

[First Reprint]

ASSEMBLY, No. 557

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman RONALD S. DANCER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

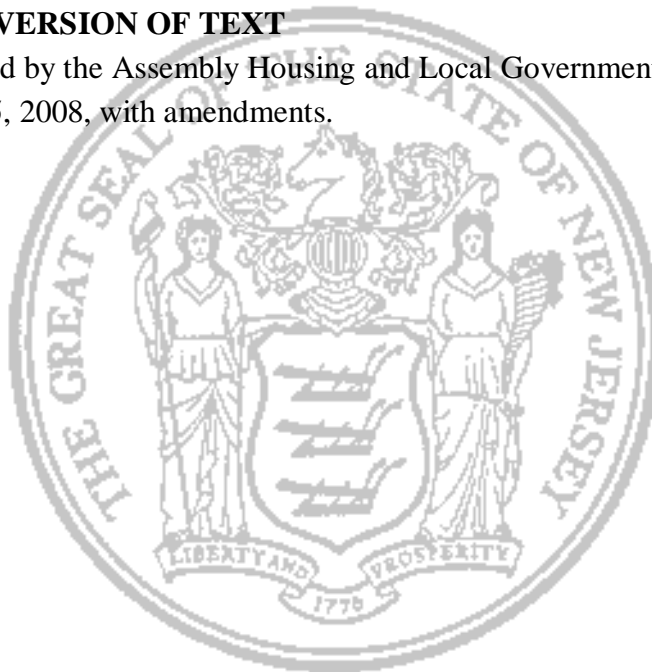
Assemblyman Green, Assemblywoman Evans and Assemblyman Schaer

SYNOPSIS

Repeals bidding requirement for local public contracts to allow bidders to avoid unresponsive bid if they inadvertently omit business registration from bid proposal provided that bidder was registered before bid submission deadline.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Local Government Committee on September 15, 2008, with amendments.



(Sponsorship Updated As Of: 9/26/2008)

1 AN ACT concerning local public contracts and amending P.L.1999,
2 c.39 and P.L.2001, c.134.

3

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

6

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

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

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

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

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

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

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

28 f. **[A copy of the contractor's, and subcontractors' listed**
29 **pursuant to subsection d. of this section, business registration as**
30 **required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44).]**
31 (Deleted by amendment, P.L. _____, c. ____.) (pending before the
32 Legislature as this bill)
33 (cf: P.L.2004, c.57, s.1)

34

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

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

38 “Bid” or “request for proposal” means a publicly advertised,
39 formal process used by a contracting agency to receive offers to
40 provide goods or services or construct a construction project. It is
41 not the same as an informal, non-advertised process of requesting
42 quotations from contractors.

43 “Bid threshold” means the statutory amount over which a
44 contracting agency must seek bids.¹

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted September 15, 2008.

1 "Business organization" means an individual, partnership,
2 association, joint stock company, trust, corporation, or other legal
3 business entity or successor thereof ¹, but does not include a
4 government agency or organization organized as a nonprofit entity¹;

5 "Business registration" means a business registration certificate
6 issued by the ¹Division of Revenue in the¹ Department of the
7 Treasury or such other form ¹[or] of¹ verification ¹or proof of
8 registration as may be approved by the Division¹ that a contractor
9 or subcontractor is registered with the Department of the Treasury;

10 ¹"Contract" means any agreement, including but not limited to a
11 purchase order or a formal agreement for the provision of goods,
12 performance of services, or construction of a construction project,
13 which is a legally binding relationship enforceable by law, between
14 a contractor and a contracting agency that agrees to compensate the
15 contractor, as defined by and subject to the terms and conditions of
16 the agreement; and where the goods that are received, services that
17 are delivered, and construction is constructed is within the
18 geographic borders of the State of New Jersey; and where:

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

22 (2) when the aggregate amount of contracts with the contractor,
23 during the fiscal year of the contracting agency, exceeds 15 percent
24 of the amount of the contracting agency's bid threshold.¹

25 "Contractor" means a business organization that seeks to enter,
26 or has entered into, a contract ¹[to provide goods or services or to
27 construct a construction project]¹ with a contracting agency;

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

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

46 "Subcontractor" means any business organization that is not a
47 contractor that knowingly ¹[provides goods or performs services

1 for] enters into a contract or constructs a construction project with¹
2 a contractor or another subcontractor in the fulfillment of a contract
3 issued by a contracting agency. ¹In the case of a construction
4 contract, “subcontractor” shall mean only those subcontractors who
5 are required by law to be named in the submission of a bid.¹

6 b. ¹[No contract shall be entered into by any contracting
7 agency unless the contractor provides a copy of its] No contractor
8 shall enter into a contract with any contracting agency unless that
9 contractor has been issued proof of¹ business registration in
10 accordance with the following schedule:

