

From: Herman, Laura E (LNI)

Sent: Friday, January 08, 2016 2:17 PM

To: Kovacs, Bela; Christensen, Jim P (LNI); Ziegert, Charles O (LNI); Nemes, Yvonne C (LNI)

Cc: Miles, Claude G.; Christensen-Russell, Ramona (LNI); Blacksmith, Jamie W (LNI); Lilyquist, Craig; Hill, Nancy; Oscarson, Ron; Arkills, Ron

Subject: RE: Request For LNI Determination - P9593 (SCRAPS CB1200 Incinerator Repairs/Upgrades - Rebid)

Béla,

This email acknowledges that you have withdrawn your request for a determination on the incinerator repairs.

Laura Herman

Industrial Relations Specialist

Prevailing Wage Program

Dept. of Labor & Industries

360-416-3047

From: Kovacs, Bela [<mailto:BKovacs@spokanecounty.org>]

Sent: Friday, January 08, 2016 1:49 PM

To: Herman, Laura E (LNI)

Cc: Miles, Claude G.; Christensen-Russell, Ramona (LNI); Christensen, Jim P (LNI); Blacksmith, Jamie W (LNI); Nemes, Yvonne C (LNI); Lilyquist, Craig; Hill, Nancy; Oscarson, Ron; Arkills, Ron

Subject: RE: Request For LNI Determination - P9593 (SCRAPS CB1200 Incinerator Repairs/Upgrades - Rebid)

Laura,

Thank you for responding to my inquiry below.

I am also in receipt of the letter from Yvonne Nemes, dated December 18, 2015 (a scanned copy of which is attached).

Your email below explains that there is a difference in the depth and length of process between the clarifications that you provide vs. a formal determination process.

To clarify, my email dated December 15, 2015 was only seeking further informal clarifications and it was not my intention to initiate a lengthy determination process.

Furthermore, in your two responses (the one below dated December 16, 2015, and the original one dated November 5, 2015) it is quite clear that even if LNI were to perform the lengthy process of conducting an LNI determination, there would be no different effect or outcome because it would not (indeed, cannot) change the applicable and underlying state laws that apply to this type of work.

Consequently, for that reason, it seems not necessary to engage in the lengthy process of conducting an LNI determination.

Accordingly, please do not proceed with a determination process since it was neither my intention to request it nor would it provide any sort of a remedy.

Thank you.

BÉLA KOVÁCS, C.P.M., CPPO
PURCHASING DIRECTOR

Communication in this email thread prior to December 15, 2015 was clarification and information provided by a Labor and Industries Specialist, NOT a determination.

From: Kovacs, Bela [<mailto:BKovacs@spokanecounty.org>]

Sent: Tuesday, December 15, 2015 10:32 AM

To: Herman, Laura E (LNI)

Cc: Miles, Claude G.; Christensen-Russell, Ramona (LNI)

Subject: RE: Request For LNI Determination - P9593 (SCRAPS CB1200 Incinerator Repairs/Upgrades - Rebid)

Laura:

I am respectfully requesting that you reconsider the determination that you provided below and please consider further the following factors which we ardently believe have a bearing on this particular work such that LNI may deem that the subject work is not a public work and therefore is not subject to the payment of prevailing wages:

