

RESOLUTION

21-238

No.

Date of Adoption JUNE 10, 2021

Approved as to Form and Legality

Factual content certified by

CITY ATTORNEY

BENJAMIN DELISLE, DIRECTOR OF HOUSING AND ECONOMIC DEVELOPMENT

Councilman /woman

HARRISON

presents the following Resolution:

RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT TO SUPER LLC FOR DEMOLITION OF VARIOUS STRUCTURES UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND NEIGHBORHOOD REDEVELOPMENT AND REVITALIZATION PILOT (NRRP) PROGRAM FOR A PERIOD OF ONE (1) YEAR FROM JUNE 11, 2021 TO JUNE 10, 2022 IN AN AMOUNT NOT TO EXCEED \$544,160.00 BID 2021-34

WHEREAS, four (4) sealed bids were received on May 18, 2021, for Demolition of Various Structures under the Community Development Block Grant (CDBG) Program and Neighborhood Redevelopment and Revitalization Pilot (NRRP) Program for the City of Trenton, Department of Housing and Economic Development; Work shall be completed within ninety (90) calendar days from "Notice to Proceed"; and

WHEREAS, the low bidder, Super, LLC, 203 Belmont Avenue, Haledon, New Jersey 07508 in made pursuant to advertisement, be and is hereby accepted, as the lowest responsive, responsible bidder complying with terms and specifications on file in the Division of Purchasing; and

WHEREAS, funds in an amount not to exceed \$544,160.00 have been certified to be available in the following trust account numbers: FY'2019, T-19-19-65-6593-290, T-19-19-65-6594-290, T-19-19-65-6595-290, T-19-19-65-6596-290, T-19-19-65-6597-290, T-19-19-65-6598-290, T-19-19-65-6599-290, T-19-19-65-6600-290, T-19-19-65-6592-290, T-19-19-65-6601-290, T-19-19-65-6604-290, T-19-19-65-6586-290, T-19-19-65-6587-290, T-19-19-65-6605-290, T-19-19-65-6588-290, T-19-19-65-6589-290, T-19-19-65-6590-290, T-19-19-65-6591-290, and T-19-19-65-6583-299. The City of Trenton shall award this contract from June 11, 2021 to June 10, 2022; and

NOW, THEREFORE, IT IS RESOLVED, by the City Council of the City of Trenton that the Mayor is hereby authorized to execute a contract with Super, LLC, 203 Belmont Avenue, Haledon, New Jersey 07508 in an amount not to exceed \$544,160.00 for Demolition of Various Structures under the Community Development Block Grant (CDBG) Program and Neighborhood Redevelopment and Revitalization Pilot (NRRP) Program for the City of Trenton, Department of Housing and Economic Development for the said purposes in the manner prescribed by law.

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
BLAKELEY	✓				MUSCHAL	✓				MCBRIDE	✓			
CALDWELL WILSON		✓			RODRIGUEZ	✓								
HARRISON	✓				VAUGHN		✓							

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on

June 10, 2021

President of Council

City Clerk

CITY OF TRENTON, NEW JERSEY
BID2021-34
RES. NO. 21-238
DEMOLITION OF VARIOUS STRUCTURES UNDER THE COMMUNITY DEVELOPMENT
BLOCK GRANT (CDBG) PROGRAM AND NEIGHBORHOOD REDEVELOPMENT AND
REVITALIZATION PILOT (NRRP) PROGRAM

PREVAILING WAGE STATEMENTS APPLIES

This Agreement, entered into this 10TH Day of JUNE 2021 between the City of Trenton, a municipal corporation of the State of New Jersey, ('CITY') **319 EAST STATE STREET, TRENTON, NEW JERSEY 08608** and **SUPER LLC, 203 BELMONT AVENUE, HALEDON, NEW JERSEY 07508** (Contractor"), witnesseth that:

WHEREAS, Contractor has bid, proposed or offered to furnish and deliver to the City the materials, supplies and/or goods to perform the services **IN AN AMOUNT NOT TO EXCEED \$544,160.00 FOR A PERIOD OF ONE (1) YEAR FROM JUNE 11, 2021 TO JUNE 10, 2022.**

WHEREAS, The City participates in the **Community Development Block Grant ("CDBG") program** and receives annual funding from the U.S. Department of Housing and Urban Development ("HUD") under the Housing and Community Development Act of 1974, Public Law 93-383, as amended, herein called the "Act". This contract is for services that may be funded in whole or in part with CDBG funds.

