

# ASSEMBLY, No. 3106

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JULY 1, 2010

**Sponsored by:**

**Assemblyman JOHN F. AMODEO**

**District 2 (Atlantic)**

**Assemblyman VINCENT J. POLISTINA**

**District 2 (Atlantic)**

**Co-Sponsored by:**

**Assemblymen Egan, Diegnan, Giblin and Rible**

**SYNOPSIS**

Revises list of documents required to be submitted when bidding on public contracts.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning public contracts and amending and  
2 supplementing various parts of the statutory law.

3

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

6

7 1. (New section) When required by the bid plans and  
8 specifications for any contract for the erection, alteration, or repair  
9 of a building, structure, facility or other improvement of real  
10 property, the following shall be considered mandatory items to be  
11 submitted at the time specified by the board of education for the  
12 receipt of the bids:

13 a guarantee to accompany the bid pursuant to N.J.S.A.18A:18A-  
14 24);

15 a certificate from a surety company pursuant to  
16 N.J.S.A.18A:18A-25;

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

19 a document provided by the contracting agent in the bid plans,  
20 specifications, or bid proposal documents for the bidder to  
21 acknowledge the bidder's receipt of any notice or revisions or  
22 addenda to the advertisement or bid documents;

23 a completed form required by the board of education listing those  
24 documentary and informational forms, certifications and other  
25 documents required to be submitted with the bid;

26 a non-collusion affidavit indicating that the bidder has not  
27 drafted specifications for the board of education in connection with  
28 the contract; and

29 a properly executed and signed bid proposal.

30 The failure to submit any one of the mandatory items shall be  
31 deemed a fatal defect that shall render the bid proposal  
32 unresponsive and that cannot be cured by the board of education.  
33 However, a bidder shall be permitted to submit any additional item  
34 that may be required, but which is not a mandatory item, as  
35 provided by this section, up to three business days after the deadline  
36 for the submission of bids. The submission of any such non-  
37 mandatory item after the deadline for the submission of bids but  
38 during that three-day period shall not be deemed a fatal defect and  
39 shall not render the bid proposal unresponsive.

40

41 2. (New section) When required by the bid plans and  
42 specifications for any contract for the erection, alteration, or repair  
43 of a building, structure, facility or other improvement of real  
44 property, the following shall be considered mandatory items to be

**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 submitted at the time specified by the county college for the receipt  
2 of the bids:

3 a guarantee to accompany the bid pursuant to section 16 of  
4 P.L.1982, c.189 (C.18A:64A-25.16);

5 a certificate from a surety company pursuant to  
6 N.J.S.A.18A:18A-25;

7 a statement of corporate ownership pursuant to section 17 of  
8 P.L.1982, c.189 (C.18A:64A-25.17);

9 a document provided by the county college in the bid plans,  
10 specifications, or bid proposal documents for the bidder to  
11 acknowledge the bidder's receipt of any notice or revisions or  
12 addenda to the advertisement or bid documents;

13 a completed form required by the county college listing those  
14 documentary and informational forms, certifications and other  
15 documents required to be submitted with the bid;

16 a non-collusion affidavit indicating that the bidder has not  
17 drafted specifications for the county college in connection with the  
18 contract; and

19 a properly executed and signed bid proposal.

20 The failure to submit any one of the mandatory items shall be  
21 deemed a fatal defect that shall render the bid proposal  
22 unresponsive and that cannot be cured by the county college.  
23 However, a bidder shall be permitted to submit any additional item  
24 that may be required, but which is not a mandatory item, as  
25 provided by this section, up to three business days after the deadline  
26 for the submission of bids. The submission of any such non-  
27 mandatory item after the deadline for the submission of bids but  
28 during that three-day period shall not be deemed a fatal defect and  
29 shall not render the bid proposal unresponsive.

