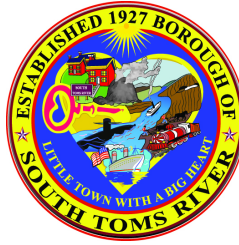


BOROUGH OF SOUTH TOMS RIVER



PURCHASING MANUAL

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I. DEFINITIONS

As used herein the following words have the following definitions, unless the context otherwise indicates:

- (1) "Governing body" means:
 - (a) The governing body of the municipality, when the purchase is to be made or the contract or agreement is to be entered into by, or on behalf of, a municipality; or
- (2) "Contracting agent" means the governing body of a contracting unit, or its authorized designee, which has the power to prepare the advertisements, to advertise for and receive bids and, as permitted by this act, to make awards for the contracting unit in connection with purchases, contracts or agreements.
- (3) "Purchase" means a transaction, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.
- (4) "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.
- (5) "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.
- (6) "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a contracting unit.
- (7) "Cooperative Pricing Agreements" means the joint marketing by two or more contracting units of the source separated recyclable materials designated in a district recycling plan required pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13) pursuant to a written cooperative agreement entered into by the participating contracting units thereof.
- (8) "Aggregate" means the sums expended or to be expended for the provision or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the same contract year through a contract awarded by a contracting agent.
- (9) "Bid threshold" means the dollar amount set in section 3 of P.L.1971, c.198 (C.40A:11-3), above which a contracting unit shall advertise for and receive sealed bids in accordance with procedures set forth in P.L.1999, c.440 (C.40A:11-4.1 et al.).
- (10) "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.
- (11) "Contract year" means the period of 12 consecutive months following the award of a contract.

- (12) "Competitive contracting" means the method described in sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 thru 40A:11-4.5) of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or administrator; and the governing body awards a contract to a vendor or vendors from among the formal proposals received.
- (13) "Goods and services" or "goods or services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a contracting agent, including goods and property subject to N.J.S.12A:2-101 et seq.
- (14) "Lowest price" means the least possible amount that meets all requirements of the request of a contracting agent.
- (15) "Lowest responsible bidder or vendor" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.
- (16) "Official newspaper" means any newspaper designated by the contracting unit pursuant to R.S.35:1-1 et seq.
- (17) ("Purchase order" means a document issued by the contracting agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the contracting unit, which, when fulfilled in accordance with the terms and conditions of a request of a contracting agent and other provisions and procedures that may be established by the contracting unit, will result in payment by the contracting unit.
- (18) "Purchasing agent" means the individual duly assigned the authority, responsibility, and accountability for the purchasing activity of the contracting unit, and who has such duties as are defined by an authority appropriate to the form and structure of the contracting unit, and P.L.1971, c.198 (C.40A:11-1 et seq.).
- (19) "Quotation" means the response to a formal or informal request made by a contracting agent by a vendor for provision or performance of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the contracting agent.
- (20) "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.
- (21) "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.
- (22) "Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a contracting unit to house local government functions or provide water, waste disposal, power, transportation, and other public infrastructures.
- (23) "Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.
- (24) "Administrator" means a municipal administrator appointed pursuant to N.J.S.40A:9-136 and N.J.S.40A:9-137; a business administrator, a municipal manager or a municipal administrator appointed pursuant to the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.); a municipal manager appointed pursuant to "the municipal manager form of government law," R.S.40:79-1 et seq.; or the person holding responsibility for the overall operations of an

authority that falls under the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

- (25) "Concession" means the granting of a license or right to act for or on behalf of the contracting unit, or to provide a service requiring the approval or endorsement of the contracting unit, and which may or may not involve a payment or exchange, or provision of services by or to the contracting unit.
- (26) "Index rate" means the rate of annual percentage increase, rounded to the nearest half-percent, in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed and published quarterly by the United States Department of Commerce, Bureau of Economic Analysis.
- (27) "Proprietary" means goods or services of a specialized nature, that may be made or marketed by a person or persons having the exclusive right to make or sell them, when the need for such goods or services has been certified in writing by the governing body of the contracting unit to be necessary for the conduct of its affairs.
- (28) "Service or services" means the performance of work, or the furnishing of labor, time, or effort, or any combination thereof, not involving or connected to the delivery or ownership of a specified end product or goods or a manufacturing process. Service or services may also include an arrangement in which a vendor compensates the contracting unit for the vendor's right to operate a concession.

II. GENERAL POLICY STATEMENT - ALL PURCHASES

This Manual presents the Borough of South Toms River (herein referred to as the "Borough") required purchasing process to assure uniformity of purchasing procedures as well as compliance with state statutes and rules governing purchasing and the expenditure of public funds. Centralization of purchasing functions is key to an effective requisitioning and purchase order system, as well as control of public funds. Thus:

- A. Only the Purchasing Agent or his/her designees can initiate and conduct solicitations for informal quotations for the purchase of necessary goods and services. (Department heads are considered designated; all others must have Purchasing Agent approval.) Strict adherence to this requirement will be enforced. Failure to adhere to these procedures may result in disciplinary action including possible termination (see Employee Handbook).
- B. Vendors are to initially contact the Purchasing Agent and/or Borough Administrator/Municipal Clerk directly regarding all requests for purchases and clarification thereof.
- C. No individual, group or user department¹ has the authority to legally and/or financially commit the Borough to any contract, agreement or purchase order for goods or services.
- D. All user agencies are required to adhere to the purchasing procedures in requisitioning all goods and services.

¹ The term user department means any department, division, bureau, or office of Borough Government, which acquires goods or services purchased pursuant to these procedures.

