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DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. BOX 110, TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

June 15, 2022

Dear Local Government and School Officials:

With the New Jersey Prevailing Wage Act having undergone multiple changes over the past few years, the New Jersey Department of Labor and Workforce Development (NJDOL) is encountering an increasing number of violations that negatively impact the timeliness and cost of public works projects. NJDOL, the New Jersey Department of Community Affairs (DCA), and the New Jersey Department of Education (DOE), jointly write this correspondence to remind local governments and boards of education of key public body responsibilities under both Acts.

The NJDOL Division of Wage and Hour Compliance is responsible for enforcing multiple statutes regarding the performance of public work set forth in the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. and the Public Works Contractor Registration Act (PWCR Act), N.J.S.A. 34:11-56.47 et seq. New Jersey laws concerning public work not only safeguard worker efficiency, safety, and well-being, but also help protect employers paying fair employee compensation and complying with State tax and insurance laws from being undercut by unfair competition. The PWCR Act now also requires public works contractors to participate in a United States Department of Labor-registered apprenticeship program, guaranteeing that contractors receiving public funds are contributing to training and growing New Jersey's crucial construction industry workforce.

Pursuant to N.J.S.A. 34:11-56.26, the Prevailing Wage Act defines a "public body" as "the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions." Furthermore, the definition of "public work" in the Prevailing Wage Act, which is also incorporated by reference in the PWCR Act, is:

construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

- (a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and



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ROBERT ASARO-ANGELO
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- (b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

Pursuant to N.J.S.A. 34:11-56.27, contracts for public work that exceed a certain threshold, currently \$16,263 for municipalities and \$2,000 for all other public bodies, are subject to both the Prevailing Wage Act and the PWCR Act. Such contracts must contain language advising of the applicability of the Act, along with either the prevailing wage rates for each craft or trade needed to perform the contract or a hyperlink which the contractor(s) can use to obtain the rates. N.J.S.A. 34:11-56.28.

N.J.S.A. 34:11-56.38 also requires public bodies to check the NJDOL list of contractors debarred for violating the Prevailing Wage Act to ensure no contract for public work is awarded to such contractors. The NJDOL prevailing wage debarment list is available [online](#). Likewise, if a debarred entity appears on the Ownership Disclosure Statement that a contractor must submit with their bid pursuant to N.J.S.A. 52:25-24.2, the contract cannot be awarded to that contractor.

All contractors, subcontractors, or lower tier subcontractors who bid on or engage in the performance of any public works contract subject to Prevailing Wage Act, and after April 1, 2020, any contract for which another State law requires payment of prevailing wage, are required to obtain a Public Works Contractor Registration (PWCR) certificate from NJDOL. The PWCR certificate for the contractor and any named subcontractors shall be provided to the public body prior to contract award and must be effective as of the date the contractor either submitted its bid, responded to a solicitation of quotes, or otherwise agreed to perform work exceeding the public body's prevailing wage threshold. Although not required by statute, it is strongly recommended that a public body check the PWCR status of a contractor and any named subcontractors prior to awarding a contract for public work. PWCR status can be checked online via the same hyperlink as listed above for checking Prevailing Wage Act debarment. Awarding public work to an unregistered contractor may expose a public body to potential litigation along with an NJDOL-issued Stop Work Order (SWO) that could prohibit the contractor from working on the public body's project and potentially all other public works projects.

After a project subject to the Prevailing Wage Act is underway, the public body must receive, maintain, and make available, the certified payrolls which are to be submitted by all contractors and subcontractors on a weekly basis. This is pursuant to N.J.A.C. 12:60-5.1(c), which states:

The public works contractors and subcontractors shall submit to the public body or lessor which contracted for the public works project the following in a form satisfactory to the Commissioner

...

1. A certified payroll record on each public works project.
 - i. Such record shall be submitted each payroll period within 10 days of the payment of wages.
 - ii. The public body shall receive, file, store and make available for inspection at its normal place of business and during normal business hours the certified payroll records.

[P.L. 2021, c. 301](#), effective as of May 7, 2022, requires a contractor submitting the lowest bid for a contract that is subject to the Prevailing Wage Act, if that bid is 10 percent or more lower than the next lowest bid, to certify to the public body that the prevailing wage rates required by the Act shall be paid. Further, P.L.

2021, c. 301 also amended N.J.S.A. 34:11-56.27 to require that any contract for public work expressly stipulate that workers performing work under the contract shall not be paid less than the required prevailing wage rate.

NJDOL is proposing a standardized form of the above-referenced certification, along with standardized contractual language for use in all public works contracts regarding the obligation of contractors to pay workers the prevailing wage rate. While those rules have not yet been finally adopted, the rule proposal can be viewed [here](#) and may be instructive when advising public works contractors and drafting contracts for the performance of public work. If the contractor does not provide the required certification, the public body must award the contract to the next lowest responsible and responsive bidder.

In summation, please make sure the following steps are taken for each public work project:

- Ensure that all contracts for public work contain language advising of the applicability of the Prevailing Wage Act and the Public Works Contractor Registration Act.
- Ensure the appropriate prevailing wage determination(s) are contained within the contract between the public body and the general contractor.
- Ensure that certified payrolls are submitted weekly for all work performed subject to the Prevailing Wage Act.
- Prior to awarding a contract for public work, check the NJDOL website to confirm that the contractor and any named subcontractors are registered with the NJDOL as public works contractors under the PWCR Act and do not appear on the list of ineligible bidders by virtue of debarment or outstanding judgments.
- Establish and maintain a process for collecting certified payroll records and making them accessible to the public and NJDOL for review.
- Where the lowest bid for a contract for public work is ten percent or more lower than the next lowest bid for the contract, ensure that, prior to awarding the contract, the lowest bidder submits a written certification stating that the contractor will pay all workers the prevailing wage rate.

Please contact the Wage & Hour Division and Contract Compliance at WHPublicContracts@dol.nj.gov, or by telephone at (609) 292-2259, with any questions on the above points. [Local Finance Notice 2021-20](#), issued by the Division of Local Government Services, also contains further information on Prevailing Wage Act and PWCR Act compliance.

Thank you for your time and attention.

Sincerely,



Robert Asaro-Angelo
Commissioner
New Jersey Department of Labor
and Workforce Development



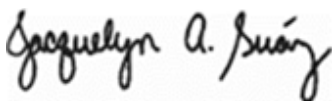
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