

52 N.J.R. 2103(b)

VOLUME 52, ISSUE 23, DECEMBER 7, 2020

RULE ADOPTIONS

Reporter

52 N.J.R. 2103(b)

***NJ - New Jersey Register > 2020 > DECEMBER > DECEMBER 7, 2020 > RULE ADOPTIONS
> LABOR AND WORKFORCE DEVELOPMENT -- DIVISION OF WAGE AND HOUR COMPLIANCE***

Agency

LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF WAGE AND HOUR COMPLIANCE

Administrative Code Citation

Adopted Amendments: N.J.A.C. 12:62-1.2 and 2.1

Text

Public Works Contractor Registration

Proposed: June 3, 2019, at 51 N.J.R. 806(a).

Adopted: November 12, 2020, by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Filed: November 12, 2020, as R.2020 d.133, **without change**.

Authority: N.J.S.A. 34:11-56.57.

Effective Date: December 7, 2020.

Expiration Date: June 7, 2025.

Summary of Hearing Officer's Recommendation and Agency's Response:

A public hearing regarding the proposed amendments was held on July 2, 2019, at the Department of Labor and Workforce Development (Department). David Fish, Executive Director, was available to preside at the public hearing and to receive testimony. After reviewing the testimony presented at the public hearing and the written comments (which are all discussed below) submitted directly to the Office of Legal and Regulatory Services, the hearing officer recommended that the Department proceed with the amendments without change.

Summary of Public Comments and Agency Responses:

Written comments were submitted by the following individuals:

1. Wayne Kenny, ABC Safety & Fire Inc., Kenilworth, New Jersey.
2. Bill and Anastasia Caravassilis, ABF Security Systems, Brick, New Jersey.
3. Thomas Kline, President, Absolute Security Unlimited, Carney's Point, New Jersey.
4. Frederick John Woelky, Jr., President, Accurate Security Co. of Ramsey, Inc., Ramsey, New Jersey.
5. William A. Ackerman, President, Ackerman Services, East Hanover, New Jersey. Identical submissions by five employees of Ackerman, James Grawehr, Benjamin Hernandez, Martin Hernandez, Alfonso Maury, and Joseph Saltalamacchia.
6. Joseph Karn, Vice President, Advanced Alarm Systems, Inc., Fairfield, New Jersey.
7. Deren Michael, Advanced Electronic Solutions, Inc., College Point, New York.
- [page=2104] 8. John G. Farrington, Regional General Manager, AES Fire, LLC, Elmwood Park, New Jersey.
9. Joseph Riotto, CEO, Advanced Video Surveillance Inc., Totowa, New Jersey. Identical submissions by two employees of Advanced Video, Michael Riotto, and Kenneth Durocher.
10. William Kilcher, Alarm & Communication Technologies, Wharton, New Jersey.
11. James Daniello, Vice President, Allied Fire & Safety Equipment Co., Inc., Neptune, New Jersey. Identical submissions by two employees of Allied, Kathryn Gabriel, and Frank Pinto.
12. Joseph Riccadonna, President, Allstate Fire Technologies, Inc., Newark, New Jersey.
13. Vito Badalamenti, American Alarm Systems, Inc., Warren, New Jersey.
14. Victor Lugo, Executive Director, American Fire Sprinkler Association, North Arlington, New Jersey.
15. Jack Kocsis, Jr., Chief Executive Officer, Associated Construction Contractors of New Jersey, Edison, New Jersey.
16. Daniel Blewitt, ASCO Fire, Lincoln Park, New Jersey.
17. Wilson Mercado, Atech Security LLC, Cherry Hill, New Jersey.
18. Gordon Heggie, Vice President, Atlantic Security & Fire, West Long Branch, New Jersey.
19. G. Scott Kindred, President, Automatic Communications Alarm Company, Inc., Raritan, New Jersey.
20. Brian Morin, Avcom Communications, LLC, East Brunswick, New Jersey. Identical submissions by three employees of Avcom, Colin Morin, Germain Albert Morin VI, and Jerry Morin.
21. Eliot Barry, President, BH Security, Union, New Jersey. Identical submissions by two employees of BH Security, Dana Barry, and Brian Arenofsky.
22. John P. McClellan, Blue Knight Security Systems, LLC, Verona, New Jersey.
23. Brian Boyle, Cherry Hill, New Jersey.
24. Philip H. Gardner, President, B Safe, Inc., Mantua, New Jersey. Identical submissions by two employees of B Safe, Joseph J. Gallagher, and Gregory Overholt.
25. Joseph Duffy, President, Campbell Fire Protection, Inc., Suffern, New York.

