

LFN 2004-17

August 6, 2004

Local Finance Notice

James E. McGreevey
Governor

Susan Bass Levin
Commissioner

Susan Jacobucci
Acting Director

Contact Information

Director's Office

V. 609.292.6613
F. 609.292.9073

Local Government Research

V. 609.292.6110
F. 609.292.9073

Financial Regulation and Assistance

V. 609.292.4806
F. 609.984.7388

Local Finance Board

V. 609.292.0479
F. 609.633.6243

Local Management Services

V. 609.292.7842
F. 609.633.6243

Authority Regulation

V. 609.984.0132
F. 609.984.7388

Mail and Delivery

101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803

Web: www.nj.gov/dca/dlgs

E-mail: dlgs@dca.state.nj.us

Distribution

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Business Registration Of Public Contractors

All government contracting units in New Jersey have received new responsibilities under the recently enacted P.L. 2004, c.57. Starting September 1, all business organizations that do business with a local contracting agency are required to be registered with the State and provide proof of that registration to the contracting agency before the contracting agency may enter into a contract with the business.

The purpose of contractor registration (which is separate from requirements of the Public Works Contractor Registration Act) is to ensure that all businesses and their subsidiaries receiving government contracts pay appropriate sales and use, and other taxes. While sales and use taxes are not paid on government contracts, the requirement to register to obtain government contracts obligates them to comply with the law on non-government contracts. Businesses, particularly out-of-state businesses, competing with New Jersey based businesses often do not pay the required taxes. Thus, unregistered businesses take unfair advantage of New Jersey businesses and deprive the State of its rightfully due taxes.

Three years ago the State began requiring all State vendors to provide proof of registration before receiving a State contract. This new law expands this practice to the following government contracting agencies:

1. Contracting units as defined in the Local Public Contracts Law
2. Boards of education as defined in the Public School Contracts Law
3. 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
4. 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.
5. State colleges and universities, and county colleges

The law is administered by the Division of Taxation which has issued “[Instructions](#)” to guide contracting agencies in the application of the law. These Instructions will eventually be supplanted by formal rules. The Instructions, and rules when issued, elaborate and interpret the law and provide direction and guidance for contracting agencies and contractors to meet their requirements under the law. Contracting agencies should immediately review the Instructions and modify their procedures to bring them into compliance.

The Division of Local Government Services is assisting the Division of Taxation in providing resources to communicate guidance and interpretations as questions arise. The Division’s [Local Procurement website](#) will have a “Frequently Asked Questions” page and local officials who have enrolled in the Local Procurement role in GovConnect can take advantage of GovConnect’s discussion forums and document libraries to share experiences and information. DLGS staff will monitor the discussion forums and participate in discussions as necessary. Local procurement staff that want to join the role should e-mail a request to join to njcooperative.purchasing@treas.state.nj.us and be sure to include their title and agency.

Summary of Contracting Agency Requirements

There are important key elements in the Instructions that affect how contracting agencies implement the law. Definitions of important terms are in the Instructions. The following list summarizes the important issues:

- The law affects all business organizations that do business with the agency, and in some cases, subcontractors to those organizations. This includes firms providing professional services.
- Contracts awarded after September 1, 2004 must comply with the law. Contracts awarded prior to September 1 are not affected, even if fulfilled after that date.
- A contract includes a formal contract awarded by a public bid, a purchase order, or other mechanism.
- **Contracts that are less than 15% (quote threshold) of the local unit’s bid threshold are not covered by the law.**
- “Proof of registration” means a copy of the organization’s “Business Registration Certificate” issued by the Division of Revenue. A sample is included in this notice. No other form can be substituted; it must be this form.
- **The law does not cover contracts with non-profit organizations and other government agencies.**
- Vendors that refuse to register and obtain a Business Registration Certificate cannot receive a contract in excess of 15% of the agency’s bid threshold.
 - If the agency has a sole source contract – where there is only one supplier of the goods or services needed, and that vendor refuses register, the contracting agency should contact the Division of Taxation for review and guidance.
- A subcontractor is a business organization that “knowingly” supplies goods or services to a contractor in fulfillment of a contracting agency contract. In this case, “knowingly” means the subcontractor had affirmative and clear knowledge that the specific goods or services being provided are for the contracting agency.

