



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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

May 30, 2008

Robert A. Marshall, President
M/D Control Systems, Inc.
3306 N.W. 211th Terrace
Hillsboro, Oregon 97124-7197

Dear Mr. Marshall:

This letter is in response to your correspondence dated May 14, 2008, regarding your request for a Letter of Determination exempting your firm from prevailing wage requirements.

Be advised that the Department of Labor and Industries cannot grant an exemption from the Public Works Act, also known as the “prevailing wage law”, which is a worker protection act. The department is directed to apply the law in ways that carry out its intent, which is to protect workers. Thus, if workers are covered under the Act, the department cannot grant an exemption, nor may a worker waive their right to be paid the required prevailing rate of wage. An employer can, however, perform work which is not covered under the Act and thus, not be required to pay prevailing wages to the workers performing such work.

The determination below is based on the facts provided in your letter. References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are included. Again, this answer is based on a specific fact set. A different set of facts may have a different answer.

The principal statute involved in your question as to whether items fabricated solely in your Hillsboro, Oregon, shop are subject to the prevailing wage rates is RCW 39.12.020, and provides 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 labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request: (Emphasis supplied.)

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(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

[2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

It is quite clear that the prevailing rate of wage requirement of RCW 39.12.020 shown above, is only applicable to work performed within the state of Washington. Be advised however, that if employees of your firm deliver these items that have been fabricated specifically for a public works project, i.e., non-standard items as defined by WAC 296-127-010(7)(a)(vi), your workers who drive the vehicle into Washington State are entitled to prevailing wages as prescribed in WAC 296-127-020(3). Further, an Intent to Pay Prevailing Wage and Affidavit of Wages paid form must be filed for such covered work.

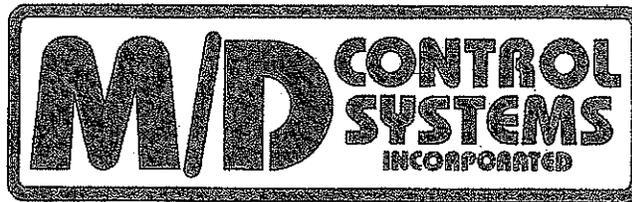
In regards to the professional work you outline, workers from your firm who provide technical, professional support of the product(s) you have sold do not meet the definition of a laborer, worker, or mechanic as defined by RCW 39.12.020. Thus, such work would not be covered under the statute.

If you have any questions, please contact me either by e-mail at chrr235@lni.wa.gov or by telephone at 360-902-5334.

Sincerely,

Ramona Christensen-Russell
Industrial Relations Specialist

cc: David Soma, Industrial Statistician/Program Manager



Attn: Reasa Nottingham - Secretary Supervisor
State of Washington
Department of Labor and Industries
Prevailing Wage
PO Box 44540
Olympia, WA 98504-4540

Ph: 360-902-5331 Fx: 360-902-5300
Email: notr235@lni.wa.gov

Subject: Request for Letter of Determination

Re: M/D Control Systems, Inc.
WA Tax ID: 601-003-860
WA CCB No: MDCOND968PA

Ms Nottingham:

Some time ago I was referred to you by Jan Stemkoski, City of Centralia - Utilities regarding our prevailing wage status. At that time, in the interest of providing me some guidance, Jan sent me a letter which you provided to him dated 11/27/2007 written by Mr. David Soma to a similar business (Technical Systems, Inc). Although our business is similar to that of TSI, I am not intimately familiar with all of their operations. I do believe there are some significant differences between the companies and the services we provide.

I would like to request a Letter of Determination exempting M/D Control Systems, Inc (M/DCS) from prevailing wage requirements. It appears that our products should be exempt since "The production of any item outside the State of Washington is not covered by RCW 39.12."

Please review the following information about our company's activities and see if you agree that a determination letter is the appropriate vehicle for our circumstances and if not, possibly provide us some direction via a brief explanation of the pertinent rules governing the matter and how we should proceed to properly handle this type of business in WA State.

- 1.) M/DCS, an OR corporation, is a control systems integrator/panel shop certified by UL in compliance with UL508A and UL698A Standards having offices and shop facilities located solely in the state of OR.
- 2.) All panel design, material acquisition, assembly, and wiring are performed at our facility in Hillsboro, OR; we have no physical facilities in WA State.
- 3.) Systems are comprised of electrical, electronic, pneumatic devices (typically buttons, lights, relays, fuses, terminals, PLC's, instruments) of standard manufacture which we design, mount, enclose, program, wire and cable together to form a working control/instrumentation assembly or system.
- 4.) If system requirements call for custom software to be included integral to our equipment, that is also designed and written at our facility in Hillsboro, OR.

M080514.01a.wpd

May 14, 2008

5.) Completed products, control and instrumentation panels/systems from our Oregon facility, are then delivered to client job sites (some of which are public works projects are in WA State e.g. City of Centralia - Utilities).

6.) The products are then installed according to applicable national, state, and local standards and codes by either contract electricians hired by our clients or the client's in house electricians and technicians.