52 N.J.R. 2103(b)

26. Richard Gould, Certified Protection, Edison, New Jersey.
27. Joseph F. Cioffi, Jr., Englewood Cliffs, New Jersey.
28. Joseph F. Cioffi, III, Englewood Cliffs, New Jersey.
29. John P. Cioffi, Rockleigh, New Jersey.
30. Paul McGrath, City Fire Equipment Co., Inc., City Fire Electric, City Fire, LLC, East Hanover, New Jersey.
31. Casey Guagenti, Vice President/General Manager, Complete Security Systems, Inc., Marlboro, New Jersey.
32. Mark Calleo, Vice President & General Manager, Confires Fire Protection Service, LLC, South Plainfield, New Jersey.
33. Andrew DeMaio, Project Manager, DeMaio Electrical Company, Inc., Hillsborough, New Jersey.
34. John Harvey, Diamond Fire Protection, Mahwah, New Jersey.
35. Len Derasmo, Dynamic Protection Systems, Middlesex, New Jersey. Identical submissions by seven employees of DPS, Gary Ascolese, Terri Ascolese, Cheryl Berta, Betsy Higle, and three additional illegible signatures.
36. Victor J. DiAnna, President, Eagle Construction Services, Inc., Burlington, New Jersey.
37. Robert Sansone, President, Effective Alarm Systems, Kearny, New Jersey.
38. Frank Aloia III, Vice-President/Owner, Fire Security Technologies, Inc., Farmingdale, New Jersey.
39. George Yiannou, General Manager, Firematic & Safety Equipment Co., Inc., Garfield, New Jersey.
40. Paul Fox, Fox Brothers Alarm Services Inc., Easton, Pennsylvania.
41. Joseph C. Petsch, President, Franklin Alarm Company Inc., Franklinville, New Jersey. Identical submissions by two employees of FACI, Mary Petsch Wilson, and Joanne Meritt.
42. Bruce Chiarello, President, Fyr-Fyter Sales and Service, Inc., Pennington, New Jersey.
43. Brian P. McDonnell, General Fire Equipment Co., Inc., Aston, Pennsylvania.
44. J. Craig Ickes, President, General Fire Sales & Service, Inc., Gloucester City, New Jersey.
45. Robert W. Hale, President, Halecon Inc., Bridgewater, New Jersey.
46. Joseph M. Hayes, Ossining, New York.
47. Jamie Kerth, President, Independent Alarm, Pennsauken, New Jersey.
48. John W. Fluta, President, Integrated Systems & Services, Inc., Eatontown, New Jersey. Identical submission by one employee of Integrated, Anthony S. Rinaldi.
49. Kenneth J. Wolgast, President, Kev Security, Clifton, New Jersey.
50. Edward Maffey, President, Maffey's Security Group, Elizabeth, New Jersey. Identical submissions by nineteen employees of Maffey's, Andrew Maffey, Laney Allen, Mark Brown, Kim Christie, David Depczynski, Don Depczynski, Jacob DeSombre, Erik Entersz, Jay Godin, Michael Gonzalez, James Guiro, Christopher Lage, Ryan Locke, Louis Matos, Walter Neubert Jr., Jose Romero, Andes Rosero, Jeff Strangio, and Liz Vera.
51. Walt Koneski, President, Main Access Systems, Inc., Lawrenceville, New Jersey.

52 N.J.R. 2103(b)

52. Mauro Pagano, Manager, The Main Lock Shop, Hackensack, New Jersey.
53. Dan Skoog and Matt Skoog, Co-Owners, Mr. Keys Inc., Brick, New Jersey. Identical submissions by two employees of Mr. Keys, Bill Hayduck, and Richard A. Rible Jr.
54. Andrew D Nikow, Englewood Cliffs, New Jersey.
55. Albert D. Fecci, President, New Jersey Association of Fire Equipment Distributors (NJAFED), Red Bank, New Jersey.
56. Denis Crayon, President, New Jersey Ground Water Association (NJGWA), West Creek, New Jersey.
57. Bill Caravassilis, NJ Smart Security, Brick, New Jersey.
58. Ralph Meyers, President, Nu-Tel, Fairfield, New Jersey.
59. Nicholas M. Hart, President, Pete's Lock and Key, Fort Lee, New Jersey.
60. Brian Stride, Pro-Tek Security Inc., Franklin Lakes, New Jersey.
61. Joseph Korczukowski, Reliable Lock & Safe, East Orange, New Jersey.
62. Douglas Coger, Vice President, Reliable Fire Protection, Eatontown, New Jersey.
63. Michael Lomega, Jr., President, Safe-T-Tech, Glen Rock, New Jersey.
64. Michael Kleinwaks, President, Security One Alarms, Hopatcong, New Jersey.
65. Peter G. Borgia, President, Sentinel Burglar and Fire Alarm Systems Co., Inc., Fair Lawn, New Jersey.
66. Rick Manzo, President, Shore Security Technologies, LLC, Toms River, New Jersey. Identical submissions by four employees of Shore Security, Terry Manzo, Nick Bisignano, Andrew Gross, and Adam Krinic.
67. Wayne B. Pinto Jr., President, Solid State Alarms, Inc., Logan Township, New Jersey.
68. Gerard Duffy, President, Spectrum Cable and Alarm Systems, Inc., Bloomfield, New Jersey.
69. Trevor Waite, CEO, Stokleys Inc., Hainesport, New Jersey.
70. Robert Bitton, President Emeritus, Supreme Security Systems, Inc., Union, New Jersey.
71. Sandra L. Kelly, President, System Design Associates, Woodland Park, New Jersey.
72. Todd G. Dieterly, Sr., President & CEO, TDK Systems Group, Columbus, New Jersey.
73. Tony Kwiatkowski, General Manager, Tech Services of New Jersey, Inc., Edison, New Jersey.
74. Pamela J. Tomasella, President, Tomasella's Fire Protection Inc., Manahawkin, New Jersey. Identical submission by one employee of Tomasella's, Joseph B. Tomasella.
75. Brian McClennen, Total Security Alarms, LLC, Millville, New Jersey.
76. Rick Sylvestro, General Manager, Triad Security Systems, Union, New Jersey. Identical submissions by seventeen employees of Triad, Brian Carroll, Chelsie Chicarielli, Victor Connolly, Gary Fall, Frank [page=2105] Ferruggia, Tim Kriss, Todd Lamb, Walter Marusiefski, Dave Mullen, John Ornowski, Mike Petty, David Rosen, Kassandra Sanchez, Chris Sidlowski, Lee Sidlowski, Frank Sparrer, and Caryn S. Wiernik.
77. Terence Mostyn, CEO, United Federated Systems Inc., Totowa, New Jersey.

