



No. 2006-02  
October 9, 2006

## Prevailing Wages in Washington

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Payment of prevailing wages on public works projects is a requirement in Washington under Chapter 39.12 RCW. The compliance of governmental entities with the prevailing wage statutes is one of SAO's areas of focus in our accountability audits.

### **What does the law say about paying prevailing wages?**

RCW 39.12.020 states:

*The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, 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.*

### **How is "prevailing wage" defined?**

Prevailing wages are defined in RCW 39.12.010(1) as, "...the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation." The prevailing wage amounts for each trade and occupation are determined by the Washington Department of Labor and Industries.

### **What are "public works projects" requiring payment of prevailing wage?**

The statutory definition for public works, as it applies generally, is at RCW 39.04.010. WAC 296-127-010(7) further delineates the definition as it applies specifically to prevailing wage. By statute, public works projects include "maintenance when performed by contract", but not ordinary maintenance. The term "ordinary maintenance" is explained in WAC 296-127-010(7)(b)(iii).

The WAC expressly states that janitorial and building maintenance contracts are *not* considered "ordinary maintenance". Under WAC 296-127-023, these contracts "*cover only work performed by janitors, waxers, shampooers, and window cleaners.*" Therefore, entities contracting for these services should ensure that prevailing wages are paid to the workers performing the services.

Ultimately, the determination of whether a project is actually a “public works project” will be dependent on the specific facts of the situation. If a project is determined to be a public work, the prevailing wage requirement should be communicated to the bidders via the bid specifications and contracts (RCW 39.12.030).

**Do prevailing wages apply to public works projects that are awarded to vendors on a small works roster or under the limited public works process?**

Yes.

**Do prevailing wages apply to personal service contracts?**

Yes, if the work is performed in specific trades or occupations on public works projects (defined above). The form of agreement between the public entity and the contractor does not affect the requirement to pay prevailing wages.

**How do prevailing wages apply to a project that is partially funded with federal money? Which prevailing wages are paid – State or federal (Davis-Bacon Act)?**

The entity must meet both requirements and it does so by ensuring that the higher of the two amounts is paid under WAC 296-127-025.

**Who is responsible for ensuring that prevailing wages are paid?**

Ultimately, the governmental entity bears that responsibility and can be liable for paying the difference between the prevailing wage and the actual wages paid if they “knowingly fail to comply” with these requirements (RCW 39.12.042(2)).

Therefore, the entity should have controls in place to ensure:

- Projects and contracts are correctly classified for prevailing wage purposes
- All vendors are properly notified of the prevailing wage amounts in the bid specifications and contracts and that the contract contains the required prevailing wage provisions
- Vendors, including subcontractors, actually pay prevailing wages to those that worked on the project
- Payments are made to vendors only after the vendors have met the prevailing wage requirements

Additional information and links related to prevailing wage issues can be found on the following websites:

- MRSC ([www.mrsc.org](http://www.mrsc.org)) – Subjects, Public Works, Purchasing and Bidding: Prevailing Wage Issues
- Department of Labor and Industries ([www.lni.wa.gov](http://www.lni.wa.gov)) – Trades and Licensing tab, Prevailing Wage