1. Spokane County Regional Animal Protection Services (SCRAPS) may well be the only public jurisdiction within the state of Washington that owns an animal incinerator. While, time has not permitted to research within other states, our efforts to locate a public jurisdiction within the state of Washington that owns an animal incinerator have been unsuccessful.
2. Thus, it appears that the potential 'market' within the state of Washington for vendors who have the necessary knowledge and skills to perform this kind of work is extremely limited. Generally, if a businesses does not see a potential market benefit (as an opportunity to earn a profit and gain market share) then such a business will refrain from engaging in any related or associated start-up costs or activities.
3. Thus, there appears to be a reluctance on the part of various companies that perform this type of work to become a licensed within the state of Washington specifically to do this work for public jurisdictions. From our surveys, the companies have advised us that they not only are not registered and licensed in Washington state, but they are also not so in any other state where they perform their business. To our knowledge, these firms do not currently do any work for public jurisdictions within the state of Washington.
4. Such vendors are apparently unwilling to exert the costs, time and effort to become a registered, licensed, contractor within Washington state on the off chance that they might be found to be the 'lowest responsible, responsive, bidder' resulting in the award of a contract. This prospect appears to be reduced even further in the eyes of the vendor when they consider that this repair work is a one-time event and that it is not a contract requiring work in successive years.
5. Consequently, Spokane County has been unable to consider bids from the firms having the requisite knowledge and skills to perform the work. The firms having the requisite knowledge and skills to perform the work are essentially the manufacturers (often small firms outside of the state) that make this equipment.
6. This equipment is not the type of equipment that is essential to the building, therefore, it is not a 'fixture' or 'betterment' to the building, per se. Rather, this equipment is only housed within a structure in order to protect it from exposure to inclement weather and the elements of wind, snow, rain and storms.

For the foregoing reasons, the County has been unable to contract for the necessary repairs and safety upgrades.

It seems that it would be in the best interests of the citizens and taxpayers for LNI to reconsider this matter, along with the unique circumstances which pertain, for a new LNI determination which finds this equipment to not be a 'fixture' and to further find that the repair and upgrade work are not be a public work, and therefore, are not subject to the payment of prevailing wages.

Please reconsider this matter and advise if LNI concurs to the forgoing.

We appreciate your time in making this re-review and consideration.

Sincerely,

BÉLA KOVÁCS, C.P.M., CPPO
PURCHASING DIRECTOR

From: Herman, Laura E (LNI)

Sent: Thursday, November 05, 2015 3:13 PM

To: Kovacs, Bela <BKovacs@spokanecounty.org>

Cc: Miles, Claude G. <CMILES@spokanecounty.org>; Christensen-Russell, Ramona (LNI) <CHRR235@LNI.WA.GOV>

Subject: RE: Request For LNI Determination - P9593 (SCRAPS CB1200 Incinerator Repairs/Upgrades - Rebid)

Béla,

Thanks for your email and phone call. We discussed your message, looked at the pictures and the descriptions of the work, and thought about your particular questions in your email below. I also have some thoughts that might be helpful to you in identifying contractors that can perform this work.

The pictures and your written narrative describe equipment that is bolted down to a concrete pad, is hard-wired with electrical connections, and is connected to the local natural gas utilities as a fuel source via a rigid gas pipe. Any one of those three types of attachment by itself would be a sufficient factor to conclude that prevailing wages will be required for the repair of this equipment. I also shared the pictures and email descriptions of the electrical work with Larry Vance in the L&I electrical program. I asked him if the electrical work identified would require an electrical permit and inspection. The answer was yes.

Similarly, with the three forms of attachment, the other (non-electrical) work would need a contractor registration for this equipment attached to real estate.

I suspect my earlier emails with the one out of state contractor who bid your work may have scared them off (copy attached). However, it was useful guidance on how to comply with Washington law. That contractor described the work in two parts:

1. The secondary combustion chamber (SCC) contains a baffle wall that has deteriorated and has to be replaced. Doing so will require my Technicians to enter the chamber, jack hammer out the remaining baffle refractory material, set plywood forms, mix bags of refractory with water (much the same as concrete), pour the refractory, allow the refractory to set 12-18 hours, and then "bake out" the refractory to remove all water and cure.
2. The existing machine is an older model and doesn't included some of the features of the newer machines. One such safety feature is a high temperature automatic shutdown. Wherein, once the machine reaches a temperature above a specific set-point, the machine will automatically shut down the burners and allow the internal machine temperature to normalize. This work will require some electrical in the sense of pulling a couple (literally 2-3 wires) of wires through existing conduit and appropriately terminating the ends, and then some programming to direct the signal paths accordingly.