78. Zoe Baldwin, Director, Government Relations, Utility and Transportation Contractors Association of New Jersey (UTCA), Farmingdale, New Jersey.

79. Victor J. DiAnna, President, Utility Construction Services, Inc., Burlington, New Jersey.

80. John Bauer Jr., President, Village Fire Extinguisher Co. Inc., Glendale, New York.

81. Duane Warehime, Sparta, New Jersey.

82. Brett Straten, Associated Fire Protection, Manalapan, New Jersey.

83. Andrew Toner, President, Atlantic Coast Alarm, Inc., Mays Landing, New Jersey.

84. Thomas P. O'Donnell, Executive Vice President, Contral Security, Flanders, New Jersey.

85. Stephen R. Caruso, SST, Hidden Security Systems, Ridgewood, New Jersey.

86. Paul Huber, Huber Locksmiths, Inc., Pleasantville, New Jersey.

87. Albert D. Fecci, President, Jersey Coast Fire Equipment, Farmingdale, New Jersey.

88. Kirk B. Eisenbeil, Lock-Tech, Flemington, New Jersey.

89. Chris Schweizer, Metro Fire & Safety Co., Inc., Carlstadt, New Jersey.

90. Christine Marzano, President, New Jersey Electronic Security Association (NJESA), Marlboro, New Jersey.

91. Roy L. Brachfeld, President, Northeast Security Systems, Mahwah, New Jersey.

92. John Milian, President, New World Solutions (NWS), Elizabeth, New Jersey.

93. Dr. Joseph F. Racite, Owner, Joseph F. Racite Fire Extinguishers & Equipment, Carneys Point, New Jersey.

94. Clifford F. Franklin, President, Sabre Integrated Security Systems, LLC, New York, New York.

95. John Czarecki, Managing Member, Translucent Security, Randolph, New Jersey.

The following individuals testified at the July 2, 2019 public hearing:

96. Paul DiPascale, TDK Systems Group, Columbus, New Jersey.

97. Jeff Cantor, CEO, NJ State Veterans Chamber of Commerce, Marlboro, New Jersey.

98. Frank Minutillo, Automatic Fire Alarm Association of NJ, Inc. (AFAA), Wallington, New Jersey.

99. Joseph Cioffi, Board Member, New Jersey Electronic Security Association (NJESA), Marlboro, New Jersey.

100. Paul McGrath, City Fire Equipment Co., Inc., East Hanover, New Jersey.

101. Al Fecci, President, New Jersey Association of Fire Equipment Distributors (NJAFED), Red Bank, New Jersey, and Owner, Jersey Coast Fire Equipment, Farmingdale, New Jersey.

102. Joseph DeLuca, Metro Fire & Communications, Bloomfield, New Jersey.

103. Jamie Kerth, President, Independent Alarm, Pennsauken, New Jersey.

104. Gerard Duffy, Past President and Board Member, New Jersey Electronic Security Association (NJESA), Marlboro, New Jersey.

