

*The Washington State*  
**Prevailing Wage Law**



*Understand your responsibilities and  
rights when performing public work.*

## **Public Contract Awarding Agencies**

***June 2022***

***Public Works***

***Prevailing Wage Law***

***Chapter 39.12 RCW***

***Chapter 296-127 WAC***

# Prevailing Wage for Contract Awarding Agencies

- This presentation is designed for contract awarding agencies and covers the Washington State prevailing wage law, chapter 39.12 RCW and chapter 296-127 WAC. L&I also has workshops designed for public works contractors.
- There is also a federal prevailing wage law: The Davis-Bacon and Related Acts apply to federally funded projects.
- **Both the laws apply to publicly funded trades work: “Public work”**
- The two laws have similarities and significant differences
  - Overtime (state law has daily overtime and prevailing overtime)
  - Paperwork (Intents & Affidavits and certified payroll records required for state law - weekly certified payroll records required for Davis-Bacon)
  - Off-site work (covered under state law when specific to the project)
  - Zone pay (federal but not state)

# Prevailing Wage on Public Work

## Joint Application of Federal and State Law

- The Davis-Bacon Act and Chapter 39.12 RCW

### Joint Application:

What if both Federal and State prevailing wage requirements apply to the same contract and project? - WAC 296-127-025 **Perform to the higher standard to comply with both of the prevailing wage laws.**

- Don't forget the overtime requirements in the state prevailing wage law! OT can alter which wage rate is higher!

# Washington State Prevailing Wage Law

- Dept. of Labor & Industries, Prevailing Wage Program
- Chapter 39.12 RCW
- Chapter 296-127 WAC
- **“Public work:”** All work, construction, alteration, repair, or improvement ... Maintenance performed by contract
  - RCW 39.04.010(4), WAC 296-127-010(7).
- **“Construction, reconstruction, maintenance or repair”**
  - RCW 39.12.030
- **Turn-Key** (lease, rental, or purchase)
  - RCW 39.04.260
- **Off-Site Fabrication of Non-Standard Items**
- **Building Service Maintenance**
  - RCW 39.12.020

# RCW 39.12.020

- Prevailing wages are required for work upon all public works and for public building service maintenance contracts.
- “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”

# Locality - County

- The prevailing rate of wage may vary by county (locality) and trade
- On-site: Use the county where the project is located
- Off-site fabrication: Use the county in which the work is performed
- Delivery of non-standard items manufactured off-site: Use the county where the project is located (the delivery point)
- Multiple counties may be listed on an Intent.

# Prevailing Wage - Definition of Public Work

- “Public work” includes all work, construction, alteration, repair or improvement, other than ordinary maintenance, executed at the cost of the state or any municipality. Maintenance, when performed by contract, is considered public work.

RCW 39.04.010(4)

- “Public work” is work executed at the cost of the state or municipality. Contracts for public work include purchase orders, job order contracts or any other legal payment agreement. The source of the funding does not determine the applicability of the statute which may include, but is not limited to, payments made by insurance companies and work covered performed warranty.

WAC 296-127-010(7)(a)

- Building service maintenance (janitorial) contracts require payment of the prevailing wage. Building service contracts for more than one year must require annual wage updates.

(WAC 296-127-023)

# Ordinary Maintenance

- There is **NO** prevailing wage exception for any contracted maintenance work.
- *Contracts for maintenance are subject to the state's prevailing wage law. See RCW 39.12.030.*

- **Case law provides guidance:**

**“... we hold the Director's conclusion, that "[m]aintenance is 'ordinary' . . . when it is performed by in house employees of the public entity," to be a legally valid interpretation or application of RCW 39.12, The Prevailing Wage on Public Works Act. Consequently... [maintenance] work, performed by private laborers under contract ... does not constitute "ordinary maintenance" and, therefore, is subject to the statutory prevailing wage.**

*City of Spokane v. Dept. of Labor & Industries*, 100 Wn. App. 805, 819-20 (2000) (emphasis added).

- **NOTE:** This case law is *prevailing wage guidance* and not guidance on when work must be procured as a “public work”.



# Emergencies – Warranty Work

## Bidding Exception: Emergencies (RCW 39.04.280)

- An emergency means unforeseen circumstances beyond the control of the municipality that either:
  - (a) Present a real, immediate threat to the proper performance of essential functions; or
  - (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.
- *Competitive bid requirements* may be waived by the governing board in the event of an emergency.
- **Note: Prevailing Wage requirements do apply to emergency work.**
- **Tell the contractor this is a prevailing wage job and, after dealing with the emergency, it will be necessary to ensure the workers were paid not less than the prevailing rate of pay and file the completed Intent & Affidavit forms and the certified payroll records.**

## Warranty Work:

- Warranty work is additional work on the same public works contract.
- Prevailing wages are still required.
- The original Intent on the contract is still effective.
- A new (amended) Affidavit will be required (if the Affidavit had already been filed) to report on the new total hours of work.

# Trade and Occupation Classifications

## *Scope of Work Descriptions*

- **The scope of work descriptions describe the work performed in each trade and occupation - The scopes are adopted as rule** WAC 296-127-013 and 01301 through 01398
- **It's what the worker does - the type and nature of the work that matters (not a job title)** WAC 296-127-013(3)
- **The Industrial Statistician of the Department of Labor and Industries determines the prevailing rate of wage (including the correct scope of work and wage rate to use)** RCW 39.12.015

# When does the law require prevailing wages?

- **Work upon a “public work”**  
RCW 39.04.010(4), WAC 296-127-010(7)(a), and RCW 39.12.020
- **Public work performed by a “laborer, worker, or mechanic”**
- **Performing publically funded contracts for “construction, reconstruction, maintenance or repair”** RCW 39.12.030
- **Building service maintenance (janitorial) contracts**  
RCW 39.12.020
- **Turn-Key projects – Private Construction caused by public agreements to rent, lease, or purchase**  
RCW 39.04.260
- **Small works (no threshold or minimum dollar amount)**
- **Off-site work specific to the public work – manufacturing a non-standard item specifically for the public work**

# Grants & Public Work

## A Cost to the Public Agency

- “Public work”
  - “Public work” includes work executed at a cost to the state or a municipality (such as the city, county, or district)
- Grant money from the state or local government?
- *The grants are a cost to the governmental entity*
- State or local government grant money (a “cost” to the state or any municipality) for the construction type project makes that work “public work” with a prevailing wage requirement
- Relevant laws and rules:
  - RCW 39.04.010
  - RCW 39.12.020
  - WAC 296-127-010(7)(a)

# Prevailing Wage on Public Work

- The Washington State prevailing wage law, chapter 39.12 RCW, requires that laborers, workers, or mechanics working upon all public works projects & public building service maintenance contracts receive not less than the prevailing rate of pay. RCW 39.12.020.
- The prevailing wage is the rate of hourly rate of wage, usual benefits, and overtime. RCW 39.12.010.
- “Usual benefits” are medical/dental, retirement, vacation, holidays, and apprenticeship. WAC 296-127-014.
- “Overtime” may have prevailing overtime rates for certain hours of work or days such as on holidays or weekends - *Check the “OT” column when you look up the wage rates!*

# Public Works Contracts

## *No Dollar Amount Threshold*

- **There is no threshold or minimum dollar amount for prevailing wage requirements.**
  - Even a small dollar amount contract is subject to chapter 39.12 RCW
- **What makes a contract?**
  - An agreement or meeting of the minds such as an offer and some form of acceptance will form a contract.
  - Contracts can be formed in conversation (e.g. a phone call), by a purchase order, the small works process, a competitive bid process or any other legal agreement.

# Prevailing Wage Paperwork

- **Intents and Affidavits**    **RCW 39.12.040**
  - The Intent is required before any payment can begin for work by that contractor or subcontractor
  - All the contractor and subcontractor Affidavits are required:
    - Prior to release of contract retainage; or,
    - If no retainage is held, before final acceptance can be made by the awarding agency.
- **Certified Payroll Records**    **RCW 39.12.120**
  - Effective January 1, 2020, for all public works, contractors must submit weekly certified payroll records online to L&I at least once a month.

# Paperwork: Intents & Affidavits – Certified Payroll

All contractors and subcontractors at all tiers must file the Intent and Affidavit forms on public work. RCW 39.12.040.

Certified Payroll Records are mandatory.

*The weekly CP records are submitted online to L&I.*

The awarding agency can view CPs through their PWIA secure portal, but there is no AA duty in law to review CPs.

Owner/operators must file the prevailing wage paperwork

**Public Agency potential liability** RCW 39.12.042

Apprentices are listed by name and registration number on the Affidavit “Trainees” are *not* state registered apprentices.

Posting of Intent forms on the job site – Projects over \$10,000  
RCW 39.12.020

No minimum amount or threshold for state prevailing wage –  
Even small jobs require prevailing wages



# Intent and Affidavit Filing Fees

Intent & Affidavit filing fee: \$40 each

Certain Affidavit Forms have No (\$0) Filing Fee:

- No Employees reported on the Affidavit.
- The Owner-operator performed all the work without any employees.
- All work was subcontracted.
- Contract dollar amount was less than \$750.
- For these specific situations, the contractor can file the Affidavit without paying any filing fee.

Filing fees apply to the Intents.

