

# 40A:11-23.2

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2009                    **CHAPTER:** 315

**NJSA:** 40A:11-23.2 (Repeals bidding requirement for local public contracts to allow bidders to avoid unresponsive bid if they inadvertently omit business registration from bid proposal provided that bidder was registered before bid submission deadline)

**BILL NO:** A557 (Substituted for S2336)

**SPONSOR(S)** Dancer and Others

**DATE INTRODUCED:** January 8, 2008

**COMMITTEE:**                    **ASSEMBLY:** Housing and Local Government

**SENATE:** Community and Urban Affairs

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** May 21, 2009

**SENATE:** January 11, 2010

**DATE OF APPROVAL:** January 18, 2010

### FOLLOWING ARE ATTACHED IF AVAILABLE:

**FINAL TEXT OF BILL** (Corrected copy of second reprint enacted)

#### A557

**SPONSOR'S STATEMENT:** (Begins on page 5 of introduced bill) Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** Yes

**LEGISLATIVE FISCAL ESTIMATE:** No

#### S2336

**SPONSOR'S STATEMENT:** (Begins on page 6 of introduced bill) Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

**SENATE:** Yes

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

(continued)

**VETO MESSAGE:**

No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No

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LAW/RWH

[Corrected Copy]

[Second Reprint]

**ASSEMBLY, No. 557**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**

**Assemblyman RONALD S. DANCER**

**District 30 (Burlington, Mercer, Monmouth and Ocean)**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

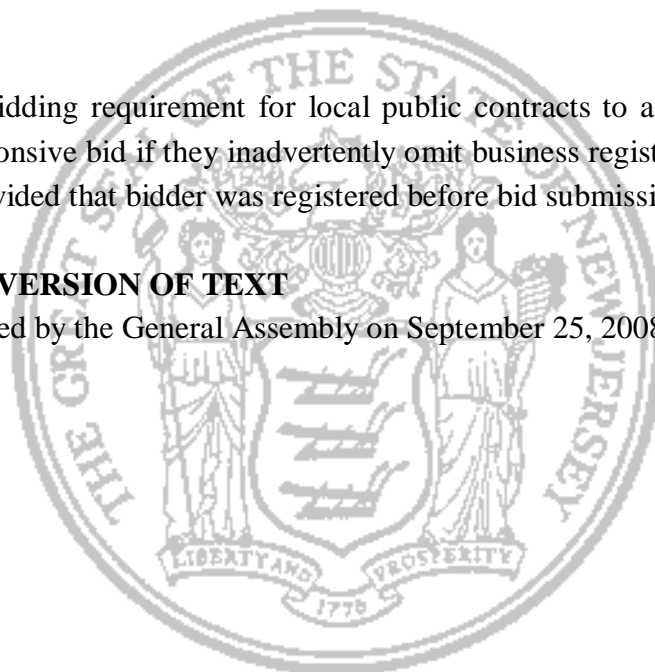
**Assemblyman Green, Assemblywoman Evans, Assemblyman Schaer,  
Senators Buono and Lance**

**SYNOPSIS**

Repeals bidding requirement for local public contracts to allow bidders to avoid unresponsive bid if they inadvertently omit business registration from bid proposal provided that bidder was registered before bid submission deadline.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on September 25, 2008.



**(Sponsorship Updated As Of: 1/12/2010)**

1 AN ACT concerning local public contracts and amending P.L.1999,  
2 c.39 and P.L.2001, c.134.

3

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

6

7 1. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to  
8 read as follows:

9 2. When required by the bid plans and specifications, the  
10 following requirements shall be considered mandatory items to be  
11 submitted at the time specified by the contracting unit for the  
12 receipt of the bids; the failure to submit any one of the mandatory  
13 items shall be deemed a fatal defect that shall render the bid  
14 proposal unresponsive and that cannot be cured by the governing  
15 body:

16 a. A guarantee to accompany the bid pursuant to section 21 of  
17 P.L.1971, c.198 (C.40A:11-21);

18 b. A certificate from a surety company pursuant to section 22  
19 of P.L.1971, c.198 (C.40A:11-22);

20 c. A statement of corporate ownership pursuant to section 1 of  
21 P.L.1977, c.33 (C.52:25-24.2);

22 d. A listing of subcontractors pursuant to section 16 of  
23 P.L.1971, c.198 (C.40A:11-16);

24 e. A document provided by the contracting agent in the bid  
25 plans, specifications, or bid proposal documents for the bidder to  
26 acknowledge the bidder's receipt of any notice or revisions or  
27 addenda to the advertisement or bid documents; and

28 f. **[A copy of the contractor's, and subcontractors' listed**  
29 **pursuant to subsection d. of this section, business registration as**  
30 **required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44).]**  
31 (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_.) (pending before the  
32 Legislature as this bill)  
33 (cf: P.L.2004, c.57, s.1)

34

35 2. Section 1 of P.L.2001, c.134 (C.52:32-44) is amended to read  
36 as follows:

37 1. a. For the purposes of this section:

38 <sup>1</sup>“Bid” or “request for proposal” means a publicly advertised,  
39 formal process used by a contracting agency to receive offers to  
40 provide goods or services or construct a construction project. It is  
41 not the same as an informal, non-advertised process of requesting  
42 quotations from contractors.

EXPLANATION – Matter enclosed in bold-faced brackets **[ thus ]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AHO committee amendments adopted September 15, 2008.

