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New Jersey Department of Community Affairs
Division of Local Government Services

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Notice Number

LOCAL FINANCE NOTICE

Date

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**Local Unit Contracting and New Jersey State Contracts:
Update and Case History**

A recent incident of what has been described as a case of inadvertent overcharging by a State contract vendor has prompted this Local Finance Notice that will review the proper use of State contracts and the responsibility held by local officials in utilizing them. The specific incident, involving a fuel oil vendor, is also described, as well as the procedures that all local contracting units should use when purchasing off the State's fuel oil contract. Finally, the Notice reviews several issues unique to State contracting practices.

State Contracts Generally

For many years, the Purchase Bureau, in the State's Division of Purchase and Property, has included provisions in its contracts that permit local government units to take advantage of the pricing obtained by the State's purchasing process. When State contractors are used, local units do not have to use public bidding for purchases in excess of the bid threshold. Also, it is also important to remember that while the State issues a contract, the individual purchasing transaction is between a local unit and a vendor. The State has no knowledge of the transactions that take place between local units and contract vendors.

Almost 230 contracts with approximately 300 vendors are available to local units. The range is very broad, including everything from police cars to office supplies, medicine to milk, and fuel oil to office furniture.

The State's process of contracting is similar to local governments: the Purchase Bureau reviews all State agency purchasing requests and, using a bid threshold similar to the Local Public Contracts Law, prepares bid specifications, advertises, evaluates, and makes awards for the wide range of goods and services. Upon a bid award, the Bureau issues a formal document, called a "Notice of Award" (NOA). Copies of NOA's are available through a subscription service, to which there are currently over 900 subscribers. Also, copies of NOA's are found on the State's Internet web site at <http://www.state.nj.us/treasury/purchase/contract.htm>.

The NOA is a key document, listing the vendor or vendors who have been awarded contracts, providing detailed directions on how the contract is to be used, and the process for contracting for the goods or services. Also, the front page of the NOA identifies the State's buyer for the contract. This is the person to contact if a local unit has any questions about a contract or vendors.

Users of State contracts must read the NOAs carefully to fully understand how to use them properly and effectively. They contain detailed information about pricing, terms and conditions, and product information. It was the failure to read and apply the information in the NOA for fuel oil that led to the circumstances described below.

Director's Office
(609) 292-6613

Local Government
Research
(609) 292-6110

Financial Regulation
and Assistance
(609) 292-4806

Local Finance
Board
(609) 292-4537

Local Management
Services
(609) 292-7842

Authority Regulation
(609) 984-0133

Fax
(609) 984-7388

There are a number of ways to get information from the Purchase Bureau. Questions on the proper use of State contracts by local governments can be obtained from 8:30- 4:30 each work day by calling (609) 292-7778. There is a dedicated fax number for local governments to use to request assistance. That number is (609) 633-8327. When local units have complaints about vendors, the Bureau has a complaint procedure for local governments to utilize when experiencing problems with State contracted vendors — call (609) 292-7778 for forms. In addition, the Purchase Bureau conducts frequent training sessions on the proper use of State contracts and can schedule additional ones for groups of contract users upon written requests.

Fuel Oil Contracts

Recent events in the southern part of the State led to a discovery (through a local newspaper) that a State contract vendor for #2 fuel oil had been overcharging its State contract and other government contract customers. Since the discovery of the overcharging, newspaper reports indicate that the vendor issued credits to its customers and claimed that the overcharge was a mistake. As in all cases where vendor complaints are filed, the Purchase Bureau is investigating the matter and once it is completed, will take any action deemed appropriate.

Generally, fuel oil contract prices are based on the formula as detailed in the NOA. The NOA provides detailed directions on the proper use of the contracts, which include procedures on how to compute the correct contract price at any given time. In fact, the NOA provides very precise examples of contract usage to facilitate understanding of the process. In addition, the Purchase Bureau conducted a special training session for local government representatives on the proper use of fuel contracts.

This situation came about because of the failure of many local contracting units to follow the requirements of the fuel oil NOA. If local units had been following the procedure, the overcharging would have been discovered quickly, and the vendor would have been able to rectify the problem immediately. Further, when the contracts are issued by the Purchase Bureau, local units are still responsible for checking the invoice prices and making appropriate arrangements with the vendor in case of any overcharging. **Similarly, local units that bid their own fuel oil contracts or participate in a cooperative purchasing system and use the same pricing model are not relieved from the responsibility to check invoices against the formula.**

Specifically, proper payment procedure requires applying the "upcharge" amount (a fixed amount per unit of measure), that was bid by the vendor, to a posted market price. The market price varies on a weekly basis. For example, the Fuel Oil #1, 2, 2D and Winter Mix Contract is based on the New York Journal of Commerce Monday Posting Price. To confirm that they are paying a proper price, the State NOA instructs local governments to obtain the benchmark price from either a phone call to a weekly updated tape recording at (609) 984-7076, or through the New Jersey Infobank database, which can be accessed through the Internet at <http://www.state.nj.us/infobank/fuelindex.htm>.

The following is a sample calculation of the fuel oil price calculation:

MARKET PRICE per gallon for the week is listed as	\$0.5700
PLUS Vendor's upcharge amount for Fuel Oil # 2 is	\$0.0497
EQUALS Total cost per gallon charged by the vendor	\$0.6197

Special Contracts Concerns

One special aspect of State contracts is the use of Multiple Award Schedules (MAS). A MAS is a contract where more than one vendor is awarded a contract for identical goods and services, often at varying prices, but

reflecting a range of geographic areas, to ensure that the goods or services are available statewide through local vendors. When local units plan to make a purchase using a MAS, they have the responsibility to carefully study the contract and, based on their needs, contact different vendors for pricing. Using a quotation process for these contracts is a prudent process. Where ongoing purchases of different products are involved (i.e., motor vehicle parts), periodic pricing is appropriate.

Local officials often claim the same goods or services can be purchased from local non-contract vendors for lower prices. This can and does happen. However, it must be realized that the State contract is more than just a price. The State has a number of criteria that vendors must meet in order to receive a contract. In some cases, these criteria add costs to the contract, costs that are part of a range of intangible services and benefits that are afforded to contract purchasers. These criteria include delivery, warranty, and replacement terms.

These benefits include the requirements for financial stability, bid bonds and bid security, to ensure that the bidder can be expected to be and stay in business the entire length of the contract. Also, they include the requirement to deliver the goods and services statewide and that the prices quoted include shipping, and that the goods and services will be available at the quoted price during the entire length of the contract.

These requirements may add costs to the State vendor that a local vendor may not incur for the occasional purchase from a local unit, but have been found to be in the State's interest in contracting with reliable vendors and meeting public policy goals.

Use of Resolutions

Finally, the Division of Local Government Services often receives questions surrounding the use of governing body resolutions when buying goods off of State contracts. N.J.A.C. 5:34-1.2 provides a clear answer to this question.

"Any local contracting unit purchasing, pursuant to N.J.S.A. 40A:11-12, materials, supplies or equipment under a contract entered into by the State Division of Purchase and Property shall authorize the award of such contract by resolution of the governing body unless the contract is awarded by a contracting agent pursuant to N.J.S.A. 40A:11-3."

We hope this information has proved useful to local units. State contracts are an important tool in a local official's procurement toolbox. Like any tool, it works best when used properly, and a user reads the instruction manual!

Local unit chief financial officers are asked to provide a copy of this Notice to all local unit individuals responsible for using State contracts.

Lana Sims

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Beth Gates

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Division of Local Government Services

Distribution: All local unit chief financial officers