



STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES

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

April 8, 2020

Lauren Parris Watts  
Helsell Fetterman LLP  
1001 Fourth Avenue, Suite 4200  
Seattle, WA 98154-1154

Re: Prevailing Wage Requirements for Third Party Vendors - On Site Equipment Repair

Dear Ms. Watts:

Thank you for your communications regarding your client who leases or sells equipment to contractors. You asked for a prevailing wage determination on certain services your client provides to contractors working on public works projects. Your January 30, 2019 letter provides five examples:

1. Perform unpaid repair work on leased construction equipment currently situated on a public works project;
2. Perform unpaid warranty work on purchased construction equipment currently situated on a public works project;
3. Perform paid repair work on purchased construction equipment currently situated on a public works project;
4. Perform paid and unpaid repair work on leased and/or purchased construction equipment currently situated at the vendor's shop; and
5. Deliver leased or purchased equipment to a contractor currently working on a public works project.

Mr. Aaron Nelson, Industrial Relations Specialist provided an email response to these questions. You indicated you would still like to receive a formal determination. I appreciate your patience as we studied this matter.

There are several issues intertwined in your examples. Before the conclusion, some background information and analysis by topic may be helpful.

## **Prevailing Wage Determinations**

As you know, chapter 39.12 RCW is the state's prevailing wage law. "All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries" per RCW 39.12.015(1). This letter is a determination made under that authority.

## **Interpretation of the Prevailing Wage Law**

Case law tells us the state's prevailing wage law is a remedial law to be liberally interpreted for the purpose of protecting local workers and their wage standards. For example, see *Everett Concrete Products v. Labor & industries*, 109 Wn.2d 819, 823 (1988).

## **Prevailing Wage On Public Works**

Chapter 39.12 RCW identifies a type of worker that is paid prevailing wages on public works: The laborer, worker, or mechanic. This prevailing wage requirement applies to work "upon all public works by the laborers, workers, or mechanics." See RCW 39.12.020. That requirement in RCW 39.12.020 does not require that the laborer, worker, or mechanic be "employed" on the public work, only that they be "upon" the public work.

Work performed by laborers, workers, or mechanics for a "contractor, subcontractor or other person doing, or contracting to do the whole or any part of the work contemplated by the contract" is subject to the prevailing wage specifications. See RCW 39.12.030.

## **Public Work: Executed at a Cost to the State or a Municipality**

The most common criteria for something to be classified as a "public work" is to have that work executed at a cost to the state or of any municipality. See RCW 39.04.010(4) and also see WAC 296-127-010(7)(a). Sometimes this cost is direct when the public entity contracts and pays for construction, reconstruction, maintenance or repair work. See RCW 39.12.030. Other situations may involve an indirect cost. For example:

- (7)(a) The term "public work" shall include:
  - (i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

WAC 296-127-010(7)(a)(i) (emphasis added).

There have been instances in which the costs for a public works were purported to be entirely in the materials and the labor was said to be at no cost to the public entity. These situations have been presented to L&I with a suggestion that the "no-cost" labor would result in no requirement to pay prevailing wages to the workers.

Mindful of the liberal interpretation of the law required by *Everett*, and the language in RCW 39.12.020 that requires prevailing wages for the laborers, workers, or mechanics upon all public works, finding some cost to the public entity for the overall project is sufficient to cause the prevailing wage requirement for all of the work by these laborers, workers, or mechanics upon the public work.

A more lenient interpretation would encounter instances that are contrary to law or arbitrary situations that cannot be adequately distinguished. The legislature crafted the prevailing wage law to be nearly all encompassing but did provide some limited, specific exceptions for contracting with service organization utilizing volunteers in RCW 35.21.278.

### **Warranty Work**

L&I often answers prevailing wage questions about warranty work performed after the initial completion of the public works contract. This involves additional work performed without any new or additional compensation. The warranty obligation is derived from the original contract for the public work that was executed at a cost to the state or of a municipality. The warranty represents a duty to ensure that the public work actually functions properly as it should. That duty is from the original, paid contract. This means the warranty work is additional work performed by the public works contractor on that public works contract. Such warranty work has the same prevailing wage requirements that applied to the public works contract.

