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May 8, 2015

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

Re: 15-0021 - Whether N.J.S.A. 52:25-24.2 applies to
limited partnerships, limited liability
companies, limited liability partnerships and
Subchapter S corporations

Dear Director Cunningham:

You have requested advice regarding the interpretation of N.J.S.A. 52:25-24.2. This statute provides that no corporation or partnership shall be awarded any contract by the State, or any county, municipality or school district, or any subsidiary or agency thereof, unless, prior to the receipt of the bid of the corporation or the partnership for the contract, there is submitted to the public contracting unit a statement setting forth the names and addresses of all individuals who own 10% or more of the stock or interest in the corporation or partnership. Your specific inquiry concerns whether the provisions of N.J.S.A. 52:25-24.2, which specifically refer to corporations and partnerships, apply to limited partnerships, limited liability companies, limited liability partnerships and Subchapter S corporations. For the reasons set forth below, you are advised that the provisions of N.J.S.A. 52:25-24.2 do apply to these types of business entities.



N.J.S.A. 52:25-24.2 was enacted as L. 1997, c. 33 on March 8, 1997. The statute provides in relevant part as follows:

No corporation or partnership shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, 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, unless prior to the receipt of the bid or accompanying the bid of said corporation or said partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own a 10% or greater interest therein, as the case may be.

The legislative purposes underlying the requirements of N.J.S.A. 52:25-24.2 were discussed in George Harms Construction Co. v. Borough of Lincoln Park, 161 N.J. Super. 367 (Law Div. 1978). In that case, the court noted that the Legislature, in enacting N.J.S.A. 52:25-24.2, expressed its clear intent to ensure that all members of a governing body and the public would be made aware of the real parties in interest with whom they are asked to contract. George Harms, 161 N.J. Super. at 372-373. The court went on to note that, by virtue of the requirements of N.J.S.A. 52:25-24.2, the public, as well as public officials, can identify any real or potential conflicts of interest arising out of the award of public contracts and can further identify those bidders who lack the requisite responsibility to properly fulfill the requirements of the awarded contract. In light of these significant public purposes, the court concluded that the disclosure requirements set forth in N.J.S.A. 52:25-24.2 were an integral part of the overall process for competitive bidding under the Local Public

Contracts Law and were designed to further the integrity of that process. George Harms, N.J. Super. at 372-373.

It is clear that the legislative purposes intended to be served by compliance with the provisions of N.J.S.A. 52:25-24.2 warrant application of those requirements to limited partnerships, limited liability companies, limited liability partnerships and Subchapter S corporations, as well as other types of business entities. See N.J.S.A. 14A:1-2.1 (defining "other business entity" as "a partnership, limited liability company, statutory trust, business trust or association, real estate investment trust, common-law trust, national association, or any other unincorporated business, whether organized under the laws of this State or under the laws of any other state or territory of the United States or the District of Columbia, the United States or any foreign country or other foreign jurisdiction"). The act provides that "no corporation or partnership shall be awarded any contract...." The word "no" means "not any," "not one." Webster's New Riverside University Dictionary (1988). So by its terms the act applies to any and all corporate entities and partnerships regardless of the precise form. Nothing in the act's language or purpose suggests a design to limit the disclosure requirements to entities in the strict corporate or partnership form. To the contrary, the clear purpose is to provide ownership information to the public and public officials in connection with the award after bid of any contract or agreement paid out of the public funds. To meet the legislative purpose of enabling public officials, as well as the public generally, to be aware of the real parties in interest with whom they are asked to contract and further to enable the public, as well as public officials, to identify any real and potential conflicts of interest arising out of the award of public contracts and also to identify those bidders who may lack the requisite responsibility to perform such contracts, the disclosure requirements set forth in N.J.S.A. 52:25-24.2 must apply to all forms of business entities.

In conclusion, for the reasons set forth above, you are advised 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 business entities, including limited partnerships, limited liability companies, limited liability partnerships and Subchapter S corporations.

Sincerely yours,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



Christine Baker
Assistant Attorney General