

INSTRUCTIONS FOR CONTRACTING AGENCIES AND BUSINESS ORGANIZATIONS COVERED BY P.L. 2004, c. 57

I. General Information

P.L. 2004, c. 57 (Chapter 57) amends and supplements the business registration provisions of N.J.S.A. 52:32-44 which impose certain requirements upon a business competing for, or entering into a contract with a State agency. Chapter 57 expands the requirement of business registration to business organizations competing for, or entering into a contract with the following public contracting agencies:

1. State colleges and universities, and county colleges
2. Contracting units as defined in the Local Public Contracts Law (N.J.S.A. 40A:11-2)
3. Boards of education as defined in the Public School Contracts Law (N.J.S.A. 18A:18A-2)
4. Private firms that have entered into a contract with a public entity to provide water supply services pursuant to N.J.S.A. 58:26-19
5. A private firm or public authority that has entered into a contract with a public entity to perform wastewater treatment services pursuant to N.J.S.A. 58:27-19, or a duly incorporated nonprofit association that has entered into a contract with a city of the first class to provide wastewater treatment services pursuant to N.J.S.A. 58:27-19.

These instructions provide guidance to public contracting agencies and business organizations in meeting their obligations under the new law. For further guidance, interested parties may contact the Division of Taxation, Regulatory Services Branch, directly at 609-292-5995. Questions concerning activities of public contracting agencies under the Local Public Contracts Law or Public School Contracts Law should be directed to the Division of Local Government Services at 609-292-7842, or at lpcl@dca.state.nj.us by e-mail.

II. Definitions

- a. "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 if it owns, directly or individually, more than 50% of the ownership interest in that entity.
- b. "Bid" or "request for proposal" means a formal process used by a contracting agency to receive offers to provide goods or services to the contracting agency. It is not the same as any informal, non-advertised process of requesting quotations from contractors.
- c. "Business organization" means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof. It also includes any affiliates of the business organization. It does not include government agencies or organizations organized as non-profit entities.

- d. "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement.
- e. "Contractor" means a business organization that seeks to enter, or has entered into a contract with a contracting agency, to provide goods, services, or a construction project, the cost of which exceeds 15% of the contracting unit's bid threshold.
- f. "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 where the cost of the subcontractors work exceeds 15% of the contracting unit's bid threshold.
- g. "Supplier" means a business organization that knowingly provides goods or services directly to a subcontractor or to a contractor in fulfillment of a construction contract issued by a contracting agency, where the value of the goods and services of the supplier exceeds 15% of the contracting unit's bid threshold.

III. General Provisions

- a. The effective date of Chapter 57 is September 1, 2004. Chapter 57 affects all contracts awarded after that date, but does not apply to contracts awarded prior to September 1, 2004, even if the contract is performed in whole or in part after September 1, 2004.
- b. When required, a business organization must submit proof of business registration to the contracting agency. Proof of business registration shall be a copy of a Business Registration Certificate issued by the Department of the Treasury, Division of Revenue. Information on how a business can obtain a certificate can be obtained on the Internet at www.nj.gov/njbgs or by phone at (609) 292-1730.
- c. An individual with **no** business tax or employer obligations to the State of New Jersey, who is entering into, or has entered into a contract with a contracting agency to perform personal services shall submit proof of business registration in the form of a Certification and Registration for Individuals Contracting with Public Agencies (NJ-REG-A) issued by the Department of the Treasury, Division of Revenue. The Certificate and Registration form can be downloaded at www.nj.gov/treasury/revenue/pdforms/reg.a.pdf or by telephone at (609) 292-1730.
- d. A contracting agency must provide notice of the requirement of submission of proof of business registration in its bid specifications, requests for proposals, or other documents notifying potential contractors of procurement opportunities.
- e. A contracting agency may not enter into a contract with a contractor unless it has received proof of business registration: (a) at the time of bid or proposal

submission, in response to a request for bids or proposals; or (b) for all other transactions, prior to issuance of a purchase order or other contracting document.

- f. The requirement to submit proof of business registration is not applicable in those contracting situations in which the dollar value of the contract is less than 15 percent of the bid threshold dollar amount defined in the applicable contracting agency procurement law.
- g. When a contract does **not** involve a request for bids or a request for proposals, a contracting agency may waive the requirement of submission of proof of business registration **only** if such proof had been previously provided to the contracting agency.
- h. For any purchase of goods or services made by a contracting agency under a State of New Jersey Cooperative Purchasing Contract, or any other authorized cooperative purchasing agreement, the contracting agency awarding the contract shall receive and hold the proof of registration. Contract documents issued under a cooperative purchasing agreement shall identify the contracting agency awarding the contract.
- i. For bids and requests for proposals, the contracting agency must keep 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 kept in a single alphabetical file.
- j. In situations of an emergent nature, a contracting agency may enter into a contract with a business organization, but the contracting agency shall not pay the organization for work done or goods provided under the contract until such time as a copy of the business registration or registrations is/are provided to the contracting agency.
- k. In situations involving sole source contractors unwilling to provide proof of business registration, a contracting agency may refer the matter to the Division of Taxation, Regulatory Services, for resolution on a case-by-case basis.

IV. Contractor Requirements Generally

- a. A contractor must include proof of business registration at the time it submits a bid or proposal in response to a request for bids or proposals. For all other transactions, proof of business registration must be submitted before the issuance of a purchase order or contracting document.
- b. A contractor must provide written notice to its subcontractors, regardless of the level (tier) of the contractor or subcontractor, of the requirement to submit proof of business registration to the contractor. The contractor shall obtain and maintain on file the proof of business registration of each subcontractor.
- c. Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of

each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.

- d. A contractor and its affiliates, and a subcontractor and its affiliates, regardless of the level (tier) of the contractor or subcontractor must collect and remit to the Division of Taxation the use tax pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State regardless of whether the tangible personal property is intended for a contract with a contracting agency.

V. Procedures for Construction Contracts

- a. These procedures shall be used for all construction contracts. For consistency, “construction” shall mean, exclusive of the value of the work, “public work” as defined in the “Prevailing Wage Act”, N.J.S.A. 34:11-56.26:
 - i. “Public work” means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program
 - ii. “Maintenance work” means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.
- b. In response to a request for bids or a request for proposals for construction work, a contractor must include proof of its own business registration and proofs of business registration of those subcontractors required to be listed in the contractor’s submission (i.e., “named subcontractors.”) The proof of business registration shall be provided at the time the bid or proposal is officially received and opened by the contracting agency.
- c. After award of the contract, a contractor must obtain proof of business registration of subcontractors and suppliers through all tiers of a contract, when the value of the goods or services to be provided by the subcontractor or supplier exceeds 15% of the contracting agency’s bid threshold.
- d. The contracting agency shall include the following language in each bid specification, purchase order or other contracting document for construction contracts.

“New Jersey Business Registration Requirements”

The contractor shall provide written notice to its subcontractors and suppliers of the responsibility to submit proof of business registration to the contractor. The requirement of proof of business registration extends down through all levels (tiers) of the project.

Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.

For the term of the contract, the contractor and each of its affiliates and a subcontractor and each of its affiliates [N.J.S.A. 52:32-44(g)(3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

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 business registration information 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.”

VI. Non-construction Contract Language

The contracting agency shall include the following language in each bid specification, purchase order or other contracting document:

“New Jersey Business Registration Requirements”

The contractor shall provide written notice to its subcontractors of the responsibility to submit proof of business registration to the contractor.

Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.

For the term of the contract, the contractor and each of its affiliates and a subcontractor and each of its affiliates [N.J.S.A. 52:32-44(g)(3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

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 business registration information 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.”