E. All Borough employees must adhere to the Local Government Ethics Law, NJSA 40A:9- 22.1 et seq., among other things that law provides that no Borough official, officer, employee or person functioning in that capacity, or member of their immediate family or business organization in which they have an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise or future employment or other thing of value from a vendor doing business with the Borough, for the purpose of influencing him, directly or indirectly in the discharge of his official duties.

F. All Borough employees must adhere to the Local Unit Pay to Play Law, P.L. 2004 c.19, N.J.S.A 19:44A-20.4 et seq., (Appendix C-7). The law requires that all contracts with a value over \$17,500 (aggregation rules apply) be awarded pursuant to a “fair and open” or “non-fair and open” process, both of which are defined in the law.

G. All Borough employees must adhere to the Prompt Payment Law, P.L. 2006 c.96, N.J.S.A. 2A:30A-1 et seq., (Appendix C-8). The law intends to ensure that construction contractors submitting bills for completed work are paid on a timely, established schedule, and that the full chain of subcontractors receive timely payment from their hiring contractor. When payments are not made pursuant to the schedule, the law allows contractors to receive interest on the outstanding balance and, under certain circumstances, to halt work without being subject to a breach of contract clauses. The construction contracts to be affected include contracts which public bidding was required and as well as those contracts under the bid threshold that are traditionally authorized through solicitation of quotes.

NOTE: Since multiple steps are involved in the overall purchasing process, the process involves significant time. Therefore, it is extremely important that the user agencies plan for the long term and allow sufficient time between the requisition of and the receipt of the goods and services described in the requisition.

III. STANDARD PURCHASING PROCEDURES

A. Central Purchasing

For items that are ordered through Administration Centralized Purchasing.

Supplies must be ordered using the Request For Purchase Form. The most current version of this form is available through the Office of the Tax Collector or Office of the Municipal Clerk. Please check periodically to ensure that you are using the most current form.

The Request For Purchase Form is to be used for standard office supplies, pens, pencil, paper, labels, and any parts, toner or ink for any machine that does not have a silver service sticker.

Please be sure to include a correct part number for each item as well as a description and number of each item that you are ordering. The fields should be filled out as follow:

- QTY: is the quantity of items (unit) that you require
- UNIT: it how the vendor packs the item. i.e.:
 - ea (each) for items packaged singly,
 - bx (box) if there are multiple items packed in a box
 - dz (dozen) if the item is packaged as a dozen
 - ctn (carton) for items packed by the carton
- PART/ITEM #: this is the number that is used to order an item. The best number is one that is assigned by the manufacturer of the product so that quotes can be obtained easily.

- **DESCRIPTION:** a brief description of the item is required so that if a requested item is not cost effective a comparable item can be sought.

Examples of UNITS are as follows:

Original Cubes Self-stick notes in cube format with assorted colors.					
No.	Size	Color	Sheets/ Pad	Unit	Price
MMM-2051-3PK	2" x 2"	Neon	400	PK	11.95
MMM-2056-PP	3" x 3"	Ultra Purple	490	EA	10.60
MMM-2056-RC	3" x 3"	Fluorescent Ribbon	470	EA	10.60
MMM-2027RCR	3" x 3"	Candy	400	EA	8.78
Value Pack—Two cubes plus one FREE 300 sheet, 2" x 2 cube					
MMM-2053-SPVAD E3	3" x 3"	Pastel	400	PK	17.58
Original Pads in Pastel Colors Use these self-stick removable notes as a way to keep yourself reminded of important dates.					
No.	Size	Color	Sheets/ Pad	Unit	Price
MMM-653-AST	1 1/2" x 2"	Plain	100	PK	10.23
MMM-654-AST	3" x 3"	Plain	100	PK	23.40
MMM-655-AST	3" x 3"	Plain	100	PK	13.13
Bonus Pack—Includes Lined Notes and Flag+Pen					
MMM-650-SPK-AST	4" x 6"	Lined	100	PK	20.40
Value Pack—Individually wrapped pads in larger packs, so you're never out of stock E3					
MMM-653-24APVAD	1 1/2" x 2"	Plain	100	PK	19.28
MMM-654-24APVAD	3" x 3"	Plain	100	PK	42.12
Value Pack—Includes Notes and Flag+Pen					
MMM-655-12AP-VAD E3	3" x 3"	Plain	90	PK	24.68
Original Pads in Canary Yellow Use these self-stick removable notes as a way to keep yourself reminded of important dates.					
No.	Size	Color	Sheets/ Pad	Unit	Price
MMM-653-VV	1 1/2" x 2"	Plain	100	PK	9.95
MMM-653-6PK	3" x 3"	Lined	100	PK	11.85
MMM-654-VV	3" x 3"	Plain	100	PK	22.70
MMM-655-VV	3" x 3"	Lined	100	PK	31.90
MMM-656-VV	4" x 4"	Plain	100	PK	29.76
MMM-675-VL	4" x 4"	Lined	200	PK	8.90
MMM-660-VV	4" x 6"	Lined	100	PK	46.20
MMM-659-VV	6" x 6"	Plain	100	PK	45.60
MMM-663-VV	6" x 8"	Lined	50	PK	6.28
Bonus Pack—Includes Bonus Flag Pen					
MMM-660-SPK	4" x 6"	Lined	100	PK	19.20
Cabinet Pack					
MMM-654-18CP	3" x 3"	Plain	90	PK	30.58
MMM-655-18CP	3" x 3"	Plain	90	PK	40.20
Value Pack—Stock up and save! E3					
MMM-653-24VAD-B	1 1/2" x 2"	Plain	90	PK	17.19
MMM-654-24VAD-B	3" x 3"	Plain	90	PK	40.36
MMM-655-24VAD-B	3" x 3"	Plain	90	PK	53.70

Ordering should be QTY (#) UNIT (ea) or QTY (#) UNIT (pk)

document alteration. Archival-quality and acid-free ink for documenting and record-keeping. Fade- and water-resistant ink. Nonrefillable.

