



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 18, 2013

James E. Sorensen, President
EnCon Washington, LLC
2140 S. Ivanhoe Street, Suite 100
Denver, CO 80222

Re: Determination Request – Prevailing Wage Rate for Delivery of Precast Concrete Tunnel Liners – SR 99 Alaskan Way Viaduct Replacement Tunnel

Dear Mr. Sorensen:

Thank you for your letter dated April 12, 2013 in which you requested a determination of the proper prevailing wage rate for delivery of tunnel liner segments to the SR99 Alaskan Way Viaduct Replacement Tunnel Project. The tunnel liner segments will be produced in EnCon's Puyallup facility which is located in Pierce County. The segments will be delivered to a location in King County.

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 enclosed document, "*Prevailing Wage Determination Request and Review Process.*"

The answer below is based on the information you provided. Copies of pertinent Revised Code of Washington (RCW) and Washington Administrative Code (WAC) sections are enclosed.

Enclosed with your letter is an excerpt from the "Supplemental to Wage Rates, 8/31/2011 Edition, Published August, 2011." The excerpt is sections (3)-(5) of WAC [296-127-018](#), titled "**Coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials.**" Since the topic of this WAC is limited to "gravel, concrete, asphalt, or similar materials," it does not discuss or pertain to the delivery of prefabricated tunnel liner segments and the reference to stockpile deliveries does not apply to the delivery of tunnel liner segments.

The production and delivery of prefabricated items, which includes tunnel liner segments, is, however, specifically mentioned in WAC [296-127-020\(3\)](#) which states, in part:

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...The definition of "locality" in RCW [39.12.010](#)(2) contains the phrase "wherein the physical work is being performed." The department interprets this phrase to mean the actual work site. For example, if nonstandard items specifically produced for public works projects are prefabricated in a county other than the county wherein the public works project is to be completed, the wage for the offsite prefabrication shall be the applicable prevailing wage for the county in which the actual prefabrication takes place. **Workers who deliver such nonstandard items, as well as materials pursuant to the terms of WAC [296-127-018](#), shall be paid the applicable prevailing wage for the county in which the public works project is located...**

WAC [296-127-020](#)(3) [emphasis added].

Prevailing wages are required for the delivery of tunnel liner segments according to WAC [296-127-020](#)(3), and the proper prevailing wage for this delivery work would be the prevailing wage for King County. This means you will not be required to track and calculate drivers' time within each county. All hours would be paid at the King County rate. The proper classification of labor for prevailing wage purposes would be that of Truck Driver – Other Trucks. If a driver delivers segments in successive trips, driving north carrying segments to the laydown yard and then driving empty south to the Puyallup facility to pick up additional loads of segments, then prevailing wages will be required to be paid for the complete round trip.

I appreciate your ongoing interest in prevailing wage topics applicable to EnCon and this opportunity to provide the determination you requested. If you have further questions, please let me know.

Sincerely,



L. Ann Selover
Industrial Statistician/Program Manager
Ann.Selover@Lni.wa.gov
(360) 902-5330

Enclosures

cc: Elizabeth Smith, L&I Assistant Director for Fraud Prevention and Labor Standards

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, you must 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@Lni.wa.gov

Prevailing Wage Determination Request and Review Process

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

Elizabeth Smith, Assistant Director
Department of Labor & Industries
Fraud Prevention and Labor Standards
P O Box 44278
Olympia, WA 98504-4278
Elizabeth.Smith@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, you must 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.

Statutes and Rules – Prevailing Wage Rate for Delivery of Precast Concrete Tunnel Liners

RCW 39.12.010

Definitions.

(1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.

[1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

Notes:

Severability -- 1985 c 15: See note following RCW [39.12.065](#).

RCW 39.12.015

Industrial statistician to make determinations of prevailing rate.

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

[1965 ex.s. c 133 § 2.]

WAC 296-127-018

Coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials.

(1) The materials covered under this section include but are not limited to: Sand, gravel, crushed rock, concrete, asphalt, or other similar materials.

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(2) All workers, regardless of by whom employed, are subject to the provisions of chapter [39.12](#) RCW when they perform any or all of the following functions:

(a) They deliver or discharge any of the above-listed materials to a public works project site:

(i) At one or more point(s) directly upon the location where the material will be incorporated into the project;
or

(ii) At multiple points at the project; or

(iii) Adjacent to the location and coordinated with the incorporation of those materials.

(b) They wait at or near a public works project site to perform any tasks subject to this section of the rule.