# Errors on the Statement of Intent to Pay Prevailing Wages

## No New Intent Required - Correct These Errors on the Affidavit:

- Inaccurate Contract dollar amount
- Wrong Start Date
- Incorrect “Yes” or “No” answer to use of subcontractors
- Incorrect “Yes” or “No” answer to owners performing work
- Missing or incorrect trade

## New Intent Filing Required to Correct Errors misstating these details:

- Project Name or can be corrected by note
- Contract Number
- Awarding Agency Information
- Incorrect contract type
- Bid Due Date
- Contract Award Date
- “No” to having employees, but will have employees

# Failure to File the Affidavit?

- **Filing On Behalf Of (FOBO):**
- By statute and L&I policy, the hiring contractor can assume liability for any unpaid wages, *document an allowable basis for the FOBO*, and get a FOBO Affidavit.
- The policy is on the L&I web site at this URL:  
[https://lni.wa.gov/licensing-permits/\\_docs/FOBOPolicyWithAddendum.pdf](https://lni.wa.gov/licensing-permits/_docs/FOBOPolicyWithAddendum.pdf)
- A failure to file both the Intent and the Affidavit can also be remedied using this FOBO process.
- Because FOBOs involve a compliance investigation (failure to file) , they take longer to process. Please do encourage the hiring contractor to request the FOBO ASAP.

# FOBO by the Surety

- Make filing the Intents and Affidavits and CPs part of the contract duties on public work.
- RCW 39.08.010 requires a contract bond on public works that guarantees performance of the contracted duties and work as well as payment of workers and material suppliers. If the contractor fails to perform, the public agency can require the surety issuing the bond to fulfill those duties.
- Check your standard contract boilerplate language. Does it have the Intent and Affidavit and CPs as required paperwork?

# Boilerplate Contract Language

- Some other agencies may have contract language you could utilize.
- WSDOT has a section in their boilerplate contract language that addresses the required documents: *1-07.9(5) Required Documents*.
- MRSC has a sample document library online at this URL: <http://mrsc.org/Home/Research-Tools/Sample-Documents/Contracts.aspx>

# Combined Intent/Affidavit - Contracts up to \$2,500

**NOTE: All combined forms are done online now!**

- *Combined Intent/Affidavit form*
- This method makes the public contract awarding agency directly liable to workers for unpaid prevailing wages. – RCW 39.12.040(2)(d)
- Dividing a project to come under the dollar limit is prohibited – RCW 39.12.040(2)(e)
- The awarding agency authorizes the use of the combined form and approves the form – all online.
- *No Filing Fee - Form fee waived by L&I policy*

# Limited Public Works Projects up to \$50,000

(Prior to July 28, 2019 that was up to \$35,000)

## Contracts awarded under RCW 39.04.155(3)

- *Limited Public Works Combined Intent/Affidavit form*
- The public agency decides if this form can be used
- The contract public awarding agency is liable to the workers for unpaid prevailing wages  
*See RCW 39.12.040(2) and also see RCW 39.04.155(3)*
- Breaking in units or phasing projects to come in under the dollar limit is prohibited RCW 39.04.155(4)
- Online authorization and approval by the contract awarding agency
- **\$80 filing fee.**

# Restrictions on use of alternative combined forms

- **The contract awarding agency decides** if the alternative process may be used. Note: Non-governmental organizations (NGOs) may not use combined forms since they are not subject to the relevant laws that control public agency use of the combined forms and assign liability for wages.
- **Liability to the public agency** for unpaid wages is a condition of using an alternative filing process. See RCW 39.12.040(2)(d) and RCW 39.04.155(4)
- **No subcontractors.** No subcontractors are allowed in this alternative process. This helps control exposure to possible liabilities.
- **Single payment.** Multiple payments require using a separate (regular) Intent before any initial payment and a separate (regular) Affidavit before the final payment is made. See RCW 39.12.040
- **No time and materials.** State the total contract amount with tax. Total must be within the form's dollar limit.
- **No dividing or phasing of projects.** The law prohibits breaking the project into units or phases to avoid the maximum dollar limit.
- **The public agency must authorize and approve** the combined forms online.
- **No payment may be made** until the form is approved by the public agency.



# Tools

## PUBLIC WEB SITE:

- **Contractor Strike and Contractor Debarment Lists**
  - ✓ Searchable app. with sort and download capability
  - ✓ <https://lni.wa.gov/licensing-permits/public-works-projects/strike-and-debar/>
- **PWIA Project Dashboard**
  - ✓ Project details based on the Intent & Affidavit filings data:
    - ✓ All Intents and Affidavits filed on the project listed
    - ✓ All the contractors and subcontractors on the project listed
    - ✓ Warning flags to identify likely instances of missing forms
    - ✓ Project organization chart

## SECURE ACCESS SITES:

- **Awarding Agency Portal**  
<https://lni.wa.gov/licensing-permits/public-works-projects/awarding-agencies/awarding-agency-portal>
  - ✓ Secure Portal
  - ✓ Authorize and approve on-line combined forms
  - ✓ Request and receive on-line, secure, Certified Payroll Records
  - ✓ Warning flags to identify likely instances of missing forms, contractor registration issues, workers comp accounts, debarment, etc.
  - ✓ Auto-fill, check, and submit Notices of Completion to DOR, ESD, and L&I
- **Contractor Portal**
  - ✓ Secure access
  - ✓ View their data and their project subcontractor's status

# PWIA Features

## Easy on-line filing of Intent and Affidavit forms!

- Online filing of *No Work Performed* affidavits.
- Improving search and sort options.
- Reducing errors and need for corrections.
- Reducing corrections and additional filings for owner/operators, by:
  - Including the name and trade for each owner/operator.
  - Identifying journey level wages on intents anytime the contractors plan to have apprentices.

# AWARDING AGENCY PORTAL - OVERVIEW

- **Choose an *Agency Administrator* for your portal**
  - L&I approves access for your agency's first *Administrator*
  - Your *Agency Administrator* will then be responsible for adding and managing additional users of your portal.
- **Create the project**
  - Control how you want the contract and project identified on the Intent & Affidavit forms
  - The prime will have your project information on their Intent
  - The subs will link to the prime's Intent
- **Authorize the use of combined forms**
  - Approve the completed combined forms
- **Certified Payroll Records**
  - Request, Receive, and Review CPs on-line!
- **View alerts for:**
  - Missing forms
  - Debarred contractors
  - Workers' compensation account issues
  - Contractor registration/license status changes
- **Create & submit the Notice of Completion form**
- **View status of the L&I Certificate of Release**

# Create a Project

Public Works Projects Manage / Add Agency Users | Print

Awarding Agency: OLYMPIA, CITY OF

**Public Works** Combined Form Projects

 [+ Create Project](#)

## Create public works project

### Agency Contact Information

Agency Name

Contact Name

Contact Phone Number



# Issues Found

Some issues were found.

Some issues were found while trying to create this project.

ⓘ Your company Industrial Insurance Account Id is missing or it is not active.

ⓘ This contractor license number is not valid for work on this project; the license is either suspended or expired.

Choose how to continue:

You may choose to ignore these warnings and create or save the project anyway.

Cancel

Create project

Contract No.	Project Name	Contract Amount	Bid Date	Award Date	Prime's Intent Status	Actions
	Blowing Rock Project	\$1,000,000	6-1-2014	6-15-2014	Intent not filed or approved	View Edit

# AWARDING AGENCY PORTAL - PROJECTS

## Search Public Works Projects

Project Name

Prime's Intent Status

Bid Date From

To

Contract Number

Prime Contractor Name

Award Date From

To

Contract Amount

Prime Contractor UBI

Apply filters

Clear filters

**View All Projects or  
Search for  
Specific Projects**

Show  rows

Showing records 1 to 1 of 1

◀ Previous Next ▶

Contract	Project	Contract Amount	Bid Date	Award Date	Prime's Intent Status	Actions
1863	Judkins Park Skatespot Development GRINDLINE SKATEPARKS INC, UBI: 602196010	\$347,760	7-18-2012	8-16-2012	Intent approved by L&I	<a href="#">View</a>

# AWARDING AGENCY PORTAL - STRUCTURE

Project Structure + expand | - collapse

- GRINDLINE SKATEPARKS INC (prime contractor)
  - Intents (1)
    - 532430 \$347,759.96 · Approved 9-6-2012
  - Affidavits (1)
    - 443504 \$347,759.96 · Approved 4-5-2013
  - Subcontractors (5)
    - BENJAMIN ASPHALT INC
      - Intents (1)
        - 555363 \$6,315 · Approved 11-13-2012
      - Affidavits (2)
        - 438441 \$6,315 · Approved 11-13-2012
        - 455357 \$6,315 · Approved 11-13-2012
    - CADMAN INC.
      - Intents (1)
        - 543776 Time and Materials · Approved 11-13-2012
    - PARKWORX LLC
      - Intents (1)
        - 535724 \$23,025 · Approved 10-9-2012
      - Affidavits (1)
        - 444417 \$23,025 · Approved 4-4-2013

**Missing Affidavit**

# AWARDING AGENCY PORTAL - FORMS

Intent 555363



## Contractor Information

Name	BENJAMIN ASPHALT INC
Phone Number	(425) 333-5050
Address Line 1	PO BOX 1237
Address Line 2	
Email Address	Carolm@benjaminasphalt.com
CompanyUBINumber	601381803

Intent 555363



# AWARDING AGENCY PORTAL - ALERTS

Project	Contractor Alerts	Intents Not Filed 	Affidavits Not Filed 	Notice of Completion
<h2>Contractor Alerts</h2> <p>No contractor alerts found</p>				

# Authorize and Create a Combined Form

Please choose if you would like to create a regular public works project, or a combined form project that will use the alternate filing process for smaller projects.

## Public Works Project

Public works projects can be for any amount and have a prime contractor with possibly one or many subcontractors.

Create Public Works Project

## Combined Form Project

Combined form projects can be up to \$35,000 and have only one contractor without any subcontractors.

Create Combined Form Project

# Processing the Combined Forms

The system will flag some issues for your review

You may spot other issues that need correction

object: S750 fee testc

### Combined form automatic review

**This combined form contains errors**

This combined form was automatically scanned and some errors were found. These errors are listed below.

