

March 25, 2020

Public Works Contractors: Be Aware of March 30, 2020 Political Contribution Reporting Requirements in the Current Environment

Since 2006, public contractors that perform work for government entities under statutes such as the Local Public Contracts Law (N.J.S.A. 40A:11-1, et seq.) and Public School Contracts Law (N.J.S.A. 18A:18A-1, et seq.) are required to disclose political contributions as a condition of performing public work. N.J.S.A. 19:44A-20.23-20.27. Under what has come to be known as New Jersey's "Pay-to-Play" ("PTP") law,¹ political contributions are also subject to specific restrictions, which under certain circumstances may prohibit a public contractor from receiving a public contract and limit its ability to make contributions during the pendency of the contract. N.J.S.A. 19:44A-20.23-20.27.

Most importantly during this pandemic period is the PTP law's reporting requirement. The State of New Jersey requires **all** for-profit business entities that receive \$50,000.00 or more in government contracts in a given year to electronically file an annual Business Entity Status Statement ("BESS") ([Form BE](#)) with the New Jersey Election Law Enforcement Commission ("ELEC") containing its government contract information and reportable political contributions. **This report is due by March 30th each year, and to date there has been no across the board extension of this deadline despite the COVID-19 pandemic.** ELEC did apparently concede that the current national health issue has impacted all operation businesses and has stated "*entities are advised to file as soon as possible by the deadline if they are currently operation or otherwise able to file.*" [Business Entity Disclosure Filing](#).

However, there may be a silver lining for the hardest hit public contractors. Based upon the recognition of the pandemic's impact on New Jersey businesses, including closures and potential limited access to records, ELEC is offering a grace period "*for any business entities during their period of closure if a business is affected by the current public health emergency.*" [Business Entity](#)

¹ There are stricter prohibitions for entities performing State contract work: *A business entity which agrees to any contract or agreement with the State or any department or agency thereof or its independent authorities either for the rendition of services or furnishing of any material, supplies or equipment or for the acquisition, sale, or lease of any land or building, if the value of the transaction exceeds \$17,500, shall not knowingly solicit or make any contribution reportable by the recipient of money, or pledge of a contribution, including in-kind contributions, to a candidate committee of any candidate or holder of the public office of Governor or to any State or county committee of a political party prior to the completion of the contract or agreement.* N.J.A.C. 19:25-24.2

[Disclosure Filing](#). Any business seeking a BESS grace period must contact ELEC via email at efiling@elec.nj.gov and provide the business entity and the duration of closure, if known. Even if a grace period is sought, we recommend working to prepare and file a BESS as close as possible to the March 30th deadline until a request for a grace period is confirmed.

While we understand that many public contractors are struggling to adapt to the new, temporary reality caused by this pandemic and focusing on keeping businesses productive despite an economic downturn, we want all our clients that perform public work to remain wary of this deadline and the right to seek a grace period. This is especially important when considering businesses that fail to file timely file a BESS “*shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report*”. N.J.S.A. 19:44A-20.27(e). Simply put, you could be left to ELEC’s whims if you fail to timely file a BESS or do not receive a grace period to file a BESS.

We encourage all public contractors to strive to either timely file a BESS online or seek a grace period. As always, and especially during these unique times, we are here to assist you in any way regarding filing the BESS, seeking a grace period, or any other questions or concerns.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.