FIRST, Contractor, under the penalty expressed in the bond hereinafter mentioned, will furnish, supply and deliver to the City of Trenton the following materials, supplies or services as authorized by:

RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT TO SUPER LLC, 203 BELMONT AVENUE,
HALEDON, NEW JERSEY 07508 FOR DEMOLITION OF VARIOUS STRUCTURES UNDER THE COMMUNITY
DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND NEIGHBORHOOD REDEVELOPMENT AND
REVITALIZATION PILOT (NRRP) PROGRAM
FOR THE CITY OF TRENTON, DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT

B. The contract shall submit with contracts with the following:
UPDATED CERTIFICATE OF INSURANCE WITH SIGNED CONTRACTS
BIG GUARANTEE, CONSENT OF SURETY, PERFORMANCE BOND AND LABOR
AND MATERIAL PAYMENT BOND REQUIRED WITH SIGNED CONTRACTS

below in strict accordance with the terms and conditions of the bid specifications, the bid response and the authorizing resolution, which are included above and is incorporated by reference,. Additionally, Contractor will furnish good and ample security in a sum equal to the said contract price for the said articles and services.

SECOND. The City of Trenton will pay Contractor the total sum mentioned herein when the appropriate Department Director has executed a certification that the said articles or services have been furnished, delivered and accepted in full conformity to the aforementioned specifications and offer or proposal.

THIRD. The City of Trenton reserves the right to order a greater or lesser quantity, not to exceed twenty-five percent, of any or all of the articles named in the said offer or proposal than is stated therein, and it is distinctly agreed between the said parties that the price quoted in the offer or proposal of Contractor shall be regarded as a standard of prices, and the total sum mentioned herein as the consideration of this contract shall not be regarded as limiting the right of the City of Trenton to order such greater or lesser quantity.

FOURTH. In the event of the failure of Contractor to deliver to the City of Trenton, such articles or perform such work or labor as described in such quantities as ordered at the time stated for such delivery by the City of Trenton, or in the event that such articles as are delivered or work and labor performed do not meet the specifications or standards, as established by the City of Trenton for such articles or acceptance of such work and labor, then such delivery shall be rejected by telephone or written notice to the Agent or address indicated by the Contractor and by simultaneous and like notice to his surety. Additionally, if Contractor or his surety does not cure the default within the time set by the said Agent on behalf of the City of Trenton, then the said Agent on behalf of the City, shall have the right to procure such services or purchase such

articles in their place and stead in the open market as are needed for replacement, and from the best source available in the judgment of the said Agent and to charge the expense of such articles or work performed to Contractor and to deduct the amount thereof from any moneys due or to become due to Contractor by virtue of this agreement. Provided, however, that the surety on the bond of Contractor for the faithful performance of this agreement shall be first notified of the necessity for such replacement, and given the same time allowance for such replacement as is given Contractor.

FIFTH. This contract shall not be amended, assigned or subcontracted without the consent of the City of Trenton in writing (if the total compensation payable thereunder shall thereby exceed \$2,500.00, approval by Resolution of the Governing Body shall be required), and any breach of this covenant shall authorize the City of Trenton, by its said Agent, to declare this contract null and void and to refuse to make any further payments thereunder to Contractor.

SIXTH. In case of any conflict between the provisions of this agreement and of any of the provisions of the specifications, the latter shall govern and control. The Bid documents and Bidders Response are made a part hereof by reference and all requirements provided therein shall be made a part of this agreement.