*License Lapsed*  
This contractor license number is not valid for work on this project; the license is either suspended or expired

*Industrial Insurance Account Id*  
Your company Industrial Insurance Account Id is not found in our system.

### What action would you like to take with this combined form?

Approve this combined form

Send a correction request to the contractor

On the next step you will be able to confirm or select errors.

# Processing the Combined Forms

## You May Need To Return The Form For Corrections

You can select the flagged issues and/or write your own correction such as “you did the work of a Carpenter not the Laborer you listed”

Send a correction request to the contractor

Select any automatically detected errors that you will send

*License Lapsed*  
This contractor license number is not valid for work on this project; the license is either suspended or expired

*Industrial Insurance Account Id*  
Your company Industrial Insurance Account Id is not found in our system.

Corrections you request

Corrections you request

# CERTIFIED PAYROLL - OVERVIEW

Secure application linked to a contractor's Intent allowing them to:

- Create weekly certified payroll reports.
- Enter and store worker information for current and future projects.
- Submit CP reports to the L&I online system.
- The awarding agency and the prime contractor can review these records through their secure portals.

# Resources to Assist Contractors Filing Certified Payroll Records

## L&I YouTube Videos

- Start at the Labor & Industries website <https://www.lni.wa.gov/>
- Scroll down to bottom
- Under “FOLLOW” select the YouTube icon
- On YouTube, search for “Labor & Industries” and select the L&I HOME page <https://www.youtube.com/user/LaborandIndustries1>
- L&I videos are found here:
  - “PLAYLISTS” tab
    - L&I Certified Payroll Training
  - “VIDEOS” tab
    - Introduction to Certified Payroll
    - Getting Started with Filing Online
    - Add Employees and Rates
    - Enter Hours Worked & Deductions
    - Review Totals & Sign
    - How to Upload certified Payroll records

# AWARDING AGENCY PORTAL – RECAP/OVERVIEW

The “Public Works” tab contains your projects bid after March 2011 (except the combined Intent/Affidavit forms submitted on paper prior to the present online system).

- **Access and use this secure system to streamline your interaction with L&I on your projects.**
- **Step by step instructions are found at this link:**

[https://lni.wa.gov/licensing-permits/\\_docs/AA%20Portal%20Step-by-Step%20Instructions.pdf](https://lni.wa.gov/licensing-permits/_docs/AA%20Portal%20Step-by-Step%20Instructions.pdf)

- **“Create Project” button: Create your project identity as you want it to appear on the Intents & Affidavits.**
- **The “Combined Form Projects” tab contains the combined Intent/Affidavit forms you authorized using the on-line system.**
- **View alerts for:**
  - ✓ **Missing Intent or Affidavit forms**
  - ✓ **Debarred contractors**
  - ✓ **Workers’ compensation account issues**
  - ✓ **Contractor registration/license status changes**
- **Create & submit the Notice of Completion form to ESD, DOR, and L&I.**
- **View project certified payroll records online.**

# L&I's Prevailing Wage Law Responsibilities

- **Make all determinations of the prevailing rates of wage.** RCW 39.12.015.
- **Establish and publish prevailing wage rates.** RCW 39.12.015, & WAC 296-127-011.
- **Determine classifications of labor (scope of work descriptions).** WAC 296-127- 01301 to 01398.
- **Process and certify Intent & Affidavit forms.** RCW 39.12.040.
- **Investigate all timely complaints alleging violations of the Public Works Act.** RCW 39.12.065.



# Interpretations of the Prevailing Wage Law

- “All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.” RCW 39.12.015.
- Sources used to make determinations include:
- Statute (RCW) (*Laws as adopted by the legislature*).
- *Understanding the language of the statute may involve these factors:*
  - Actual Language
  - Legislative History
  - Legislative Intent
- Rule (WAC): *Adopted under the Administrative Procedures Act chapter 34.05 RCW.*
  - Administrative rules help apply the law but do not override the statute
- Case Law:
  - The Courts tell us how the statutes and rules function.

# Contract Awarding Agency Responsibilities pg. 1/2

- **Award only to a “Responsible” Contractor.** RCW 39.04.350.
  - **Verify registration, workers comp:** <https://secure.lni.wa.gov/verify/>
  - **Award contracts only to properly registered or licensed contractors**

RCW 39.06.010, RCW 18.27 (contractor reg.) and RCW 19.28 (electrical licensing).

- **Do not award contracts to contractors not allowed to perform public work. Search or view the debarred contractor list on-line:**  
<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>

RCW 39.12.050, RCW 39.12.065, and RCW 39.12.055.

- **Obtain an approved Statement of Intent to Pay Prevailing Wages from each and every contractor and subcontractor at all tiers of subcontracting prior to any payment for work by that contractor.**

RCW 39.12.040.

- **Obtain an approved Affidavit of Wages Paid from each and every contractor and subcontractor at all tiers of subcontracting prior to release of retainage held under RCW 60.28.011 or, if no retainage is held, prior to final acceptance of the project.** RCW 39.12.040.

# Contract Awarding Agency Responsibilities pg. 2/2

- **Failure to obtain Intents & Affidavits from each and every contractor and subcontractor makes the awarding agency liable to all workers, laborers or mechanics for the full amount of wages due.**

RCW 39.12.042.

- **When awarding a contract, the public agency must make the determination as to whether that contract involves “public work” and communicate it to the employers in the bid specifications and contracts .**

RCW 39.12.030, and WAC 296-127-011(5).

- **Contract specifications must contain a provision stating the prevailing wage rates and requirements *and* state if residential rates may be used *There is a potential liability if residential rates are improperly allowed!***

RCW 39.12.030, and WAC 296-127-011(5).

# Responsible Bidder Requirements

## RCW 39.04.350

- At the time of bid submittal, the contractor must meet the law's *responsible bidder* requirements.
- ***Before awarding a public works contract:***  
Verify the bidder is a “responsible contractor” under RCW 39.04.350

# Responsible Bidder Requirements

## RCW 39.04.350

- No debarment (contractors not eligible to bid public works);
- Valid UBI;
- Contractor registration or licensing per chapters 18.27 and 19.28 RCW;
- Industrial insurance coverage for employees;
- Employment security department account number;
- State excise tax registration number;
- No final L&I Notice of Assessment for willful violations of chapters 49.46, 49.48, or 45.82 RCW in the three years prior to bid solicitation.
- **Contractors must meet the public works and prevailing wage experience or training requirements – Check this status in L&I *Verify a Contractor* under: “Public Works Requirements” If the contractor’s status states “exempt” (from the training) they have already satisfied this requirement.**
- *When apprenticeship utilization requirements in RCW 39.04.320 are required, no Washington State Apprenticeship and Training Council findings of violations for the one-year period preceding the date of the bid solicitation.*

# Responsible Bidder Requirements

## RCW 39.04.350

- For the RCW 39.04.350(1)(g) provision about certain violations of wage and hour laws, under RCW 39.04.350(2), the contracting agency may reasonably rely on a contractor's signed statement.
- MRSC has a *model certification form* and details online: <http://mrsc.org/getdoc/dd1e41fa-b042-4366-b3f6-4d16818433ad/Public-Works-Bidding-and-Award.aspx>
- Scroll down to “What is a Responsible Bidder?” and “Effective July 28, 2019 SSB 5017” and click on “model statement”

# Responsible Bidder Requirements

## RCW 39.06.010

**By law, public agencies cannot hire an unregistered contractor.**

**Contracts with unregistered or unlicensed contractors and with other violators prohibited.**

No agency of the state or any of its political subdivisions may execute a contract:

(1) With any contractor who is not registered or licensed as may be required by the laws of this state other than contractors on highway projects who have been prequalified as required by RCW [47.28.070](#), with the department of transportation to perform highway construction, reconstruction, or maintenance; or

(2) For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW [50.12.070](#)(1)(b), [51.16.070](#)(1)(b), or \* [82.32.070](#)(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract.

# Problems – Contractor Registration

- Avoid violating RCW 39.06.010 - Be careful when you hire a company - What work will they do under your contract? Does that require a contractor registration?
- When a business is not a registered contractor and is doing work on your project that requires that registration, the Intent and Affidavit forms get held up in the processing for approval.
- Supply houses, factories, and off-site fabricators often do not need to be registered contractors, unless they or their subcontractor perform work, such as on-site work, away from their established, store, factory, or fab shop. Once they step into the contractor role, they need to be a registered contractor, even if all work was subcontracted.



# ***Subcontractors***

## **Responsible Bidder Requirements**

### **RCW 39.06.020**

**Contractors must verify the responsible bidder status for any subcontractors that they hire on a public work.**

#### **Verification of subcontractor responsibility criteria.**

A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW [39.04.350\(1\)](#) and possesses an electrical contractor license, if required by chapter [19.28](#) RCW, or an elevator contractor license, if required by chapter [70.87](#) RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

# Supplemental Responsible Bidder Requirements RCW 39.04.350(3)

- Subsection 3 of the responsible bidder statute specifically authorizes public agencies to develop *Supplemental Bidder Responsibility Criteria* applicable to their particular contract.
- Public owners are *not required* to adopt Supplemental Bidder Responsibility Criteria.
- The law provides statutory requirements that public owners and bidders must follow.
- The Capital Projects Advisory Review Board (CPARB) has a document: Suggested Guidelines for Bidder Responsibility posted on the DES website at this link:

[https://des.wa.gov/sites/default/files/public/documents/About/CPARB/AdminDocs/BidderResponsibilityGuidelines.pdf?\\_=4a984](https://des.wa.gov/sites/default/files/public/documents/About/CPARB/AdminDocs/BidderResponsibilityGuidelines.pdf?_=4a984)

# Know Your Contract Type and Requirements!

- Knowing which laws and processes you are using to procure contracted work is important!
- Please share the contract type with your prime contractor: The prime will be asked what type of contract it is when filing their Intent.
- The contract type will affect the effective date for prevailing wages and also define how many and how often Intents and Affidavits must be filed on that contract.