### **Upon all Public Works**

Under RCW 39.12.020, prevailing wages must be paid to the laborers, workers, or mechanics “upon all public works”. When L&I, and subsequently the Washington Supreme Court, considered the application of prevailing wage requirements to off-site work, a sufficient nexus to the public works project was required. “Relevant factors in determining whether such nexus exists should include physical location of the project site, the nature of the relationship between the parties performing the work, and the characteristics of the product itself.” *Everett* at 822-23.

The on-site work by a mechanic repairing equipment that was used to perform the public work was before the court in *Heller v. McClure & Sons Inc.*, 92 Wn. App. 333 (1998). This work was on-site and the court did not consider any off-site work. See (fn3) *Heller* at 337. “The phrase “upon all public works” is the focus of our analysis.” *Heller* at 338. “The question here is whether Heller’s work on equipment owned by McClure and used at the several public works sites is within the scope of that phrase.” *Heller* at 338.

### **Repair of Equipment - Directly Related and Necessary to Perform the Public Work**

The *Heller* court was looking for and found a nexus between the work on the site of the public work by Mr. Heller as a mechanic and the construction of that public works project, observing “the better view is that those workers on public works projects who are classified as “laborers, workers, or mechanics” are entitled to the prevailing wage when their work directly relates to the prosecution of the work that is contracted to be performed and necessary for the completion of that work.” *Heller* at 340.

Here, there is no dispute that Heller's work on McClure's construction equipment at the sites was required in order for McClure to perform the work it had contracted to do. In this sense, Heller's work was both directly related to the prosecution of the contracted work and necessary for its completion.

We believe this standard best achieves the legislative intent of avoiding payment of substandard wages to covered workers and preventing the depression of local labor wage rates. We also believe that such a standard is completely consistent with the act's remedial purposes. *Heller* at 340.

“In sum, we conclude that Heller's work on the public works project sites must be compensated at the prevailing wage.” *Heller* at 341.

Notably, the *Heller* court did not address *off-site* equipment repair. Absent guidance in case law for that off-site equipment repair, L&I has for many years provided guidance that off-site equipment repairs performed at the contractor's or equipment vendor's shop will not require prevailing wages under chapter 39.12 RCW.

The work on the site of the public work to repair equipment used to perform that public work is directly related to the public works contract and necessary to perform the public works contract. Consistent with *Heller*, such work requires payment of not less than the prevailing rate of wage to the mechanic performing that repair.

### **Delivery to a Public Work**

Whether a delivery also includes *work upon the public work* is a critical factor for when prevailing wages are required for a delivery to a public works project.

WAC 296-127-018 addresses these distinctions for sand and gravel product deliveries to a public work. The rule requires prevailing wages for these deliveries, but then, in WAC 296-127-018(4) provides a specific, narrow exception for delivery to a stockpile.

The stockpile exception involves a material supplier employer and a delivery by their employees to one location situated away from where the materials will actually be placed and used on the public works project. This means someone else who is actually working upon the public works project must perform the work that is directly related to the project and necessary to perform the contract: Moving the materials from the stockpile and placing them where they will be used on the public works project. It is this latter work that requires prevailing wages as work upon the public work.

Consider the delivery of standard materials to a public works such as drywall. If the material delivery of those standard items for sale on the general market is a ‘drop and depart’ delivery to a staging area and no work upon the public work is performed by that material supplier, L&I has historically not applied prevailing wages to such a delivery.

A change in facts can alter the answer. The drywall material is delivered to the public work and the material supplier moves and places the required number of sheets of drywall in each room or area of the public works project. Now, the example is a delivery plus some work upon the public work. That activates the prevailing wage requirement for such deliveries.

The construction contractor performing a public work may mobilize (or deliver) to the job. The contractor's work that is specific to the public work has prevailing wage requirements. See for example this determination on travel time and loading and unloading the employer's truck: <https://lni.wa.gov/licensing-permits/docs/TravelAndTruckLoadingTime.pdf>

In this and other examples, the employees are performing a variety of work upon a public work for a contractor working upon the public work. Such work requires prevailing wages under chapter 39.12 RCW.