No.	Ink	Point Size	Point Type	Qty. per Unit	Unit	Price
SAN-1768011	Black	1.0 mm	Medium	1	EA	21.00
SAN-1768012	Blue	1.0 mm	Medium	1	EA	21.00
SAN-1769012	Red	1.0 mm	Medium	1	EA	21.00

Ordering should be QTY (#) UNIT (ea) or QTY (#) UNIT (st)

ONYX® Stick Roller Ball Pen The precision tungsten ball features an ultra-smooth action. Excellent for use on carbons and multi-part forms. Easy-to-hold matte black barrel prevents writing fatigue. Sturdy metal roller point with liquid ink ensures a flawless writing experience. Nonrefillable.

No.	Ink	Point Size	Point Type	Qty. per Unit	Unit	Price
SAN-60040	Black	0.5 mm	Micro	12	DZ	15.96
SAN-60041	Blue	0.5 mm	Micro	12	DZ	15.96
SAN-60042	Red	0.5 mm	Micro	12	DZ	15.96
SAN-60143	Black	0.7 mm	Fine	12	DZ	15.96
SAN-60145	Blue	0.7 mm	Fine	12	DZ	15.96
SAN-60144	Red	0.7 mm	Fine	12	DZ	15.96

Ordering should be QTY (#) UNIT (dz)

Please note that in addition to a Request For Purchase form, any purchase that is 15% of the current bid threshold requires a "Purchases over 15% Bid Threshold" Form.

Items will be charged to the respective departments budget account.

B. Equipment Supplies and Service

a. Supplies

Most of the Borough printers and all of the copiers are under a Service Contract. These contracts include toner and parts as well as service.

Each department is responsible for contacting the Tax/Finance Office with the appropriate request information to order supplies for the machines in their departments.

Copiers and Printers are currently contracted with Herritage Business Systems Inc. Each copier has a silver sticker on it with an equipment ID # and phone number.

Fax Machines are not under any contracts at this time. If toner/ink is required please order on the Request for Purchase Form. See Central Purchasing.

NOTE: Toner/ink can only be ordered 1 at a time for each machine and/or color.

b. Service

Each department is responsible for requesting service for equipment in their department through the Finance/Tax Office. Please refer to instructions above for contacting the correct vendor.

If a machine does not have a silver vendor sticker on it and is in need of service an email must be sent to the Municipal Clerk (joseph.kostecki@boroughofsouthtomsriver.com) or

Finance/Tax Office (patricia.reevey@boroughofsouthtomsriver.com) with the make/model of machine, a detailed explanation of the issue and any service code numbers that show on the screen. This includes postage machines, fax machines and phones.

C. Preparation and Submission of a Requisition

1. A Purchase Requisition (Appendix A) is prepared by a user department for all goods and services required by it. Each user department requisition is subject to a three (3) part approval process consisting of the following:

a. First Approval

i. The Purchasing Agent/Assistant to the CFO/CFO will render first approval upon data entry into the computer system. The requisition shall contain all of the following information:

- a. Name of the User Department
- b. Date of Requisition
- c. Quantity and Unit Amount Required
- d. Full Description of Requested Purchase
- e. Quoted Vendors if purchase is in excess of Quote threshold. Copy of quote should be attached to the Requisition as a .pdf file. **Please note that any purchase that is 15% of the current bid threshold requires a "Purchases over 15% Bid Threshold" Form.
- f. State or Co-op Contract number, if the items are being purchased thorough one of these methods
- g. Appropriate Tracking Id

ii. All requisitions are subject to delay if the above information is missing or incomplete. If any of the above-required information is missing or incomplete the Purchasing Agent, at his/her discretion, will either deny or hold the requisition and contact the user department or complete the requisition.

iii. All requisitions should be submitted well in advance of when goods and services are required. Be advised that requisitions requiring the development of detailed specifications may require formal contracts and will need more time to complete. Failure to adhere to this requirement could delay the processing of the request.

b. Second Approval

The Borough's Administrator then reviews the purchase requisition to approve the user departments need.

This procedure completes the second approval of the requisition.

c. Third Approval

The Finance Department will then generate a hard copy of the Purchase Order. The Chief Financial Officer signs the Purchase Order and returns it to the Requesting Office department of record for processing. The department will then forward the white and canary copies to the vendor for the processing of the order.

NOTE: Quotes will only be solicited if the estimated dollar amount exceeds the Quote threshold, which is \$2,650.00. If in excess of the bid threshold (in the aggregate), a formal bid may be necessary. (See appendix C6) 40A:11-3C. Should the Borough

increase it's threshold through use of a recognized, QPA (Qualified Purchasing Agent), the quotes will be increased to reflect the increased bid threshold.

D. Purchases Under the Quote Threshold Established by State Law.

For goods or services less than the quote threshold, the purchasing procedure is as follows:

1. When prices are obtained, the Purchasing Agent approves the requisition for a purchase order.
2. The department of record will send the vendor the white and canary copies of the Purchase Order. This authorized the vendor to complete the purchase and serves as the contract. The white copy is for the vendors records. The canary copy (the Voucher copy) contains Certification Declaration. This claimant's certification on the purchase order must be clearly signed, titled and dated by the vendor and returned to the Department of record. Vendors must include with the signed purchase order with their invoice.
3. The department of record retains the pink copy of the purchase order (the department copy) and the white receiving copy.
4. When the goods or services have been provided by the vendor The white (receiving copy) is forwarded by the department of record to the Finance Office for, with copies of all back up, for final processing after they have ensured that the goods or services are properly received or performed, inspected and verified as conforming to the order, the user department's designee authorized to take receipt of the goods/services, signs the white receiving copy, verifying receipt of goods and performance of service and returns it to the Department of Finance.
5. The yellow (voucher copy) is signed under the Vendor's Certification by the vendor and returned to the Finance Office for payment once the good have been delivered or the services provided. **THIS IS A CRITICAL STEP. PAYMENT WILL NOT BE MADE TO THE VENDOR UNTIL THE YELLOW COPY OF THE PURCHASE ORDER IS SUBMITTED TO THE DEPARTMENT OF FINANCE.**

In the case of partial payments, a copy of the original receiving report must be signed and forwarded to the Finance Office. In the case of the last payment, the original receiving report must be marked as "close out" payment, and forwarded to the Finance Office.