105. Christine Shockly, Adult Education and Apprenticeship Coordinator, Hunterdon and Somerset Counties, New Jersey.
106. Wyatt Earp, International Brotherhood of Electrical Workers (IBEW).
107. Scott Phillips, Partner, R.S. Phillips Steel, Vernon, New Jersey.
108. Kyle Chadwick, Sonitrol Security Systems, East Rutherford, New Jersey.
109. Christine Marzano, President, New Jersey Electronic Security Association (NJESA), Marlboro, New Jersey.
110. Vito Badalamenti, Owner, American Alarm Systems, Inc., Warren, New Jersey.
111. Ed Maffey, President, Maffey's Security Group, Elizabeth, New Jersey.
112. Kenneth Whelan, Chief Executive Operating Officer (CEO), Engineered Security Systems, Towaco, New Jersey.
113. Victor Lugo, Metro Fire & Safety Co., Inc., Carlstadt, New Jersey.
114. Dan West, Interdepartmental Security Unit, New Jersey Department of Treasury, Trenton, New Jersey.
115. Chris Mosley, President, Electronic Security Association (ESA), Irving, Texas.
116. Casey Guagenti, Vice President/General Manager, Complete Security Systems, Inc., Marlboro, New Jersey; also Treasurer, New Jersey Electronic Security Association (NJESA).
117. Brian Campbell, Metro Fire & Safety Co., Inc., Carlstadt, New Jersey.
118. Kathleen Madares, Vice President, Edge Consulting, Philadelphia, Pennsylvania.
119. Zoe Baldwin, Director, Government Relations, Utility and Transportation Contractors Association of New Jersey (UTCA), Farmingdale, New Jersey.
120. Ardith Racite, Joseph F. Racite Fire Extinguishers & Equipment, Carneys Point, New Jersey.
121. Joe Petsch, Franklin Alarm Company Inc., Franklinville, New Jersey.
122. Glen Bellini, Fire Security Technologies, Inc., Farmingdale, New Jersey.
123. Cheryl Fallon, Reliable Fire Protection, Eatontown, New Jersey.
124. Jim Kolmer, Special Security Technician, Hopatcong, New Jersey.

1. COMMENT: The commenters state the following:

[The proposed rule amendments], while stemming from the passage of A-3666/S-3071, go far beyond the newly enacted law requiring participation in a USDOL-registered apprenticeship program for registration as a Public Works Contractor. Specifically, while the law itself (P.L. 2019, c. 21) and the new apprenticeship program participation requirements put an onerous burden on small businesses that perform public work in New Jersey, these proposed rules/regulations virtually make it impossible for small businesses to continue to register for a Public Works Contractor Registration Certificate.

Importantly, the new requirement for companies to participate in an "ERISA-covered apprenticeship training program trust fund," which is not mentioned in the law, is overly cumbersome for small businesses and belies the fact that small businesses that already engage in public works have various retirement plans in place for employees, including 401(k) plans and the like. Since many small businesses that register to perform public work as a Public Works Contractor do not exclusively perform public work, the burden on parsing which hours

and which days were spent performing public work vs. private sector work would be overwhelming. Moreover, as the law requires participation in a USDOL-registered apprenticeship program, what is gained by the added requirement for the participation in an "ERISA-covered apprenticeship training program trust fund?" The consequence of this additional requirement will be to eliminate a great many small businesses from the ability to register for a Public Works Contractor Registration Certificate.

RESPONSE: The Department of Labor and Workforce Development (Department) is aware of the impact of the new law, P.L. 2019, c. 21, on public works contractors, including those that are small businesses. This is precisely why the rule amendments provide multiple paths to compliance, one of which seeks to build on the existing trade association activities of small businesses. That is, P.L. 2019, c. 21, which amends the Contractor Registration Act (Act), N.J.S.A. 34:11-56.48 et seq., states among other things that, as a condition to being registered as a public works contractor, the contractor must include with his or her application, "[a] certification form provided by the Commissioner [of the Department of Labor and Workforce Development], with documentation satisfactory to the Commissioner, that ... the contractor, if directly employing craftworkers, **participates in** a registered apprenticeship program ... for each craft they employ." (emphasis added). The Act defines the term "registered apprenticeship program" to mean an apprenticeship program, "which is registered with and approved by the United States Department [page=2106] of Labor (USDOL) and which provides each trainee with combined classroom and on-the-job training in an occupation recognized as an apprenticeable trade and meets the program standards of enrollment and graduation under 29 C.F.R. 29.6."

