

LAW OFFICES

RONALD L. TOBIA ●▲
JILL TOBIA SORGER ●▲■

TOBIA & SORGER ESQS., LLC

A LIMITED LIABILITY CORPORATION OF LAWYERS

COUNSEL

SAL M. ANDERTON ● ■

BAR AFFILIATIONS

NJ BAR ●
FLA BAR ▲
NY BAR ■

500 SUPOR BOULEVARD
HARRISON, NEW JERSEY 07029

1-973-746-6000

FAX: 1-973-509-1578

EMAIL: RTOBIA@TOBIASORGER.COM
EMAIL: JSORGER@TOBIASORGER.COM
EMAIL: SANDERTON@TOBIASORGER.COM

TRENTON OFFICE

172 W. STATE STREET
P.O. BOX 2041
TRENTON, NJ 08607
609-393-1442
609-393-1990 FAX

FLORIDA OFFICE

4302 HOLLYWOOD BOULEVARD
SUITE 171
HOLLYWOOD, FL 33021
973-746-6000

Reply to: Harrison, NJ Office

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***PUBLIC WORKS CONTRACTOR REGISTRATION:
They Want Everything.....***

By: Jill Tobia Sorger, Esq.

Introduction:

Under the Public Works Contractor Registration Act, *N.J.S.A.* 34:11-56.48, all contractors and subcontractors (including lower tier subcontractors) who bid or perform work on public projects in New Jersey must be registered with the New Jersey Department of Labor and Workforce Development (“NJDOL”). To obtain registration, a contractor must complete and submit an application provided by the NJDOL. If approved, the contractor is issued a Contractor Registration Certificate. This Registration Certificate must be renewed every year, with the exception of a two year renewal which is available only to contractors who have been continuously registered with the NJDOL for a period of two years prior to renewal without any violations of state or federal labor laws.

The application for registration is relatively simple and straightforward, with the majority of questions being general information, such as name and address type questions. The application is not qualification oriented and therefore, the majority of applications are approved assuming that the form is completed properly and timely. The only real reason for denial of such an application is a prior history of significant violations of federal and or state labor laws by either the applicant

company or an individual associated with the applicant company. The vetting of a company or individual with a history of significant violations is accomplished by a series of questions on the application aimed at revealing the existence of any prior matters with the NJDOL and/or other labor law enforcement agencies such as the Occupational Safety and Health Administration (OSHA) or the National Labor Relations Board (NLRB). Under the law, a Contractor Registration Certificate may be denied, suspended or revoked for failing to provide complete and/or accurate information in response to these questions concerning prior history.

While these questions are undoubtedly aimed at exposing contractors who have a repeated history of violating the New Jersey Prevailing Wage Act and/or other labor laws, many contractors who are otherwise in good standing with the NJDOL become targets for revocation of their Contractor Registration Certificates on the grounds that information was intentionally omitted from the application. While the June 2005 Article for this Column attributed such an occurrence to confusion over the wording of these application questions, recent revisions to the questions make it abundantly clear what information is being requested on the application. Accordingly, contractors must take the time to ensure the accuracy of their answers in order to avoid being threatened with revocation of their Contractor Registration Certificates.

Questions 13 and 14:

The particular questions for which contractors are cited for answering improperly are Questions 13 and 14 of the application. Question 13 states:

At any time during the preceding five (5) years, did the businesses listed in item #1 receive a notice of any alleged violation of any:

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- a. New Jersey State Labor Law
If yes, provide date of notice, description of violation and case number.
- b. United States Federal Labor Law including OSHA (Occupational Safety and Health Act), NLRB (National Labor Relations Board) or Affirmative Action laws.
If yes, provide date of notice, description of violation and case number.
- c. Labor Laws of any other state or public entity (i.e. city, county, board of education, etc.)
If yes, provide date of notice, description of violation and case number.

Question 14 essentially repeats the above questions in reference to any individual having an “interest” in the applicant company. As is evident from the phrase “alleged violation”, the question seeks a listing of any matter that an applicant may have had with the NJDOL or other entity regardless of whether the matter was settled and/or a violation was found. Where contractors most often make mistakes in answering is by failing to include matters that have been settled and/or resolved in the applicant’s favor. Another common mistake is that a prior application is merely copied off of a prior year’s application by office personnel who may be unaware of an intervening matter. Regardless of the reason, the failure to include these matters (even ones that were settled quickly and for minimal dollar amounts) triggers a violation of the Contractor Registration Act and serves as the grounds for revocation of a Contractor Registration Certificate. Since the Certificate is a prerequisite to bid and perform work on public projects, the contractor’s ability to perform the same is immediately placed in jeopardy upon the issuance of a notice of intent to revoke.

Advice for Contractors:

Contractors submitting a registration application or application for renewal should consult legal counsel to obtain a summary of its past “violations” history from the NJDOL, so that the same

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may be addressed in connection with the responses to Questions 13 and 14. It is important to remember that the application is seeking information about all matters, regardless of amount or outcome. The NJDOL is primarily concerned with recidivist violators and not the average contractor applicant who may have some “prior matters”. Accordingly, the failure to include the information is what creates the grounds to seek revocation of the Contractor Registration Certificate as opposed to the information itself. Most likely, the information will have no impact on the outcome of the application. Therefore, the best way for a contractor to avoid this problem is to make sure that it obtains and maintains thereafter a complete “alleged violations” history that is updated yearly for inclusion in each renewal application. Otherwise, the contractor will be forced to defend a Notice of Intent to Revoke Contractor Registration even when it is otherwise in good standing with the NJDOL.

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