5. The Department of Finance reviews the Purchase Order Packet for completeness of matching the receiving report and if satisfactory will process the packet for payment. Purchases involving Grant funding must be reviewed and approved by the Chief Finance Officer prior to processing the payment.

Note: Packet for payment consists of the following:

- a. Goldenrod Copy of the Purchase Order (Finance Dept Copy
- b. Purchase Requisition
- c. Invoice, bid or quote form and other appropriate documentation
- d. White Receiving Copy of the Purchase Order signed by the Department
- e. Yellow Vendor Certification Copy – Signed by the Vendor

E. Purchases Over Quote Threshold But Under Pay to Play Threshold

For goods or services over the amount of the quote threshold but under the Pay to Play threshold, the purchasing procedure is as follows:

1. The department's requisition is entered into the Edmunds finance program. At least one other quote shall be listed, and all quotes shall be provided as a summary on the "Purchases over 15% Bid Threshold" Form.
2. The department should select the vendor submitting the lowest responsible quote, with price and other factors considered. Whenever possible, three (3) quotations will be solicited. The Finance Department will retain all quotation documents as backup information with the purchase orders.

F. Purchase Over Pay to Play Threshold but under Bid Threshold

1. The Purchasing agent is to be consulted prior to any action being taken by the Department.
2. The Department shall solicit at least 2 quotes to confirm dollar amount of goods or services required.
3. The Purchasing Agent with the Department Head will devise the best method of Procuring necessary items.

G. Purchases Over Bid Threshold (Bid/RFP Procedures)

When the amount of the purchase exceeds the bid threshold, specific statutory and regulatory requirements must be followed in regard to: 1) preparation of written specifications; 2) the proper legal advertising; and 3) preparation and implementation of formal bid procedures.

1. Written Specifications

For goods and/or services in excess of the bid threshold, the Borough Administrator/Municipal Clerk, with Purchasing Agent and the user department, examines and determines the appropriate specifications and publicly advertises for bids.

2. Bid/RFP Procedure

- a. As part of the bid process, advertisements in the Public Notice section of an authorized newspaper must be published no less than ten (10) days prior to the receipt of bids. Therefore, it is important for user departments to understand the time limitations and procedures required in the formal bid process. Understanding and knowledge of the process by user departments will avoid unnecessary delays or confusion.
- b. At the time and date of the advertised opening of bids, the Borough Administrator/Municipal Clerk, Purchasing Agent or authorized designee shall publicly open and read aloud the bids as to the name of the vendor and offered price.
- c. The Borough Administrator/Municipal Clerk or Purchasing Agent shall review the bids for statutory completeness. Once deemed responsive and responsible, the Purchasing Agent or Borough Administrator/Municipal Clerk will forward a copy of the

bid proposal to the Department Head for review of the proposal against the Technical Specifications for completeness. After reviewing the bids, the user department, with input from the Purchasing Agent submits his/her recommendations(s) along with copies of all submitted bids to the Borough Administrator.

d. Upon completion of the legal review by the Borough Attorney, the Purchasing Agent forwards the request to the Municipal Clerk's Office for inclusion on the Borough Council agenda.

e. At the appropriate Council meeting, the Borough Council will, through Resolution vote, either to approve or disapprove the award of a contract. Item (s) "tabled" by Council will automatically be resubmitted for reconsideration by the Municipal Clerk. No-Action items must be resubmitted by the user department.

f. A contract is prepared/approved by the Borough Attorney's Office when it receives an approved Resolution from the Municipal Clerk which indicates the contract was awarded by Borough Council.

g. Three (3) copies of the Contract are sent to the vendor, a copy of the Resolution, The vendor must sign and return all Contract copies to the Purchasing Agent, along with the signed Voucher. The Mayor or authorized signer must sign all copies of the contract. The Municipal Clerk acts as the witness and records all signed contracts. Contracts are distributed as follows:

- One original is maintained by the Municipal Clerk's office
- One original is maintained in the project file, held by the Purchasing Agent
- One original is returned to the vendor, by the Purchasing Agent
- A copy is sent to the user department; (contract summary)
- A copy is sent to the Finance Office where the Contract is entered into the Contract Maintenance module of the Edmunds Financial Software to properly encumber funds.
- If the contract involves grant funding, an additional contract summary will be required for the Finance Department for grants management.

i. The Notice to Proceed shall originate from the user department unless directed differently.

H. Partial Payments

Any vendor requesting partial payment should be referred to the Department of Finance. Partial deliveries should be noted on the white receiving copy, by the user department. Damaged goods and/or incomplete orders must be recorded on the Receiving Report and sent to Purchasing Agent. The Purchasing Agent or authorized designee will contact the vendor to resolve the discrepancy (i.e. replacement, removal from invoice). **No payment will be authorized until goods are received or services are rendered according to specification(s) and contract terms.**

I. Progress Payments

Some contracts will require that goods or services be furnished over an extended period. The contract may provide for periodic progress payments as goods or services are provided.

