

SENATE, No. 2078

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED JUNE 22, 2006

Sponsored by:

Senator WAYNE R. BRYANT
District 5 (Camden and Gloucester)

SYNOPSIS

Revises the business registration requirements for contractors doing business with government agencies.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT revising the business registration requirements for
2 contractors doing business with government agencies, amending
3 P.L.1999, c.39 and P.L.2001, c.134.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to
9 read as follows:

10 2. When required by the bid plans and specifications, the
11 following requirements shall be considered mandatory items to be
12 submitted at the time specified by the contracting unit for the
13 receipt of the bids; the failure to submit any one of the mandatory
14 items shall be deemed a fatal defect that shall render the bid
15 proposal unresponsive and that cannot be cured by the governing
16 body:

17 a. A guarantee to accompany the bid pursuant to section 21 of
18 P.L.1971, c.198 (C.40A:11-21);

19 b. A certificate from a surety company pursuant to section 22
20 of P.L.1971, c.198 (C.40A:11-22);

21 c. A statement of corporate ownership pursuant to section 1 of
22 P.L.1977, c.33 (C.52:25-24.2);

23 d. A listing of subcontractors pursuant to section 16 of
24 P.L.1971, c.198 (C.40A:11-16);

25 e. A document provided by the contracting agent in the bid
26 plans, specifications, or bid proposal documents for the bidder to
27 acknowledge the bidder's receipt of any notice or revisions or
28 addenda to the advertisement or bid documents; and

29 f. **[A copy of the contractor's, and subcontractors' listed**
30 **pursuant to subsection d. of this section, business registration as**
31 **required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44)]**
32 **(Deleted by amendment, P.L. , c.)(pending before the**
33 **Legislature as this bill).**

34 (cf: P.L.2004, c.57, s.1)

35
36 2. Section 1 of P.L.2001, c.134 (C.52:32-44) is amended to read
37 as follows:

38 1. a. For the purposes of this section:

39 "Request for bid" or "request for proposal" means a publicly
40 advertised, formal process used by a contracting agency to receive
41 bids or proposals to provide it with goods or services or to construct
42 a construction project, but shall not include an informal,
43 non-advertised process of requesting quotations from contractors;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Bid threshold" means the statutory amount over which a
2 contracting agency must request bids or make requests for
3 proposals;

4 "Business organization" means an individual, partnership,
5 association, joint stock company, trust, corporation, or other legal
6 business entity or successor thereof but shall not include a
7 government agency or organization organized as a nonprofit entity;

8 "Business registration" means a business registration certificate
9 issued by the Division of Revenue in the Department of the
10 Treasury or such other form **[or]** of verification or proof of
11 registration as the Director of the Division of Revenue may approve
12 that a contractor or subcontractor is registered with the Department
13 of the Treasury;

14 "Contract" means any agreement, including but not limited to a
15 purchase order or a formal agreement for the provision of goods,
16 performance of services, or construction of a construction project,
17 which is a legally binding relationship, enforceable by law, between
18 a contractor and a contracting agency that agrees to compensate the
19 contractor, as defined by and subject to the terms and conditions of
20 the agreement; and under which the goods that are received,
21 services that are delivered, or construction is constructed is within
22 the geographic borders of the State of New Jersey; and:

23 (1) the value of a single contract with the contractor is in excess
24 of 15 percent of the amount of the contracting agency's bid
25 threshold; or

26 (2) the aggregate amount of contracts with the contractor, during
27 the fiscal year of the contracting agency, exceeds 15 percent of the
28 amount of the contracting agency's bid threshold;

29 "Contractor" means a business organization that seeks to enter,
30 or has entered into, a contract **[to provide goods or services or to**
31 **construct a construction project]** with a contracting agency;

32 "Contracting agency" means the principal departments in the
33 Executive Branch of the State Government, and any division, board,
34 bureau, office, commission or other instrumentality within or
35 created by such department, or any independent State authority,
36 commission, instrumentality or agency, or any State college or
37 university, any county college, or any local unit;

38 "Local unit" means any contracting unit as defined pursuant to
39 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education
40 as defined pursuant to N.J.S.18A:18A-2, a private firm that has
41 entered into a contract with a public entity for the provision of
42 water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et
43 al.), a private firm or public authority that has entered into a
44 contract with a public entity for the provision of wastewater
45 treatment service pursuant to P.L.1995, c.216 (C.58:27-19 et al.),
46 and a duly incorporated nonprofit association that entered into a
47 contract with the governing body of a city of the first class for the

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1 provision of wastewater treatment services pursuant to P.L.1995,
2 c.216 (C.58:27-19 et al.);

3 "Subcontractor" means any business organization that is not a
4 contractor that knowingly ~~provides goods or performs services~~
5 ~~for~~ enters into a contract with a contractor or another subcontractor
6 in the fulfillment of a contract issued by a contracting agency.

