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EMERGENCY POLICIES & PROCEDURES

1. What is an emergency?

N.J.S.A. 40:A:11-6.1 requires that an emergency meet the following criteria:

- a. Must be an event that was reasonably unforeseeable.
- b. Must be actual or imminent.
- c. Must affect the public health, safety or welfare.
- d. Cannot be a product of bad planning.

2. How do you declare an emergency?

Authority must have an emergency policy, including a “Chain of Command” procedure required by N.J.A.C. 5:34-6.1.

3. How should emergency purchases be made?

- a. The Local Public Contracts Law (LPCP) allows for purchases above the bid threshold without bidding for emergencies. The LPCP bid thresholds are as follows:
 1. Quotes are required for purchases between \$3,150.00 and \$21,000.00 if the Authority does not have a Qualified Purchasing Agent (QPA).
 2. Formal bids are required for purchases over \$21,000.00.
 3. If the Authority has a QPA, quotes are required from \$4,350.00 to \$29,000.00 and formal bidding for purchases over \$29,000.00.

- b. Limit purchases to immediate needs. Emergency contracts cannot be for multi-year contracts.
- c. The Purchasing Agent has to issue an emergency purchase order or contract. The following documents and contract requirements may be necessary from the vendor or contractor:
 - 1. NJ Business Registration – N.J.S.A. 52:32-44
 - 2. Public Contractors Registration – N.J.S. A. 34-11-56.51
 - 3. Insurance Certificates (as required by the Authority policies)
 - 4. Prevailing Wages Requirements
 - 5. Statement of Ownership – N.J.S.A. 52:25-24.2
 - 6. Non-collusion Affidavit – N.J.S.A. 52:34-15
 - 7. Performance Bond (in excess of \$100,000.00)
- d. Examples of Emergency Purchases
 - 1. Waste Hauling

Authority properly advertises for bids for waste hauling services. However, all bids are defective and must be rejected or no bids received. Authority may award an emergency contract for waste hauling services for a limited period (90 days) to allow for a rebid of the services.
 - 2. Sewer Line Collapse

Authority may award a contract for a point repair of the collapse or replacement of the affected section of pipe but should not award an emergency contract to reline the entire system.

4. What is the necessary documentation?

- a. Emergency Declaration - The person authorized by the Authority's Emergency Purchasing Policy to declare an emergency must notify the person authorized to award a contract or contracts necessary. The notification shall be reduced to writing and filed with the Purchasing Agent as soon as reasonably possible.

- b. Purchases in excess of the purchasing officer's authority should be ratified by a resolution of the governing body.

5. How do the Pay-to-Play requirements apply to emergencies?

Emergency purchases are exempt from Pay-to-Play requirements, however, emergency purchases in excess of \$17,500.00 in which Pay-to-Play requirements are not met, an emergency procurement report must be filed with the Division of Local Government Services with 30 days of issuing the emergency contract.

6. How can emergency purchases be avoided?

- a. Good maintenance procedures
- b. Adequate spare parts inventory
- c. Use of state contracts for goods and services
- d. Use of bid hourly emergency contracts (i.e. sewer repair service, electrician)
- e. Use of Interlocal Agreements within municipalities
- f. Annual Engineers Inspection Report

SAMPLE AUTHORITY EMERGENCY PURCHASING POLICY

DEFINITION

Emergency purchase of supplies or contractual services are those supplies or services necessary because of emergent situations or conditions occurring that affect the public health, safety and welfare of the area residents or the Authority employees.

CRITERIA FOR EMERGENCIES

- A. The emergency must be actual or imminent and must affect the public health, safety or welfare.
- B. The failure to plan cannot be the basis for an emergency purchase. The emergency must be reasonably unforeseen, unforeseeable and immediate in nature.
- C. Quotations are not required but are suggested for emergency purposes.
- D. EMERGENCY CERTIFICATION
 - 1. Detail the nature of the emergency, whether it was unforeseen and unforeseeable, and why immediate action is required.
 - 2. Must be signed by the Executive Director or Authority Engineer and filed with the Authority's Purchasing Agent.