IV. EXEMPTIONS TO BIDDING REQUIREMENTS

Requests for utilization of any exemptions as authorized by State Law must be initially submitted in writing to the Purchasing Agent by the user department. The Borough Attorney **shall review and approve all exceptions in writing** to bidding requirements in accordance with statutory guidelines and submit to the Purchasing Agent.

A. State Contract Awards

The State of New Jersey, through the Division of Purchasing and Property, awards contracts that can be used by local units of government. The user department is responsible for consulting with the Purchasing Agent to verify whether vendors are currently on the State Contract list and in good standing. All Contract Purchases over Bid Threshold require a resolution to award.

B. Cooperative Pricing Agreement

The Borough is currently a member of the following Co-Op's: Ocean County (for Paper and Office Supplies), Lakewood Township (for robo recycling containers), Barnegat Township (for Road Salt), and Stafford Township (for Gasoline/petroleum). Procedures for contracting are the same as State Contract Purchases.

C. Professional Services

Certain services are occasionally required to handle specific matters relating to areas of expertise, which are governed through education, licensing and statutory requirements. The user department, upon identifying the needed services, prepares a requisition and, in consultation with the Purchasing Agent, determines whether the request qualifies as a Professional Service.

Professional Services, as defined in N.J.S.A. 40A:11-5 (See Appendix C-1), include, but are not limited to, the traditional professional services.

- Law
- Engineering
- Medicine
- Architecture
- Dentistry
- Accounting

A Purchase Requisition will be prepared by the user department, upon normal encumbrance procedures, a request for action(s) by Borough Council shall be forwarded to the Purchasing Agent.

D. Emergency Procurements

1. Unanticipated emergencies, which affect the public health, safety, or welfare of citizens may require the immediate delivery of goods or the performance of services. (N.J.S.A. 40A:11-6a) discusses emergency contacts.

2. A request with supporting documentation is submitted to the Purchasing Agent for legal review.
3. A written memorandum (hereafter memo) for the performance of such work or labor or the furnishing of material, supplies or service is filed with the Purchasing Agent. The written memo must describe the nature of the emergency, the time of its occurrence and the need for involving emergency procurement procedures. This statement of need shall be certified by the officer or director in charge of the department [user department] responsible for securing performance of the work or procurement of the goods required to address the emergency conditions described in the statement.
4. When goods or services cannot be obtained pursuant to procedural requirements, within the guidelines of N.J.S.A. 40A:11-6 (See Appendix C- 4), a Requisition must be prepared and the Purchasing Agent notified immediately. Only when a specified, definable danger to the public health, safety or welfare requires immediate delivery of goods/services, can the Purchasing Agent take the applicable steps necessary to execute a Purchase Order. Whenever practicable the Purchasing Agent or designee will attempt to obtain at least two written quotes for the goods or services necessary to resolve the emergency. If any quotes are received verbally, the Purchasing Agent or designee must document the quotes in writing indicating the name of the vendor and the price quoted. The contract awarded will then be exclusive only to satisfy the immediate needs of the emergent situation.
5. Council authorizes the emergency purchase at the next regularly scheduled meeting by Resolution.

E. Emergency Demolition Procedures

Abandoned and/or vacant properties can either collapse or pose hazards to the public safety. Consequently, a specific procedure has been developed to address these matters. The procedure consists of the following:

1. The Construction Official or Fire Marshal declares a structure an imminent hazard and calls for an emergency demolition of the structure(s) pursuant to N.J.A.C. 5:23-2.32 of the Uniform Construction Code.
2. The official declaration for emergency demolition action documentation (letter from Construction Official/and user department and any supporting documentation) is submitted to the Borough Attorney's Office for legal review.

At times the Code Enforcement Officer may declare and document emergency demolition work for processing and final address to the emergency with a vendor/contractor.

3. The Construction Official, Fire Marshal or Director of Public Works or Code Enforcement Officer prepares a Requisition and submits it to the Purchasing Agent.
4. All pertinent follow-up documentation (i.e. supporting documentation related to the emergency demolition project) is submitted for appropriate action by Borough Council.

5. Council authorizes the emergency purchase at the next regularly scheduled meeting by Resolution.

F. Extraordinary, Unspecifiable Services (EUS)

Extraordinary, Unspecifiable Services (EUS) are specifically defined by state statute (N.J.S.A. 40A: 11-2(7)) as services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor. (See Appendix C-4.) If the user department believes a service qualifies as a EUS, the department must complete a certification, which contains the information supporting the request. The form of this certification is attached in Appendix C-5. Actions by the governing body in each instance must provide supporting rationale for its action in the resolution awarding each contract.

G. Other Exemptions That Exceed the Bid Threshold

There are at least thirty exemptions from the requirement of public bidding under the Local Public Contracts Law. These may be found in N.J.S.A. 40A: 11-5. (See Appendix C-1)

H. Formal Contracts

A formal written contract is required for all procurements over the bid threshold. The contract will be prepared by the Purchasing Agent and approved by the Borough Attorney. NOTE: The only exception would be purchases done under State Contract, but Council action is required if the amount exceeds the threshold.

V. FEDERAL AND STATE GRANT PURCHASING PROCEDURES

- A. All grants are established as appropriation items and, as such, the purchasing process outlined in this manual shall apply. The statute, regulation or contract establishing the grant may contain requirements or restrictions that exceed those required by State law.
- B. When a purchase is funded by grant funds, the requisition shall be reviewed by the Purchasing Agent. The Purchasing Agent will consult with the CFO for compliance with all applicable grant requirements, including eligibility and whether the activity is allowable within the scope of the grant.
- C. Sub-recipient agreements are contractual arrangements with agencies, e.g., nonprofits, which are to perform or administer federal or state grant funds to carry out programs on behalf of the Borough.