Applicable for Public Construction Contracts Only: "Dispute Resolution Procedures (NJSA 40A:11-50). Disputes arising under this contract shall be subject to mediation or non-binding arbitration at the sole discretion of the City of Trenton, before a construction industry mediator or arbitrator or panels thereof. The City of Trenton shall have the right to select a third party to mediate any disputes arising under this agreement and the mediation shall be conducted informally in a manner decided upon by the mediator".

SEVENTH. Contractor hereby agrees to pay all workmen as a minimum the prevailing wages rate in accordance with Chapter 150 of the New Jersey Laws of 1963, Prevailing Wages on Public Contracts and U.S. Department of Labor Wage Rates with the higher rate for any given occupation being the governing rate, and N.J.S.A. 10:2-1 et seq., prohibiting discrimination in employment on public contracts.

EIGHTH. During the performance of the contract, the CONTRACTOR agrees to comply with all applicable Federal laws and regulations including but not limited to the following:

1. **RESOLUTION OF PROGRAM NON-COMPLIANCE AND DISALLOWED COSTS:** As applicable to all contracts, subcontracts and subgrants of amounts in excess of \$150,000. For all such Contracts, all CONTRACTORS and subcontractors agree to the following requirements:

In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or City of Trenton CDBG program requirements, shall be subject to mediation or non-binding arbitration at the sole discretion of the City of Trenton, before a construction industry mediator or arbitrator or panels thereof. The City of Trenton shall have the right to select a third party to mediate any disputes arising under this agreement and the mediation shall be conducted informally in a manner decided upon by the mediator".

2. **TERMINATION OF CONTRACT:** This Contract may be terminated as follows:

TERMINATION FOR CAUSE: If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this contract, the City shall thereupon have the right to terminate this contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination.

In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONTRACTOR under this contract shall, at the option of the City, become the City's property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the CONTRACTOR, and the City may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the City from the CONTRACTOR is determined.

TERMINATION FOR CONVENIENCE: The City may terminate this contract at any time by giving at least ten (10) days' notice in writing to the CONTRACTOR. If the contract is terminated by the City as

provided herein, the CONTRACTOR will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the CONTRACTOR, "Termination of Contract for Cause" hereof relative to termination shall apply.

3. **EQUAL EMPLOYMENT OPPORTUNITY:** As applicable to all contracts, subcontracts and subgrants that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, the CONTRACTOR agrees as follows:

The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60), and the rules, regulations, and relevant orders of the Secretary of Labor.

The CONTRACTOR will not discriminate against any employee or applicant of reemployment because of age, race, creed, sex, color or national origin. The CONTRACTOR will take affirmative action to ensure that the applicants are employed, and that employees are treated during employment, without regard to their age, race, creed, sex, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; rates of pay of other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.

The CONTRACTOR will, in all solicitation of advertisement for employees to be placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, sex, or national origin.

The CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. **COPELAND "ANTI-KICKBACK" ACT (18 U.S.C. 874, 40 U.S.C. 276c AND 40 U.S.C. 3145)** All contracts and subgrants in excess of \$2000 for construction or repair shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), as applicable. The Act provides that each CONTRACTOR or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

5. **BYRD ANTI-LOBBYING AMENDMENT (31 USC 1352) :** The CONTRACTOR certifies, to the best of his or her knowledge and belief that:

CONTRACTORS that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

6. **DAVIS BACON ACT:** as amended (40 U.S.C. 3141- 3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). As per attached HUD form 4010 Federal Labor Standards Provisions.

7. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** As applicable to contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each CONTRACTOR must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less

