



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

July 29, 2011

Giles F. Hulsman III
CEO, Director of Land Development Services
Abbey Road Group
P.O. Box 1224
Puyallup, WA 98731

Re: Prevailing Wage Requirements for Surveying

Dear Mr. Giles:

Thank you for your June 14, 2011 letter. I apologize for the delay in this reply. I offer no excuses, just that I have a considerable workload and too little time.

In your letter you asked for a determination of the application of the Washington State prevailing wage on public work law, chapter 39.12 RCW to work performed by surveyors. You provided information on professional and licensing status of your firm and its employees. You further discuss excerpts from various laws and rules including some related to contractors and registration or licensing.

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.

RCW 39.12.015 provides that "All determinations of the prevailing rate of wage shall be made by the Industrial Statistician of the Department of Labor & Industries."

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."

RCW 39.12.030 requires that when public agencies are in privity to contracts to perform "construction, reconstruction, maintenance or repair" such contracts must require payment of no less than the prevailing rate of wage to the "laborers, workers, or mechanics in each trade and

occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract....”

The Construction Site Surveyor is a trade and occupation for which a prevailing rate of wage has been determined by the Industrial Statistician. A scope of work description has been adopted for the Construction Site Surveyor. The scope of work “describes” but may not fully “define” the trade and occupation.

The Washington State Supreme Court has provided guidance on the interpretation and implementation of the prevailing wage law (chapter 39.12 RCW). See, for example, *Everett Concrete Products v. L&I*, 109 Wn.2d 819 (1988). Case law instructs us that “RCW 39.12 is remedial and should be construed liberally.” “A liberal construction should carry into effect the purpose of the statute.” The purpose behind Washington’s prevailing wage law is drawn from the model used for the state law, the federal prevailing wage law (the Davis-Bacon Act), which “was enacted to protect the employees of government contractors from substandard earnings and to preserve local wage standards... The employees, not the contractor or its assignee, are the beneficiaries of the Act.” *Everett* at 823 (quoting *Unity Bank & Trust Co. v. United States*, 756 F.2d 870, 873 (1985)).

Your letter posits that the definition of “contractor” and/or the professional status of your employees would preclude the application of prevailing wages to any of their work. This conclusion is not correct. The prevailing wage law actually applies to “the contractor, subcontractor or other person” performing any part of the work contemplated by the public works contract. See RCW 39.12.030.

The employees protected by the prevailing wage law are the “laborers, workers, or mechanics” employed on the public work. See RCW 39.12.020. There is nothing in chapter 39.12 RCW that would exclude a “professional” from the universe of “laborers, workers, or mechanics.” The prevailing wage law is not focused on what someone is (such as a title, license, or professional status), rather it looks at what the person may actually do (the type, character, and nature of the work). See *Lockheed Shipyard v. L&I*, 56 Wn. App. 421, 429-430 (1989).

Considering the statute and case law, Labor & Industries adopted a scope of work description for the Construction Site Surveyor:

For the purpose of the Washington state public works law, chapter 39.12 RCW, construction site surveyors perform survey work which requires the use or utilization of transits, tripod mounted levels, lasers, electrotape and other electronic measuring devices or theodolites to establish a location, an elevation or grade, distances, and other measurements.

(1) The work of the construction site surveyor includes, but is not limited to:

- Survey work performed after the contract is awarded and during the actual construction in direct support of construction crews when the worker is in the employ of and working under the direction of a construction contractor to survey check points of location and grade on a construction site using a variety of measurement tools, instruments, and procedures.

(2) The construction site surveyor scope of work does not include surveying services not within the description in subsection (1) of this section that are required by specification or contract or state law to be performed under the direct supervision of individuals registered under chapter [18.43](#) RCW.

WAC 296-127-01396.

You will note that surveying work related to the performance of a public work requires payment of the prevailing rate of wage to the people performing such work and, conversely, the survey work that is unrelated to the performance of any public work project would not have a prevailing wage requirement. This is consistent with the requirements in law. An example of work that would require prevailing wages would include (but is not limited to) surveying during construction to establish construction elevations or grades. An example of work that might be performed for a public agency and not require prevailing wages would be a boundary line survey not related to the performance of any part of a public works construction contract. Your firm may very well perform work in each of those two categories (one of which does, in fact, require prevailing wages).

As you can see, for these prevailing wage questions, when the facts vary, the answer may be different.

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 me at 360 902-5330 or e-mail me at sela235@Lni.wa.gov.

Sincerely,



L. Ann Selover
Acting Industrial Statistician/Program Manager

cc: José Rodriquez, Assistant Director,
for Specialty Compliance Services