

# New Jersey Economic Development Authority Affirmative Action Addendum to Construction Contract

## MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

Pursuant to N.J.A.C. 19:30 SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

### **N.J.A.C. 19:30-3.5 Construction contracts**

1. The New Jersey Economic Development Authority “*Affirmative Action Addendum to Construction Contract*”, which is provided by the Authority as part of its application for financial assistance and also available at [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction), must be part of all construction contracts and must be signed by the project owner/applicant, prime contractor and subcontractor (all tiers).
2. Unless specifically exempted by N.J.A.C. 19:30-3.4 or 3.5(b), 10 percent of every disbursement for each construction contract in connection with the construction project shall be retained by the project owner/applicant, agent, trustee or lender until 50 per cent completion of the contract. Upon notification to the AA Compliance Officer that a contract is 50 percent complete and confirmation from the AA Compliance Officer that the project is in substantial compliance with this subchapter, five percent of every disbursement for each construction contract must be retained. Upon approximately 90 percent completion of the construction contract and receipt of an Authority Affirmative Action Completion Certificate that is acceptable to the Authority, the Authority will notify the project owner/applicant that the remaining retainage may be released.
3. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional, or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor or subcontractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth provisions of this nondiscrimination clause.
5. The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
6. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a referral letter, to be provided by the Authority, advising the labor union or workers’ representative of the contractor’s commitments under this subchapter and shall post copies of the referral letters in conspicuous places available to employees and applicants for employment.
7. The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-7.2; provided, however, that the Authority may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed in N.J.A.C. 19:30-3.6 (see below), as

long as the Authority is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Authority, that its percentage of active “card-carrying” members who are minority and women workers is equal to or greater than the applicable employment goals established in accordance with N.J.A.C. 17:27-7.2.

8. The general contractor that is awarded a construction contract or the project owner/applicant must submit an initial project workforce report to the Authority. Each initial workforce report shall identify the estimated workforce requirements, by trade or craft, of the construction contractors and subcontractors for the duration of the construction contract.
9. The general contractor must submit a monthly project workforce report to the Authority within 15 business days after the end of the reporting month.
10. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
11. In the event a construction contract has been executed between a project owner/applicant; Or; a landlord not exempted by N.J.A.C. 19:30-3.4, and the contractor or subcontractor before the project owner/applicant applied to and/or received final approval, the Authority will require that any executed construction contract(s) be amended to include the NJEDA “Affirmative Action Addendum to Construction Contract”, on a go-forward basis or incorporate such addendum by a side letter agreement.

#### 19:30-3.6 Good Faith

- (a) A contractor will be considered in compliance with this subchapter only if the contractor has made good faith efforts to meet the minority and women hiring goals for each trade or craft employed on the project. The goals are expressed as percentages of the total hours worked on the project in each trade. The goals are established by the Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance and can be found at the Division’s website at: [www.state.nj.us/treasury/contract\\_compliance/](http://www.state.nj.us/treasury/contract_compliance/).

The contractor must take the following steps in demonstrating good faith effort:

1. When hiring or scheduling workers in each construction trade, the contractor or subcontractor shall make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Authority may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by this paragraph and (a) 2 below, as long as the Authority is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Authority, that its percentage of “card carrying” members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3.

A good faith effort by the contractor or subcontractor shall include compliance with the following procedures:

- i. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with this subchapter [N.J.A.C. 19:30 Subchapter 3] as supplemented and amended from time to time. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to commencement of construction work, the contractor or subcontractor shall attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor shall be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under N.J.A.C. 19:30-3.6(a)2 below; and the contractor or subcontractor shall take said action immediately if it determines or is so notified by the Authority that the union is not referring minority and women workers consistent with the applicable employment goal.
2. If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (a)1 above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall take the following actions consistent with the applicable county employment goals:
    - i. Notify the Authority's Affirmative Action Compliance Officer and minority and women referral organizations listed by the Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers.
    - ii. Notify any minority and women workers who have been listed with it as awaiting available vacancies;
    - iii. Prior to commencement of work, request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
    - iv. Leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service at <http://lwd.dol.state.nj.us/labor/employer/content/joborderrequest.html> and other approved referral sources in the area until such time as the workforce is consistent with the employment goal; and
    - v. If it is necessary to lay off any of the workers in a given trade on the construction site, assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et seq.;

3. The contractor or subcontractor shall adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
  - i. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possess the requisite skills, and experience as recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Authority. If necessary, the contractor or subcontractor shall hire or schedule minority workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of N.J.A.C. 19:30-3.6(a) 4 below.
  - ii. If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested woman or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.
  - iii. If, for any reason, a contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the Authority's Affirmative Action Compliance Officer.
  - iv. The contractor or subcontractor shall keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Authority and submitted promptly to the Authority's Affirmative Action Compliance Officer upon request.
  