# Effective Date for Prevailing Wage

## **WAC 296-127-011(3&4):**

- (3) The applicable prevailing wage rates for a given public works contract will be determined as follows:
  - (a) For all public works contracts, except janitorial or building service maintenance contracts, the applicable prevailing wage rates shall be the rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. These rates shall remain in effect for the duration of the contract.
  - (b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. These rates shall remain in effect for the duration of the contract.
  - (c) For work orders issued under job order contracts pursuant to chapter 301, Laws of 2003, the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.
- (4) If a contract for public work is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. These rates shall remain in effect for the duration of the contract.

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **Bid-Build Contracts under chapter 39.04 RCW**
- *Use the prime contractor's bid due date unless the contract award is not within six months of the bid due date (then use the award date instead).*
- When all the work is fully defined in the contract with no unspecified future work, one Intent for the contract and one Affidavit for the one project.

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **Small Works Roster Contracts under RCW 39.04.155; and**
- **Limited Public Works Contracts under RCW 39.04.155(3)**
- Small Works Roster and Limited Public Works both use the prime contractor's bid due date (date of quote) unless the contract award is not within six months of the bid due date (then use the award date).
- When all the work is fully defined in the contract with no unspecified future work, one Intent for the contract and one Affidavit for the one project.

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

### ■ Purchased Service Contracts

- If pursuant to bids: Use the prime contractor's bid due date (date of quote) unless the contract award is not within six months of the bid due date (then use the award date).
- When all the work is fully defined in the contract with no unspecified future work, one Intent for the contract and one Affidavit for the one project.
- If not pursuant to bids: The date the prime contract was executed.

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **Design-Build Contracts under chapter 39.10 RCW**
  - Awarded through RFP – Use the award date (date the contract was executed).
  - The Intent should state that contract award date under both the bid due date and the award date fields.
  - Affidavit for the “project” (usually one Intent and one Affidavit for Design-Build).



# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **Job Order Contracts under chapter 39.10 RCW**
  - Use the date that each work order is awarded per RCWs 39.10.440 and 39.10.450.
  - Intent and Affidavit by work order (there is an Intent and an Affidavit specific to each individual work order).

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **General Contractor/Construction Manager under chapter 39.10 RCW**
  - GC/CM may have a pre-construction design phase contract and later the construction contract executed after the Maximum Allowable Construction Cost (MACC) has been *negotiated* (not an award pursuant to bids). If the MACC negotiations are not successful, the law allows a change to negotiate with the next most qualified contractor. The date the contract with the MACC is executed with the winning finalist/construction contractor is the prevailing wage effective date for that construction phase contract.
  - **Two distinct sets of the Intent and the Affidavit are required. One set for the design phase, and another set for the construction phase. Both use their respective award dates.**

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **Building Service Maintenance (Janitorial) Contracts**
- See WAC 296-127-023.
- The first contract year of a janitorial contract must use the prevailing wage rates in effect on the date when the bids are required to be submitted to the contract awarding agency. In a multi-year janitorial contract, subsequent contract years use the prevailing rates of wage in effect at the beginning of that contract year.
  - Annual wage updates by *contract year*
  - Annual filing of the Intent and the Affidavit by *contract year*

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **On-call Contracts (not specifically authorized in any state statute or law!)**
  - Use the date the contract was bid unless the contract award is not within six months of the bid due date – When that occurs, use the award date instead.
  - If not awarded pursuant to bids, the date the contract was executed.
  - Intent for the contract.
  - Affidavit for each call-out (task or project). Note: A call-out may be formal (e.g., a purchase order) or informal (e.g., a phone call).

# Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Unit Priced Contracts (authority in law may either be in the agency's own enabling statute or in chapter 39.04 RCW)**
  - Annual wage updates by *contract* year
  - Annual filing of the Intent and the Affidavit by *contract* year
- **PUDs, Ports, Cities, Counties, Sewer-Water Districts, and Transit Agencies are authorized in law to use unit priced contracts**

# Effective Date - Contract Types

## Process overview with Effective Date and Intent & Affidavit Requirements

- **Emergency Contracts issued without competitive process under RCW 39.04.280**
- *Use the date the contract was awarded or executed (the date the call to answer the emergency occurred).*
- Generally, one Intent filed as soon as possible after the emergency is under control with one Affidavit when work is complete.

# Duty to Communicate Prevailing Wage Requirements

RCW 39.12.030 & WAC 296-127-011(5)

- RCW 39.12.030 requires prevailing wage specifications in your contracts to perform construction, reconstruction, maintenance or repair
- WAC 296-127-011(5) requires communicating this prevailing wage requirement:
  - By the awarding agency to the prime contractor; and
  - By any contractor hiring any tier of subcontractor to that subcontractor

# Contract Specifications – Prevailing Rates of Pay

## *Duty to Communicate Requirements for Prevailing Wages*

RCW 39.12.030, WAC 296-127-011(5)

**Include a schedule of the applicable prevailing wages in your bid and contract documents, or...**

*The bid and contract specifications may provide the required prevailing wage rate information in this alternate format:*

- Provide the URL to the Dept. of L & I's prevailing wage rates  
<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>
- Identify the exact wage publication date to use (the effective date)
- State the county in which the public works project is located  
Note: off-site work will use the rates for the county where that off-site work is performed
- Specify a copy is available for viewing in your office
- Explain that your agency will mail a hard copy upon request
- Retain a printed version of the rates as part of your records



# Contract Specifications – Prevailing Rates of Pay

## Example

### PREVAILING WAGE RATES

This [public agency name] contract requires prevailing wages under chapter 39.12 RCW. Any worker, laborer, or mechanic employed in the performance of any part of the work shall be paid not less than the applicable prevailing rate of wage.

The project site is located in \_\_\_\_\_ County/Countries.

The effective date for prevailing wages on this project will be the prime contractor's **bid due date** with these exceptions:

- If the project is not awarded within six (6) months of the bid due date, the award date is the effective date.
- If the project is not awarded pursuant to bids, the award date (the date the contract is executed) is the effective date.
- Janitorial contracts follow WAC 296-127-023.

For contract number \_\_\_\_\_ the prime contractor bid due date is \_\_\_\_\_.

For janitorial contracts, the rates in effect on the bid due date shall apply for the duration of the contract (unless otherwise noted in the solicitation).

*For unit priced contracts when authorized in your enabling statute, provide guidance consistent with that statute.*

Look up the prevailing rates of pay, benefit, and overtime codes from this link:

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>

For prevailing wage questions, contact the Dept. of Labor and Industries at [PW1@Lni.wa.gov](mailto:PW1@Lni.wa.gov) or 360-902-5335.

# Residential Rates

RCW 39.12.017(3) provides a definition of residential construction:

(3) For purposes of this section:

(a) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single-family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including the basement, in the following categories:

(i) Affordable housing, including permanent supportive housing and transitional housing, which may include common spaces, community rooms, recreational spaces, a management office, or offices for the purposes of service delivery;

(ii) Weatherization and home rehabilitation programs for low-income households; and

(iii) Homeless shelters and domestic violence shelters.

(b) "Residential construction" does not include the utilities construction, such as water and sewer lines, or work on streets, or work on other structures unrelated to the housing.

RCW 39.12.030 places responsibility on the awarding agency for stating if residential rates can be used: "If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information." RCW 39.12.030.

# Acceptance of the Contract

- Acceptance affects when a claim can be filed against the contract bond: RCW 39.08.030:

PROVIDED, That, except for the state with respect to claims for taxes, increases, and penalties specified in RCW [39.08.010](#), such persons do not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, must present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows...

(Partial excerpt from RCW 39.08.030).

- **Effective 7/28/2019, *When no retainage is held, final acceptance cannot occur unless all the approved Affidavits of Wages Paid forms have been obtained.***

— ESSB 5418 (2019)

# Contract Retainage

- Chapter 60.28 RCW
- “Public Improvement Contracts” require retainage.
- A contract retainage of up to 5% of the monies earned by the contractor is held...
- As a trust fund to cover claims arising under the contract.
- Liens on retainage may be made for unpaid labor or material suppliers as well as for unpaid state taxes and premiums.

# Exceptions to Contract Retainage

For projects with **Federal transportation funds** (full or partial funding) no retainage is held - RCW

60.28.011(1)(b) – Any claims then rely on the chapter 39.08 RCW contract bond instead of the retainage.

RCW 39.04.155: **Small Works Roster** – The awarding agency may waive the RCW 60.28 contract retainage, but the awarding agency then assumes liability for any claims. - ESSB 5418

RCW 39.04.155(3): **Limited Public Works** - The awarding agency may waive the RCW 39.08 contract bond and the RCW 60.28 contract retainage, but the awarding agency then assumes liability for any claims.

# Bond in Lieu of Retainage

RCW 60.28.011(6)

- The prime contractor can provide a surety bond for all or part of the retainage.
- A subcontractor can ask the prime contractor to submit a bond for the sub's retainage – The subcontractor must pay their bond's premium.
- The retained funds must be released within 30 days when the bond has been provided.

# Prerequisites to Release of the Contract Retainage

- All the approved Affidavits of Wages Paid from each and every contractor and subcontractor are required before the contract retainage can be released.
- If no retainage is held, the contract cannot be accepted without all the Affidavits.
- On public improvement contracts over \$35,000, the DOR, ESD, and L&I Certificates of Release are required to release the contract retainage.
- Any liens on the contract retainage must be resolved before releasing the retained funds subject to a lien.