<sup>2</sup>Assembly floor amendments adopted September 25, 2008.

1 “Bid threshold” means the statutory amount over which a  
2 contracting agency must seek bids.<sup>1</sup>

3 "Business organization" means an individual, partnership,  
4 association, joint stock company, trust, corporation, or other legal  
5 business entity or successor thereof <sup>1</sup>, but does not include a  
6 government agency or organization organized as a nonprofit entity<sup>1</sup>  
7 <sup>2</sup>under 26U.S.C. sec. 501 (c)<sup>2</sup>;

8 "Business registration" means a business registration certificate  
9 issued by the <sup>1</sup>Division of Revenue in the<sup>1</sup> Department of the  
10 Treasury or such other form <sup>1</sup>[or] of<sup>1</sup> verification <sup>1</sup>or proof of  
11 registration as may be approved by the Division<sup>1</sup> that a contractor  
12 or subcontractor is registered with the Department of the Treasury;

13 <sup>1</sup>“Contract” means any agreement, including but not limited to a  
14 purchase order or a formal agreement for the provision of goods,  
15 performance of services, or construction of a construction project,  
16 which is a legally binding relationship enforceable by law, between  
17 a contractor and a contracting agency that agrees to compensate the  
18 contractor, as defined by and subject to the terms and conditions of  
19 the agreement; and where the goods that are received, services that  
20 are delivered, and construction is constructed is within the  
21 geographic borders of the State of New Jersey; and where:

22 (1) the value of a single contract with the contractor is in excess  
23 of 15 percent of the amount of the contracting agency’s bid  
24 threshold; or

25 (2) when the aggregate amount of contracts with the contractor,  
26 during the fiscal year of the contracting agency, exceeds 15 percent  
27 of the amount of the contracting agency’s bid threshold.<sup>1</sup>

28 "Contractor" means a business organization that seeks to enter,  
29 or has entered into, a contract <sup>1</sup>[to provide goods or services or to  
30 construct a construction project]<sup>1</sup> with a contracting agency;

31 "Contracting agency" means the principal departments in the  
32 Executive Branch of the State Government, and any division, board,  
33 bureau, office, commission or other instrumentality within or  
34 created by such department, or any independent State authority,  
35 commission, instrumentality or agency, or any State college or  
36 university, any county college, or any local unit;

37 "Local unit" means any contracting unit as defined pursuant to  
38 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education  
39 as defined pursuant to N.J.S.18A:18A-2, a private firm that has  
40 entered into a contract with a public entity for the provision of  
41 water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et  
42 al.), a private firm or public authority that has entered into a  
43 contract with a public entity for the provision of wastewater  
44 treatment service pursuant to P.L.1995, c.216 (C.58:27-19 et al.),  
45 and a duly incorporated nonprofit association that entered into a  
46 contract with the governing body of a city of the first class for the

1 provision of wastewater treatment services pursuant to P.L.1995,  
2 c.216 (C.58:27-19 et al.);

3 "Subcontractor" means any business organization that is not a  
4 contractor that knowingly <sup>1</sup>provides goods or performs services  
5 for] enters into a contract <sup>2, 2</sup> or constructs a construction project <sup>2, 2</sup>  
6 with<sup>1</sup> a contractor or another subcontractor in the fulfillment of a  
7 contract issued by a contracting agency. <sup>1</sup>In the case of a  
8 construction contract, "subcontractor" shall mean only those  
9 subcontractors who are required by law to be named in the  
10 submission of a bid.<sup>1</sup>

11 b. <sup>1</sup>provides goods or performs services  
12 unless the contractor provides a copy of its ] <sup>2</sup>provides goods or performs services  
13 enter into a contract with any contracting agency unless that  
14 contractor has been issued proof of<sup>1</sup> business registration in  
15 accordance with the following schedule:

16 (1) In response to a request for bids or a request for proposals,  
17 <sup>1</sup>at] before<sup>1</sup> the time a bid or proposal is submitted <sup>1</sup>provides goods or performs services  
18 discretion, a local contracting unit may waive this requirement and  
19 allow the contractor a reasonable amount of time to submit its  
20 business registration, provided that the business registration was  
21 obtained on or prior to the last date for submission of bids or  
22 proposals]<sup>1</sup> ; or

23 (2) For all other transactions, before the issuance of a purchase  
24 order or other contracting document.]<sup>2</sup> <sup>1</sup>provides goods or performs services  
25 contracting unit may waive this requirement if a business  
26 registration has been previously provided to the contracting  
27 agency.]<sup>1</sup> <sup>2</sup>A contractor shall provide the contracting agency with  
28 the business registration of the contractor and that of any named  
29 subcontractor prior to the time a contract, purchase order, or other  
30 contracting document is awarded or authorized. At the sole option  
31 of the contracting agency, the requirement that a contractor provide  
32 proof of business registration may be fulfilled by the contractor  
33 providing the contracting agency sufficient information for the  
34 contracting agency to verify proof of registration of the contractor,  
35 or named subcontractors, through a computerized system  
36 maintained by the State.<sup>2</sup>

37 c. A subcontractor <sup>1</sup>named in a bid or other proposal made by a  
38 contractor to a contracting agency<sup>1</sup> shall provide a copy of its  
39 business registration to any contractor who shall [forward it to the  
40 contracting agency] <sup>1</sup>provide it to the contracting agency pursuant  
41 to the provisions of subsection <sup>2</sup>[i.] b.<sup>2</sup> of this section<sup>1</sup>. No  
42 contract with a subcontractor shall be entered into by any contractor  
43 under any contract with a contracting agency unless the  
44 subcontractor first provides <sup>1</sup>the contractor with<sup>1</sup> proof of <sup>1</sup>a<sup>1</sup> valid  
45 business registration. <sup>1</sup>provides goods or performs services  
46 business registrations received by the contracting agency with other

1 procurement documents related to the contract] For bids and  
2 requests for proposals, the contracting agency must retain the proof  
3 of business registration in the file where documents relating to the  
4 contract are maintained. For all other contracts, proofs of business  
5 registration shall be maintained in an alphabetical file<sup>1</sup>.

