



Chapter 51/EO 117



**State of New Jersey
Department of Treasury
Division of Purchase & Property (DPP)
Contract Compliance & Audit Unit
Contact: CD134@treas.nj.gov**

REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134) AND EXECUTIVE ORDER 117 (2008)

- To safeguard the integrity of State government procurement by imposing restrictions 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.
- Prohibits State departments, agencies and authorities from entering into contracts exceeding \$17,500 with individuals or entities that made certain political contributions.

History

- Governor James E. McGreevey issued Executive Order 134 on September 22, 2004.
- Executive Order 134 was codified and superseded by Public Law 2005, c.51, which was made retroactive to September 22, 2004 (“Chapter 51”).
- Governor Jon S. Corzine issued Executive Order No. 117 on September 24, 2008, which was designed to enhance New Jersey’s efforts to protect the integrity of procurement decisions and increase the public’s confidence in government. The Executive Order builds upon the provisions of Chapter 51.

Certification Process

- DPP was assigned the responsibility of reviewing and approving the Certification and Disclosure of Political Contributions form to determine legal compliance.
- Prior to awarding any contract or agreement to any business entity (BE), the BE proposed as the intended awardee of the contract shall submit the Certification and Disclosure of Political Contributions form, certifying that no reportable contributions (in excess of \$300) or any currency contribution prohibited by either Chapter 51 or Executive Order 117 have been made by the BE and reporting all contributions the BE made.

Business Entity

- A corporation and any officer of the corporation and any person or business entity that owns or controls 10% or more of the stock of the corporation.
- A partnership (GP, LP, LLP) and any partner of the partnership.
- A professional corporation and any shareholder or any officer of the professional corporation.
- A limited liability company and any member of the limited liability company.
- A sole proprietor (natural or legal person).
- Any other form of entity organized under the laws of New Jersey or any other state or foreign jurisdiction: the entity and any principal, officer or partner.
- Any subsidiary directly or indirectly controlled by the business entity.
- Any political organization that falls under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity.
- A spouse or civil union partner and any child residing with an individual included within the definition of business entity, however, it does not apply to a contribution for whom the contributor is entitled to vote or to a political committee within whose jurisdiction the contributor resides.

Contributions

- Reportable and Prohibited Contributions
 - Contribution(s), including in-kind contributions, in excess of \$300 in the aggregate **per election** made to election funds of candidates for Governor/Lieutenant Governor and **per calendar year** made to a State Political Party Committee, County Political Party Committee, Legislative Leadership Committee or a Municipal Political Party Committee.
 - Currency contribution in any amount to the entities listed above.

Disclosure of Contributions

- Contributions made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. must be disclosed and if the State Treasurer determines any contribution poses a conflict of interest, it may be considered prohibited.

Disclosure of Contributions

- Any reportable contribution solicited or made during the 5 ½ years immediately preceding the commencement of negotiations or submission of a proposal must be disclosed to any:
 - i. Election Fund of any candidate for Governor/Lieutenant Governor
 - ii. State Political Party Committee
 - iii. County Political Party Committee

Disclosure of Contributions

- Any reportable contribution solicited or made during the 18 months immediately preceding the commencement of negotiations or submission of a proposal to any:
 - i. Municipal Political Party Committee
 - ii. Legislative Leadership Committee

Prohibited Contributions and the Period of Disqualification

- Election Fund of any candidate for Governor/Lieutenant Governor = 18 months from date of contribution if made prior to term of office. Applies to winner or loser.
- Election Fund of the sitting Governor/Lieutenant Governor made during the term of office = remainder of sitting Governor/Lieutenant Governor's term.
- Election Fund of sitting Governor/Lieutenant Governor made during the last 18 months of the term of office = remainder of sitting Governor/Lieutenant Governor's term AND to the end of second term if reelected.
Potentially 5 ½ years!

Prohibited Contributions and the Period of Disqualification

- State or County political party committee = 18 months from date of contribution.
- State or County political party committee of the same political party of the sitting Governor/Lieutenant Governor during the Governor/Lieutenant Governor's term of office = remainder of Governor/Lieutenant Governor's term.
- State or County political party committee of the same political party of the sitting Governor/Lieutenant Governor during the last 18 months of the term of office = remainder of Governor/Lieutenant Governor's term AND to the end of second term if reelected.

Prohibited Contributions and the Period of Disqualification

- Municipal political party committee = 18 months from date of contribution.
- Legislative leadership committee = 18 months from date of contribution.

