



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

July 7, 2010

Richard B O'Neill
Erin Rockery
4521 56th St NW
PO Box 431
Gig Harbor, WA 98335

Re: Wage Determination for Installation of a Flexibly-lined Shallow and Naturalistic Water Garden for the Tacoma's Children's Nature Exploration Area

Dear Mr. O'Neill:

Thank you for your patience on this response. You have asked for a determination of the appropriate work classification to be used for installing Aquascape pond equipment inside a polypropylene flexibility lined pond and stream using an all natural wetland bog filtration system. You believe that you should be able to use landscape wage rates for these tasks because you believe that the construction of the entire 5000 square feet involves the beautification of the plot of land by changing its natural features through the addition of water, sand, gravel, river cobbles, and boulders.

The answer below is based on the information you provided as well as a thorough review of previous communications. References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are included. Again, this answer is based on your fact set. If the facts differ from those you provided, the answers may be different.

RCW 39.12.020 requires that "The hourly wages to be paid to laborers, workers or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality, or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such work is performed."

Scope of work descriptions identify the correct use of the wage rate for a particular trade and occupation. I know you are familiar with the scope of work for Landscape Construction (WAC 296-127-01346). As you know, the Landscape Construction scope of work, WAC 296-127-01346, is a very limited scope of work specific to certain instances of beautification of a plot of



Richard B O'Neill Letter
July 7, 2010
Page 2

land through addition to or modification of lawns, trees, and bushes. The scope contains both detailed limits on its use and broad exclusions from its application.

Case law provides us further guidance. It provides that the correct identification of the proper scope(s) of work to use is not limited to the task performed, but instead is also tied to the nature of the work or project. This was illustrated in *Lockheed Shipbuilding Company v. Labor and Industries*, 56 Wn. App. 421 (1989). The Lockheed court ruled that the Pipefitter construction rate (under the scope of work for Plumber/Pipefitter) was correct based on the nature of the work, which involved welding pipe for a wastewater treatment plant project, even though the work of welding pipe sections was performed in a shipyard. The workers had been paid the lower shipyard rate for a Boilermaker. The court ruled that the nature of the work was construction of a wastewater treatment facility. That work, by its nature, required the Plumber/Pipefitter rate of pay, not the shipyard Boilermaker rate of pay.

In administering prevailing wage laws, the Department looks to statutes, legislative intent, rules, and case law. Here, case law tells us that the nature of the public works project, as well as the type of work performed, will determine the correct scope of work to be used. Because of both the work performed and the nature of the project, you cannot utilize the Landscape Construction scope of work for the work performed in the installation of the naturalistic water garden.

Prevailing wage work that is excluded from the Landscape Construction scope of work falls under other construction scopes of work. Based on the information provided by you, the work will fall under at least the following scopes of work: Laborers (WAC 296-127-01344), Operating Engineers (WAC 296-127-01354), and Plumbers, Pipefitters, and Steamfitters (WAC 296-127-01364). However, depending on the actual work performed, additional scopes may also apply.

You make mention that you will be mixing and spreading soil and amendments for all of the aquatic planting areas and planting pockets inside the pond boundary. If you are installing no more than six inches of soil and amendments for this area, you can use landscape wage rates for this work only.

Washington State prevailing wage information, including the WACs, are available on the Department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

I hope this answers your questions. If you need additional information or have questions, please call or email me at 360 902-5330 or somd235@lni.wa.gov.

Sincerely,



David J. Soma
Industrial Statistician
Prevailing Wage Program Manager



David J. Soma
Prevailing Wage Program Manager
Department of Labor and Industries
State of Washington

May 25, 2010

Dear Dave:

RE: Intent to pay Prevailing Wages at Tacoma's Children's Nature Exploration Area

ERC II Inc dba Erin Rockery (ER) is a certified Aquascape Contractor (CAC). We will be installing all Aquascape pond equipment inside a polypropylene flexibly lined pond and stream using an all natural wetland bog filtration system. This system circulates the water with 4 pumps, 2 skimmer mechanical filters, and 2 biological filtration falls (Bio-falls). Along with 2 circulating jet streams, this water garden will have as close to natural function as possible.

I have been creating water gardens for over 14 years. I spend a lot of time on the creation due to my perfectionist tendencies and treating the project as a canvas for my artwork.

I am enclosing a copy of WAS 296-127-01346 that I found online. I feel that my request for Landscape Construction Classification is justified. In the following, I will attempt to explain why we, as landscape artists, should have this classification. I believe we are in Category Number (1) of "Landscapes Construction includes". We are not engaged in any of the activities

in Category (2) "Landscape Construction does not include". Some of our work could possibly even come under the classification of Playground and Park Equipment Installer, journey level.

Landscape Construction

For the purposes of Washington State Public Works Law, Chapter 39.12 RCW, Landscape Construction involves the beautification of a plot of land by changing its natural features through the addition or modification of lawn, trees, bushes, etc.

1) Landscape construction includes: constructing or maintaining lawns, yards, gardens or other landscape surfaces.