11 (1) In response to a request for bids or a request for proposals,
12 ¹[at] before the time a bid or proposal is submitted ¹[. In its sole
13 discretion, a local contracting unit may waive this requirement and
14 allow the contractor a reasonable amount of time to submit its
15 business registration, provided that the business registration was
16 obtained on or prior to the last date for submission of bids or
17 proposals]¹ ; or

18 (2) For all other transactions, before the issuance of a purchase
19 order or other contracting document. ¹[In its sole discretion, the
20 contracting unit may waive this requirement if a business
21 registration has been previously provided to the contracting
22 agency.]¹

23 c. A subcontractor ¹named in a bid or other proposal made by a
24 contractor to a contracting agency¹ shall provide a copy of its
25 business registration to any contractor who shall [forward it to the
26 contracting agency] ¹provide it to the contracting agency pursuant
27 to the provisions of subsection i. of this section¹. No contract with
28 a subcontractor shall be entered into by any contractor under any
29 contract with a contracting agency unless the subcontractor first
30 provides ¹the contractor with proof of ¹a valid business
31 registration. ¹[The contracting agency shall file all business
32 registrations received by the contracting agency with other
33 procurement documents related to the contract] For bids and
34 requests for proposals, the contracting agency must retain the proof
35 of business registration in the file where documents relating to the
36 contract are maintained. For all other contracts, proofs of business
37 registration shall be maintained in an alphabetical file¹.

38 d. ¹[A contract entered into by a contracting agency with a
39 contractor shall include provisions under subsection b. of this
40 section and this subsection for the contractor to comply with, and
41 for the contractor to notify subcontractors by written notice to
42 comply with subsection c. of this section. A contracting agency
43 shall not be responsible for a contractor's failure to comply with this
44 section.]¹ The contractor shall maintain and submit to the
45 contracting agency a list of subcontractors and their addresses that

1 may be updated from time to time during the course of the contract
2 performance. A complete and accurate list shall be submitted
3 before final payment is made for goods provided or services
4 rendered or for construction of a construction project under the
5 contract. 'A contracting agency shall not be responsible for a
6 contractor's failure to comply with this section.'

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

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

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

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

36 (3) For the purposes of this subsection, "affiliate" means any
37 entity that (1) directly, indirectly, or constructively controls another
38 entity, (2) is directly, indirectly, or constructively controlled by
39 another entity, or (3) is subject to the control of a common entity.
40 For purposes of this subsection an entity controls another entity if it
41 owns, directly or individually, more than 50% of the ownership
42 interest in that entity.

43 h. The State Treasurer may adopt regulations pursuant to the
44 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et
45 seq.) as are necessary to administer the provisions of this act.

1 i. Proof of business registration of a contractor shall be subject
2 to the following provisions:

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

7 (2) The contracting agency may include a requirement to submit
8 proof of a business registration with a bid or request for proposals;
9 provided, however, that any failure to provide proof of business
10 registration with the submission of a bid or other proposal
11 document shall be considered a curable defect, which shall only be
12 cured by the contractor providing the proof of business registration
13 to the contracting agency prior to the time a contract, purchase
14 order, or other contracting document is awarded or authorized.

15 (3) At the sole option of the contracting agency, the requirement
16 that a contractor provide proof of business registration may be
17 fulfilled by the contractor providing the contracting agency
18 sufficient information for the contracting agency to verify proof of
19 registration of the contractor or listed subcontractors through a
20 computerized system maintained by the State.

21 j. If a contractor fails to provide proof of business registration
22 upon request by the contracting agency for a contract that does not
23 require bidding or a request for proposals, and the contracting
24 agency determines that the purpose of that contract is of a
25 proprietary nature with a contractor that does not have a business
26 presence in New Jersey, the contracting agency shall provide the
27 Division of Revenue, within 10 days of executing the contract, a
28 copy of the contract, evidence of the contractor's taxpayer
29 identification number, and a signed certification attesting to the
30 proprietary nature of the contract and representing that the
31 contracting agency made a diligent effort to obtain proof of a
32 business registration from the contractor.

33 k. When a contracting agency enters into a contract with a
34 contractor under a contract issued by State of New Jersey
35 Cooperative Purchasing Program, or any other authorized
36 cooperative purchasing system, the contracting agency awarding the
37 initial contract shall receive and file the proof of business
38 registration. Contract documents issued under a cooperative
39 purchasing agreement shall identify the contract and the contracting
40 agency awarding the contract.

41 l. In situations of an emergent nature, a contracting agency
42 may enter into a contract with a business organization, provided
43 that the contractor agrees to provide a business registration within
44 two weeks of the execution of the contract.¹

45 (cf: P.L.2004, c.57, s.3)

46

47 3. This act shall take effect immediately.