Prohibited Contributions

- If any prohibited contribution is made by the vendor during the term of the contract, it must be reported to the Review Unit and may result in a material breach of contract if the State Treasurer determines the contribution poses a conflict of interest.
- The vendor will be prohibited from being awarded any future contracts exceeding \$17,500 until its period of ineligibility has expired.

Two-Year Certification

- The initial Certification and Disclosure of Political Contributions form is submitted by the vendor to the contracting State Agency.
- The State Agency forwards the form to the Review Unit for approval.
- Upon approval by the Review Unit, the Certification and Disclosure of Political Contributions form is valid for a two (2) year period for purposes of bidding on any new State contract.

Two-Year Certification

- The “approval” received from the Review Unit lasts for the term of the contract even if the contract exceeds the two year certification timeframe.

Example: State Agency receives approval from the Review Unit for a BE it intends to award a 3 year contract with 2 one year extensions. The State Agency does not need to submit new forms for the BE during the 5 years of the contract.

- The State Agency would have to request new forms from the same BE before it enters into a new contract with the BE after the BE’s two-year certification expired.

Two-Year Certification Vendor Responsibility

- Any change in the BE's ownership structure and/or any political contributions made during the two-year certification period will require the BE to submit a new Certification and Disclosure of Political Contributions form to the Review Unit.
- Additionally, during the term of the contract the BE has a continuing responsibility to report any change in the ownership structure and/or any political contributions made directly to the Review Unit.
- After a vendor has received a two-year certification, it may submit any subsequent form directly to the Review Unit for recertification.

State Agency's Role

- Prior to requesting a Certification and Disclosure of Political Contributions form from the BE, the State Agency should first send an e-mail to CD134@treas.nj.gov to verify the certification status of the vendor.
- The State Agency must receive notification of a business entity's approved Two-Year Certification before awarding any contract or agreement to the BE.
- If the Review Unit sends an email response that the recommended BE is within an approved two-year period, then the response should be included with the bid/contract documentation.

State Agency's Role

- If the response from the Review Unit is that the BE is not within an approved two-year period, then a two-year certification form must be obtained from the vendor and forwarded to the Review Unit.
- The State Agency should communicate Chapter 51/EO 117 requirements to the BE.
- The State Agency should provide the BE with the Information and Instructions document along with the Vendor Certification and Disclosure of Political Contributions form available at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>
- The State Agency should notify the BE of an ineligibility determination made by the Review Unit.

State Agency's Role

- Certification and Disclosure of Political Contributions forms should be scanned and sent electronically to CD134@treas.nj.gov.
- If forms are unable to be sent electronically, hard copies may be mailed to the Review Unit or hand delivered to the 9th floor Review Unit, 33 West State Street, Trenton.
- The “State Agency Use Only” section at the top of the Certification and Disclosure of Political Contributions form must be completed by the contracting State Agency. Forms should not be sent or hand delivered without the top section completed.

State Agency's Role “Good Faith Review”

The State Agency should conduct a good faith review before sending the form to the Review Unit. The State Agency should:

- Review the Certification and Disclosure of Political Contributions form for completeness. (Are all sections filled out?)
- Obtain all missing information from the BE before sending to the Review Unit.
- Follow-up communication to remind the BE of outstanding documentation.

Review of Form

- Form must be completed in its entirety.
- **Page 1, Part 1: Business Entity Information**
 - Name, address and FEIN
 - Type of business must be checked
 - Ownership information must be listed.
- **Page 2, Part 2: Disclosure of Contributions**
 - If no reportable contributions were made, the box must be checked.

Review of Form

- Page 2, **Part 3: Certification** – Box A, B, C and D
 - At least one box must be checked
 - BOX A offers the convenience of having a single representative give certification for the BE and any person or entity whose contributions are attributable to the BE. (Only one form needs to be submitted.)
 - If the BE is a sole proprietor (e.g. a consultant), any box may be checked under **Part 3: Certification** if the sole proprietor is the person completing the form.
 - For all other businesses, if Box A is not checked, additional forms are required from the necessary parties.

Examples

- If a partnership submits its form with BOX C checked, additional forms are required from each of the partners regardless of the partner's ownership interest.
- If a corporation submits its form with BOX B checked, additional forms are required from the officers of the corporation or shareholders of the corporation for which the representative is not certifying. Those additional forms must be included with the submittal.

Review of Form

- Page 3, Continuation of **Part 3: Certification**
 - The representative completing the form must sign and print his/her name, title or position and enter the date.