Certain commenters appear to believe that the new law would require each contractor to sponsor its own registered apprenticeship program and employ its own apprentice(s) in order to be registered for the performance of public work. These commenters base their assertion that the new law and proposed rule amendments would be overly burdensome, at least in part, on that belief. However, the Department proposed a definition for the phrase, "participating in a registered apprenticeship program," that would result in compliance by a contractor without having, at any particular time, to either be the sponsor of a registered apprenticeship program or actually employ an apprentice(s). That is, the Department recognized that to require each individual contractor/applicant to sponsor its own registered (USDOL-approved) apprenticeship program for each craft that it employs may, in fact, create a substantial barrier to certain contractors, including those that are small businesses, who would otherwise be eligible to bid on and engage in public work. Consequently, the Department proposed N.J.A.C. 12:62-2.1(h), which provides five separate ways in which a contractor/applicant may be considered "participating in a registered apprenticeship program" and, therefore, in compliance with the law's apprenticeship requirement. The contractor may (1) sponsor its own registered apprenticeship program; (2) employ at least one apprentice who is registered with the USDOL within a registered apprenticeship program; provided that as of the date of the contractor's submission to the Department of the Application for Public Works Contractor Registration, the apprentice has completed at least 1,000 hours of on-the-job learning with the contractor; (3) during the one-year period immediately preceding submission to the Department of the Application for Public Works Contractor Registration, have employed at least one apprentice who was registered with the USDOL within a registered apprenticeship program; provided that the apprentice had completed at least 1,000 hours of on-the-job learning with the contractor; (4) be a signatory to a collective bargaining agreement through which the contractor has access to a registered apprenticeship program that is sponsored by the labor union, or agree to joint sponsorship with the labor union of a registered apprenticeship program, provided that the collective bargaining agreement also requires ongoing employer contributions into an ERISA-covered apprenticeship training program trust fund; or (5) be a signatory to an agreement with a workforce intermediary, such as an industry association, consortium of businesses, community-based organization, or educational institution, through which the contractor has access to a registered apprenticeship program sponsored by the workforce intermediary, or agree to joint sponsorship with the workforce intermediary of a registered apprenticeship program, provided that the agreement between the contractor and the workforce intermediary also requires ongoing employer contributions into an ERISA-covered apprenticeship program trust fund. The fifth option is included in the amended rules expressly to provide a path to compliance with the Act's apprenticeship requirement for contractors who are not the sponsor of their own registered apprenticeship program, who do not employ a registered apprentice(s), and who do not wish to enter into a collective bargaining agreement with a labor union.

The commenter raises particular concern about the requirement at N.J.A.C. 12:62-2.1(h)1 and 2 for contributions to an ERISA-covered apprenticeship training trust fund where the contractor/applicant seeks to comply with the registered apprenticeship program participation requirement through becoming signatory to either a collective bargaining agreement with a labor union or an agreement with another workforce intermediary (such as an industry association, consortium of businesses, community-based organization, or educational institution). The commenter maintains that making contributions into an ERISA-covered apprenticeship training program trust fund is not mentioned in the law, is overly burdensome for small businesses and "belies the fact that many small businesses that already engage in public works have various retirement plans in place for employees, including 401(k) plans and the like." While it is true that the law does not mention contributions to an ERISA-covered apprenticeship training program fund, it also does not mention a compliance option whereby a contractor will be considered "participating in" a registered apprenticeship program without personally sponsoring such a program and personally employing a USDOL-registered apprentice(s). Rather, the Department, mindful of the challenges for compliance that a reading of the law to require individual program sponsorship would present to contractors (especially those who are small businesses), has created the above-described alternate path to compliance with the law's apprenticeship requirement. Using this alternate path, a contractor may comply with the apprenticeship program participation requirement by providing financial support to a registered apprenticeship program sponsored by a workforce intermediary with which the contractor has a relationship, rather than sponsoring its own registered apprenticeship program. The oversight of the apprenticeship training fund by the Employee Benefits Security Administration under the Employee Retirement Income Security Act of 1974 (ERISA) simply ensures, as it does for all other "employee welfare benefit plans," including those sponsored by unions, that the monies contributed to the fund by the contractor are applied appropriately to the fund.

The commenters also express a general concern about burdens on small businesses. As explained in the Regulatory Flexibility Analysis statement within the notice of proposal (51 N.J.R. 806(a)), a number of other proposed provisions (adopted through this rulemaking) are expressly intended to minimize the burden on all affected businesses, with a particular focus on small businesses. Specifically, the Department includes definitions for the terms "craft" and "craftworker" that limit the Act's registered apprenticeship program participation requirement to construction trades or crafts that the contractor utilizes directly on public works. P.L. 2019, c. 21, states simply that, "the contractor, if directly employing craftworkers," must certify to the Department that it, "participates in a registered apprenticeship program ... for each craft they employ." This could be read to require that the contractor participate in a registered apprenticeship program not only for each craft that it employs in the performance of public works, but also for each craft that it employs in non-public works projects. Also, because the term "craft" is not defined within the Act, the above-quoted language could be read to require that the contractor participate in a registered apprenticeship program for each occupation recognized as an apprenticeable trade, which might extend beyond the construction trades. Instead, with the amendments to N.J.A.C. 12:62-1.2 and 2.1, the Department makes clear that the CRA's apprenticeship requirement applies only to "construction trades or crafts that the contractor utilizes directly on public works."