The materials supplier supplying a standard item to the public works in a *drop and depart delivery without performing any work on the public work* performs that delivery work without any prevailing wage requirement. Note how this resembles the stockpile exception in WAC 296-127-018. Similarly, an equipment rental company that supplies and delivers a Bobcat to a public works project in a drop and depart delivery without performing any other work upon that public work is just barely outside of having any prevailing wage requirement. Both suppliers deliver a standard item for sale on the general market (perhaps insulation materials or a Bobcat). Both leave without performing any work upon that public work.

If the material supplier does more than drop the standard item and depart, and stays on the public works to further distribute materials, L&I then treats the supplier as a contractor performing work upon the public work. The same holds for the equipment supplier. If the equipment supplier performs equipment repair on the site of the public works on equipment being used to perform that public works, *Heller* is on-point. For purposes of chapter 39.12 RCW, that equipment supplier has now become a contractor performing work upon that public work.

A supplier of equipment, whether by sale, lease, or rental should avoid performing equipment repair work on the site of the public work if they do not want to have a prevailing wage requirement under chapter 39.12 RCW. Often, an equipment rental company will bring out another piece of equipment and haul the broken equipment back to their shop for repairs. In doing that exchange, the equipment rental company avoided performing the on-site repairs that, consistent with *Heller*, would have caused a prevailing wage requirement.

### **Paid Versus Unpaid**

The five questions presented (above) include some that are "unpaid". There, presumably, the "unpaid" status refers to an absence of any further payment to the equipment supplier that employs the mechanic performing the repairs, and does not examine whether the public works project was executed at a cost to the state or of a municipality. Since these two "unpaid" questions both address work performed on the site of a public work, this determination assumes that overall public work was, in fact, executed at a cost to the state or of a municipality.

Such facts present an awkward situation for the equipment vendor. L&I has noted in its prevailing wage on public works workshops, and in email clarifications, that an equipment rental company that responds to the public works contractor's call about broken equipment can avoid having prevailing wage requirements for that repair if they haul the equipment back to their shop for repairs and avoid doing the repair on the site of the public work.

The *Heller* court found the on-site repair of equipment being used to perform the public work was both directly related to the public work and necessary to perform the public works contract. With both prongs of that two part test satisfied, the prevailing wage requirements of chapter 39.12 RCW were applicable to the work of the mechanic performed on the site of the public work.

The implied question presented by the “paid” or “unpaid” aspects of these questions might be restated in another form: Is the equipment repair subject to the chapter 39.12 RCW prevailing wage requirements when:

- The repair is performed by the equipment vendor’s employees;
- Without any additional or specific payment to the vendor for the repair work;
- Performed on the site of the public work; and
- Performed on equipment being used to perform the public work?

The argument for carving out a prevailing wage exception is that there was no payment specific to this particular segment of work on the public work and therefore the work was not executed at a cost to the state or of any municipality. The argument against such an exception has several aspects. The vendor is not performing the repair out of a sense of charity. Rather, there may be other obligations that were, in fact, paid obligations. The rental vendor charges for providing operable equipment. The equipment provided through a lease or a sale has costs that include some warranty coverage to ensure the purchaser receives what they paid to acquire. If you follow the money, there was, in fact, a cost for the repair, albeit an indirect cost. Notably, the actual statute and rule that define “public work” for purposes of the state prevailing wage law, chapter 39.12 RCW, did not break the costs down to an individual vendor level. Rather, the question of cost looks at the overall project.

Case law has examined some indirect costs for public work:

The City of Spokane contracted with Wheelabrator to operate and maintain a waste to energy facility that burns garbage and generates electricity. The contractor was paid a flat fee for each ton of garbage burned. That fee was the City’s only cost and did not vary in relation to the maintenance and operating costs. The City collected a fee for “tipping charges” from customers.

The contractor, provided all management, supervision, personnel, materials, equipment, services and supplies necessary to operate, maintain and repair the facility. The contractor used an annual shutdown for major maintenance and repair work. The City did not direct or control that work.