The State Agency as well as the BE should review the Information and Instructions form for guidance on how to complete the Vendor Certification and Disclosure of Political Contributions form and for definitions pertaining to the statute and Executive Order.

FOR STATE AGENCY USE ONLY

Solicitation, RFP, or Contract No. _____ Award Amount _____
Description of Services _____
State Agency Name _____ Contact Person _____
Phone Number _____ Contact Email _____
 Check if the Contract / Agreement is Being Funded Using FHWA Funds

Must be completed by State Agency

Part 1: Business Entity Information

Please check if requesting recertification

Full Legal Business Name _____
(Including trade name if applicable)
Address _____
City _____ State _____ Zip _____ Phone _____
Vendor Email _____ Vendor FEIN (SS# if sole proprietor/natural person) _____

Check off the business type and list below the required information for the type of business selected.
MUST BE COMPLETED IN FULL

- Corporation: LIST ALL OFFICERS and any 10% and greater shareholder
- Professional Corporation: LIST ALL OFFICERS and ALL SHAREHOLDERS
- Partnership: LIST ALL PARTNERS with any equity interest
- Limited Liability Company: LIST ALL MEMBERS with any equity interest
- Sole Proprietor

Note: "Officers" means President, Vice President with senior management responsibility, Secretary, Treasurer, Chief Executive Officer or Chief Financial Officer of a corporation, or any person routinely performing such functions for a corporation.

All Officers of a Corporation or PC

10% and greater shareholders of a corporation
or all shareholder of a PC

All Equity partners of a Partnership

All Equity members of a LLC

If you need additional space for listing of Officers, Shareholders, Partners or Members, please attach separate page.

IMPORTANT NOTE: You must review the definition of "contribution" and "business entity" on the Information and Instructions form prior to completing Part 2 and Part 3. The Information and Instructions form is available at: <http://www.state.nj.us/treasury/purchase/forms.shtml#eoi34>.

Ownership Information
(A separate Ownership Disclosure form is no longer required)

Part 2: Disclosure of Contributions by the business entity or any person or entity whose contributions are attributable to the business entity.

1. Report below all contributions solicited or made during the 4 years immediately preceding the commencement of negotiations or submission of a proposal to any:

Political organization organized under Section 527 of the Internal Revenue Code and which also meets the definition of a continuing political committee as defined in N.J.S.A. (See Information and Instructions forms.)

2. Report below all contributions solicited or made during the 5 ½ years immediately preceding the commencement of negotiations or submission of a proposal to any:

Candidate Committee for or Election Fund of any Governorial or Lieutenant Governorial candidate
State Political Party Committee
County Political Party Committee

3. Report below all contributions solicited or made during the 18 months immediately preceding the commencement of negotiations or submission of a proposal to any:

Municipal Political Party Committee
Legislative Leadership Committee

Full Legal Name of Recipient	_____		
Address of Recipient	_____		
Date of Contribution	_____	Amount of Contribution	_____
Type of Contribution (i.e. currency, check, loan, in-kind)	_____		
Contributor Name	_____		
Relationship of Contributor to the Vendor	_____		
If this form is not being completed electronically, please attach additional contributions on separate page.			
<input type="button" value="Remove Contribution"/>	<input type="button" value="Click the 'Add a Contribution' tab to enter additional contributions."/>		
<input type="button" value="Add a Contribution"/>			

Check this box only if no political contributions have been solicited or made by the business entity or any person or entity whose contributions are attributable to the business entity.

Part 3: Certification

- (A) I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**.
- (B) I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**, except for the individuals and/or entities who are submitting separate Certification and Disclosure forms which are included with this submittal.
- (C) I am certifying on behalf of the business entity only; any remaining persons or entities whose contributions are attributable to the business entity (as listed on Page 1) have completed separate Certification and Disclosure forms which are included with this submittal.
- (D) I am certifying as an individual or entity whose contributions are attributable to the business entity.

I hereby certify as follows:

1. I have read the Information and Instructions accompanying this form prior to completing the certification on behalf of the business entity.
2. All reportable contributions made by or attributable to the business entity have been listed above.

