

CHAPTER 67

AN ACT concerning the enforcement of prevailing wage requirements and amending P.L.1963, c.150 and P.L.1999, c.238.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 14 of P.L.1963, c.150 (C.34:11-56.38) is amended to read as follows:

C.34:11-56.38 Prohibition against award of contract to non-complying contractors; definition; presumption.

14. The public body awarding any contract for public work, or otherwise undertaking any public work, or entering into a lease or agreement to lease pursuant to which public work is to be done, shall first ascertain from the commissioner the list of names of contractors or subcontractors who have failed to pay prevailing wages as determined in section 13 of this act, and no contract shall be awarded to such contractor or subcontractor, or to any firm, corporation or partnership in which such contractor or subcontractor has an interest until three years have elapsed from the date of listing as determined in section 13 of this act.

For purposes of this section, "interest" shall mean an interest in the firm, corporation or partnership bidding on, or performing public work, whether having the interest as an owner, partner, officer, manager, employee, agent, consultant or representative. The term may also include, but not be limited to, all instances in which the contractor or subcontractor listed by the commissioner under section 13 of this act has received payments, whether those payments are in the form of cash or any other form of compensation from the firm, corporation or partnership, or when the contractor or subcontractor listed by the commissioner under section 13 of this act has entered into any contract or agreement with the firm, corporation or partnership for services performed or to be performed, for services that have been or will be assigned or subletted, or for the sale, rental or lease of vehicles, tools, equipment or supplies during the period from the initiation of the proceedings under section 13 of this act against the contractor or subcontractor until three years have elapsed from the date that the contractor or subcontractor has been listed by the commissioner under section 13 of this act. The term "interest" shall not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of proceedings under section 13 of this act from a firm, corporation or partnership bidding or performing public work.

A rebuttable presumption that a contractor or subcontractor listed by the commissioner under section 13 of this act has an interest in another firm, corporation or partnership may arise if the two share any of the following capacities or characteristics: (1) perform similar work within the same geographical area and within the same monetary range, (2) occupy the same premises, (3) have the same telephone number or fax number, (4) have the same email address or internet website, (5) employ substantially the same administrative employees, (6) utilize the same tools and equipment, (7) employ or engage the services of any listed person or persons involved in the direction or control of the other, or (8) list substantially the same work experience in order to obtain the requisite pre-qualification rating from the Department of the Treasury, or any other entity, to participate in any public work.

If a rebuttable presumption has arisen that a contractor or subcontractor listed by the commissioner under section 13 of this act has an interest in another firm, corporation or partnership, the adversely affected contractor or subcontractor, including the firm, corporation or partnership, which would by virtue of a finding of "interest" be prevented under this section from being awarded public work, may request a hearing, which shall be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

2. Section 3 of P.L.1999, c.238 (C.34:11-56.50) is amended to read as follows:

C.34:11-56.50 Definitions relative to public works contractors.

3. As used in this act:

"Commissioner" means the Commissioner of Labor and Workforce Development or his 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 (C.34:11-56.25 et seq.), and includes any subcontractor or lower tier subcontractor of a contractor as defined herein.

"Department" means the Department of Labor and Workforce Development.

"Director" means the Director of the Division of Wage and Hour Compliance in the Department of Labor and Workforce Development.

"Worker" includes 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.

3. Section 9 of P.L.1999, c.238 (C.34:11-56.56) is amended to read as follows:

C.34:11-56.56 Violation; disorderly persons offense; other penalties; suspension; hearing.

9. a. A contractor who: (1) willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act; (2) fails to make, keep, and preserve any records as required under the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); (3) falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand; (4) refuses to furnish a sworn statement of such records or any other information required for the enforcement of this act to the commissioner upon demand; (5) pays or agrees to pay wages at a rate less than the rate prescribed by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); or (6) otherwise violates any provision of this act, shall be guilty of a disorderly persons offense.

b. As an alternative to or in addition to sanctions provided by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may, after providing the contractor with notice of any alleged violation of this act, and with an opportunity to request a hearing before the commissioner or his designee:

(1) Deny renewal, revoke or suspend the registration of a contractor for a period of not more than five years; or

(2) Require a contractor, as a condition of initial or continued registration, to provide a surety bond payable to the State. 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 (C.34:11-56.25 et seq.) or this act. 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. The surety bond shall be issued by a surety that meets the requirements of N.J.S.2A:44-143.

c. The director may order the immediate suspension of a contractor's registration, prior to a formal hearing on the revocation of the contractor's registration pursuant to subsection b. of this section, if the director determines that ordering an immediate suspension is in the

public interest and provided that the contractor is afforded an opportunity to contest the immediate suspension in the following manner:

(1) The director shall notify the contractor in writing of the immediate revocation and the contractor's rights under the subsection.

(2) The contractor may notify the director of its request for an opportunity to be heard and contest the immediate suspension in writing within 72 hours of its receipt of immediate suspension notification.

(3) Within seven business days of receipt of the notification from the contractor pursuant to paragraph (2) of this subsection, the director shall grant the contractor a hearing to contest the immediate suspension. The director shall permit the contractor to present evidence at the hearing.

(4) The director shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's immediate suspension. The decision shall include the grounds for upholding or reversing the contractor's immediate suspension.

(5) If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. If the director intends to impose an immediate suspension as set forth in subsection c. of this section, based upon a rebuttable presumption as set forth in section 14 of P.L.1963, c.150 (C.34:11-56.38), the director shall provide the contractor with a notice of intent to suspend and the contractor may request a hearing before the Director of the Division of Wage and Hour Compliance within 72 hours of the receipt of the notice of intent to suspend in order to present evidence expeditiously in support of the position that the suspension should not be imposed. The suspension shall not take effect prior to the expiration of the 72-hour opportunity to request a hearing. If such a request is not made, the suspension shall take effect at the end of the 72-hour period. If such a request is made, the suspension shall take effect only after the director conducts the hearing.

e. If the director orders the immediate suspension of a contractor's registration pursuant to subsection b. of this section, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor.

4. This act shall take effect immediately.

Approved April 26, 2007.