30

31 3. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended as  
32 follows:

33 2. When required by the bid plans and specifications for any  
34 contract for the erection, alteration, or repair of a building,  
35 structure, facility or other improvement of real property, the  
36 following **[requirements]** shall be considered mandatory items to  
37 be submitted at the time specified by the contracting unit for the  
38 receipt of the bids **;** the failure to submit any one of the mandatory  
39 items shall be deemed a fatal defect that shall render the bid  
40 proposal unresponsive and that cannot be cured by the governing  
41 body**];**

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

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

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

- 1 d. 【A listing of subcontractors pursuant to section 16 of  
2 P.L.1971, c.198 (C.40A:11-16);】 (Deleted by amendment, P.L. ,  
3 c. ) (pending before the Legislature as this bill.)
- 4 e. A document provided by the contracting agent in the bid  
5 plans, specifications, or bid proposal documents for the bidder to  
6 acknowledge the bidder's receipt of any notice or revisions or  
7 addenda to the advertisement or bid documents **【.】** ;
- 8 f. (Deleted by amendment, P.L.2009, c.315.)
- 9 g. A completed form required by subsection b. of section 1 of  
10 P.L.1999, c.39 (C.40A:11-23.1) listing those documentary and  
11 informational forms, certifications and other documents required to  
12 be submitted with the bid;
- 13 h. A non-collusion affidavit indicating that the bidder has not  
14 drafted specifications for the contracting unit in connection with the  
15 contract; and
- 16 i. A properly executed and signed bid proposal.
- 17 The failure to submit any one of the mandatory items shall be  
18 deemed a fatal defect that shall render the bid proposal  
19 unresponsive and that cannot be cured by the governing body.  
20 However, a bidder shall be permitted to submit any additional item  
21 that may be required, but which is not a mandatory item, as  
22 provided by this section, up to three business days after the deadline  
23 for the submission of bids. The submission of any such non-  
24 mandatory item after the deadline for the submission of bids but  
25 during that three-day period shall not be deemed a fatal defect and  
26 shall not render the bid proposal unresponsive.  
27 (cf: P.L.2009, c.315, s.1)
- 28
- 29 4. (New section) When required by the bid plans and  
30 specifications for any contract for the erection, alteration, or repair  
31 of a building, structure, facility or other improvement of real  
32 property, the following shall be considered mandatory items to be  
33 submitted at the time specified by a State contracting agency, as  
34 defined in section 1 of P.L.2001, c.134 (C.52:32-44), for the receipt  
35 of the bids:
- 36 a guarantee to accompany the bid to ensure that if the contract is  
37 awarded to the bidder, the bidder will enter into a contract and will  
38 furnish any performance bond or other security that may be required  
39 as a guarantee or indemnification;
- 40 a certificate from a surety company stating that it will provide  
41 the bidder with any bond that may be required in the advertisement  
42 or specifications for the contract;
- 43 a statement of corporate ownership pursuant to section 1 of  
44 P.L.1977, c.33 (C.52:25-24.2);
- 45 a document provided by the contracting agency in the bid plans,  
46 specifications, or bid proposal documents for the bidder to  
47 acknowledge the bidder's receipt of any notice or revisions or  
48 addenda to the advertisement or bid documents;

1 a completed form required by the contracting agency listing  
2 those documentary and informational forms, certifications and other  
3 documents required to be submitted with the bid;

4 a non-collusion affidavit indicating that the bidder has not  
5 drafted specifications for the contracting agency in connection with  
6 the contract; and

7 a properly executed and signed bid proposal.

8 The failure to submit any one of the mandatory items required  
9 shall be deemed a fatal defect that shall render the bid proposal  
10 unresponsive and that cannot be cured by the contracting agency.  
11 However, a bidder shall be permitted to submit any additional item  
12 that may be required, but which is not a mandatory item, as  
13 provided by this section, up to three business days after the deadline  
14 for the submission of bids. The submission of any such non-  
15 mandatory item after the deadline for the submission of bids but  
16 during that three-day period shall not be deemed a fatal defect and  
17 shall not render the bid proposal unresponsive.