6 d. <sup>1</sup>[A contract entered into by a contracting agency with a  
7 contractor shall include provisions under subsection b. of this  
8 section and this subsection for the contractor to comply with, and  
9 for the contractor to notify subcontractors by written notice to  
10 comply with subsection c. of this section. A contracting agency  
11 shall not be responsible for a contractor's failure to comply with this  
12 section.]<sup>1</sup> The contractor shall maintain and submit to the  
13 contracting agency a list of subcontractors and their addresses that  
14 may be updated from time to time during the course of the contract  
15 performance. A complete and accurate list shall be submitted  
16 before final payment is made for goods provided or services  
17 rendered or for construction of a construction project under the  
18 contract. <sup>1</sup>A contracting agency shall not be responsible for a  
19 contractor's failure to comply with this <sup>2</sup>[section] subsection<sup>2</sup> <sup>1</sup>.

20 e. <sup>1</sup>[Notice of the provisions of this section shall be included by  
21 the contracting agency] The Department of the Treasury shall  
22 provide each contracting agency with appropriate language  
23 reflecting the obligations of contractors and subcontractors under  
24 this section that the contracting agency shall include<sup>1</sup> in any  
25 <sup>1</sup>contract document,<sup>1</sup> bid specification, requests for proposals, or  
26 other documents notifying potential contractors of <sup>1</sup>contract<sup>1</sup>  
27 opportunities <sup>1</sup>[to provide goods or perform services for] with<sup>1</sup> a  
28 contracting agency.

29 f. Nothing in this section shall in any way alter the provisions or  
30 change the responsibilities or obligations of casino industry  
31 licensees as set forth in section 92 of P.L.1977, c.110 (C.5:12-92).

32 g. (1) A contractor or a contractor with a subcontractor that has  
33 entered into a contract with a contracting agency, and each of their  
34 affiliates, shall collect and remit to the Director of the Division of  
35 Taxation in the Department of the Treasury the use tax due pursuant  
36 to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)  
37 on all their <sup>1</sup>taxable<sup>1</sup> sales of tangible personal property delivered  
38 into this State.

39 (2) A contracting agency entering into a contract with a  
40 contractor, or a contractor with a subcontractor, shall include in its  
41 contract <sup>1</sup>[to provide goods or perform services or to construct a  
42 construction project]<sup>1</sup> with that contractor, or a contractor with a  
43 subcontractor, for the term of the contract, a requirement that the  
44 contractor or subcontractor and each of their affiliates shall collect  
45 and remit to the Director of the Division of Taxation in the  
46 Department of the Treasury the use tax due pursuant to the "Sales

1 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) on all their  
2 sales of tangible personal property delivered into this State.

3 (3) For the purposes of this subsection, "affiliate" means any  
4 entity that (1) directly, indirectly, or constructively controls another  
5 entity, (2) is directly, indirectly, or constructively controlled by  
6 another entity, or (3) is subject to the control of a common entity.  
7 For purposes of this subsection an entity controls another entity if it  
8 owns, directly or individually, more than 50% of the ownership  
9 interest in that entity.

10 h. The State Treasurer may adopt regulations pursuant to the  
11 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et  
12 seq.) as are necessary to administer the provisions of this act.

13 <sup>1</sup>i. <sup>2</sup>[Proof of business registration of a contractor shall be  
14 subject to the following provisions:

15 (1) A contractor shall provide the contracting agency with the  
16 business registration of the contractor and that of any named  
17 subcontractor prior to the time a contract, purchase order, or other  
18 contracting document is awarded or authorized.

19 (2) The contracting agency may include a requirement to submit  
20 proof of a business registration with a bid or request for proposals;  
21 provided, however, that any failure to provide proof of business  
22 registration with the submission of a bid or other proposal  
23 document shall be considered a curable defect, which shall only be  
24 cured by the contractor providing the proof of business registration  
25 to the contracting agency prior to the time a contract, purchase  
26 order, or other contracting document is awarded or authorized.

27 (3) At the sole option of the contracting agency, the requirement  
28 that a contractor provide proof of business registration may be  
29 fulfilled by the contractor providing the contracting agency  
30 sufficient information for the contracting agency to verify proof of  
31 registration of the contractor or listed subcontractors through a  
32 computerized system maintained by the State.