EMERGENCY PURCHASE AT NIGHT, WEEKENDS OR HOLIDAYS

All emergency purchases shall be approved by the Executive Director, in his absence the Authority Engineer shall be contacted. If an emergency should arise during a time when the Executive Director or Authority Engineer is unavailable, the Plant Superintendent shall act to secure the necessary materials or service. The evidence of purchase such as sales tickets, bills, delivery slip, counter receipt, etc., which the supplier normally furnishes shall be attached to the requisition form.

For emergency purchases in excess of the bid threshold, the Executive Director or Superintendent shall endeavor to notify the Chairman or, in his absence, the Vice Chairman prior to any purchase.

GENERAL INFORMATION

When emergency purchases are made, the Purchasing Department will make the purchase at the best possible price. A true emergency will often occur as a result of an act of nature or something unforeseen. Emergencies created through negligence are to be avoided. Failure to anticipate normal maintenance needs or project deadline dates does not constitute an emergency.

EMERGENCY PROCUREMENT REPORT

Public Exigencies Pursuant To N.J.S.A. 19:44A-20.12

Procedure

An Emergency Procurement Report is required when municipalities, counties, and their instrumentalities and agencies¹ (public agency) experience an emergency that warrants the immediate delivery of goods or services and in doing so, are unable to comply with the “Pay-to-Play” provisions of N.J.S.A. 19:44A-20.4 et seq. N.J.S.A. 19:44A-20.12 provides in pertinent part that:

“Nothing contained in this act shall be construed as prohibiting the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of emergency services as determined by the State Treasurer.”

The State Treasurer² has determined that approval under this provision is automatically granted when:

1. A public agency finds the public’s health, safety or welfare requires the immediate delivery of goods or the performance of services.
2. The award of any such contracts is made pursuant to the provisions of N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1 et seq., or for county colleges, N.J.S.A. 18A:64A-25.6.
3. Contracts are issued in response to a formal declaration of an emergency by the Governor.

Emergency Report Required

The Treasurer also requires that when a contracting agency uses these provisions, the agency’s purchasing agent or other appropriate personnel shall file with Director of the Division of Local Government Services an “Emergency Procurement Report,” within 30 days of the date the contract was issued. Contracts relating to a formal declaration of an emergency by the Governor are exempt from the reporting provision.

Certain information is necessary to address situations in which an exigency/emergency affecting the public’s health, safety or welfare requires the immediate delivery of goods or the performance of services.

¹ This language has been interpreted by the State to include among others, local authorities, fire districts, and county colleges.

² The State Treasurer’s directive can be seen at www.nj.gov/dca/lgs/p2p

N.J. Division of Local Government Services

EMERGENCY PROCUREMENT REPORT

This report is to be filed by the contracting agent of the public agency with the Director of the Division of Local Government Services within 30 days of the date the emergency contract was issued. Please provide the necessary information to satisfactorily complete the report. Refer to the Instructions accompanying this form and the statutory and regulatory citations on the reverse of this form.

This form is designed to be completed using Microsoft Word; if not completed that way, please print it out.

1. Name of Public Agency:		County:	
2. Date Emergency occurred:		Time emergency occurred:	
3. Date emergency declared:		Time emergency declared:	
4. Agency/department responsible for determining there was an emergency:			
5. Name and title of the official in charge of that agency:			
6. Describe the condition or circumstance pertaining to the emergency (attach additional sheets if necessary):			
7. Name and title of the individual who determined the matter was an emergency and authorized award of contract(s):			
8. The total (or estimated) cost of providing the goods or performing services was:		\$	
9. List the names the contractors/suppliers receiving 25% or more of the contracts awarded under the emergency:			
10. When was the notification reduced to writing and filed with the purchasing agent?			
11. Has the public agency adopted a "chain of command" procedure pursuant to N.J.A.C.5:34-6.1?			
This report was completed by (name and title):			
Name and Address of agency contact person:			
Signature:			Date:

Submit by mail or fax to:
 Director, Division of Local Government Services
 P.O. Box 803
 Trenton, New Jersey 08625-0803
 Fax: 609-633-6243



State of New Jersey
OFFICE OF THE STATE TREASURER
P.O. Box 002
TRENTON NJ 08625-0002