18

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

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

22 "Bid" or "request for proposal" means a publicly advertised,  
23 formal process used by a contracting agency to receive offers to  
24 provide goods or services or construct a construction project. It is  
25 not the same as an informal, non-advertised process of requesting  
26 quotations from contractors.

27 "Bid threshold" means the statutory amount over which a  
28 contracting agency must seek bids.

29 "Business organization" means an individual, partnership,  
30 association, joint stock company, trust, corporation, or other legal  
31 business entity or successor thereof, but does not include a  
32 government agency or organization organized as a nonprofit entity  
33 under 26 U.S.C. sec. 501 (c);

34 "Business registration" means a business registration certificate  
35 issued by the Division of Revenue in the Department of the  
36 Treasury or such other form of verification or proof of registration  
37 as may be approved by the Division that a contractor or  
38 subcontractor is registered with the Department of the Treasury;

39 "Contract" means any agreement, including but not limited to a  
40 purchase order or a formal agreement for the provision of goods,  
41 performance of services, or construction of a construction project,  
42 which is a legally binding relationship enforceable by law, between  
43 a contractor and a contracting agency that agrees to compensate the  
44 contractor, as defined by and subject to the terms and conditions of  
45 the agreement; and where the goods that are received, services that  
46 are delivered, and construction is constructed is within the  
47 geographic borders of the State of New Jersey; and where:

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

4 (2) when the aggregate amount of contracts with the contractor,  
5 during the fiscal year of the contracting agency, exceeds 15 percent  
6 of the amount of the contracting agency's bid threshold.

7 "Contractor" means a business organization that seeks to enter,  
8 or has entered into, a contract with a contracting agency;

9 "Contracting agency" means the principal departments in the  
10 Executive Branch of the State Government, and any division, board,  
11 bureau, office, commission or other instrumentality within or  
12 created by such department, or any independent State authority,  
13 commission, instrumentality or agency, or any State college or  
14 university, any county college, or any local unit;

15 "Local unit" means any contracting unit as defined pursuant to  
16 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education  
17 as defined pursuant to N.J.S.18A:18A-2, a private firm that has  
18 entered into a contract with a public entity for the provision of  
19 water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et  
20 al.), a private firm or public authority that has entered into a  
21 contract with a public entity for the provision of wastewater  
22 treatment service pursuant to P.L.1995, c.216 (C.58:27-19 et al.),  
23 and a duly incorporated nonprofit association that entered into a  
24 contract with the governing body of a city of the first class for the  
25 provision of wastewater treatment services pursuant to P.L.1995,  
26 c.216 (C.58:27-19 et al.);

27 "Subcontractor" means any business organization that is not a  
28 contractor that knowingly enters into a contract, or constructs a  
29 construction project, with a contractor or another subcontractor in  
30 the fulfillment of a contract issued by a contracting agency. In the  
31 case of a construction contract, "subcontractor" shall mean only  
32 those subcontractors who are required by law to be named in the  
33 submission of a bid.

34 b. A contractor shall provide the contracting agency with the  
35 business registration of the contractor and that of any named  
36 subcontractor prior to the time a contract, purchase order, or other  
37 contracting document is awarded or authorized, provided that the  
38 contractor may submit such registration up to three business days  
39 after the time a contract, purchase order, or other contracting  
40 document is awarded or authorized. At the sole option of the  
41 contracting agency, the requirement that a contractor provide proof  
42 of business registration may be fulfilled by the contractor providing  
43 the contracting agency sufficient information for the contracting  
44 agency to verify proof of registration of the contractor, or named  
45 subcontractors, through a computerized system maintained by the  
46 State.