Wheelabrator, the contractor, used its employees and subcontractors to perform the shutdown work. See *City of Spokane v. The Dept. of Labor & Industries*, 100 Wn. App. 805, 807-09 (2000).

The City did not pay Wheelabrator for the annual maintenance shutdown (AMS) nor did the cost to the City vary according to those maintenance costs. The tipping fees did pay for the overall operation of the waste to energy plant. The maintenance shutdown was an indirect cost for the overall project. The *City of Spokane* court considered these indirect costs:

The work performed during the [AMS] is done at Wheelabrator's discretion and direction, however the City of Spokane pays Wheelabrator with money it collects from citizens to accomplish the public purpose of converting garbage into electricity. Part of that process requires this annual shutdown. This is a City owned facility, paid for with public funds, operating to benefit the public. Therefore, the work performed during the [AMS] of the Spokane facility is "public work."

*City of Spokane* at 809.

Part of the process of providing equipment to a contractor will likely include some assurances, guarantee, or warranty that the equipment will function as intended for some period of time. This is not charity but rather a component of the costs paid for acquiring that equipment. A supplier might very well provide limits to such coverage such as requiring that repairs must be accomplished in the supplier's own shop, or repairs are not offered on the site of a public work. Absent such limits, the supplier may very well encounter an equipment breakdown on the site of the public work. Even then, removing the equipment from the site back to the shop would keep the repair out of any prevailing wage requirement.

The paid or unpaid distinction in the questions presented will not impact the prevailing wage answer. Therefore, a restatement of the remaining questions is appropriate.

### **Remaining Prevailing Wage Questions**

Do these factual situations require prevailing wages?

1. Equipment repair work (including warranty repair work) performed on the site of the public works project on rented, leased, or purchased construction equipment being used to perform that public work.
2. Repair work in the vendor's shop on rental, leased, or purchased construction equipment.
3. Deliver rented, leased, or purchased equipment to a public works project.

## **CONCLUSIONS**

### **On-Site Equipment Repair**

The on-the-site of the public work repair of equipment being used to perform the public work is both directly related to performing that public work and necessary to perform the contract for the public work. This on-site repair requires prevailing wages under chapter 39.12 RCW.

### **Off-Site Repair in the Vendor's Shop**

The off-site, in-shop repair of equipment is likely not directly related or specific to performing a public work. Such off-site, in-shop repairs do not require prevailing wages under chapter 39.12 RCW.

Lauren Parris Watts

April 8, 2020

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### **Vendor Delivery of Equipment**

An equipment supplier or vendor that supplies and delivers equipment to a public works project in a drop and depart delivery without performing any other work upon that public work is just barely outside of having any prevailing wage requirement under chapter 39.12 RCW.

### **PREVAILING WAGE DETERMINATION REQUEST AND REVIEW POLICY**

Enclosed is a copy of the Prevailing Wage Determination Request and Review Process Policy. According to WAC 296-127-060(3), any party in interest may now request that the Industrial Statistician modify his or her determination. The policy applies a 30-day period during which such a request must be submitted, and advises that any additional relevant information should accompany that request.

Again, thank you for your interest in prevailing wage matters and for this opportunity to inform your clients and others regarding application of the prevailing wage law. Please do not hesitate to contact me with any questions you may have.

Sincerely,



Jim P. Christensen

Industrial Statistician/Prevailing wage Program Manager

[jim.christensen@Lni.wa.gov](mailto:jim.christensen@Lni.wa.gov)

Enclosures



HELSELL  
FETTERMAN

January 30, 2019

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EMAIL: [lwatts@helsell.com](mailto:lwatts@helsell.com)  
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Department of Labor and Industries  
Prevailing Wage Section  
PO Box 44540  
Olympia, WA 98504

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FEB 01 2019

Re: *Prevailing Wage Requirements for Third Party Vendors*

Prevailing Wage Section

Dear L&I,

I represent a construction equipment vendor who operates in the state of Washington. My client requests L&I's opinion regarding whether certain services provided to contractors working on public works projects are subject to the prevailing wage requirements (RCW 39.12).

