

Public Law 2005, Chapter 51
Effective October 15, 2004

To be eligible for an award, a vendor must comply with the requirements of Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13-20.25, superseding Executive Order 134 (2004)).

CHAPTER 51

AN ACT concerning campaign contributions by certain business entities seeking or holding State contracts, supplementing P.L.1973, c.83 (C.19:44A-1 et seq.), amending P.L.2004, c.19, and repealing section 1 of P.L.2004, c.19 (C.19:44A-20.2).

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

C.19:44A-20.13 Findings, declarations relative to certain campaign contributions by business entities.

1. The Legislature finds and declares that:

In our representative form of government, it is essential that individuals who are elected to public office have the trust, respect and confidence of the citizenry; and

All individuals, businesses, associations, and other persons have a right to participate fully in the political process of New Jersey, including making and soliciting contributions to candidates, political parties and holders of public office; and

When a person or business interest makes or solicits major contributions to obtain a contract awarded by a government agency or independent authority, this constitutes a violation of the public's trust in government and raises legitimate public concerns about whether the contract has been awarded on the basis of merit; and
The growing infusion of funds donated by business entities into the political process at all levels of government has generated widespread cynicism among the public that special interest groups are "buying" favors from elected officeholders; and

For the purposes of protecting the integrity of government contractual decisions and of improving the public's confidence in government, it is a compelling interest of this State to prohibit awarding government contracts to business entities which are also contributors to candidates, political parties and the holders of public office; and
There exists the perception that campaign contributions are often made to a State or county political party committee by an individual or business seeking favor with State elected officials, with the understanding that the money given to such a committee will be transmitted to other committees in other parts of the State, or is otherwise intended to circumvent legal restrictions on the making of political contributions or gifts directly to elected State officials, thus again making elected State officials beholden to those contributors; and

County political party committees, through their powers of endorsement, fundraising, ballot slogan or party line designation, and other means, exert significant influence over the gubernatorial primary and general election process; and

Although the right of individuals and businesses to make campaign contributions is unequivocal, that right may be limited, even abrogated, when such contributions promote the actuality or appearance of public corruption; and
It is essential that the public have confidence that the selection of State contractors is based on merit and not on political contributions made by such contractors and it is essential that the public have trust in the processes by which taxpayer dollars are spent; and

It has long been the public policy of this State to secure for the taxpayers the benefits of competition, to promote the public good by promoting the honesty and integrity of bidders for public contracts and the system, and to guard against favoritism, improvidence, extravagance and corruption in order to benefit the taxpayers; and
In the procurement process, our public policy grants to the State broad discretion, taking into consideration all factors, to award a contract to a bidder whose proposal will be most advantageous to the State; and

The operations of the State government must be effectively and fairly managed to ensure public order and prosperity, and malfeasance, in whatever form it may take, must be confronted and uprooted; and The Legislature must safeguard the integrity of State government procurement by imposing restrictions on State agencies and independent authorities to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof.

C.19:44A-20.14 Contributors, certain, ineligibility to enter into agreement with the State or its authorities.

2. The State or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure from any business entity services or any material, supplies or equipment, or to acquire, sell, or lease any land or building, where the value of the transaction exceeds \$17,500, if that business entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee or election fund of any candidate or holder of the public office of Governor, or to any State or county political party committee: (i) within the eighteen months immediately preceding the commencement of negotiations for the contract or agreement; (ii) during the term of office of a Governor, in the case of contributions to a candidate committee or election fund of the holder of that office, or to any State or county political party committee of a political party nominating such Governor in the last gubernatorial election preceding the commencement of such term; or (iii) within the eighteen months immediately preceding the last day of the term of office of Governor, in which case such prohibition shall continue through the end of the next immediately following term of the office of Governor, in the case of contributions to a candidate committee or election fund of the holder of that office, or to any State or county political party committee of a political party nominating such Governor in the last gubernatorial election preceding the commencement of the latter term.

C.19:44A-20.15 Certain contributions prohibited by certain contractors of the State or its authorities.

3. No business entity which agrees to any contract or agreement with the State or any department or agency thereof or its independent authorities either for the rendition of services or furnishing of any material, supplies or equipment or for the acquisition, sale, or lease of any land or building, if the value of the transaction exceeds \$17,500, shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor or to any State or county political party committee prior to the completion of the contract or agreement.

C.19:44A-20.16 "Contribution" defined.

4. For the purposes of this act, a "contribution" means a contribution reportable by the recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act, " P.L.1973, c.83 (C.19:44A-1 et seq.) made on or after the effective date of this act.

C.19:44A-20.17 "Business entity" defined.

5. For the purposes of this act, a "business entity" means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or any other state or foreign jurisdiction. The definition of a business entity includes: (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing therewith, are also included within this definition.

C.19:44A-20.18 Report of contributions by business entities as part of State procurement process.

