

LOCAL FINANCE NOTICE**Contracting Law Related Attorney General Advice**

The Division has recently received advice from the Attorney General's office on two issues related to the public contracting process used by local units under the Local Public Contracts Law, and school district boards of education/charter school boards of trustees under the Public School Contracts Law. This Notice summarizes this advice. Copies of the full advice letters are available on the Division's web site (under Attorney General Opinions) at www.nj.gov/dca/lgs/attnygnl/agmenu.htm or by contacting the Division by e-mail (lpcl@dca.state.nj.us), by mail, or by phone (609-292-7842).

Coverage of "Statement of Corporate Ownership"

Since 1977, all contracting units have required the submission of a Statement of Corporate Ownership pursuant to N.J.S.A. 52:25-24.2. This law provides that:

"no corporation or partnership shall be awarded any contract by the State, county, municipality or school district, or any subsidiary or agency thereof, unless prior to the receipt of the bid of the corporation or partnership, there is submitted to the public contracting unit a statement setting forth the names and address of all individuals who own 10% or more of the stock or interest in the corporation or partnership."

Over the years, the Legislature has authorized the creation of different forms of corporate ownership, such as limited partnerships, limited liability corporations, limited liability partnerships, and Subchapter S corporations. The Division periodically receives questions concerning the applicability of the Statement of Corporate Ownership to these entities that are not specifically mentioned in the law.

The Attorney General has now advised the Division that the provisions of N.J.S.A. 52:25-24.2, in referring to corporations and partnerships, are intended to apply to all forms of corporations and partnerships, including limited partnerships, limited liability corporations, limited liability partnerships, and Subchapter S corporations.

All contracting units should ensure that their specifications, bidding and contracting documents reflect this advice.

Requirements for Proof of Valid Business Registration

Recently enacted N.J.S.A 52:32-44 directs "any contracting State agency" to require all vendors contracting with it to provide the contracting State agency with proof of the contractors' valid business registration with the State's Division of Revenue. The intent is to ensure that all contractors are registered with the State and pay proper State taxes. The question raised was if contracting units under the Local Public Contracts Law or the Public School Contracts Law were considered a "contracting State agency."

In this case, the Attorney General has advised the Division that the plain language of N.J.S.A. 52:32-44 applies only to State departments, agencies and entities and not to local contracting units or boards of education/boards of trustees. The advice also finds that it is evident that where the Legislature has deemed it appropriate to make specific statutory requirements applicable to procurement activities of the State and municipal and county entities and boards of education/boards of trustees, it has utilized explicit language to make clear its intent.

Further, the Division has also been advised that language in the law that refers to contractors as entities that enter into a contract with a contracting state agency to “construct a construction project” **does not** include boards of education that receive grants from the Economic Development Authority (EDA), as the grant agreement with EDA is not a contract to restrict a construction project. Those projects that are constructed directly by EDA (Abbott districts) however do come under the law as EDA is the “contracting state agency.”

If you have questions on these issues, please contact the Division by e-mail at lpcl@dca.state.nj.us or by phone at 609-292-7842. Recipients of this Notice are asked to distribute it to their Chief Administrative Officer, Chief Financial Officer, Purchasing Agent, and Attorney.

Distribution: Municipal Clerks, School Business Administrators, Clerks to Boards of Chosen Freeholders, Authority Executive Directors, Fire District Board of Commissioners, and Purchasing Agents (through various professional associations).