My client leases and sells construction equipment to contractors. Some of those contractors later use that equipment on public works projects and then call upon my client to do one or more of the following:

- (1) Perform **unpaid** repair work on leased construction equipment currently situated on a public works project;
- (2) Perform **unpaid** warranty work on purchased construction equipment currently situated on a public works project;
- (3) Perform **paid** repair work on purchased construction equipment currently situated on a public works project;
- (4) Perform **paid** and **unpaid** repair work on leased and/or purchased construction equipment currently situated at my client's shop.
- (5) Deliver leased or purchased equipment to a contractor currently working on a public works project.

In each of these situations, my client is not a party to the underlying public works contract. It is simply a third party vendor who previously leased or sold equipment to a customer, and the customer is now using that leased or purchased equipment on a public works project. As you'll note, in some of the above scenarios, my client is not paid for the work it is now performing.

FEB 01 2019

Prevailing Wage Section

### Scenarios 1-3

While my client's employees performing the repair work are "mechanics on a public works project", it is unclear that the legislature intended for RCW 39.12.020 to apply to third party vendors. Sometimes there is no charge for the repair work (e.g., Scenarios 1 and 2 above). Even when there is a charge, it is not passed along to the public entity and, thus, the repair work is not "executed at the cost of the state or of any municipality." RCW 39.04.010.

Moreover, the statute, if applied, would have a drastic impact on third party vendors. Any vendor who supplies, for example, commercial coffee machines to contractors on public works jobsites would be required to pay their employees prevailing wage for servicing broken machines onsite. Such a broad reading of the statute would be far-reaching and would certainly be an interruption in the practice of many industries who currently understand there to be an exception for third party vendors.

In researching this issue, I discovered the enclosed March 28, 2013 determination suggesting that work performed on leased equipment that is "incidental" to the services provided is **not** subject to prevailing wage. I request guidance from the Department if there is a similar exception for my client whose repair work on leased and purchased construction equipment is only incidental to the leasing and sales services provided by the company.

### Scenario 4

Does the answer change if my client performs the repair work at its shop (i.e., not onsite at the public works project)? This issue was raised in *Heller v. McClure & Sons, Inc.*, 92 Wn. App. 333 (1998) but the plaintiff later abandoned the claim that repair work performed offsite was compensable at the prevailing wage rate so the court declined to discuss the issue on appeal.<sup>1</sup>

### Scenario 5

WAC 296-127-01398 requires employers to pay prevailing wage to truck drivers who mobilize contractors' equipment. Is there any exception made if it is a third party vendor mobilizing the contractors' equipment?

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<sup>1</sup> While *Heller v. McClure* holds that mechanics who service construction equipment onsite at public works projects must receive prevailing wage, the case is distinguishable from my client's situation. In *Heller*, the employer was a contractor on the public works project. Here, my client is a third party vendor.

January 30, 2019  
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In sum, I am requesting a formal determination of whether a third party vendor must satisfy the prevailing wage requirements for scenarios 1-5 above. Thank you for considering this question and please let me know if you need any additional information from me.

Sincerely,



Lauren Parris Watts

Enclosure

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STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES

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PO Box 44540 • Olympia, Washington 98504-4540  
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March 28, 2013

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Prevailing Wage Section

Christian J. Linville  
Linville Law Firm, PLLC  
800 5<sup>th</sup> Avenue, Suite 3850  
Seattle, WA 98104

Re: Prevailing Wage Requirements for Telecommunications Companies

Dear Mr. Linville:

This is a determination of the Industrial Statistician regarding coverage of the referenced work under Washington's prevailing wage laws and is made pursuant to RCW [39.12.015](#). See the attached document, "*Prevailing Wage Determination Request and Review Process*."

Thank you for your November 26, 2012 inquiry about prevailing wage requirements for telecommunications companies. In that letter, you ask about whether some telecommunications work on the site of a public entity but only on equipment that is owned by the telecommunications company and leased to the public entity (such as a state agency or municipality) requires compliance with chapter [39.12](#) RCW. You specifically refer to the running of cable to the premises that is receiving the service and supplying and installing "the necessary appurtenant equipment (like termination panels) so that the building can hook up all its switches." You also indicate that while most of the work is performed offsite, some of the work necessarily has to take place on the public premises. The public agency that receives the telecommunication service leases the termination panels and all other equipment provided by the telecommunications company and must return the equipment when it no longer utilizes the telecommunications company's services.