(c) They remove any materials from a public works construction site pursuant to contract requirements or specifications (e.g., excavated materials, materials from demolished structures, clean-up materials, etc.).

(d) They work in a materials production facility (e.g., batch plant, borrow pit, rock quarry, etc.) which is established for a public works project for the specific, but not necessarily exclusive, purpose of supplying materials for the project.

(e) They deliver concrete to a public works site regardless of the method of incorporation.

(f) They assist or participate in the incorporation of any materials into the public works project.

(3) All travel time that relates to the work covered under subsection (2) of this section requires the payment of prevailing wages. Travel time includes time spent waiting to load, loading, transporting, waiting to unload, and delivering materials. Travel time would include all time spent in travel in support of a public works project whether the vehicle is empty or full. For example, travel time spent returning to a supply source to obtain another load of material for use on a public works site or returning to the public works site to obtain another load of excavated material is time spent in travel that is subject to prevailing wage. Travel to a supply source, including travel from a public works site, to obtain materials for use on a private project would not be travel subject to the prevailing wage.

(4) Workers are not subject to the provisions of chapter [39.12](#) RCW when they deliver materials to a stockpile.

(a) A "stockpile" is defined as materials delivered to a pile located away from the site of incorporation such that the stockpiled materials must be physically moved from the stockpile and transported to another location on the project site in order to be incorporated into the project.

(b) A stockpile does not include any of the functions described in subsection (2)(a) through (f) of this section; nor does a stockpile include materials delivered or distributed to multiple locations upon the project site; nor does a stockpile include materials dumped at the place of incorporation, or adjacent to the location and coordinated with the incorporation.

(5) The applicable prevailing wage rate shall be determined by the locality in which the work is performed. Workers subject to subsection (2)(d) of this section, who produce such materials at an offsite facility shall be paid the applicable prevailing wage rates for the county in which the offsite facility is located. Workers subject to subsection (2) of this section, who deliver such materials to a public works project site shall be paid the applicable prevailing wage rates for the county in which the public works project is located.

[Statutory Authority: Chapter [39.12](#) RCW, RCW [43.22.051](#) and [43.22.270](#). 08-24-101, § 296-127-018, filed 12/2/08, effective 1/2/09. Statutory Authority: Chapters [39.04](#) and [39.12](#) RCW and RCW [43.22.270](#). 92-01-104 and 92-08-101, § 296-127-018, filed 12/18/91 and 4/1/92, effective 8/31/92.]

WAC 296-127-020

Interpretation of phrases used in chapter [39.12](#) RCW.

- (1) (1) The "acceptance date of the public works project" referred to in RCW [39.12.065](#) is the date that the contract awarding agency formally accepts the completed public works project pursuant to state law.

(2) RCW [39.12.050](#) and [39.12.065](#) refer to "inadvertent filing or reporting error." The department defines an error as "inadvertent" if it is made by a contractor, as defined by WAC [296-127-010](#)(5), or employer that shows that the error was made notwithstanding the use of due care by the contractor or employer. The burden of proving that an error is inadvertent rests with the contractor or employer charged with the error.

(3) The definition of "locality" in RCW [39.12.010](#)(2) contains the phrase "wherein the physical work is being performed." The department interprets this phrase to mean the actual work site. For example, if nonstandard items specifically produced for public works projects are prefabricated in a county other than the county wherein the public works project is to be completed, the wage for the offsite prefabrication shall be the applicable prevailing wage for the county in which the actual prefabrication takes place. Workers who deliver such nonstandard items, as well as materials pursuant to the terms of WAC [296-127-018](#), shall be paid the applicable prevailing wage for the county in which the public works project is located.

(4) In the implementation and enforcement of RCW [39.12.050](#) the terms "contractor" and "subcontractor" include an entity, however organized, with substantially identical corporate and/or operational structure to an entity that has been found to violate RCW [39.12.050](#). The factors used to determine substantial identity shall include an assessment of whether there is: Substantial continuity of the same business operation; use of the same machinery and/or equipment; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services.

[Statutory Authority: Chapters [39.04](#) and [39.12](#) RCW and RCW [43.22.270](#). 92-01-104, § 296-127-020, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW [39.12.050](#), [39.12.065](#), [43.22.270](#) and [51.04.020](#). 86-03-063 (Order 85-28), § 296-127-020, filed 1/17/86. Statutory Authority: RCW [39.12.015](#), [39.12.060](#) and HB 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-020, filed 8/27/82.]