7 b. No ~~contractor shall enter into a~~ contract ~~shall be entered~~
8 ~~into by~~ with any contracting agency unless ~~the~~ that contractor
9 ~~provides a copy of its~~ has been issued a business registration in
10 accordance with the following schedule:

11 (1) In response to a request for bids or a request for proposals,
12 ~~at~~ before the time a bid or proposal is submitted; or

13 (2) For all other transactions, before the issuance of a purchase
14 order or other contracting document. ~~In its sole discretion, the~~
15 ~~contracting unit may waive this requirement if a business~~
16 ~~registration has been previously provided to the contracting~~
17 ~~agency.~~

18 c. A subcontractor named in a bid or proposal made to a
19 contracting agency shall provide a copy of its business registration
20 to any contractor who shall ~~forward~~ provide it to the contracting
21 agency pursuant to the provisions of subsection h. of this section.
22 No contract with a subcontractor shall be entered into by any
23 contractor under any contract with a contracting agency unless the
24 subcontractor first provides the contractor proof of a valid business
25 registration. ~~The contracting agency shall file all business~~
26 ~~registrations received by the contracting agency with other~~
27 ~~procurement documents related to the contract.~~ For requests for
28 bids and requests for proposals, the contracting agency shall retain
29 the proof of business registration in the file where documents
30 relating to the contract are maintained; for all other contracts,
31 proofs of business registration shall be maintained in an
32 alphabetical file.

33 d. ~~A contract entered into by a contracting agency with a~~
34 ~~contractor shall include provisions under subsection b. of this~~
35 ~~section and this subsection for the contractor to comply with, and~~
36 ~~for the contractor to notify subcontractors by written notice to~~
37 ~~comply with subsection c. of this section. A contracting agency~~
38 ~~shall not be responsible for a contractor's failure to comply with this~~
39 ~~section.~~ The contractor shall maintain and submit to the
40 contracting agency a list of subcontractors and their addresses that
41 may be updated from time to time during the course of the contract
42 performance. A complete and accurate list shall be submitted
43 before final payment is made for goods provided or services
44 rendered or for construction of a construction project under the
45 contract. A contracting agency shall not be responsible for a
46 contractor's failure to comply with this section.

1 e. **[Notice of the provisions of this section shall be included by**
2 **the contracting agency]** The Department of the Treasury shall
3 provide each contracting agency with appropriate language
4 reflecting the obligations of contractors and subcontractors under
5 this section that the contracting agency shall include in any contract
6 document, bid specification, requests for proposals, or other
7 documents notifying potential contractors of contract opportunities
8 **[to provide goods or perform services for]** with a contracting
9 agency.

10 f. Nothing in this section shall in any way alter the provisions
11 or change the responsibilities or obligations of casino industry
12 licensees as set forth in section 92 of P.L.1977, c.110 (C.5:12-92).

13 g. (1) A contractor or a contractor with a subcontractor that has
14 entered into a contract with a contracting agency, and each of their
15 affiliates, shall collect and remit to the Director of the Division of
16 Taxation in the Department of the Treasury the use tax due pursuant
17 to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)
18 on all their taxable sales of tangible personal property delivered into
19 this State.

20 (2) A contracting agency entering into a contract with a
21 contractor, or a contractor with a subcontractor, shall include in its
22 contract **[to provide goods or perform services or to construct a**
23 **construction project]** with that contractor, or a contractor with a
24 subcontractor, for the term of the contract, a requirement that the
25 contractor or subcontractor and each of their affiliates shall collect
26 and remit to the Director of the Division of Taxation in the
27 Department of the Treasury the use tax due pursuant to the "Sales
28 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) on all their
29 taxable sales of tangible personal property delivered into this State.

30 (3) For the purposes of this subsection, "affiliate" means any
31 entity that (1) directly, indirectly, or constructively controls another
32 entity, (2) is directly, indirectly, or constructively controlled by
33 another entity, or (3) is subject to the control of a common entity.
34 For purposes of this subsection an entity controls another entity if
35 it owns, directly or individually, more than 50% of the ownership
36 interest in that entity.

37 h. Proof of registration of a contractor shall be subject to the
38 following provisions:

39 (1) A contractor shall provide the contracting agency with the
40 business registration of the contractor and that of any named
41 subcontractor prior to the time a contract, purchase order, or other
42 contracting document is awarded or authorized.

