

ATTORNEY GENERAL

April 3, 1980

MR. BARRY SKOKOWSKI
Acting Director
Division of Local Government Services
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 9—1980

Dear Mr. Skokowski:

You have asked for our opinion concerning the meaning of an Act dealing with the disclosure of the identity of stockholders or partners prior to the award of a contract to be paid out of public funds.

In 1977, the Legislature enacted a law which requires corporations or partnerships to disclose the identity of major stockholders or partners prior to the award of a contract, the cost of which is to be paid out of public funds. N.J.S.A. 52:25-24.2 provides in relevant part as follows:

[N]o corporation or partnership shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, *unless prior to the receipt of the bid* or accompanying the bid of said corporation, or said partnership, there is submitted a statement setting forth the names and address of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own 10% or greater interest therein, as the case may be. [Emphasis added.] [N.J.S.A. 52:25-24.2.]

The essential question posed is whether the filing of a disclosure statement is applicable in an instance where an agreement is to be entered into with a public agency after public advertisement for competitive bids or whether the statutory requirement extends to any instance where the performance of work or the furnishing of materials is to be paid with or out of public funds. The question therefore more sharply drawn is whether the term "bid" should be interpreted to mean the taking of competitive bids after public advertisement or whether it should be given its more general meaning of an offer to perform work or to supply materials.

This State has a well established legislative scheme governing the making of contracts by the State and by local governmental units. This scheme includes the Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.*, the Public School Contracts Law, N.J.S.A. 18A:18A-1 *et seq.*, and statutes such as N.J.S.A. 52:32-2 which govern contracts for construction, alteration or repair of state buildings and N.J.S.A. 52:34-6 *et seq.* which govern the award of State contracts. These statutes are all aimed at preserving

FORMAL OPINION

the integrity of the process by which public contracts are awarded. *Hillside Tp. v. Sternin*, 25 N.J. 317, 322 (1957).

The disclosure requirement mandated in the Act was also designed to further the integrity of the competitive bidding process. In *George Harms Construction Co. v. Borough of Lincoln Park*, 161 N.J. Super. 367 (Law Div. 1978), the court held that the submission of a disclosure statement under the Act is a mandatory and material part of the award of a contract let by competitive bids and cannot be waived or cured. The court noted:

The Legislature in enacting N.J.S.A. 52:25-24.2 expressed its clear purpose to insure that all members of a governing body and the public be made aware of the real parties in interest with whom they are asked to contract. Thus the public, as well as public officials, can identify any real or potential conflicts of interest arising out of the awarding of public contracts, or can identify those bidders who lack the requisite responsibility. . . .

The [Local Public Contracts Law] provides the framework for the solicitation of public bids. The 1977 statute evinces a supervening requirement imposed on the bidding framework

[*George Harms Construction Co. v. Borough of Lincoln Park*, *supra*, at 372-73.]

It is therefore clear that the court concluded that the disclosure act was an integral part of the overall process for competitive bidding in the Local Public Contracts Law.

Since the statute which requires the disclosure of the identity of principal partners or stockholders complements and serves the same salutary purpose as laws governing the award of contracts by the State, local school boards and local governing bodies, it is reasonable to assume the Legislature intended the term "bid" to be interpreted in a manner consistent with those related laws. In the Local Public Contracts Law the term "bid" is used to denote an offer resulting from the scheme of publicly advertised bidding. *See, e.g.* N.J.S.A. 40A:11-4. Likewise, the Local School Contracts Law and the laws governing State contracts use the term "bid" to refer to an offer made in the context of publicly advertised bidding. N.J.S.A. 18A:18A-5(d), 37; N.J.S.A. 52:34-6; N.J.S.A. 52:32-2. By contrast, offers made without such public advertising are referred to as "negotiated prices" or "quotations." N.J.S.A. 40A:11-5(3), 6.1; N.J.S.A. 18A:18A-37; N.J.S.A. 52:34-9(e).¹ "The import of any word or phrase is to be gleaned from . . . statutes in *pari materia*." *State v. Brown*, 22 N.J.

1. Legislative committee statements to L. 1977, c. 33 (A-22) indicate that the bill was aimed at "bid contracts" of the various governmental bodies named in the bill. *Assembly Municipal Government Committee, Statement to Assembly No. 22* (1976); *Senate State Government, Federal and Interstate, Relations and Veterans Affairs Committee, Statement to Assembly No. 22* (1976). In the context of the scheme created in pre-existing laws governing public contracts, of which the Legislature was surely aware, the term "bid contract" would refer to a contract awarded through public advertisement and competitive bidding.

