired a contractor to renovate the clubhouse on the West Course of the Township-owned Knoll Country Club (Knoll West). The New Jersey Local Public Contracts Law (LPCL) requires local governments to publicly advertise contracts valued over a threshold amount and award those contracts to the lowest responsible bidder. Although the LPCL provides an exception to the public bidding requirement “when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services,” the exception is limited and requires local governments to follow specific emergency procurement procedures to provide for public accountability.¹ Among these procedures are the LPCL requirement that payment of an emergency contract be authorized via public resolution. Parsippany’s local purchasing policies also require that the resolution include a description of the underlying emergency.

In late March 2020, Parsippany hired a general contracting firm (the Contractor) specializing in emergency property damage mitigation and reconstruction to complete long-desired renovations to the Knoll West clubhouse under the emergency procurement procedures. The Township initiated the project immediately after the COVID-19 Stay-at-Home order was issued, citing mold and water damage to justify use of the emergency exception. However, because the building was closed to the public indefinitely at that time, these conditions did not present any imminent danger to public health or safety, and therefore did not qualify as an emergency under the LPCL. The Township continued to impermissibly rely on the emergency exception to reconstruct exterior portions of the clubhouse and convert an interior catering space into a public bar and restaurant. Parsippany utilized the Contractor’s services on the project for over a year without proceeding through the public bidding process or adopting a public resolution authorizing payment for the renovation, which eventually totaled nearly \$1.3 million.

Parsippany is a local government entity funded by taxpayer dollars and, as such, has an obligation to spend its money in a fiscally responsible manner and in accordance with applicable law. The LPCL is designed to guard against corruption, waste, and abuse of taxpayer money. By improperly using the emergency exception to authorize the renovation work without public bidding, Parsippany violated the LPCL and risked paying more for the repairs and renovations to the Knoll West clubhouse. OSC reports the following findings and recommendations to ensure that going forward Parsippany strictly complies with the LPCL to guard against wasteful and abusive spending.

¹ N.J.S.A. 40A:11-6.

II. Background

A. The Township of Parsippany-Troy Hills and the Knoll Country Club

Parsippany is a municipality in Morris County, New Jersey, with an estimated population of 56,162. Parsippany covers an area of 24 square miles. The Township employs a Qualified Purchasing Agent (QPA), an individual responsible for purchasing activities, for the provision or performance of goods or services for the municipality.

The Knoll Country Club is owned and operated by the Township and consists of two 18-hole golf courses, referred to as Knoll East and Knoll West. Knoll East and Knoll West each has its own clubhouse and catering venue that can be booked for weddings, parties, and other events. The Knoll West clubhouse, which is the larger of the two venues, accommodates up to 500 guests. Knoll West's clubhouse also contains the Knoll West Bar & Grille, a public bar and restaurant that opened in fall 2022 following the renovations discussed in this report. The Township makes operational decisions about the club with the assistance of the Knoll Country Club Golf Advisory Committee (Knoll Advisory Committee), a body of twelve appointed members and one councilmember tasked with providing independent advice on matters relating to "the planning, budgeting, regulation and use" of the Knoll golf courses and facilities.²

In December 2019, Parsippany terminated a contract it held with an outside sports venue management company that had operated the Knoll Country Club and appointed a Knoll Advisory Committee member to serve as the new General Manager. This individual, who had recently retired from a career in private business, did not possess any experience in municipal government or sports venue management. Shortly after assuming the position, the new General Manager publicly expressed his plans to "improve the Club's overall amenities," including the locker rooms, grill room, and pro shop, in hopes of bringing "the private golf experience to the public."

B. The Local Public Contracts Law and Emergency Procurement

The Local Public Contracts Law (LPCL) governs public contracting by local governments, including municipalities such as Parsippany. It requires public bidding for all contracts valued over a threshold amount—currently \$17,500—absent specific exceptions.³ For municipalities with an appointed QPA such as Parsippany, the bidding threshold is \$44,000.⁴

² Township of Parsippany-Troy Hills, N.J. Code ch. 4, art. X, § 4-38(B)(10).

³ N.J.S.A. 40A:11-3, -4, -6.1.

⁴ N.J.S.A. 40A:11-3(a), -9.