43 (2) The contracting agency may include a requirement to submit
44 business registration with a request for bid or request for proposals;
45 provided however, that any failure to provide proof of business
46 registration with the submission of a bid or other proposal
47 document shall be considered a curable defect, which shall be cured

1 by the contractor providing the proof of business registration to the
2 contracting agency prior to the time a contract, purchase order, or
3 other contracting document is awarded or authorized.

4 (3) At the sole option of the contracting agency, the requirement
5 that a contractor provide proof of business registration may be
6 fulfilled by the contractor providing the contracting agency
7 sufficient information for the contracting agency to verify proof of
8 registration of the contractor or listed subcontractors through a
9 computerized system maintained by the State.

10 i. If a contractor fails to provide proof of business registration
11 upon request by the contracting agency for a contract that does not
12 require a request for bids or a request for proposals and the
13 contracting agency determines that the purpose of that contract is of
14 a proprietary nature with a contractor that does not have business
15 presence in New Jersey, the contracting agency shall, within ten
16 days of executing the contract, provide the Division of Revenue a
17 copy of the contract, evidence of the contractor's taxpayer
18 identification number, and a signed certification attesting to the
19 proprietary nature of the contract and representing that the
20 contracting agency made a diligent effort to obtain a business
21 registration from the contractor.

22 j. If a contracting agency enters into a contract with a contractor
23 under a contract issued by State of New Jersey Cooperative
24 Purchasing Program, or any other authorized cooperative
25 purchasing system, the contracting agency awarding the initial
26 contract shall receive and file the proof of business registration.
27 Contract documents issued under a cooperative purchasing
28 agreement shall identify the contract and the contracting agency
29 awarding the contract.

30 k. In an emergency situation, a contracting agency may enter
31 into a contract with a business organization, provided that the
32 contractor agrees to provide a business registration within two
33 weeks of the execution of the contract.

34 l. The State Treasurer may adopt regulations pursuant to the
35 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et
36 seq.) as are necessary to administer the provisions of this act.
37 (cf: P.L.2004, c.57, s.3)

38
39 3. This act shall take effect immediately; provided however that
40 section 2 shall remain inoperative until the first day of the second
41 month following enactment and apply to contracts under requests
42 that were issued thereafter.

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45 STATEMENT

46
47 This bill revises the program of proof of business registration for
48 contractors with government agencies.

1 All businesses doing business in New Jersey are required, under
2 various laws, to be registered with one or more State agencies (for
3 example, the corporate registration laws for incorporated business,
4 the gross income tax for unincorporated businesses, the sales and
5 use tax law for businesses dealing in tangible property and taxable
6 services, and the labor laws for businesses with employees). These
7 registration procedures have been consolidated for new businesses
8 in a “one stop” procedure under the Division of Revenue in the
9 Department of the Treasury.

10 P.L.2001, c.39 (C.52:32-44 et al.) required all contractors and
11 subcontractors under contracts with casino licensees and all
12 agencies and instrumentalities of State government to provide proof
13 of their registration with the Division of Revenue before entering
14 contracts. This bill revises that procedure for the State and local
15 governments, their agencies and authorities, and State and county
16 institutions of higher education, so that they can more easily make
17 relatively small purchases.

18 This bill classifies contracts by the relative size of the contract.
19 State and local contracting agencies have, under various laws,
20 requirements that contracts of a certain size, for example more than
21 \$25,000 for most State executive branch contracts, must be
22 advertised for public bidding. This bill defines a contract for which
23 a contractor must provide prior registration as one for which the
24 value of a single contract with the contractor, or the value of the
25 aggregate of contracts in a fiscal year of the contracting agency,
26 exceeds 15% of the contracting agencies bid threshold.

27 The bill clarifies that proof of business registration is a
28 requirement for *entering* a contract, and that failure to provide
29 business registration information when making a responsive bid or
30 proposal is a curable defect. For uniformity and consistency, the
31 bill requires the Department of the Treasury to provide each
32 contracting agency with appropriate language reflecting the
33 obligations of contractors and subcontractors under the registration
34 requirement that the contracting agency shall include in any
35 contract document and any documents notifying potential
36 contractors of contract opportunities.

37 This bill also deletes a business registration requirement from the
38 “Local Public Contracts Law” (N.J.S.A.40A:11-1 et seq.) which is
39 in conflict with the more comprehensive “Public Works Contractor
40 Registration Act” (N.J.S.A.34:11-56.48 et seq.).