than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

8. **RECORDS AND REPORTS:** Records for nonexpendable real property purchased totally or partially with CDBG funds must be retained for five years after its final disposition. The (Unit of Local Government) must provide a quarterly progress report. All other pertinent grant records, including beneficiary data, financial records, supporting documents, and statistical records, shall be retained for a minimum of five years after final close-out of the Grant. If, however, any litigation, claim or audit is started before the expiration of the five year period, then records must be retained for five years after the litigation claim or audit is resolved.
9. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:** If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
10. **RECORDS AND AUDITS:** The CONTRACTOR shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. These records will be made available for audit purposes to the City, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives.
11. **RETENTION OF RECORDS:** The CONTRACTOR further agrees to maintain such records for a period of five (5) years after final payment under this Agreement, and that on or before the end of the five (5) year audit/retention period.
12. **CLEAN AIR ACT AND CLEAN WATER ACT COMPLIANCE:** Compliance with the applicable standards, orders or requirements issues under the Clean Air Act (42 U.S.C. 7401-7671q.), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), Executive Order 11738 and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15 is required for all contracts, subcontracts and subgrants of amounts in excess of \$150,000. For all such Contracts, all CONTRACTORS and subcontractors agree to the following requirements:
 - a. A stipulation by the CONTRACTOR or subcontractors that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
 - b. Agreement by the CONTRACTOR to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
 - c. A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.
 - d. Agreement by the CONTRACTOR that he will include or cause to be included the criteria and requirements in paragraph (a) through (d) of this section in every nonexempt subcontract and requiring that the CONTRACTOR will take such action as the Government may direct as a means of enforcing such provision.
 - e. In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

13. **ENERGY CONSERVATION PROVISIONS:** CONTRACTOR will comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).
14. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (12 U.S.C. 1801 U):** This agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1801 u) as amended. The Section 3 clause provides:
- a. Every applicant, recipient, contracting party, CONTRACTOR and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as a Section 3 clause):
 - b. A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - c. B. The parties to the contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
 - d. C. The CONTRACTOR agrees send to each labor organization or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other understanding, if any, a notice advising the said labor organization or workers' representative of CONTRACTOR's commitments under this Section 3 clause and will post copies of the notice in conspicuous places available to at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the sections 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.
 - e. D. The CONTRACTOR agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The CONTRACTOR will not subcontract with any subcontractor where the CONTRACTOR has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
 - f. E. The CONTRACTOR will certify that any vacant employment positions, including training positions, that are filled (1) after the CONTRACTOR is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the CONTRACTOR's obligations under 24 CFR Part 135.
 - g. F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

NINTH. During the performance of this contract, the CONTRACTOR agrees as follows:

a. CONTRACTOR or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, or sex. CONTRACTOR will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

b. CONTRACTOR or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital

status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

c. CONTRACTOR or subcontractor where applicable, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of CONTRACTOR's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

d. CONTRACTOR or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. (N.J.A.C. 17:27-3.4)

Note: A public works contract for a subcontractor with a total work force of four or fewer employees or for a contractor or subcontractor performing under an existing Federally approved or sanctioned affirmative action program shall contain as mandatory language only paragraphs a, b, and c above, and the contract shall not contain any other mandatory language prescribed by N.J.A.C. 17:27. (N.J.A.C. 17:27-3.4) (c)

e. All bidders and all contractors who are negotiating for a procurement or service contract with the public agency which is not subject to a federally approved or sanctioned affirmative action program are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127), one of the following three documents:

1. Appropriate evidence that the contractor is operating under an existing federally approved or sanctioned affirmative action program; or

2. A certificate of employee information report approval issued in accordance N.J.A.C. 17:27-4; or

3. An initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-4. (N.J.A.C. 17:27-3.3) (a)

f. CONTRACTOR or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time. (N.J.A.C. 17:27-5.3)(a) (1)

g. CONTRACTOR or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, gender identity or expression, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices. (N.J.A.C. 17:27-5.3) (a) (2)

h. CONTRACTOR or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions. (N.J.A.C. 17:27-5.3) (a) (3)

i. CONTRACTOR or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions. (N.J.A.C. 17:27-5.3) (a) (4)

j. CONTRACTOR agrees that in the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity, or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates. (N.J.S.A. 10:2-1) (a)

k. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex. (N.J.S.A. 10:2-1) (b)

l. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract. (N.J.S.A. 10:2-1) (c)

m. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract. (N.J.S.A. 10:2-1) (d)

n. The parties of this contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereto, are hereby made a part of this contract and are binding upon them. (N.J.A.C. 13:6-1.1)

o. Contractor and subcontractor agree and guarantee to afford equal opportunity in performance of the contract and, except with respect to affectional or sexual orientation, and gender identity or expression in accordance with an affirmative action program approved by the State Treasurer. (N.J.S.A. 10:5-32 and 10:5-35) (a)


p. The parties of this contract do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., which prohibits discrimination on the basis of disability by public entities in all services programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. The contractor agrees to conduct all activities in compliance with the provisions of Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and the U.S. Department of Labor's regulations at 29 CFR Parts 31, 32 and 34.

