



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
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May 14, 2012

Chuck Prussack, P.E.
General Manager
Central Pre-Mix Prestress Company
P O Box 3366
Spokane, WA 99220

Re: Precast Segments for the Sound Transit S440/S. 200th Street Project

Dear Mr. Prussack:

Thank you for your request for a determination regarding the appropriate worker classification and prevailing wage rate of pay for the construction of precast segments for the referenced project.

Determinations of the prevailing rate of wage are made by the industrial statistician of the Department of Labor & Industries (L&I). *See* RCW 39.12.015.

You plan to bid on work that you describe as composed of approximately 1,100 precast concrete segments, approximately 8' tall, 10' wide, and 26'-8" long, with each piece weighing approximately 37 tons. You plan to produce these segments from your established facility in Spokane and transport them to the jobsite in King County. Your company has been in the business of producing prefabricated items since 1958, and you plan to fabricate the precast segments for this project from your present facility. Specifically, you want to know if you need to apply "outside construction" rates to the work, or whether you may utilize "in-shop" fabricated precast concrete rates. The answer to this question is significant to you and to others contemplating bidding on the project since generally in-shop rates are considerably lower than construction rates.

RCW 39.12.020 requires that the hourly wages to be paid to laborers, workers, or mechanic "...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." "Locality" is defined in RCW 39.12.010(2) as "the largest city in the county wherein the physical work is being performed." WAC 296-127-020 further defines "locality" as "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 off-site prefabrication shall be the applicable prevailing wage for the county in which the actual prefabrication takes place.”

See WAC 296-127-020(3), emphasis added.

Here's what that difference means in this instance:

- Worker outside construction classifications typical for these segments would be Ironworkers, Carpenters, Laborers and Cement Masons. The current wage rates for performance of that work in Spokane County, the site of your company's pre-existing fabrication facility, are \$51.45, \$37.90, \$33.11, and \$36.50 per hour, respectively.
- The current Fabricated Precast Concrete Products wage rate for Spokane County is \$20.23 per hour.

You also expressed to me that if outside construction rates are required for this work, you are concerned that no Washington fabricator will be able to compete effectively for the contract, but rather, the contract may very likely go to an out-of-state contractor who under current Washington law is not required to pay Washington prevailing wage rates.

Various past Labor & Industries (L&I) communications have addressed the issues you raise. A summary of those which are pertinent to this determination follows.

1. January 5, 2007 determination issued to Iron Workers Local Union 86. Former Prevailing Wage Industrial Statistician, David J. Soma, after considering the nature of the specific work under consideration concluded that work performed by Bethlehem Construction Inc. (BCI) at its Cashmere, Washington site, in constructing the foundations for Sound Transit's Central Link Light Rail Project required payment to workers at construction worker wage rates.
2. April 30, 2008 re-determination issued to BCI. A party who seeks modification or other change in an Industrial Statistician's wage determination may request reconsideration by L&I's Assistant Director. In this instance, L&I Assistant Director Patrick Woods reviewed the Soma January 5, 2007 determination referenced above. Based upon an analysis of the nature of the work, like David Soma, Mr. Woods determined that the work was “[m]ost similar to that done by skilled construction tradespersons and should be paid at the construction worker rate.” Key factors in the decision were:
 - The concrete segments are, sophisticated in their engineering and given their ultimate use are complex and relatively unique. While some segments are alike it is clear that the structure varies from one to the next as required by the engineering of the transit spans. For this reason the skills required to construct these products were neither simple nor repetitive, and therefore do not qualify for the Fabricated Pre-Cast Concrete rate.

- The photographs and drawings provided show that the infrastructure of the segments was sophisticated and therefore required sophisticated skills for their construction. In these photographs we see that the work was not simple but rather required a significant understanding of the way the component parts of each segment (rebar, etc.) would interrelate with the other components parts of each segment (concrete, etc.) and with the project as a whole.
- The Fabricated Pre-Cast Concrete classification covers work not requiring specialized skills of construction workers. Because the work on the Sound Transit project required knowledge above and beyond simple and repetitive tasks associated with prefabrication, it is clear that the Fabricated Pre-Cast Concrete rate is not appropriate.

Mr. Woods concluded that the specific work at issue although not appropriately qualifying for the rate could (for reasons not pertinent to this discussion), nonetheless be paid at the in-shop prefabrication rate. For all similar future projects, Mr. Woods suggested BCI consult with the Industrial Statistician about what constitutes the appropriate use of the fabricated precast concrete or other worker classifications.

3. May 30, 2008 communication to M/D Control Systems, Inc. This communication concluded that the work at issue, fabrication in an Oregon shop of non-standard items specifically for a Washington public work project, did not require worker payment at Washington prevailing wage rates. Also noted is the requirement that the transportation of the non-standard item within the state of Washington to the public work site requires payment of Washington prevailing wage rates. Although this communication, provided by a prevailing wage technical specialist, is not a determination, its conclusions have consistently been applied to similar situations by the Industrial Statistician.
4. March 3, 2009 determination issued to Concrete Technology Corporation (Concrete Tech). In this determination, Industrial Statistician David Soma concluded that tunnel liners manufactured in Concrete Tech's established Tacoma manufacturing facility, in which they have produced similar produces for numerous other projects, qualified for application of the fabricated precast concrete rates. Here is how Mr. Soma distinguished this work from that he reviewed in his January 7, 2008 determination:

This work involves the use of forms you and another company have previously used to produce tunnel liners. The tunnel liner segments are used to make rings which are assembled on the construction site during tunnel boring. Each ring is a set of components that are identical to the next ring (many copies of the same exact set of segments composing a ring are used in the final project). Your work is the shop manufacture of these tunnel liner segments in repetitive steps to produce identical sets of segments. The manufacture of the tunnel liner segments can be distinguished

from on-site construction in design, engineering, and the nature of the complexity of the work.