33 <sup>j.</sup><sup>2</sup> If a contractor fails to provide proof of business registration  
34 upon request by the contracting agency for a contract that does not  
35 require bidding or a request for proposals, and the contracting  
36 agency determines that the purpose of that contract is of a  
37 proprietary nature with a contractor that does not have a business  
38 presence in New Jersey, the contracting agency shall provide the  
39 Division of Revenue, within 10 days of executing the contract, a  
40 copy of the contract, evidence of the contractor's taxpayer  
41 identification number, and a signed certification attesting to the  
42 proprietary nature of the contract and representing that the  
43 contracting agency made a diligent effort to obtain proof of a  
44 business registration from the contractor.

45 <sup>2</sup>[k.] <sup>j.</sup><sup>2</sup> When a contracting agency enters into a contract with a  
46 contractor under a contract issued by State of New Jersey  
47 Cooperative Purchasing Program, or any other authorized



1 cooperative purchasing system, the contracting agency awarding the  
2 initial contract shall receive and file the proof of business  
3 registration. Contract documents issued under a cooperative  
4 purchasing agreement shall identify the contract and the contracting  
5 agency awarding the contract.

6 <sup>2</sup>[1.] k.<sup>2</sup> In situations of an emergent nature, a contracting  
7 agency may enter into a contract with a business organization,  
8 provided that the contractor agrees to provide a business  
9 registration within two weeks of the execution of the contract.<sup>1</sup>

10 <sup>2</sup>The contracting agency shall not pay the business organization for  
11 goods or services provided until such time as the organization  
12 provides proof of business registration as set forth in this section.  
13 Failure to pay the business organization until proof of business  
14 registration is received shall not be grounds for the agency being  
15 liable for payment.<sup>2</sup>

16 (cf: P.L.2004, c.57, s.3)

17

18 3. This act shall take effect immediately.

# ASSEMBLY, No. 557

## STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**

**Assemblyman RONALD S. DANCER**

**District 30 (Burlington, Mercer, Monmouth and Ocean)**

**Co-Sponsored by:**

**Assemblyman Green**

**SYNOPSIS**

Repeals bidding requirement for local public contracts to allow bidders to avoid unresponsive bid if they inadvertently omit business registration from bid proposal provided that bidder was registered before bid submission deadline.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 9/16/2008)**

A557 DANCER

2

1 AN ACT concerning local public contracts and amending P.L.1999,  
2 c.39 and P.L.2001, c.134.

3

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

6

7 1. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to  
8 read as follows:

9 2. When required by the bid plans and specifications, the  
10 following requirements shall be considered mandatory items to be  
11 submitted at the time specified by the contracting unit for the  
12 receipt of the bids; the failure to submit any one of the mandatory  
13 items shall be deemed a fatal defect that shall render the bid  
14 proposal unresponsive and that cannot be cured by the governing  
15 body:

16 a. A guarantee to accompany the bid pursuant to section 21 of  
17 P.L.1971, c.198 (C.40A:11-21);

18 b. A certificate from a surety company pursuant to section 22 of  
19 P.L.1971, c.198 (C.40A:11-22);

20 c. A statement of corporate ownership pursuant to section 1 of  
21 P.L.1977, c.33 (C.52:25-24.2);

22 d. A listing of subcontractors pursuant to section 16 of  
23 P.L.1971, c.198 (C.40A:11-16);

24 e. A document provided by the contracting agent in the bid  
25 plans, specifications, or bid proposal documents for the bidder to  
26 acknowledge the bidder's receipt of any notice or revisions or  
27 addenda to the advertisement or bid documents; and

28 f. **[A copy of the contractor's, and subcontractors' listed**  
29 **pursuant to subsection d. of this section, business registration as**  
30 **required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44).]**  
31 (Deleted by amendment, P.L. ., c. .) (pending before the Legislature  
32 as this bill)

33 (cf: P.L.2004, c.57, s.1)

34

35 2. Section 1 of P.L.2001, c.134 (C.52:32-44) is amended to read  
36 as follows:

37 1. a. For the purposes of this section:

38 "Business organization" means an individual, partnership,  
39 association, joint stock company, trust, corporation, or other legal  
40 business entity or successor thereof;

41 "Business registration" means a business registration certificate  
42 issued by the Department of the Treasury or such other form or  
43 verification that a contractor or subcontractor is registered with the  
44 Department of the Treasury;

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 "Contractor" means a business organization that seeks to enter,  
2 or has entered into, a contract to provide goods or services or to  
3 construct a construction project with a contracting agency;

4 "Contracting agency" means the principal departments in the  
5 Executive Branch of the State Government, and any division, board,  
6 bureau, office, commission or other instrumentality within or  
7 created by such department, or any independent State authority,  
8 commission, instrumentality or agency, or any State college or  
9 university, any county college, or any local unit;

10 "Local unit" means any contracting unit as defined pursuant to  
11 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education  
12 as defined pursuant to N.J.S.18A:18A-2, a private firm that has  
13 entered into a contract with a public entity for the provision of  
14 water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et  
15 al.), a private firm or public authority that has entered into a  
16 contract with a public entity for the provision of wastewater  
17 treatment service pursuant to P.L.1995, c.216 (C.58:27-19 et al.),  
18 and a duly incorporated nonprofit association that entered into a  
19 contract with the governing body of a city of the first class for the  
20 provision of wastewater treatment services pursuant to P.L.1995,  
21 c.216 (C.58:27-19 et al.);

22 "Subcontractor" means any business organization that is not a  
23 contractor that knowingly provides goods or performs services for a  
24 contractor or another subcontractor in the fulfillment of a contract  
25 issued by a contracting agency.