4. Nothing contained in N.J.A.C. 19:30-3.6(a) 2 above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred to N.J.A.C.19:30-3.6(a) 2 above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey workers ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, in implementing the procedures of (a) 2 above, the contract or subcontractor shall, where applicable, employ minority and women workers, residing within the geographical jurisdiction of the union. After notification of award, but prior to signing a construction

contract, the contractor shall submit to the Authority an initial EDA project workforce report provided by the Authority for distribution to and completion by the contractor, in accordance with N.J.A.C. 19:30-3.7. The contractor shall also submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Authority. The contractor agrees to notify the Authority and at least two minority referral organizations of the contractor's labor needs, and to request referrals of minority and women workers. The contractor shall leave standing requests for referrals of minority and women workers with the local unions, the State Employment Service, New Jersey Bureau of Apprenticeship and Training and at least two referral sources designated from time to time by the Authority until such a time as the contractor has met its hiring goals.

5. In conforming with the applicable employment goals, the contractor or subcontractor shall review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- (b) When compliance challenges are initiated pursuant to N.J.A.C. 19:30-3.8, the Authority shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith:
1. Whether the contractor or subcontractor has knowledge of and has considered the general availability of minorities and women having requisite skills in the immediate labor area;
  2. Whether the contractor or subcontractor has knowledge of and has considered the percentage of minorities and women in the total workforce in the immediate labor area;
  3. Whether, when the opportunity has presented itself, the contractor or subcontractor has considered promoting minority and women employees within its organization;
  4. Whether the contractor or subcontractor attempted to hire minorities and women based upon the anticipated expansion, contraction and turnover of its workforce;
  5. Whether the contractor or subcontractor has the ability to consider undertaking training as a means of making all job classifications available to minorities and women and whether it has done so;
  6. Whether the contractor or subcontractor has utilized the available recruitment resources to attract minorities and women with requisite skills, including but not limited to training institutions, job placement services, referral agencies, newspapers, trade papers, faith-based organizations, and community-based organizations; and
  7. Whether the contractor or subcontractor has documented its attempts to attain the goals.

# New Jersey Economic Development Authority Prevailing Wage Addendum to Construction Contract

## N.J.A.C. 19:30 SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

The New Jersey Economic Development Authority “*Prevailing Wage Addendum to Construction Contract*”, which is provided by the Authority as part of its application for financial assistance and also available at [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction), must be part of all construction contracts and must be signed by the project owner/applicant, prime contractor and subcontractor (all tiers), and by the owner/applicant’s or recipient of authority financial assistance landlord, unless specifically exempted by N.J.A.C. 19:30-4.2.

### **N.J.A.C. 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 mill work 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:

1. Performed on a facility owned by a landlord of the entity receiving the assistance;
2. The landlord is a party to a construction contract(s); and
3. 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.

(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.

### **N.J.A.C. 19:30-4.3 Assurances required**

(a) Recipients of Authority financial assistance for construction contract shall deliver a NJEDA affirmative action completion certificate to the Authority (or designated agent for the Authority), upon completion of the contract, 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

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).

**N.J.A.C. 19:30-4.4 Contract provisions required**

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

1. Prime contractors maintain and submit certified payrolls to the Authority; or
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.

In the event a construction contract has been executed between a project owner/applicant; or; a landlord not exempted by N.J.A.C. 19:30-3.4, and the contractor (or subcontractor) before the project owner/applicant applied to and/or received final approval, the Authority will require that any executed construction contract(s) be amended to include the NJEDA *“Prevailing Wage Addendum to Construction Contract”*, on a go-forward basis or incorporate such addendum by a side letter agreement.



## AFFIRMATIVE ACTION & PREVAILING WAGE ADDENDUM TO CONSTRUCTION CONTRACT SIGNATURE PAGE (PAGE 1 OF 2)

### THIS PROJECT IS SUBJECT TO NJEDA PREVAILING WAGE & AFFIRMATIVE ACTION REQUIREMENTS

I/We, the undersigned certify to the New Jersey Economic Development Authority that the Authority's "Affirmative Action and Prevailing Wage Addendums to Construction Contract" will be included as part of all construction contracts and must be signed by the 1.) project owner/applicant or grant recipient; 2.) general contractor(s) or construction manager; 3.) the subcontractor; and for certain projects 4. The grant recipient's landlord (on page 2 of 2, if applicable) and all lower-tier contractors (on page 2 of 2, if applicable).