As you would likely expect, the answer depends on some very specific factual details. A change in facts can change the correct answer.

RCW [39.12.020](#) has a requirement to pay not less than the prevailing rate of wage on public works. "Public works" is defined in RCW [39.04.010](#) as:

[A]ll 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.

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Prevailing Wage Section

For purposes of chapter 39.12 RCW in WAC 296-127-010(7) the definition is more detailed. Additionally, under the provisions of RCW 39.12.030, state or municipal contracts with a “contractor, subcontractor or other person” to perform “construction, reconstruction, maintenance or repair” the “laborers, workers, or mechanics” performing “the whole or any part of the work” shall be paid not less than the prevailing rate of pay.

The factor in the definitions of “public work” contained in RCW 39.04.010(4) and WAC 296-127-010(7) that may be most useful in answering your question could be whether the work is “executed at the cost of the state of Washington or of any municipality.” The standard does not require that the public entity own the product of such work but, rather, looks to whether such work was performed at a cost to the public entity.

RCW 39.04.260 is also instructive on the question you pose. That statute provides for the application of prevailing wage requirements to “[a]ny work, construction, alteration, repair, or improvement...that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities...”

As you will note, the type of work addressed in the relevant statutes and rule defining “public work” includes “[a]ll work, construction, alteration, enlargement, improvement, repair, and/or demolition...” and it specifically includes work performed pursuant to RCW 39.04.260. See WAC 296-127-010(7)(a).

Since you have not provided me with a specific factual situation or contract for work to be performed that I can address in detail, this determination is necessarily limited in its application. In order to provide guidance to your client in the performance of its contractual obligations, the best answer I can give you based on the information you provided is that if: (a) your client enters into a contract with a public agency to provide telecommunication services, (b) installs a termination panel on the premises in order to transmit the telecommunications service to equipment located on the public premises that the public agency leases from your company, and (c) you charge no fee for the installation, maintenance or removal of the termination panel and other equipment, then I would regard the work performed on the termination panel and the other leased equipment as only incidental to the service your client provides and not subject to prevailing wage requirements. In providing you with this general guidance statement, I caution you and your client that if they perform any work utilizing public funds or subject to RCW 39.04.260, that varies from the specific provisions of this guidance they need to inquire further since most likely such work would require compliance with chapter 39.12 RCW.

Attached to this determination is an August 1, 2006 determination addressed to GTECH Corporation from then industrial statistician, David J. Soma, which also concerns the installation of telecommunications equipment. In that instance, Mr. Soma concluded that the work required compliance with chapter 39.12 RCW, and I concur with that decision. The difference between that determination and the conclusion I’ve reached here requires careful analysis of specific contractual details, including but not limited to the type and extent of the work performed upon the equipment, thus I restate that your client must exercise caution in its application of my decision.

Christian J. Linville  
March 28, 2013  
Page 3 of 3

As you can see, the specific facts of the situation are vitally important to the correct prevailing wage answer. If the facts vary, the answer could be different.

I hope this information is helpful. If you have additional questions, please let me know.

Sincerely,



L. Ann Selover  
Industrial Statistician/Program Manager  
[Ann.Selover@lni.wa.gov](mailto:Ann.Selover@lni.wa.gov)  
(360) 902-5330

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Prevailing Wage Section

## Prevailing Wage Determination Request and Review Process

RCW 39.12.015 is the basis for requesting a determination, since it provides:

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

If you disagree with a determination the industrial statistician provides, WAC 296-127-060(3) provides for a review process:

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter 39.12 RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which he would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

If you choose to utilize this review process, please submit your request within 30 days of the date of the applicable industrial statistician's determination or response to your request for modification or other change. Include with your request any additional information you consider relevant to the review.