26 b. No contract shall be entered into by any contracting agency  
27 unless the contractor provides a copy of its business registration in  
28 accordance with the following schedule:

29 (1) In response to a request for bids or a request for proposals, at  
30 the time a bid or proposal is submitted. In its sole discretion, a  
31 local contracting unit may waive this requirement and allow the  
32 contractor a reasonable amount of time to submit its business  
33 registration, provided that the business registration was obtained on  
34 or prior to the last date for submission of bids or proposals ; or

35 (2) For all other transactions, before the issuance of a purchase  
36 order or other contracting document. In its sole discretion, the  
37 contracting unit may waive this requirement if a business  
38 registration has been previously provided to the contracting agency.

39 c. A subcontractor shall provide a copy of its business  
40 registration to any contractor who shall forward it to the contracting  
41 agency. No contract with a subcontractor shall be entered into by  
42 any contractor under any contract with a contracting agency unless  
43 the subcontractor first provides proof of valid business registration.  
44 The contracting agency shall file all business registrations received  
45 by the contracting agency with other procurement documents  
46 related to the contract.

47 d. A contract entered into by a contracting agency with a  
48 contractor shall include provisions under subsection b. of this

A557 DANCER

1 section and this subsection for the contractor to comply with, and  
2 for the contractor to notify subcontractors by written notice to  
3 comply with subsection c. of this section. A contracting agency  
4 shall not be responsible for a contractor's failure to comply with this  
5 section. The contractor shall maintain and submit to the contracting  
6 agency a list of subcontractors and their addresses that may be  
7 updated from time to time during the course of the contract  
8 performance. A complete and accurate list shall be submitted  
9 before final payment is made for goods provided or services  
10 rendered or for construction of a construction project under the  
11 contract.

12 e. Notice of the provisions of this section shall be included by  
13 the contracting agency in any bid specification, requests for  
14 proposals, or other documents notifying potential contractors of  
15 opportunities to provide goods or perform services for a contracting  
16 agency.

17 f. Nothing in this section shall in any way alter the provisions or  
18 change the responsibilities or obligations of casino industry  
19 licensees as set forth in section 92 of P.L.1977, c.110 (C.5:12-92).

20 g. (1) A contractor or a contractor with a subcontractor that has  
21 entered into a contract with a contracting agency, and each of their  
22 affiliates, shall collect and remit to the Director of the Division of  
23 Taxation in the Department of the Treasury the use tax due pursuant  
24 to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)  
25 on all their sales of tangible personal property delivered into this  
26 State.

27 (2) A contracting agency entering into a contract with a  
28 contractor, or a contractor with a subcontractor, shall include in its  
29 contract to provide goods or perform services or to construct a  
30 construction project with that contractor, or a contractor with a  
31 subcontractor, for the term of the contract, a requirement that the  
32 contractor or subcontractor and each of their affiliates shall collect  
33 and remit to the Director of the Division of Taxation in the  
34 Department of the Treasury the use tax due pursuant to the "Sales  
35 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) on all their  
36 sales of tangible personal property delivered into this State.

37 (3) For the purposes of this subsection, "affiliate" means any  
38 entity that (1) directly, indirectly, or constructively controls another  
39 entity, (2) is directly, indirectly, or constructively controlled by  
40 another entity, or (3) is subject to the control of a common entity.  
41 For purposes of this subsection an entity controls another entity if it  
42 owns, directly or individually, more than 50% of the ownership  
43 interest in that entity.

44 h. The State Treasurer may adopt regulations pursuant to the  
45 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et  
46 seq.) as are necessary to administer the provisions of this act.  
47 (cf: P.L.2004, c.57, s.3.)

1       3. This act shall take effect immediately.

2

3

4

STATEMENT

5

6       This bill would grant discretion to local governments to allow a  
7 bidder a reasonable amount of time to submit its business  
8 registration, provided that the bidder was registered on or before the  
9 last date for submitting bids. Under current law, if a business  
10 mistakenly omits its business registration from its bid proposal, the  
11 contracting unit is required to declare the omission a "fatal error"  
12 and consider the bid unresponsive. Current law does not allow a  
13 governing body to waive this restriction or provide additional time  
14 for a bidder to submit its business registration. This bill would  
15 allow a governing body to operate more efficiently in the event that  
16 a bidder who is already registered mistakenly omits its businesses  
17 registration from its bid proposal.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 557**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 15, 2008

The Assembly Housing and Local Government Committee reports favorably and with committee amendments Assembly Bill No. 557.

This bill, as amended, provides standards for when proof of business registration must be provided concerning contracts with public entities. Under current law, if a business mistakenly omits its business registration from its bid proposal, the contracting unit is required to declare the omission a "fatal error" and consider the bid unresponsive. The bill, as amended, would allow, the contracting agency to include a requirement to submit proof of a business registration with a bid or request for proposals; provided, however, that any failure to provide proof of business registration with the submission of a bid or other proposal document will be considered a curable defect, which may be cured by the contractor providing the proof of business registration to the contracting agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

The bill, as amended, would allow a governing body to operate more efficiently in the event that a bidder who is already registered mistakenly omits its businesses registration from its bid proposal.

The bill also provides that contract documents issued under a cooperative purchasing agreement shall identify the contract and the contracting agency awarding the contract.