Box must be checked if no political contributions were made

3. The business entity has not knowingly solicited or made any contribution of money, pledge of contribution, including in-kind contributions, that would bar the award of a contract to the business entity unless otherwise disclosed above:
- a) Within the 18 months immediately preceding the commencement of negotiations or submission of a proposal for the contract or agreement to:
 - (I) A candidate committee or election fund of any candidate for the public office of Governor or Lieutenant Governor or to a campaign committee or election fund of holder of public office of Governor or Lieutenant Governor; OR
 - (II) Any State, County or Municipal political party committee; OR
 - (III) Any Legislative Leadership committee.
 - b) During the term of office of the current Governor or Lieutenant Governor to:
 - (I) A candidate committee or election fund of a holder of the public office of Governor or Lieutenant Governor; OR
 - (II) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.
 - c) Within the 18 months immediately preceding the last day of the sitting Governor or Lieutenant Governor's first term of office to:
 - (I) A candidate committee or election fund of the Incumbent Governor or Lieutenant Governor; OR
 - (II) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.
4. During the term of the contract/agreement the business entity has a continuing responsibility to report, by submitting a new Certification and Disclosure form, any contribution it solicits or makes to:
- (a) Any candidate committee or election fund of any candidate or holder of the public office of Governor or Lieutenant Governor; OR
 - (b) Any State, County or Municipal political party committee; OR
 - (c) Any Legislative Leadership committee.
- The business entity further acknowledges that contributions solicited or made during the term of the contract/agreement may be determined to be a material breach of the contract/agreement.
5. During the two-year certification period the business entity will report any changes in its ownership structure (including the appointment of an officer within a corporation) by submitting a new Certification and Disclosure form indicating the new owner(s) and reporting said owner(s) contributions.

I certify that the foregoing statements in Parts 1, 2 and 3 are true. I am aware that if any of the statements are willfully false, I may be subject to punishment.

Signed Name _____ Print Name _____
 Title/Position _____ Date _____

Form must be signed and dated

Procedure for Submitting Form(s)

The contracting State Agency should submit this form to the Chapter 51 Review Unit when it has been required as part of a contracting process. The contracting State Agency should submit a copy of the completed and signed form(s), to the Chapter 51 Unit and retain the original for their records.

The business entity should return this form to the contracting State Agency. The business entity can submit this form directly to the Chapter 51 Review Unit only when it -

- Is approaching its two-year certification expiration date and wishes to renew certification;
- Had a change in its ownership structure; OR
- Made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Forms should be submitted either electronically to cd134@treas.nj.gov, or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625.

Review Unit's Role

- The Review Unit is responsible for processing approximately 3,000 forms on an annual basis.
- Any additional information needed to process the form will be requested from the State Agency. If necessary, the Review Unit will provide guidance to the BE regarding the completion of the form.

Review Unit's Role

- Once the transaction is reviewed and approved, the Review Unit will send the State Agency an email confirming the BE's Chapter 51/EO 117 compliance.
- Until the State Agency has obtained an email from the Review Unit approving the BE's form, the BE is not eligible to be awarded a contract.
- The email is proof of approval and must be retained by the State Agency.

Ineligibility

- If the Review Unit determines that a BE is not in compliance with the statute or Executive Order, a letter of ineligibility will be forwarded to the contracting State Agency. Note: It is the State Agency's responsibility to notify the vendor of its ineligibility determination.
- BE can rectify a disqualifying contribution if it requests **and receives** a refund of the prohibited contribution within 30 calendar days of the making of the contribution. However, there is no recourse for contributions made within 60 days of a gubernatorial primary or general election.
- The BE has 10 calendar days from the receipt of the State Agency's notice of ineligibility to request reconsideration from the Director of DPP.

Ineligibility

- If the Director upholds the Review Unit's decision, the BE has 10 days of the notice of the Director's determination to file an appeal with the State Treasurer.
- If the State Treasurer upholds the Director's decision, the BE may file an appeal of the Treasurer's final decision with the Appellate Division of the New Jersey Superior Court.

Public Exigency

- Public exigency: If a State Agency determines that a public exigency requires a particular transaction to proceed without Chapter 51 review or despite an ineligibility determination, the State Agency may send a request to the Treasurer explaining why the procurement should be exempted as a public exigency.
- It must be an emergency that affects the public health, safety, or welfare OR a critical State Agency mandate which requires the immediate delivery of goods or performance of services.

Additional Helpful Information

<http://www.state.nj.us/treasury/purchase/execorder134.shtml>

Visit the above webpage for the following information:

- Link to the Information and Instructions form together with the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form.
- Link to Questions and Answers pertaining to Chapter 51 and EO 117.
- Link to send inquiries pertaining to Chapter 51 and EO 117.
- Link to the definition of a Business Entity.
- Various additional information.