

## **TITLE 260 – DEPARTMENT OF LABOR AND TRAINING**

### **CHAPTER 30 – WORKFORCE REGULATION AND SAFETY**

#### **SUBCHAPTER 15 – PROFESSIONAL REGULATION**

##### **PART 3 – Rules and Regulations Relating to Prevailing Wages**

### **3.1 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws Chapter 37-13.

### **3.2 Purpose**

These rules ("hereinafter, Rules" or "Regulations") are adopted for the purpose of regulating work on all public works projects.

### **3.3 Definitions**

- A. "Base hourly rate of pay" means the rate of pay identified for the trade as "Rates" on the General Wage Decisions of the Davis-Bacon Act, 40 U.S.C. § 3142 (2017).
- B. "Construction"
  - 1. "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;
  - 2. 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 or subcontractor consistent with R.I. Gen. Laws § 37-13-7(c).
- C. "Employee" means any person employed by an employer. This definition shall be interpreted consistent with the definition of "employee" under the Fair Labor Standards Act, 29 U.S.C. § 203(e), including any exemptions thereto under said Act applicable to employment in Rhode Island.

- D. "Employer" means any person acting directly or indirectly in the interest of an employer in relation to an employee. This definition shall be interpreted consistent with the definition of "employee" herein and the definition of "employer" under 29 U.S.C. § 203(d), including any exemptions thereto under said act applicable to employment in Rhode Island.
- E. "Fringe benefit" means a benefit that is granted by an employer to an employee by company policy that involves a monetary cost such as holiday pay, vacation pay, health insurance, bona fide pension plans, etc. Benefits required by law such as workers compensation, unemployment premiums and matching social security are not considered "fringe benefits" and cannot be used as a credit against the fringe benefit portion of the rate. Authorized fringe benefit credits may be deducted from prevailing wages owed pursuant to § 3.4(Q) of this Part.
- F. "Fringe benefit credit" means the amount identified as "Fringes" for the trade on the General Wage Decisions, 40 U.S.C. § 3142 (2017).
- G. "Heavy construction"
1. "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;
  2. 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.
- H. "Independent contractor" means any natural person, business, corporation or entity of any kind that provides goods or services to another and that does not qualify as an "employee" as provided for herein.
- I. "Prevailing wage" means the Base Hourly Rate of Pay plus the Fringe Benefit Credit which are listed on the General Wage Decisions, 40 U.S.C. § 3142 (2017), developed by the U.S. Department of Labor and adopted by the Rhode Island Department of Labor and Training.
- J. "Prevailing wage law" means R.I. Gen. Laws § 37-13-1, *et seq.*
- K. "Principal" is a person who has a majority of the ownership of a business, firm or corporation.

- L. "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. Gen. Laws § 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.
- M. "Public work"
1. "Public work" means grading, clearing, demolition, improvement, completion, repair, alteration or construction on any public site;
  2. "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.
- N. "Public works contract" means any contract, purchase order, or any other legal agreement, in writing, for any public work or heavy construction on a public site to be performed by a public contractor on behalf of a public agency for a fixed or determinable amount of One Thousand Dollars or more (\$1,000), where public funds are utilized.
1. "public works contract" does not include general maintenance and service contracts where the contractor performs comprehensive, wrap-around, general maintenance and services to public entities, including, but not limited to: janitorial services, the maintenance, servicing and limited replacement of air conditioning, electrical, heating, plumbing, refrigeration and ventilation systems and the limited replacement of structural and cosmetic materials within facilities when the size, type or extent of such facilities is not changed.
    - a. "Limited Replacement" means the replacement of electrical, mechanical or plumbing equipment and/or devices, or the demolition, removal and replacement and/or application of structural and cosmetic materials, including, but not limited to, drywall, ceiling tiles, paint, carpeting, flooring tiles and vinyl flooring, when the work is performed on an emergency basis to address immediate needs to return the facility to a safe and suitable operating condition.

