

# EO 63 DRAFT

*This document is a draft for EO63 comment purposes only. Please excuse all typos and citations errors.*

*The draft amendments to the existing prevailing wage rules at N.J.A.C. 19:30-4.1 through -4.5 are proposed to update the rules to be consistent with current statutory requirements, including but not limited to the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (as amended by P.L. 2021, c. 160), the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.58, et seq, and the Prevailing Wage Act, N.J.S.A. 34:11-56-25, et seq.*

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 30. ADMINISTRATIVE RULES

### SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

#### 19:30-4.1A Applicability and scope

**The rules in this subchapter are promulgated by the Authority to implement the provisions of N.J.S.A. 34:1B-5.1 and set forth the Authority’s prevailing wage requirements. Compliance may also be required with other statutes, rules, and regulations, including but not limited to the Davis Bacon Act, 40 U.S.C. 3141 et seq., the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, and the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.**

#### 19:30-4.1 Definitions

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

“Authority financial assistance” means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded **in whole or in part**, authorized, administered or provided by the Authority to any entity and is provided before, during or after completion of a project, including but not limited to, all Authority financial assistance received by the entity [pursuant to the Business Employment Incentive Program Act, P.L. 1999, c. 26 (N.J.S.A. 34:1B-124 et seq.),] that enables the entity to engage in a construction contract **and/or building services contract**.

“Building services” means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. "Building services" shall not include any maintenance work, professional services, or other public work for which a contractor is required to pay the "prevailing wage" as defined by N.J.S.A. 34:11-56.26.

**“Building services contract” means any contract, subcontract or agreement, whether written or oral, for building services.**

“Construction contract” means any contract, subcontract or agreement, whether written or oral, for construction **work**.[, reconstruction, demolition, alteration, repair work, maintenance work or construction related to installation of equipment, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 or undertaken to fulfill any condition of receiving Authority financial assistance and paid for in whole or in part with funds received through Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance unless specifically exempted by N.J.A.C. 19:30-4.2.]

“Construction project” or “project” means a project that has received final approval from the Authority.

**“Construction work” means construction, reconstruction, demolition, alteration, duct cleaning, repair work, or skilled maintenance work including painting and decorating, millwork fabrication, remediation, removal of hazardous substances, custom fabrication, excavation, grading, pile driving, concrete form, or other types of foundation work undertaken in connection with Authority financial assistance or any of its projects, those projects which the Authority undertakes pursuant to N.J.S.A. 52:27BBB-1 et seq., or those projects undertaken by any individual or entity to fulfill any condition of receiving Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance unless specifically exempted by N.J.A.C. 19:30-4.2 or other statute, rule, or regulation to the contrary. When determining if an activity is construction work, the Authority shall consider the following factors: (1) physical changes to a property, including but not limited to, construction, reconstruction, demolition, alteration, excavation, grading, and pile driving; (2) equipment installation activity, including but not limited to, the complexity and effort required beyond plug-in for end use; (3) property maintenance or repairs, including but not limited to, activity beyond minor touch-ups or fixes such as painting or decorating; (4) environmental work, including but not limited to, removal of hazardous substances and the use of machinery for site testing; (5) whether the activity is undertaken to qualify the applicant, property, or project for Authority financial assistance; and (6) any other factors as the Authority may deem appropriate.**

**“Continuity of ownership”, as used in N.J.S.A. 34:1B-5.1(b) and for the purpose of the requirements in this subchapter, means continuity of the property interest and possession of the real property on which the project is located that is continuous and extends back to the point in time when the applicant first acquired that interest.**

“Contractor” means any party who enters into a construction contract **or building services contract** with the **developer**/project owner/applicant, or any party, **including any**

**subcontractor**, to whom funds will be disbursed for payment of construction work[, including any subcontractor of the contractor] **or building services.**

**"Custom fabrication" shall have the same meaning as N.J.S.A. 34:11-56.26.**

**"Maintenance work" shall have the same meaning as N.J.S.A. 34:11-56.26.**

"Prevailing wage rate" means the prevailing wage rate established by the Commissioner of New Jersey Department of Labor and Workforce Development from time to time in accordance with the provisions of N.J.S.A. 34:11-56.25 et seq. for the locality in which the project is located.

**"Public work" shall have the same meaning as N.J.S.A. 34:11-56.26.**

#### 19:30-4.2 Payments of prevailing wages in projects receiving assistance

(a) Not less than the prevailing wage rate shall be paid to workers employed in the performance of any construction contract, [including contracts for millwork fabrication undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or undertaken to fulfill any condition of receiving Authority financial assistance, including the performance of any contract to construct, renovate, or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance,] unless the work performed under the contract is **a public work project undertaken by the Authority subject to the exception in N.J.S.A. 34:11-56.26, or is:**

1. Performed on a facility owned by a landlord of the entity receiving the assistance;
2. The landlord is a party to **the** [a] construction contract(s); and
3. **(i) For applications for Authority financial assistance approved prior to January 7, 2021, [L]less than 55 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility.**

**(ii) For applications for Authority financial assistance approved on or after January 7, 2021, less than 35 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility, as required under N.J.S.A. 34:1B-5.1.**

(b) [In accordance with P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), nothing in this subchapter shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after an entity has executed with the Authority a commitment letter regarding Authority financial assistance and the first payment or other provision of the assistance is received.] **The exception in (a) above shall be determined in relation to each specific construction contract. For example, if a recipient of Authority financial assistance is a**

tenant that leases and occupies less than the percentage threshold identified in (a) above of a facility and the landlord that owns the facility is a party to the construction contract for fit-out for the recipient of Authority financial assistance, payment of prevailing wage and compliance documentation are not required for that contract. In this example, if the recipient of Authority financial assistance then executes a construction contract which the landlord is not a party to, payment of prevailing wage shall apply to the recipients of Authority financial assistance construction contract.

