



10 W Lafayette Street
Trenton, NJ 08608-
2002

609-393-7707
www.njbia.org

To: David Fish, Executive Director of Legal and Regulatory Affairs, New Jersey
Department of Labor and Workforce Development

From: Alexis Bailey, Director of Government Affairs

Date: August 19, 2022

RE: NJBIA Comments on Rule Proposal 54 N.J.R. 1158(a)

Michele N. Siekerka,
Esq.
President and CEO

Christine Buteas
Chief Government
Affairs Officer

Raymond Cantor
Vice President

Christopher Emigholz
Vice President

Alexis Bailey
Director of
Government Affairs

Kyle Sullender
Director of Economic
Policy Research

On behalf of our member companies that make NJBIA the largest most impactful association representing New Jersey businesses, I write to you to express concerns regarding rule proposal 54 N.J.R. 1158 (a) which creates regulations to implement P.L. 2021 c. 423.

Since the enactment of a law requiring that all contractors must participate in a registered apprenticeship program in order to bid on public works contracts, many small business contractors have faced significant burdens to complete these projects. **In 2020, 1,900 potential contractors were denied bids for public works contracts with the majority of them losing out on a contract for failing to participate in an apprenticeship program.**

Despite the Legislature and Governor Murphy stressing the need to assist the small business community, this outcome is completely contradictory to that claim. This new law and proposed regulations will make it even more difficult for small business contractors to participate in an apprenticeship program, resulting in even more contractors being left out of the public bidding process at a time when a robust construction workforce is greatly needed.

As federal infrastructure dollars pour into our state in the coming years, New Jersey must be prepared to encourage more contractors, not less, to execute the many projects our state so desperately needs. We urge the Department of Labor to be as flexible as possible while promulgating these regulations to ensure additional barriers are not imposed on small businesses that will make it even more difficult for them to satisfy the apprenticeship program requirement to bid on public works projects. The New Jersey Department of Labor should take into consideration how to make the expectations set forth by this rule proposal as clear as possible to ensure ease of compliance for the business community.

12:62-2.7 Continuing compliance obligation: There are several provisions in this rule proposal we ask the Department to remove or clarify for the betterment of small business contractors. First, under the proposed changes to N.J.A.C. 12:62-2.7, registered contractors would have to provide written notification to the Department between renewal cycles if there is “a change in the registered apprenticeship program or programs in which the contractor participates.” The proposed rule does not fully define what constitutes a “change” that would warrant reporting to NJDOLWD. Further complicating the matter, if a contractor participates in a registered apprenticeship program, they may

not immediately know of every small change that occurs within the program as they are not the sponsor and operator of the program. This responsibility, once more explicitly defined, is better placed on the apprenticeship program sponsor who runs the day-to-day operations of the aggregated apprenticeship program and works with the U.S. Department of Labor for program compliance, rather than on individual contractors. This would streamline reporting for small businesses as well as cut down on the amount of duplicative information the Department would have to receive from a number of contractors participating in the same apprenticeship program reporting the same changes.

The proposed regulatory change to this section also requires contractors to report any “changes to other ‘relevant and appropriate information’ required by the Department.” Relevant and appropriate information is not defined in the proposed rule. Without a clear definition that outlines the Department’s expectation of what “relevant and appropriate information” is, small business contractors will essentially be set up to fail and fall out of compliance by not being properly informed on what must be reported.

Lastly, reporting of any changes pertinent to the Department as outlined in the proposed regulations must be submitted to the Department within five calendar days of when the changes occurred. This short time frame will not provide adequate time for contractors to be able to submit information to the Department of Labor and Workforce Development. We suggest extending this time frame to at least 14 calendar days.

In addition to our concerns on the clarity and ease of compliance of the proposed regulations we have several concerns regarding the overall impacts they will have on the New Jersey business climate.