# Contract Bond

## Chapter 39.08 RCW

- The contract bond (payment and performance bond) ensures the contractor will:
  - Faithfully perform all provisions of the contract;
  - Pay workers, suppliers, and subcontractors; and
  - Pay state taxes, increases, and penalties due under titles 50, 51, and 82 RCW to the Employment Security Dept., the Dept. of Labor & Industries, and the Dept. of Revenue.



# Contract Bond

## Chapter 39.08 RCW

- The contract bond is required on state, county, or municipal contracts with any person or corporation to perform any work. RCW 39.08.010.
- A failure to obtain the required bond makes the contract awarding agency liable for the claims the bond should have covered. RCW 39.08.015.

# Contract Bond – Amount Required

RCW 39.08.030

- The contract bond must be for the full contract amount except:
  - Cities, towns, PTBAs, passenger only ferry districts, and water-sewer districts may reduce the amount of the bond by ordinance or resolution to as low as 25% of the contract amount.
- Job Order Contracts under chapter 39.10 RCW require a bond not less than the total of all open work orders.

# Contract Bond - Exceptions

- RCW 39.04.155(3): Limited Public Works: The awarding agency may waive the RCW 39.08 contract bond and the RCW 60.28 contract retainage, but the awarding agency assumes liability for any claims.
- RCW 39.08.010(3): On contracts up to \$150,000, the awarding agency may, at the option of the contractor, retain 10% of the contract amount for 30 days or until receipt of all releases from DOR, ESD, and L&I and settlement of any liens filed under chapter [60.28](#) RCW, whichever is later.

# Tools to Aid Compliance

- Track the contractors & subcontractors & their work!
- Check the UBI, contractor registration, DOR account and L&I industrial insurance account status for all subcontractors.
- Do you have boilerplate contract language that makes the prime responsible for reporting when a subcontractor first starts work and what days & hours they work, along with the number of workers they have on the project?
- Does your project manager track and double check this information?
- Rather than waiting for acceptance, when a contractor's work is complete, secure the Affidavit.
- Are the contractors posting their Intents? Since Jan. 1, 2020, a failure to post is a violation of RCW 39.12.050.
- Employee interviews about prevailing wage compliance are effective. They are required for federal Davis-Bacon projects and a good practice for the state law.

# Anti-Bid Shopping Law – Contract Award

## RCW 39.30.060

- For contracts expected to cost one million dollars or more, RCW 39.30.060 requires identification of certain subcontractors:
- Within one hour of the bid submittal time, the prime contractor must state the HVAC (heating, ventilation, and air conditioning) subcontractor; the plumbing subcontractor (as described in chapter 18.106 RCW); and the electrical subcontractor (as described in chapter 19.28 RCW), or to name itself for the work.
- *Within 48 hours of the bid submittal time, the prime contractor must state the structural steel and rebar contractor - ESSB 5457 effective June 11, 2020.*
- Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited.
- Certain circumstances are listed as exceptions that allow a substitution.

# Intentional Violations of Procurement Statutes

## RCW 39.30.020

### RCW 39.30.020

#### Contracts requiring competitive bidding or procurement of services— Violations by municipal officer—Penalties.

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in **willful and intentional violation** of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding or procurement procedures for consulting, architectural, engineering, or other services, upon such contract shall be held **liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation.** If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his or her office. For purposes of this section, "municipal officer" means an "officer" or "municipal officer" as those terms are defined in RCW [42.23.020](#)(2).

**(emphasis added)**

## 2017 Legislation *Prevailing Wage & Public Works*

**ESHB 1538** AN ACT Relating to requiring prime contractors to bond the subcontractor's portion of the retainage upon request.

*Gives subcontractors rights to have the prime obtain a bond in lieu of retainage for that subcontractor's retainage.*

**SB 5734** AN ACT Relating to bringing Washington state government contracting provisions into compliance with federal law as it relates to small works bonding requirements.

*The RCW 39.08.010(3) retainage in lieu of the contract bond provision is expanded in SB 5734 (increased from up to \$35 K to up to \$150K contracts) and the amount retained in lieu of the contract bond in such instances is reduced (from 50% down to 10%).*

Unpaid wages are the first priority for claims against this retainage held in lieu of the contract bond.

**SSB 5301** AN ACT Relating to the inclusion of willful violations of chapters 49.46, 49.48, and 49.52 RCW to the state's responsible bidder criteria.

*Includes repeat and willful violations of certain employment standards laws in the responsible bidder criteria. The public contract awarding agency will rely on a sworn statement now required from the contractor (not the debar/strike lists for this issue).* **Checking the debarment list is still essential for the usual issues.**

**SB 5036** AN Act Relating to clarifying the authority and procedures for unit priced contracting by public utility districts.

*PUDs authorized to use fixed period, indefinite quantity, unit priced contracts for recurring work.*

**HB 1395** AN Act Relating to job order contracts and procedure.

*PTBAs (a type of transit agency) authorized to use Job Order Contracting.*

# 2018 Legislation *Prevailing Wage & Public Works*

- **HB 1672** Prevailing Wage law recovery (tolling for determination)

*The statute of limitations is tolled while a prevailing wage determination is pending.*

- **E2SHB 1673** Adding training on public works and prevailing wage requirements to responsible bidder criteria.

*Effective July 1, 2019, contractors must have public works experience or training.*

- **EHB 1849** Addressing compliance with apprenticeship utilization requirements.

*Awarding Agencies must monitor apprentice hours and include goals and incentives in contracts.*

- **SHB 2317** Concerning contractor bonding requirements for public transportation benefit areas and passenger-only ferry service districts.

*Allows PTBAS to reduce the contract bond to as low as 25% of the contract amount – Allows POF Service Districts to use alternate forms of security for construction of marine vessels.*

- **SSB 5493** Establishing the prevailing rate of wage based on collective bargaining agreements (CBAs) or other methods if CBAs are not available.

*Directs the Industrial Statistician to use CBAs, if applicable, to establish prevailing rates.*

- **ESSB 6143** Concerning unit priced contracting by cities.

*Authorizes unit priced contracting by cities with annual wage updates and annual Intent & Affidavits.*

- **ESSB 6329** Clarifying the authority and procedures for contracting by public port districts (bid threshold and, by amendment, unit priced contracts).

*Authorizes unit priced contracting by cities - annual wage updates and annual Intent & Affidavits.*



## 2019 Legislation Public Works, & Prevailing Wage

- **SHB 1295 Concerning public works contracting procedures.** *Amends the Design-Build and Job Order Contracting laws in chapter 39.10 RCW. Passed legislature. Signed by the Governor April 30, 2019, effective 7/28/2019.*
- **HB 1743 Addressing the methodology for establishing the prevailing rate of wages for the construction of affordable housing, homeless and domestic violence shelters, and low-income weatherization and home rehabilitation public works.** *Defines “residential construction” and changes the process for establishing residential construction rates. Signed by the Governor on April 17, 2019. Effective 4/17/2019. New section to chapter 39.12 RCW, amends RCW 39.12.015.*
- **SSB 5017 Concerning the uniform unsworn declarations act.** *Signed by the Governor April 30, 2019, Effective 7/28/2019 - RCW 39.04.350 declarations potentially affected.*

## 2019 Legislation Public Works, & Prevailing Wage

- **ESSB 5418 Concerning local government procurement modernization and efficiency.** *Modifies contract bid limits. Adds Unit Priced Contract authority for certain types of public entities (RTAs, PTBAs, county transportation authorities, counties, and water-sewer districts). Changes PUD unit priced contracts to annual filings with annual wage updates. Raises the dollar amounts allowed for Small Works and Limited Public Works. Effective 7/28/2019.*
- **ESB 5958 Title revised for Engrossed Bill: Concerning public works contracts and interlocal agreements.** *) Clarifies process for piggyback contracts. Effective 7/28/2019.*
- **ESSB 5035 Enhancing the prevailing wage laws to ensure contractor and owner accountability and worker protection.** *Effective 1/1/2020.*

# 2019 – ESSB 5035 Effective 1/1/2020 slide 1/2

## ESSB 5035 Enhancing the prevailing wage laws to ensure contractor and owner accountability and worker protection

- Weekly certified payroll records required to be submitted to L&I at least once a month.
- “Unpaid prevailing wages” defined. A failure to pay all of the prevailing wage rate by the regularly established pay day.
- Usual benefits must be paid by the regularly established deadline for such payments.
- Time period to file a wage complaint now 60 days from the acceptance date of the public works project. L&I must investigate a timely complaint.
- L&I may still investigate when a complaint is not timely filed but L&I may only recover wages owed (no sanctions or penalties).
- L&I may not investigate or recover unpaid prevailing wages if the complaint is filed after two years (private action may still occur).
- L&I may issue a notice of violation for unpaid wages, penalties, and interest on all wages owed at 1 percent per month.
- Contractors & subcontractors must keep accurate payroll records for three years from the date of acceptance of the public works contract.
- Employers must pay all wages, other than usual benefits, owing to its employees not less than once a month.

# 2019 – ESSB 5035 Effective 1/1/2020 slide 2/2

ESSB 5035 Enhancing the prevailing wage laws to ensure contractor and owner accountability and worker protection

- Increased civil penalty on violations: \$5,000 or 50 % of the wages owed, whichever is greater, plus interest at 1% per month.
- An inadvertent filing or reporting error is a mistake and is made in spite of the use of due care by the contractor or employer (inadvertent error - not subject to civil penalties).
- Burden of proof: On the contractor - a preponderance of the evidence. An inadvertent filing or reporting error includes good faith reliance on written L&I communications.
- Notices of violation not appealed in 30 days are final and binding – no further appeal.
- The director of L&I may waive or reduce a penalty or additional sanction, but may not waive or reduce wages due or interest.
- L&I must submit a report of the waivers granted, including the justification for any waiver, upon request of an interested party.
- After a complaint is filed and before a final determination is made, (NOV issued) if the contractor or subcontractor pays the unpaid wages, interest of 1 percent per month, and penalties of \$1,000 or an amount equal to 20 percent of the total prevailing wage violation, the matter is resolved without further penalty.
- If a contractor or subcontractor uses this option (above) twice in a five-year period, the contractor *is barred from bidding on public works contracts for two years.*

## 2020 Legislation Public Works, & *Prevailing Wage*

- ESB 5457. Adds a requirement to name the structural steel and rebar contractor within 48 hours of the bid submittal time.
- ESB 6239 Addressing compliance with apprenticeship utilization requirements and bidding on public works projects. Defines “apprenticeship utilization plan”. Adds new details under the *optional* supplemental bidder responsibility requirements related to achieving apprentice utilization requirements.
- E2SHB 1521 Providing for accountability and transparency in government contracting. Addresses transparency and provides for a new “comprehensive impact assessment” regarding decisions to contract out for services.