Contractor shall cooperate with any state or federal reviews aimed at determining compliance with nondiscrimination laws and regulations authorized by State Law and expressly specified herein.

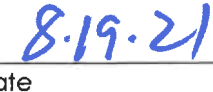
IN WITNESS WHEREOF, the City of Trenton has caused this agreement to be signed by the Mayor of the City of Trenton and its corporate seal to be hereto affixed, attested by the City Clerk, and Contractor has likewise caused this agreement to be executed the day and year first above written.

CITY OF TRENTON

Attest: 
Matthew H. Conlon
Municipal Clerk


W. Reed Gusciara, Esq., Mayor

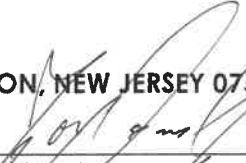

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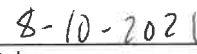

Date

and

SUPER LLC, 203 BELMONT AVENUE, HALEDON, NEW JERSEY 07508

Attest: 
Secretary


President


Date

LFN 2006-21

November 1, 2006

Local Finance Notice

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Governor

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PROMPT PAYMENT OF CONSTRUCTION CONTRACTS P.L. 2006, c. 96

On September 1, 2006 Governor Corzine signed Senate Bill 1726 into law as P.L. 2006, c.96 of the Laws of 2006. Known as the "Prompt Payment" Law, Chapter 96 establishes timing standards for the payment of bills by both public and private sector organizations for a wide range of construction-related contractors. The "**default**" payment procedure in the law may conflict with existing procedures in some government agencies. The bill, however, provides alternate procedures for these local units (see Section III).

Codified as N.J.S.A. 2A:30A-1 et seq., the law took effect immediately upon signing. It affects construction-related contracts of all local units (municipalities, schools, counties, fire districts, local authorities, etc.) that **took effect after September 1, 2006**. Given that the law is currently in effect, immediate attention must be paid by all local units to ensure their interests are protected.

The law intends to ensure that 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 breach of contract clauses.

The law affects all contracts for "improvements" (defined below) regardless of dollar amount. This means it affects contracts for which public bidding is required as well as those **contracts under the bid threshold** that are traditionally authorized through solicitation of quotes.

This Local Finance Notice reviews the general provisions of the law. Section VI is a "to-do" list local units should consider in meeting the obligations of the law. Because local units have a wide range of policies regarding payment of bills, careful analysis and application of the law is warranted.

Local payment procedures should **immediately** be reviewed by the chief financial officer, purchasing agent, legal counsel, consulting engineers, and other staff as appropriate in order to develop local procedures to meet the requirements of the law.

I. Definitions

The law affects contracts for above and below ground “improvements” to real property and structures. The law defines the term “structure” to mean any part of a building and other improvements to real property. The law defines the term “improve” to mean the following:

- ...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.

This is an expansive definition and includes **all** improvements to real property. Real property is defined as “real estate” – which includes publicly owned property – including traditional infrastructure: roads, bridges, underground utilities, rights-of-way, and easements.

In other words, the law affects contracts for improvements to any land (regardless of ownership or use) and its appurtenances.

With respect to local units, the law covers contracts with general or “prime contractors.” While this term may have specific meaning for certain kinds of construction contracts under the Local Public and Public School Contracts Laws, for Prompt Payment purposes, it means any contractor that has contracted directly with a local unit for construction of improvements. It permits separate identification of “prime” contractors from any subcontractors working for the prime contractor – subs have their own rights to timely payment under the law. This Notice uses “prime contractor” and “contractor” interchangeably.

