

CHAPTER 62

PUBLIC WORKS CONTRACTOR REGISTRATION

Authority

N.J.S.A. 34:11-56.48 et seq. (P.L. 1999 c.238).

Source and Effective Date

R.2000 d.167, effective April 17, 2000.
See: 32 N.J.R. 381(a), 32 N.J.R. 1397(a).

Chapter Expiration Date

Chapter 62, Public Works Contractor Registration, was extended by gubernatorial directive from October 14, 2005 to March 14, 2006. See: 37 N.J.R. 4275(a).

Chapter Historical Note

Chapter 62, Public Works Contractor Registration, was adopted as R.2000 d.167, effective April 17, 2000. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

12:62-1.1 Application and scope

(a) The rules in this chapter are promulgated by the Department of Labor in order to implement "The Public Works Contractor Registration Act," P.L. 1999, c.238 (N.J.S.A. 34:11-56.48 et seq.). The Act establishes a unified procedure for the registration of contractors and subcontractors engaged in public works projects.

(b) The provisions of this chapter shall apply to all contractors, as that term is defined in N.J.A.C. 12:62-1.3.

12:62-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means "The Public Works Contractor Registration Act" (P.L. 1999, c.238; N.J.S.A. 34:11-56.48 et seq.) and the rules promulgated thereunder.

"Commissioner" means the Commissioner of Labor or his or her duly authorized representatives.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq., and includes any subcontractor or lower tier subcontractor of a contractor as defined in this section.

"Department" means the Department of Labor.

"Maintenance" means "maintenance work" as that term is defined at N.J.S.A. 34:11-56.26, namely, the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

"Public work" means construction, reconstruction, demolition, alteration, 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, 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 the contract:

1. Not less than 55 percent 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;
2. 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.

"Subcontractor" means any subcontractor or lower tier subcontractor of a contractor.

"Worker" includes a laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site.

Amended by R.2004 d.164, effective April 19, 2004.
See: 35 N.J.R. 5480(a), 36 N.J.R. 1942(b).
Rewrote "Contractor"; added "Subcontractor".

12:62-1.3 Administration and enforcement

The Division of Wage and Hour Compliance, within the Department of Labor, shall administer and enforce this chapter. All the powers, duties and responsibilities vested in the Commissioner by the Public Works Contractor Registration Act are hereby delegated to and vested in the Director of the Division of Wage and Hour Compliance, except the power to adopt, amend or repeal rules and the power to make final determinations resulting from any of the

hearings required or permitted to be held pursuant to the Act or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

12:62-1.4 Validity

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter. To this end, the provisions of this chapter are severable.

SUBCHAPTER 2. PUBLIC WORKS CONTRACTOR REGISTRATION

12:62-2.1 Registration required

(a) No contractor shall bid on any contract for public work unless the contractor is registered pursuant to the Act. In addition:

1. No contractor shall list a subcontractor in a bid proposal for a public works contract unless the subcontractor as required is registered pursuant to the terms of N.J.S.A. 34:11-56.48 et seq., the Public Works Contractor Registration Act, at the time the bid is submitted to the public entity; and

2. No contractor or subcontractor not listed on the bid proposal shall engage in the performance of any public work project unless the contractor or subcontractor is registered pursuant to the Act.

(b) Any contractor which seeks to register under the Act shall apply to the Division of Wage and Hour Compliance, within the Department of Labor. For this purpose, the Department shall prepare a "New Jersey Department of Labor Application for Public Works Contractor Registration." This form shall be available from the Department.

(c) As part of its application to the Department, a contractor shall provide all required information and documents requested by the Application for Public Works Contractor Registration. The information to be submitted for review shall include:

1. The name, principal business address, telephone and fax number as well as any e-mail address of the business;

2. Whether the contractor or subcontractor is a corporation, partnership, sole proprietorship, or other form of a business entity;

3. The name and address of the custodian of records and agent for service of process within the State of New Jersey;

4. The name, addresses of residence, and telephone number of each person with a financial interest in the business and the percentage of interest, except that if the business is a publicly traded corporation, the contractor shall supply the names and addresses of residence of the corporation's officers;

5. The business' Federal Employer Identification Number and State of New Jersey Taxpayer Identification Number;

6. A history of previous and/or current labor law violations and the final dispositions of such violations;

7. Proof of workers' compensation insurance; and

8. Any other relevant and appropriate information from a particular applicant as determined by the Commissioner.

(d) The contractor shall pay an initial, non-refundable, annual registration fee of \$300.00 to the Commissioner. The non-refundable fee for the second annual registration shall be \$300.00. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$500.00

(e) An applicant shall fully and accurately complete all relevant parts of the Application for Public Works Contractor Registration. Failure to provide a complete application shall result in rejection.

(f) An applicant who fails to provide specifically requested additional information or documentation shall be considered not in compliance with the Act and shall be subject to rejection.

(g) If the applicant knowingly supplies incomplete or inaccurate information to the Department in connection with his or her application, he or she shall be disqualified under these rules, barred from reapplying for registration for a period of up to one year from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. 12:62-2.3, 2.4 and 2.5.

Amended by R.2004 d.164, effective April 19, 2004.

See: 35 N.J.R. 5480(a), 36 N.J.R. 1942(b).

Rewrote (a); in (d), inserted "non-refundable" preceding references to registration fees throughout.

12:62-2.2 Issuance and term of a certificate of registration

(a) Upon receipt of the fee, a fully completed form and all documentation required under N.J.A.C. 12:62-2.1, the Commissioner shall issue a certificate of registration to the contractor within 30 days.

(b) A certificate of registration shall be valid for a period of one calendar year from the date of registration.