	NJEDA PROJECT #: _____ PROJECT OWNER – RECIPIENT COMPANY NAME: _____	
<b>PROJECT OWNER OR GRANT RECIPIENT</b>	_____ Signature of Authorized Representative for Project Owner/Grant Recipient	_____ Company Name of Project Owner/Grant Recipient
	_____ Signatory's Name and Title	_____ Street Address or PO Box of Project Owner/Grant Recipient
	_____ Date of Signature	_____ City, State and Zip Code of Project Owner/Grant Recipient
	_____ Date of Actual or Projected Date of Contract Award to General Contractor	_____ e-mail address of Project Owner/Grant Recipient
	Phone: _____	
<b>GENERAL CONTRACTOR or CONSTRUCTION MANAGER</b>	_____ Signature of Authorized Representative for General Contractor or C.M.	_____ Company Name of General Contractor or Construction Mgt. Co.
	_____ Signatory's Name and Title	_____ Street Address or PO Box of General Contractor or Mgt. Co.
	_____ Date of Signature	_____ City, State and Zip Code of General Contractor or Mgt. Co.
	_____ Date of Actual or Projected Construction Start Date	_____ e-mail address of General Contractor or Construction Mgt. Co.
	Phone #: _____	
<b>SUBCONTRACTOR</b>	_____ Signature of Authorized Representative for Subcontractor Company	_____ Name of Subcontractor Company
	_____ Signatory's Name and Title	_____ Street Address or PO Box of Subcontractor Company
	_____ Date of Signature	_____ City, State and Zip Code of Subcontractor Company
	_____ Date of Actual or Projected Date of Subcontract Award	_____ e-mail address of Subcontractor Company
	Phone #: _____	

Submit to: NJ Economic Development Authority – 24 Commerce Street – Suite 301 – Newark, NJ 07102 or [affirmativeaction@njeda.com](mailto:affirmativeaction@njeda.com)





## AFFIRMATIVE ACTION & PREVAILING WAGE ADDENDUM TO CONSTRUCTION CONTRACT SIGNATURE PAGE (PAGE 2 OF 2)

### THIS PROJECT IS SUBJECT TO NJEDA PREVAILING WAGE & AFFIRMATIVE ACTION REQUIREMENTS

I/We, the undersigned certify to the New Jersey Economic Development Authority that the Authority's "Affirmative Action Addendum to Construction Contract" has/will be included as part of all construction contracts and must be signed by the 1.) project owner/applicant or grant recipient; 2.) general contractor(s) or construction manager; 3.) the subcontractor; and for certain projects 4. The grant recipient's landlord (on PAGE 2, if applicable) and all lower-tier contractors (on PAGE 2, if applicable), if not specifically exempted by N.J.A.C. 19:30-3.4 Therefore, a Landlord to the recipient of NJEDA financial assistance will be required to sign the NJEDA Affirmative Action and Prevailing Wage Addendums to Construction Contract, pursuant to N.J.A.C. 19:30-3.7 and N.J.A.C. 19:30-4.2, if the work being performed under the construction contract(s) is:

1. Being performed on a facility owned by a landlord of the entity receiving the Authority financial assistance; and
2. The landlord is a party to the construction contract(s); and
3. More than 55 per cent of the facility is leased by the entity receiving the Authority financial assistance at the time of construction contract(s) and under any agreement to subsequently lease the facility.

	NJEDA PROJECT #: _____ PROJECT OWNER – RECIPIENT COMPANY NAME: _____	
<b>LANDLORD OF RECIPIENT</b>	_____ Signature of Authorized Representative for Landlord of EDA Grant Recipient  _____ Signatory's Name and Title  _____ Date of Signature  _____ Date of Actual or Projected Date of Contract Award to General Contractor	_____ Company Name of Landlord of EDA Grant Recipient  _____ Street Address or PO Box of Project of Landlord of EDA Grant Recipient  _____ City, State and Zip Code of Landlord of EDA Grant Recipient  _____ e-mail address of Landlord of Grant Recipient  Phone: _____
<b>SUBCONTRACTOR (lower tier)</b>	_____ Signature of Authorized Representative for Subcontractor (lower tier)  _____ Signatory's Name and Title  _____ Date of Signature  _____ Date of Actual or Projected Date of Contract Award to Subcontractor (lower tier)	_____ Company Name of Subcontractor (lower tier)  _____ Street Address or PO Box of Subcontractor (lower tier)  _____ City, State and Zip Code of Subcontractor (lower tier)  _____ e-mail address of Subcontractor (lower tier)  Phone: _____

Submit to: NJ Economic Development Authority – 24 Commerce Street – Suite 301 – Newark, NJ 07102 or [affirmativeaction@njeda.com](mailto:affirmativeaction@njeda.com)