



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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360/902-5335 Fax 360/902-5300

January 28, 2010

Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison LLP
P.O. Box 1088
Ellensburg, WA 98926

Re: Washington State Horse Park Authority (your file # 701608.001)

Dear Mr. Slothower:

Thank you for your January 14, 2010 letter. You have asked for a determination of the application of prevailing wage requirements to a non-governmental, non-profit organization when the funds for the project come, at least in part, from the State of Washington or a municipality.

The answer below is based on the information you provided. References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are included. Again, this answer is based on your fact set. If the facts differ from those you provided, the answers may be different.

"Public work" is defined in statute:

"Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, **executed at the cost of the state or of any municipality**, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

RCW 39.04.010(4) (emphasis added).

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The facts relevant to your specific question involve a grant from the Department of Community, Trade, and Economic Development now named Department of Commerce (Commerce). The grant contract face sheet states, in part, "Funds awarded under this grant shall be used for construction activities associated with the Washington State Horse Park project located on Ranger Station Road in Cle Elum." The contract amount is \$3,480,000.00.

You are asking about construction work executed at a cost to the state of nearly \$3.5 million. This meets the definition of "public work" in RCW 39.04.010(4).

RCW 39.12.020 requires that "The hourly wages to be paid to laborers, workers or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality, or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such work is performed."

Where a private non-governmental organization (NGO) uses state or municipal funds to execute a construction project, the prevailing wage provisions of Chapter 39.12 RCW will apply to that NGO's project.

Your letter states; "The Washington State Horse Park Authority is not a state, county, municipality, or political subdivision of the State created by law." However, the relevant factor isn't the NGO status of the organization, at issue is the source of the money. Here, funds are from the state, and the construction work is executed at a cost to the state. The prevailing wage requirements of Chapter 39.12 RCW do apply to this set of facts.

Washington State prevailing wage information, including the WACs, are available on the Department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

I hope this answers your questions. If you need additional information or have questions, please call or e-mail me at 360 902-5330 or somd235@lni.wa.gov.

Sincerely,



David J. Soma

Industrial Statistician

Prevailing Wage Program Manager

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.

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January 14, 2010

VIA FIRST CLASS MAIL AND EMAIL

David J. Soma, Industrial Statistician
Prevailing Wage Manager
Department of Labor and Industries
PO Box 44540
Olympia, WA 98504-4540

Email Address: somd235@lni.wa.gov

Re: Washington State Horse Park Authority
Our File No. 701608.001

Dear Mr. Soma:

I represent the Washington State Horse Park Authority. The Washington State Horse Park Authority is a non-profit corporation organized pursuant to Chapter 79A.30 RCW for the purposes of developing a horse park. Under RCW 79A.30.030(1), the Washington State Horse Park Authority is a Washington non-profit corporation that was formed under the non-profit corporation provisions of Chapter 24.03 RCW to carry out the purposes of Chapter 79A.30 RCW. Under RCW 79A.30.030, the Washington State Horse Park Authority has all of the powers and is subject to the same restrictions as are permitted or prescribed to non-profit corporations and shall exercise those powers for carrying out the purposes of (Chapter RCW 79A.30) and those purpose necessary implied therefrom.

The Washington State Horse Park Authority is developing the horse park with funds obtained through Department of Community Trade and Economic Development ("CTED") (now known as the Department of Commerce) Grant No. 08-96107-001, a copy of which is enclosed. At paragraph 25, the CTED contract indicates that the Horse Park needs to consult with the Industrial Statistician to determine whether prevailing wage should be paid on work contracted for by the Washington State Horse Park Authority.

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David J. Soma, Industrial Statistician

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The Washington State Horse Park Authority is now in a position where they are going to begin making improvements to real property by hiring several contractors to develop, construct and build the horse park.

The Washington State Horse Park Authority is not a state, county, municipality, or political subdivision of the State created by law. Instead, the Washington State Horse Park Authority is a private, non-profit corporation authorized under Washington law. As a result, the Washington State Horse Park Authority concludes that it is not subject to the prevailing wage law.

We request that you, as the Industrial Statistician of the State of Washington, review this and confirm our conclusion that the Washington State Horse Park Authority is not subject to the prevailing wage law, or provide the basis for a different conclusion.

If you have any questions or concerns or need further information, please do not hesitate to contact me.

Very truly yours,



Jeff Sletcher

JS/hh

Encl.

cc: Client (w/encl.)