## 2021 Legislation Public Works, & *Prevailing Wage*

- Fewer legislative changes in 2021!
- SB 5032 Alternate public works contracting - CPARB recommended updates to Design-Build, GC/CM, and JOC contracting processes
  - Alternative public works are reauthorized, subject to another sunset review in ten years. Uniform notification requirements, publication in a legal newspaper of general circulation. Posting encouraged on websites for business associations, with the OMWBE, and other locations

# *What kind of violations cause a Debarment?*

- Debarment – Contractors not eligible to bid public work.
- Multiple violations of these issues will result in debarment:

**RCW 39.12.065** Failure to pay the prevailing rate of wage

*Two violations in five years results in a two year debarment.*

**RCW 39.12.050** Failure to file or false filing - prevailing wage paperwork *Two violations in five years results in a one year debarment.*

**Violations of RCW 39.12.055** *Any two violations in five years results in a one year debarment.*

*Industrial Insurance account violations - RCW 39.12.055*

False reporting or failure to pay Workers' Comp. premiums

- Violation of RCW 51.48.103 (also at least a gross misdemeanor – certain violations are class C felonies)
- Violation of RCW 51.48.020(1) (certain violations are class C felonies)

*Violations of the contractor registration law - Chapter 18.27 RCW*

*Apprenticeship violations*

- Violation of chapter 49.04 RCW as determined by the State Apprenticeship Council

# Owners

- **Certain owners of at least 30% of the business do not have to pay themselves prevailing wages (all other provisions of the law such as the paperwork still apply) WAC 296-127-026**
- **WAC 296-127-026 Exemptions for sole owners and their spouses, partnerships, corporations, and employees of public agencies**
- The prevailing **wage** requirements of chapter [39.12](#) RCW do not apply to:
  - (1) Sole owners and their spouses.
  - (2) Any partner who owns at least thirty percent of a partnership.
  - (3) The president, vice-president and treasurer of a corporation if each one owns at least thirty percent of the corporation.
  - (4) Workers regularly employed on monthly or per diem salary by the state or any political subdivision created by its laws.
- *NOTE: the exception is to the wage requirement, the Intent and Affidavit paperwork is still required by RCW 39.12.040*



# Supervisors

- **Supervisors may need to be paid prevailing wages depending on the percentage of their time working with tools.**

## **WAC 296-127-015**

- (2) Supervisors (e.g., foremen, general foremen, superintendents, etc.,) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:
  - (a) For each hour spent in the performance of manual or physical labor if it is for more than twenty percent but less than fifty percent of their hours worked on a public works project during any given week.
  - (b) For all hours worked in any given week if they perform manual or physical labor for fifty percent or more of their hours worked on a public works project during such week.
- (3) If supervisors subject to the journey level prevailing wage rate are paid a salary, the compensation (salary divided by number of hours worked) must be equal to or greater than the prevailing wage rate for the type of work performed.

# Volunteer Labor

## WAC 296-127-010(7)(b)(i)

- RCW 39.12.020 requires prevailing wages for the laborers, workers, or mechanics upon all public works
- The prevailing wage administrative rules provide an exclusion from the definition of “public work” for volunteer work performed consistent with RCW 35.21.278
- WAC 296-127-010(7)(b)(i):
  - (b) The term "public work" shall not include:
    - (i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278

# Volunteer Labor

## RCW 35.21.278

Without regard to competitive bidding laws for public works, **a county, city, town, school district, metropolitan park district, park and recreation district, port district, or park and recreation service area** may contract with a chamber of commerce, a service organization, a community, youth, or athletic association, or **other similar association** located and providing service in the immediate neighborhood, for drawing design plans, **making improvements to a park, school playground, public square, or port habitat site, installing equipment or artworks, or providing maintenance services for a facility or facilities as a community or neighborhood project, or environmental stewardship project, and may reimburse the contracting association its expense.** The contracting association may use volunteers in the project and provide the volunteers with clothing or tools; meals or refreshments; accident/injury insurance coverage; and reimbursement of their expenses. **The consideration to be received by the public entity through the value of the improvements, artworks, equipment, or maintenance shall have a value at least equal to three times that of the payment to the contracting association.** All payments made by a public entity under the authority of this section for all such contracts in any one year shall not exceed twenty-five thousand dollars or two dollars per resident within the boundaries of the public entity, whichever is greater.

RCW 35.21.278(1) (emphasis added).

# Volunteer Labor

## L&I Employment Standards Policy ES.A.1 (Selected Minimum Wage Act ES.A.1 Policy excerpts)

- **The department uses the following interpretation in determining whether workers are volunteers exempt from the MWA:** Individuals will be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer. Individuals who volunteer or donate their services, usually on a part-time basis, for public service or for humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the entities that received their services. However, if these people are paid for their services beyond reimbursement for expenses, reasonable benefits or a nominal fee, they are employees and not volunteers.
- An individual will not be considered a volunteer if he or she is otherwise employed by the same agency or organization to perform similar or identical services as those for which the individual proposes to volunteer. Any individual providing services as a volunteer who then receives wages for services, is no longer exempt and must be paid at least minimum wage and overtime pay for hours worked in excess of 40 hours per workweek. Unpaid employment is unlawful. An employee-employer relationship is deemed to exist where there is a contemplation or expectation of payment for goods or services provided.
- **Volunteers are not allowed in a "for-profit" business.** Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer, who permits any individual to work, is subject to the provisions of the MWA.

*To avoid liabilities, please be careful about how you use any volunteers!*

# Materials Delivery – WAC 296-127-018

- Delivery of sand, gravel, crushed rock, concrete, asphalt and similar materials requires prevailing wages unless the delivery meets the narrow definition of a “stockpile” in WAC 296-127-018.
- To have a “stockpile” and the exception to prevailing wages, the conditions of the rule need to be satisfied including:
  - The materials supplier delivers material to only one location on the job;
  - The one stockpile is located away from where the material will be placed and used on that project;
  - The materials supplier performs no other work on the project; and
  - In order to use the stockpiled materials on the project, someone else who *is* working on that project must be pick up, move, and place the materials where they will be used and remain in the project

# Apprentices on Public Works

## ■ RCW 39.12.021

Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

# Apprentice Utilization

## RCW 39.04.310

- Defines “Apprenticeship” as “registered Apprenticeship”
- Applies the utilization requirement as applying to all labor hours on a project and defines which hours count

## RCW 39.04.320

- Sets the requirement at 15% of all labor hours have to be performed by apprentices
- Identifies the agencies that have these utilization requirements
- Provides reporting requirements, and allowable adjustments to the utilization requirement

## WAC 296-05-107

- Describes potential penalties for failing to abide by the responsibilities of an apprenticeship training agent
- Violations of this rule can affect responsible bidder criteria and lead to ineligibility to bid on a public works contract.

# Making Apprenticeship Utilization Work

- Make Apprentice utilization a contract *BIDDING* requirement
- Require an Apprentice Utilization *PLAN* from the prime
- Monitor the *REPORTING* of Apprentice hours on the certified payroll records to ensure the utilization plan is being followed
- Establish uniform “*GOOD FAITH*” *exception criteria consistent with RCW 39.04.320(2)&(3) for all our projects*
- *ENFORCE* the utilization requirement
- Use LNI resources to help utilization happen
- Example: King County Plan and Utilization Forms are a good model
- L&I Apprenticeship Contact:
  - James Kaltenbaugh [James.Kaltenbaugh@Lni.wa.gov](mailto:James.Kaltenbaugh@Lni.wa.gov) 360-902-5373



# Apprentice Utilization Compliance, Monitoring, and Reporting Requirements

- Contracts with apprentice utilization requirements must:
  - Specify the apprentice utilization goals should be met
  - Provide monetary incentives and penalties for the goals
  - Report the apprentice utilization by final project acceptance
- The L&I certified payroll records system is be used to monitor and report:
  - Weekly certified payroll records submitted online with L&I at least once a month (data during the project)
  - Affidavits of Wages Paid (final utilization data)

# Applicable Apprenticeship Rules

- WAC 296-05-107 Decisions against training agent for violating ratio, supervision, and/or approved work process requirements.
- Defines the potential penalties for failing to abide by the responsibilities of apprenticeship training agents.
- Violations of this rule can affect responsible bidder criteria and lead to ineligibility to bid on a public works contract.

# L&I Apprenticeship Information & Resources

- Questions? L&I Apprenticeship Staff:  
**James Kaltenbaugh**  
[James.Kaltenbaugh@Lni.wa.gov](mailto:James.Kaltenbaugh@Lni.wa.gov)  
360-902-5373
- L&I Apprenticeship Consultants can help! Please call (360) 902-5320 for referral to the Apprenticeship Consultant in your area.

