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Local Finance Notice

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Electronic Procurement: Provisional Guidance Pending Adoption of Regulations

The Local Government Electronic Procurement Act [P.L. 2018, c.156](#) authorizes local governments and school districts to utilize online electronic procurement platforms, subject to regulations promulgated by the Director of the Division of Local Government Services. This Notice offers provisional guidance on use of electronic procurement pending adoption of regulations.

P.L. 2018, c.156 (N.J.S.A. 40A:11-4.7 through 4.12; 40A:12-13; 18A:20-8.2) was enacted to enable local governments and school districts to adopt proven technologies for the procurement of goods, services, and public works construction contracts, along with the sale of surplus property and sale or lease of real property. The Division is charged with adopting rules and regulations that would, among other things:

- Convert the law, principles, safeguards, and procedures related to sealed bidding to the e-procurement environment
- Authorize the acceptance of commercial standards for electronic forms of bid security; and
- Establish minimum standards that must be met by systems and services providing and administering e-procurement activities
- Protect against collusion and bid rigging (in consultation with the Office of the Attorney General)
- Ensure the privacy and security of electronic transactions (in consultation with the Office of Information Technology)

The Division is consulting with several State agencies and numerous stakeholders in the course of its rulemaking process. Having received a high volume of comments on its initial draft regulations, the Division will be issuing a subsequent draft for additional input prior to submitting a formal rule proposal. The Division expects to promulgate a formal rule proposal in the beginning of next year.

Current Status of E-Procurement Pending Rule Adoption

P.L. 2018, c.156 repeals the “Local Unit Electronic Technology Pilot Program and Study Act” effective October 1st. Under this prior E-Procurement Pilot, the Division had authorized local governments and school districts to utilize certain pre-approved electronic procurement platforms for the online purchase of energy generation services along with other goods and commodities. The Pilot Program also permitted the use of pre-approved online platforms for the auction of surplus personal property and Solar Renewable Energy Credits (SRECs).

Effective October 1st pending Division adoption of e-procurement regulations, and subject to the provisional guidance set forth below, contracting units subject to the Local Public Contracts Law or Public School Contracts Law may continue to utilize electronic procurement platforms for the purchase of electricity and natural gas, the online sale of SRECs, and the sale of personal property through an online auction. Contracting units are no longer authorized to solicit and accept bids through online procurement platforms for any other commodities, goods, or services, regardless of whether an online procurement platform had been approved under the prior E-Procurement Pilot; as such new procurements for goods or commodities must be performed through the standard paper-based process pending adoption of E-Procurement regulations.

Local Finance Notice 2008-9 is hereby repealed.

Using E-Procurement for Electricity and Natural Gas Supply

The electricity and gas supply market features rapid and frequent price fluctuations, lending itself to online bidding or reverse auctions, versus traditional sealed bidding where paper-based bids are submitted at a fixed location and time. The retail sale of electricity is regulated by the New Jersey Board of Public Utilities, with third-party energy suppliers, energy agents, and energy consultants required to be registered with and licensed by the BPU. The energy supply marketplace has unique elements and is extensively regulated by the BPU. As such, those contracting units that procure electricity and gas supply in the competitive market, including lead agents in cooperative purchasing systems involved in energy aggregation, may continue to utilize electronic procurement platforms such as online reverse auctions that had been pre-approved under the Pilot Program for this purpose subject to the guidance set forth in [Local Finance Notice 2012-12](#). LFN 2012-12 incorporates by reference several articles on energy procurement that are published on the Division’s Local Public Contracts Law [webpage](#).

Please note that all licensed third-party energy suppliers should, at minimum, be individually notified by electronic mail or US Mail of the bid. To comply with the Local Public and Public School Contracts Laws, bidding must take place, or close, no earlier than 10 days prior to the date of notification. Likewise, any notices of revision or addenda should be transmitted in similar fashion, with return receipt acknowledgement from the supplier, no later than seven days prior to the close of bidding or the bidding taking place. In order to minimize the time between the receipt of bids and contract award, a contracting unit’s governing body may continue to adopt a resolution authorizing its purchasing agent to award a contract shortly after close of bidding if the

price is below a given amount. This reduces the risk premium built in by third-party energy suppliers to hedge against price fluctuations during that period.

Using E-Procurement for Sale of Surplus Personal Property through an Online Auction

When selling surplus personal property valued equal to or greater than 15% of the bid threshold, many contracting units have utilized online auction platforms pre-approved under the former E-Procurement Pilot Program. Examples of such platforms include eBay, Municibid, and PropertyRoom.com. Contracting units may continue to utilize existing contracts with such online auction platforms until contract expiration; however, new contracts with any online auction platform providers are subject to the contracting unit's bid threshold and pay-to-play. Online auction platforms are generally compensated based on a percentage of the final auction price of the goods being sold. As such, the estimated fair market value of the categories or types of goods expected to be sold over the term of the contract must be used to determine whether the fees charged to buyers and/or sellers require competitive quotes or competitive bidding for online auction services.

