

A Local Law adding a new Chapter 309 to the Laws of Westchester County to require that County contractors and subcontractors have in place apprenticeship agreements appropriate for the type and scope of work to be performed, that have been registered with the New York State Commissioner of Labor.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Chapter 309 of the Laws of Westchester County is hereby added to read as follows:

CHAPTER 309

**APPRENTICESHIP AGREEMENTS
REQUIRED FOR COUNTY CONSTRUCTION CONTRACTS**

- § 309.01. Legislative Intent.**
- § 309.11. Definitions.**
- § 309.21. Requirement of Apprenticeship Agreements for Construction Contracts.**
- § 309.31. Additional Considerations Permissible.**
- § 309.41. Proof of Participation and Apprentice Completion Rates.**
- § 309.51. Certified Payroll.**
- § 309.61. Applicability.**
- § 309.71. Sanctions and Remedies.**
- § 309.81. Copy of Law Provided.**
- § 309.91. Severability.**

§ 309.01. Legislative Intent.

The County Board of Legislators recognizes that the New York State Legislature has declared it the public policy of the State of New York to develop sound apprenticeship training standards and to encourage labor and industry to participate in apprenticeship programs. Section 816-b of the New York State Labor Law authorizes governmental entities—like the County—that are direct or indirect parties to a construction contract to require contractors and subcontractors to have apprenticeship agreements in place that are appropriate for the type and scope of work to be performed, and that

have been registered with by the New York State Commissioner of Labor pursuant to Article 23 of the Labor Law.

The County Board finds that New York State registered apprenticeship programs provide valuable educational and training tools for County residents, and may facilitate the ability of County residents to obtain skilled jobs. The County Board finds that it would be valuable to encourage local businesses to participate in such state registered apprenticeship programs, in order to meet the need for skilled trade persons, while providing residents with the means to earn a better living. New York State approved apprenticeship programs also encourage equal opportunity for apprentices and applicants for apprenticeship, consistent with state and federal regulations, in order to enhance workforce development and diversification, and to prevent exclusionary practices. See 12 N.Y.C.R.R. 600.4; see also 29 C.F.R. pt. 30.

§ 309.11. Definitions.

- A. “Apprenticeship Agreement” means: (1) an individual written agreement between an employer and an apprentice; (2) a written agreement between an employer or an association of employers, and an organization of employees describing conditions of employment for apprentices; or (3) a written statement describing conditions of employment for apprentices in a plant or plants where there is no bona fide employee organization.
- B. “Commissioner” means the Commissioner of the Department of Public Works and Transportation.
- C. “Construction Contract” means any contract to which the County or any of its departments or agencies may be a direct or indirect party which involves the construction, reconstruction, improvement, rehabilitation, repair, furnishing, equipping of or otherwise providing for any building, facility, or physical structure in excess of \$250,000. A public entity need not be party to the Construction Contract. A Construction Contract includes: projects that Westchester

County funds directly; projects that Westchester County funds indirectly by providing funds to a separate entity to perform the construction-type activity; privately financed construction projects specifically built with the intent of leasing the entire property to any agency or department of Westchester County government; and construction projects built under Westchester County's direction and later paid for with Westchester County funds.

- D. “Contractor” means any bidder for, or awardee of, a Construction Contract, as defined in this section, obtained through competitive bidding procedures.
- E. “Date of Award of the Construction Contract” means the date that the Construction Contract has been approved by the Board of Acquisition and Contract.
- F. “Subcontract” means any agreement between Contractors or any agreement between a Contractor and any person or entity under which any portion of the Contractor’s obligation is performed, undertaken or assumed.
- G. “Subcontractor” means an individual, sole proprietorship, partnership, joint venture or corporation which is engaged by a Contractor or another subcontractor pursuant to a Construction Contract.

§ 309.21. Requirement of Apprenticeship Agreements for Construction Contracts.

- A. A Contractor shall have in place at the time of submission of a bid for a Construction Contract an Apprenticeship Agreement appropriate for the type and scope of work to be performed. Such Apprenticeship Agreement shall be registered with the New York State Commissioner of Labor pursuant to the requirements found in Article 23 of the New York State Labor Law.
- B. A Contractor shall provide each Subcontractor with notice of the requirements for Apprenticeship Agreements as appropriate, and a copy of this Local Law, at the time of the execution of each respective Subcontract.

- C. A Subcontractor shall have in place within ninety (90) days of the Date of the Award of a Construction Contract an Apprenticeship Agreement appropriate for the type and scope of work to be performed. Such Apprenticeship Agreement shall be registered with the New York State Commissioner of Labor pursuant to the requirements found in Article 23 of the New York State Labor Law.
- D. This provision shall not apply to Contractors or Subcontractors engaged in occupations which are not registered as apprenticeable by the New York State Commissioner of Labor.
- E. This provision shall not apply to emergency procurements entered into pursuant to section 103 of the New York State General Municipal Law and section 167.171 of the Laws of Westchester County.
- F. The Commissioner is authorized to enact rules and regulations as may be deemed necessary for the implementation of this Chapter. This authority shall not include providing any further exemptions to the requirements of this Chapter, which are not already stated herein.