# Overtime on State Prevailing Wage Projects

## ■ Prevailing Overtime

- *May affect how the contractor bids the project!*
- Part of the “prevailing rate of wage” publication
- Check when you look up wages!
- *Overtime code* (check for OT requirements for certain days or hours of work)
- *Holiday Code* (list of holidays with premium pay for hours worked)
- Will vary by trade and occupation and county

## ■ **Daily** – *Over 8 hours in a calendar day on public works*

RCW 49.28.010, 040, 050, & 060 [pgs. 34-35]

### – **4-10 agreements**

RCW 49.28.065 [pg. 35] WAC 296-127-022 [pgs. 54-55]

## ■ **Weekly** *40 hour workweek*

RCW 49.16.130, WAC 296-126, WAC 296-128, L&I policy ES.A.8.1

# Federal and State Law Differences - Trucking

**Federal law** (the Davis-Bacon Act) only covers the work performed on the site of the public work

**State law:** Chapter 39.12 RCW applies prevailing wages to work specific to the public work including off-site work

**State law:** Work “contemplated” by the contract for public work requires prevailing wages.

See RCW 39.12.030 [pgs. 27-28]

**State law:** Materials delivery: WAC 296-127-018

[pgs. 50-51]

# Significant Prevailing Wage Court Cases

## DISCLAIMER:

This presentation of court cases includes a few selected, significant issues for prevailing wages under Chapter 39.12 RCW.

This presentation is not a comprehensive analysis of the cases identified nor a full set of relevant case law on Chapter 39.12 RCW.

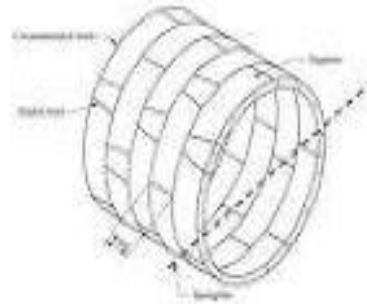
# Everett Concrete Products

1988 State Supreme Court case - 109 Wn.2d 819 (1988).

This case law provides important details on how this prevailing wage law works.

- Chapter 39.12 RCW is a worker protection law
  - The law is “remedial”
  - The law is to be liberally interpreted for its purpose
  - The purpose is: Protecting local worker wages
  - The state law is broader than the federal law.
- This case law tells us off site work, specific to the public work, will require prevailing wages.
- This off-site coverage is limited to “within the state” RCW 39.12.020.

# Concrete Tunnel Liners



- *Everett Concrete Products*
- Off-Site Manufacture or Fabrication of a non-standard item made specifically for a public work requires prevailing wages.
- A Standard or Non-Standard checklist was developed by PWAC and is used by WSDOT.

<https://www.wsdot.wa.gov/sites/default/files/2007/07/31/Wage-Rate-Supplemental-State-2020-03-04.pdf>



# Standard vs. Non-Standard Check List

Below is the list of criteria developed by the Prevailing Wage Advisory Committee in the 1990s to assist in distinguishing whether a prefabricated item is "standard" or "non-standard"

Off-site production of non-standard items for a public work is covered by the prevailing wage requirements of RCW 39.12.

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.
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.

Anyone with questions or needing guidance on covered and non-covered workers can contact L&I at [PW1@Lni.wa.gov](mailto:PW1@Lni.wa.gov).

WSDOT has a predetermined list of their common products posted on their web site based on these criteria:

<https://www.wsdot.wa.gov/sites/default/files/2007/07/31/Wage-Rate-Supplemental-State-2020-03-04.pdf>

# ***Silverstreak, Inc. v. L&I,*** **159 Wn.2d 868 (2007).**

- Two conditions had to be satisfied to reach a prevailing wage requirement: (1) The drivers must deliver the materials, and (2) the drivers must perform an additional task that involves incorporation of the materials into the project.
- Although the court ruled prevailing wages should be required for this work the court also ruled that because of the employers' reliance on a 1992 L&I memo, the department was estopped from collecting the workers' wage claim.
- To eliminate such reliance on old communications, the rule on materials delivery, (sand, gravel, crushed rock, concrete, asphalt, and similar materials) WAC 296-127-018 was revised.

# ***Supporters of the Center, Inc. v. Moore,*** 119 Wn. App. 352 (2003).

- The center received a \$2.97 million CTED Building for the Arts grant (almost half of the project construction cost).
- The city paid \$700K in “advance rent” to SOC for use of the center.
- CTED & city funds paid for 52% of the project.
- The appellate court looked to both the source of funding and the character of the project and found that prevailing wages were required.
- State or local government funding (grants, etc.) brings a prevailing wage requirement to otherwise private projects.

# *City of Spokane v. L&I,* 100 Wn. App. 805 (2000).

- The “Wheelabrator” case.
- Issue: Were prevailing wages required for the contractor’s annual maintenance shutdown at the City’s waste to energy facility (that burns garbage and generates electricity) or was this work exempt as “ordinary maintenance”?
- **“All maintenance, when performed by contract is public work, and subject to prevailing wage. Maintenance is “ordinary” under the statute, when it is performed by in house employees of the public entity, and excluded.”** *City of Spokane* at 810.
- Public agency employees are already exempted in RCW 39.12.020(2).
- Prevailing wages must be paid for contracted public maintenance work.

# ***Lockheed Shipbuilding Co. v. L&I,*** 56 Wn. App. 421 (1989).

- Project: Construction of a Wastewater treatment plant and its outfall pipe.
- Scope of Work Issue: The correct prevailing rate of wage for welding a waste water treatment plant outfall pipe off-site in a shipyard: Shipyard Boilermaker or Construction Plumber/Pipefitter?
- The “..work performed... was of the same type and similar nature as work done by pipefitters in the construction industry.”
- The type and nature of the work (*not an employee's title*) is important in determining which scope of work description (and prevailing rate of wage) applies to the work.

# *Heller v. McClure,* 92 Wn. App. 333 (1998).


- On-site repair of equipment used to perform the public work.
- The court focused on the phrase “upon all public works” in its analysis. See RCW 39.12.020.
- The employer argued the mechanic’s work was not prevailing wage work because it was not “incorporated into the project.”
- **The court did not require such incorporation in this fact set.**
- ***“Heller’s work was both directly related to the prosecution of the contracted work and necessary for its completion.”***
- The appellate court found that prevailing wages were required for this on the site of the public works equipment.
- **The on-site repair of equipment being used to perform the public work will require prevailing wages.**
- Off-site equipment repair may have a different answer – Check with L&I about your facts.

# *Drake v. Molvik & Olsen Electric,*

107 Wn.2d 26 (1986).

- A housing authority had 100% federal funds for a project.
- The court considered the question: Was there a cost to the state or a municipality for this project?
- “The source of funding does not determine the applicability of the prevailing wage statute.”  
*Drake* at 29.
- Prevailing wages were required under the state law, chapter 39.12 RCW.

# Contract Retainage Release Fraud Prevention



**NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT**

Contractor's UBI Number: \_\_\_\_\_  
Date: \_\_\_\_\_

Name & Address of Public Agency	Department Use Only
	Assigned to: _____
	Date Assigned: _____

UBI Number: \_\_\_\_\_

*Notice is hereby given relative to the completion of contract or project described below*

Project Name	Contract Number	Job Order Contracting	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Description of Work Done/Include Jobsite Address(es)			
Federally funded road transportation project? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Contractor's Name	Telephone Number	Affidavit ID*	
Contractor Address			
If Retainage is Bonded, List Surety's Name (or attach a copy)			
Surety Agent's Address			
Date Contract Awarded	Date Work Commenced	Date Work Completed	Date Work Accepted

Contract Amount	\$		Liquidated Damages \$	
Additions (+)	\$		Amount Disbursed \$	
Reductions (-)	\$		Amount Retained \$	
<b>Sub-Total</b>	\$			
Amount of Sales Tax Paid at _____	\$			
<small>(If various rates apply, please send a breakdown)</small>				
<b>TOTAL</b>	\$		<b>TOTAL</b>	\$

*NOTE: These two totals must be equal*

Please List all Subcontractors and Sub-tiers Below:

Subcontractor's Name:	UBI Number: (Required)	Affidavit ID*

F215-038-000 07-2012

## Contract Release L&I Process

## Industrial Insurance (workers' comp) Retainage Release

## Chapter 60.28 RCW



# Contract Release and Workers' Compensation

## *L&I's Role at Contract Close-Out*

These slides cover:

- How workers' compensation premiums are assessed
- How completed contracts are reviewed by L&I
- Things that cause delays in the release
- Helpful information for awarding agencies

# Overview of Workers' Compensation

Workers' compensation coverage applies to most Washington employees unless excluded by law or lack of jurisdiction

- Employees excluded from coverage:
  - **Reciprocal States** (WAC 296-17-31009)
    - Oregon, Idaho, North & South Dakota, Utah, Wyoming
  - **By Law** – Owners, to include sole proprietors, partners, corporate officers, LLC member/managers (can elect coverage)
  - **By Jurisdiction** – Native American tribes, maritime (Longshore and Harbor Workers), federal employees

# What is Contract Release?

Chapter 60.28 RCW – RCW 60.28.051

## *LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS*

- “Except as provided in (b) of this subsection, **public improvement contracts** must provide, and public bodies must reserve, a **contract retainage not to exceed five percent** of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) **the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW** which may be due from such contractor.”

RCW 60.28.011(1)(a) (emphasis added).

- **L&I, ESD, and DOR can collect from the retainage the money owed under Titles 50, 51, and 82 RCW (Title 51 is industrial insurance)**
- **RCW 60.28.051 Duties of disbursing officer upon completion of contract – Notice of Completion required on contracts over \$35,000:**
  - **To close out the contract, the contract awarding agency requests approval from L&I, ESD, DOR to release the retainage – Certificates of Release are issued when everything checks out OK**
- **L&I requires all the Affidavits be filed prior to the Notice of Completion – This data assists in the L&I review.**

# Overview of Workers' Comp Risk Classes

## Construction Risk Classification

- Basic classes are assigned for type and each phase of construction work performed
- “Type of construction” refers to wood-framed or other type of structure (concrete, steel, etc.), bridges, road work, etc.
- “Phase of construction” refers to type of work – foundation, framing, interior finish carpentry, plumbing, paving, street lights, etc.

