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Is there a “Public Utility” in the Prevailing Wage?

By: Jill Tobia Sorger, Esq.

Introduction:

UTCA Contractors who perform construction work for public utilities in New Jersey take note - under a newly passed law, contractors on New Jersey public utility projects will now be required to pay prevailing wages to their workers. On January 13, 2008, Governor Jon S. Corzine signed into law a bill providing that construction work on New Jersey public utility projects is subject to the requirements of the New Jersey Prevailing Wage Act. In addition to providing for payment of the prevailing wage, this law also mandates that contractors may only employ workers on a public utility project who have successfully completed an Occupational Safety and Health Administration (“OSHA”) certified safety training program for the work being performed at the jobsite. The new law is set to take effect in six (6) months (July 13, 2008) and will apply only to those public utility construction contracts entered into after said effective date.

Definitions in the New Law:

Prior to being enacted, the law went through several versions amidst various opposition. The new law specifically defines “construction work on a public utility” as the “construction,

reconstruction, installation, demolition, restoration and alteration” of the facilities of a public utility. The law, however, specifically excludes from its definition of “construction work on a public utility” “operational work” such as flagging work, “snow plowing, vegetation management in and around utility rights of way, mark outs, janitorial services, landscaping, leak surveyors, meter work, and miscellaneous repairs.” Furthermore, unregulated public utility affiliates are not covered by the law.

Advice for Contractors:

As with any new law, UTCA contractors, especially those now performing or intending to bid and perform work for a New Jersey public utility, should review the same to assess whether and the extent to which the law applies to and/or impacts the work of the contractor. For example, the law’s definition of “construction work on a public utility” should be scrutinized by the contractor as the law exempts specific types of work from its scope and therefore, from the requirement to pay the prevailing wage. In addition, contractors should note the effective date of the law, particularly since it is prospective in nature and thus, will only apply to contracts entered into after its effective date (which is six (6) months from the date of enactment or July 13, 2008). It is also good planning to specifically evaluate the impact of the law on new work after July 2008. After the law takes effect, a contractor may have to increase the pay of its workers to meet prevailing rates. If a contractor has a collective bargaining agreement with a union or unions which provides for the payment of lesser rates than the prevailing rates, the contractor will have to adjust those collective bargaining agreements to conform to prevailing rates after July 2008 when working on New Jersey public utility projects.

Proponents of the law insist that there are advantages to having the prevailing wage apply to public utility projects; however, initially some contractors (both union and non-union) on public

utility projects will experience increased costs and a change in the way they must approach these types of projects. From the outset, contractors must be careful to factor in the increased cost of performing the work at the correct prevailing rates when bidding since the New Jersey Department of Labor and Workforce Development can be expected to stringently enforce this new law. Furthermore, contractors must make the necessary arrangements to comply with the law's mandate that all workers performing work on the site receive certified OSHA safety training. Remember, a contractor cannot claim ignorance of a law (even a new law) since ignorance is never a valid defense to a violation of the New Jersey Prevailing Wage Act.

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