This bill was prefiled for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

Committee amendments

The committee amended the bill to provide more clear standards for the circumstances requiring proof of business registration. The amendments also provide that contract documents issued under a cooperative purchasing agreement shall identify the contract and the contracting agency awarding the contract.

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

[Second Reprint]

**ASSEMBLY, No. 557**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 7, 2009

The Senate Community and Urban Affairs Committee reports favorably Assembly Bill No. 557 (2R).

This bill revises the procedure for contractors to provide proof of business registration to a local contracting agency prior to the awarding of a contract, purchase order or other contracting document.

Under current law, if a business mistakenly omits its business registration from its bid proposal, the local contracting unit is required to declare the omission a "fatal error" and consider the bid unresponsive. This permissive bill allows a local contracting agency to permit contractors to fulfill the requirement to provide proof of business registration by providing the contracting agency sufficient information for the contracting agency to verify proof of registration of the contractor, or listed subcontractors, through a computerized system maintained by the State.

The bill also requires a contracting agency to not pay a business organization for goods or services provided until such time as the organization provides proof of business registration. Failure to pay the business organization until proof of business registration is received shall not be grounds for the agency being liable for payment.

The bill would allow a governing body to operate more efficiently in the event that a registered bidder mistakenly omits its business registration from its bid proposal.

This bill is identical to S-2336.



STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 557**

with Assembly Floor Amendments  
(Proposed By Assemblyman DANCER)

ADOPTED: SEPTEMBER 25, 2008

These amendments revise the procedure for contractors to provide proof of business registration to a local contracting agency prior to the time that a contract, purchase order or other contracting document is awarded and authorized. The amendments provide that at the sole option of the contracting agency, the requirement that a contractor provide proof of business registration may be fulfilled by the contractor providing the contracting agency sufficient information for the contracting agency to verify proof of registration of the contractor, or listed subcontractors, through a computerized system maintained by the State.

The amendments also require that a contracting agency shall not pay a business organization for goods or services provided until such time as the organization provides proof of business registration as set forth in this section. Failure to pay the business organization until proof of business registration is received shall not be grounds for the agency being liable for payment.

The bill also makes a minor technical amendment to change the term "listed" subcontractor to "named" subcontractor in subsection b. of section 1 of P.L.2001, c.134 (C.52:32-44) and move the provision concerning the business registration of a contractor from subsection i. of section 1 of P.L.2001, c.134 (C.52:32-44) to subsection b. of section 1 of P.L.2001, c.134 (C.52:32-44).

# SENATE, No. 2336

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 27, 2008

**Sponsored by:**

**Senator BARBARA BUONO**

**District 18 (Middlesex)**

**Senator LEONARD LANCE**

**District 23 (Warren and Hunterdon)**

**SYNOPSIS**

Repeals bidding requirement for local public contracts to allow bidders to avoid unresponsive bid if they inadvertently omit business registration from bid proposal provided that bidder was registered before bid submission deadline.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning local public contracts and amending P.L.1999,  
2 c.39 and P.L.2001, c.134.

3

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

6

7 1. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to  
8 read as follows:

9 2. When required by the bid plans and specifications, the  
10 following requirements shall be considered mandatory items to be  
11 submitted at the time specified by the contracting unit for the  
12 receipt of the bids; the failure to submit any one of the mandatory  
13 items shall be deemed a fatal defect that shall render the bid  
14 proposal unresponsive and that cannot be cured by the governing  
15 body:

16 a. A guarantee to accompany the bid pursuant to section 21 of  
17 P.L.1971, c.198 (C.40A:11-21);

18 b. A certificate from a surety company pursuant to section 22  
19 of P.L.1971, c.198 (C.40A:11-22);

20 c. A statement of corporate ownership pursuant to section 1 of  
21 P.L.1977, c.33 (C.52:25-24.2);

22 d. A listing of subcontractors pursuant to section 16 of  
23 P.L.1971, c.198 (C.40A:11-16);

24 e. A document provided by the contracting agent in the bid  
25 plans, specifications, or bid proposal documents for the bidder to  
26 acknowledge the bidder's receipt of any notice or revisions or  
27 addenda to the advertisement or bid documents; and

28 f. **[A copy of the contractor's, and subcontractors' listed**  
29 **pursuant to subsection d. of this section, business registration as**  
30 **required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44)]**  
31 **(Deleted by amendment, P.L. , c. ) (pending before the**  
32 **Legislature as this bill).**  
33 (cf: P.L.2004, c.57, s.1)

34

35 2. Section 1 of P.L.2001, c.134 (C.52:32-44) is amended to  
36 read as follows:

37 1. a. For the purposes of this section:

38 “Bid” or “request for proposal” means a publicly advertised,  
39 formal process used by a contracting agency to receive offers to  
40 provide goods or services or construct a construction project. It is  
41 not the same as an informal, non-advertised process of requesting  
42 quotations from contractors;

43 “Bid threshold” means the statutory amount over which a  
44 contracting agency must seek bids;

45 "Business organization" means an individual, partnership,  
46 association, joint stock company, trust, corporation, or other legal

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 business entity or successor thereof, but does not include a  
2 government agency or organization organized as a nonprofit entity  
3 under 26 U.S.C. sec. 501 (c);

4 "Business registration" means a business registration certificate  
5 issued by the Division of Revenue in the Department of the  
6 Treasury or such other form [or] of verification or proof of  
7 registration as may be approved by the division that a contractor or  
8 subcontractor is registered with the Department of the Treasury;