5. April 5, 2011 determination issued to Jim Christensen and Traylor Technopref Precast, LLC. In issuing this determination, Industrial Statistician, David Soma indicated that based on the information that the correct wage rates for fabrication of tunnel liners for Sound Transit's U-220 and U-230 projects are outside construction rates, not the fabricated precast concrete rate.
6. June 30, 2011 re-determination issued to Traylor-Technopref. After reviewing the April 5, 2011 determination issued by Industrial Statistician, David Soma, together with additional information that was available after Mr. Soma's determination, L&I Assistant Director Steve McLain concluded that contrary to Mr. Soma's determination, that Traylor-Technopref could use the fabricated precast concrete rates for fabrication of tunnel liners for the Sound Transit U-220 and U-230 projects. In this case, however, although prior to bidding on the U-220 and U-230 projects, Traylor-Technopref had no facility location in Washington, Mr. McLain found it significant that the facility Traylor-Technopref planned to lease to produce the tunnel liners had historically produced a variety of prefabricated concrete products other than tunnel liners and continues to do so; and "neither the [leased Washington] fabrication plant nor Traylor-Technopref exists for the sole purpose of fabricating segments for the U-220 and U-230 projects. For those reasons, Mr. McLain concluded that the fabrication of the tunnel liners could be compensated at the fabricated precast concrete products rate.

RCW 39.12.020 requires that the hourly wages to be paid to laborers, workers, or mechanic "...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." Case law provides further direction on this point. See *Lockheed Shipbuilding Co. v. Department of Labor and Industries*, 56 Wn.App. 421, 783 P.2d 1119 (1989). In *Lockheed*, the court stated that "the determination whether work is 'in the same trade or occupation' depends upon the 'type of work rather than where the work was performed or by whom it was done.'"

In considering your request and the nature of the work at issue, I reviewed in detail the information you provided, the referenced past communication documents, subsequent determinations on the issue of application of precast rates, and applicable case law.

Clearly, the fabricated items that will need to be produced for this project are sophisticated, and require considerable skill to ensure they fit together properly. You've described the process as a "short line match cast process." For this process adjustable forms form and support the concrete being cast. The adjustments are necessary to provide the geometry that is needed so that the forms will fit or match. The forms are adjusted as needed to meet the project needs.

I appreciate this and the additional details you provided regarding the contemplated process, and your acknowledgement that the process does not vary in any substantial way from the process under consideration in the David Soma's January 5, 2007 determination and Patrick Woods' April 30, 2008 redetermination which are discussed above and attached. Both the Soma determination and the Woods redetermination focused upon the complexity of the work as a

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major factor in deciding that the work must be compensated at "construction" rather than "shop" worker wage rates.

There is no question but that your company facility in Spokane is an "established facility." However, based on your own description of the process and a comparison of that process to those addressed in the referenced #1 and #2 communications above, the work cannot be compensated at the fabricated precast concrete rate. Rather, it must be paid at "construction" prevailing wage rates consistent with the specific work performed. Typical worker classifications for this process would include Ironworkers (WAC 296-127-01399), Carpenters (WAC 296-127-01310) Laborers (WAC 296-127-01344) and Cement Masons (WAC 296-127-01315), depending on the specific tasks.

In providing determinations I try to be very cognizant of their impact, and the need to provide clear guidance regarding application of prevailing wage requirements. With that in mind, I am acutely aware of the issue you identified concerning the likelihood that if the work cannot be compensated at fabricated precast concrete rates, out-of-state fabricators may have an economic advantage. Possibly that issue is one that may only be remedied by adoption of a scope of work rule or work interpretation that applies a test different from that articulated here, or perhaps adoption of a new statute or rule concerning what constitutes "locality" for prevailing wage rate determination issues. In any event, I understand and appreciate the need to provide a level playing field for all contractors on Washington public works, including those contractors located outside Washington's borders. Given the current state of the law and the past decisions before me, however, I am hesitant to deviate from prior decisions in the absence of compelling facts that are not before me at this time.

I understand that Laura Herman, one of our prevailing wage technical specialists, made a presentation on April 5, 2012 to Sound Transit which was a mandatory pre-proposal meeting for the finalists still in the process for making a design-build proposal for this project. Ms. Herman conveyed to me that at that meeting she advised everyone there of determinations #1 and #2 referenced above, and provided the Sound Transit staff copies of those determinations. Hopefully, those efforts, combined with dissemination of this determination, will help ensure that all those who bid on this work do so utilizing the appropriate prevailing wage rates for the work you've described.

I know this is not the decision you wanted, but I believe it is the correct one under the circumstances.

If I can be of further assistance, please let me know.

Sincerely,



L. Ann Selover
Industrial Statistician
Program Manager

cc: Sound Transit: Chris Elwell, Miles Haupt, John F. Santiago, CPPB