It should be noted that the rule also limits procedural steps by not conditioning registration on submission to the Department of documentation regarding the contractor's possession of all valid licenses, registrations, and certificates required by State law. Nor does it require the contractor to submit documentation establishing that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program. Rather, under the amendments, it will suffice for the contractor to certify that it is in possession of such documentation and that it will make the documentation available to the Department upon request. Finally, the rule provides a one-year period from May 1, 2019 (the law's effective date) through April 30, 2020, during which the apprenticeship program participation requirement may be satisfied by certifying and possessing documentation to establish that either the contractor or an intermediary (for example, a labor union, industry association, or business consortium) with which the contractor has a relationship has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs.

2. COMMENT: The commenter states the following:

[I] think you should consider [m]aking a monetary threshold for smaller projects, such as a \$ 30,000.00 limit to not require a public work certificate. It is likely that there will be some smaller jobs that traditionally would be

completed by a local contractor that will now get no bidders. The reason for this being is that the smaller companies will not pay the annual expense or put up with the extra hassle of union membership to meet this new law obligation.

RESPONSE: Under the CRA, specifically, N.J.S.A. 34:11-56-56.51, no contractor is permitted to bid on any contract for "public work," as that term is defined within the New Jersey Prevailing Wage Act (PWA), N.J.S.A. 34:11-56.25 et seq., unless the contractor is registered with the Department pursuant to the CRA. The requirements of the PWA (and by [page=2107] extension, the requirements of the CRA) apply only to contracts for the performance of public work where the contract amount is in excess of the "prevailing wage contract threshold amount." The prevailing wage contract threshold amount is \$ 16,263 for contracts awarded in whole or in part by a municipal public body, and is \$ 2,000 for contracts awarded by a non-municipal public body. See N.J.S.A. 34:11-56.27 and N.J.A.C. 12:60-1.4(b). The Department has no discretion to establish, through rulemaking, a \$ 30,000 project threshold amount for application of the requirements of the CRA, as suggested by the commenter, nor does it have the discretion to set any other contract or project threshold amount for application of the requirements of the CRA or the PWA beside what is set forth in statute.

3. COMMENT: The commenter states the following:

Water/wastewater treatment facility construction is a highly specialized field in construction that requires knowledge and skills of just about every trade in the construction industry.

...

A basic wastewater pumping station rehabilitation project requires about a dozen trades to complete the project. There is no way any water/wastewater contractor will be able to actively participate in all of the apprenticeship programs for all of the trades required for this work and the cost to contribute to all of the necessary ERISA-covered apprenticeship program [funds] will be enormous. We currently estimate the cost to our firm will be at least \$ 21,000 per year in order to comply with this law.

RESPONSE: P.L. 2019, c. 21, expressly requires that, as a condition to registration under the CRA, a contractor, if directly employing craftworkers, must certify to the Department that "it participates in a registered apprenticeship program ... for each craft that they employ." As explained in the Response to Comment 1, the Department has established a path to compliance that would not require the water/wastewater treatment facility construction contractor to individually sponsor a separate registered apprenticeship program for each of the dozen crafts it said that it employs, thereby necessitating, among other things, that the contractor employ at least one apprentice in each of those dozen crafts. Rather, under the amended rule, a contractor has the less costly option for each construction craft that the contractor employs directly on a public work, to enter into an agreement with a workforce intermediary, like an industry association or a business consortium, which is the sponsor of a registered apprenticeship program, and contribute financially on an ongoing basis to an ERISA-covered apprenticeship training trust fund to support that program.

Incidentally, the commenter might consider either on his own, or through an industry association or consortium of businesses, applying to the USDOL for inclusion on that agency's list of apprenticeable occupations a specialized occupation for water/wastewater treatment facility construction. The contractor, industry association, or business consortium could then develop an apprenticeship program for that newly recognized apprenticeable occupation (perhaps based on an existing training program(s) developed and deployed by an individual contractor(s) or by an industry association), and apply for, and obtain, approval from the USDOL for the program. If the contractor/applicant was to "participate in" such a registered apprenticeship program, it would satisfy the apprenticeship requirement for CRA registration purposes. The contractor would still be required under the PWA to pay the prevailing wage rate for each of the dozen or so individual crafts or trades that it employs on the public work, but participation in the single USDOL-registered apprenticeship program for water/wastewater treatment facility construction would meet the CRA registration requirement.

