

## CHAPTER 315

AN ACT concerning local public contracts and amending P.L.1999, c.39 and P.L.2001, c.134.

**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 Mandatory items for bid plans, specifications.

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.

- f. (Deleted by amendment, P.L.2009, c.315.)

2. 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:

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

“Bid threshold” means the statutory amount over which a contracting agency must seek bids.

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

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

“Contract” means any agreement, including but not limited to a purchase order or a formal agreement for the provision of goods, performance of services, or construction of a construction project, which is a legally binding relationship enforceable by law, between a contractor and a contracting agency that agrees to compensate the contractor, as defined by and subject to the terms and conditions of the agreement; and where the goods that are

received, services that are delivered, and construction that is constructed is within the geographic borders of the State of New Jersey; and where:

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

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

"Contractor" means a business organization that seeks to enter, or has entered into, a contract 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 enters into a contract, or constructs a construction project, with a contractor or another subcontractor in the fulfillment of a contract issued by a contracting agency. In the case of a construction contract, "subcontractor" shall mean only those subcontractors who are required by law to be named in the submission of a bid.

b. A contractor shall provide the contracting agency with the business registration of the contractor and that of any named subcontractor prior to the time a contract, purchase order, or other contracting document is awarded or authorized. At the sole option of the contracting agency, the requirement that a contractor provide proof of business registration may be fulfilled by the contractor providing the contracting agency sufficient information for the contracting agency to verify proof of registration of the contractor, or named subcontractors, through a computerized system maintained by the State.

c. A subcontractor named in a bid or other proposal made by a contractor to a contracting agency shall provide a copy of its business registration to any contractor who shall provide it to the contracting agency pursuant to the provisions of subsection b. of this section. No contract with a subcontractor shall be entered into by any contractor under any contract with a contracting agency unless the subcontractor first provides the contractor with proof of a valid business registration. For bids and requests for proposals, the contracting agency must retain the proof of business registration in the file where documents relating to the contract are maintained. For all other contracts, proofs of business registration shall be maintained in an alphabetical file.

d. 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. A contracting agency shall not be responsible for a contractor's failure to comply with this subsection.

e. The Department of the Treasury shall provide each contracting agency with appropriate language reflecting the obligations of contractors and subcontractors 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.

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 taxable 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 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.

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

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

k. In situations of an emergent nature, a contracting agency may enter into a contract with a business organization, provided that the contractor agrees to provide a business registration within two weeks of the execution of the contract. The contracting agency shall

not pay the business organization for goods or services provided until such time as the organization provides proof of business registration as set forth in this section. Failure to pay the business organization until proof of business registration is received shall not be grounds for the agency being liable for payment.

3. This act shall take effect immediately.

Approved January 18, 2010.