March 9, 2007

Chief Dean Whitney
Whatcom County Fire District # 8
752 Marine Drive
Bellingham, WA 98225

Re:     Prevailing wage for exhaust system modification to fire trucks.

Dear Chief Whitney:

You have asked for a determination of any requirement for prevailing wages to be paid for the modification of the exhaust system of a fire truck.  This involved the installation of a Ward diesel exhaust automatic filter system on an existing truck.  The system was manufactured in New York State and installed on your truck by a Ward's technician in your local facility.

The answer below is based on the information you provided.  References to the Revised Code of Washington (RCW) and some court cases are included.  Again, this answer is based on your fact set.  If the facts differ from those you provided, the answers may be different.

Some background and understanding of the Public Works Act is essential to this determination, including the definition of "public work." RCW 39.04.010 provides our initial definition: "The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein."  A cost to a public agency may exist regardless of the source of the funds, e.g. insurance settlements, grants, donations, etc.

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."

RCW 39.04.010 requires payment of prevailing wages under RCW 39.12 for public work: "All public works including maintenance when performed by contract shall comply with the provisions of RCW 39.12.010."

Still, not all work performed at the cost of a public agency will be "public work." For instance, municipal garbage collection and disposal performed by contract has been held to be outside the definition of "public work" found in RCW 39.04.010. See Shaw Disposal, Inc, et al v. City of Auburn, 15 Wn. App. 65; 546 P2d. 1236. (1978).

Legislative intent is helpful in administering the application of a statute. The Washington State Legislature has applied prevailing wages to public building construction, repair, renovation and maintenance, certain private facilities leased by public agencies, construction and maintenance and repair of public roads and highways, construction, maintenance and repair of Washington State Ferries (part of the state highway system), etc. In each of those instances, there is no doubt that the project is public work and prevailing wages are required.

The legislature has not specifically applied any prevailing wage requirement to repair, maintenance or modification of publicly owned motor vehicles that are licensed for operation on roads and highways.

The Department has historically not applied prevailing wage laws to publicly owned motor vehicles. It is therefore my determination that the modification of the exhaust system of a fire truck is outside the scope of the legislative intent for the requirement to pay prevailing wages in RCW 39.12. Therefore, that work will not require the payment of the prevailing rate of wage.

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