



New York State Department of Labor

Kathy Hochul, Governor

Roberta Reardon, Commissioner

ENFORCEMENT GUIDANCE

DATE: February 7, 2023

RE: LL §224-d; Wage Requirements for Certain Renewable Energy Systems

FROM: Shaun McCreedy, Director of Public Work

ATTN: All

Effective October 1, 2021, section 224-d was added to Article 8 of the New York State Labor Law establishing prevailing wage requirements for certain renewable energy systems.

A “covered renewable energy system,” subject to the prevailing wage requirements of Section 220, meant a renewable energy system as defined in section 66-p of the Public Service Law with a capacity of greater than five megawatts alternating current and which involves the procurement of renewable energy credits by a public entity, or a third party acting on behalf and for the benefit of a public entity.

Specifically excluded from coverage under section 224-d is construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself, and/or its affiliates, as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization.

On July 5, 2022, section 224-d was amended (S8648/A9598) to change the definition of a covered renewable energy system to a renewable energy system as defined in section 66-p of the Public Service Law with a capacity of one or more megawatts alternating current and which involves the procurement of renewable energy credits by a public entity, or a third party acting on behalf and for the benefit of a public entity; or any “thermal energy network” as defined by subdivision twenty-nine of section 2 of the Public Service Law.

Prior to the enactment of section 224-d, certain renewable energy system projects that entered into an agreement with NYSERDA for the purchase of renewable energy credits were made to require the payment of prevailing wages pursuant to NYSERDA procurement policy. These prevailing wage requirements mandated by NYSERDA on projects solicited prior to the effective date of 224-d are contractual requirements between the developer and NYSERDA. The New York State Department of Labor lacks jurisdiction to enforce the provisions of Article 8 on any such project prior to the law’s effective date.

To avoid imposing unanticipated costs on contractors and developers, the Bureau of Public Work shall enforce the provisions of section 224-d and prevailing wage requirements of Article 8 on all covered renewable energy system projects, with a capacity of more than five megawatts, that were awarded a contract from an advertisement or a solicitation or a request for proposal, invitation for bid, or solicitation of proposal, or any other method provided for by law or regulation for soliciting a response from offerors intended to result in a contract that is issued on or after October 1, 2021.



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Likewise, the Bureau of Public Work shall enforce the provisions of section 224-d and prevailing wage requirements of Article 8 on all covered renewable energy system projects, with a capacity of one or more megawatts or which are thermal energy networks, that were awarded a contract from an advertisement or a solicitation or a request for proposal, invitation for bid, or solicitation of proposal, or any other method provided for by law or regulation for soliciting a response from offerors intended to result in a contract that is issued on or after July 5, 2022.

For reference, Public Service Law section 66-p defines a “renewable energy system” to mean systems that generate electricity or thermal energy through use of the following technologies: solar, thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

Public Service Law section 2(29) defines a “thermal energy network” to mean all real estate, fixtures, and personal property operated, owned, used or to be used for or in connection with or to facilitate a utility-scale distribution infrastructure project that supplies thermal energy. “Thermal energy” is defined by Public Service Law section 2(28) as piped non-combustible fluids used for transferring heat into and out of buildings for the purpose of eliminating any resultant on-site greenhouse gas emissions of all types of heating and cooling processes, including, but not limited to, comfort heating and cooling, domestic hot water, and refrigeration.

In summary, the Bureau of Public work shall enforce prevailing wage requirements on “covered renewable energy system” projects when:

- The system has a capacity of more than 5 megawatts and the project was solicited / procurement issued on or after October 1, 2021.
- The system has a capacity of 1 or more megawatts or is a thermal energy network and the project was solicited / procurement issued on or after July 5, 2022.

The Bureau of Public work shall not enforce the prevailing wage requirements of section 224-d when:

- The project was solicited, contracted for, or work began, prior to October 1, 2021.
- The system has a capacity between 1 and 5 megawatts and was solicited, contracted for, or work began, prior to July 5, 2022.
- The system has a capacity of less than 1 megawatt and is not a thermal energy network.
- The construction work is performed under a labor peace agreement, project labor agreement, or an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization.

In the event a renewable energy system construction project is not covered by section 224-d, it may still be subject to the provisions of Labor Law section 220 or 224-a and prevailing wage requirements.

Director
Bureau of Public Work