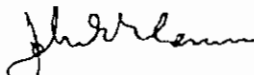
RICHARD J. CUDLY
Acting Governor

January 17, 2006

JOHN E. McCORMAC, CPA
State Treasurer

MEMORANDUM

To: Susan Jacobucci, Director
Division of Local Government Services

From: John E. McCormac, State Treasurer 

Subject: Approvals of Public Exigencies Pursuant to N.J.S.A. 19:44A-20.12

This memorandum addresses situations in which the immediate delivery of goods or the performance of emergency services is required in order for counties and municipalities, as well as county and municipal agencies covered under the provisions of N.J.S.A. 19:44A-20.4 and 20.5, to address public exigencies in a timely and effective manner. As you are aware, the recent campaign finance reform legislation, (P.L. 2004, c. 19), N.J.S.A. 19:44A-20.12, provides in pertinent part that:

“Nothing contained in this act shall be construed as prohibiting the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of emergency services as determined by the State Treasurer.”

In order to facilitate such determinations, for those public agencies covered under the provisions of N.J.S.A. 19:44A-20.4 and 20.5, including county colleges covered under the provisions of N.J.S.A. 19:44A-20.4, I have determined that the circumstances of a public exigency shall presumptively exist when a public agency finds that the public health, safety, or welfare requires the immediate delivery of goods or the performance of services; provided, however, that the award of any such contracts shall be made pursuant to the provisions of N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1 et seq., or N.J.S.A. 18A:64-25.6, if applicable. Only when such circumstances exist, including those relating to the formal declaration of an emergency by the Governor, and the above-cited provisions of law and regulation are fully satisfied, may contracts be awarded to address public exigencies.

Furthermore, with the exception of contracts awarded in direct response to a declared State of Emergency, the contracting agent of the public agency shall file with your office an “Emergency Procurement Report,” on a form to be promulgated by your office, within 30 days of the date the contract was issued. The report shall include a full description of the circumstances surrounding the emergency, the names of all contractors, a complete list of all goods or services procured, and a detailed listing of all fees and payments to be made. A copy of any report filed with your office shall be forwarded to my office in a timely manner. Any other request for the exercise of a waiver of the provisions of N.J.S.A. 19:44A-20.4 et seq. for public exigency should be filed, in the first instance, with your office. I ask that your office promptly review the request and recommend to my office an appropriate action. Please take appropriate action to communicate this directive to affected public agencies.

Thank you for your assistance in this important matter

Legal Provisions Related to Use of Emergencies

40A:11-6 Emergency contracts

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 agency 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.

N.J.A.C. 5:34-6.1 General requirements (edited as to applicability)

(a) The use of emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 shall be subject to the following requirements:

1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service;...
- ...3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;
4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and
5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

(b) The governing body of each contracting unit shall adopt rules or regulations as appropriate to the contracting unit to ensure that there is a procedure for determining and confirming the existence of an emergency and that the provisions for emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 may be implemented. Such rules or regulations shall include such provisions that ensure that if initially designated individuals are not available, there is a designated chain of command to ensure that there are always appropriate individuals available to make such decisions.

18A:64A-25.6 Emergency purchases and contracts

6. Any purchase, contract, or agreement may be made, negotiated or awarded by a county college without public advertising for bids and bidding therefor, notwithstanding that the cost or contract price will exceed \$25,000* or, commencing January 1, 2003, the amount determined pursuant to subsection b. of section 3 of P.L.1982, c.189 (C.18A:64A-25.3), when an emergency affecting the health, safety or welfare of occupants of college property requires the immediate delivery of the materials or supplies or the performance of the work, provided that such purchases, contracts or agreements are awarded or made in the following manner:

- a. A written requisition for the performance of such work or the furnishing of materials or supplies, certified by the employee in charge of the building, facility or equipment where the emergency occurred, is filed with the contracting agent or his deputy in charge, describing the nature of the emergency, the time of its occurrence, and the need for invoking this section. The contracting agent, or his deputy in charge, being satisfied that the emergency exists, is hereby authorized to award a contract for said work, materials or supplies.
- b. Upon the furnishing of such work, materials or supplies in accordance with the terms of the contract or agreement, the contractor furnishing such work, materials or supplies shall be entitled to be paid therefor and the county college shall be obligated for said payment.
- c. The board of trustees may prescribe rules and procedures to implement the requirements of this section.

* This provision is superseded by the provisions of N.J.S.A. 19:44A-20.4 threshold of \$17,500