



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

August 13, 2013

Antonella Colella, Corporate Counsel
Universal Technical Resource Services, Inc.
950 N. Kings Highway, Suite 208
Cherry Hill, New Jersey 08034

Re: Stray Electrical Current Testing on Railroad Tracks

Dear Ms. Colella:

Thank you for your June 21, 2013 letter in which you request my review of the Statement of Intent to Pay Prevailing Wages (Intent ID# 559056) filed by Universal Technical Resource Services, Inc. (UTRS). Specifically, you request a determination of whether UTRS staff must receive prevailing wage rates for stray electrical current testing work performed under the King County Metro Rail Operations 2012 Contract# C00680C11.

The state's prevailing wage law is [chapter 39.12 RCW](#). The administrative rules for the prevailing wage law are in [chapter 296-127 WAC](#). Prevailing wages are required to be paid to all laborers, workers and mechanics who perform work on any Washington State public works project, according to [RCW 39.12.020](#). Public Work is defined in [RCW 39.04.010](#) and [WAC 296-127-010](#).

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

As part of my review, Stuart Ell of your Marysville, Washington location was contacted. Mr. Ell described the work in question. Based on communications between Mr. Ell and Prevailing Wage Program staff, my understanding is as follows:

The rail system in question is electrically-powered. Current flows through a circuit of overhead wires and returns to the source via rails located near grade. The rails are designed to be electrically insulated to prevent the leakage of electrical current into the ground. Various utility piping structures are located beneath the rail corridor. At least some of these pipes are made of metal. UTRS

periodically evaluates the effectiveness of the electrical separation between the ground and the current-carrying rails. Specifically, UTRS conducts tests to see if current is leaking into the ground from the current-carrying rail.

The leakage of electrical current from this rail into the ground is undesirable for a number of reasons: (1) it may cause an additional cost to King County in the form of unnecessary electrical power usage and expense; (2) it poses safety concerns; and (3) stray current may promote corrosion of underlying metal utility pipes, some of which carry natural gas.

UTRS' testing for the presence of stray current being introduced into the ground does not require permanent installation of equipment nor does it require physical modification to real property or structures. Voltage sensors are simply placed by hand onto the ground and are monitored by a small (hand-held size) voltage sensing and voltage-recording device. One sensor is placed onto the ground near to, and another sensor is placed onto the ground further from, the current-carrying rail. No tools are used in the process. The voltage-sensing and voltage-recording device measures and records voltage simultaneously at both sensor locations. Simultaneous voltage readings which are greater at the sensor location nearest the current-carrying rail than at the more distant sensor location would suggest that voltage is leaking into the ground. Sensors are left in position for 10-15 minutes at a time. At the end of this period, the sensors are placed by hand into new locations elsewhere along the rail corridor in the same configuration as before. Testing is conducted approximately every 500 feet along the corridor. No other devices are used within the corridor besides these small sensors and the measuring/recording device placed into position by hand.

The recording device is then taken to UTRS offices where data is downloaded, mapped and analyzed. UTRS staff then create a report of their findings, which is submitted to King County, Sound Transit and other interested local agencies. UTRS does not participate in repairs or modifications to the rail corridor and/or electrical circuit. Repairs, when indicated, would be accomplished by King County or other public agency staff, or by construction contractors or electrical contractors under separate contracts with the public agency.

Based on the foregoing understanding of the work performed by UTRS and the limitations of UTRS' role, I conclude that the work in question does not fall within the 'laborers, workers or mechanics' class of workers who must be compensated at prevailing wage rates. Your Statement of Intent to Pay Prevailing Wages (Intent ID# 559056) is approved, based on the facts stated above. In reaching this conclusion I want to note that reference in your letter regarding the "professional" status of the individuals performing the identified tasks is not pertinent to the issue. Rather, the inquiry must address the specific tasks that such individuals perform. Please see the determination [07292011](#) and rule proposal decision [04302012](#) posted at: <http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp>, which address the same reliance upon status of the worker that you've suggested in your letter.

Antonella Colella
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Please also be aware that a public agency, in this case King County, or the general contractor may require the filing of prevailing wage forms whether or not you feel, and whether or not I have determined, that prevailing wages are not required to be paid to your staff. A public agency or general contractor may also independently require the payment of prevailing wage rates, and the forms may be required for that reason or simply because you are a subcontractor to a public works contract. Those entities might also mandate that an Affidavit of Wages Paid be filed, particularly in an instance where the Intent has been filed. As mentioned, your Intent has been approved. If a matching Affidavit is filed and no new information about your work processes has been submitted to my office, that Affidavit will also be certified.

Prevailing wage determinations such as this are very fact-specific. If my understanding of the work performed under this contract is inaccurate in any way, or if other work is performed under this contract that is not described above, then the answer may be different.

If you have questions or if I can be of further assistance, please let me know.

Sincerely,



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

Attachment

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.



UNIVERSAL TECHNICAL RESOURCE SERVICES, INC.