7.) M/DCS provides NO installation services.

8.) When required, after completed products have been installed; M/DCS engineers and/or software technicians provide on site system commissioning and training assistance to the client's installation and operations team. This work consists primarily of witnessing "system operational readiness" testing, monitoring machine/system operation, gathering information to be incorporated on "As Installed" system drawings and other documents, and making any necessary software modifications needed for proper operation. Any "trade" classification work required is performed by the client's electricians and technicians.

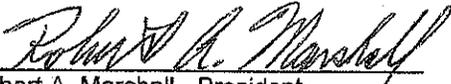
9.) After successful system commissioning, M/DSC engineers and/or technicians are sometimes called upon to assist the client's operations team on site and from our facility with diagnosing problems or performing engineering/design duties associated with system modifications and software upgrades.

10.) M/DCS also repairs and refurbishes system components at our facility in Hillsboro, OR.

I hope the details above have adequately described our operations to you and that our particular circumstances permit your issuance of the requested letter of exemption. If you have further questions or require additional information on this matter, please feel free to contact me at the numbers below.

Thank you for your assistance and timely handling of this matter.

Best Regards,



Robert A. Marshall - President
M/D Control Systems, Inc.
Email: ramarshall@mdcontrolsys.com

cc:
Mr. Gary E. Doyle - M/D Control Systems, Inc.
Email: gedoyle@mdcontrolsys.com



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November 27, 2007

Bob Kotjan
Technical Systems Inc.
2303 196th Street SW
Lynnwood, WA 98036

Re: Shop Panel Fabrication.

Dear Mr. Kotjan:

You have asked for a determination of prevailing wage requirements applicable to the control panel fabrication work for TSI's products. TSI is a control systems integrator or "panel shop."

The answer below is based on the information you provided. 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.

Case law has provided direction on the application of prevailing wage requirements to off-site work for a public works project. The Washington State Supreme Court considered the question of whether the prevailing wage requirement of RCW 39.12 applies to an employer who fabricates items specifically designed for a particular public works project regardless of where the fabrication occurs or of whether the employer is considered a subcontractor or a material man in the Everett Concrete Products case.

Washington's prevailing wage law, RCW 39.12.010 ET SEQ., provides that the wages paid to workers on public works projects must be not less than the prevailing wage for similar work in the locality where the labor on the public works project is performed. RCW 39.12.020. This case presents the issue of whether the prevailing wage law applies to the off-site manufacture of prefabricated items for use on a particular public works project.

Everett Concrete v. L&I, 109 Wn.2d 819, 820 (1988).

The court held that the prevailing wage law does apply to off-site work where the work is production of a "nonstandard item specifically for a public works project."

RCW 39.12.020 provides that prevailing wages must be paid to workers "upon all public works". This language must be construed to require application of the prevailing wage requirement to off site manufacturers, when they are producing nonstandard items specifically for a public works project. In this way the use of cheap labor from distant areas is avoided and the purpose of RCW 39.12 is not circumvented. Here ECP's manufacture of tunnel liners for the Mt. Baker Ridge Tunnel Public Works Project constituted the manufacture of nonstandard items for a public works project. The ALJ correctly held that ECP was required to pay employees who manufactured the tunnel liners prevailing wages in accordance with the requirements of RCW 39.12.

Everett, at 831-32.

Some years ago, the department, the Washington State Department of Transportation, and the Prevailing Wage Advisory Committee (PWAC) worked to better define the issue of standard and non-standard. A six part checklist was developed.

**Washington State Department of Labor and Industries Policy Statement
(Regarding the Production of "Standard" or "Non-standard" Items)**

Below is the department's (State L&I's) list of criteria to be used in determining whether a prefabricated item is "standard" or "non-standard". For items not appearing on WSDOT's predetermined list, these criteria shall be used by the Contractor (and the Contractor's subcontractors, agents to subcontractors, suppliers, manufacturers, and fabricators) to determine coverage under RCW 39.12. The production, in the State of Washington, of non-standard items is covered by RCW 39.12, and the production of standard items is not. The production of any item outside the State of Washington is not covered by RCW 39.12.

1. Is the item fabricated for a public works project? If not, it is not subject to RCW 39.12. If it is, go to question 2.
2. Is the item fabricated on the public works jobsite? If it is, the work is covered under RCW 39.12. If not, go to question 3.
3. Is the item fabricated in an assembly/fabrication plant set up for, and dedicated primarily to, the public works project? If it is, the work is covered by RCW 39.12. If not, go to question 4.
4. Does the item require any assembly, cutting, modification or other fabrication by the supplier? If not, the work is not covered by RCW 39.12. If yes, go to question 5.
5. Is the prefabricated item intended for the public works project typically an inventory item which could reasonably be sold on the general market? If not, the work is covered by RCW 39.12. If yes, go to question 6.

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6. Does the specific prefabricated item, generally defined as standard, have any unusual characteristics such as shape, type of material, strength requirements, finish, etc? If yes, the work is covered under RCW 39.12.