9 "Contract" means any agreement, including but not limited to a  
10 purchase order or a formal agreement for the provision of goods,  
11 performance of services, or construction of a construction project,  
12 which is a legally binding relationship enforceable by law, between  
13 a contractor and a contracting agency that agrees to compensate the  
14 contractor, as defined by and subject to the terms and conditions of  
15 the agreement; and where the goods that are received, services that  
16 are delivered, and construction that is constructed is within the  
17 geographic borders of the State of New Jersey; and where:

18 (1) the value of a single contract with the contractor is in excess  
19 of 15 percent of the amount of the contracting agency's bid  
20 threshold; or

21 (2) when the aggregate amount of contracts with the contractor,  
22 during the fiscal year of the contracting agency, exceeds 15 percent  
23 of the amount of the contracting agency's bid threshold;

24 "Contractor" means a business organization that seeks to enter,  
25 or has entered into, a contract [to provide goods or services or to  
26 construct a construction project] with a contracting agency;

27 "Contracting agency" means the principal departments in the  
28 Executive Branch of the State Government, and any division, board,  
29 bureau, office, commission or other instrumentality within or  
30 created by such department, or any independent State authority,  
31 commission, instrumentality or agency, or any State college or  
32 university, any county college, or any local unit;

33 "Local unit" means any contracting unit as defined pursuant to  
34 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education  
35 as defined pursuant to N.J.S.18A:18A-2, a private firm that has  
36 entered into a contract with a public entity for the provision of  
37 water supply services pursuant to P.L.1995, c.101 (C.58:26-19 et  
38 al.), a private firm or public authority that has entered into a  
39 contract with a public entity for the provision of wastewater  
40 treatment service pursuant to P.L.1995, c.216 (C.58:27-19 et al.),  
41 and a duly incorporated nonprofit association that entered into a  
42 contract with the governing body of a city of the first class for the  
43 provision of wastewater treatment services pursuant to P.L.1995,  
44 c.216 (C.58:27-19 et al.);

45 "Subcontractor" means any business organization that is not a  
46 contractor that knowingly [provides goods or performs services  
47 for] enters into a contract, or constructs a construction project, with  
48 a contractor or another subcontractor in the fulfillment of a contract

1 issued by a contracting agency. In the case of a construction  
2 contract, “subcontractor” means only those subcontractors who are  
3 required by law to be named in the submission of a bid.

4 b. [No contract shall be entered into by any contracting agency  
5 unless the contractor provides a copy of its business registration in  
6 accordance with the following schedule:

7 (1) In response to a request for bids or a request for proposals, at  
8 the time a bid or proposal is submitted; or

9 (2) For all other transactions, before the issuance of a purchase  
10 order or other contracting document. In its sole discretion, the  
11 contracting unit may waive this requirement if a business  
12 registration has been previously provided to the contracting  
13 agency] A contractor shall provide the contracting agency with the  
14 business registration of the contractor and that of any named  
15 subcontractor prior to the time a contract, purchase order, or other  
16 contracting document is awarded or authorized. At the sole option  
17 of the contracting agency, the requirement that a contractor provide  
18 proof of business registration may be fulfilled by the contractor  
19 providing the contracting agency sufficient information for the  
20 contracting agency to verify proof of registration of the contractor,  
21 or named subcontractors, through a computerized system  
22 maintained by the State.

23 c. A subcontractor named in a bid or other proposal made by a  
24 contractor to a contracting agency shall provide a copy of its  
25 business registration to any contractor who shall [forward it to the  
26 contracting agency] provide it to the contracting agency pursuant to  
27 the provisions of subsection b. of this section. No contract with a  
28 subcontractor shall be entered into by any contractor under any  
29 contract with a contracting agency unless the subcontractor first  
30 provides the contractor with proof of a valid business registration.  
31 [The contracting agency shall file all business registrations received  
32 by the contracting agency with other procurement documents  
33 related to the contract] For bids and requests for proposals, the  
34 contracting agency shall retain the proof of business registration in  
35 the file where documents relating to the contract are maintained.  
36 For all other contracts, proofs of business registration shall be  
37 maintained in an alphabetical file.

38 d. [A contract entered into by a contracting agency with a  
39 contractor shall include provisions under subsection b. of this  
40 section and this subsection for the contractor to comply with, and  
41 for the contractor to notify subcontractors by written notice to  
42 comply with subsection c. of this section. A contracting agency  
43 shall not be responsible for a contractor's failure to comply with this  
44 section.] The contractor shall maintain and submit to the  
45 contracting agency a list of subcontractors and their addresses that  
46 may be updated from time to time during the course of the contract  
47 performance. A complete and accurate list shall be submitted

1 before final payment is made for goods provided or services  
2 rendered or for construction of a construction project under the  
3 contract. A contracting agency shall not be responsible for a  
4 contractor's failure to comply with this subsection.

5 e. **【Notice of the provisions of this section shall be included by**  
6 **the contracting agency】** The Department of the Treasury shall  
7 provide each contracting agency with appropriate language  
8 reflecting the obligations of contractors and subcontractors under  
9 this section that the contracting agency shall include in any contract  
10 document, bid specification, requests for proposals, or other  
11 documents notifying potential contractors of contract opportunities  
12 **【to provide goods or perform services for】** with a contracting  
13 agency.