Sub-recipient agreements shall be processed in accordance with all applicable regulations of the original funding source. Such agreements shall be awarded by Resolution of Borough Council, and are executed only by formal contract. The Purchasing Agent will review all required documentation for sub-recipient agreements and prepare the necessary requisition(s). The Requisition shall only be prepared after all requests for proposals (RFP's), advertisements for bids if required, pre-award assessment(s) and ranking of proposals have been evaluated and approved by the Purchasing Agent or Borough Administrator/Municipal Clerk. The Purchasing Agent then submits a fully completed and approved Purchase Order, via the Administrator/Municipal Clerk, to the Finance Department for inclusion on the Council Agenda and subsequent award by Borough Council Resolution.

- D. Copies of all documentation pertaining to the grant must be maintained in the Finance Department. Such documentation shall include, but not be limited to, advertisement for bids or Requests for Proposals (RFP's), formal bids, contracts, payment vouchers, etc. The originals of all contracts shall be forwarded to the Purchasing Agent and maintained by the Borough Clerks Office.

VI. FIXED ASSETS AND PROPERTY MANAGEMENT

A. Fixed Asset Recording

Proper management of fixed assets is necessary to all user agencies, pursuant to New Jersey Department of Community Affairs, Division of Local Government Services' Technical Accounting Directive No. 85-2. A physical inventory of property/fixed assets must be taken and the results reconciled with property records at least once every two (2) years and maintained by the Finance Department. Property records must be maintained to include:

1. Description of the property
2. Serial number/identification number
3. Source of property
4. Title holder
5. Acquisition date
6. Cost of property
7. Location of property
8. Date of disposal (or sale) of property

Regardless of financial source, all property-including those purchased via grants-are to be managed with the recorded information as detailed above. In addition, any asset purchased with grant funds must also indicate the following:

1. Sources of grant funds - i.e., grantor department
2. A separate accounting of fixed assets by grant source
3. Follow the disposition of asset rules as stated in OMB A-102: Common Rule

B. Inventory Testing

A Product Material Inspection (PMI) must be conducted by the user department upon receipt of all goods, material or equipment. All such item(s) received must be inspected and examined to ensure that they function according to the specified purchase requirements.

Damaged goods and/or incomplete orders must be recorded on the Receiving Report and sent to Purchasing Agent. The Purchasing Agent/Finance Office will contact the vendor to resolve the discrepancy (i.e. replacement, removal from invoice). **No payment will be authorized until goods are received or services are rendered according to specification(s) and contract terms.**

C. Exceptions 40a:11-5

Any contract in the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefore and shall be awarded by Resolution of the governing body if:

- 1) The subject matter thereof consists of:
 - (a) (i) Professional Services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in the official newspaper, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating such contracting unit; or (ii) Extraordinary Unspecifiable Services. The application of this exception shall be construed narrowly in favor of open competitive bidding, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed, in the manner set forth in subsection (1) (a) (i) of this section, a brief notice of the award of such contract;
 - (b) The doing of any work by employees of the contracting unit;
 - (c) The printing of legal briefs, records and appendices to be used in any legal proceeding in which the contracting unit may be a party;
 - (d) The furnishing of a tax map or maps for the contracting unit;
 - (e) The purchase of perishable foods as a subsistence supply;
 - (f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;
 - (g) The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation;
 - (h) The printing of bonds and documents necessary to the issuance and sale thereof by a contracting unit;
 - (i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
 - (j) the publishing of legal notices in newspapers as required by law;
 - (k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;
 - (l) Those goods and services necessary or required to prepare and conduct an election;
 - (m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
 - (n) The doing of any work by handicapped persons employed by a sheltered workshop;

- (o) The provision of any goods or services including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;
- (p) (Deleted by amendment, P.L.1999, c.440.)
- (q) Library and educational goods and services;
- (r) (Deleted by amendment, P.L.2005, c.212).
- (s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products;
- (t) (Deleted by amendment, P.L.1999, c.440.)
- (u) Contracting unit towing and storage contracts, provided that all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor;
- (v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of such steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C.s.796;
- (w) The purchase of electricity or administrative or dispatching services directly related to the transmission of such purchased electricity by a contracting unit engaged in the generation of electricity;
- (x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances;
- (y) An agreement for the purchase of an equitable interest in a water supply facility or for the provision of water supply services entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement entered into pursuant to P.L.1989, c.109 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no later than six months after the effective date of P.L.1993, c.381;
- (z) A contract for the provision of water supply services entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- (aa) The cooperative marketing of recyclable materials recovered through a recycling program;
- (bb) A contract for the provision of wastewater treatment services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.);
- (cc) Expenses for travel and conferences;

- (dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;
 - (ee) The management or operation of an airport owned by the contracting unit pursuant to R.S.40:8-1 et seq.;
 - (ff) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;
 - (gg) A contract for the provision of water supply services or wastewater treatment services entered into pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);
 - (hh) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit.
- (2) It is to be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, department or authority thereof or any other state or subdivision thereof.
- (3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract; provided, however, that:
- (i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an department or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit;
 - (ii) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and
 - (iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the

contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services.

Whenever a contracting unit shall determine that a bid was not arrived at independently in open competition pursuant to subsection (3) of this section it shall thereupon notify the county prosecutor of the county in which the contracting unit is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

- (4) The contracting unit has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12), and the lowest responsible quotation is at least 10% less than the price the contracting unit would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit at a meeting thereof authorizing such a contract. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of such contracts on local contracting and shall consult with the State Treasurer on the impact of such contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.
- (5) Notwithstanding any provision of law, rule or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar

products, provided that in lieu of engaging in such public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing said services. Within 30 days after receipt of the written description the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section, "collection" means the physical removal of recyclable materials from curbside or any other location selected by the contracting unit.

