

DIVISION OF PROFESSIONAL REGULATION

RULES AND REGULATIONS RELATING TO PREVAILING WAGES

(Rev. 3/12/08)

- 1) Any contractor who has been awarded a contract for a Public Works Project in excess of \$1,000.00, or any subcontractor performing work on said project, shall be liable for the payment of prevailing wages under this chapter regardless of whether or not the prevailing wages were listed in the contract between the contractor and the awarding authority of the state or political sub-division, as required by law.
- 2) Any contractor who has been awarded a contract for a Public Works Project in excess of \$1,000.00, shall be liable for the payment of prevailing wages under this chapter regardless of whether or not a subcontractor may be the primary obligor. The contractor shall ensure that a subcontractor pays the prevailing wage to his employees and otherwise complies with the provisions of R.I.G.L. Chapter 37-13.
- 3) Before awarding a contract for a Public Works Project, an awarding authority shall first determine from the Director of Labor and Training whether the proposed contractor has been debarred under R.I.G.L. 37-13-16, and shall notify all bidders that the prevailing wage is required as a condition of the contract.
- 4) All complaints filed for noncompliance with Chapter 13, Title 37 of the General Laws of Rhode Island shall be in writing, and on forms issued by the Department of Labor. The written complaints must be filed with the Department of Labor and Training within twenty-four (24) months of the completion of the project.
- 5) Any contractor or subcontractor doing work on a Public Works Project, must pay the prevailing wage for the classification of the work performed by an apprentice unless such apprentice is registered under and apprenticeship program sanctioned by the Rhode Island Department of Labor and Training's Apprenticeship Council.
- 6) The Director of Labor and Training shall notify an awarding authority of the name of any contractor that has violated any provisions of this chapter.
- 7) Any proceeding to debar a contractor from bidding on a Public Works Project under the provisions of R.I.G.L. Chapter 37-13, may be brought against the principals, officers or successors in interest of such contractor, where such principals, officers or successors in interest are responsible for the violation of this chapter.
- 8) "No person, contractor, firm, business or corporation shall by any special contract or arrangement with an employee or by any other means exempt himself from coverage from R.I.G.L. Chapter 37-13. For purposes of this chapter individuals performing any service shall be deemed to be employees and shall be subject to the provisions of Chapter 37-13 even though the employee may hold share(s) of stock in the enterprise. Such presumption of employee status shall not apply if it is shown that the individual has been and will continue to

be free from control and direction in connection with the performance of such service under this contract, and such service is performed either outside the usual course of business for which the service is performed or is performed outside of all places of business of the enterprise; and, said individual is customarily engaged in an independently established occupation, profession or business of the same nature as involved in the service performed. The failure to withhold federal or state income taxes or unemployment compensation from an employee's wages, or to provide workers' compensation coverage for employees, shall not be used for the purposes of making a determination hereunder. The president and treasurer of a corporation or any officer or agent having management of such corporation shall be deemed the employer hereunder."

9) The Department of Labor and Training will be guided by the General Wage Decisions in accordance with Section 37-13-8 of the General Laws of Rhode Island. Said General Wage Decisions shall be effective upon filing with the Rhode Island Secretary of State's Office.

10) In order to comply with Section 37-13-13 of the General Laws of Rhode Island, a certified payroll record shall be a weekly compilation of all wages, taxes and benefits paid and/or withheld from employees.

11) Where the Director of Labor and Training has found a violation and entered as decision, the contractor and/or subcontractor shall pay all wages due, interest and penalties assessed within thirty (30) days of the date of the decision. The Director of Labor and Training shall upon application by the faulting contractor and/or subcontractor, extended the period for payment, provided a request is made within twenty (20) days of the date of decision and a written agreement or repayment is entered into by the Director of Labor and Training and the contractor and/or the subcontractor. The repayment agreement shall become void in the event the contractor and/or subcontractor fail to make payments as agreed.

12) In enforcing the provisions of Chapter 13 of Title 37, the Director of Labor and Training may order an awarding authority to withhold a percentage of the contract price from a contractor and/or subcontractor. The amount withheld shall be equal to the amount of the wage due, interest and penalties to satisfy the decision.

13) All service and maintenance contracts with the State of Rhode Island or political subdivision therefore shall comply with the provisions of Chapter 13, Title 37 where the contract price exceeds \$1,000.00 and the work includes alterations, installation, repairs or construction.

14) The Director of Labor and Training hereby adopts the position of the United State's Department of Labor that all independent contractors and/or subcontractors shall comply with the provisions of Chapter 13, Title 37.

