

54 N.J.R. 1009(a)

VOLUME 54, ISSUE 11, JUNE 6, 2022

RULE PROPOSALS

Reporter

54 N.J.R. 1009(a)

NJ - New Jersey Register > 2022 > JUNE > JUNE 6, 2022 > RULE PROPOSALS > LABOR AND WORKFORCE DEVELOPMENT -- DIVISION OF WAGE AND HOUR COMPLIANCE

Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF WAGE AND HOUR COMPLIANCE

Administrative Code Citation

Proposed New Rules: N.J.A.C. 12:60-9.1 and 9.2 and 12:60-9 Appendix

Text

Assurances for Payment of Prevailing Wage; Certification by Bidder with Lowest Bid by 10 Percent or More; Required Contract Provisions Concerning Prevailing Wage Payment

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

[page=1010] Authority: N.J.S.A. 34:11-56.43, 34:11-56.27a.b, and 34:11-56.27.b.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2022-078.

Submit written comments by August 5, 2022, to:

David Fish, Executive Director
Legal and Regulatory Services
NJ Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110

david.fish@dol.nj.gov

The agency proposal follows:

Summary

The New Jersey Department of Labor and Workforce Development ("Department" or "NJLWD") is proposing new rules at N.J.A.C. 12:60-9.1 and 9.2 and N.J.A.C. 12:60-9 Appendix, in order to implement P.L. 2021, c. 301, which requires that when a public body engages in competitive bidding for public work subject to the provisions at N.J.S.A. 34:11-56.25 et seq., the New Jersey Prevailing Wage Act (PWA), the person who makes the lowest bid for the contract by at least 10 percent under the amount of the next lowest bid shall, prior to award of the contract, certify to the public body on a form prescribed by the Commissioner of the Department (Commissioner) that the prevailing wage rates required by the PWA shall be paid in performing the work under the contract. P.L. 2021, c. 301, also states that if the bidder does not provide the certification on the form prescribed by the Commissioner prior to the award of the contract, the public body shall award the contract to the next lowest responsible and responsive bidder.

In addition, P.L. 2021, c. 301, requires that each public works contract must contain a stipulation in a form prescribed by the Commissioner that those performing work under the contract shall be paid not less than the prevailing wage rate, and that where a contractor or subcontractor fails to pay the prevailing wage rate, the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required prevailing wage rate.

The new law also states that the contractor and his or her sureties shall be liable to the public body, any lessee to whom the public body is leasing a property or premises or to any lessor from whom the public body is leasing or will be leasing a property or premises, for any excess costs occasioned by the termination of the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages.

Proposed new N.J.A.C. 12:60-9.1 would describe the certification requirement at P.L. 2021, c. 301, for the person whose bid is at least 10 percent lower than the next lowest bid and would require that the certification used by that low bidder must be in the form contained at N.J.A.C. 12:60 Appendix.

Proposed new N.J.A.C. 12:60-9.2 would provide verbatim the stipulation that must be contained within each public works contract indicating that those performing work under the contract must be paid not less than the prevailing wage rate.

Proposed new N.J.A.C. 12:60-9 Appendix would contain the form of certification to be used by contractors at proposed new N.J.A.C. 12:60-9.1.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

It is the Department's belief that the proposed new rules would have a positive social impact in that they would reduce the number of instances of prevailing wage violations, thereby increasing the well-being of workers on public works projects who are paid properly for all hours worked. The proposed new rules would also improve the fairness of the bidding process for public work; which is to say, the proposed new rules should reduce or eliminate the practice by unscrupulous contractors of underbidding competitors by submitting bids that are premised upon an intentional under-estimation of labor costs for the project at a rate less than the required prevailing wage rate.

Economic Impact

It is the Department's belief that the proposed new rules would have a positive economic impact in that they would, as stated in the Social Impact above, instill compliance with the PWA as employers are unlikely to ignore the language of the certification and the contract that clearly state that the prevailing wage rate must be paid. This would inure to the benefit of both workers and law-abiding public works contractors, each of whom is harmed economically when workers on public works projects are paid less than the required prevailing wage rate.

An economic benefit to employers is also conferred by the fact that the certification form and required contract language have been provided at no cost to contractors at new N.J.A.C. 12:60-9 Appendix.

Federal Standards Statement

The proposed new rules do not exceed standards or requirements imposed by Federal law. Specifically, the proposed new rules are governed entirely by State law and no Federal laws apply. Consequently, no Federal standards analysis is required.