II. Billing Dates and Payment Cycles

While the law does not define the term “bill,” local units should interpret the term as being the same as an invoice, voucher, warrant, or whatever term the local unit uses to describe the documents a vendor submits to request payment.

The law uses the phrase “periodic payment, final payment and retainage monies” as the types of bills that are submitted on a “billing date.” In the case of a periodic billing, the law defines the “billing date” as the “date specified in the contract.” This requirement implies that local units should establish a periodic billing date in contracts whenever a contract will have more than one payment.

The law does not define billing dates for final payments and payments of retainage. To avoid confusion, **local unit bid specifications and contracts should define billing date for final and retainage payments as “the date the bill is received by the local unit.”** The Division’s position is that a fixed billing date can not be set for final or retainage payments – bills must be processed as they are received.

Local units subject to the Local Public Contracts Law should also include payments required by N.J.S.A. 40A:11-16.2, in its periodic billing schedule. This section requires a monthly payment for construction projects in excess of \$100,000. This provision does not apply to the Public School Contracts Law.

N.J.S.A. 40A:5-17 establishes procedures local units (except schools) must follow for payment of bills. The law requires governing bodies to approve all bills, unless the local unit adopts other procedures that permit payments without governing body approval. Many local units have used this authority to permit the chief financial officer to pay bills in between governing body meetings, and submit a list of bills paid at the following meeting for inclusion in the official minutes. Similarly, N.J.S.A. 18A:19-1 et seq. and associated rules at N.J.A.C. 6A:23-2.11(a)1 set forth procedures to be used by public schools.

Finally, the law uses the phrase "payment cycle" to describe when actual payment is made after the governing body has approved payment. While not directly required by the law, it is concluded that the law intends that contractors have some certainty of when they will receive payment. To meet this expectation, local units should formally adopt a payment cycle and provide the information to contractors so they know when payments will be made.

III. Required Procedures and Processes

N.J.S.A. 2A:30A-2a sets out two procedures: a **default**, covering **any public or private entity** that enters into a contract for described services; and an "alternate," specifically created for public entities where the governing body must vote to authorize the payment of bills.

The **default procedure** applies to local units that **do not require governing body approval** to authorize the payment of bills. It imposes the following payment process:

- If the contractor has performed in accordance with the contract; and
- The work has been approved and certified by the owner or the owner's "authorized approving agent,"
- The owner shall pay the bill not more than 30 calendar days after the billing date;
- Provided that the billing shall be deemed "approved" and "certified" 20 calendar 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.

The **alternate procedure** for local units applies when local policies **require governing body approval** authorizing the payment of bills. In addition to ensuring the contractor has performed in accordance with the contract and that the work has been approved and certified by the owner or the owner's "authorized approving agent," the following provisions apply:

- The 20th calendar day deadline of the default procedure to approve and certify, or decide to withhold full or partial payment **is deferred until the public meeting following 20 calendar days of the billing date**, at which time the bill must be approved for payment or notice provided as to why the bill or any portion of it will not be approved.
- If the billing is approved, the 30-day payment requirement of the default is replaced by the requirement that the bill be paid in the payment cycle following the meeting.

- The law anticipates prompt and timely notice to the contractor of any denial of payment, its deficiency, and what is required to resolve it.
- The alternate procedure must be defined in bid specifications and contract documents to have effect.

Because the law allows the local unit to set the “billing date” by establishing a “periodic billing date” in the contract, the local unit can control when periodic bills are submitted, and to a degree the timing of the payment process. This date should be carefully coordinated with internal or external professionals with responsibility to review bills.

It is important to note the law uses the term “public meeting” as the time when bills are approved. This includes any meeting of the governing body that is open to the public, in addition to the traditional meetings where formal action is taken. This includes “workshop,” “agenda,” 48-hour notice, or special meetings (but not closed or executive sessions or emergency meetings). It does not permit a local unit to designate that bills will only be approved at public meetings where “formal action” is routinely taken. Local units must arrange their meeting agendas and internal review procedures to accommodate bill payment to take place at any meeting following an established billing date.

