

Expanded March 30 Filing Enhances Pay-to-Play Disclosure, Highlights Penalties for New Jersey Government Contractors

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New Jersey is well-known for having strict, comprehensive, and complex pay-to-play laws. Two new changes to an annual pay-to-play filing required of some government contractors will only enhance that reputation.

State law requires a company that receives \$50,000 annually through government contracts in New Jersey to file a report by March 30 of the following year disclosing most of its public contracts and political contributions in the state. Covered companies must disclose their 2015 activity [online](#) using Form BE by March 30, 2016.

The **New Jersey Election Law Enforcement Commission (“ELEC”)** recently amended [Form BE](#) to include two new requirements effective this year. First, the filer must certify that the statements in the form are true, and that he or she is aware that willfully filing a false statement may lead to punishment. Second, the form now requires that a filer identify whether each disclosed contract “was awarded pursuant to a fair and open process.”

These changes may appear minor but are significant for three reasons. First, highlighting the possibility of false statements prosecution signals a potential liability for contractors at a time of increased attention to pay-to-play violations in New Jersey. The state is wrapping up its largest-ever prosecution of pay-to-play violations in which multiple executives of a company pled guilty to [evading the pay-to-play laws](#). Individual sentences included six-figure fines, debarment, and likely jail time, while the company paid [\\$2 million in fines](#) and is no longer in business. In this atmosphere, and with this new certification, a truthful and accurate disclosure is of paramount importance.

Second, the fair and open certification touches on other parts of New Jersey’s notoriously complex pay-to-play reporting and prohibition system. For example, certain laws only apply to contracts not awarded via a fair and open process, so identifying a contract as one that was not awarded by a fair and open process highlights the contract for regulatory agencies. Disclosing that a large contract was awarded by other than a fair and open process may create public relations problem for contractors as well.

Third, determining whether a contract was awarded pursuant to a fair and open process is not always a simple task. State law requires a contract awarded according to a “fair and open process” to, “at a minimum,” be:

- advertised in advance in newspapers or on the contracting entity’s website;
- awarded by a process providing for public solicitation for proposals and under a process established in writing; and
- opened and announced publicly upon award.

However, the final decision on whether a contracting process was fair and open is left to the entity awarding the contract. This means that the fair and open analysis rules might change based on who awarded the contract. Nonetheless, contractors will have to make this determination and disclosure with the new false statements certification lurking in the background.

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