47 c. A subcontractor named in a bid or other proposal made by a  
48 contractor to a contracting agency shall provide a copy of its

1 business registration to any contractor who shall provide it to the  
2 contracting agency pursuant to the provisions of subsection b. of  
3 this section. No contract with a subcontractor shall be entered into  
4 by any contractor under any contract with a contracting agency  
5 unless the subcontractor first provides the contractor with proof of a  
6 valid business registration. For bids and requests for proposals, the  
7 contracting agency must retain the proof of business registration in  
8 the file where documents relating to the contract are maintained.  
9 For all other contracts, proofs of business registration shall be  
10 maintained in an alphabetical file.

11 d. The contractor shall maintain and submit to the contracting  
12 agency a list of subcontractors and their addresses that may be  
13 updated from time to time during the course of the contract  
14 performance. A complete and accurate list shall be submitted  
15 before final payment is made for goods provided or services  
16 rendered or for construction of a construction project under the  
17 contract. A contracting agency shall not be responsible for a  
18 contractor's failure to comply with this subsection.

19 e. The Department of the Treasury shall provide each  
20 contracting agency with appropriate language reflecting the  
21 obligations of contractors and subcontractors under this section that  
22 the contracting agency shall include in any contract document, bid  
23 specification, requests for proposals, or other documents notifying  
24 potential contractors of contract opportunities with a contracting  
25 agency.

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

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

36 (2) A contracting agency entering into a contract with a  
37 contractor, or a contractor with a subcontractor, shall include in its  
38 contract with that contractor, or a contractor with a subcontractor,  
39 for the term of the contract, a requirement that the contractor or  
40 subcontractor and each of their affiliates shall collect and remit to  
41 the Director of the Division of Taxation in the Department of the  
42 Treasury the use tax due pursuant to the "Sales and Use Tax Act,"  
43 P.L.1966, c.30 (C.54:32B-1 et seq.) on all their sales of tangible  
44 personal property delivered into this State.

45 (3) For the purposes of this subsection, "affiliate" means any  
46 entity that (1) directly, indirectly, or constructively controls another  
47 entity, (2) is directly, indirectly, or constructively controlled by  
48 another entity, or (3) is subject to the control of a common entity.

1 For purposes of this subsection an entity controls another entity if it  
2 owns, directly or individually, more than 50% of the ownership  
3 interest in that entity.

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

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

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

27 k. In situations of an emergent nature, a contracting agency  
28 may enter into a contract with a business organization, provided  
29 that the contractor agrees to provide a business registration within  
30 two weeks of the execution of the contract. The contracting agency  
31 shall not pay the business organization for goods or services  
32 provided until such time as the organization provides proof of  
33 business registration as set forth in this section. Failure to pay the  
34 business organization until proof of business registration is received  
35 shall not be grounds for the agency being liable for payment.

36 (cf: P.L.2009, c.315, s.2)

37

38 7. This act shall take effect immediately.

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40

41

#### STATEMENT

42

43 This bill revises existing law with respect to the items that  
44 bidders on State, local government, board of education and county  
45 college construction contracts must submit at the time a bid is  
46 made.

47 At present, the Local Public Contracts Law provides that, when  
48 required by bid plans and specifications, the following items must



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1 be submitted by bidders to the contracting unit: a bid guarantee, a  
2 certificate from a surety company, a statement of corporate  
3 ownership, a list of subcontractors, and a bidder's  
4 acknowledgement of receipt of any notice or revisions or addenda  
5 to the advertisement or bid documents. The failure to submit any  
6 one of these mandatory items would be deemed a fatal defect that  
7 renders the bid proposal unresponsive. This bill would amend the  
8 Local Public Contracts Law to eliminate the names of  
9 subcontractors from the list of mandatory documents and to add to  
10 the list of mandatory documents a checklist of required documents,  
11 non-collusion affidavit, and a properly executed and signed bid  
12 proposal. The bill would permit any other item to be submitted up  
13 to three business days after the deadline for the submission of bids.  
14 It would also supplement the contracting laws applicable to boards  
15 of education, county colleges and State agencies to apply these  
16 same requirements to those entities.