# Review of Contract

- L&I compares and reconciles data from Affidavits with the quarterly industrial insurance reports
  - PWIA (Prevailing Wage – Intents and Affidavits): Affidavits list dates worked, number of workers and hours by occupation
  - Workers' Compensation: Quarterly reports list hours by risk classification
- To compare, we must understand nature of work performed on the contract
  - Description of contract work listed on the Notice of Completion
  - *Nature* of work listed on Affidavit
  - If unclear more information is requested

# Review of Contract

## Possible Approval Delays:

- Misclassified hours (*most common problem found*)
- Not enough hours (*affidavit lists more hours than reported*)
- Unreported workers
- Workers' compensation premiums owed for work completed during the contract
- Non-filed Affidavits

*Resolving issues can take anywhere from 2 weeks to 6+ months.*

# Review of Contract – Passing Grade!

Used the correct risk classification & Affidavit hours are within the hours reported to industrial insurance

## ■ Affidavit of Wages Paid:

Job start date:MM-DD-YYYY	3/12/2011
Date work completed:MM-DD-YYYY	3/15/2011

### Journey Level Wages

County	Trade	Occupation	Wages	Fringes	# Workers	# Hours
Grant	Flaggers	JOURNEY LEVEL	\$22.76	\$9.40	4	192.00

## ■ Industrial Insurance Quarterly Report:

RLSE ITEM PRV1      LINES (c) Copyright L&I, WA 1990 (A1 Reg)      02/12/13  
CURRENT ITEMIZED STATEMENT      14:45:01.3

SI:      STAT: O      TYPE: S      T4:PM4S  
STAT: A/      /      /      RPT FREQ: Q

TYPE	LNIEMP	EFCTV DT	BUNDLE	RSKCLS	UNITS	RATE	AMOUNT
PREM ASSMT		03/31/11	1065-05031	04 01		.1728	4.15
PREM ASSMT		03/31/11	1065-05031	110		1.3376	62.87
PREM ASSMT		03/31/11	1065-05031	7118 00	1527	.0171	4,607.11
CHECK		04/30/11	8070-050211				4,674.13

PREM RPT PRD: 111 \*\*ARCH FR: 6/30/97 TO: 12/31/10 OI: RF UA      \*\*      PG 1 OF 1  
PREV BAL:      0.00      ITEM BAL:      0.00      NEW BAL:      0.00  
OPT: \_\_\_ (T=TOP P=PRINT S=SUMM H=HIST ##=PAGE-NUM M#=MIG-RES) BAL AS OF 02/12/13

# Review of Contract

Insufficient hours reported in the applicable risk classifications – corrections required

## Affidavit of Wages Paid:

Job start date:MM-DD-YYYY	3/15/2011
Date work completed:MM-DD-YYYY	7/13/2011

### Journey Level Wages

County	Trade	Occupation	Wages	Fringes	# Workers	# Hours
Chelan	Electricians - Inside	JOURNEY LEVEL	\$48.72	\$0.00	1	88.50
Chelan	Electricians - Powerline Construction	Groundperson	\$41.06	\$0.00	1	88.00

## Industrial Insurance Quarterly Report:

LINIIS (c) Copyright L&I, WA 1990 (A1 Reg) 02/12/13  
 CURRENT ITEMIZED STATEMENT 14:33:37.3

SI: STAT: O TYPE: C T2:PM2S  
 STAT: A/COL/ /FA RPT FREQ: Q

TYPE	LNIEMP	EFCTV	DT	BUNDLE	RKCLS	UNITS	RATE	AMOUNT
ADJ RECON	19638	03/31/11	0096-012413	0219 00		2.6630		0.00
ADJ RECON	19638	03/31/11	0096-012413	0601 00	80	1.3909		111.27
PEN ADJ	19638	05/01/11	0096-012413					10.00
INT ADJ	19638	05/01/11	0096-012413					1.11
INT ADJ	19638	06/01/11	0096-012413					1.11
EFT PYMNT		06/01/11	8985-020113					129.05
PEN ADJ	19638	06/01/11	0096-012413					5.56
PEN ADJ	19638	07/01/11	0096-012413					0.00
INT ADJ	19638	07/01/11	0096-012413					0.00

PREM RPT PRD: 111 PG 1 OF 4  
 PREV BAL: 0.00 ITEM BAL: 0.00 NEW BAL: 0.00  
 OPT: (T=TOP P=PRINT S=SUMM H=HIST ##=PAGE-NUM M#=MIG-RES) BAL AS OF 02/12/13



# Review of Contract

## Resolution of primary compliance issues

- Obtain contract documents to confirm issue
- Resolve issue
  - **Amend:** L&I allows two weeks for submission of amended reports
    - An email is sent to the firm with the appropriate risk class(es) and request amended quarterly reports
  - **Assessment Letter:** If not willing to amend, adjustments are made and findings are issued to firm
  - **Audit** – referrals will be made for
    - Unregistered firms/No L&I account but has workers
    - Independent Contractor issues
    - Multiple contracts with same issue
    - Egregious non-compliance, a full audit will be made

# Review of Contract

- If a debt is owed, L&I refers to Collections
  - If subcontractor owes, L&I attempts collection from the prime or hiring firm (RCW 51.12.070)
  - If prime owes, L&I attempts collection from the retainage
  - RCW 51.12.050 makes the awarding agency responsible for industrial insurance premiums on their projects. If L&I is unable to collect from retainage, we may attempt collection from the public body or performance bond

# L&I Contract Release

RCW 60.28.051 Notice of Completion

## Contract release questions?

### Contact L&I Contract Release at:

- **Phone: 855.545.8163 Opt #4**
- **Email: [ContractRelease@Lni.wa.gov](mailto:ContractRelease@Lni.wa.gov)**

- Christina Summers-Shelton [christina.summers@lni.wa.gov](mailto:christina.summers@lni.wa.gov) 360-902-5772
- Elsa McDonnell [elsa.mcdonnell@lni.wa.gov](mailto:elsa.mcdonnell@lni.wa.gov) 360-902-6558
- Jordan Guerra [jordan.guerra@lni.wa.gov](mailto:jordan.guerra@lni.wa.gov) 360-902-6752
- Lindsey Thurgood [lindsey.thurgood@lni.wa.gov](mailto:lindsey.thurgood@lni.wa.gov) 360-902-5385

Notice of Completion – Use the portal or the form at this link: <https://lni.wa.gov/dA/84ebdfc30e/F215-038-000.pdf>

# Apprenticeship Team

- **Questions? L&I Apprenticeship Staff:**

James Kaltenbaugh

[James.Kaltenbaugh@Lni.wa.gov](mailto:James.Kaltenbaugh@Lni.wa.gov) 360-902-5373

- **L&I Apprenticeship Consultants:**

L&I Apprenticeship Consultants can help! Please call (360) 902-5320 for referral to the Apprenticeship Consultant in your area.

# WA State Dept. of Labor & Industries Website

<https://lni.wa.gov/>

- **Verify a Contractor**

<https://secure.lni.wa.gov/verify/>

- **Look Up Prevailing Wages**

<https://secure.lni.wa.gov/wagelookup>

- **Scope of Work Descriptions**

<https://lni.wa.gov/licensing-permits/public-works-projects/scopes-of-work>

- **Search Approved Intents & Affidavits**

<https://secure.lni.wa.gov/wagelookup/searchforms.aspx>

- **Prevailing Wage Policies & Determinations**

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-policies>

- **Verify a Contractor - Check Registration and More!**

<https://lni.wa.gov/licensing-permits/contractors/hiring-a-contractor/verify-contractor-tradesperson-business>

# Prevailing Wage Resources

- **Sign up for the Prevailing Wage Electronic Mailing Lists:**

[https://public.govdelivery.com/accounts/WADLI/subscriber/new?topic\\_id=WADLI\\_40](https://public.govdelivery.com/accounts/WADLI/subscriber/new?topic_id=WADLI_40)

Scroll down to and select any or all of these three options as needed:

- ✓ Prevailing Wage
- ✓ Prevailing Wage – Awarding Agencies
- ✓ Prevailing Wage – Intents & Affidavits

- **Debarment list (check for contractors not eligible to bid):**

<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>

- **L&I on-line:** <https://www.lni.wa.gov/>

*Prevailing Wage* information is found under:

- “Licensing & Permits” and
- “PUBLIC WORKS PROJECTS”:

# L&I Prevailing Wage *Ask Your Questions!*

**PW1@Lni.wa.gov**

**360-902-5335**

- Peter Guzman, Acting Industrial Statistician, Program Manager  
[Peter.Guzman@Lni.wa.gov](mailto:Peter.Guzman@Lni.wa.gov) (360) 902-5330
- Chuck Ziegert, Industrial Relations Specialist  
[Charles.Ziegert@Lni.wa.gov](mailto:Charles.Ziegert@Lni.wa.gov) (360) 902-4538
- Harvey Means, Industrial Relations Specialist  
[Harvey.Means@Lni.wa.gov](mailto:Harvey.Means@Lni.wa.gov) (360) 902-5391
- Reasa Pearson, Administrative Regulations Analyst  
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[Bonnie.Dressel@Lni.wa.gov](mailto:Bonnie.Dressel@Lni.wa.gov) (360) 902-5211
- Megan Kistler, Industrial Relations Agent  
[Ramona.Christensen-Russell@Lni.wa.gov](mailto:Ramona.Christensen-Russell@Lni.wa.gov) (360) 902-5056