



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage

December 28, 2015

Mr. Earl Smith
Prevailing Wage Compliance, Field Representative
Washington & Northern Idaho District of Laborers
P.O. Box 12917
Mill Creek, WA 98082

Re: Determination 15-103-D - Port of Seattle

Dear Mr. Smith:

Thank you for your December 7, 2014 letter. You have asked for a determination of the application of prevailing wage requirements to a tenant improvement project coordinated by Airport Management Services, a private entity leasing property from the Port of Seattle in which the Port of Seattle reimbursed, or will reimburse, the private entity for the costs of the work performed.

Industrial Statistician determinations are made pursuant to [RCW 39.12.015](#) and requests for their modification are provided for in [WAC 296-127-060\(2\)](#). See the enclosed document, "*Prevailing Wage Determination Request and Review Process*." References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are available on our website:

<http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp>.

This determination is limited to the facts of this particular project and the information you provided. My review included but was not limited to:

- Your December 7, 2014 request
- Port of Seattle Agenda dated November 11, 2014
- [RCW 39.12.020](#) and [RCW 39.04.010](#)
- Determination dated January 28, 2010 by Industrial Statistician David Soma
- My conversations and document exchanges with Port staff

Work reviewed

The work that you describe in your letter involves physical improvements, including demolition, remodeling, and renovation of a space at a cost to the Port of Seattle of \$350,917. According to my understanding, the Port Commission has delegated limited authority to the Port's Chief Executive Officer (CEO) to request that tenants accomplish certain construction goals under their private contracts with construction contractors, and to authorize expenditures made to those tenants for the work performed. The CEO's delegated authority is limited to \$200,000. Expenditures greater than this amount must have Commission approval. In this way, the Port is able to efficiently accomplish limited construction goals through tenants, as part of the construction work those tenants ordinarily perform.

Analysis

[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 labor is performed."

"Public work" is defined under [RCW 39.04.010\(4\)](#):

"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\(8\)](#). (emphasis added).

“Municipality” is defined under RCW [39.04.010\(3\)](#):

"Municipality" means every city, county, town, *port district*, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands. (emphasis added).

Based on the above provisions, where a private entity uses state or municipal funds, including those of a port district, to execute a construction project, the prevailing wage provisions of Chapter 39.12 RCW will apply to that entity’s project.

At issue is the source of the money. Here, the funds are from the Port of Seattle, and the construction work is executed at a cost to the Port. The prevailing wage requirements of RCW Chapter 39.12 apply to this set of facts.

This determination is consistent with the January 28, 2010 David Soma determination, regarding Non-Governmental, Non-Profits Receiving WA Funds stating in part:

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.

The cost to the Port of Seattle causes the state’s prevailing wage laws to be applicable to this project. Anticipating this, the Port has adopted contract language, guidelines and procedures for addressing prevailing wage requirements. Port staff provided to me the attached “procedure” document which I believe you already have, along with the “guidelines” document (also attached) which you may already have.

Mr. Earl Smith
December 28, 2015
Page 4 of 4

I believe the Port is currently working through these prevailing wage questions with Airport Management Services (AMS). According to my understanding, the Port has not entered into a Tenant Reimbursement Agreement with AMS nor has it made payments to AMS, and will not do so until after AMS has provided proof that prevailing wage law has been satisfied. Presumably, the Port will require contractors and subcontractors to file Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid with the department.

Washington State prevailing wage information, including the WACs, are available on the Department's web site:

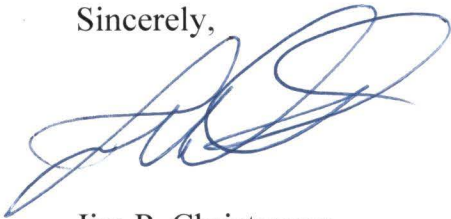
<http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp>

This answer is based on your fact set. If the facts differ from those you provided, the answer may be different.

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

Jim.Christensen@lni.wa.gov.

Sincerely,



Jim P. Christensen
Industrial Statistician
Prevailing Wage Program Manager

cc: Nora Huey, Port of Seattle

Enclosures