4. COMMENT: The commenters are fire protection companies who say that there are no apprenticeable trades for the unique type of work they perform on fire and life safety systems. The commenters state there are a multitude of

trades or crafts that potentially connect to their work rendering any particular apprenticeship program impractical and unworkable. The commenters say that inasmuch as small businesses typically characterize the fire and life safety equipment field, the newly proposed ERISA-covered apprenticeship training program trust fund requirement places an intolerable financial burden on them because they are already financially burdened with ERISA funding costs, such as contributing to 401(k) retirement plans for employees. The commenters stress that their employees are factory trained and authorized by manufacturers in the fire and life safety equipment industry to perform work on these systems, and if these specialized companies are no longer available to work on such fire and life safety systems, this will place the public's safety, lives, and property at risk. The commenters maintain the apprenticeship requirement should only apply to "the new construction aspect, rather than a company that performs inspections and repairs." Finally, the commenters maintain that "[t]his law seems to be discriminatory in favor of union companies as opposed to being neutral between union companies and small/family owned businesses."

RESPONSE: The Department refers the commenters to the Responses to Comments 1 and 3.

5. COMMENT: The commenters are various industry organizations that request exemptions from the apprenticeship requirement on behalf of the member companies they represent. The American Fire Sprinkler Association, New Jersey Chapter (AFSA-NJ) and the New Jersey Association of Fire Equipment Distributors (NJAFED) request that companies already licensed and certified by the New Jersey Department of Community Affairs (DCA) as fire equipment contractors be exempt from the apprenticeship requirement for the reasons discussed in Comment 4. The New Jersey Ground Water Association (NJGWA) requests that well drillers and pump installers be exempted from the apprenticeship requirement because those individuals are already licensed by the New Jersey Department of Environmental Protection (DEP), which includes supervised training that NJGWA maintains equals an apprenticeship. The Utility and Transportation Contractors Association of New Jersey (UTCA) requests an exemption for owner-operators because they say the trucking and hauling work their members perform is ancillary to the registered work of other contractors who are already licensed or qualified to perform work on the project. For small businesses the UTCA calls "micro-businesses," very small businesses with five workers or less, the commenter urges that micro-businesses be exempt because the burden of complying with the new apprenticeship requirement is disproportionately harsh on them, adding that an exemption would not give such micro-businesses any unfair business advantages, but would just allow them to remain in business.

RESPONSE: The Department does not have the statutory authority to create exemptions from the CRA's requirements for certain industries, nor does it have the statutory authority to exempt certain contractors from the CRA's requirements based on size. As explained in the Response to Comment 1, the Department gave careful consideration as to how, within its statutory authority, it could minimize the burden on small businesses of compliance with the CRA's apprenticeship requirement.

6. COMMENT: The commenter supports the rule amendments stating that they have the potential to enhance the quality of the project being constructed and strengthen the safety and training of the workers constructing the project. The commenter asserts that New Jersey residents will benefit from the amendments, because public work projects will be constructed by a more highly trained and skilled workforce. Finally, the commenter asks that the Department consider requiring each contractor to specify at the time of applying for registration that one of the five methods for "participating in a registered apprenticeship program" the contractor is using to satisfy the CRA's apprenticeship requirement.

RESPONSE: The Department thanks the commenter for his support. No change to the proposed amendments will be made on the basis of the commenter's suggestion.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are not subject to any Federal standards or requirements. Specifically, the adopted amendments are governed by State law, N.J.S.A. 34:11-56.48 et seq., which requires that contractors register with the Department of Labor and Workforce Development as a condition to performing "public work," as that term is defined within the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. There are no Federal standards or requirements that impose a registration requirement as a

condition to performing "public work," as that term is defined within the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

Inasmuch as P.L. 2019, c. 21, requires as a condition to registration as a public works contractor that the applicant certify that it is participating [page=2108] in a "registered apprenticeship program," and then defines that term to mean an apprenticeship program that is registered with and approved by the USDOL under Federal regulations, and inasmuch as the adopted amendments reflect that statutory requirement, the adopted amendments have a connection to the Federal apprenticeship regulations. However, as indicated above, the subject of the amendments is public works contractor registration, not apprenticeship; which is to say, the Department will not be enforcing any apprenticeship standards, State or Federal, as a result of the adopted amendments, but rather, pursuant to P.L. 2019, c. 21, will simply be confirming as part of the application evaluation process that the contractor who is applying for public works contractor registration is participating in a registered apprenticeship program.

Regarding adopted N.J.A.C. 12:62-2.1(j), which makes express reference to and restates the substance of 29 CFR 29.6, as explained in the notice of proposal Summary, this is purely an informational subsection. That is to say, the Department is simply relaying to the regulated community that under that particular Federal regulation, which is enforced by the USDOL, a registered apprenticeship program must have at least one registered apprentice except for the following periods of time, which may not exceed one year: between the date when a program is registered and the date for its first apprentice; and between the date that a program graduates an apprentice and the date of registration for the next apprentice in the program. Because one of the most frequently voiced concerns during the rulemaking process was that a contractor might be required to employ a registered apprentice at all times in order to satisfy the new requirement at P.L. 2019, c. 21, the Department believes that it is worth including this informational subsection, so as to reassure the regulated community that even under USDOL's apprenticeship rules, there are certain limited circumstances where the program sponsor would be permitted a lapse in continuous engagement of an apprentice in on-the-job learning without jeopardizing the program's standing with the USDOL. Again, the standard set forth at adopted N.J.A.C. 12:62-2.1(j) is a Federal rule enforced exclusively by the USDOL and it is being included within the adopted amendments for purely informational purposes.

