



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
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February 6, 2015

Mr. Mike O'Connor
Director, Labor Relations
Foss Maritime Company
1151 Fairview Ave. N.
Seattle, WA 98109

Mr. Dennis W. Conklin
IBU Pacific National Office
1711 W. Nickerson, Suite D
Seattle WA 98119

Re: Request for Determination on Applicability of Chapter 39.12 RCW, Prevailing Wage Law, to Tug Boat Towing Work on the Seattle Tunnel Project

Gentlemen:

Thank you for your request for a determination of whether tug boat towing work is subject to Washington's prevailing wage laws and, if so what prevailing wages Foss Maritime Company (Foss Maritime) is required to pay to tug boat crews. 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 determination request, I reviewed your letter and email correspondence with specialist, Saul Olivarez. In your joint letter you report that Foss Maritime Company provides tug boats, crews and barges to the Seattle Tunnel Project to transport (tow) spoils from Pier 46 in Seattle across Puget Sound so that the spoils can be placed into the Mats Mats Quarry on the Kitsap Peninsula. Additionally, your letter asserts that this towing work is distinguishable from the marine construction work described in the Inland Boatmen's scope of work description (see [WAC 296-127-01335](#)) and that currently, a prevailing wage scope of work does not exist for the marine towing work being performed by Foss Maritime.

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](#).

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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 Foss Maritime must comply with the law's requirements. Here, the towing of the spoils from the work 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 is work that is directly related to and necessary for the completion of the project.

Wage Rate

You 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 a marine-based public works project. Therefore, the Inland Boatmen prevailing wage rate is not applicable to the towing work Foss Maritime 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. Your crews' wages, benefits and conditions of employment are regulated by a collective bargaining agreement which reflects established local wage standards for that (towing) work.

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Intents and Affidavits

Intents and Affidavits are required to be filed on all Washington public works projects. See RCW 39.12.040. Companies performing tug boat towing services under publicly-funded contracts 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

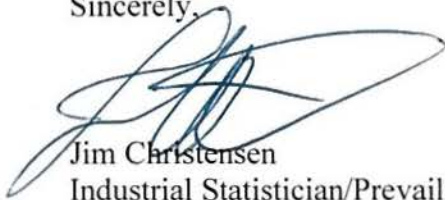
Tug boat towing work is subject to the prevailing wage laws of Washington when the towing work is related to and necessary for the completion of the public works project. The current wages paid by your company or subcontractors for tug boat towing work, including overtime and benefits, is acceptable 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 or (360) 902-5330.

Sincerely,



Jim Christensen
Industrial Statistician/Prevailing Wage Program Manager

Enclosures