I sympathize with your difficulty in finding an in-state contractor. I am thinking that looking only for someone who works on this particular equipment may have unnecessarily limited your responses to your request for bids. I was thinking about how you might find a local business that can do the needed work. Some revision to your specifications or splitting the electrical from the refractory work might both be helpful. I know there is great caution about bid splitting, but I have heard the State Auditor's Office state they have allowed it when there was a valid reason to divide the contract and it was not done to evade requirements in the procurement statutes.

The refractory work that the contractor described in # 1 (above – the poured refractory material) sounds very similar to work that is commonly performed by boilermakers. You also mentioned brick. Bricklayers often work with fire or refractory brick. There are likely many local contractors already set up to do business in Washington State that could do that work. I suppose you could check with various industry associations or

unions (such as Boilermakers Local 242 in Spokane) to ask who does that particular work. It's been a few years but I consulted Local 242 on some technical questions and they were very helpful to me. Maybe they could be helpful to you.

I am guessing the electrical likely involves a new high temperature sensor and wiring (see # 2 above). If so, the sensor and instructions are likely available from the manufacturer. That might prove to be sufficient for a local electrical contractor to perform that work.

I know you will want to be cautious about compliance with RCW 39.04.350 (responsible bidder law) as well as RCW 39.06.010 (prohibition on hiring an unregistered contractor) in your contracting for this work.

Although this is not the answer you hoped to receive, I hope that additional thoughts are helpful to you in thinking about how to expand the potential field of contractors that might want to perform this work for you. Although the equipment is specialized, the work described is not unusual and there should be contractors eager to do such work.

I hope that provides some help to you. Thanks for checking with L&I.

Laura

Prevailing wage answers are fact specific and a change in facts may result in a different answer.

Laura Herman

Industrial Relations Specialist
Prevailing Wage Program
Dept. of Labor & Industries
360-416-3047

From: Kovacs, Bela [<mailto:BKovacs@spokanecounty.org>]

Sent: Thursday, October 29, 2015 2:25 PM

To: Herman, Laura E (LNI); Christensen-Russell, Ramona (LNI)

Cc: Miles, Claude G.

Subject: Request For LNI Determination - P9593 (SCRAPS CB1200 Incinerator Repairs/Upgrades - Rebid)

Good Afternoon Laura and Ramona,

We are seeking a review and determination by LNI on the following project because LNI is the regulating agency of WA state for the interpretation of the prevailing wage laws.

I am sending this to both of you on the chance that I may not know whether one of you is out of the office. I ask that you please coordinate among yourselves to provide us with one response.

As usual, time is of the essence.

The question pertains only to whether (or not) this project would be considered by LNI as being subject to the prevailing wage laws of Washington.

1. Is the work as described herein subject to the payment of prevailing wages?
2. Does LNI take exception to our County's review and consensus as indicated below?

3. In the opinion of LNI, does the nature of this work require that the contractor be licensed in the state of Washington?

Project No. **P9593**

Project Title: **SCRAPS CB1200 Incinerator Repairs/Upgrades - Rebid**

Internal Review By Spokane County: It is the general consensus of the Spokane County Purchasing Department and of the Spokane County Facilities Department that the project as described herein is not subject to the payment of prevailing wages. The reason for making this request for review and determination by LNI is because we recognize that LNI is the state agency in Washington responsible for the interpretation and application of the prevailing wage laws in Washington. The County owns the facility that this equipment is located in; HOWEVER, this equipment is not considered by Spokane County to be a 'fixture' to real property because the incinerator is not a functional part of the building where it is housed and it is the personal property of the County that our County had moved to its present location. The installation of the equipment was treated and handled as a public work.

Any mention of refractory work in the description of work below is limited to the fire bricks that are on the inside of the equipment (i.e. the bricks are a part of the equipment itself).

At this time we have not yet obtained a review by the County's legal counsel on this matter.

We are not seeking for an opinion from LNI for the manner of bidding –rather our question to LNI is solely focused on prevailing wages as indicated above.

Any reference to electrical work in the description of work below, is referring to an upgrade of the display control electronics on the equipment itself.