- b. "Servicing" means the routine work necessary to keep electrical, mechanical and plumbing systems operational, including, but not limited to: replacing filters, belts, hoses, gaskets and other parts required for the equipment to operate as intended.
- O. "Public works contractor" means the prime contractor, and each and every subcontractor, performing public work or heavy construction on any public works project site.
- P. "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.
- Q. "Public works site"
  - 1. "Public works site" means the physical place or places, but not a privately owned residence where the heavy construction or public work called for in the public works contract takes place or will remain and is owned or will be owned by the public agency;
  - 2. 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 or subcontractor which can reasonably be said to be included in the public works site;
  - 3. 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.
- R. "Residential construction" means projects consisting of single family homes and apartments up to and including four (4) stories.
- S. "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.

### **3.4 Rules and Regulations**

- A. Any contractor who has been awarded a contract for a public works project in excess of One Thousand Dollars (\$1,000), or any subcontractor performing work on said project, shall be liable for the payment of the applicable Prevailing Wage amount listed in the General Wage Decisions of the Davis-Bacon Act, 40 U.S.C. § 3142 (2017), 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. The Fringe Benefit Credit amount listed

in the applicable General Wage Decisions 40 U.S.C. § 3142 (2017), always be paid in full as either a bona fide Fringe Benefit Credit or cash equivalent or both.

- B. Any contractor who has been awarded a contract for a public works project in excess of One Thousand Dollars (\$1,000), shall be liable for the payment of prevailing wages regardless of whether or not a subcontractor may be the primary obligor. The contractor shall ensure that a subcontractor pays the prevailing wage to its employees and otherwise complies with the provisions of R.I. Gen. Laws § 37-13-1, *et seq.*
- C. Pursuant to R.I. Gen. Laws § 37-13-4, all public works projects shall be done by contract. Before awarding a contract for a public works project, an awarding authority shall first determine from the Department of Labor and Training's website, Debarment List, whether the proposed contractor has been debarred under R.I. Gen. Laws § 37-13-14.1 and shall then disqualify all such debarred contractors. In addition, the awarding authority shall notify all bidders that the Prevailing Wage is required as a condition of the contract.
- D. All alleged violations of noncompliance with R.I. Gen. Laws Chapter 37-13 shall be made in writing, and on forms issued by the Department of Labor and Training. The written complaints must be filed with the Department of Labor and Training on the Department's written complaint form within twenty-four (24) months of the completion of the project.
- E. For apprentices registered pursuant to R.I. Gen. Laws § 28-45-1, *et seq.*, a percentage of the Base Hourly Rate of Pay must be taken in accordance with the scale listed in the apprentice's apprenticeship agreement. If the employee is not registered as an apprentice pursuant to R.I. Gen. Laws § 28-45-1, *et seq.*, then the employee must be paid the full Prevailing Wage according to the General Wage Decisions 40 U.S.C. § 3142 (2017) for the classification of the work actually performed. Moreover, all general contractors and subcontractors who perform work on any public works contract awarded by the state and valued at One Million Dollars (\$1,000,000) or more shall employ apprentices required for the performance of the awarded contract. The number of apprentices shall comply with the apprentice to journeyperson ratio for each trade approved by the Department of Labor and Training. State awarding authorities may determine from the Department of Labor and Training's website, whether all contractors and subcontractors have a registered apprenticeship program. Apprentices found to be working outside of the applicable journeyperson to apprentice job site ratios shall be paid at the full applicable journeyperson Prevailing Wage.
- F. Any proceeding to debar a contractor from bidding on a public works project under the provisions of R.I. Gen. Laws § 37-13-14.1, 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 the prevailing wage requirements.