“The purpose of the public bidding requirement is to ‘secure for the public the benefits of unfettered competition,’ and to ‘guard against favoritism, improvidence, extravagance, and corruption.’”⁵ It exists “for the benefit of taxpayers, not bidders, and should be construed with sole reference to the public good.”⁶ By fostering competition among multiple bidders, the LPCL increases “the likelihood that the public entity will receive the lowest possible contract price from responsible bidders.”⁷ With these principles in mind, New Jersey courts have “curtailed ‘the discretion of local authorities by demanding strict compliance with public bidding guidelines.’”⁸

An exception to the public bidding requirement under the LPCL—referred to as the “emergency exception”—may be used when actual or imminent conditions affecting public health, safety, or welfare require the immediate delivery of goods or services that could not have been reasonably foreseen.⁹ Under the emergency exception, a local government may award a contract for goods or services related to the emergency without public bidding. However, because of the lack of competition resulting from use of the exception, the LPCL requires local governments to follow specific procedures when awarding emergency contracts. As OSC recently noted in a [Letter to Gloucester County](#), these procedures are designed to limit the scope of the contract to address only the emergency condition.¹⁰ An emergency contract must be of limited duration, meeting only the immediate needs of the emergency. Lastly, in order to ensure transparency in the procurement process, the LPCL also requires local governments that award contracts under the emergency exception to adopt a resolution authorizing payment of the contract.¹¹

In order to utilize the emergency exception, the head of the affected department must notify the QPA or other designated individuals “of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking [emergency contracting procedures].”¹² This notification must be in writing, certified, and “filed with the purchasing agent

⁵ Nat’l Waste Recycling, Inc. v. Middlesex Cty. Improvement Auth., 150 N.J. 209, 219 (1997) (quoting Terminal Constr. Corp. v. Atl. Cty. Sewerage Auth., 67 N.J. 403, 410 (1975)).

⁶ Id. at 220.

⁷ Tormee Constr. v. Mercer Cty Improvement Auth., 143 N.J. 143, 148 (citing Skakel v. Twp. of North Bergen, 37 N.J. 369, 378 (1962)). See also N.J.S.A. 40A:11-4(a) (requiring local governments to award contracts to the “lowest responsible bidder”).

⁸ Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135, 160 (2001) (quoting L. Pucillo & Sons, Inc. v. Mayor and Council of the Borough of New Milford, 73 N.J. 349, 356 (1977)).

⁹ N.J.S.A. 40A:11-6(a); N.J.A.C. 5:34-6.1(a).

¹⁰ New Jersey Office of the State Comptroller, *Letter on Gloucester County’s Unlawful Award of Emergency Contract*, April 6, 2023, <https://www.nj.gov/comptroller/reports/2021/approved/20230406.shtml>.

¹¹ N.J.S.A. 40A:11-4(a), -6(a); N.J.A.C. 5:34-6.1(a).

¹² N.J.S.A. 40A:11-6(a).

as soon as practicable.”¹³ Payment of emergency contracts valued over the bid threshold must then be authorized by resolution of the local governing body.¹⁴

Because application of the emergency exception is fact-specific, State regulations instruct local governments to adopt their own procedures to determine and confirm the existence of a condition justifying the use of emergency purchasing procedures.¹⁵ These local rules should include the establishment of “a designated chain of command to ensure that there are always appropriate individuals available to make such decisions.”¹⁶ Under Parsippany’s procedures, the affected department head must first consult the Business Administrator, who is responsible for determining that a qualifying emergency exists. After the respective department head receives approval from the Business Administrator, the department head, through the QPA, is authorized to “purchase essential work, materials, supplies or services in compliance with the provisions of the [LPCL].”¹⁷ Parsippany’s local purchasing procedure requires the Mayor and Township Council to “confirm the award of emergency contracts in excess of the bid threshold by resolution describing the imminent peril to life or property.”¹⁸

III. Methodology

OSC initiated this investigation upon receipt of an anonymous tip alleging that Parsippany was using emergency purchasing procedures when no emergency existed to renovate the Knoll West clubhouse. OSC reviewed documents produced by the Township, its former joint insurance fund, and the contractor that performed the work. The documents reviewed included requisitions, purchase orders, invoices, email correspondence, vendor work reports, insurance claim documentation, and photographs of conditions at the Knoll West clubhouse. OSC also reviewed relevant law and administrative guidance regarding emergency purchasing procedures. In addition, OSC interviewed multiple senior Township officials who possessed knowledge of the

¹³ *Ibid.* See, e.g., *Cooper Med. Ctr. v. Johnson*, 204 N.J. Super. 79, 82-83 (Super. Ct. 1985) (describing differing procedures for contracts exempt from public bidding due to exigent circumstances as opposed to other exemptions under the LPCL).

¹⁴ N.J.S.A. 40A:11-4(a).

¹⁵ N.J.S.A. 40A:11-6(d); N.J.A.C. 5:34-6.1(b).

¹⁶ N.J.A.C. 5:34-6.1(b).

¹⁷ Township of Parsippany-Troy Hills, N.J. Code ch. 4, art. V, § 4-14(B)(5).

