

LFN 2017-10

June 6, 2017

# Local Finance Notice

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## Certification of Available Funds: Recent Rule Changes by Local Finance Board

The Local Finance Board adopted amendments to N.J.A.C. 5:30-5.3 through 5.5 at its May 10, 2017 meeting. These rules, effective as of June 5<sup>th</sup>, pertain to the certification of available funds by a chief financial officer (or equivalent) prior to a contract being awarded or authorized; and apply to entities subject to either the Local Budget Law or the Local Authorities Fiscal Control Law.

Key changes include:

- The maximum dollar value of a contract pending authorization by the governing body must now appear in the resolution awarding or authorizing entering into the contract, in addition to the exact line item appropriation(s) and/or appropriation from a source other than the budget. Including the maximum dollar value of the contract in the resolution awarding or authorizing a contract will provide greater transparency, ensuring the public can more effectively monitor the cost of contracts being awarded. N.J.A.C. 5:30-5.4(a)2.

*Note: This requirement likewise applies to ordinances authorizing entering into a contract (e.g. municipal acquisition of real property by ordinance pursuant to the Local Land and Buildings Law (N.J.S.A. 40A:12-1 et seq.)).*

- The certification of available funds must now reference the maximum dollar value of the contract pending award or authorization by the governing body unless a special situation set forth in N.J.A.C. 5:30-5.5 permits the certification of either no amount or an amount less than the maximum dollar value of the contract. Except where N.J.A.C. 5:30-5.5 expressly requires the full cost of the contract to be certified at the time the contract is awarded or authorized, these special situations include open-end contracts, multi-year contracts, contracts of up to 12 months that do not coincide with the fiscal year, or contracts awarded when a municipality or county is operating under a temporary budget. N.J.A.C. 5:30-5.4(a)1.

- A certification of available funds may now be incorporated into the resolution awarding or authorizing entering into a contract, in lieu of being on a separate sheet of paper attached to the resolution. If the certification of available funds is incorporated into the resolution rather than attached separately, the certification need only state that the maximum dollar value of the pending contract is as set forth in the resolution. N.J.A.C. 5:30-5.4(a)3.
- The local unit may now make the secretary of its governing body, in lieu of its attorney, responsible for ensuring that the certification of available funds has been provided to the governing body. For example, the secretary to a municipal or county governing body would be the municipal clerk and the freeholder board clerk, respectively. This change was made in recognition that local units may not have their attorney review resolutions for more routine contract awards. N.J.A.C. 5:30-5.4(a)2.
- If a purchase or the execution of a contract does not require specific authorization by formal action of the governing body, the individual approving the contract or release of the purchase order can rely on the entry made into the local unit's encumbrance accounting system by the CFO or the certifying finance officer, as appropriate, that there are available sufficient uncommitted appropriations to provide for the payment. This change reflects the current process for ensuring available funds through a local unit's encumbrance accounting system. Formerly, a written certification of available funds was required to be obtained from the CFO (or equivalent) and physically attached to the purchase order. N.J.A.C. 5:30-5.3(c), 5.4(b), and 5.5(b)2.
- To conform with the provisions of N.J.S.A. 40A:12-5(b), the Board has expressly barred multi-year contracts for municipal or county acquisition of land and buildings by installment purchase agreement from incorporating either a cancellation clause, or a clause making the contract subject to the annual availability and appropriation of sufficient funds as may be required to meet the extended obligation. N.J.A.C. 5:30-5.5(d)(2).

Other amendments to N.J.A.C. 5:30-5.3 through 5.5 make various changes that enhance clarity without modifying substance or scope. Requirements and procedures for change orders remain as set forth in N.J.A.C. 5:30-11.

The established maximum dollar value of a professional services contract such as for a local unit's attorney or engineer, or an open-end contract generally, at the time of award would be based on a reasonable estimate of the goods or services needed over the contract term. To reach a reasonable estimate, the local unit should rely upon the amount spent on such goods or services in the prior year, factoring in any increased or decreased costs in the current contract (e.g. changes to unit quantities/prices or hourly rates) along with any projected increase or decrease in goods or services to be ordered versus the prior year. For benefit of the public, a contract award resolution may contain a caveat that the displayed maximum dollar value is based on a reasonable estimate of the goods or services required over the contract term, and the local unit is not obligated to spend that amount.

In the case of attorneys, a reasonable estimate of the maximum dollar value is likely to vary from year to year based on pending litigation or labor negotiations, among other factors. Even though legal services may generally come under a single budget line item, a reasonable estimate of the maximum dollar value of the contract for individual counsel (e.g. municipal attorney, labor counsel, bond counsel) can be determined in the above-referenced manner. For a municipal engineer, a reasonable estimate of the contract's maximum dollar value would be based on the amount expended for prior year services rendered, the change in hourly rate (if any), plus any projected increase/decrease in need for the engineering firm's services based on the municipality's projected capital budget.

**Please note that these amendments do not require a certification of available funds to be issued before going out to bid.** Further, for open-end contracts no funds are required to be encumbered until such time as goods or services are ordered (unless the full amount of the contract is charged against the budget upon awarding the contract). The amendments make no change in this regard; indeed, the certification of available funds regulations have always required open-end contracts to have an established maximum.

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Approved: Timothy J. Cunningham, Director, Division of Local Government Services

Document	Internet Address
Notice of Adoption – Amendments to <u>N.J.A.C.</u> 5:30-5.3 through 5.5	<a href="http://www.nj.gov/dca/divisions/dlgs/resources/rules_reg.html">http://www.nj.gov/dca/divisions/dlgs/resources/rules_reg.html</a>
Subchapter 5 of N.J.A.C. 5:30	<a href="http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_30/njac_5305.pdf">http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_30/njac_5305.pdf</a>
Subchapter 11 of N.J.A.C. 5:30	<a href="http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_30/njac_53011.pdf">http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_30/njac_53011.pdf</a>