- (6) Notwithstanding any provision of law, rule or regulation to the contrary, the contract is for the provision of electricity by a contracting unit engaged in the distribution of electricity for retail sale, or for the provision of administrative or dispatching services related to the transmission of such electricity, provided that in lieu of engaging in public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing such services. Such process shall be designed in a way that is appropriate to and commensurate with industry practices, and the integrity of the government contracting process. Within 30 days after receipt of the written description, the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process, as submitted to the director pursuant to this section, shall be deemed approved.

L.1971,c.198,s.5; amended 1975, c.353, s.4; 1976, c.20; 1977, c.53, s.2; 1982, c.208; 1983, c.209; 1983, c.331, s.2; 1985, c.436; 1986, c.61; 1987, c.102, s.32; 1989, c.92; 1989, c.159, s.1; 1991, c.142, s.1; 1991, c.143, s.2; 1991, c.368; 1993, c.381, s.4; 1995, c.101, s.12; 1995, c.103, s.4; 1995, c.216, s.11; 1997, c.387, s.2; 1999, c.440, s.9; 2002, c.47, s.8; 2003, c.150, s.2; 2005, c.212, s.2; 2005, c.296, s.1.

D. Definitions 2A:30A-1 .

1. As used in this act:

"Billing" means, in accordance with the terms and definitions of the applicable contract, any periodic payment, final payment, written approved change order or request for release of retainage.

"Prime contractor" means a person who contracts with an owner to improve real property.

"Improve" means: to build, alter, repair or demolish any structure upon, connected with, on or beneath the surface of any real property; to excavate, clear, grade, fill or landscape any real property; to construct driveways and private roadways on real property; to furnish construction related materials, including trees and shrubbery, for any of the above purposes; or to perform any labor upon a structure, including any design, professional or skilled services furnished by an architect, engineer, land surveyor or landscape architect licensed or registered pursuant to the laws of this State.

"Structure" means all or any part of a building and other improvements to real property.

"Owner" means any person, including any public or governmental entity, who has an interest in the real property to be improved and who has contracted with a prime contractor for such improvement to be made. "Owner" shall be deemed to include any successor in interest or agent acting on behalf of an owner.

"Prime rate" means the base rate on corporate loans at large United States money center commercial banks.

"Real property" means the real estate that is improved upon or to be improved upon.

"Subcontractor" means any person who has contracted to furnish labor, materials or other services to a prime contractor in connection with a contract to improve real property.

"Subsubcontractor" means any person who has contracted to furnish labor, materials or other services to a subcontractor in connection with a contract to improve real property.

L.1991, c.133, s.1; amended 2006, c.96, s.1.

E. Payment 2A:30A-2

To prime contractor, subcontractor, subsubcontractor, timely payment; exceptions; disputes; resolution.

- a. If a prime contractor has performed in accordance with the provisions of a contract with the owner and the billing for the work has been approved and certified by the owner or the owner's authorized approving agent, the owner shall pay the amount due to the prime contractor for each periodic payment, final payment or retainage monies not more than 30 calendar days after the billing date, which for a periodic billing, shall be the periodic billing date specified in the contract. The billing shall be deemed approved and certified 20 days after the owner receives it unless the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the reason for withholding payment, except that in the case of a public or governmental entity that requires the entity's governing body to vote on authorizations for each periodic payment, final payment or retainage monies, the amount due may be approved and certified at the next scheduled public meeting of the entity's governing body, and paid during the entity's subsequent payment cycle, provided this exception has been defined in the bid specifications and contract documents.
- b. If a subcontractor or subsubcontractor has performed in accordance with the provisions of its contract with the prime contractor or subcontractor and the work has been

accepted by the owner, the owner's authorized approving agent, or the prime contractor, as applicable, and the parties have not otherwise agreed in writing, the prime contractor shall pay to its subcontractor and the subcontractor shall pay to its subsubcontractor within 10 calendar days of the receipt of each periodic payment, final payment or receipt of retainage monies, the full amount received for the work of the subcontractor or subsubcontractor based on the work completed or the services rendered under the applicable contract. In the case of ongoing work on the same project for which partial payments are made, the amount of money owed for work already completed shall only be payable if the subcontractor or subsubcontractor is performing to the satisfaction of the prime contractor or subcontractor, as applicable.

- c. If a payment due pursuant to the provisions of this section is not made in a timely manner, the delinquent party shall be liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Interest on amounts due pursuant to this section shall be paid to the prime contractor, subcontractor or subsubcontractor for the period beginning on the day after the required payment date and ending on the day on which the check for payment has been drawn. The provisions of this subsection c. shall not apply to any transportation project as defined in section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives federal funding and the awarding department has been notified by the federal government that it will be classified as a high risk grantee pursuant to 49 C.F.R. 18.12.
- d. A prime contractor, subcontractor or subsubcontractor may, after providing seven calendar days' written notice to the party failing to make the required payments, suspend performance of a construction contract, without penalty for breach of contract, until the payment required pursuant to this section is made, if the contractor, subcontractor or subsubcontractor: is not paid as required by this section; is not provided a written statement of the amount withheld and the reason for the withholding; and the payor is not engaged in a good faith effort to resolve the reason for the withholding. The provisions of this subsection d. shall not apply to any transportation project as defined in section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives federal funding and the application of this provision would jeopardize the funding because the owner could not meet the federal standards for financial management systems as outlined in 49 C.F.R. 18.20.
- e.
 - (1) The rights, remedies or protections provided by this section for prime contractors, subcontractors and subsubcontractors shall be in addition to other remedies provided pursuant to any other provision of State law. To the extent that the provisions of this section provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other provisions of State law, the provisions of this section shall supersede those other provisions.
 - (2) No provision of this section shall be construed as restricting in any way the rights or remedies provided by any other applicable State or federal law to an owner who is a resident homeowner or purchaser with respect to the real property being improved.
- f. All contracts for the improvement of structures entered into after the effective date of P.L.2006, c.96 between owners, prime contractors, subcontractors or subsubcontractors shall provide that disputes regarding whether a party has failed to make payments

required pursuant to this section may be submitted to a process of alternative dispute resolution. Alternative dispute resolution permitted by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. In any civil action brought to collect payments pursuant to this section, the action shall be conducted inside of this State and the prevailing party shall be awarded reasonable costs and attorney fees.