§ 309.31. Additional Considerations Permissible.

The County, in addition to whatever considerations are required by law, may consider the degree to which career opportunities in apprenticeship training programs approved by the New York State Commissioner of Labor may be provided.

§ 309.41. Proof of Participation and Apprentice Completion Rates.

- A. Any prospective Contractor shall submit with their Construction Contract bid:
 - 1. proof of an Apprenticeship Agreement;
 - 2. most recently available certificates of completion, which show that each of the Contractor's applicable registered apprenticeship programs has an apprentice

completion rate of at least thirty percent (30%) as determined by the New York State Department of Labor; and

3. a certification that it shall fulfill its obligations under Section 309.21(B) of this Chapter.

B. Within ninety (90) days of the Date of the Award of the Construction Contract, the Contractor shall submit to the Commissioner, for all Subcontractors under the Construction Contract:

1. proof of each Subcontractor's Apprenticeship Agreement(s); and

2. certificates of completion, which show that each of the Subcontractor's applicable registered apprenticeship programs has an apprentice completion rate of at least thirty percent (30%) as determined by the New York State Department of Labor.

C. Completion Rate Exemptions.

1. A registered apprenticeship program, under which any Apprenticeship Agreement is executed, shall be exempt from the completion rate requirements of § 309.41(A)(2) and § 309.41(B)(2) where that apprenticeship program:

i. is still in its probation period with the State Department of Labor, consistent with 12 N.Y.C.R.R. ch. IX, pt. 601; or

ii. is within one year of the projected completion date of its first apprentice(s) eligible to be included in the completion rate calculation.

2. For the exemption to apply, the Contractor shall submit to the Commissioner, on behalf of the Contractor and/or any Subcontractors, a copy of the relevant fully executed program registration agreement or proof of the State Department of Labor's provisional approval of the apprenticeship program.

§ 309.51. Certified Payroll.

The Contractor shall provide the Commissioner with a certified monthly payroll, which shall include the following information for each person employed to work on the Construction Contract by the Contractor and/or any Subcontractor: worker's name, address, last four digits of Social Security Number, classification(s) in which the worker was employed, hourly wage rate(s) paid, supplements paid or provided, and daily and weekly number of hours worked in each classification.

§ 309.61. Applicability.

- A. This Chapter shall apply to Construction Contracts and Subcontracts entered on or after the effective date of the law, but shall not apply to extensions or renewals that were authorized pursuant to a provision contained in a Construction Contract or Subcontract that was executed prior to the effective date of the law. Nothing herein shall impair existing Construction Contracts or Subcontracts.
- B. The requirements of Sections 309.21 and 309.41 of this Chapter, although recommended, shall not apply to a Contractor or Subcontractor upon receipt of a verified written statement that the total number of persons employed by such Contractor or Subcontractor is 14 or fewer.

§ 309.71. Sanctions and Remedies.

- A. The failure of a prospective Contractor to provide the following may result in the determination that the bid is non-responsive:
 - 1. proof of an Apprenticeship Agreement for such Contractor as required by Section 309.21(A) or a verified written statement that the total number of persons employed by such Contractor is 14 or fewer; and/or

2. a certification that a copy of this Local Law and notice of the requirements therein shall be provided to each Subcontractor, as required by Section 309.41(A)(3).
- B. The County may withdraw or suspend its approval of one or more Subcontractors on any Construction Contract, or any portion thereof, in the event that it is established that a Subcontractor failed to comply with the requirements of this Chapter.

§ 309.81. Copy of Law Provided.

- A. The Commissioner shall cause a copy of this Local Law to be provided with the bid specifications for each bid for a Construction Contract.
- B. This Local Law shall be included as an Appendix to each Construction Contract.

§ 309.91. Severability.

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 2.

The Clerk of the Board shall cause a notice of this Local Law to be published at least once a week for two successive weeks, the first publication of which shall be had within ten days after such local law is adopted, in the official newspapers published in the County of Westchester, said notice to contain the number, date of adoption and a true copy of the Local Law, and a statement that this Local Law changes a provision of law relating to public bidding and/or contracts, and is therefore

subject to the provisions of Sections 209.171(2) and 209.181 of the Laws of Westchester County, providing for a permissive referendum.

Section 3.

This Local Law shall take effect ninety (90) days after its adoption, subject to the provisions of Section 209.181 of the Laws of Westchester County.