14 f. Nothing in this section shall in any way alter the provisions  
15 or change the responsibilities or obligations of casino industry  
16 licensees as set forth in section 92 of P.L.1977, c.110 (C.5:12-92).

17 g. (1) A contractor or a contractor with a subcontractor that has  
18 entered into a contract with a contracting agency, and each of their  
19 affiliates, shall collect and remit to the Director of the Division of  
20 Taxation in the Department of the Treasury the use tax due pursuant  
21 to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)  
22 on all their taxable sales of tangible personal property delivered into  
23 this State.

24 (2) A contracting agency entering into a contract with a  
25 contractor, or a contractor with a subcontractor, shall include in its  
26 contract **【to provide goods or perform services or to construct a**  
27 **construction project】** with that contractor, or a contractor with a  
28 subcontractor, for the term of the contract, a requirement that the  
29 contractor or subcontractor and each of their affiliates shall collect  
30 and remit to the Director of the Division of Taxation in the  
31 Department of the Treasury the use tax due pursuant to the "Sales  
32 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) on all their  
33 sales of tangible personal property delivered into this State.

34 (3) For the purposes of this subsection, "affiliate" means any  
35 entity that (1) directly, indirectly, or constructively controls another  
36 entity, (2) is directly, indirectly, or constructively controlled by  
37 another entity, or (3) is subject to the control of a common entity.  
38 For purposes of this subsection an entity controls another entity if it  
39 owns, directly or individually, more than 50% of the ownership  
40 interest in that entity.

41 h. The State Treasurer may adopt regulations pursuant to the  
42 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et  
43 seq.) as are necessary to administer the provisions of this act.

44 i. If a contractor fails to provide proof of business registration  
45 upon request by the contracting agency for a contract that does not  
46 require bidding or a request for proposals, and the contracting  
47 agency determines that the purpose of that contract is of a  
48 proprietary nature with a contractor that does not have a business

1 presence in New Jersey, the contracting agency shall provide the  
2 Division of Revenue, within 10 days of executing the contract, a  
3 copy of the contract, evidence of the contractor's taxpayer  
4 identification number, and a signed certification attesting to the  
5 proprietary nature of the contract and representing that the  
6 contracting agency made a diligent effort to obtain proof of a  
7 business registration from the contractor.

8 j. When a contracting agency enters into a contract with a  
9 contractor under a contract issued by State of New Jersey  
10 Cooperative Purchasing Program, or any other authorized  
11 cooperative purchasing system, the contracting agency awarding the  
12 initial contract shall receive and file the proof of business  
13 registration. Contract documents issued under a cooperative  
14 purchasing agreement shall identify the contract and the contracting  
15 agency awarding the contract.

16 k. In situations of an emergent nature, a contracting agency  
17 may enter into a contract with a business organization, provided  
18 that the contractor agrees to provide a business registration within  
19 two weeks of the execution of the contract. The contracting agency  
20 shall not pay the business organization for goods or services  
21 provided until such time as the organization provides proof of  
22 business registration as set forth in this section. Failure to pay the  
23 business organization until proof of business registration is received  
24 shall not be grounds for the agency being liable for payment.

25 (cf: P.L.2004, c.57, s.3)

26  
27 3. This act shall take effect immediately.

28  
29  
30 STATEMENT

31  
32 This bill revises the procedure for contractors to provide proof of  
33 business registration to a local contracting agency prior to the  
34 awarding of a contract, purchase order or other contracting  
35 document.

36 Under current law, if a business mistakenly omits its business  
37 registration from its bid proposal, the local contracting unit is  
38 required to declare the omission a "fatal error" and consider the bid  
39 unresponsive. At the sole discretion of the local contracting  
40 agency, the bill would allow contractors to fulfill the requirement to  
41 provide proof of business registration by providing the contracting  
42 agency sufficient information for the contracting agency to verify  
43 proof of registration of the contractor, or listed subcontractors,  
44 through a computerized system maintained by the State.

45 The bill also requires a contracting agency to not pay a business  
46 organization for goods or services provided until such time as the  
47 organization provides proof of business registration. Failure to pay  
48 the business organization until proof of business registration is

**S2336 BUONO, LANCE**

7

1 received shall not be grounds for the agency being liable for  
2 payment.

3 The bill would allow a governing body to operate more  
4 efficiently in the event that a registered bidder mistakenly omits its  
5 businesses registration from its bid proposal.



# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

### SENATE, No. 2336

# STATE OF NEW JERSEY

DATED: DECEMBER 7, 2009

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 2336.

This bill revises the procedure for contractors to provide proof of business registration to a local contracting agency prior to the awarding of a contract, purchase order or other contracting document.

Under current law, if a business mistakenly omits its business registration from its bid proposal, the local contracting unit is required to declare the omission a "fatal error" and consider the bid unresponsive. This permissive bill allows a local contracting agency to permit contractors to fulfill the requirement to provide proof of business registration by providing the contracting agency sufficient information for the contracting agency to verify proof of registration of the contractor, or listed subcontractors, through a computerized system maintained by the State.

The bill also requires a contracting agency to not pay a business organization for goods or services provided until such time as the organization provides proof of business registration. Failure to pay the business organization until proof of business registration is received shall not be grounds for the agency being liable for payment.

The bill would allow a governing body to operate more efficiently in the event that a registered bidder mistakenly omits its business registration from its bid proposal.

This bill is identical to A-557(2R).