- G. The Department of Labor and Training will be guided by the General Wage Decisions 40 U.S.C. § 3142 (2017), in accordance with R.I. Gen. Laws § 37-13-8.
- H. In order to comply with R.I. Gen. Laws § 37-13-13, contractors and subcontractors shall execute a fully completed RI Certified Weekly Payroll Form, provided by the agency, for each week of work performed on the project and shall furnish the fully executed RI Certified Weekly Payroll Form to the awarding authority on a monthly basis for all work completed in the preceding month. However, federal forms may be submitted to the Rhode Island Department of Transportation. If the Department of Labor and Training investigates any contractor awarded a contract from the Rhode Island Department of Transportation, the contractor shall furnish the Department of Labor and Training a fully executed certified payroll on the RI Certified Weekly Payroll Form provided by the agency, within ten (10) days of request. All awarding authorities shall furnish the Department of Labor and Training any requested certified payroll within ten days of request. The Department of Labor and Training may impose a penalty of up to Five Hundred Dollars (\$500) for each calendar day of noncompliance with this section.
- I. In compliance with R.I. Gen. Laws § 37-13-13, when the general or primary contract is One Million Dollars (\$1,000,000) or more, each contractor or subcontractor shall maintain on the work site a fully executed RI Certified Prevailing Wage Daily Log, listing the contractor's employees employed each day on the public works site; the RI Certified Prevailing Wage Daily Log shall be available for inspection on the public works site at all times; this rule shall not apply to road, highway, or bridge public works projects. Where applicable, contractors must furnish both the Rhode Island Certified Prevailing Wage Daily Log, together with the Rhode Island Weekly Certified Payroll, to the appropriate awarding authority. The Department of Labor and Training may impose a penalty of up to Five Hundred Dollars (\$500) for each calendar day of noncompliance with this section; mere errors or omissions in the RI Certified Prevailing Wage Daily Log shall not be grounds for imposing a penalty under this section.
- J. The Director of Labor and Training may enter into consent agreements with contractors and/or subcontractors to resolve all issues under R.I. Gen. Laws § 37-13-1, *et seq.*
- K. In enforcing the provisions of R.I. Gen. Laws § 37-13-1, *et seq.*, when any contractor or subcontractor fails to comply with R.I. Gen. Laws § 37-13-13(a) and (b), the Director of Labor and Training may order an awarding authority to

withhold all future payments until such time as the contractor or subcontractor has fully complied. The amount withheld from any subcontractor shall be proportionate to the amount attributed or due the offending subcontractor as determined by the awarding authority.

- L. All service and maintenance contracts with the State of Rhode Island or political subdivision therefore shall comply with the provisions of R.I. Gen. Laws Chapter 37-13, where the contract price exceeds One Thousand Dollars (\$1,000) and the work includes alterations, installation, repairs or construction. See § 3.3 of this Part for exceptions.
- M. Each contractor awarded a contract with a contract price in excess of One Thousand Dollars (\$1000) for public works, each subcontractor who performs work on public works and each awarding authority awarding any such contract, shall keep those certified weekly payroll records required by R.I. Gen. Laws § 37-13-13 and on the forms set forth in § 3.4(H) of this Part, in a safe and secure location for a period of five (5) years from the date such work was performed. Certified weekly payroll records shall be made available to the Director of the Department of Labor and Training within ten (10) days of request to any contractor, subcontractor, or awarding authority.
- N. The prevailing rate of wages and payments made to or on behalf of employees, as set forth in R.I. Gen. Laws 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. Gen. Laws § 37-13-8.
- O. The Department of Labor and Training, in making its investigation and determination of prevailing wages pursuant to R.I. Gen. Laws § 37-13-8, shall not determine or address jurisdictional disputes between trade or trades.
- P. All alleged violations of non-compliance with R.I. Gen. Laws Chapter 37-13, filed with the Department of Labor and Training 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; verification of the funding source; and evidence that the correct prevailing wage was not in fact received.
- Q. The Director of Labor and Training hereby adopts the United States Department of Labor's definition of bona fide fringe benefit credits. These benefits may include medical or hospital coverage, life insurance, disability insurance (not workers' compensation), pension, 401k, apprentice costs (books, tuition) or

holiday, sick, vacation/personal time. State mandated unemployment insurance, travel, gas reimbursement, company vehicle, uniforms and discretionary bonuses are not bona-fide fringe benefits. In addition, in order for the plan to be acceptable, the following stipulations must be met:

1. Contributions must be irrevocable and for the employee's benefit;
2. Contributions must be made regularly and at least on a quarterly basis;
3. Contributions must not be required by law (i.e.: taxes, workers' compensation, social security, etc.);
4. Contributions made for fringe benefit plans for prevailing wage work may not be used to fund the plan for periods of non-prevailing wage work;
5. The amount of contributions for fringe benefits must be paid irrevocably to a trustee or third party

- R. If the fringe benefits are anticipated to be paid from general assets of the contractor (ex. holidays, sick and vacation days, profit sharing, etc.), the contractor must set aside, in an escrow account the amount of money the contractor plans to claim as a fringe benefit credit for the prevailing wage project. In the event that an employee leaves the company before the end of the calendar year and prior to the completion of the project, any remaining escrowed funds must be paid to the employee. The allowable hourly credit must be determined separately and documented for each employee since the credit is based on figures that will usually vary for each individual, depending on their benefit contribution amount, type of benefits, hours worked, etc. In addition, only the employer's contribution toward a benefit may be used to calculate the allowable hourly credit.
- S. Owners, supervisors, or foremen performing manual work on the public works site must be documented as employees on the contractor's RI Certified Weekly Payroll Form, which must show payment of the applicable prevailing wage rate.
- T. Pursuant to R.I. Gen. Laws § 37-13-10, overtime shall be calculated on the Base Hourly Rate of Pay listed in the General Wage Decisions (Davis-Bacon Wage Determinations) and not the Fringe Benefit Credit amount. The full Fringe Benefit Credit amount listed in the General Wage 40 U.S.C. § 3142 (2017), must be added to the adjusted Base Hourly Rate of Pay.
- U. Pursuant to R.I. Gen. Laws §§ 37-13-2 and 37-13-3.1, all general contractors and subcontractors who bid and/or perform work on state public works projects valued at One Million Dollars (\$1,000,000) or more shall employ apprentices and shall be subject to the following provisions:

1. Bidding

- a. Pursuant to R.I. Gen. Laws § 37-13-2, any person, firm, or corporation bidding on a state public works contract (“general contractor”) valued at One Million Dollars (\$1,000,000) or more shall certify their ability to perform the contract by meeting the apprenticeship requirements set forth in R.I. Gen. Laws § 37-13-3.1.
- b. If the general contractor employs apprentices, then the apprentices must be subject to an apprenticeship agreement as defined by R.I. Gen. Laws § 28-45-10 in order for the general contractor to qualify for payment of the applicable apprentice wage rate set forth on the wage schedule pursuant to § 3.4(E) of this Part.
- c. Prior to bidding on a state public works contract valued at One Million Dollars (\$1,000,000) or more, the general contractor shall certify compliance with apprenticeship requirements by fully executing a General Contractor Apprenticeship Certification Form. The general contractor shall meet one of the qualifications identified on said form. The general contractor shall attach said form to his/her application to bid and submit to the awarding authority.
- d. No contract award for a state public works contract valued at One Million Dollars (\$1,000,000) or more shall be made to any general contractor who fails to submit a fully executed and truthful General Contractor Apprenticeship Certification Form.

2. Awarding

- a. Pursuant to R.I. Gen. Laws § 37-13-3.1, all general contractors who perform work on any public works contract awarded by the state and valued at One Million Dollars (\$ 1,000,000) or more shall certify their ability to perform the contract by meeting the apprenticeship requirements set forth in R.I. Gen. Laws § 37-13-3.1.
- b. If the general contractor employs apprentices, then the apprentices must be subject to an apprenticeship agreement as defined by R.I. Gen. Laws § 28-45-10 in order for the general contractor to qualify for payment of the applicable apprentice wage rate set forth on the wage schedule pursuant to § 3.4(E) of this Part.
- c. Prior to the award of a state public works contract valued at One Million Dollars (\$1,000,000) or more, the general contractor who will perform the work shall re-certify compliance with apprenticeship

requirements by fully executing a General Contractor Apprenticeship Re-Certification and Certification Form. The general contractor shall meet one of the qualifications identified in Part A of General Contractor Apprenticeship Re-Certification and Certification Form.