¹⁸ During the course of the repairs and renovations detailed in this Report, the Division of Local Government Services in the Department of Community Affairs issued Local Finance Notice 2021-15 as a reminder to local governments of the limitations on emergency procurements. That Notice reiterates to local officials the requirement “that an emergency contract shall only address the immediate needs of the emergency, rather than encompass everything having to do with the emergency.” For example, emergency procurement procedures may be utilized for the removal of tree debris from public roads or other locations that present an immediate danger to people or property, but “cannot be utilized for other tree debris removal work that is not an urgent matter of public safety.”

project, including two former Business Administrators, one former Chief Financial Officer (CFO), and the former Purchasing Director.

OSC sent drafts of this Report to Parsippany and the former General Manager of the Knoll Country Club to provide them with an opportunity to comment on the facts and issues identified during this investigation.¹⁹ OSC considered the responses received and incorporated them into this Report where appropriate.

In its response, the Township recognized OSC's findings and acknowledged that its use of emergency procurement procedures was not justified in this instance. The Township noted that it "has separated with all employees involved in the Knoll West failure to comply, and currently [has] a different Mayor, Business Administrator, Chief Financial Officer, Purchasing Director, Golf General Manager, and Township Attorney." The Township further stated that its current officials "are updating the Township Purchasing Manual to implement robust policies, procedures, and internal controls," and that its new Purchasing Director "will be conducting comprehensive trainings with Department and Division Heads to ensure rules and guidelines are followed."

IV. Findings

A. Parsippany Improperly Utilized the Emergency Exception to Public Bidding to Renovate the Knoll West Country Club

Between 2020 and 2021, Parsippany made extensive repairs and renovations to the Knoll West clubhouse without proceeding through public bidding, relying instead on the LPCL's emergency exception. The repairs and renovations largely proceeded through three phases. The Township began by invoking the exception to remediate visible mold and water damage that, with Governor Philip D. Murphy's Stay-at-Home order connected to the COVID-19 pandemic in effect, posed no actual or imminent threat to the public health, safety, or welfare. The Township continued to rely on the emergency exception to authorize the Contractor to perform repairs to the exterior of the building and lastly reconstruct an interior catering space into a public bar and grill. The Township's reliance on the emergency exception was improper and violated fundamental public contracting principles. The LPCL only allows the use of emergency procurement procedures to address urgent matters of public health and safety. OSC found no evidence establishing—or even suggesting—an emergent condition existed to support the repairs and renovations to the clubhouse pursuant to the emergency exception.

Governor Murphy issued the COVID-19 Stay-at-Home order on March 21, 2020, shortly after declaring the COVID-19 pandemic a public health emergency. The executive order directed all residents to stay home, cancelled all social gatherings, and required "[a]ll places of public amusement, whether indoors or outdoors" to close to the public until further notice.

¹⁹ OSC attempted to arrange an interview with the General Manager during the course of its investigation. The General Manager was not responsive to OSC's requests.

On March 22, 2020, the following day, the General Manager stated he discovered mold and water leaks at the Knoll West clubhouse. The General Manager authorized the Contractor to start demolition and remediation of the mold and water leaks immediately, and the Township issued a purchase order for that work on April 8, 2020. This phase of the project was completed by the end of April 2020 for a total cost of \$23,007.²⁰ In response to a discussion draft of this Report, the General Manager stated that he never authorized any work “without the approval of [his] superiors.” However, Parsippany did not produce any documentation demonstrating that the then-Business Administrator authorized the use of emergency contracting for this work or the renovation that followed. The General Manager never submitted a certification of the emergency conditions and did not prepare a memorandum detailing the same until two months later. Without approval from the Business Administrator and filing of the required certification, this work was not authorized under the LPCL.

On May 22, 2020, the General Manager—two months after discovering the damages—prepared a memorandum titled “Request for Emergency Funding for the Knoll West Mold Remediation and Reconstruction” in which he described the condition of the Knoll West clubhouse.²¹ The memorandum stated that on March 22, 2020, “very strong thunderstorms with high winds” caused leaks in the roof and windows of the building’s three turrets and front cupola.²² The memorandum indicated that the Contractor inspected the clubhouse and found mold in its three turrets, along with indications that structural elements of the turrets had been “compromised,” but did not state, or even suggest, that the structural elements were in need of immediate repair or in danger of imminent collapse. According to the memorandum, the Contractor recommended the removal and replacement of the turrets’ various structural components, including the framing, windows, exterior cladding, and roof structures due to water damage. The General Manager noted that the soffit²³ in the catering area’s bar room had also been remediated for mold and needed to be reconstructed. Similar to the damages to the structural elements, there was no indication that

