

Prevailing Wage Regulations

Definition of Public Work

- RCW 39.04.010: Public work includes all work, construction, alteration, repair or improvement other than ordinary maintenance executed at the cost of the state or any other municipality. Maintenance, when performed by contract, is considered public work.

The Washington State Public Works Act

- Requires the payment of prevailing wage to workers based upon classification of labor performed. RCW 39.12.020
- This Act is applicable to all “public work” involving state agencies or local governments
- Davis-Bacon Act requirements apply to federally funded construction projects as well as those with a combination of state and federal funds.
- For projects where both the state Public Works Act and the federal Davis-Bacon Act apply, contractors must pay the higher of the state or federal wage rates, on a classification by classification basis. WAC 296-127-025

Prevailing Wage Rates

- The prevailing wage rate in effect on the bid due date are the prevailing wage rates that apply to that construction contract project, no matter how long it lasts, unless the contract is awarded more than six months after the bids were due, except for building service maintenance contracts.
- If award of building service maintenance contracts is delayed more than 6 months, the prevailing wage rates in effect on the date of the award shall apply for the duration of the contract.
- Rates are published twice per year – First business day of February and August – effective 30 days after publication
- Prevailing wage determined by survey – 3 year cycle

Awarding Agency Responsibilities

- Obtain Intent to Pay Prevailing Wages before any payment is made under the contract - RCW 39.12.040
- Obtain Affidavit of Prevailing Wages Paid before releasing the retainage - RCW 39.12.040
- If an awarding agency knowingly fails to comply with the provisions of RCW 39.12.040 it is liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due – RCW 39.12.042
- Contract specification must contain the prevailing wage rates – RCW 39.12.030
- Building Service Maintenance Contracts – require prevailing wage – renewing each year – or if contract is for more than one year – the contract must contain wage increase language. WAC 296-127-027
- Owner/operators are required to complete intent and affidavits
- Off-site fabrication – WAC 296-127-010
- Turn-Key (building) projects – RCW 39.04.260

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Awarding Agency Responsibilities (continued)

- For projects \$2,500 or less (or \$35,000 or less if Limited Public Works Process is used), a combined I/A form may be used.
 - Every 30 days forward completed copies to Labor and Industries
 - This method makes the Awarding Agency directly liable to workers for any unpaid prevailing wages. - RCW 39.12.040
- Weekly certified payrolls are not required for projects with no federal funds, but must be requested from the contractor by the awarding agency if it receives a request.

Bid/Quote Process

- Awarding Agencies, in awarding a contract, must make the determination of whether that contract involves “public work” and communicate it to the employers in the bid specifications and contracts. RCW 39.04.010, RCW 39.12.030
- The Awarding Agency cannot place this burden upon the employer/contractor. RCW 39.12.040 and RCW 39.12.042
- There is no lower limit below which prevailing wages need not be paid. Intents and Affidavits are required for *ALL* projects.

Common Mistakes

Failing to...

- Obtain contractor’s certified payrolls when required.
- Notify contractors that prevailing wages are required on public works or building service maintenance contracts, which include janitorial services
- Manage records
- Obtain intent and affidavits for all sub-contractors
- Pay contractor only after receiving statements of intent
- Have controls in place to ensure that contractors pay prevailing wages
- Pay the higher state prevailing wage versus federal prevailing wage

Recommended Internal Controls

- Routine or periodic job site inspections to verify compliance
- Checking for – posted intent form, randomly interview workers to verify prevailing wages are paid, verify apprentice worker registration cards
- Keep accurate records of all contractors and subcontractors on a project
- Verify prevailing wage on contracts are correct
- Verify scope of work to avoid discrepancies between the wage class information given to the employee and the type of work he or she is actually performing
- Lack of documentation/verification of payroll and fringe benefits paid to employees