

LFN 2011-35

November 28, 2011

Local Finance Notice

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Lori Grifa
Commissioner

Thomas H. Neff
Director

Contact Information

Director's Office

V. 609.292.6613

F. 609.292.9073

Local Government Research

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

Local Management Services

V. 609.292.7842

F. 609.633.6243

Authority Regulation

V. 609.984.0132

F. 609.984.7388

Mail and Delivery

101 South Broad St.

PO Box 803

Trenton, New Jersey

08625-0803

Web: www.nj.gov/dca/lgs

E-mail: dlgs@dca.state.nj.us

Distribution

County and Municipal Clerks
and Chief Financial Officers
Local Authority and Fire
District Boards of
Commissioners
School Business Officials
Local Procurement Officials

Guidance on Use of New Law Regarding National Contracts

Recently Governor Christie enacted [P.L.2011, c.139](#) into law. This law affects public contracting laws for all government contracting agencies by permitting agencies to use contracts awarded by "national" or "regional" cooperatives or other states that were competitively bid. The law supplements existing law on the use of such contracts and is intended to provide additional flexibility to local government in the area of procurement.

Appropriate State agencies are reviewing the new law and the Division of Local Government Services intends to issue additional guidance in the near future.

Until then, contracting units should proceed with prudence to ensure their actions are compliant with the law. Pending additional guidance, contracting units should take into account the following as local circumstances dictate.

1. In applying the law, consider that there is no stated intent that NJ businesses should be put at a disadvantage because of differences between NJ public contracting law and that of jurisdictions that awarded the cooperative contract.
2. Local procurement procedures should continue to ensure the public trust. Laws relating to disclosure of political contributions, non-collusion, and ethics should continue to be followed.
3. Contracting officials should be cautious to ensure that the new authority is not abused. Local officials continue to have responsibility to choose vendors in an open and transparent manner to ensure public confidence in the integrity of government spending. Further, if a national contract is used, membership and participation rules of the national cooperative should be reviewed and followed.

4. Best practices should include ensuring that pricing under the national model is competitive and that economy in the form of low pricing is not unduly compromised by the possible of efficiency of national contractors. To that extent, contracting units should review State and local cooperative system contracts to see if there other available contracts that provide lower prices.
5. When using online ordering systems, local officials must establish and maintain internal controls to ensure quote and bid thresholds are maintained, encumbrances are established, purchases are documented, and there is an audit trail. Procurement and fiscal staff are reminded that all purchases with a dollar volume over the contracting units bid threshold require award by the governing body.
6. The new law does not make changes to previous law concerning U.S. General Services Administration Federal Supply Contracts. GSA/FSS contract use is not authorized by contracting units unless the contracts are issued as State contracts by the Division of Purchase and Property (N.J.A.C. 17:12-1A.5). While it is possible that some GSA/FSS vendors are part of national cooperative contracts and contracts may be available through them, the new law does not change the existing limits on GSA contracts.
7. Contracting units that previously awarded contracts for goods or services that may be covered by a national cooperative contract are obligated to fulfill those contracts until they expire. Using a national contract in the presence of an awarded contract could constitute a charge of breach of contract by that vendor.

The vendor community will be bringing the new law to the attention of contracting units. Contracting officials choosing to move forward with such purchases in advance of additional guidance should carefully review vendor claims of compliance with the new law with their legal advisors to ensure they are consistent with the law.

The Division appreciates that this law is new and potentially creates a wide range of new procurement sources. Contracting unit officials should act prudently pending issuance of further guidance.

Approved: Thomas H. Neff, Director

Table of Web Links

Page	Shortcut text	Internet Address
1	P.L.2011, c.139	www.njleg.state.nj.us/2010/Bills/AL11/139_.PDF