



State of New Jersey

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March 1, 2002

Marc Pfeiffer, Deputy Director
Division of Local Government Services
Department of Community Affairs
101 South Broad Street
P.O. Box 803
Trenton, New Jersey 08625

Re: 02-0017 - Whether local governmental contracting
units and school districts are subject to N.J.S.A.
52:32-44

Dear Deputy Director Pfeiffer:

You have requested advice regarding the application of N.J.S.A. 52:32-44 to local contracting units whose procurement activities are subject to the requirements of the Local Public Contracts Law and to school districts whose procurement activities are subject to the requirements of the Public School Contracts Law. More specifically, you have inquired as to whether a contractor that provides goods and/or services to a local contracting unit or a school district is required, pursuant to N.J.S.A. 52:32-44, to provide that local contracting unit or school district with proof of the contractor's valid business registration with the Division of Revenue in the Department of Treasury. For the reasons set forth below, you are advised that the provisions of N.J.S.A. 52:32-44 apply only to State contracting agencies and not to local contracting units or school districts and that, as a consequence, contractors who provide goods and/or services to such local contracting units or school districts are not required to provide proof of valid business registration with the Division of Revenue.

N.J.S.A. 52:32-44 was enacted on June 29, 2001 as L. 2001, c. 134. The enactment requires that a "contractor", as defined in the statute, must provide proof of valid business registration with the Division of Revenue in the Department of Treasury to "any contracting State agency", as that term is defined in the statute, prior to entering into a contract with that agency. N.J.S.A. 52:32-44(b). N.J.S.A. 52:32-44(a) defines the term "Contractor" to mean "a person under contract to provide goods or services or to construct a construction project, or seeking to

enter a contract to provide goods or services or to construct a construction project, with a contracting State agency." [Emphasis supplied.] N.J.S.A. 52:32-44(a) defines the term "Contracting State agency" to mean "the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and the Judicial Branch of the State and any office, board, bureau or commission within or created by the Legislative Branch or the Judicial Branch, or any independent State authority, commission, instrumentality or agency."

In addressing the question you have raised, it is clear from the language of N.J.S.A. 52:32-44 that the requirements of that statute are only applicable to the procurement activities of State agencies and not to the procurement activities of local contracting units subject to the Local Public Contracts Law. It is well established that statutory language is to be construed in accordance with its plain, ordinary and well-understood meaning. Alan J. Cornblatt, P.A. v. Barrow, 153 N.J. 218, 231 (1998); Service Armament Co. v. Hyland, 70 N.J. 530, 556 (1976). The plain language of N.J.S.A. 52:32-44 makes clear that its provisions are intended to apply to the principal departments in the Executive Branch of the State Government; to any division, board, bureau, office, commission or other instrumentality within or created by such a department; to the State Legislature; to any office, board, bureau or commission within or created by the Legislature; to the Judicial Branch of the State; to any office, board, bureau or commission within or created by the Judicial Branch of the State; and to any independent State authority, commission, instrumentality or agency. While N.J.S.A. 52:32-44(a) explicitly describes the types of entities that fall within the definition of the term "Contracting State agency" set forth in N.J.S.A. 52:32-44(a), the same statute makes no reference whatsoever to local contracting units that are subject to the Local Public Contracts Law. The plain language of the statute accordingly makes clear that it is only intended to apply to State, and not local, contracting entities.

Moreover, in those circumstances in which the Legislature has determined it appropriate to make statutory requirements pertaining to governmental procurement activities applicable not only to State agencies but also to local contracting units, it has enacted legislation which explicitly provides for the application of such legislation to both State and local units of government. For example, N.J.S.A. 52:25-24.2 provides that corporations or partnerships that seek to enter into contracts with public agencies are to submit statements to such agencies setting forth the names and addresses of all individuals who own 10% or more of the corporation or partnership. N.J.S.A. 52:25-24.2 expressly provides

that its requirements apply to any contract or agreement to be entered into by "the State or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions". [Emphasis supplied.]

Similarly, N.J.S.A. 10:5-31 et seq. requires that no public works contract shall be awarded to any contractor, subcontractor or business firm which has not agreed and guaranteed to afford equal employment opportunity in the performance of the contract in accordance with an affirmative action program approved by the State Treasurer. Similar to the requirements set forth in N.J.S.A. 52:25-24.2, the provisions of N.J.S.A. 10:5-31 et seq. make explicitly clear that they apply to any public works contract awarded by "the State, any county, municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing".

It is thus evident, first of all, 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 that are subject to Local Public Contracts Law. Moreover, it is also evident that, where the Legislature has deemed it appropriate to make specific statutory requirements applicable to procurement activities of both the State and municipal and county entities, it has utilized explicit language to make clear its intent in this regard.

The same analysis would apply to the issue of whether the provisions of N.J.S.A. 52:32-44 apply to the contracting activities of school districts. The plain language of N.J.S.A. 52:32-44 clearly does not encompass school districts whose procurement activities are governed by the Public School Contracts Law. Further, where the Legislature has deemed it appropriate to make specific statutory requirements, such as those set forth in N.J.S.A. 52:25-24.2, applicable to the procurement activities of school districts, it has done so through explicit statutory language. This is so even if the school district is eligible for receipt of the State share of the final eligible costs of school facility projects pursuant to the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72.


However, if the New Jersey Economic Development Authority undertakes the construction of a school facilities project, as is required for Abbott Districts and certain other districts under the Educational Facilities Construction and Financing Act, the analysis is different. The New Jersey Economic Development Authority is clearly an "instrumentality" of the State of New Jersey. Accordingly, Section 5(n) of the Educational Facilities Construction and Financing Act provides that the provisions of the

Public Schools Contracts Law "shall be applicable to any school facilities project constructed by a district but shall not be applicable to projects constructed by the authority...." Accordingly, contractors that enter into contracts with the New Jersey Economic Development Authority for the construction of school facilities would be required to comply with the requirements of N.J.S.A. 52:32-44 since the New Jersey Economic Development Authority is a contracting State agency within the scope of N.J.S.A. 52:32-44 (b).

In light of the foregoing, you are advised that the provisions of N.J.S.A. 52:32-44 have no application to the contracting activities of the local contracting units which are subject to the Local Public Contracts Law or of school districts which are subject to the Public School Contracts Law. In turn, such local contracting units and school districts are not required to comply with the requirements of that statute and are not required to obtain from contractors with whom they are contracting proof of the contractor's valid business registration with the Division of Revenue in the Department of Treasury.

Sincerely yours,

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By: 
Daniel P. Reynolds
Senior Deputy Attorney General

It should be noted that, under the Educational Facilities Construction and Financing Act, certain school facilities projects may be undertaken by redevelopment entities. Pursuant to the Educational Facilities Construction and Financing Act, redevelopment entities are not subject to the Public School Contracts Law. However, given that such entities are, under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., local contracting units that would be subject to the Local Public Contracts Law, see N.J.S.A. 40A:12A-3 and 4(c), they would also not be subject to the provisions of N.J.S.A. 52:32-44.