(c) Registration shall be renewed not less than 30 calendar days prior to the expiration date of the immediately preceding registration.

(d) Each contractor shall, after the bid is made and prior to the awarding of the public works contract, submit to the public entity for whom the work is to be performed the certificates of registration for all subcontractors listed in the bid proposal.

(e) A certificate of registration shall not be transferable.

(f) A registered contractor who allows his or her contractor registration certificate to expire prior to attempting to renew same, must subsequently apply for a registration certificate as if for the first time.

Amended by R.2002 d.48, effective February 4, 2002.
See: 33 N.J.R. 3885(a), 33 N.J.R. 4309(a), 34 N.J.R. 776(a).

Added (e).

Amended by R.2004 d.164, effective April 19, 2004.
See: 35 N.J.R. 5480(a), 36 N.J.R. 1942(b).

Rewrote (d); added (f).

12:62-2.3 Disorderly persons offense

(a) A contractor who commits any of the following acts shall be guilty of a disorderly persons offense:

1. Willfully hindering or delaying the Commissioner in the performance of his or her duties in the enforcement of the Act;

2. Failure to make, keep, and preserve any records as required under the provisions of the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq.;

3. Falsifying any such record, or refusing to make any such record accessible to the Commissioner upon demand;

4. Refusing to furnish a sworn statement of such records or any other information required for the enforcement of the Act to the Commissioner upon demand;

5. Paying or agreeing to pay wages at a rate less than the rate prescribed by the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq.; or

6. Otherwise violating any provision of the Act.

12:62-2.4 Denial, suspension or revocation of registration

(a) As an alternative to or in addition to sanctions provided in N.J.A.C. 12:62-2.5, a certificate of registration may be denied, suspended or revoked if the registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time:

1. Failed to comply with the registration requirement set forth in the Act;

2. Bid for or performed work pursuant to a public works contract without having fully complied with the registration requirement set forth in the Act;

3. Willfully made a misstatement of material fact in the application for registration or renewal;

4. Failed to provide all information requested by the Department pursuant to N.J.A.C. 12:62-2.1(c); or

5. Contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered.

(b) A certificate of registration may be denied, revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director, stockholder or agent of the applicant or registrant has at any time violated any provision of the Act or of this chapter, or has failed to comply with the labor laws of New Jersey or any other state or Federal labor law or any order of the Commissioner with regard to any matter not referred to in (a) above.

(c) The registration of a contractor shall not be revoked or suspended for a period beyond five years.

(d) The Commissioner may require as a condition of initial or continued registration that a contractor who has violated either the Act or the Prevailing Wage Act must provide a surety bond payable to the State.

1. The surety bond shall be for the benefit of workers damaged by any failure of a contractor to pay wages or benefits pursuant to or otherwise comply with the provisions of the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq., or the Act.

2. The surety bond shall be in the amount and form that the Commissioner deems necessary for the protection of the contractor's workers, but shall not exceed \$10,000 per worker.

3. The surety bond shall be issued by a surety that meets the requirements of N.J.S.A. 2A:44-143.

Amended by R.2002 d.48, effective February 4, 2002.
See: 33 N.J.R. 3885(a), 33 N.J.R. 4309(a), 34 N.J.R. 776(a).

In (b), inserted "or has failed to comply with the labor laws of New Jersey or any other state or Federal labor law" following "chapter".

12:62-2.5 Administrative penalties

Any or all of the administrative penalties set forth in N.J.A.C. 12:60-9.3 for violations of the "Prevailing Wage Act," N.J.S.A. 34:11-56.25 et seq., may also be imposed by the Commissioner or his or her designee upon a finding that a registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time committed any of the acts set forth at N.J.A.C. 12:62-2.4(a).

12:62-2.6 Appeals

(a) Whenever the Department shall find cause to suspend or revoke a certificate of registration, to require the posting of a surety bond pursuant to N.J.A.C. 12:62-2.4(d), or to impose an administrative penalty pursuant to N.J.A.C. 12:62-2.5, it shall notify the registrant or applicant of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) All requests for hearing shall be filed within 10 business days from the date of receipt of the notice. The Commissioner or his or her designee shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

1. All requests for hearing shall be in writing and shall be directed to the following address:

Division of Wage and Hour Compliance
225 E. State Street
PO Box 389
Trenton, NJ 08625-0389

(c) In the absence of a timely request for a hearing, pursuant to (b) above, the determination of the Department shall be deemed the final administrative action in the given matter.

(d) Where the Department has notified a registrant that it has found cause to suspend or revoke its certificate of registration and where, further, that registrant has failed to request a hearing within the 10 day time limit prescribed in (b) above, the registrant shall, within 20 days of having received notice of the revocation or suspension, surrender its certificate of registration by way of certified mail to the address listed at (b)1 above.

(e) Any contractor who has his or her registration suspended or revoked for violations enumerated in this subchapter shall not be permitted to perform work for which a bid has been submitted and which is under review.

(f) Where a hearing with regard to a suspension or revocation of a certificate of registration is requested and where, further, the Commissioner of Labor ultimately determines that cause has been established to suspend or revoke the certificate of registration, the registrant shall, within 10 days of receipt of the final order of the Commissioner or his or her designee, surrender the certificate of registration, by way of certified mail to the address listed at (b)1 above.

(g) All requests for hearing shall be reviewed by the Division of Wage and Hour Compliance in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

Amended by R.2002 d.48, effective February 4, 2002.
See: 33 N.J.R. 3885(a), 33 N.J.R. 4309(a), 34 N.J.R. 776(a).
Inserted new (c) through (f) and recodified former (c) as (g).