ATTORNEY GENERAL

405, 415 (1956). Therefore, the term bid should be construed to have been used in the Act in the same sense as it was used in these statutes regarding public contracts.

Further support for this conclusion is found in statutes enacted contemporaneously with L. 1977, c. 33. Within a few months of March, 1977, the date on which L. 1977, c. 33 was approved, the Legislature enacted two other statutes relating to the awarding of public contracts, both of which use the term "bid" to refer to publicly advertised competitive bids. One of the statutes, L. 1977, c. 53, adopted on April 5, 1977, was a series of amendments to the Local Public Contracts Law. Among the amendments was the deletion of the phrase "lowest responsible bidder" where the phrase had referred to a solicited quotation rather than a competitive bid. The Legislature replaced this phrase with the expression "lowest responsible quotation received." L. 1977, c. 53, §4. This change further emphasizes the distinction between a "bid" and an offer arrived at without public advertisement. On June, 2, 1977, the Legislature enacted L. 1977, c. 114 (N.J.S.A. 18A:18A-1 *et seq.*), the Public School Contracts Law, which specifies a scheme of competitive bidding to be used by public school districts in awarding contracts. Like the Local Public Contracts Law, L. 1977, c. 114 uses the term "bid" to refer to publicly advertised bids and refers to other offers as "negotiated prices" or "quotations". See N.J.S.A. 18A:18A-5(d), 37.

Since L. 1977, c. 33 and the two statutes discussed above were enacted in the same session of the Legislature and all deal with the award of public contracts, it is reasonable to assume that they all use the term "bid" in the same sense.

Application of the rule that statutes in *pari materia* should be construed together is most justified . . . in the case of statutes relating to the same subject that were passed at the same session of the legislature. [2A Sutherland, *Statutory Construction*, §51.03, at 299 (4th Ed. 1973).]

Reading the three statutes together, it is clear that the term "bid" as used in L. 1977, c. 33 means an offer made after public advertisement for competitive bids.

In summary, therefore, it is our opinion that a disclosure statement should be submitted only in an instance where a statute requires public advertisement for competitive bids. The disclosure requirement is thus limited to those proposed contracts over the dollar amount for which competitive bidding is mandated. Similarly, the disclosure requirement would apply to the performance of work such as professional services only in those instances where the governing statutes require such contracts to be advertised for competitive bids.²

2. In the case of the Local Public Contracts Law, for example, public advertisement for bids is required, with certain specified exceptions, for contracts involving expenditures in excess of \$2,500, N.J.S.A. 40A:11-3, 4, and contracts for professional services are not required to be awarded through competitive bidding. N.J.S.A. 40A:11-5(i)(a).

FORMAL OPINION

Finally, although the Act only requires disclosure statements where publicly advertised bidding is involved, we note that the Act does not prohibit the imposition of more extensive disclosure requirements than those mandated by the Act. The purpose of the disclosure statements is to make the members of the governing body aware of the real parties in interest with whom they are dealing and to identify "any real or potential conflicts of interest arising out of the awarding of public contracts." *Statement on the Bill, Assembly No. 22 (1976); George Harms Constr. Co. v. Bor. of Lincoln Pk., supra*, at 372. Clearly, a voluntary administrative extension of the disclosure requirement to include nonadvertised bidding should be encouraged as a means to further protect the integrity of the government's procurement process.

Very truly yours,
JOHN J DEGNAN
Attorney General

By: SUSAN L. REISNER
Deputy Attorney General

May 1, 1980

MR. BARRY SKOKOWSKI
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Department of Community Affairs
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FORMAL OPINION NO. 10—1980

Dear Mr. Skokowski:

You have requested advice as to the proper construction of the provisions of N.J.S.A. 40A:4-46 which provide as follows:

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditures to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year.

Specifically, you have inquired as to whether the word "or" in the first sentence of N.J.S.A. 40A:4-46 is to be read disjunctively or conjunctively. Construing the term disjunctively would permit the making of an emergency appropriation by a local unit for either a purpose which is not foreseen at the time of the adoption of the local unit's budget or