Background: The Animal; Control Agency of Spokane County [i.e., Spokane County Regional Animal Protection Service (S.C.R.A.P.S.)] owns a Crawford CB1200 Incinerator which is in need of repair. This piece of equipment is highly unique. Photos of the equipment are attached. The equipment is a free-standing unit, which is bolted down to a concrete pad, is hard-wired with electrical connections and is connected to the local natural gas utilities as a fuel source via rigid gas pipe.

According to our Facilities Department, in making the repairs, it is not anticipated that the equipment will need to be disconnected from either the electrical source of power nor from the natural gas source of fuel.

Ering on the conservative side, our County has already solicited bids as a 'public work' for these needed repairs. Only one bid was received which came in at \$30,000+ over the project estimate. The project estimate was based on our Facilities Department contacting several specialized firms having the expertise to repair such unique equipment. All of these specialize firms are outside of the state of Washington and none of them hold any contractor's licenses in the state of Washington.

Further research by our Facilities Department has revealed the following:

- No firm could be found within the state of Washington that specialized in the repairs of this type of equipment.
- There are no licensed contractors within the State of Washington licensed to do this work (presuming that the repair of this equipment would even require a licensed contractor – and we are not convinced that a license is required for this work).
- If the work were to be considered as subject to the payment of prevailing wages (which at this time we are not convinced that it is) then it would raise the cost by an additional \$30,000.

Description of work: An excerpt of the description of work is below:

Repair/Upgrade Crawford CB1200 Incinerator

SCRAPS Facility
6815 E. Trent Avenue
Spokane, WA.

- 1) Provide labor, material and equipment for the following work to repair and upgrade the Crawford CB1200 incinerator.
- 2) All work to be done with the incinerator in place.
- 3) Open and prep machine as necessary.
- 4) Remove the damaged secondary combustion baffle.
- 5) Remove and discard old baffle and all loose debris.
- 6) Prep the associated side walls (cut-in, hangers and insulation) as necessary.
- 7) Pour new baffle for the secondary combustion baffle using manufacturer's recommended material or its equal and specifications.
- 8) Repair existing refractory/insulation as necessary.
- 9) Upgrade the electrical system to current design configuration (PLC, touch screen, air and fuel controls, re-wire, conduit, etc.)
- 10) Provide and include Safety control for over-temp conditions to minimize premature wear.
- 11) Conduct controlled bake-out of new secondary combustion chamber baffle. Inspect new baffle to make sure it is in satisfactory condition. Repair as necessary.
- 12) Re-calibrate air and fuel settings as necessary to ensure proper machine operation.
- 13) Perform one (1) test burn with minimum 480 lb. load.
- 14) Provide training and re-certify Spokane County staff on enhanced machine operation.
- 15) Provide updated/as-built O&M manual and electrical diagrams to reflect new controls/equipment.
- 16) Spokane County to provide waste container for debris disposal (approx. 1720 lbs.); any and all utilities; and unloading of delivered materials and appropriate covered storage area.
- 17) Machine to be cold/off state prior to technician arrival. Discontinue use for 24 hours.
- 18) Spokane County to also provide one (1) standard load to burn and operator to fine-tune the incinerator.
- 19) Clean up and remove all debris in, on or around equipment and machine room upon completion of work.
- 20) Any additional billable work/materials not provided in this scope of work must be approved by the authorized Spokane County representative before proceeding.
- 21) Provide a written one (1) year labor and material warranty for work provided under this specification.

Thank you.

PLEASE LET US KNOW HOW WE ARE DOING.

CLICK ON THE FOLLOWING LINK TO USE OUR NEW SURVEY:

[HTTP://SPOKANECOUNTY.FLUIDSURVEYS.COM/S/PURCHASING-SURVEY/](http://spokanecounty.fluids-surveys.com/s/purchasing-survey/)

THANK YOU!

BÉLA KOVÁCS, C.P.M., CPPO
PURCHASING DIRECTOR