- d. The general contractor who will perform work on the state public works project only through the use of subcontractors shall certify compliance with the apprenticeship requirements by completing the “non-performance” qualification of Part A of General Contractor Apprenticeship Re-Certification and Certification Form. Whether the general contractor or its subcontractors are performing work on the project, the general contractor shall certify that the subcontractors performing work on the project are in compliance with the apprenticeship requirements set forth in R.I. Gen. Laws § 37-13-3.1 by completing Part B of General Contractor Apprenticeship Re-Certification and Certification Form. General contractors shall submit said form to the awarding authority.
- e. No contract award shall be made to any general contractor who fails to submit a fully executed and truthful General Contractor Apprenticeship Re-Certification and Certification Form.

### 3. Awarding and Subcontractors

- a. Pursuant to R.I. Gen. Laws § 37-13-3.1, any subcontractor who performs work on any public works contract awarded by the state and valued at One Million Dollars (\$ 1,000,000) or more shall certify its ability to perform the contract by meeting the apprenticeship requirements set forth in R.I. Gen. Laws § 37-13-3.1.
- b. If subcontractors employ apprentices, then the apprentices must be subject to an apprenticeship agreement as defined by R.I. Gen. Laws § 28-45-10 in order for subcontractors to qualify for payment of the applicable apprentice wage rate set forth on the wage schedule pursuant to § 3.4(E) of this Part.
- c. Prior to the award of a state public works contract valued at One Million Dollars (\$1,000,000) or more, all subcontractors who will perform work on the project shall certify compliance with the apprenticeship requirements by fully executing a Subcontractor Apprenticeship Certification Form. The subcontractor shall meet one of the qualifications identified in Part A of the Subcontractor Apprenticeship Certification Form.

- d. The subcontractor who will perform work on the state public works project only through the use of subcontractors shall certify compliance with the apprenticeship requirements by completing the “nonperformance” qualification of Part A of the Subcontractor Apprenticeship Certification Form. Whether the subcontractor or its subcontractors are performing work on the project, the subcontractor shall certify that the subcontractors performing work on the project are in compliance with the apprenticeship requirements set forth in R.I. Gen. Laws § 37-13-3.1 by completing Part B of the Subcontractor Apprenticeship Certification Form. Subcontractors shall submit said form to the general contractor and/or hiring subcontractor for submission to the awarding authority.
- e. For state public works contracts valued at One Million Dollars (\$1,000,000) or more, no general contractor and/or subcontractor shall hire any subcontractor who fails to submit a fully executed and truthful Subcontractor Apprenticeship Certification Form.
- f. For subcontractors hired after contract award of a state public works contract valued at One Million Dollars (\$1,000,000) or more, said subcontractors shall submit said apprenticeship certification form to the general contractor and/or hiring subcontractor prior to or at the time of hiring.

4. Cancellation of Award; Penalties and Enforcement Proceedings

- a. Pursuant to R.I. Gen. Laws § 37-13-16, an awarding authority may cancel an award if apprentice wages are paid to apprentices who are not subject to an apprenticeship agreement as defined by R.I. Gen. Laws § 28-45-10.
- b. Pursuant to R.I. Gen. Laws § 37-13-12.4, general contractors and subcontractors determined to be in violation of these regulations shall be subject to fines and penalties.
- c. Pursuant to R.I. Gen. Laws §§ 37-13-14.1(a) and (d) and (f), general contractors and subcontractors determined to be in violation of these regulations shall be subject to enforcement proceedings.

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**CHAPTER 30 - WORKFORCE REGULATION AND SAFETY**

**SUBCHAPTER 15 - PROFESSIONAL REGULATION**

**PART 3 - RULES AND REGULATIONS RELATING TO PREVAILING WAGES (260-RICR-30-15-3)**

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**Department of State**

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