



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage

PO Box 44540 • Olympia, Washington 98504-4540

360/902-5335 Fax 360/902-5300

December 9, 2016

Kevin Davidson
Davidson Enterprises, Inc.
5018 East 21st
Spokane WA 99223

Re: Request for Determination – NSC-BNSF Railway Structures/Realignment Project
(fencing) Prevailing Wage File #16-120-D

Dear Mr. Davidson:

Thank you for your April 13, 2016 letter requesting a determination regarding a scope of work classification for the installation of railings and fencing on the above project.

In your letter you are contesting the opinion put forth by the Department in a previous communication that the work in question is covered in the Ironworker scope of work. You believe this work is more closely aligned with the Laborer scope of work.

This is a determination of the Industrial Statistician regarding coverage of the referenced work under the Washington's prevailing wage laws and is made pursuant to [RCW 39.12.015](#). See the enclosed documents, "*Prevailing Wage Determination Request and Review Process*." Copies of the WACs referenced in this letter are also enclosed.

RCW Chapter 39.12 requires that the correct prevailing rate of wage be paid to all workers, laborers, and mechanics under all public works construction projects.

This determination is based on the information you provided. Specifically: four photographs of the project site; Article 2 Scope of Work Contract No D 146 88-17 and 12 pages of drawings entitled *Railing for the NB US 395 Over BNSF Bridge*. If the facts differ from those provided, the answers may be different.

You point out that the term “fencing” is used in the WSDOT contract to refer to the structures you erected. Government offices and agencies sometimes use terms differently and I would agree that the structures you erected on this project are not “fences” for prevailing wage purposes.

The *Webster Dictionary* provides the following definitions:

Fence - an enclosure about a field or other space, or about any object; especially, an inclosing structure of wood, iron, or other material, intended to prevent the intrusion from without or straying from within.

Railing – a barrier made of a rail or of rails, together with vertical supports. The typical railing in the interior of structures or on porches has a horizontal rail near waist height, and multiple vertical supports. Its function is usually to provide a safety barrier at the edge of a vertical drop to prevent falls.

Webster defines these terms in such a way as to describe your work on this project as railing installation rather than fence erection.

This is because the Fence Erector and Fence Laborer (WAC 296-127-01328) scope of work, suggests that fences function as items around industrial structures or are erected along highways. “Fences” also appear to be limited to structures that are embedded into the ground, since holes must be dug for them. Railings, such as the structures you installed, are more commonly attached to concrete using anchor bolts and nuts and/or welding.

The Laborer (WAC 296-127-01344) scope of work includes language stating that laborers perform a variety of tasks such as erecting and repairing guard rails. Guard rails are described as a low horizontal rail fastened to intermittent upright posts along a lane of highway. As this description does not approach the scope of work called out in the specifications for this contract the Laborer prevailing wage is not applied.

The Ironworker (WAC 296-127-01339) scope of work states that Ironworkers:

perform all work in connection with field fabrication and/or erection, installation, removal, wrecking and dismantling of structural, architectural and reinforcing iron and steel, ornamental lead, bronze, brass, copper and aluminum, and plastics or other materials when used in place thereof.

And notes that the work performed by ironworkers includes, but is not limited to “Locks, gates, metal forms, railings (including pipe).”

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The drawings and photographs submitted indicate the railings are bolted to low concrete walls that are part of the bridge structure. The installation of the railing does enhance this structure to ensure continuous separation between pedestrian and vehicle traffic. Structural additions are not limited to enhancements that help hold up the bridge. The work performed in this project appears to have created a physical barrier capable of containing some of the things, including vehicles, that would likely otherwise leave the bridge deck but for these railing structures. Because this work involved fabrication and installation of the railings that served a structural purpose, the work in this contract is properly classified under the Ironworker scope of work.

This answer is based on the information and facts you provided. If the facts change from those provided, the answer may be different.

If you need additional information or have questions, please contact my office.

Sincerely,



Jim P. Christensen
Industrial Statistician/Program Manager
Jim.Christensen@Lni.wa.gov
(360) 902-5330

Enclosures

cc: Elizabeth Smith, Assistant Director, Fraud Prevention Labor Standards

Fence erectors and fence laborers.