Social Impact: NJBIA disagrees with the Department’s assertion that these regulations will have a “positive social impact in that they would minimize any possible confusion...”. The proposed regulations add further confusion to the business community due to the lack of clarity as mentioned above. Additionally, the potential loss of income for small businesses due to increased barriers to accessing public works projects by no means has a “positive social impact” on New Jersey’s economy. Small businesses often do not operate their own apprenticeship programs because they may not be actively hiring new employees, have the capacity to facilitate a robust apprenticeship program on their own or are sole proprietors. By increasing the regulatory burden on apprenticeship programs, small businesses that do not have the bandwidth to operate their own program and rely upon participation in aggregated apprenticeship programs to satisfy the requirement may have fewer program options, thus limiting the pool of eligible contractors. Decreasing competition in the bidding process and increasing barriers not only harms businesses, but also taxpayers and public entities seeking bidders.

Jobs Impact: NJBIA also disagrees with the Department’s claim that this proposed regulation will have no impact on jobs. From the Department’s own data, it is very clear that businesses have been eliminated from participating in the public works bidding process due to the first iteration of this policy. Additional regulatory burdens coupled with the lack of a small business exemption of any kind will only cause the decrease in eligible businesses to continue to grow.

Additionally, part of the regulatory changes to Section 9 of P.L. 1999 C.238 allow a contractor to face increased civil and criminal penalties if they fail to register with a properly recognized apprenticeship program. Businesses can also have their certificate of registration to perform public work suspended even if the “failure to comply with N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1 did not exist at the time of the contractor’s most recent certificate of registration application, whether that application was for contractor registration renewal or initial approval.” Adding insult to injury, “when a contractor has had its

registration certificate either revoked or suspended pursuant to (h) or (i) above, for failure between registration certificate renewal cycles to comply with N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1, that registration certificate revocation or suspension shall be taken into consideration by the Department as a prior offense when determining whether to approve any subsequent certificate of registration application.” Contractors will effectively be punished at no fault of their own because statute and regulations changed while they were in the midst of operating under a valid certificate of registration. These revisions may stifle contractors from even attempting to participate in public works projects if they fear being penalized for failing to meet ambiguous requirements to complete a project. As a result, these new proposed regulations will only eliminate more businesses from participating in bidding on public projects, cut their revenue streams and decrease the number of jobs generated by these businesses. If the Departments encounters “bad actors” in the field, they already have the tools to hold companies accountable if operating outside of the current regulations.

Economic Impact: The Department indicated that these new regulations “might result in an increase in the number of registered apprenticeship programs in the State.” We disagree because apprenticeship programs in New Jersey must already be approved by the U.S. Department of Labor. Now they will have to meet and comply with standards set forth by both the federal and state governments. These regulations do not even make it clear what the new state standards for a registered apprenticeship program will be. As a result of this new, unclear red tape, apprenticeship programs will have more difficulty starting and thriving in our state. This will harm the building trades sector and our overall economy.

Lastly, NJBIA disagrees with the Department's claim that it “has no discretion through rulemaking to deviate 54 N.J.R. 1158(a) from these statutory mandates, regardless of whether doing so might lessen the burden of compliance on any particular class of employers, including small employers.” The Department has the ability, for example, to inform the small business community of exactly what they must do to comply with requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7; (3) which requires each applicant as a condition of being registered as a public works contractor to certify that the registered apprenticeship program or programs in which it participates meet the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7. and how these expectations will be monitored and enforced. Within these proposed regulations it is not clear what criteria the Department is going to use to determine what constitutes a registered apprenticeship program recognized by the state.

NJBIA has been a consistent supporter and champion of apprenticeship and workforce development programs to help meet the needs of the business community and foster sustainable careers for New Jerseyans. We fully recognize the importance of apprenticeship programs to support the talent pipeline of the building trades industry. However, these regulations fail to recognize that not every small business can facilitate an apprenticeship and fails to present proper recourse or balance for those small businesses to allow them to continue accessing public works projects. In fact, these proposed regulations create further ambiguity and stoke fears that the aggregated apprenticeship programs they are forced to rely on may be at risk.

As the business community continues to navigate turbulent economic circumstances and prepares to execute public works projects in the coming years with federal infrastructure money, our state must ensure the number of eligible contractors that can bid on public works contracts can expand.

NJBIA encourages you to keep the regulatory burden as flexible as possible on small business contractors as you consider the proposed rules to implement P.L. 2021 c. 423. Thank you for taking our comments

and concerns into consideration. If you have any questions, I can be reached at abailey@njbja.org or at 551-221-3355.