The payment cycle is independent of meetings – the law does not require that a meeting trigger its own payment cycle.

IV. Setting Dispute Resolution Policies

Subsection “f” of N.J.S.A. 2A:30A-2 provides that all contracts for improvements **shall** include a provision that disputes **may** be submitted to an alternative dispute resolution (ADR) procedure for bills (or portions) that are not approved. While not precisely drafted, it appears that the intent of the bill is to provide that either party may submit a claim to ADR.

This is consistent with N.J.S.A. 40A:11-50 that requires local units covered by the Local Public Contracts Law to include an ADR provision in all construction contracts (regardless of value), that covers the construction work, as well as related professional service (i.e., architect, engineer) contracts.

Considering these two elements, the law requires that all local units provide for an ADR process in their bid specifications and contracts for improvements that can be used by either party.

Local units can refer to Local Finance Notice AU-98-4 for details of N.J.S.A. 40A:11-50, a general explanation of the ADR process, and suggested ADR procedures. While that law does not pertain to them, local units that fall under the Public School Contracts Law or the County College Contracts Law may find the Notice instructive.

As a general approach to ADR, the Division recommends immediate communication between the parties as a first step, with discussions at successively higher levels in the organization, then the use of an outside mediator or arbitrator as attempts to resolve the matter before court action is taken. The specific steps and procedures are the local unit’s decision and should be reflected in bid specifications and contracts.

The law specifically states that ADR provisions **do not apply** to disputes concerning the bid solicitation or award process or formation of contracts.

procedures. In particular, finance staff should be trained to pay careful attention to incoming bills, and if appropriate, ensure logging, transmittal, and tracking of bills.

5. When governing bodies approve bills, add **“payment of bills” as a routine agenda item for all public meetings** to allow the governing body to approve or reject any bills or portion of one whenever they meet.
6. When a bill or portion of a bill is denied, immediately notify the contractor **in writing** of any denial of payment, its deficiency, and what is required to remedy the deficiency.
7. **Add a bill payment provision/schedule to bid specifications and contracts.** The law permits use of the alternate governing body approval practice **only** if it is reflected in bid specifications and contract documents. All bid specifications, contract documents, and purchase order “boilerplate” text (as appropriate to local circumstances) should be amended to describe the process used by the local unit for approval and payment of bills, including billing dates and payment dates.
8. **Update outstanding contracts and bid proposals.** The law does not apply to contracts for the improvement of structures awarded before the effective date of September 1, 2006. Local units may currently have outstanding bid advertisements or have received bids but not yet awarded contracts. In these cases, local officials should act, as appropriate to amend bid specifications through the addenda process, or work with legal counsel to amend pending or issued contracts to include the appropriate language, or work with contractors to otherwise meet the intent of the law.
9. **Review alternative dispute resolution provisions for construction contracts.** N.J.S.A. 40A:11-50 has required for several years that all construction contracts include an alternative dispute resolution process. Local units should carefully review their existing procedure in context of Prompt Payment and update it as appropriate.

VII. Conclusion

The Prompt Payment Law presents new challenges to local units in managing their payment procedures. Its immediate effect adds to that challenge. Local unit officials should act expeditiously to ensure they do not violate the law while they consider implementing long-term policies.

Local finance officials can use GovConnect to share information via the Discussion Forums. They can submit sample language to the Division for posting in the Chief Financial Officer, Authority, and Fire District Document Libraries.

As there are many variations on policies that can be adopted, the Division is not at this time recommending specific language for inclusion in bid specifications and contracts. Local units are urged to carefully review this Notice and the law to adopt practices that meet their needs, and the intent and spirit of the law.

Approved: Susan Jacobucci, Director

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Page	Shortcut text	Internet Address
4	Local Finance Notice	Local Finance Notice AU-98-4
5	Prime Rate	Wall Street Journal Prime Rate

PROMPT PAYMENT STATUTORY REFERENCES

CHAPTER 96, P.L. 2006

AN ACT concerning the prompt payment of construction contracts and amending P.L.1991, c.133.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1991, c.133 (C.2A:30A-1) is amended to read as follows:

C.2A:30A-1 Definitions.

