

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs Administrative Rules; Prevailing Wage Rules

Adopted Amendments:

N.J.A.C. 19:30-4.1 through 4.5

Adopted New Rule: N.J.A.C. 19:30-4.1A

Proposed: November 18, 2024, at 56 N.J.R. 2225(a).

Adopted: January 22, 2025, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: January 22, 2025, as R.2025 d.028, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 34:1B-5.1.

Effective Date: February 18, 2025.

Expiration Date: May 8, 2025.

Summary of Public Comment and Agency Response:

The public comment period ended January 17, 2025. **No comments were received.**

SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN

AUTHORITY PROJECTS

19:30-*[4.1A]**4.1* Applicability and scope

The rules in this subchapter are promulgated by the Authority to implement the provisions at N.J.S.A. 34:1B-5.1 and set forth the Authority's prevailing wage requirements. 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 at P.L. 2021, c. 160, and the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., may include applicable requirements.

19:30-*[4.1]**4.1A* 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 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 at 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.

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"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 that 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 that are necessary for the receipt of Authority financial assistance, unless specifically exempted pursuant to 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 at N.J.S.A. 34:1B-5.1.b, and for the purpose of the requirements of 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 or building services.

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

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

“Public work” shall have the same meaning as at 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, unless the work performed pursuant to the contract is:

1. Performed on a facility owned by a landlord of the entity receiving the Authority financial assistance;

2. The landlord is a party to the construction contract(s); and

3. For applications for Authority financial assistance approved prior to January 7, 2021, less than 55 percent of the facility is leased by the entity at the time of the contract and pursuant to any agreement to subsequently lease the facility. 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 pursuant to any agreement to subsequently lease the facility, as required pursuant to N.J.S.A. 34:1B-5.1.

(b) The exceptions at (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 at (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 that the landlord is not a party to, payment of prevailing wage shall apply to the recipients of the 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, the prevailing wage contract threshold amount, as defined in the Prevailing Wage Act, N.J.S.A. 34:11-56.26(11)(b).

1. 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 at 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:

i. 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

ii. 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, first tax credit certificate, or other provision of the assistance is received.

2. 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, or N.J.S.A. 34:11-56.25 et seq., or 34:11-56.58 et seq.

19:30-4.3 Assurances required

(a) Recipients of Authority financial assistance shall provide all documentation requested by the Authority and a completion certificate, in a form prescribed by the Authority, upon completion of each construction contract, executed by the recipient or the landlord, as required by the Authority, signed by an authorized representative of the recipient,

certifying that:

1. 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. The recipient has complied and has caused its landlord, if applicable, contractors, and subcontractors to comply with the requirements at 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 execution, and as required by the Authority on an ongoing basis, of each contract and/or subcontract for building services by the recipient or the landlord, if applicable, the recipient shall submit documentation, as required by the Authority, evidencing and confirming that the contract complies with the requirements at N.J.A.C. 19:30-4.2 and any statute, rule, or condition of Authority financial assistance for the payment of prevailing wage.

19:30-4.4 Documentation required

(a) All construction contracts in the amount of \$2,000, or more, in accordance with the prevailing wage contract threshold amount as defined in the Prevailing Wage Act, N.J.S.A. 34:11-56.26(11)(b), and all building services contracts shall require that:

1. 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 on a form satisfactory to the Commissioner of the Department of Labor and Workforce Development (see N.J.A.C. 12:60-5.1 Appendix); and

2. (No change.)

(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) 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., and 34:11-56.58 et seq., N.J.A.C. 12:60-8, and/or 12:64-4.

1. The Authority shall refer any such violation to the Department of Labor and Workforce Development, as applicable.

2. 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 pursuant to (a) above may:

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

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

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

3. The Authority may refer a violation to any other applicable government entity for relevant action.