L.1991, c.133, s.2; amended 2006, c.96, s.2.

F. Contributors 19:44A-20.4

..... to county committee of political party of elective officers; eligibility for county contracts.

2. Notwithstanding the provisions of any other law to the contrary:

a county, or any department or instrumentality thereof, shall not enter into a contract having an anticipated value in excess of \$17,500, as determined in advance and certified in writing by the county, department or instrumentality, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when the contract is awarded; and a business entity that has entered into a contract having an anticipated value in excess of \$17,500 with a county, or any department or instrumentality thereof, except a contract that is awarded pursuant to a fair and open process, shall not make such a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when the contract is awarded, during the term of that contract.

No such committee shall accept such a contribution from a business entity during the term of its contract with the county.

L.2004,c.19,s.3.

G. Emergency Contracts 40A:11-6

Emergency contracts: Any contract may be negotiated or awarded for a contracting unit without public advertising for bids and bidding therefor, notwithstanding that the contract price will exceed the bid threshold, when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services; provided that the awarding of such contracts is made in the following manner:

- a. The official in charge of the department wherein the emergency occurred, or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the governing body, as may be appropriate to the form of government, of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency

exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.

- b. Upon the furnishing of such goods or services, in accordance with the terms of the contract, the contractor furnishing such goods or services shall be entitled to be paid therefor and the contracting unit shall be obligated for said payment. The governing body of the contracting unit shall take such action as shall be required to provide for the payment of the contract price.
- c. The Director of the Division of Local Government Services in the Department of Community Affairs shall prescribe rules and procedures to implement the requirements of this section.
- d. The governing body of the contracting unit may prescribe additional rules and procedures to implement the requirements of this section. L.1971,c.198,s.6; amended 1975, c.353, s.5; 1977, c.53, s.3; 1979, c.350, s.3; 1985, c.60, s.3; 1985, c.469, s.8; 1999, c.440, s.10.

H. Unsafe structures 5:23-2.32

- (a) All buildings or structures that shall become unsafe, or unsanitary, or that contain deficient or blocked exit way facilities, or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or that by reason of illegal or improper use or occupancy shall be deemed unsafe buildings or structures, shall be taken down and removed or made safe and secure. A vacant building that is unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this chapter.

1. Examination and record of damaged structure: The appropriate subcode official shall examine every building or structure reported as dangerous, unsafe structurally, unsanitary or constituting a fire hazard and shall prepare a report to be filed in a docket of unsafe structures and premises, stating the use of the structure, the nature of the hazard, the nature and estimated amount of damages, if any, caused by collapse or failure.

2. Notice of unsafe structure: If an unsafe or unsanitary condition is found in a building or structure, the construction official shall serve a written notice describing the building or structure deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be vacated or demolished within a stipulated time. Such notice shall require the person thus notified to immediately declare to the construction official his or her acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals (or appropriate entity) within 15 days of receipt of the notice.

Restoration of unsafe structure: A building or structure condemned by the construction official may be restored to a safe condition in accordance with 5:23-6, Rehabilitation Subcode. A certificate of approval or certificate of occupancy, as appropriate, shall be obtained prior to reoccupancy of the building or structure.

4. Posting notice of unsafe structure: If the person addressed with a notice of unsafe structure cannot be found within the municipality after diligent search, then such notice shall be sent by registered or certified mail to the last known address of such person, as on file with the office of the tax collector, and a copy of the notice of unsafe structure shall be posted in a conspicuous place on the premises; and such procedures shall be deemed the equivalent of personal notice.

5. Upon refusal or neglect of the person served with a notice of unsafe structure to comply with the requirements of the order to abate the unsafe condition, the construction official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

(b) Emergency measures:

1. When, in the opinion of the construction official and appropriate subcode officials, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the construction official is hereby authorized and empowered to order and require the occupants to vacate the same forthwith. The construction official shall cause to be posted at each entrance to such building a notice reading as follows: This structure is unsafe and its use or occupancy has been prohibited by the construction official, and it shall be unlawful for any person to enter such building or structure except for the purpose of making the required repairs or demolishing the same. The order of the construction official shall be effective immediately.

2. Temporary safeguards: When, in the opinion of the construction official, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, the construction official shall cause the necessary work to be done to render such building or structure or part thereof temporarily safe, whether or not the legal procedure herein has been instituted. Such work may include such demolition as may be necessary in order to eliminate any actual and immediate danger to human life; provided, however, that any demolition work shall not commence until at least 24 hours following service of notice of the pending demolition upon the owner, unless such service is not possible because the identity or the address of the owner cannot be determined from public records. Upon expiration of the 24-hour period, demolition may proceed unless stayed by order of the Superior Court.

3. Closing streets: When necessary for the public safety, the construction official may temporarily close sidewalks, streets, buildings and structures and places adjacent to such unsafe structure, and prohibit the same from being used.

4. Emergency repairs or demolition: For the purpose of this section, the construction official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

5. Costs of emergency repairs: Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on certificate of the construction official; and the legal authority of the jurisdiction shall institute appropriate action against the owner of the premises for the recovery of such costs.

6. Appeals: An emergency order issued by a municipal construction official pursuant to this subsection shall be appealable only to a court of competent jurisdiction.