PREVAILING WAGE POLICY MEMORANDUM

DATE: April 20, 2011

TO: All Interested Parties

FROM: David J. Soma, Industrial Statistician, Prevailing Wage Program Manager


Policy Disclaimer

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Prevailing Wage Industrial Statistician/Program Manager should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Prevailing Wage Industrial Statistician/Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

Although The Housing Act of 1937 and 24 CFR 965.101 exempt contractors from paying state prevailing wage rates, they do not exempt the application of other prevailing wage requirements. In order to determine that an exemption from payment of state prevailing wage rates is appropriate, the Department of Labor & Industries (L&I) must review the specific circumstances that pertain to the project at issue. In order to accomplish this task, L&I requires that contractors provide the relevant information by filing prevailing wage Intent to Pay Prevailing Wages (Intent) and Affidavit of Wages Paid (Affidavit) forms.

For all contracts with a bid due date of May 15, 2011 or later, when a contractor claims an exemption from state prevailing wage requirements on HUD projects, they must file an Intent and an Affidavit for the project. If they claim an exemption based on federal preemption, they must also include with the Intent a statement that the project is exempt from the payment of state prevailing wage rates based on The Housing Act of 1937 and 24 CFR 965.101, and stating that they will pay the workers properly in accordance with Davis-Bacon wage requirements. A similar statement must accompany the Affidavit.
Public agencies, in awarding a contract, must determine whether the contract involves “public work” and communicate that information to prospective contractors and subcontractors in bid specifications and contracts. The law does not allow public agencies to shift this burden upon the contractor or subcontractor. For example, it is insufficient to state, “Contractors shall comply with the prevailing wage law, if applicable.”

Pursuant to RCW 39.12.040, agencies may not make any payments to any contractor or subcontractor who has not submitted an Intent form that has been approved by the Industrial Statistician. Agencies may not release funds retained under RCW 60.28.011 until all contractors and all subcontractors have submitted Affidavit forms that have been certified by the Industrial Statistician. The requirement to submit these forms should also be stated in the contract. Any agency that fails to comply with the provisions of RCW 39.12.040 may be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due.

To file Intent and Affidavit forms claiming an exemption from payment of state prevailing wage rates, please complete the downloadable, “fillable” forms located on the L&I Prevailing Wage website at [http://www.lni.wa.gov/TradesLicensing/PrevWage/FormPub/default.asp](http://www.lni.wa.gov/TradesLicensing/PrevWage/FormPub/default.asp). After you complete a form, mail it, with the original signature, to L&I together with your $40 filing fee for each form. The mailing address is:

Management Services  
Department of Labor & Industries  
Prevailing Wage Program  
P O Box 44835  
Olympia, WA 98504-4835

A sample “Exemption” Intent form is attached.

If you have questions about a specific project, please consult with the Industrial Statistician/Prevailing Wage Program Manager for specific answers. The Department is happy to provide guidance on your fact set. Please identify the actual circumstances and describe them in full to the Department. You may contact us by phone: 360-902-5335 or by e-mail at [PW1@Lni.wa.gov](mailto:PW1@Lni.wa.gov).
BE SURE THE FORM IS COMPLETE AND INCLUDES THE HIGHLIGHTED STATEMENT AND A LIST OF THE CRAFTS/TRADES/OCCUPATIONS, WITH APPLICABLE WAGE RATES.