²⁰ This amount was below the bidding threshold required for a town with a QPA and, taken alone, did not need to be publicly advertised for bids. However, the LPCL requires local governments to aggregate the cost of “the provision or performance of any goods or services in connection with the same immediate purpose or task” from or by the same vendor during the same contract year through a single contract. N.J.S.A. 40A:11-2(19). It is this aggregate cost of the contract a municipality must consider when determining whether public bidding is required. N.J.S.A. 40A:11-4(a). The LPCL expressly forbids a municipality from dividing a contract “which is single in character” to avoid the public bidding requirement. N.J.S.A. 40A:11-7(a). In this instance, the demolition, remediation, and construction work was all performed by the same contractor, at the same location, as part of the same project, and therefore, should have been aggregated in a single contract, awarded through public bidding.

²¹ In response to a discussion draft of this Report, the General Manager stated that he received no orientation or training on the Township’s purchasing procedures and was initially unaware that a certification was required.

²² A turret is a small vertical tower situated at the corner of a building or wall; a cupola is a relatively small, dome-like structure on top of a building.

²³ A soffit covers the underside of an architectural feature, such as a beam, arch, or overhang.

the damages to the bar room required immediate repair or posed any health or safety risk to the public.²⁴

The Township initiated repairs of the clubhouse turrets and the interior catering space months after the onset of the damage. On June 17, 2020—nearly three months after the onset of damage identified in the General Manager’s memorandum—the Contractor began demolishing and rebuilding the turrets. Reconstruction of all three turrets was completed in March 2021. Parsippany authorized this work under the emergency exception and paid the Contractor \$661,098.

On August 4, 2020—approximately four and one-half months from the storm that caused damage to the Knoll West clubhouse—the Contractor began renovating the bar and grill room. This renovation included demolition and reconstruction of the walls, columns, soffit, and bar; installation of a new rear door and windows; electrical work and installation of assorted audio-visual equipment; and the replacement of the bar’s contents. The Contractor continued with the renovation until April 12, 2021, when Parsippany’s own Division of Construction Inspections issued a stop work order and notice of violation because the General Manager had failed to obtain the required building permits. The Contractor was ordered to leave the premises and work stalled for nearly a year as the Township sought needed approvals for the project. The job was later finished with proper permits by a different entity. Parsippany paid the Contractor \$613,590 for its work on the bar and grill room.

In total, Parsippany paid the contractor nearly \$1.3 million for construction at the Knoll West clubhouse under the emergency exception and without the benefit of public bidding.

Although remediation and reconstruction of those areas affected by mold and water damage were needed, none of the work constituted an actual or imminent risk to public health, safety, or welfare justifying the use of emergency procurement procedures under the LPCL’s fact-specific requirements. With the Stay-at-Home order in effect, members of the public were not exposed to any potentially hazardous conditions created by the mold. Similarly, there is no indication that the damage to the turrets and the interior catering space presented a public harm or that those areas were in danger of imminent collapse.

Furthermore, the lengthy delays in initiating the project further demonstrate that the work was not necessitated by actual or imminent emergency conditions. Reconstruction of the turrets did not begin until three months after the damage that led to the emergency. Similarly, renovation of the bar and grill room did not begin for over four and one-half months. Between the onset of the damage and the commencement of those repairs, the Township could have easily utilized the public bidding process without negatively affecting the project’s timeline.

²⁴ The Township filed an insurance claim supported by this memorandum and a spreadsheet of estimated costs. The insurance carrier denied the claim in its entirety, citing an investigative report that found the leaks and mold growth had been “ongoing for at least several years” and predated the policy.

Evidence obtained by OSC revealed that Parsippany viewed the COVID-19 pandemic as an opportunity to effectuate long-desired renovations to the clubhouse. In interviews with OSC, several former Parsippany officials stated that the Township had plans and had attempted on multiple occasions prior to 2020 to complete these renovations. However, because Knoll West was used for weddings, parties, and other events year-round, finding a suitable time to perform the renovation proved difficult. One former Township official acknowledged that the COVID-19 Stay-at-Home order “had a lot to do” with the decision to proceed with the renovation on an emergency basis, because “what better time to fix [the facility] than when you can’t use it?” Emails obtained by OSC demonstrated that Parsippany wanted to complete the renovations “in time to open the 2021 season.” While completing renovations in time to open the golf season was an appropriate goal for a country club, it does not provide a basis to avoid the public bidding requirement of the LPCL, and the Township was obliged to follow the law in trying to meet that objective.

