SENATE, No. 1346

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

SYNOPSIS

Debars permanently from government contracting any person convicted of certain crimes involving government contracts.

CURRENT VERSION OF TEXT

As introduced.

AN ACT barring certain persons from working on government contracts and supplementing chapter 32 of Title 52 of the Revised Statutes and chapter 21 of Title 2C of the New Jersey Statutes.

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

1. a. A person who is convicted of a crime under subsection a. or b. of section 97 of P.L.1999, c.440 (C.2C:21-34) shall be permanently barred from:

(1) contracting with a contracting agency; or

(2) serving as a key employee of any entity that is contracting with a contracting agency or any affiliate of such an entity.

b. As used in this section:

"Affiliate" means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. An entity controls another entity if it owns, directly or individually, more than 50% of the ownership interest in that entity;

"Contract" means a contract or agreement at or above the contracting agency's bid threshold to procure services or any material, supplies or equipment, or for any project involving construction, renovation, or restoration;

"Contracting agency" means 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, or any independent State authority, commission, instrumentality or agency, or any State college or university, any county college, or any local unit;

"Key employee" means any natural person employed with an entity in a supervisory capacity or empowered to make discretionary decisions regarding business operations, including, but not limited to, presidents, vice-presidents, chief executive officers, chief financial officers, chief information officers, chief operating officers, directors, and supervisory managers;

"Local unit" means any contracting unit as defined pursuant to section 2 of P.L.1971, c.198 (C.40A:11-2) and any board of education as defined pursuant to N.J.S.18A:18A-2.

c. Prior to awarding any contract to any person or entity, that person or entity shall provide a written certification to the contracting agency that the person or the key employees of the entity and its affiliates are not permanently debarred pursuant to subsection a. of this section. A contracting agency shall not make, negotiate, or award a contract to any person or entity that does not provide such written certification as required by this subsection.

d. The Department of the Treasury, in consultation with the Division of Local Government Services in the Department of Community Affairs, shall provide each contracting agency with appropriate language reflecting the obligations of contractors under this section that the contracting agency shall include in any contract document, bid specification, requests for proposals, or other documents notifying potential contractors of contract opportunities with a contracting agency.

e. In situations of an emergent nature, a contracting agency may enter into a contract with a person or entity, provided that the contractor agrees to provide the written certification required pursuant to subsection c. of this section within two weeks of the execution of the contract. The contracting agency shall not make final payment to the contractor until such time as the contractor provides the written certification. Failure to pay the contractor until the written certification is received shall not be grounds for the agency being liable for payment.

f. The requirements of this section shall not apply with regard to purchases made pursuant to sections 1 and 7 of P.L.1996, c.16 (C.52:34-6.1 and C.52:34-6.2).

2. Upon conviction of a person of a crime under subsection a. or b. of section 97 of P.L.1999, c.440 (C.2C:21-34), the county prosecutor or Attorney General shall provide notice of that conviction to the contracting agency that awarded the government contract at issue in that conviction.

The county prosecutor shall notify the Attorney General of any person who is convicted of a crime under subsection a. or b. of section 97 of P.L.1999, c.440 (C.2C:21-34). The Attorney General shall notify the State Treasurer of all relevant convictions under section 97 of P.L.1999, c.440 (C.2C:21-34) and the State Treasurer shall maintain a list of all persons who have been permanently debarred pursuant to subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill). The list shall be made available to the public through the Internet. The contracting agency shall have the right to rely solely on the contractor's certification and the list provided by the State Treasurer.

3. This act shall take effect on the 30th day after the date of enactment.

STATEMENT

This bill provides that any person who is convicted under subsection a. or b. of N.J.S.A.2C:21-34 will be permanently debarred from contracting or from working as a key employee of a contractor, or any affiliate, that is contracting with a government

entity. These subsections involve fraudulent activity in relation to government contracts.

The bill requires the State Treasurer to publish and maintain a list on the Internet of permanently debarred persons. Persons or entities wishing to contract with a government entity will be required to file a written certification stating that the person or entity and any key employees are not permanently debarred pursuant to this bill. In some emergency situations, the contractor may submit the written certification after the contract has been awarded. The contracting agency will have the right to rely solely on the contractor's certification and the list provided by the State Treasurer.

This bill does not apply to purchases from federal supply schedules or cooperative purchasing agreements with one or more states.