For the purpose of the Washington state public works law, chapter 39.12 RCW, fence erectors and fence laborers erect and repair metal and wooden fences and fence gates around industrial establishments (schools, playgrounds, etc.), residences, farms and along highways using power tools and hand tools.

The work of the fence erectors includes, but is not limited to:

(1) Fence erector.

- Lays out fence line, using tape measure, and marks for postholes.
- Digs postholes with mechanical posthole digger or power-driven auger.
- Aligns posts, using line or by sighting along edges of posts.
- Verifies vertical alignment of posts with plumb bob or spirit level.
- Attaches fence-rail support to post, using hammer and pliers.
- Cuts metal tubing, using pipe cutter, and inserts tubing through rail support.
- Completes top fence rail of metal fence by connecting tube sections, using metal sleeves.
- Attaches rails or tension wire along bottoms of posts to form fencing frame.
- May weld metal parts together, using portable gas welding equipment.
- Stretches wire, wire mesh, barbed wire, or chain link fencing between posts and attaches

fencing to frame.

- Assembles gate and fastens in position, using hand tools.
- Saws required length of lumber to make rails for wooden fence.
- Nails top and bottom rails to fence posts, or inserts them in slots on posts.
- Nails pointed slats to rails to construct picket fence.
- Erects alternate panel, basket weave, and louvered fences.

(2) Fence laborer. In addition to assisting the fence erector in the performance of the tasks described above, the work of the fence laborer includes, but is not limited to:

- Digs holes for posts with spade or posthole digger.
- Blasts rock formations with dynamite to facilitate digging of holes.
- Sets metal or wooden posts in upright position in holes.
- Mixes concrete by hand or by use of a cement mixer.
- Pours concrete around base of posts or tamps soil into holes to embed posts.
- All the cleanup required in connection with the erection of fences.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-01328, filed 7/19/00, effective 7/19/00.]

Laborers.

For the intents and purposes of the Washington state public works law, chapter 39.12 RCW, laborers perform a variety of tasks such as:

- Erect and repair guard rails, median rails, guide and reference posts, sign posts and right of way markers along highways.
- Mix, pour and spread asphalt, gravel and other materials, using hand tools, and mix, pour, spread and rod concrete.
 - Lift, carry and hold building materials, tools and supplies.
 - Measure distances from grade stakes, drive stakes and stretch tight line.
 - Bolt, nail, align and block up under forms.
 - Signal operators of construction equipment to facilitate alignment, movement and adjustment of machinery to conform to grade specifications.
 - Level earth to fine grade specifications, using pick and shovel.
 - Mix concrete, using portable mixer.
 - Position, join, align, wrap and seal pipe sections.
 - The placement and testing of plastic conduit for electrical cable, when the conduit is buried underground.
 - Erect scaffolding, shoring and braces.
 - Mop, or spread bituminous compounds over surfaces for protection (outside buildings).
 - Spray material such as water, sand, steam, vinyl, or stucco through hoses to clean, coat or seal surfaces.
 - Apply caulking compounds by hand or with caulking gun to seal crevices.
 - The application of penetrating sealer and primer protective coatings to concrete floors and steps when safe to walk on.
 - Installation of plastic panels on the inside of existing window frames for insulation (instead of storm windows). The panels are held in place magnetically (with metal brackets) and with self-taping screws.

The cleaning and grinding of concrete floors and walls by high pressure waterblasting or sandblasting preparatory to the application of waterproofing.

- The removing of rough or defective spots from concrete surfaces, using grinder or chisel and hammer and patching holes with fresh concrete or epoxy compound when not preparatory to sacking (finishing a large surface of patched holes).

- The setting of concrete curb, gutter and sidewalk forms as a composite crew with cement masons.

- The laying of concrete, granite and brick pavers in beds of sand.
- General cleanup required after damage caused by water or fire.

All clean-up work required in connection with the above work. Clean tools, equipment, materials and work areas:

(1) When the cleanup is performed for more than one trade (usually employed by general contractor).