Direct requests for determinations, and for modification of determinations via email or letter to the prevailing wage industrial statistician:

L. Ann Selover  
Industrial Statistician/Program Manger  
Department of Labor & Industries  
Prevailing Wage  
P O Box 44540  
Olympia, WA 98504-4540  
[Ann.Selover@Lm.wa.gov](mailto:Ann.Selover@Lm.wa.gov)

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Prevailing Wage Section

## Prevailing Wage Determination Request and Review Process

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Direct requests via email or letter seeking reconsideration (redetermination) by the assistant director to:

José Rodriguez, Assistant Director  
Department of Labor & Industries  
Specialty Compliance Services  
P O Box 44400  
Olympia, WA 98504-4400  
[Rodr235@Lni.wa.gov](mailto:Rodr235@Lni.wa.gov)

Direct petitions for arbitration to:

Joel Sacks, Director  
Department of Labor & Industries  
P O Box 44001  
Olympia, WA 98504-4001

If you choose to utilize this arbitration process, please submit your request within 30 days of the date of the applicable assistant director's decision on reconsideration (redetermination). Submit an original and two copies of your request for arbitration to the Director personally, or by mail. The physical address for the Director is 7273 Linderson Way, SW, Tumwater, WA 98501.

WAC 296-127-061 also contains the following provisions regarding petitions for arbitration:

In addition, copies of the petition shall be served personally or by mail upon each of the following:

- (a) The public agency or agencies involved,
  - (b) The industrial statistician, and
  - (c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.
- (2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.
- (3) A petition for arbitration of a wage determination shall:
- (a) Be in writing and signed by the petitioner or his counsel (or other authorized representative), and
  - (b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned, and
  - (c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request, and
  - (d) Contain a short and plain statement of the grounds for review, and
  - (e) Be accompanied by supporting data, views, or arguments, and
  - (f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.

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Prevailing Wage Section



PREVAILING WAGE PROGRAM – (360) 902-5335  
SPECIALTY COMPLIANCE SERVICES DIVISION  
PO BOX 44540, OLYMPIA, WA 98504-4540

August 1, 2006

Mr. Bob Klingman, Contract Manager  
GTECH Corporation  
7860 B 29th Avenue NE  
Lacey, WA 98516

RE: Contract Number LGS2005 Lottery Gaming System  
Washington's Lottery and GTECH Corporation

Dear Mr. Klingman:

The Department has been asked to determine if the work performed pursuant to the above contract is subject to RCW 39.12.

The issues surrounding GTECH Corporation have been brought to the attention of the Prevailing Wage Program through our Electrical division due to their concern that GTECH Corporation may be performing public work and that workers are not receiving the required prevailing rate of wage.

In a letter dated March 15, 2006, Industrial Relations Specialist Ramona Christensen-Russell advised Mr. Bill Chamberland of the Washington State Lottery that the contract is a public works projects as defined by RCW 39.04.010 and the Washington State Prevailing Wage Law (Chapter 39.12 RCW) does apply.

Based on the information that Ms. Christensen-Russell and the Department was able to obtain, the contract between the Washington State Lottery and GTECH Corporation is a public work and the workers performing such work are entitled to prevailing wage. RCW 39.12.030 requires that contracts for public work must contain the prevailing rate of wages applicable to that project. Once a contract is awarded, RCW 39.12.040 requires that a public agency, prior to the release of any funds to a contractor or subcontractor, obtain a Statement of Intent to Pay prevailing Wages and an Affidavit of Wages Paid from the contractor and all subcontractors.

Enclosed are copies of the above-referenced statutes.

The contract between GTECH and the Lottery Commission calls for GTECH to provide a fully functioning on-line and instant ticket system, including hardware, software, communications, system installation, data conversion and system operation. Of this work, it is the system installation that would require the payment of prevailing wages.

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This work is covered, primarily, under the Scope of Work of Electronic Technicians; WAC 296-127-01322 (providing the wiring is low voltage, which we would presume it is). Work falling under any other Scope of Work will depend on the actual work performed and whether there is any covered work done in addition to the wiring, i.e. installation of the satellite dishes. If these satellite dishes are permanently affixed or attached to the structure, the installation work will be covered. Any alteration or modification to any structure necessary to complete the installation of any terminal or satellite dish will also be covered work.