- For example, the supplier of pens to the office supply company that gets a purchase order from a board of education is not a subcontractor, but a mason hired by a general contractor working at a municipal building would be.
- All bidders must submit a copy of their proof of registration with bids.
 - The bidder must include the proofs of all named or listed subcontractors in a construction bid as part of the bid submission.
- The law requires that bid and contract documents include specific references and language to inform contractors of their responsibilities. The language is part of the Instructions.
- Failure to submit proof of registration is considered a mandatory rejection of bids (a non-waivable defect). This covers construction work as well as non-construction bids. N.J.S.A. 40A:11-23.2 adds business registration to the mandatory list of documents submitted in a construction bid.
- Proof of registration for non-bid contracts (i.e., purchase orders under the bid threshold) must be received before the contract is issued.
- For non-bid contracts only, if proof has been filed through a previous contract, the contracting agency may waive resubmission.
- Proof should be kept with bid documents; non-bid proof documents should be filed in a separate alphabetical file.
- Individuals (non-employees) must also obtain a certificate and submit it in order to receive a contract. A [simplified form to file](#) is available and is included with this Notice.
- Contract documents must contain mandatory language requiring contractors to obtain proof of registration from their subcontractors. The law requires subcontractors at all levels (tiers) to provide proof of registration to their (sub)contractors until they reach the direct contractor. The contractor has the obligation to obtain these certificates and file them with contracting agency prior to receiving final payment. Please keep in mind the “knowingly” provision of the definition of a subcontractor.
 - If there are no subcontractors on a job, the contractor must certify to that effect.
 - This requirement will likely require contracting units to modify their “boilerplate” bid specifications, and add language or a separate form to voucher documents.
- The law does not penalize contracting agencies that fail to comply; but government agencies must meet their general obligations to comply with the law. A contractor, however, that fails or fraudulently submits forms, is subject to civil penalties. Further, a contracting unit that fails to include the proper language in its bid documents could find bid awards challenged in court for failing to comply.
- Contracts issued under a State or local cooperative purchasing contract can be issued without the contracting agency obtaining proof of registration. The lead agency awarding the contract must obtain the proof, and the contract document issued by the contracting agency must include the lead agency’s cooperative contracting reference number.

- Proof does not have to be provided in advance of issuing an emergency contract, but proof must be obtained prior to payment.

About Business Registration Certificates

The State Division of Revenue issues Business Registration Certificates. There is no cost to file, and renewal is unnecessary, though changes to information must be submitted.

Filing is quick, uncomplicated and [can be done online](#). A flyer designed for distribution by contracting agencies to contractors is part of this Notice.

The Division of Taxation has advised this Division that they understand that it may take a little time for contracting agencies to understand the law and make the necessary administrative changes, especially for non-bid contracts. The Division also foresees that during the first few months, many questions and unanticipated situations will come up that need resolution.

The law fully applies, however, to bid awards and contracting agencies should diligently ensure that their bid specifications and contract documents include the mandatory language included in the Instructions and that bid submission forms are changed to reflect the new requirements.

The agencies will be working together to resolve issues that arise and communicate them to local officials. As a way of keeping abreast of interpretations and techniques, contracting agencies are encouraged to use the [DLGS](#) and [GovConnect Local Procurement](#) website ([enrollment required](#)) and to post and share sample documents and forms.

The answers to many questions concerning the law will be found in the Instructions or on the web site. If answers cannot be found there, e-mail them to taxation@tax.state.nj.us or lpcl@dca.state.nj.us.

The following documents are part of this Notice and are posted on the Division's [Local Procurement website](#):

- [This Notice](#)
- [Sample Business Registration Certificate](#)
- [Instructions](#) for Contracting Agencies and Business Organizations Covered by [P.L. 2004, c.57](#), issued by the Division of Taxation
- [Flyer](#) describing how to file for a Business Registration Certificate and a copy of the [application for an individual certificate](#)
- Coming soon: Frequently Asked Questions

Approved: Susan Jacobucci, Acting Director

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2	njcooperative.purchasing@treas.state.nj.us	mailto: njcooperative.purchasing@treas.state.nj.us
4	can be done online	www.nj.gov/treasury/revenue/busregcert.htm

4	DLGS	www.nj.gov/dca/lgs/lpcl/index.shtml
4	(enrollment required)	mailto:njcooperative.purchasing@treas.state.nj.us
4	taxation@tax.state.nj.us	mailto: taxation@tax.state.nj.us
4	lpcl@dca.state.nj.us	Mailto: lpcl@dca.state.nj.us
4	Local Procurement website	www.nj.gov/dca/lgs/lpcl/index.shtml
4	This Notice	www.nj.gov/dca/lgs/lfns/04lfns/2004_17.doc
4	Sample Business Registration	www.nj.gov/dca/lgs/lpcl/busregis/nj_bus_reg_cert_sample1.gif
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