The online auction platform vendor need not have been approved under the Pilot Program; however, please note that any documentation that may be required as part of a bid submission or prior to contract award also applies for online auction platforms. There is a New Jersey State Contract for Online Auction Services (19-GNSV1-00696) that has been awarded to Municibid and is authorized for use by local governments and school districts.

The governing body of the contracting unit must adopt an authorizing resolution for each online sale of surplus property containing, at minimum, the following:

1. A description of the surplus property.
2. A statement that the surplus property is no longer needed for public use and that the sale will be held on an online auction platform.
2. The name of the online auction platform.
3. For each item of surplus property that is part of a contracting unit's fixed asset inventory, the description of each item shall include information that sufficiently identifies the item and provides an audit trail.
4. For surplus property that is not part of the contracting unit's fixed asset inventory, except for motorized vehicles titled in the name of the local unit, a general description sufficient to inform the public of the item or items being sold.
5. For each motorized vehicle titled in the name of the contracting unit, a description of each vehicle with sufficient detail to inform the public of the item being sold, along with the vehicle information number (VIN) displayed on the title.

No single resolution shall authorize more than one online sale; “blanket” or “rolling” auction authorizations are not permitted. However, multiple items of surplus property may be sold at a single online sale. A [sample resolution](#) can be found on the Division’s Local Public Contracts Law webpage. The actual date of sale is not required to be included in the resolution. Any reserve price should be set by the governing body and included in the resolution authorizing the sale. The Division does not require a copy of the resolution.

Advertisements of the online sale of surplus property shall continue to be published in the local unit’s official newspaper pursuant to N.J.S.A. 18A:18A-45 of the Public School Contracts Law or 40A:11-36 of the Local Public Contracts Law in conjunction with each resolution authorizing an online auction. At minimum, the advertisement should:

1. Set forth a general description of the surplus property to be sold and the conditions of sale.
2. State that the public sale is being held through an online auction.
3. Include the name of the online auction platform on which the sale is being conducted, along with the website address of the platform.
4. State the date and time of the online auction. If the online auction will take place over a set number of hours or days, the advertisement should state the dates and times upon which the sale will commence and conclude.

An online auction must occur or commence not less than seven (7) nor more than fourteen (14) days after the date of publication of the advertisement.

It is highly recommended that a contracting unit’s right to reject all bids pursuant to N.J.S.A. 18A:18A-45(e) or 40A:11-36(5) be articulated in both the resolution and the advertisement. If the contracting unit rejects all bids and holds a subsequent online auction of surplus property, the subsequent public sale shall be authorized by the governing body in a separate resolution from the resolution authorizing the initial public sale. In the event the agreement between online auction platform vendor and the contracting unit provides an option of continuing or reopening a sale after the close, such as if the minimum reserve price was not met, this possibility should be articulated in the original advertisement of sale. The online auction’s website should also display a notification to bidders about the possibility of a continuance or reopening, and any bidders initially participating in the sale should be notified of the new date.

If an online auction platform collects monies from the sale of surplus property through an online auction, deducts the commission owed and disburses the balance of proceeds to the contracting unit, the vendor’s contract with the contracting unit should expressly provide for this arrangement; with the vendor either holding the proceeds in an escrow account, or otherwise posting a surety bond, auctioneer’s bond, or insurance in an amount sufficient to cover the potential loss of such funds.

Using E-Procurement for Sale of Solar Renewable Energy Certificates

Contracting units may continue to sell Solar Renewable Energy Certificates (SRECs) through the Generation Attribute Tracking System (GATS) utilized by the BPU’s Clean Energy Program. GATS is administered by PJM-Environmental Information Services, an affiliate of PJM Interconnection, which is the power grid operator that coordinates the movement of wholesale electricity throughout the mid-Atlantic and portions of the Midwest. The GATS system tracks and records the characteristic data of generators registered in the system, converting the data into an electronic SREC which can be sold to interested buyers.

Certain online SREC auction platforms had been approved for use under the prior E-Procurement Pilot. Contracting units may continue to utilize existing contracts with such platforms until contract expiration; however, new contracts with any online auction platform providers are subject to the contracting unit’s bid threshold as well as pay-to-play. Any fees charged to the seller and/or bidders must be factored in by the contracting unit to determine whether the contract exceeds the bid threshold. The online auction platform vendor need not have been approved under the Pilot Program; however, please note that any documentation that may be required as part of a bid submission or prior to contract award also applies for SREC auction platforms.

If the total value of the SRECs being sold exceeds 15% of the contracting unit’s bid threshold, the sale of such SRECs should be authorized by governing body resolution listing the number of SRECs being sold along with the name of the online auction platform. In the manner discussed above for surplus property auctions, the contracting unit should likewise publish a newspaper advertisement pursuant to N.J.S.A. 18A:18A-45 or 40A:11-36 notifying the public of the SREC auction.

Approved: Melanie R. Walter, Director

Document	Internet Address
P.L. 2018, c.156	https://www.njleg.state.nj.us/2018/Bills/PL18/156_.PDF
LFN 2012-12	https://www.nj.gov/dca/divisions/dlgs/lfns/12/2012-12.pdf
Online Surplus Property Auction Resolution	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/res_online_auctions.doc