Full text of the adoption follows:

SUBCHAPTER 1. GENERAL PROVISIONS

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:

...

"Craft" means a construction trade or craft that is utilized by the contractor directly on a public work and that is included on the U.S. Department of Labor's (USDOL's) "List of Occupations Officially Recognized as Apprenticeable by the Office of Apprenticeship."

"Craftworker" means an individual employed by a contractor in a craft.

...

"ERISA-covered apprenticeship training program trust fund" means an "employee welfare benefit plan," as that term is defined within the Employee Retirement Income Security Act of 1974 (ERISA), that is subject to the requirements for such a plan under ERISA, and that is a fund established and maintained for the sole purpose of financing a registered apprenticeship program.

...

"Registered apprenticeship program" means an apprenticeship program that is registered with, and approved by the USDOL, that provides each trainee with combined classroom and on-the-job training in an occupation

recognized as an apprenticeable occupation, and which meets the program standards of enrollment and graduation under 29 CFR 29.6.

"Sponsor" means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

"Sponsorship" means the position of being a sponsor.

...

"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, who have completed or are actively participating in a registered apprenticeship program, 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. For the purposes of this chapter, contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.

SUBCHAPTER 2. PUBLIC WORKS CONTRACTOR REGISTRATION

12:62-2.1 Registration required

(a)-(b) (No change.)

(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 and certify to the truthfulness and accuracy of all statements made, and documents submitted, in connection with the Application for Public Works Contractor Registration. The information to be submitted for review shall include:

1.-6. (No change.)

7. Proof of workers' compensation insurance;

8. A statement that the contractor possesses all valid and effective licenses, registrations, or certificates required by State law, including registrations or certifications required to do business in New Jersey;

9. A statement that the contractor is in possession of documentation, which will be made available to the Department upon request, that the contractor possesses all valid and effective licenses, registrations, or certificates required by State law, including registrations or certifications required to do business in New Jersey;

10. A statement that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that it employs;

11. A statement that the contractor is in possession of documentation that will be made available to the Department upon request, establishing that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that it employs; and

12. (No change in text.)

(d)-(g) (No change.)

(h) For the purpose of this section, a contractor is considered to be participating in a registered apprenticeship program if:

1. The contractor is a signatory to a collective bargaining agreement through which the contractor has access to a registered apprenticeship program that is sponsored by the labor union, or agrees to joint sponsorship with the labor union of a registered apprenticeship program; provided that the collective bargaining agreement also requires ongoing employer contributions into an ERISA-covered apprenticeship training program trust fund;

52 N.J.R. 2103(b)

2. The contractor is signatory to an agreement with a workforce intermediary, such as an industry association, consortium of businesses, community-based organization, or educational institution, through which the contractor has access to a registered apprenticeship program sponsored by the workforce intermediary, or agrees to joint sponsorship with the workforce intermediary of a registered apprenticeship program; provided that the agreement between the contractor and the workforce intermediary also requires ongoing employer contributions into an ERISA-covered apprenticeship training program trust fund;

3. The contractor is the sponsor of a registered apprenticeship program;

4. The contractor currently employs at least one apprentice who is registered with the United States Department of Labor within a registered apprenticeship program; provided that as of the date of the contractor's submission to the Department of the Application for Public Works Contractor Registration, the apprentice has completed at least 1,000 hours of on-the-job learning with the contractor; or

5. During the one-year period immediately preceding submission to the Department of the Application for Public Works Contractor Registration, the contractor employed at least one apprentice who was registered with the United States Department of Labor (USDOL) within a registered apprenticeship program; provided that the apprentice had completed at least 1,000 hours of on-the-job learning with the contractor.

(i) For the period from May 1, 2019 (the effective date of P.L. 2019, c. 21) to April 30, 2020, a contractor submitting an Application for Public [page=2109] Works Contractor Registration to the Department may satisfy the requirements of (c)10 and 11 above by certifying and possessing documentation to establish that the contractor has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that a labor union with which the contractor is signatory to a collective bargaining agreement has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that an industry association or consortium of businesses of which the contractor is a member in good standing has applied to the USDOL, for approval of a registered apprenticeship program for each craft that the contractor employs.

(j) Pursuant to 29 CFR 29.6, every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed one year:

1. Between the date when a program is registered and the date of registration for its first apprentice(s); or
2. Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

NEW JERSEY REGISTER

Copyright © 2020 by the New Jersey Office of Administrative Law

End of Document