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.

2. Section 2 of P.L.1991, c.133 (C.2A:30A-2) is amended to read as follows:

C.2A:30A-2 Payment to prime contractor, subsubcontractor, timely payment; exceptions; disputes; resolution.

2. 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 agency 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.

3. This act shall take effect immediately, but shall not apply to contracts for the improvement of structures entered into before the effective date.

Approved September 1, 2006.

40A:5-17. Approval and payment of claims and required general books of account

Approval and payment of claims and required general books of account. a. Approval of claims. The governing body shall approve or disapprove all claims. In the case of a county, other than a county which has adopted a form of government pursuant to the "Optional County Charter Law," P.L. 1972, c. 154 (C. 40:41A-1 et seq.), the governing body may, by resolution, designate one person who may approve claims between meetings of the governing body. The specified designee shall be chosen from the following positions: the certified financial officer, chief fiscal officer, county administrator, director of finance, treasurer or comptroller. Any approval by the designated person shall be presented to the county governing body at its next meeting for ratification, except that, prior to being paid, such vouchers shall be brought to the attention of the freeholder who has responsibility for the designee. The county governing body may establish a maximum dollar amount for which payment may be approved without prior approval of the governing body. Claims shall be approved or disapproved in the manner prescribed by rules made and promulgated by the bureau unless the governing body adopts an ordinance or resolution, as may be appropriate, in the case of a county, or an ordinance, in the case of a municipality, including the following provisions:

- (1) Designating an approval officer with the title of certifying and approval officer;
- (2) Prescribing the duties of the approval officer, including the making of certifications required by 40A:5-16b., ascertaining the existence of proper and sufficient appropriations for the payments to be made and determining that there is legal authority for the payments, evidenced by action of a purchasing department or agent or officer in respect to the goods or services ordered and the incurring of the expense therefor;
- (3) Prescribing the procedure for approving and certifying to the proper officer claims for payments and drawing checks therefor;
- (4) Prescribing the procedure for certifying approved claims to the governing body and regulating its action of approval or disapproval thereon.

b. Payment of claims. A resolution or an ordinance adopted pursuant to this section may also provide a method of disbursing moneys or payment of claims approved, but if it does not so provide the method shall be as follows:

- (1) In the case of a county organized pursuant to the provisions of the "Optional County Charter Law" (P.L. 1972, c. 154; C. 40:41A-1 et seq.), by check issued upon the requisition of and signed by the chief executive officer and countersigned by the treasurer, and in all other counties by check issued upon requisition of the clerk of the board of chosen freeholders, signed by the county treasurer and countersigned by such other officer or officers as are designated by ordinance or resolution of the governing body;

(2) In the case of a municipality, by check drawn on the municipality, signed by the mayor or other chief executive officer and the municipal clerk and countersigned by such other officer or officers as are designated by ordinance.

c. Required general books of account. The bureau shall prescribe the kind and manner of keeping of general books of account for the financial officers of the local units and said officers shall be required to keep and maintain said books.

Amended by L. 1985, c. 127, s. 1, eff. April 12, 1985.

40A:11-16.2 Partial payments; deposit bonds.

1. Any contract, the total price of which exceeds \$100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the contracting unit pursuant to P.L.1979, c.152 (C.40A:11-16.1).

L.1979,c.464,s.1; amended 1999, c.440, s.25.

40A:11-50. Process of resolution for construction contract disputes

1. All construction contract documents entered into in accordance with the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) after the effective date of P.L.1997, c.371 (C.40A:11-50) shall provide that disputes arising under the contract shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication. Nothing in this section shall prevent the contracting unit from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator or person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the arbitrator or person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

For the purposes of this section, the term "construction contract" means a contract involving construction, or a contract related thereto concerning architecture, engineering or construction management

L.1997, c.371.