(c) Prevailing wage requirements for construction contracts shall not apply if the contract is in an amount less than \$2,000.

(d) Except as otherwise may be required by other statutes, rules, regulations, including but not limited to the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, in accordance with N.J.S.A. 34:1B-5.1, nothing in this subchapter shall be construed as requiring the payment of prevailing wage for (1) contracts by or between a grantee receiving Authority financial assistance and another entity if the contract is a subgrant or if the contract is not primarily for construction work or (2) construction commencing more than two years after an entity has executed with the Authority a commitment letter, approval letter, or has received notification of approval from the Authority where a commitment letter or approval letter is not required regarding Authority financial assistance and the first payment or other provision of the assistance is received.

(e) Not less than the prevailing wage rate shall be paid to workers employed to perform building services if required by the statute, rules, conditions of the Authority financial assistance, N.J.S.A. 34:11-56.25 et seq, or N.J.S.A. 34:11-56.58 et seq.

#### 19:30-4.3 Assurances required

(a) Recipients of Authority financial assistance [for construction contracts] shall [deliver an NJEDA affirmative action completion certificate to the Authority (or designated agent for the Authority),] **provide all documentation requested by the Authority and a completion certificate, in a form prescribed by the Authority, upon completion of each [the] construction contract, executed by the recipient or the landlord, as required by the Authority,** signed by an authorized representative of the recipient, representing and confirming that:

1. [It has complied and has caused its landlord, if applicable, contractors and subcontractors to comply with the requirements of N.J.A.C. 19:30-4.2; or] **Any and all contractors and subcontractors subject to any prevailing wage requirement are registered with the Department of Labor and Workforce Development in accordance with N.J.S.A. 34:11-56.48, et seq; and**
2. [It has not entered into any construction contracts subject to the provisions of N.J.A.C. 19:30-4.2(a) and its landlord has not entered in any contracts pursuant to N.J.A.C. 19:30-

4.2(a).] **The recipient has complied and has caused its landlord, if applicable, contractors and subcontractors to comply with the requirements of N.J.A.C. 19:30-4.2 and any statute, rule or condition of Authority financial assistance that requires payment of prevailing wage.**

**(b) To the extent that payment of prevailing wage is required for performance of building services, recipients of Authority financial assistance shall provide all documentation requested by the Authority. Upon completion of each contract and/or subcontract for building services executed by the recipient or the landlord, if applicable, the recipient shall submit documentation, as required by the Authority, evidencing and confirming that the recipient has complied with the requirements of N.J.A.C. 19:30-4.2 and any statute, rule, or condition of Authority financial assistance that requires payment of prevailing wage.**

#### 19:30-4.4 [Contract provisions required] **Documentation required**

(a) All construction contracts in the amount of \$2,000 or more **and all building services contracts** shall require that:

1. [Prime] **Contractors** [contractors] **that are party to such a contract with the recipient of Authority financial assistance or the recipient's landlord subject to N.J.A.C. 19:30-4.2(a) maintain and submit certified payroll records of the contractor and every subcontractor to the Authority; [or] and**

2. Contractors and subcontractors:

i. Permit the Authority, or its designated agent, complete access to payroll records and other records for purposes of determining compliance with the provisions of this subchapter; and

ii. Keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and to preserve such records for two years from the date of payment.

**(b) All construction contracts and building services contracts of all tiers shall include mandatory language in a form satisfactory to the Authority setting forth the requirements of this subchapter. Every contractor and subcontractor shall sign an addendum to such a contract in a form satisfactory to the Authority.**

#### 19:30-4.5 Violation

A violation of the provisions of this subchapter **with regard to construction work or building services, as applicable, at a public work undertaken by the Authority** shall be

deemed a violation of N.J.S.A. 34:11-56.25 et seq., **N.J.S.A. 34:11-56.58 et seq**, N.J.A.C. 12:60-[5.1]**8.1 et seq., and/or N.J.A.C. 12:64-4.1 et seq**[, and the Internal Process Management unit in the EDA shall refer the determination of violation proceeding to the Authority unit that administers the Authority financial assistance to determine if the commitment to, or offer of, Authority financial assistance should be withdrawn, terminated and/or repaid].

**(a) The Authority shall refer any such violation to the Department of Labor and Workforce Development, as applicable.**

**(b) In the event of any violation of the provisions of this subchapter, the Authority, irrespective of any sanctions or penalties imposed by the Department of Labor and Workforce Development under subsection (a) above, may**

**1. Withdraw, suspend, terminate, recapture, and/or require repayment of any financial assistance;**

**2. Forfeit all or some of the tax credits awarded; and**

**3. Impose any other remedy available to the Authority at law or in its respective agreement with the recipient of financial assistance.**

**(c) The Authority may refer a violation to any other applicable government entity for relevant action.**

19:30-4.6 (Reserved)