Jobs Impact

The proposed new rules would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed new rules would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules would impose no reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than the compliance requirements resulting from P.L. 2021, c. 301; which is to say, each of the proposed new rules is dictated by a corresponding amendment to the PWA, stemming from P.L. 2021, c. 301. Proposed new N.J.A.C. 12:60-9 and N.J.A.C. 12:60-9 Appendix are dictated by the lowest bidder certification and standard contract provisions that are required at P.L. 2021, c. 301. The Department has no discretion to deviate from the statute. Employers should not require outside professional services to comply with the proposed new rules. In fact, the Department having provided both the form of certification and contractual language to be used in compliance with P.L. 2021, c. 301, should save employers the use of outside professional services that might otherwise be necessary.

Housing Affordability Impact Analysis

It is not anticipated that the proposed new rules would evoke a change in the average costs associated with housing or on the affordability of housing in the State. The basis for this finding is that the proposed new rules pertain to enforcement of the PWA and have nothing to do with housing.

Smart Growth Development Impact Analysis

It is not anticipated that the proposed new rules would evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed new rules do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner has evaluated this rulemaking and determined that it would not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

[page=1011]

CHAPTER 60

PREVAILING WAGES FOR PUBLIC WORKS

SUBCHAPTER 9. ASSURANCES FOR PAYMENT OF PREVAILING WAGE

12:60-9.1 Certification by bidder with lowest bid by 10 percent or more

(a) When a public body engages in competitive bidding for public work subject to the provisions of the New Jersey Prevailing Wage Act (PWA), the person who makes the lowest bid for the contract by 10 percent or more under the amount of the next lowest bid shall prior to award of the contract certify to the public body on the form found at N.J.A.C. 12:60 Appendix that the prevailing wage rates required by the PWA shall be paid in performing the work under the contract.

(b) If the bidder does not provide the certification required pursuant to (a) above prior to the award of the contract, the public body shall award the contract to the next lowest responsible and responsive bidder.

12:60-9.2 Required contract provisions concerning payment of prevailing wage

(a) Every contract for the performance of public work shall contain the following contract provisions:

1. "Attached hereto and incorporated herein is(are) the Department of Labor and Workforce Development prevailing wage determination(s) for the locality and craft(s) that will be employed in the performance of work under this contract. It is hereby stipulated that each individual who performs work under this contract shall be paid not less than the prevailing wage rate to which that worker is entitled under the New Jersey Prevailing Wage Act, as reflected in the appropriate Department of Labor and Workforce Development prevailing wage determination"; and

2. "In the event it is found that any worker employed by the contractor or any subcontractor covered by this contract has been paid a rate of wages less than the prevailing wage rate required to be paid by this contract, the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages, and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable to the public body, any lessee to whom the public body is leasing a property or premises, or to any lessor from whom the public body is leasing or will be leasing a property or premises for any excess costs occasioned by the termination of the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages."

LOWEST BIDDER PREVAILING WAGE CERTIFICATION

In the matter of an award)	STATE OF NEW JERSEY
of a)	
contract for public work for)	DEPARTMENT OF LABOR AND
a)	
project described as:)	WORKFORCE DEVELOPMENT
)	DIVISION OF WAGE &
[Enter project description)	HOOR COMPLIANCE
here])	
)	
)	
)	Certification of Lowest Bidder

_____, of full age and under oath, duly provides the following sworn statement:

(1). I am the owner and/or highest-ranking official or officer of a company or firm named _____, which holds a currently valid public works contractor registration pursuant to the New Jersey Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., certificate number _____.

(2). I submitted a bid for a contract award in the above identified project and the public body has informed me that I am the lowest bidder by 10 percent or more as compared to the next lowest bid submitted.

(3). The amount of my bid does include paying the prevailing wage rate to all workers who perform work on the project at rates of pay, including both base wage and fringe benefits, set forth in applicable Wage Determinations, (1) for the appropriate locality, (2) for the appropriate work classification (e.g., carpenter, electrician, mason, plumber), and (3) for the appropriate job title (e.g., Apprentice, Journeyman, Forman), published by the New Jersey Department of Labor and Workforce Development (NJDOL) pursuant to the New Jersey Prevailing Wage Act (NJPWA), N.J.S.A. 34:11-56.25 et seq., and corresponding NJDOL rules, N.J.A.C. 12:60.

I certify under penalty of perjury that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment. See N.J.S.A. 2C:28-1 et seq., specifically, N.J.S.A. 2C:28-3, within the New Jersey Code of Criminal Justice.

Dated: _____ Signature: _____

Title: _____