



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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

March 28, 2013

Christian J. Linville
Linville Law Firm, PLLC
800 5th Avenue, Suite 3850
Seattle, WA 98104

Re: Prevailing Wage Requirements for Telecommunications Companies

Dear Mr. Linville:

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*."

Thank you for your November 26, 2012 inquiry about prevailing wage requirements for telecommunications companies. In that letter, you ask about whether some telecommunications work on the site of a public entity but only on equipment that is owned by the telecommunications company and leased to the public entity (such as a state agency or municipality) requires compliance with chapter [39.12](#) RCW. You specifically refer to the running of cable to the premises that is receiving the service and supplying and installing "the necessary appurtenant equipment (like termination panels) so that the building can hook up all its switches." You also indicate that while most of the work is performed offsite, some of the work necessarily has to take place on the public premises. The public agency that receives the telecommunication service leases the termination panels and all other equipment provided by the telecommunications company and must return the equipment when it no longer utilizes the telecommunications company's services.

As you would likely expect, the answer depends on some very specific factual details. A change in facts can change the correct answer.

RCW [39.12.020](#) has a requirement to pay not less than the prevailing rate of wage on public works. "Public works" is defined in RCW [39.04.010](#) as:

[A]ll 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.

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For purposes of chapter [39.12 RCW](#) in [WAC 296-127-010\(7\)](#) the definition is more detailed. Additionally, under the provisions of [RCW 39.12.030](#), state or municipal contracts with a “contractor, subcontractor or other person” to perform “construction, reconstruction, maintenance or repair” the “laborers, workers, or mechanics” performing “the whole or any part of the work” shall be paid not less than the prevailing rate of pay.

The factor in the definitions of “public work” contained in [RCW 39.04.010\(4\)](#) and [WAC 296-127-010\(7\)](#) that may be most useful in answering your question could be whether the work is “executed at the cost of the state of Washington or of any municipality.” The standard does not require that the public entity own the product of such work but, rather, looks to whether such work was performed at a cost to the public entity.

[RCW 39.04.260](#) is also instructive on the question you pose. That statute provides for the application of prevailing wage requirements to “[a]ny work, construction, alteration, repair, or improvement...that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities...”

As you will note, the type of work addressed in the relevant statutes and rule defining “public work” includes “[a]ll work, construction, alteration, enlargement, improvement, repair, and/or demolition...” and it specifically includes work performed pursuant to [RCW 39.04.260](#). See [WAC 296-127-010\(7\)\(a\)](#).

Since you have not provided me with a specific factual situation or contract for work to be performed that I can address in detail, this determination is necessarily limited in its application. In order to provide guidance to your client in the performance of its contractual obligations, the best answer I can give you based on the information you provided is that if: (a) your client enters into a contract with a public agency to provide telecommunication services, (b) installs a termination panel on the premises in order to transmit the telecommunications service to equipment located on the public premises that the public agency leases from your company, and (c) you charge no fee for the installation, maintenance or removal of the termination panel and other equipment, then I would regard the work performed on the termination panel and the other leased equipment as only incidental to the service your client provides and not subject to prevailing wage requirements. In providing you with this general guidance statement, I caution you and your client that if they perform any work utilizing public funds or subject to [RCW 39.04.260](#), that varies from the specific provisions of this guidance they need to inquire further since most likely such work would require compliance with chapter [39.12 RCW](#).

Attached to this determination is an August 1, 2006 determination addressed to GTECH Corporation from then industrial statistician, David J. Soma, which also concerns the installation of telecommunications equipment. In that instance, Mr. Soma concluded that the work required compliance with chapter [39.12 RCW](#), and I concur with that decision. The difference between that determination and the conclusion I’ve reached here requires careful analysis of specific contractual details, including but not limited to the type and extent of the work performed upon the equipment, thus I restate that your client must exercise caution in its application of my decision.

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As you can see, the specific facts of the situation are vitally important to the correct prevailing wage answer. If the facts vary, the answer could be different.

I hope this information is helpful. If you have additional questions, please let me know.

Sincerely,



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

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, please 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:

José Rodriguez, Assistant Director
Department of Labor & Industries
Specialty Compliance Services
P O Box 44400
Olympia, WA 98504-4400
Rodr235@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, please 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.

**PREVAILING WAGE PROGRAM – (360) 902-5335
SPECIALTY COMPLIANCE SERVICES DIVISION
PO BOX 44540, OLYMPIA, WA 98504-4540**

August 1, 2006

Mr. Bob Klingman, Contract Manager
GTECH Corporation
7860 B 29th Avenue NE
Lacey, WA 98516

RE: Contract Number LGS2005 Lottery Gaming System
Washington's Lottery and GTECH Corporation

Dear Mr. Klingman:

The Department has been asked to determine if the work performed pursuant to the above contract is subject to RCW 39.12.

The issues surrounding GTECH Corporation have been brought to the attention of the Prevailing Wage Program through our Electrical division due to their concern that GTECH Corporation may be performing public work and that workers are not receiving the required prevailing rate of wage.

In a letter dated March 15, 2006, Industrial Relations Specialist Ramona Christensen-Russell advised Mr. Bill Chamberland of the Washington State Lottery that the contract is a public works projects as defined by RCW 39.04.010 and the Washington State Prevailing Wage Law (Chapter 39.12 RCW) does apply.

