

## CHAPTER 25

AN ACT concerning public contracts and supplementing various parts of the statutory law.

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

C.52:32-55 Findings, declarations relative to certain public contracts.

1. The Legislature finds and declares that:

a. In imposing sanctions on Iran, the United States Congress and the President of the United States have determined that the illicit nuclear activities of Iran, combined with its development of unconventional weapons and ballistic missiles, and its support of international terrorism, represent a serious threat to the security of the United States and its allies around the world.

b. The International Atomic Energy Agency has repeatedly called attention to Iran's unlawful nuclear activities, and as a result, the United Nations Security Council has adopted four rounds of sanctions designed to compel the Government of Iran to cease those activities and comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, commonly known as the Nuclear Non-Proliferation Treaty.

c. The human rights situation in Iran has steadily deteriorated since the fraudulent elections of 2009, as evidenced by the brutal repression, torture, murder and arbitrary detention of peaceful protestors, dissidents and minorities.

d. On July 1, 2010, President Obama signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, which expressly authorizes state and local governments to prevent investment in, including prohibiting entry into or renewing contracts with, companies operating in Iran and includes provisions that preclude companies that do business in Iran from contracting with the U.S. Government.

e. It is the intention of the Legislature to implement this authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

f. There are moral and reputational reasons for state and local governments to not engage in business with foreign companies that have business activities benefiting foreign states, such as Iran, that pursue illegal nuclear programs, support acts of terrorism and commit violations of human rights.

g. Short-term economic profits cannot be a justification to circumvent even in spirit those international sanctions designed to thwart Iran from developing nuclear weapons.

h. The concerns of this Legislature regarding Iran are strictly the result of the actions of the government of Iran and should not be construed as enmity toward the Iranian people.

C.52:32-56 Definitions relative to certain public contracts.

2. As used in this act:

a. "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 which is authorized by law to award public contracts.

b. "Energy sector" of Iran means activities to develop, invest in, explore for, refine, transfer, purchase or sell petroleum, gasoline, or other refined petroleum products, or natural gas, liquefied natural gas resources or nuclear power in Iran.

c. "Financial institution" means the term as used in Section 14 of the Iran Sanctions Act of 1996, Section 14 of Pub.L.104-172 (50 U.S.C. 1701 note).

d. "Iran" means the government of Iran, and includes the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the government of Iran exercises partial or total control over the area or derives a benefit from economic activity in the area pursuant to international arrangements.

e. "Person or entity" means any of the following:

(1) A natural person, corporation, company, limited partnership, limited liability partnership, limited liability company, business association, sole proprietorship, joint venture, partnership, society, trust, or any other nongovernmental entity, organization, or group.

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act, 22 U.S.C. 262r(c)(3).

(3) Any parent, successor, subunit, direct or indirect subsidiary, or any entity under common ownership or control with, any entity described in paragraph (1) or (2).

f. For the purposes of this act, a person engages in investment activities in Iran, if:

the person provides goods or services of \$20,000,000 or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

the person is a financial institution that extends \$20,000,000 or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to subsection b. of section 3 of this act as a person engaging in investment activities in Iran as described in subsection a. of section 3 of this act.

The State Treasurer shall adopt regulations that reduce the amounts provided for in this subsection if the State Treasurer determines that such change is permitted or required under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

C.52:32-57 Certain persons, entities prohibited from bidding on certain public contracts, maintenance of list.

3. a. A person or entity that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on a list created pursuant to subsection b. of this section as a person or entity engaging in investment activities in Iran as described in subsection f. of section 2 of this act, shall be ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a State agency for goods or services.

b. Within 90 days of the effective date of this act, the Department of the Treasury shall, using credible information available to the public, develop a list of persons or entities it determines engage in investment activities in Iran as described in subsection f. of section 2.

c. The department shall update the list every 180 days.

d. Before finalizing an initial list pursuant to subsection b. of this section or an updated list pursuant to subsection c. of this section, the department shall do the following before a person or entity is included on the list:

(1) Provide 90 days' written notice of its intent to include the person or entity on the list. The notice shall inform the person or entity that inclusion on the list would make the person or entity ineligible to bid on, submit a proposal for, or enter into or renew, a contract for goods or services with a State agency; and

(2) Provide a person or entity with an opportunity to comment in writing that it is not engaged in investment activities in Iran. If the person or entity demonstrates to the department that the person or entity is not engaged in investment activities in Iran as described in subsection f. of section 2 of this act, the person or entity shall not be included on the list, unless the person or entity is otherwise ineligible to bid on a contract as described in paragraph (3) of subsection a. of section 5 of this act.

(3) The department shall make every effort to avoid erroneously including a person or entity on the list.

C.52:32-58 Certification required.

