



STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage  
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360/902-5335 Fax 360/902-5300

February 3, 2015

Mr. Dustin Donahoo  
Project Manager  
Kiewit-General, A Joint Venture  
1301 West Heron St.  
Aberdeen, WA 98520

Re: Request for Determination of the Applicability of Chapter 39.12 RCW, Prevailing Wage Law, to Tug Boat Towing Work on the SR 520 Pontoon Construction Design-Build Project

Mr. Donahoo:

Thank you for your request for a determination on whether tug boat towing work on the SR 520 Pontoon Construction Design-Build Project is subject to Washington's prevailing wage laws and, if so, what prevailing wage rates are required. I appreciate your patience in awaiting my response.

This is a request for determination and is made pursuant to RCW 39.12.015. See the enclosed document, "Prevailing Wage Determination Request and Review Process." Copies of the RCWs and WACs referenced in this letter are also enclosed.

In preparing this response to your request for determination, I reviewed a number of materials including, but not limited to:

- Your determination request letter dated June 4, 2014
- Letter between Kiewit and WSDOT dated April 11, 2012
- Various e-mail communications between specialist Saul Olivarez and Kiewit employees Dustin Fairbrook and Joaquin Medina
- SR 520 Pontoon Construction Design-Build Project Modified Request for Proposal
- Work descriptions provided by Kiewit, their subcontractors and the Inland Boatmen's Union distinguishing marine construction and towing work

The work in question involves tug boat towing work for the SR 520 Pontoon Construction Design-Build Project. Your company self-performed and subcontracted work utilizing tug boats for dredge work, the transportation of spoils from a work site to another location for disposal and the towing of pontoons from the fabrication plant in Aberdeen, Washington to the Port of Grays Harbor.

Your company does not have workers at the construction site participating in the excavation of spoils or the ground transportation of those spoils to the barge. This work would fall under the Inland Boatmen scope of work description (See [WAC 296-127-01335](#)) or another scope of work depending on the work in question. Please note that any tug and launch work related to construction, dredge tending, pile driving, diver tending and geodetic surveying is classified as work under the Inland Boatmen scope of work and must be compensated at the applicable rate. See [WAC 296-127-01335](#).

The answer below is based on the information you provided.

Public works projects are subject to Washington's prevailing wage laws. [RCW 39.12.020](#). A public work includes "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." [WAC 296-127-010\(7\)\(a\)\(i\)](#). The hourly wages to be paid to laborers, workers, or mechanics upon all public works is subject to the prevailing wage and "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." [RCW 39.12.020](#).

Workers involved in the removal of excavated materials from a public works construction site pursuant to contract requirements or specifications must be compensated in accordance with the provisions of chapter [39.12 RCW](#). See [WAC 296-127-018\(2\)\(c\)](#). "Workers on public work 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 v. McClure & Sons, Inc.*, 92 Wn. App. 333, 340 (1998). Our program evaluates the totality of the specific facts and circumstances when making policy and determination decisions.

Tug boat towing work that is part of a public works project is subject to Washington's prevailing wage law and Kiewit-General must comply with the law's requirements. Here, the towing of the spoils from the excavation site to the disposal site removes and disposes of excavated materials from a work site. The towing of the spoils from the work site to the disposal site and the towing of pontoons from the fabrication plant to the construction site is work that is directly related to and necessary for the completion of the project.

### **Wage Rate**

You, the Inland Boatmen's Union and others have asserted that local wage standards for tugboat crews engaged in marine construction are different from established local wage standards for towing operations. The presence of separate collective bargaining agreements for these two bodies of work supports your assertion. I agree that local wage standards and working conditions for workers performing towing operations are different from the work described in the Inland Boatmen scope of work (See [WAC 296-127-01335](#)). The Inland Boatmen scope of work describes construction activities. The towing work you describe is work that can occur with or without marine construction occurring and is commonly the transportation needed for deliveries to and removals from a marine-based public works project. Therefore, the Inland Boatmen prevailing wage rate is not applicable to the towing work Kiewit-General is performing and, accordingly, the program declines to apply the Inland Boatmen wage rate to the tug boat towing work.

The program currently does not have a prevailing wage rate for tug boat towing work. The current wages, overtime and benefits paid by your company or subcontractors for tug boat towing work is an acceptable wage rate at this time until a scope of work is developed and a prevailing wage rate is established for this work.

Dustin Donahoo  
February 6, 2015  
Page 3 of 3

**Intents and Affidavits**

Intents and Affidavits are required to be filed on all public works projects. See RCW 39.12.040. Companies performing tug boat towing work must file the Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid in paper form and must mail them to the program along with the requisite fees for processing.

**Conclusion**

Tug boat towing work is subject to the prevailing wage laws of Washington when the towing work is related to and necessary for the completion of the public works project. The current wages paid by your company or subcontractors for tug boat towing work, including overtime and benefits, is acceptable for prevailing wage purposes at this time. Intents and Affidavits, until further notice, will need to be filed on paper forms and mailed to our office with the requisite fees for required processing. Blank Intent and Affidavit forms are enclosed.

This answer is based on the information and facts you provided. If the facts change from those provided, 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>

If you need additional information or have questions, please email or call me at [Jim.Christensen@Lni.wa.gov](mailto:Jim.Christensen@Lni.wa.gov) or (360) 902-5330.

Sincerely,



Jim Christensen  
Program Manager/Industrial Statistician

Enclosures