Based on the information that Ms. Christensen-Russell and the Department was able to obtain, the contract between the Washington State Lottery and GTECH Corporation is a public work and the workers performing such work are entitled to prevailing wage. RCW 39.12.030 requires that contracts for public work must contain the prevailing rate of wages applicable to that project. Once a contract is awarded, RCW 39,.12.040 requires that a public agency, prior to the release of any funds to a contractor or subcontractor, obtain a Statement of Intent to Pay prevailing Wages and an Affidavit of Wages Paid from the contractor and all subcontractors.

Enclosed are copies of the above-referenced statutes.

The contract between GTECH and the Lottery Commission calls for GTECH to provide a fully functioning on-line and instant ticket system, including hardware, software, communications, system installation, data conversion and system operation. Of this work, it is the system installation that would require the payment of prevailing wages.

Mr. Bob Klingman
August 1, 2006
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This work is covered, primarily, under the Scope of Work of Electronic Technicians; WAC 296-127-01322 (providing the wiring is low voltage, which we would presume it is). Work falling under any other Scope of Work will depend on the actual work performed and whether there is any covered work done in addition to the wiring, i.e. installation of the satellite dishes. If these satellite dishes are permanently affixed or attached to the structure, the installation work will be covered. Any alteration or modification to any structure necessary to complete the installation of any terminal or satellite dish will also be covered work.

My office is available to determine which Scope of Work applies and the applicable wage rates. For any work in question, please provide my office with a written description of the work performed.

The Electronic Technician rate in effect for this project was \$12.07 and that rate applied in all 39 counties. If workers performing work falling under the Electronic Technician Scope did not receive at least \$12.07, you will have to make the necessary arrangements to pay the workers the difference. You will also have to pay any back payments necessary for any other work performed requiring the payment of prevailing wages for which workers were not properly paid.

Furthermore, your firm, as well as any subcontractors, will need to file a Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid. This can be accomplished on-line or with paper forms. The on-line process is very user friendly and saves quite a bit of time. We have staff who can offer assistance if needed.

We trust that your company will take the necessary steps to ensure compliance with the above statutes, that affected workers will receive the required prevailing wage, and all contractors performing such work for this project will file Intent to Pay Prevailing Wage and Affidavit of Wages Paid forms. If you have any questions or need further clarification, feel free to contact my office.

Sincerely,

Dave J. Soma
Industrial Statistician
Prevailing Wage Program Manager
360 902-5330

Enclosure

cc: David Harrison, Sales Director, Washington State Lottery
Bill Cumberland, Sales Division, Washington State Lottery
Faith Jeffrey, Electrical Division, Labor and Industries
Patrick Woods, Assistant Director, Labor and Industries



LINVILLE LAW FIRM PLLC

November 26, 2012

Department of Labor and Industries
Prevailing Wage Section
PO Box 44540
Olympia, WA 98504

Re: Prevailing Wage Requirements for Telecommunications Companies

Dear L&I,

I represent a telecommunications contractor who operates in the state of Washington. My client requests L&I's opinion regarding whether or not certain telecommunication services provided to public entities are subject to the prevailing wage requirements for public works projects (RCW 39.12).

As you know, public facilities, such as schools, community centers, jails, libraries, zoos, etc. require telecommunication services (internet, phones, cable, etc.). When a public agency (and anyone else) contracts with a telecommunication provider (like Comcast), the contract usually requires the telecommunication provider to run the necessary cable to the premises that is receiving the service. Also, the contract usually requires the service provider to supply and install the necessary appurtenant equipment (like termination panels) so that the building can hook up all its switches. While most of the work is performed offsite, some of the work necessarily has to take place at the end of the line, i.e., on the public premises.

Right now, my strong suspicion is that most (if not all) public agencies are treating their telecommunication agreements like a utility services bill, and NOT like a "public works" project subject to RCW 39. I think they are right in doing so. Telecommunication services do not involve constructing, or improving, or maintaining the premises. They are not lienable services because they cannot be said to improve the premises. The small bit of work performed onsite is just necessary in order to hook up the services to the facility. The telecommunications company at all times owns 100% of the equipment they provide. The public agency just leases the termination panels (and all the other equipments provided by the telecommunication co.) during the term of the services agreement. Just like Comcast. You have to return the remote and the box when you're done.

RCW 39.12.020 clearly requires prevailing wages to be paid on "public works" and "maintenance contracts." But what about these telecommunication services agreements? Yes, the agreements usually require at least some work to be performed on the public premises, but the work is unique because it is not at all related to maintaining or improving the premises. It's just ancillary and necessary in order provide the service.

REC'D NOV 28 2012

So ultimately, the question boils down to this. If my client finds itself negotiating a telecommunication services agreement with a public entity (like the one described above – where the public entity is not purchasing any equipment at all), and the public entity does not treat any part of the transaction as a public works project (per RCW 39), is my client still required to comply with the prevailing wage statutes (RCW 39.12) for the bit of work that takes place at the end of the line on the public premises?

Thank you for considering this question.

Sincerely yours,

Christian J. Linville