ASSEMBLY, No. 3420



STATE OF NEW JERSEY

218th LEGISLATURE



INTRODUCED FEBRUARY 15, 2018

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

SYNOPSIS

Applies local public contract bid threshold amounts to local pay to play and prevailing wage laws.

CURRENT VERSION OF TEXT

As introduced.



An Act coordinating threshold dollar amounts under certain laws concerning local public contracts, prevailing wages, and campaign contributions, and amending P.L.2004, c.19, P.L.2005, c.271 and P.L.1963, c.150.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.2004, c.19 (C.19:44A-20.4) is amended to read as follows:

3. Notwithstanding the provisions of any other law to the contrary:

a county, or any agency or instrumentality thereof, shall not enter into a contract having an anticipated value in excess of **[**$17,500**]** the local bid threshold, as determined in advance and certified in writing by the county, agency or instrumentality, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when the contract is awarded; and

a business entity that has entered into a contract having an anticipated value in excess of **[**$17,500**]** the local bid threshold with a county, or any agency or instrumentality thereof, except a contract that is awarded pursuant to a fair and open process, shall not make such a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when the contract is awarded, during the term of that contract.

No such committee shall accept such a contribution from a business entity during the term of its contract with the county.

(cf: P.L.2004, c.19, s.3)

2. Section 4 of P.L.2004, c.19 (C.19:44A-20.5) is amended to read as follows:

4. Notwithstanding the provisions of any other law to the contrary:

a municipality, or any agency or instrumentality thereof, shall not enter into a contract having an anticipated value in excess of **[**$17,500**]** the local bid threshold, as determined in advance and certified in writing by the municipality, agency or instrumentality, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded; and

a business entity that has entered into a contract having an anticipated value in excess of **[**$17,500**]** the local bid threshold with a municipality, or any agency or instrumentality thereof, except a contract that is awarded pursuant to a fair and open process, shall not make such a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded, during the term of that contract.

No such committee shall accept such a contribution from a business entity during the term of its contract with the municipality.

(cf: P.L.2004, c.19, s.4)

3. Section 6 of P.L.2004, c.19 (C.19:44A-20.7) is amended to read as follows:

6. As used in sections 2 through 12 of **[**this act**]** P.L.2004, c.19 (C.19:44A-20.2 et seq.):

"business entity" means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

“local bid threshold” means the bid threshold or threshold amount applicable to the contract at issue under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.);

"fair and open process" means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. The decision of a public entity as to what constitutes a fair and open process shall be final.

"State agency in the Legislative Branch" means the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch.

(cf: P.L.2005, c.51, s.14)

4. Section 2 of P.L.2005, c.271 (C.19:44A-20.26) is amended to read as follows:

2. a. **[**Not later than 10 days prior to entering into any contract having an anticipated value in excess of $17,500, except for a contract that is required by law to be publicly advertised for bids, a**]** (1) A State agency, **[**county, municipality, independent authority,**]** or board of education, **[**or fire district**]** not later than 10 days prior to entering into any contract having an anticipated value in excess of $17,500, except for a contract that is required by law to be publicly advertised for bids; and

(2) a contracting unit, as defined in section 2 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-2), not later than 10 days prior to entering into any contract having an anticipated value in excess of the local bid threshold, except for a contract that is required by law to be publicly advertised for bids:

shall require any business entity bidding thereon or negotiating therefor, to submit along with its bid or price quote, a list of political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L.1973, c.83 (C.19:44A-1 et al.) and that were made by the business entity during the preceding 12-month period, along with the date and amount of each contribution and the name of the recipient of each contribution. A business entity contracting with a State agency shall disclose contributions to any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or any continuing political committee. A business entity contracting with a county, municipality, independent authority, other than an independent authority that is a State agency, board of education, or fire district shall disclose contributions to: any State, county, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, or holder of, an elective office of that public entity, of that county in which that public entity is located, of another public entity within that county, or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county, or any continuing political committee.

The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

b. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

c. As used in this section:

"business entity" means a for-profit entity that is a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

“local bid threshold” means the bid threshold or threshold amount applicable to the contract at issue under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.); and

"State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency.

d. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

(cf: P.L.2007, c.304, s.1)

5. Section 2 of P.L.1963, c.150 (C.34:11-56.26) is amended to read as follows:

2. As used in this act:

(1) "Department" means the Department of Labor and Workforce Development of the State of New Jersey.

(2) "Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality," the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workers in such craft or trade.

(3) "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. "Maintenance work" also means any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids, and has an aggregate value exceeding $50,000.

(4) "Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

(5) "Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

(a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and

(b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

(6) "Commissioner" means the Commissioner of Labor and Workforce Development or his duly authorized representatives.

(7) "Workman" or "worker" includes laborer, mechanic, skilled or semi-skilled, laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purpose of P.L.1963, c.150 (C.34:11-56.25 et seq.), contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.

(8) "Work performed under a rehabilitation program" means work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.

(9) "Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

(10) "Act" means the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) and the rules and regulations issued hereunder.

(11) "Prevailing wage contract threshold amount" means:

(a) In the case of any public work paid for in whole or in part out of the funds of a **[**municipality in the State of New Jersey**]** contracting unit, as defined in section 2 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-2) or done on property or premises owned by a **[**public body**]** contracting unit or leased or to be leased by **[**the municipality, the dollar amount established for the then current calendar year by the commissioner through rules and regulations promulgated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which amount shall be equal to $9,850 on July 1, 1994 and which amount shall be adjusted on July 1 every five calendar years thereafter in direct proportion to the rise or fall in the average of the Consumer Price Indices for Urban Wage Earners and Clerical Workers for the New York metropolitan and the Philadelphia metropolitan regions as reported by the United States Department of Labor during the last full calendar year preceding the date upon which the adjustment is made**]** a contracting unit, the local bid threshold applicable to the contract at issue under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.); and

(b) In the case of any public work other than a public work described in paragraph (a) of this subsection, an amount equal to $2,000.

(12) "Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation.

(cf: P.L.2009, c.249, s.2)

6. This act shall take effect immediately.

STATEMENT

An unintended consequence of two bodies of law, the “Pay to Play” laws, P.L.2004, c.19 and P.L.2005, c.271 (C.19:44A-20.4 et al) and the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) is to make it difficult for small, local businesses to contract with municipalities and counties. These bodies of law impose requirements and costs on businesses which contract with public entities for relatively modest dollar amounts. The threshold dollar amounts set under these laws is lower than the bid threshold amounts authorized under the “Local Public Contracts Law.”

Under current law, the governing bodies of counties, municipalities, and other contracting units subject to the “Local Public Contracts Law” (LPCL) may authorize a purchasing agent or other employee to award contracts below a certain dollar amount without public advertising for bids. The statutory bid threshold is $17,500, however, a contracting unit that has appointed a “qualified purchasing agent” (QPA), can set the bid threshold at a higher amount. The statute provides that a contracting unit with a QPA can set the bid threshold at up to $25,000, which amount is adjusted by the Governor every five years to account for inflation. The Governor’s adjusted threshold amount currently allows contracting units that have appointed a QPA to set the bid threshold at up to $36,000. The bid threshold is next scheduled to be adjusted by the Governor on July 1, 2015.

The pay-to-play laws require contracts above $17,500 to be awarded pursuant to a fair and open process. The "New Jersey Prevailing Wage Act" stipulates the payment of prevailing wage rates for workers on construction projects that are subsidized by public funds of over $2,000, in the case of counties, and an amount below $17,500, in the case of municipalities.

This bill amends the threshold amounts under the pay to play and prevailing wage laws to make them the same as the amount applicable to the contract under the LPCL.