

CHAPTER 57

AN ACT expanding the program of business registration for contractors with government agencies and requiring certain government agency contractors and their affiliates to collect State use tax, amending P.L.1999, c.39, the Title and text of P.L.2001, c.134 and R.S.54:50-9, repealing section 3 of P.L.2001, c.134 (C.54:52-20), and supplementing Title 54 of the Revised Statutes.

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

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

C.40A:11-23.2 Required mandatory items for bid plans, specification.

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

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

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

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

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

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

f. A copy of the contractor's, and subcontractors' listed pursuant to subsection d. of this section, business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44).

2. The Title of P.L.2001, c.134 is amended to read as follows:

Title amended.

AN ACT concerning business registration for providers of goods and services to the State, State colleges and universities, county colleges, local contracting units, boards of education, water and wastewater contractors and casinos, supplementing Title 54 of the Revised Statutes and amending P.L.1977, c.110.

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

C.52:32-44 Definitions relative to registration of certain businesses; registration requirements.

1. a. For the purposes of this section:

"Business organization" means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof;

"Business registration" means a business registration certificate issued by the Department of the Treasury or such other form or verification that a contractor or subcontractor is registered with the Department of the Treasury;

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

"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;

"Local unit" means any contracting unit as defined pursuant to section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education as defined pursuant to N.J.S.18A:18A-2, a private firm that has entered into a contract with a public entity for the provision of water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et al.), a private firm or public authority that has

entered into a contract with a public entity for the provision of wastewater treatment service pursuant to P.L.1995, c.216 (C.58:27-19 et al.), and a duly incorporated nonprofit association that entered into a contract with the governing body of a city of the first class for the provision of wastewater treatment services pursuant to P.L.1995, c.216 (C.58:27-19 et al.);

"Subcontractor" means any business organization that is not a contractor that knowingly provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract issued by a contracting agency.

b. No contract shall be entered into by any contracting agency unless the contractor provides a copy of its business registration in accordance with the following schedule:

(1) In response to a request for bids or a request for proposals, at the time a bid or proposal is submitted; or

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

c. A subcontractor shall provide a copy of its business registration to any contractor who shall forward it to the contracting agency. No contract with a subcontractor shall be entered into by any contractor under any contract with a contracting agency unless the subcontractor first provides proof of valid business registration. The contracting agency shall file all business registrations received by the contracting agency with other procurement documents related to the contract.

d. A contract entered into by a contracting agency with a contractor shall include provisions under subsection b. of this section and this subsection for the contractor to comply with, and for the contractor to notify subcontractors by written notice to comply with subsection c. of this section. A contracting agency shall not be responsible for a contractor's failure to comply with this section. The contractor shall maintain and submit to the contracting agency a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance. A complete and accurate list shall be submitted before final payment is made for goods provided or services rendered or for construction of a construction project under the contract.

e. Notice of the provisions of this section shall be included by the contracting agency in any bid specification, requests for proposals, or other documents notifying potential contractors of opportunities to provide goods or perform services for a contracting agency.

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

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

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

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

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

4. R.S.54:50-9 is amended to read as follows:

Certain officers entitled to examine records.

54:50-9. Nothing herein contained shall be construed to prevent:

a. The delivery to a taxpayer or the taxpayer's duly authorized representative of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of this subtitle or of any such State tax law;

b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

c. The director, in the director's discretion and subject to reasonable conditions imposed by the director, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;

d. The inspection by the Attorney General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;

e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the director, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other state, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the director, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law;

h. The furnishing by the director to the State agency responsible for administering the Child Support Enforcement program pursuant to Title IV-D of the federal Social Security Act, Pub. L.93-647 (42 U.S.C. s.51 et seq.), with the names, home addresses, social security numbers and sources of income and assets of all absent parents who are certified by that agency as being required to pay child support, upon request by the State agency and pursuant to procedures and in a form prescribed by the director;

I. The furnishing by the director to the Board of Public Utilities any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be necessary for the administration of P.L.1991, c.184 (C.54:30A-18.6 et al.) and P.L.1997, c.162 (C.54:10A-3 et al.);

j. The furnishing by the director to the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be relevant, in the discretion of the director, in any proceeding conducted for the issuance, suspension or revocation of any license authorized pursuant to Title 33 of the Revised Statutes;

k. The inspection by the Attorney General or other legal representative of this State of the reports or files of any tobacco product manufacturer, as defined in section 2 of P.L.1999, c.148 (C.52:4D-2), for any period in which that tobacco product manufacturer was not or is not in compliance with subsection a. of section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2), for the purpose of facilitating the administration of the provisions of P.L.1999, c.148 (C.52:4D-1 et seq.);

l. The furnishing, at the discretion of the director, of information as to whether a contractor or subcontractor holds a valid business registration as defined in section 1 of P.L.2001, c.134 (C.52:32-44).

C.54:49-4.1 Violations of registration requirements; penalties.

5. A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12:92), or that provides false information of business registration under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency or under a casino service industry contract.

Repealer.

6. Section 3 of P.L.2001, c.134 (C.54:52-20) is repealed.

7. This act shall take effect immediately, provided however that sections 1 through 6 shall remain inoperative until the first day of the third month following enactment.

Approved June 29, 2004.