

Questions & Answers – EHB 2805

NOTICE: New Legislation ([EHB 2805](#)) Requires Contractors to Report Out-of-State Production of Prefabricated Project Specific Items Used on Washington Public Works Projects

What does EHB 2805 require of contractors?

For public works contracts estimated to cost over \$1million, entered into between September 1, 2010 and December 31, 2013, this new law requires that contractors who use ***prefabricated project specific items produced out-of-state*** must report that fact to the Department of Labor & Industries (L&I).

Are any contract provisions affected by the new law?

Yes. All contracts for public works construction contracts estimated to cost over \$1million, entered into between September 1, 2010 and December 31, 2013, except for projects specifically exempt, must include a provision regarding the reporting requirements set forth in the law. The [Department of General Administration](#) is responsible for developing and making available on its web site standard contract language to meet the contract provision requirements. You can access the contract provisions at: [Off-Site Prefabricated Language \(HB 2805\)](#)  **NEW!**. Owners must include the provisions in their contracts with prime contractors and contractors must include the provisions in their contracts with subcontractors.

What projects are exempt from EHB 2805?

The law does not apply to the following types of work:

- a) Department of Transportation public works projects; and
- b) local transportation public works projects.

Who must report the information required by the law, and to whom must they report it?

For all public works projects estimated to cost over \$1 million, *contractors and subcontractors who directly contract for off-site, prefabricated, nonstandard, project specific items produced outside Washington* must report that information to L&I. Contractors and subcontractors must provide the information by answering a series of questions as part of the Affidavit of Wages Paid (Affidavit) filing process.

What information must contractors and subcontractors provide regarding with the Affidavit?

The law requires that contractors and subcontractors report the following information:

- a) the estimated cost of the public works project;
- b) the name of the awarding agency and the title of the public works project;
- c) the contract value of the off-site prefabricated, nonstandard project specific items produced outside Washington, including labor and materials; and
- d) the name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.

What types of items qualify as “off-site, prefabricated, nonstandard, project specific items” that I must report?

The legislation defines “off-site, prefabricated, nonstandard, project specific items” subject to the reporting requirements as products that are:

- a) made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal duct work;
- b) produced specifically for the public work and not considered to be regularly available shelf items;
- c) produced or manufactured by labor expended to assemble or modify standard items; and
- d) produced at an off-site location.

Why is this information being collected?

Washington prevailing wage rates apply to all off-site, prefabricated, nonstandard, project specific items if they are produced in the state of Washington. Washington prevailing wage rates do not apply to such items produced outside Washington. The legislation was adopted in order to gather data which will be used to assess the extent to which such items are contracted for out-of-state in order to assess the impact on Washington businesses. L&I is required to collect the information and report it to the Capital Projects Advisory Review Board created under [RCW 39.10.220](#) for its review.

When do contractors and subcontractors need to start complying with the new law?

L&I is revising its Affidavit of Wages Paid form to comply with the data collection requirements of the new law. We anticipate the new Affidavit forms will be available to meet the filing requirements that will attach to public works contracts estimated to cost over \$1 million entered into on or after September 1, 2010. Because this change in the

Affidavit form will be coordinated with previously planned revisions to the L&I on-line reporting system, the new electronic form provisions may not be available until January 2011. Since the information is required only when filing an Affidavit upon completion of a project, and not on the Statement of Intent to Pay Prevailing Wages which is filed at the beginning of a project, we should be able to effectively capture the critical data based on this time line.

What if contractors and subcontractors need to complete the form and provide the information prior to the availability of the on-line forms?

Please contact L&I at: pw1@Lni.wa.gov or (360) 902-5335 and we will provide you with guidance.

What happens to contractors and subcontractors who do not comply with EHB 2805?

Any contractor that L&I determines has twice violated the requirements of the act will not meet the [RCW 39.04.350](#) responsibility criteria and will not qualify to be awarded a public works contract.

Where can I get further information if I have questions?

If you have further questions, please contact L&I at: pw1@Lni.wa.gov or (360) 902-5335.