15) Each contractor awarded a contract with a contract price in excess of one thousand dollars (\$1000.00) for public works, and each subcontractor who performs work on public works, shall keep those certified weekly payroll records required by 37-13-13 and on the forms set forth in Regulation 10 above, in a safe and secure location for a period of seven

(7) years from the date such work was performed. Any Awarding Authority that has received certified weekly payroll records from any contractor or subcontractor shall also keep the certified payroll records in a safe and secure location for this same time period. These certified weekly payroll records shall be made available to the Director of the Department of Labor and Training immediately upon his/her request directed to a contractor, subcontractor, or Awarding Authority.

16) The prevailing rate of wages and payments made to or on behalf of employees, as set forth in Chapter 37-13, for general contractors and subcontractors, shall be determined as of the date of the awarding of the contract for public works to the general contractor and shall remain effective until such time as those rates are modified pursuant to R.I.G.L. §37-13-8.

17) The Department of Labor and Training, in making its investigation and determination of prevailing wages pursuant to 37-13-8, shall not determine or address jurisdictional disputes between trade or trades.

18) All complaints filed with the Department of Labor and Training pursuant to Chapter 37-13 shall include information sufficient to establish a *prima facie* claim, and the Department may reject any complaint that does not establish such claim. This information shall include, but shall not be limited to: evidence of the actual work performed by the employee(s) involved in the complaint; the locations(s) and the exact date(s) the work in question was performed; and evidence that the correct prevailing wage was not in fact received.

19) The Director of Labor and Training hereby adopts the United States Department of Labor's method(s) of computing hourly fringe benefit credits.

20) The Apprentice Ratio applied to "Public Works" jobs in this state shall be that ratio set and adopted by the Rhode Island Apprenticeship Council.

DEFINITIONS

- A. Successor in interest is one who continues to retain the same right, control or interest in a new business, firm, or corporation which purchased or merged with a former business, firm or corporation.
- B. A Principal is a person who has a majority of the ownership of a business, firm or corporation.
- C. "prevailing wage law"
 - i "prevailing wage law means R.I.G.L. §37-13-1 et.seq.

D. “public work”

- i. “public work” means grading, clearing, demolition, improvement, completion, repair, alteration or construction on any public site;
- ii. the term “public work” does not include”
 - a. grading, clearing, demolition, improvement, completion, repair, alteration or construction on any public site for which no salary or wages or in kind payments are paid or owed;
 - b. ordinary maintenance work performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually or annually) or on a routine basis to service, check, or replace items or parts that are not broken; or work that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

E. “heavy construction”

- i. “heavy construction” means those construction projects that are not properly classified as either “building”, “highway”, or “residential”. Projects within the heavy classification are distinguished on the basis of their particular project characteristics, like complex engineering and industrial nature, and separate wage determinations;
- ii. Examples of heavy construction include, but are not limited to power plants, pipelines, mass transit lines, marine and port facilities, sewage and solid waste facilities, landfills wastewater treatment facilities, sanitary, storm and sewer facilities, water supply facilities, transmission lines, aqueducts, water treatment facilities, desalination plant facilities, dams and reservoirs and the laying of fiber optic cable;

F. “public agency”

- i. “public agency” means the State of Rhode Island, any awarding agency or authority of the State of Rhode Island, those agencies listed at R.I.G.L. §37-13-7(d), any Rhode Island city, town or village or any division of same, or any person or other entity acting on behalf of any public agency as defined herein;

G. “public works contractor”

- i. “public works contractor” means the prime contractor, and each and every subcontractor, performing public work or heavy construction on any public works project site;

H. “public works contract”

- i. “public works contract” means any contract, purchase order, or any other legal agreement, in writing, for public work or heavy construction on a public sight to be performed by a public constructor on behalf of a public agency for a fixed or determinable amount of \$1,000 or more;

- ii. payments made through contracts with third parties on behalf of a public agency shall be deemed public works contracts if public funds are utilized;

I. “construction”

- i. “construction” means construction activity, as distinguished from manufacturing, furnishing of materials or servicing and maintenance work and includes, without limitation, the construction of buildings, structures, improvements of all types and heavy construction work:
- ii. construction work includes altering, remodeling, demolishing existing structures, installation of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the public works site by the employee of the public works contractor;

J. “public works site”

- i. “public works site” means the physical place or places where the heavy construction or public work called for in the public works contract takes place or will remain;
- ii. the physical place(s) where the public work or heavy construction is to occur also means other adjacent or nearby property used by the public works contractor which can reasonably be said to be included in the public works site;
- iii. except as otherwise provided in this section, fabrication plants, mobile factories, batch plants borrow pits, job headquarters, tool yards and the like, are part of the site of the building or construction job provided they are dedicated to the performance of the public works project, and are so located in the State of Rhode Island;
- vi. physical place(s) which are not owned by a public agency but which are developed under contract and in anticipation of being owned by a public agency shall be considered a public works site.

K. “public works project”

“public works project” means public work or heavy construction work at any public works site for a public purpose for which the prevailing wage law applies.