(2) When assisting those trades for which laborers have been specifically designated as tenders, e.g., carpenter tender, cement finisher tender, etc.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-01344, filed 7/19/00, effective 7/19/00.]

Ironworkers.

For the purpose of the Washington state public works law, chapter 39.12 RCW, ironworkers perform all work in connection with field fabrication and/or erection, installation, removal, wrecking and dismantling of structural, architectural and reinforcing iron and steel, ornamental lead, bronze, brass, copper and aluminum, and plastics or other materials when used in place thereof.

The work performed by ironworkers includes, but is not limited to:

- Steel and metal houses and packaged buildings.
- Bridges, viaducts, cableways, tramways, monorails.
- Locks, gates, metal forms, railings (including pipe).
- Steel towers, energy producing windmill type towers, nuclear reactors.
- Frames in support of boilers.
- The installation of metal siding and metal roof decking, regardless of the fastening method, or what it is fastened to.
- All reinforcing work in connection with field fabrication, handling, burning, welding and tying of all materials used to reinforce concrete structures.
- The signaling, rigging, hoisting, aligning, bolting, riveting, or welding of structural-steel members.
- The unloading, loading, distributing, stockpiling, hoisting, rigging, and handling of materials used by ironworkers and all cleanup work.

Work process:

(1) Structural:

(a) Erecting:

- Connecting
- Fitting
- Hooking on
- Bolting up
- Torquing
- Signaling
- Preengineered buildings
- Sheeting

(b) Rigging:

- Cranes
- Derricks
- Land rigs
- Cable splicing

(c) Maintenance of equipment:

- Dismantling
- Field rigging
- Moving field equipment

(2) Welding:

- (a) Acetylene welding
- (b) Electric arc welding
- (c) Cutting and burning
- (d) Heliarc.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-01339, filed 7/19/00, effective 7/19/00.]

Prevailing Wage Determination Request and Review Process

RCW 39.12.015 is the basis for requesting a determination, since it provides:

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

If you disagree with a determination the industrial statistician provides, WAC 296-127-060(3) provides for a review process:

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter 39.12 RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which he would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

If you choose to utilize this review process, you must submit your request within 30 days of the date of the applicable industrial statistician's determination or response to your request for modification or other change. Include with your request any additional information you consider relevant to the review.

Direct requests for determinations, and for modification of determinations via email or letter to the prevailing wage industrial statistician:

Jim P. Christensen
Industrial Statistician/Program Manger
Department of Labor & Industries
Prevailing Wage
P O Box 44540
Olympia, WA 98504-4540
Jim.Christensen@Lni.wa.gov

Prevailing Wage Determination Request and Review Process

Direct requests via email or letter seeking reconsideration (redetermination) by the assistant director to:

Elizabeth Smith, Assistant Director
Department of Labor & Industries
Fraud Prevention and Labor Standards
P O Box 44278
Olympia, WA 98504-4278
Elizabeth.Smith@Lni.wa.gov

Direct petitions for arbitration to:
Joel Sacks, Director
Department of Labor & Industries
P O Box 44001
Olympia, WA 98504-4001

If you choose to utilize this arbitration process, you must submit your request within 30 days of the date of the applicable assistant director's decision on reconsideration (redetermination). Submit an original and two copies of your request for arbitration to the Director personally, or by mail. The physical address for the Director is 7273 Linderson Way, SW, Tumwater, WA 98501.

WAC 296-127-061 also contains the following provisions regarding petitions for arbitration:

In addition, copies of the petition shall be served personally or by mail upon each of the following:

- (a) The public agency or agencies involved,
 - (b) The industrial statistician, and
 - (c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.
- (2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.
- (3) A petition for arbitration of a wage determination shall:
- (a) Be in writing and signed by the petitioner or his counsel (or other authorized representative), and
 - (b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned, and
 - (c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request, and
 - (d) Contain a short and plain statement of the grounds for review, and
 - (e) Be accompanied by supporting data, views, or arguments, and
 - (f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.