ER's portion of the Metropolitan Park District of Tacoma's Children's Nature Exploration Area Bid #J2010-2 is limited only to the flexibly-lined shallow and naturalistic water garden. (Please see a copy of the bid notice from the contract documents for this project marked "A" for reference.)

The area of the pond, stream and children's exploration stream is approximately 5,000 square feet. The construction of the entire 5000 square feet involves the beautification of the plot of land by changing its natural features through the addition of water, sand, gravel, river cobbles and boulders. These materials will cover every square inch of our part of the project. The mixing, spreading and placement will be as specified by the landscape architect expressing an artistic interpretation of each individual rock's shape, color and appearance in conjunction with its location, Zen and with the surrounding rocks and topography. All of these are decorative rocks as specified in Item #2 of WAC 296-127-01346 (1) Landscape Construction includes "mixing and spreading or decorative rock". We will also be mixing and spreading soil and amendments for all of the aquatic planting areas and planting pockets inside the pond boundary.

When we originally bid this contract on February 23, 2010 and entered into agreement on March 23, 2010 for this project it was with the expectation of paying prevailing wages for Landscape Construction. Even with the new May 19, 2010 Revised Landscape Construction Policy, I feel that the scope of our work is not technically covered by Section 4.C and this is a policy change made after the contract was signed.

I would very much appreciate the chance to meet with you at your office, at the job site, or any other place you would choose to discuss this matter in more detail. Time is of the essence for resolution of this issue as we are more than half way through with the project and nearing completion.

Sincerely,

A handwritten signature in black ink that reads "Richard B. O'Neill". The signature is written in a cursive style with a large, prominent initial "R".

Richard B. O'Neill

President

REQUEST FOR BIDS
METROPOLITAN PARK DISTRICT OF TACOMA
Children's Nature Exploration Area
BID# J2010-02

BID NOTICE

The Metropolitan Park District of Tacoma will receive sealed bids for Bid# J2010-02, Children's Nature Exploration Area, at the office of Planning, Design & Development, Metropolitan Park District of Tacoma, 4702 S 19th Street, Tacoma WA 98405 until 10 a.m., February 23, 2010. Bids will be opened and publicly read aloud at 10 a.m. Bids received after the appointed time set for receipt will be returned unopened.

The project includes, but is not limited to:

This contract includes the installation of The Children's Nature Exploration Area at The Tacoma Nature Center. This project generally entails the construction of exploration and play features, including a flexibly-lined shallow and naturalistic water feature; custom, artist-quality shotcrete work; prefabricated play elements; play surfacing; crushed rock paving; planting; lawn and meadow installation; rain gardens; irrigation; water service, electrical service; fencing; site furnishing; earthwork; parking area curbing, paving and striping. This is only a general summary of work; other work and trades may be involved.

Prevailing Wage Rates and the Metro Parks Tacoma Apprenticeship Training Program requirements will apply. 228 apprentice hours are estimated for this project.

The base bid estimate range is \$500,000 - \$600,000. Time of completion is 120 calendar days.

A non-mandatory pre-bid conference will be held at Tacoma Nature Center, 1919 S. Tyler Street, Tacoma WA 98405 on February 10, 2010, at 11 a.m. Bidders are encouraged to visit the site prior to the pre-bid conference.

Bid documents may be viewed at the following plan centers:

1. Associated Sub-Contractors, Tacoma, WA, 253-383-4591
2. Builders Exchange of Washington, Everett, WA, 425-258-1303
3. DJC Plan Center, Seattle, WA, 206-622-8272
4. DJC Plan Center, Portland, OR, 503-274-0624
5. McGraw-Hill Construction/Dodge, Seattle, WA, 206-223-0320
6. McGraw-Hill Construction/Dodge, Tacoma, WA, 253-922-7172
7. Olympia Plan Service, Olympia, WA, 360-943-3960
8. Olympic Peninsula Plan Center, Bremerton, WA, 360-479-3579
9. Small Business Incubator, Tacoma, WA, 253-722-5800
10. Valley Plan Center, Kent, WA, 253-852-1090

Bid documents will be available Tuesday, February, 2, 2010 at Reprographics Northwest, Inc., 632 Broadway, Tacoma WA 98402. Please order bid documents online at www.repronw.com or call (253) 383-6363 or (800) 337-8103 for availability prior to picking up documents. Project information and plan holders list is also available online. A non-refundable check for \$25.00 (per set) payable to Metro Parks Tacoma for purchase of bid documents is required (accounts with Reprographics Northwest, Inc. may not be used to purchase the bid documents). If you would like them mailed, please contact Reprographics Northwest, Inc. for additional shipping costs, payable to Reprographics Northwest, Inc. (account with Reprographics Northwest, Inc. may be used for shipping costs) or you may pick up your sets at any of the Reprographics Northwest, Inc. Puget Sound branches at no additional charge (Tacoma, Bellevue, Seattle). Questions may be directed to Curtis Hancock, Project Manager, at curtish@tacomaparks.com or (253) 305-1052.

Scheduled for Advertisement -

February 2nd and February 9th.