6. Prior to awarding any contract or agreement to procure services or any material, supplies or equipment from, or for the acquisition, sale, or lease of any land or building from or to, any business entity, the State or any of its purchasing agents or agencies, as the case may be, shall require, as part of the procurement process, the business entity to report all contributions the business entity made during the preceding four years to any political organization organized under section 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the meaning of section 3 of P.L.1973, c.83 (C.19:44A-3). Such reporting shall be made in a manner and form to be developed by the State Treasurer with the advice of the New Jersey Election Law Enforcement Commission, which agencies shall promulgate regulations to effect and implement this disclosure obligation. Such reports shall be subject to review by the State Treasurer. If the State Treasurer determines that any such contribution, or any other act that would constitute a breach of contract pursuant to section

9 of this act, poses a conflict of interest in the awarding of any contract or agreement, the State Treasurer shall disqualify such business entity from bidding on or being awarded such contract or agreement.

C.19:44A-20.19 Written certification by business entities relative to contributions.

7. Prior to awarding any contract or agreement to procure services or any material, supplies or equipment from, or for the acquisition, sale, or lease of any land or building from or to, any business entity, the State or any of its purchasing agents or agencies or independent authorities, as the case may be, shall require the business entity to provide a written certification that it has not made a contribution that would bar the award of the contract pursuant to this act. The business entity shall have a continuing duty to report any contribution it makes during the term of the contract. Such reports shall be subject to review by the State Treasurer. If the State Treasurer determines that any such contribution poses a conflict of interest, such contribution shall be deemed a material breach of such contract or agreement.

C.19:44A-20.20 Request for reimbursement of contribution.

8. If a business entity inadvertently makes a contribution that would otherwise bar it from receiving a contract or makes a contribution during the term of a contract in violation of this act, the entity may request a full reimbursement from the recipient and, if such reimbursement is received within 30 days after the date on which the contribution was made, the business entity would again be eligible to receive a contract or would no longer be in violation, as appropriate. It shall be presumed that contributions made within 60 days of a gubernatorial primary or general election were not made inadvertently.

C.19:44A-20.21 Breach of terms of government contract concerning contributions.

9. It shall be a breach of the terms of the government contract for a business entity to: (i) make or solicit a contribution in violation of this act; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of this act; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange or contributions to circumvent the intent of this act, or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this act.

C.19:44A-20.22 Exception for public exigency.

10. This act shall not prohibit the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of services as determined by the State Treasurer.

C.19:44A-20.23 Applicability of act to State agencies and authorities.

11. This act shall apply to all State agencies including any of the principal departments in the Executive Branch, and any division, board, bureau, office, commission or other instrumentality within or created by such department and any independent State authority, board, commission, instrumentality or agency.

C.19:44A-20.24 Contract, bid applications and specs to describe requirements of act.

12. Every contract and bid application and specifications promulgated in connection therewith covered by this act shall contain a provision describing the requirements of this act and a statement that compliance with this act shall be a material term and condition of said contract or bid application and binding upon the parties thereto upon the entry of all applicable contracts.

C.19:44A-20.25 Inapplicability of act under federal law or eminent domain.

13. The provisions of sections 1 through 12 of this act, P.L.2005, c.51, shall not: a. apply in circumstances when it is determined by the federal government or a court of competent jurisdiction that its application would violate federal law or regulation; or b. prevent the State, its executive departments, agencies or independent authorities from complying with all of the requirements, conditions and obligations of the "Eminent Domain Act of 1971," P.L.1971,

c.361 (C.20:3-1 et seq.), as amended and supplemented.

14. Section 6 of P.L.2004, c.19 (C.19:44A-20.7) is amended to read as follows:

C.19:44A-20.7 Definitions relative to certain campaign contributions.

6. As used in sections 2 through 12 of this act:

"business entity" means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

"fair and open process" means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. The decision of a public entity as to what constitutes a fair and open process shall be final.

"State agency in the Legislative Branch" means the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch.

15. Section 7 of P.L.2004, c.19 (C.19:44A-20.8) is amended to read as follows:

C.19:44A-20.8 Business entity to provide written certification, ELEC reports.

7. a. Prior to awarding any contract, except a contract that is awarded pursuant to a fair and open process, a State agency in the Legislative Branch, a county, or a municipality shall require the business entity to which the contract is to be awarded to provide a written certification that it has not made a contribution that would bar the award of a contract pursuant to this act.

b. A business entity shall have a continuing duty to report to the Election Law Enforcement Commission any contributions that constitute a violation of this act that are made during the duration of a contract.

Repealer.

16. Section 1 of P.L.2004, c.19 (C.19:44A-20.2) is repealed.

Superseder.

17. Executive Order No. 134 (2004) is hereby superseded.

18. Sections 14, 15 and 16 shall take effect on the original effective date of P.L.2004, c.19

P.L. 2005, CHAPTER 51

5

(C.19:44A-20.2 et seq.), and the remainder of this act shall take effect immediately and shall be retroactive to October 15, 2004 and shall apply to contributions made and contracts awarded on or after October 15, 2004.

Approved March 22, 2005.