4. a. A State agency shall require a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract to certify, at the time the bid is submitted or the contract is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 of this act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 of this act.

b. The certification required shall be executed on behalf of the applicable person or entity by an authorized officer or representative of the person or entity.

c. In the event that a person or entity is unable to make the certification required because it or one of its parents, subsidiaries, or affiliates as defined in subsection e. of section 2 of this act has engaged in one or more of the activities specified in subsection f. of section 2 of this act, the person or entity shall provide to the State agency concerned, prior to the deadline for delivery of such certification, a detailed and precise description of such activities, such description to be provided under penalty of perjury.

d. The certifications provided under subsection a. of this section and disclosures provided under subsection c. of this section shall be disclosed to the public.

C.52:32-59 False certification, penalties.

5. a. If the department determines, using credible information available to the public and after providing 90 days' written notice and an opportunity to comment in writing for the person or entity to demonstrate that it is not engaged in investment activities in Iran, that the person or entity has submitted a false certification pursuant to section 4 of this act, and the person or entity fails to demonstrate to the department that the person or entity has ceased its engagement in the investment activities in Iran within 90 days after the determination of a false certification, the following shall apply:

(1) Pursuant to an action under subsection b. of this section, a civil penalty in an amount that is equal to the greater of \$1,000,000 or twice the amount of the contract for which the false certification was made.

(2) Termination of an existing contract with the State agency as deemed appropriate by the State agency.

(3) Ineligibility to bid on a contract for a period of three years from the date of the determination that the person or entity submitted the false certification.

b. The department shall report to the New Jersey Attorney General the name of the person or entity that the State agency determines has submitted a false certification under section 4 of this act, together with its information as to the false certification, and the Attorney General shall determine whether to bring a civil action against the person or entity to collect the penalty described in paragraph (1) of subsection a. of this section.

Only one civil action against the person or entity to collect the penalty described in paragraph (1) of subsection a. of this section may be brought for a false certification on a

contract. A civil action to collect such penalty shall commence within three years from the date the certification is made.

C.52:32-60 Written notice to Attorney General.

6. The Governor shall submit to the Attorney General of the United States a written notice describing this act within 30 days after its effective date.

C.40A:11-2.1 Civil action brought on behalf of local contracting unit.

7. a. A local contracting unit as defined in and subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), shall implement and comply with the provisions of P.L.2012, c.25 (C.52:32-55 et al.), except that the contracting unit shall rely on the list developed by the State Department of the Treasury pursuant to section 3 of P.L.2012, c.25 (C.52:32-57).

b. If the local contracting unit determines that a person or entity has submitted a false certification concerning its engagement in investment activities in Iran pursuant to section 4 of P.L.2012, c.25 (C.52:32-58), the local contracting unit shall report to the New Jersey Attorney General the name of that person or entity, and the Attorney General shall determine whether to bring a civil action against the person to collect the penalty prescribed in paragraph (1) of subsection a. of section 5 of P.L.2012, c.25 (C.52:32-59). The local contracting unit may also report to the municipal attorney or county counsel, as appropriate, the name of that person, together with its information as to the false certification, and the municipal attorney or county counsel, as appropriate, may determine to bring such civil action against the person to collect such penalty.

C.18A:18A-49.4 Civil action brought on behalf of board of education.

8. a. A board of education as defined in and subject to the provisions of the "Public School Contracts Law," P.L.1977, c.114 (N.J.S.18A:18A-1 et seq.), shall implement and comply with the provisions of P.L.2012, c.25 (C.52:32-55 et al.), except that the board shall rely on the list developed by the State Department of the Treasury pursuant to section 3 of P.L.2012, c.25 (C.52:32-57).

b. If the board determines that a person or entity has submitted a false certification concerning its engagement in investment activities in Iran under section 4 of P.L.2012, c.25 (C.52:32-58), the board shall report to the New Jersey Attorney General the name of that person or entity, and the Attorney General shall determine whether to bring a civil action against the person to collect the penalty prescribed in paragraph (1) of subsection a. of section 5 of P.L.2012, c.25 (C.52:32-59).

The board may also report to the board's attorney the name of that person, together with its information as to the false certification, and the board's attorney may determine to bring such civil action against the person to collect such penalty.

C.18A:64A-25.43 Civil action brought on behalf of county college.

9. a. A county college as defined in and subject to the provisions of the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), shall implement and comply with the provisions of P.L.2012, c.25 (C.52:32-55 et al.), except that the county college shall rely on the list developed by the State Department of the Treasury pursuant to section 3 of P.L.2012, c.25 (C.52:32-57).

b. If the county college determines that a person or entity has submitted a false certification concerning its engagement in investment activities in Iran pursuant to section 4

of P.L.2012, c.25 (C.52:32-58), the county college shall report to the New Jersey Attorney General the name of that person, and the Attorney General shall determine whether to bring a civil action against the person or entity to collect the penalty prescribed in paragraph (1) of subsection a. of section 5 of P.L.2012, c.25 (C.52:32-59).

The county college may also report to the county college attorney the name of that person, together with its information as to the false certification, and the county college attorney may determine to bring such civil action against the person to collect such penalty.

10. This act shall take effect immediately but shall apply to contracts awarded or renewed commencing 30 days after the effective date of this act.

Approved July 30, 2012.