My office is available to determine which Scope of Work applies and the applicable wage rates. For any work in question, please provide my office with a written description of the work performed.

The Electronic Technician rate in effect for this project was \$12.07 and that rate applied in all 39 counties. If workers performing work falling under the Electronic Technician Scope did not receive at least \$12.07, you will have to make the necessary arrangements to pay the workers the difference. You will also have to pay any back payments necessary for any other work performed requiring the payment of prevailing wages for which workers were not properly paid.

Furthermore, your firm, as well as any subcontractors, will need to file a Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid. This can be accomplished on-line or with paper forms. The on-line process is very user friendly and saves quite a bit of time. We have staff who can offer assistance if needed.

We trust that your company will take the necessary steps to ensure compliance with the above statutes, that affected workers will receive the required prevailing wage, and all contractors performing such work for this project will file Intent to Pay Prevailing Wage and Affidavit of Wages Paid forms. If you have any questions or need further clarification, feel free to contact my office.

Sincerely,

Dave J. Soma  
Industrial Statistician  
Prevailing Wage Program Manager  
360 902-5330

Enclosure

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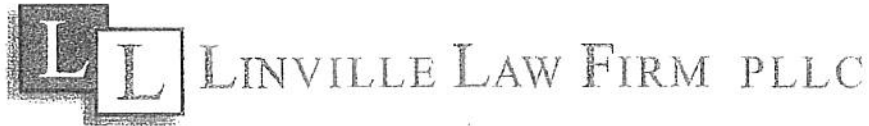
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cc: David Harrison, Sales Director, Washington State Lottery  
Bill Cumberland, Sales Division, Washington State Lottery  
Faith Jeffrey, Electrical Division, Labor and Industries  
Patrick Woods, Assistant Director, Labor and Industries

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November 26, 2012

Department of Labor and Industries  
Prevailing Wage Section  
PO Box 44540  
Olympia, WA 98504

*Re: Prevailing Wage Requirements for Telecommunications Companies*

Dear L&I,

I represent a telecommunications contractor who operates in the state of Washington. My client requests L&I's opinion regarding whether or not certain telecommunication services provided to public entities are subject to the prevailing wage requirements for public works projects (RCW 39.12).

As you know, public facilities, such as schools, community centers, jails, libraries, zoos, etc. require telecommunication services (internet, phones, cable, etc.). When a public agency (and anyone else) contracts with a telecommunication provider (like Comcast), the contract usually requires the telecommunication provider to run the necessary cable to the premises that is receiving the service. Also, the contract usually requires the service provider to supply and install the necessary appurtenant equipment (like termination panels) so that the building can hook up all its switches. While most of the work is performed offsite, some of the work necessarily has to take place at the end of the line, i.e., on the public premises.

Right now, my strong suspicion is that most (if not all) public agencies are treating their telecommunication agreements like a utility services bill, and NOT like a "public works" project subject to RCW 39. I think they are right in doing so. Telecommunication services do not involve constructing, or improving, or maintaining the premises. They are not lienable services because they cannot be said to improve the premises. The small bit of work performed onsite is just necessary in order to hook up the services to the facility. The telecommunications company at all times owns 100% of the equipment they provide. The public agency just leases the termination panels (and all the other equipments provided by the telecommunication co.) during the term of the services agreement. Just like Comcast. You have to return the remote and the box when you're done.

RCW 39.12.020 clearly requires prevailing wages to be paid on "public works" and "maintenance contracts." But what about these telecommunication services agreements? Yes, the agreements usually require at least some work to be performed on the public premises, but the work is unique because it is not at all related to maintaining or improving the premises. It's just ancillary and necessary in order provide the service.

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So ultimately, the question boils down to this. If my client finds itself negotiating a telecommunication services agreement with a public entity (like the one described above – where the public entity is not purchasing any equipment at all), and the public entity does not treat any part of the transaction as a public works project (per RCW 39), is my client still required to comply with the prevailing wage statutes (RCW 39.12) for the bit of work that takes place at the end of the line on the public premises?

Thank you for considering this question.

Sincerely yours,

Christian J. Linville

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