Any firm with questions regarding the policy, WSDOT's Predetermined List, or for determinations of covered and non-covered workers shall be directed to State L&I at (360) 902-5330.

The list provides a framework of thought for analyzing if and when prevailing wage requirements may attach to work such as your production of panels. As you note, the mere furnishing of standard hardware is not covered. However, the production of a non-standard item out of such hardware is covered by the requirement to pay the prevailing rate of wage.

As you describe the work, your workers read prints and construct panels for a specific design and application. Walking through the checklist above, the answer to # 1 is "yes" and we proceed to question two. The answer to # 2 is "no" and we proceed to question three. The answer to # 3 is "no" and we proceed to question four. The answer to # 4 is "yes" and we proceed to question five. The answer to # 5 is "no" This means prevailing wages are required for your shop manufacture of what is now a non-standard panel although it is manufactured out of standard components.

The appropriate trade and occupation classifications (scopes of work) for your work may include Electronic Technicians (WAC 296-127-01322) and Inside Wireman Electricians (WAC 296-127-01323). The Electronic Technician scope is limited to certain low voltage circumstances. Copies of both scopes are enclosed.

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

WAC 296-127-01322 Electronic technicians.

For the purpose of the Washington state public works law, chapter 39.12 RCW, the scope of work for electronic technicians is as follows:

(1) The installation, operation, inspection, maintenance, repair and service of:

(a) Radio, television and recording systems and devices.

(b) Systems for paging, intercommunication, public address, wired music, clocks, security and surveillance systems and mobile radio systems.

(c) Fire alarm and burglar systems.

(2) The installation of nonmetallic conduits and incidental shielded metallic conduits of no longer than ten feet nor larger than one inch, when installed for the specific purpose of carrying low voltage wiring.

(3) Pulling wiring through the type of conduit described under subsection (2) of this section, when the wiring is installed for the specific purpose of carrying low voltage electricity.

(4) All the cleanup required in connection with electronic technician's work.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. 00-15-077, § 296-127-01322, filed 7/19/00, effective 7/19/00.]

WAC 296-127-01323 Inside wireman electrician.

For the purpose of the Washington state public works law, chapter 39.12 RCW, inside wireman electricians plan the layout, install and repair conduit, wiring, electrical fixtures, apparatus, and control equipment in buildings and adjacent yards to provide electricity for power and lighting.

(1) They assemble, install and maintain all electrical lighting, electric heating and cooling equipment, standby motor generators, electric heat pumps, under-floor duct and luminous ceilings.

They install, repair and maintain highway and street lighting systems and highway and street traffic signal systems.

The work includes, but is not limited to:

- The handling and moving of any electrical materials, equipment and apparatus on the job site.
- Welding, burning, brazing, bending, drilling and shaping of all copper, silver, aluminum, angle iron and brackets to be used in connection with the installation and erection of electrical wiring and equipment.
- Measuring, cutting, bending, threading, forming, assembling and installing of electrical conduit, using such tools as hacksaw, pipe threader and conduit bender.
- Pulling wiring through conduit.
- The installation of conduit and interduct raceways for fiber optic cable and the pulling of fiber optic cable through these raceways, except telephone conduit and cable.

Cutting holes in floors and walls for electrical conduit:

- With point and hammer.
- Core-drilled.
- Chasing and channeling necessary to complete any electrical work, including the fabrication and installation of duct and manhole forms incidental to electrical installation.

- Splicing wires by stripping insulation from terminal leads with knife or pliers, twisting or soldering wires together and applying tape or terminal caps.

- Installation and maintenance of lighting fixtures.

- Connecting wiring to lighting fixtures and power equipment.

Assembling and installing of conduit switches, relays, junction boxes, circuit breaker panels, and related accessories and controls.

- Testing continuity of circuit to insure electrical compatibility and safety of components.

- All cleanup required in connection with electrical work.

(2) The following power line construction classifications may assist journeymen wireman in the installation, repair and maintenance of highway and signal lighting systems and highway and street traffic signal systems:

(a) Groundmen.

- Performs the following tasks:

- Manual digging of pole holes, anchor holes and trenches.

- Assembles and erects fixtures.

- Assists in framing of poles, pulling guys.

- Tamping and compacting.

- Driving of 1/2 or 3/4 ton pickup truck.

(b) Head groundman.

- Performs the following tasks:

- Manual digging of pole holes, anchor holes and trenches.

- Assists in framing of poles, pulling guys.

- Assembles and erects fixtures.

- Tamping and compacting.

- Driving of 1/3 or 3/4 ton pickup truck for materials or man haul.

(c) Line equipment operators. Operate caterpillars, trucks equipped with winch and/or boom, hydraulically operated backhoes with or without front end loaders, mounted booms, and any other equipment that does not come within the scope of heavy equipment operators.

(d) Heavy line equipment operators. Operate any piece of equipment which, in accordance with manufacturer's recommended specifications is capable of operating with one hundred or more aggregate feet of boom, be it crane, backhoe or clam shell, drag line, or shovel.

