



PREVAILING WAGE POLICY MEMORANDUM

DATE: April 20, 2011

TO: All Interested Parties

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

SUBJECT: HUD Housing Projects – Federal Preemption, The Housing Act of 1937 and 24 CFR 965.101

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 This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.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>. 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.



STATEMENT OF INTENT TO PAY PREVAILING WAGES

Public Works Contract
 \$40.00 Filing Fee Required

Intent ID # (Assigned by L&I) _____

- This form **must** be typed or printed in ink.
- Fill in all blanks or the form will be returned for correction (see instructions).**
- Please allow a **minimum** of 10 working days for processing.
- Once approved, your form will be posted online at <https://fortress.wa.gov/lni/pwiapub/SearchFor.asp>

Your Company Information			Awarding Agency Information		
Your Company Name ABC Contractor			Project Name Sylvester Arms Renovation		Contract Number AB-4347
Your Address 4645 Green Street			Awarding Agency XXXX Housing Authority		
City Rochester	State WA	Zip+4 98579	Awarding Agency Address 10073 Baker Street		
Your Contractor Registration Number ABxxx*mmmm		Your UBI Number 600055555	City Olympia		State WA
Your Industrial Insurance Account Number XX-XXXXXXX			Zip+4 98502		
Your Email Address (required for notification of approval) ABCContractor@anyone.net		Your Phone Number (360) 777-7777	Awarding Agency Contact Name Mary Smith		Phone Number (360) 999-9999
Additional Details			Contract Details		
Your Expected Job Start Date (mm/dd/yyyy) 05/30/2011			Bid Due Date (Prime Contractor's) 05/19/2011		Award Date (Prime Contractor's) 05/20/2011
Job Site Address/Directions 2938 Sylvester Street, Olympia, WA			Total Dollar Amount of Your Contract (including sales tax) or indicate time and materials, if applicable. \$xx,xxx <input type="checkbox"/> T&M		
ARRA Funds			Weatherization or Energy Efficient Funds		
Does this project utilize American Recovery and Reinvestment Act (ARRA) funds? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Does this project utilize any weatherization or energy efficiency upgrade funds (ARRA or otherwise)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Prime Contractor's Company Information			Hiring Contractor's Company Information		
Prime Contractor's Company Name Able Builders		Prime Contractor's Intent Number 333333	Hiring Contractor's Company Name Milton Contracting		
Prime Contractor's Registration Number ABU*xxxx		Prime Contractor's UBI Number 600044444	Hiring Contractor's Contractor Registration Number MCC*mmmm		Hiring Contractors UBI Number 600033333
Employment Information					
Do you intend to use ANY subcontractors?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Will employees perform work on this project?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will ALL work be subcontracted?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Do you intend to use apprentice employees?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Number of Owner/Operators who own at least 30% of the company who will perform work on this project: <input checked="" type="checkbox"/> None (0) <input type="checkbox"/> One (1) <input type="checkbox"/> Two (2) <input type="checkbox"/> Three (3)					
Crafts/Trades/Occupations – (Do not list apprentices. They are listed on the Affidavit of Wages Paid only.) If an employee works in more than one trade, ensure that all hours worked in each trade are reported below. For additional crafts/trades/occupations please use Addendum A.			Number of Workers	Rate of Hourly Pay	Rate of Hourly Usual ("Fringe") Benefits
Project is exempt from state prevailing wage requirements based on The Housing Act of 1937 and 24 CFR 965.101. Workers will be paid in accordance with Davis-Bacon wage requirements for the following crafts/trades/occupations:					
[List the trades here consistent with the sample.]					
Brick Masons			4	\$xx.xx	\$xx.xx
Hod Carriers			2	\$xx.xx	\$xx.xx
Signature Block					
I hereby certify that I have read and understand the instructions to complete this form and that the information, including any addenda, are correct and that all workers I employ on this Public Works Project will be paid no less than the Prevailing Wage Rate(s) as determined by the Industrial Statistician of the Department of Labor and Industries.					
Print Name: ABC Contractor		Print Title: Treasurer		Signature: _____	
				Date: 05/23/11	
For L&I Use Only					
Approved by signature of the Department of Labor and Industries Industrial Statistician					

NOTICE: If the prime contract is at a cost of over one million dollars (\$1,000,000.00), RCW 39.04.370 requires you to complete the EHB 2805 (RCW 39.04.370) Addendum and attach it to your Affidavit of Wages of Paid when your work on the project concludes. This is only a notice. The EHB 2805 Addendum is not submitted with this Intent.
 F700-029-000 Statement of Intent to Pay Prevailing Wages 03-2011

BE SURE THE FORM IS COMPLETE AND INCLUDES THE HIGHLIGHTED STATEMENT AND A LIST OF THE CRAFTS/TRADES/OCCUPATIONS, WITH APPLICABLE WAGE RATES.