June 21, 2013

Via Email and UPS

Ann Selover
Industrial Statistician/Program Manager
Department of Labor & Industries
Prevailing Wage Program
P. O. Box 44540
Olympia, WA 98504-4540

Re: Intent Id# 559056 - King County Metro Rail Operations 2012 project for King County
Contract# - C00680C11

Dear Ms. Selover:

I am the corporate counsel for Universal Technical Resource Services, Inc. ("UTRS"). UTRS is providing corrosion control engineering services under the above-referenced contract as a subcontractor to Railworks Track Systems. Our Director of Business Management erroneously completed a Statement of Intent to Pay Prevailing Wages on this project. I would like to explain why the work performed by our employees under this contract does not require the payment of prevailing wage.

I have reviewed the Correction Notice and the other paper work I have received from the State of Washington regarding UTRS's payment of prevailing wage on this project. It appears that Washington's Department of Labor and Industries does not have a clear understanding of the nature of UTRS's work under this project. The Correction Notice, which I have enclosed, indicates that UTRS must add an "Electricians-Powerline Construction/Journey Level Lineperson" classification to our prevailing wage form because the State of Washington determined that stray current testing is the work of a laborer, worker or mechanic. This is an incorrect characterization of the work.

UTRS is performing testing to prevent the corrosion of the rail structure and utility pipes within the rail system. UTRS employees' work on this project includes:

- Designing and testing of cathodic protection systems
- Reviewing preliminary data and suggesting appropriate engineering methods and procedures
- Applying knowledge of corrosion theory to execute projects
- Conducting field testing of soil resistivity and stray current
- Evaluating data and comparing it to the criteria established in the Maintenance and Operations Agreement between the Central Puget Sound Regional Transit Authority and the City of Seattle
- Preparing a technical report identifying any areas which exceed the noted criteria and if these areas will reduce the life of the cathodic protection anodes in the area

Our employees are highly skilled and educated white collar professional engineers and are very highly compensated. They hold professional degrees and are experts in their field. In addition, our employees performing work under this contract are certified by the National Association of Corrosion Engineers (NACE), recognized globally as the premier authority for corrosion control solutions. Their services under this project are not that of a "worker, laborer or mechanic" as set forth in RCW 39.12.010(1). Further, our employees are not doing any work on powerlines, therefore, the addition of the classification requested by the State of Washington does not reflect UTRS's services under this contract. Moreover, the services performed by our employees do not satisfy the definition of "public work" under RCW 39.04.010(4) or WAC 296-127-010(7) as they do not include any construction, alteration, improvement, repair or demolition. Significantly, the tools used by our employees on this project – voltage logger, industrial magnets and cooper sulfite reference electrodes – are all measuring tools to be operated by individuals highly skilled in cathodic protection systems. There is no manual labor involved with this work.

In summary, our employees will be performing testing and analysis of data which will then be formulated into a report for the prime contractor on this project. This is not the work of a laborer, worker or mechanic. For the reasons stated above, prevailing wage does not apply to the services performed by UTRS on this project. Should you have any questions or need any further information, please contact me. Thank you.

Sincerely,



Antonella Colella, Esq.
Corporate Counsel

Enclosure

cc: James McCabe

Correction Notice

Prevailing Wage Section
 Department of Labor & Industries
 PO Box 44540
 Olympia, WA 98504-4540
 (360) 902-5335

Statement of Intent to Pay Prevailing Wages

Company Name: UNIVERSAL TECHNICAL RESOURCE SERVICES I		Intent Id 559056
Prime Contractor: RAILWORKS TRACK SYSTEMS INC		Proj. Name: King County Metro Rail Operations 2012
Contract Awarding Agency: King County		Contract #: C00680C11
Company Returned To: UNIVERSAL TECHNICAL RESOURCE SERVICES I	Date Received: 3/5/2013	Date Returned: 5/21/2013

Please be advised that the on-site work to perform stray current testing is the work of a laborer, worker, or mechanic within the definitions provided in the prevailing wage statutes and rules; however, the paperwork associated with this contracted work would not require the payment of prevailing wages (e.g., test schedule, test plan, meetings, hand sketches, data evaluation, technical report, etc.) Thus, we cannot approve your form in which you claim that all of the work associated with this contract is not covered. Your firm must add a "Electricians-Powerline Construction/Journey Level Lineperson" classification (WAC 296-127-01320) to your form to report this covered work along with the wage rate/benefits that the worker will be compensated, as the described falls within that scope of work description (note that licensing is not a factor when applying prevailing wage scopes). In addition, we will need your firm to provide an amount per item breakdown of the \$15.00 hourly total fringe benefit package listed on your form. For example, if the fringe benefit package totals \$7.25 and the breakdown of that total amount is: \$3.75 medical, \$1.05 life, \$2.50 pension, \$.90 vacation, and \$1.15 holiday, that is how you would list the details. Please also review your claimed fringe benefits (aka "usual benefits") to ensure they include only medical and life insurance, pensions, vacation and holiday pay, and state apprenticeship council approved training programs as provided in WAC 296-127-014 and that your benefit plan or program otherwise complies with RCW 39.12.010(3). List the fringe benefit breakdown on the enclosed Addendum C. Thank you.