



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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360/902-5335 Fax 360/902-5300

October 17, 2016

Aaron B Blaisdell, PLS
Apex Engineering
2601 South 35th Street, Suite 200
Tacoma, WA 98409

RE: Request for Determination on Point Defiance Bypass Track and Signal Improvements Project

Dear Mr. Blaisdell:

Thank you for your letter dated January 29, 2016. You asked the Industrial Statistician to determine whether the surveying services Apex Engineering (“Apex”) performed under contract with Stacy and Witbeck (“SWI”) are professional land survey services exempt from prevailing wage, or whether it is work performed by construction site surveyors as defined in WAC 296-127-01396. I have provided a copy of the WAC for your review.

I reviewed the materials you submitted with your letter. Those materials include:

- A copy of the Point Defiance Bypass Contract Specifications Section 017123, “Field Engineering”
- A copy of the Professional Services Subcontract Agreement (“Subcontract”). The subcontract between SWI and Apex refers to construction layout, professional design and/or engineering services;
- A copy of Sound Transit’s letter to Stacy and Witbeck dated January 4, 2016
- WAC 296-127-01396; RCW 39.12

I also discussed the matter with Phillip Riggins of Sound Transit. Based on my review, I determine the work done under the contract between Apex and SWI is construction site surveyor work and is paid at the prevailing rate of wage.

1. The contract at issue here is a construction contract, not for design services.

According to my review of the documents, and consistent with Mr. Riggins’ characterization, the design phase of the contract was complete when the construction contract was awarded. The contract between Sound Transit and Stacy and Witbeck, Inc. is a contract for construction, not design. Since this topographical surveying work was performed under this contract, it was performed to support a construction effort.

Construction contracts commonly place a substantial burden of accuracy upon the contractor (in this case, Stacy and Witbeck, Inc.). This contract is not an exception. Section 01 71 23 of the contract includes this provision:

“Construction Control Point (CCP) Coordinates identified in the Contract Drawings are provided for informational purposes only. If the Contractor uses these points for establishment of their construction survey control, it shall be at the sole risk of the Contractor at no expense to the Contracting Agency.”

In performing its due diligence, Stacy and Witbeck directed Apex to perform various surveying activities that it (Stacy and Witbeck) believed to be prudent and necessary in order to carry out its construction duty under the contract and to avoid errors. Whether design specifications were verified or found to be inaccurate, whether the work in question was performed to verify or relocate control points, whether the work was performed to estimate excavation volumes or to ensure accurate construction activity planning or other goals, all activities under this contract were performed for a construction purpose, including the various survey activities performed by Apex.

2. The scope of work for construction site surveyors covers the survey work done under the subcontract.

WAC 296-127-01396(1) states:

“The work of the construction site surveyor includes, *but is not limited to*: survey work performed *after* the contract is awarded and during the actual construction in direct support of construction crews when the worker is in the employ of and working under the direction of construction contractor to survey check points of location and grade on a construction site using a variety of measurement tools, instruments, and procedures.”
(emphasis added)

L&I interprets scopes of work to promote the remedial purposes of the Prevailing Wage law, chapter 39.12 RCW, which is to protect workers and preserve local wage standards. When a scope of work includes the “not limited to” language, it directs L&I to interpret the scope in the broadest manner possible. A broad interpretation of the law protects workers.

Apex asserts the work it performed is land surveying work covered by chapter 18.43 RCW and is thus not subject to chapter 39.12 RCW. I notice that licensure under chapter 18.43 RCW is required by contract specification. Further, I believe you assert the topographical survey work at issue here is required by law to be performed under the direction of a Licensed Professional Land Surveyor. I concede these facts.

The work at issue here is described in WAC 296-127-01396(1). When this is the case, WAC 296-127-01396(2) does not apply. Since Apex’s work was performed both after the contract was awarded and during the actual construction, and the work was done in support of construction, surveying work done by Apex is within the scope of work for construction site surveyors. Therefore, the work is properly paid at the prevailing rate for construction site surveyors.

Your letter reports that “This work.....was not establishing a location, an elevation or grade, distances, and other measurements for the layout work.” Surveying, whether topographical or for a staking purpose, involves finding locations of elevation and grade. This work is described in WAC 296-127-01396(1) and therefore requires the payment of prevailing wages.

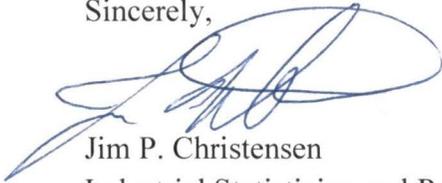
3. Other scopes of work could apply to the work done under the subcontract between SWI and Apex.

I answered only whether the work done in this instance was construction site surveyor work and have determined that it is. The Industrial Statistician determines all prevailing wage rates. In this case, I exercised my discretion and did not, although authority exists to do so, review all existing scopes of work to determine whether there is another classification that could possibly apply.

4. Conclusion

The Industrial Statistician determines the surveying work done under the contract between SWI and Apex is construction site surveyor work paid at the prevailing rate of wage.

Sincerely,



Jim P. Christensen
Industrial Statistician and Prevailing Wage Program Manager

cc: Elizabeth Smith, Assistant Director, Labor & Industries
Michael Robertson, Stacy and Witbeck
Scott Perry, Sound Transit

Enclosures

Construction site surveyor.

For the purpose of the Washington state public works law, chapter 39.12 RCW, construction site surveyors perform survey work which requires the use or utilization of transits, tripod mounted levels, lasers, electrotape and other electronic measuring devices or theodolites to establish a location, an elevation or grade, distances, and other measurements.

(1) The work of the construction site surveyor includes, but is not limited to:

- Survey work performed after the contract is awarded and during the actual construction in direct support of construction crews when the worker is in the employ of and working under the direction of a construction contractor to survey check points of location and grade on a construction site using a variety of measurement tools, instruments, and procedures.

(2) The construction site surveyor scope of work does not include surveying services not within the description in subsection (1) of this section that are required by specification or contract or state law to be performed under the direct supervision of individuals registered under chapter 18.43 RCW.

[Statutory Authority: Chapter 39.12 RCW and RCW 43.22.270. WSR 08-23-082, § 296-127-01396, filed 11/18/08, effective 1/1/09.]

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.