OSC found that certain Township officials voiced concerns about whether the \$1.3 million renovation project’s duration and scope of work complied with the LPCL, but nevertheless they did not prevent the project from continuing under emergency procurement procedures.²⁵ The General Manager seemingly acknowledged that he was misusing the emergency exception by stating in an email that he “agree[d] that some things may be questioned.” Despite this acknowledgement, he then stated that he “was hired to go into the Knoll and fix an operation that was going downhill and run it as the business it truly is.”

Additionally, Parsippany failed to comply with the LPCL and its own procurement rules throughout the renovations. Parsippany was unable to produce any written correspondence or authorization from the Business Administrator approving the work, and the General Manager’s memorandum in support of the emergency repairs was uncertified and not prepared until May 2020—one month after the initial mold remediation work was completed. Most notably, the Township Council never adopted an emergency resolution authorizing payment for the renovation, even after completion of the work. In interviews with OSC, Parsippany officials were unable to explain why a resolution was never adopted.

Again, in response to these findings, the Township acknowledged and recognized that it “improperly utilized the emergency exception to public bidding requirements and failed to comply with multiple applicable procurement laws when it hired a contractor to renovate the clubhouse.” The Township also stated that it will conduct an internal training to ensure that procurement laws are followed and update the Township’s purchasing manual to implement robust policies, procedures, and internal controls.

²⁵ In one particularly pointed exchange, Parsippany’s then-Business Administrator forwarded a number of new invoices for emergency work in the bar and grill room to the General Manager, and asked, “How does the removal of the Bar constitute an emergency, unless it is slowing up happy hour?”

B. Parsippany Risked Wasting Taxpayer Funds and Undermining Public Confidence in the Operation of Local Government by Circumventing the Procurement Process Required by the LPCL

Public confidence in the integrity of local government is of paramount importance. The LPCL aims to uphold and strengthen that confidence by safeguarding the procurement process against favoritism, improvidence, extravagance, and corruption, whether actual or perceived. By improperly utilizing the emergency procurement process to contract with the Contractor without soliciting other quotations, Parsippany created, at the very least, an appearance of favoritism towards the Contractor that threatens to undermine public confidence in the operation of local government.

Further, although it is difficult to determine after-the-fact whether the public bidding process would have provided savings to Parsippany on this particular project, the Township risked overpayment for construction services by failing to foster competition. One of the intended purposes of the public bidding process is to ensure that municipalities “will receive the lowest possible contract price from responsible bidders.”²⁶ “The more companies that can bid on a project, the greater the likelihood that the public entity will receive the lowest possible contract price from responsible bidders.”²⁷ Because the emergency procurement procedure may only be used to address urgent matters of public health and safety, Parsippany should have utilized the public bidding process set forth in the LPCL to award the contract for renovations to the Knoll West clubhouse.

Parsippany’s former Purchasing Director described multiple instances in which the Township was able to procure or perform some of the unrelated goods and services sought by the General Manager through its own staff, existing contracts, or cooperative agreements at a significant cost savings. During this same period, the Township publicly bid other improvement projects at the Knoll Country Club—an irrigation system replacement and installation of two metal pergolas—and received multiple responses at a range of prices. Public bidding on the renovation may very well have yielded similar results, to the benefit of Parsippany and its taxpayers.

²⁶ Tormee Constr., 143 N.J. at 148.

²⁷ Id. at 148 (citing Skakel v. Twp. of North Bergen, 37 N.J. 369, 378 (1962)).

V. Recommendations

In light of the findings in this report, OSC makes the following recommendations to help ensure Parsippany adheres to applicable procurement laws and properly spends taxpayer dollars in the future. These recommendations reflect procurement best practices that should be adhered to by all New Jersey municipalities:

1. Parsippany should draft and update specific policies, practices, and procedures for the approval and documentation of emergency procurements under the Local Public Contracts Law. Parsippany should also train staff who may perform these functions on the proper processes for doing so to ensure that the violations of law discussed in this report are not repeated.

Parsippany, for its part, acknowledged the deficiencies identified through this investigation and represented that it will update and implement “robust policies, procedures, and internal controls.” It also stated that it would conduct “comprehensive trainings with Department and Division Heads to ensure rules and guidelines are followed.” Parsippany should act expeditiously in instituting these changes.

2. Parsippany must adhere to the public bidding requirements of the Local Public Contracts Law before awarding contracts governed by that law in order to foster competition and benefit from potential cost savings. The use of exceptions to bidding public should be strictly limited to the narrow circumstances to which they apply.
3. Parsippany should promptly obtain written emergency certifications and adopt public resolutions authorizing emergency contracts and procurements as soon as practicable and prior to payment of any associated invoices.