



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Specialty Compliance Services
PO Box 44400 • Olympia, Washington 98504-4400

June 21, 2011

Amy Joseph Pedersen
Stole Rives LLP
900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204

Re: Request for Redetermination for Contract No. 14013-US 101:
Columbia River (Astoria-Megler) Bridge

Dear Ms. Pedersen:

This letter is in response to your March 25, 2011, request for a redetermination of the Industrial Statistician's determination related to the appropriate classification and prevailing wage rate to apply to Abhe & Svoboda's installation of the SafeSpan system on the Astoria-Megler Bridge project.

The answer below is limited to the facts of this particular project and the information you provided, as well as my review of a number of documents related to this issue. The documents I reviewed include, but are not limited to:

- Your correspondence
- David Soma's July 6, 2010 determination letter
- Contract No. 14013
- The scope of work descriptions in WAC 296-127-01356, WAC 296-127-01339, WAC 296-127-01344, and WAC 296-127-01310

I also met with you on March 9, 2011, and visited the work site on March 22, 2011. Along with my staff, I have also interviewed workers and reviewed photos of work performed on the site.

In his July 6, 2010, letter, Industrial Statistician David Soma cited to websites that describe the work involved in the installation of the SafeSpan system. This includes SafeSpan's website <http://safespanplatforms.com/index.htm> and a discussion of the system found on Purdue University's Division of Construction Engineering and Management's website, <http://rebar.ecn.purdue.edu/ECT/links/technologies/civil/safespan.aspx>. Based upon these descriptions and my visit to the work site, I have determined that the installation of the SafeSpan system involves the following tasks using reusable components: installation of a cable-suspended platform supported on cables fastened in equal intervals to the bridge's structural members, and attachment of sheets of corrugated steel decking configured for the project's scope and weight requirements to the cables, using custom-fabricated fasteners.

The Industrial Statistician also cited to the plain language definition of “scaffolding” in the Means Illustrated Construction Dictionary (Third Edition), which is “a temporary structure for the support of deck forms, cart ways, and/or workers, such as an elevated platform for supporting workers, tools, and materials...” This definition is similar to The Department’s Washington Industrial Safety and Health Act (WISHA) rules, which define “scaffold” as “a temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.”

WAC 296-874-100. The U.S. Secretary of Labor has also classified the SafeSpan system as a “catenary scaffold” under OSHA regulation 29 C.F.R. 1962.450(b), which is defined as “a suspension scaffold consisting of a platform supported by two essentially horizontal and parallel ropes attached to structural members of a building or other structure. Additional support may be provided by vertical pickups.” *Secretary of Labor v. Thomas Industrial Coatings, Inc.*, OSHRC Docket No. 06-1542 (2009).

Although the SafeSpan system also provides containment of dust and debris from paint removal through attached plastic tarps in addition to a work platform, my research indicates that the SafeSpan system falls with the plain language definition of “scaffolding” as referenced in subsection (7) of the Painters scope of work classification, WAC 296-127-01356, which includes “[e]recting of scaffolding ... to perform the work above ground level.”

The tasks involved in erecting scaffolding are found in multiple scope of work descriptions. In addition to the Painters scope (WAC 296-127-01356), the Laborers scope (WAC 296-127-01344) includes “erect scaffolding, shoring and braces,” the Carpenters scope (WAC 296-127-01310) includes “construct, erect, install...structures, structural members...made of...metals, using carpenter hand tools and power tools” and “build[ing]..scaffolds,” and the Ironworkers scope (WAC 296-127-01339) includes “perform all work in connection with field fabrication and/or erection, installation, removal...and dismantling of structural, architectural and reinforcing iron and steel...and “connecting, fitting, hooking on, bolting up...”

Where multiple scopes of work can apply, the Department uses the analysis adopted by the Court of Appeals in *Lockheed v. Dep’t of Labor & Indus.*, 56 Wn. App. 421, 429, 783 P.2d 1119 (1989), which held that “the determination of whether work is ‘in the same trade or occupation’ depends upon the ‘type of work rather than where the work was performed or by whom it was done.” This means that the Department looks to the nature of the public works project as well as the work performed to determine the appropriate classification.

Here, the Painters scope of work applies to the erection of scaffolding for the purpose of performing “the” work as described in the Painters scope, which means that the Painters scope applies to erection of the scaffolding when the nature of the work is Painters’ work.

On this project, the title of the contract was “Bridge Painting” and the purpose of the contract was to “1. Prepare and paint the northern .072 miles of the Astoria-Megler Bridge and 2. Perform additional and incidental Work as called for by the Specifications and Plans.” That incidental work included contract provisions for 1700 rivets and bolts replacement.

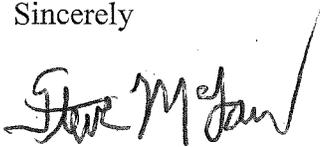
Amy Joseph Pedersen
June 21, 2011
Page 3

As you stated in your correspondence, as of February, only 10 rivets had been replaced on the Washington side of the bridge and 43 were replaced on the Oregon side. No welding had been done on the Washington side and only one small welding project was done on the Oregon side. Because the principal purpose of the contract was painting, the fact that a de minimis amount of rivet replacement was performed on the project and paid at the Ironworkers rate, would not require the SafeSpan installation work to be classified under the Ironworkers scope of work. *See AFL-CIO v. Donovan*, 582 F. Suppl. 1015, 1020-21 & n.5 (D.D.C. 1984), *aff'd in part and vacated in part on other grounds*, 757 F.2d 330 (D.C. Cir. 1985)(federal courts look to the "principal purpose" of a contract to determine the applicability of the Davis-Bacon Act.)

I disagree with the Industrial Statistician's conclusion that Ironworkers is the only correct scope/classification of work to apply to A&S's installation of the SafeSpan system on this project. Although the tasks involved in installing the SafeSpan system are generally described in the Ironworkers scope, there is no specific reference in that scope to scaffolding and welding is not required for erection of the SafeSpan system as would be required to construct the type of structures described in the Ironworkers scope.

The SafeSpan system can also be installed at the Carpenters rate if the contract indicates the scaffolding is to be used by multiple trades, and that use is more than "de minimis" or incidental. If you have further questions about my decision, please feel free to contact me at (360) 902-6348.

Sincerely



Steve McLain
Assistant Director

cc: Anne Selover, Acting Prevailing Wage Program Manager
Trent Harris, Industrial Relations Agent
Gail Svoboda, Abhe & Svoboda

