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CONTRACTS FOR STATE PROJECTS SUBJECT TO ACT 166**D1.00**

Purpose

To establish uniform criteria for determining whether a contract for a “state project is subject to the provisions of the Michigan Prevailing Wage Law.

Responsibility

The investigator is responsible for reviewing all complaints to determine whether the contract is subject to the provisions of the Act.

Policy

1. Except as provided in policy 2, a contract for a state project shall be subject to state prevailing rate requirements if the contract;
 - a. is executed between a contracting agent and a successful bidder as contractor, and
 - b. is entered into pursuant to advertisement and invitation to bid, and
 - c. involves the employment of construction mechanics, and
 - d. is sponsored or financed in whole or in part by the State of Michigan. (Sec. 2) and,
 - e. includes an express term and/or other evidence exists in the bid specifications that the Michigan prevailing rates of wages and fringe benefits be paid each class of mechanics by the contractor and all subcontractors and (Sec. 2)
 - f. a prevailing rate schedule issued by the department is a part of the contract.
2. Contracts on state projects which require the payment of prevailing wages pursuant to the federal Davis-Bacon Act or related acts (see appendix B of 29 CFR Part I) or contracts that contain wage or fringe benefits rates that are equal or greater than the prevailing rate are not subject to the Act. (Sec. 2)
3. Cities, counties, townships or economic development corporations are not contracting agents, and are not subject to the Prevailing Wage Act, even if state prevailing rates are incorporated in contracts.

CONTRACTS FOR STATE PROJECTS SUBJECT TO ACT 166**D1.00**

Application 1 - on Coverage

Michigan's prevailing wage law covers state, public school (including community colleges) and state university projects, paid for by state funds or state backed bonds.

It does not cover construction projects:

- initiated by cities, townships, counties or
- initiated by economic development corporations or
- initiated by other entities not defined in the Act as "contracting agent."

Political subdivisions or governmental units that are not "contracting agent(s)" may have their own prevailing wage requirements, but those requirements are not subject to Act 166.

Application 2 - State University and State Government Agencies

All state universities and state government agencies are considered Contracting Agents. Western Michigan University Board of Control and Associated Builders & Contractors v. State of Michigan (refer to appendix C for Michigan Supreme Court decision).

Application 3 - on Advertisement or Invitation to Bid, Competitive Bidding

The revised school code, MCL 380.1267 MSA 15.41267, requires competitive bidding by all public school districts or a public school academy (except for emergency repairs, or repairs done by school district employees) for projects over the annual amount established by the Michigan Department of Education. This amount is adjusted yearly to reflect increases in the consumer price index (see appendix G).

Application 4 - on Advertisement or Invitation to Bid

A state university has entered into a \$75,000 contract with a contractor for alteration of a facility without an advertisement or invitation to bid. This contract would not be within the jurisdiction of the act because the university failed to advertise or invite contractors to bid on the project.

Application 5 – on Advertisement or Invitation to Bid

A state university has entered into a \$75,000 contract with a contractor for alteration of a facility. The university sent a letter inviting one or more contractors to bid on the project. This contract would be within the jurisdiction of the act because the university invited contractors to bid on the project.

CONTRACTORS AND SUBCONTRACTORS SUBJECT TO ACT 166**D1.01**

Purpose

To establish uniform criteria for determining whether a "contractor or subcontractor" is subject to the provisions of the Michigan Prevailing Wage Law, Act 166, of 1965.

Responsibility

Investigators are responsible for reviewing all complaints to determine if the contractor is subject to the Act.

Policy

1. A contractor awarded a contract to perform work on a covered state project is subject to the Act.
2. A subcontractor who contracts for work under a contract subject to Act 166 is also subject to the Act.
3. Each contractor or subcontractor is separately liable for the payment of the prevailing rate to its workers on a covered project.
4. The prime contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work.

CONSTRUCTION MECHANICS PROTECTED BY THE ACT**D1.02****Purpose**

To establish uniform criteria for determining whether construction mechanics are protected by the provisions of the Michigan Prevailing Wage Law, Act 166, P.A. 1965.

Responsibility

The investigator is responsible for reviewing all complaints to determine if a construction mechanic is subject to the Act.

Policy

1. A "construction mechanic" employed by a contractor to perform work as described in the contract specification is covered by the Act.
2. An employer/employee relationship must exist for the Act to apply to a construction mechanic.
3. Civil service employees subject to the jurisdiction of the State Civil Service Commission are not covered by the Act.

Application for construction mechanics**EXAMPLE 1:**

A driver employed by a project contractor or project subcontractor to haul materials to and from locations **on the project site** is covered for all time worked on the project.

S&L Road Building Co. leased or invoiced D&H Trucking Co. to haul dirt from point A and deliver it to point B on the project site. D&H became a project subcontractor at the time it was allowed to perform work on the project site. The truck driver(s) employed by D&H must be paid the prevailing wage rate for all time worked that is related to the project.

EXAMPLE 2:

A driver employed by a project contractor or project subcontractor to haul materials (such as sand, gravel, asphalt) to and from a **location off site** is covered for all project time worked. This includes time spent driving to and loading at the off-site location and driving to, unloading and driving from the project site.

- A. XYZ Asphalt Co. is contracted by a contracting agent to build a road. XYZ has truck drivers that pick up sand at Anybody Gravel Pit Inc., and deliver it to the project site. XYZ is a project contractor and therefore the truck driver must be paid the prevailing wage rate for all time worked that is related to the project.
- B. XYZ Asphalt Co. is contracted by a contracting agent to build a road. XYZ does not have truck drivers. XYZ issues a purchase order to Lost My Wheels Trucking Co. to pick up sand at Anybody Gravel Pit Inc. and deliver it to the project site. Lost My Wheels Trucking Co. is not a supplier because they do not provide the sand; they provide just the transportation of the sand. Lost My Wheels Trucking Co. is now a project subcontractor because they were allowed to perform work on the project site. The truck drivers for Lost My Wheels Trucking Co. must be paid the prevailing wage rate for all time worked that is related to the project.

CONSTRUCTION MECHANICS PROTECTED BY THE ACT**D1.02**

- C. Road Building contractor RU Working issues a purchase order to TBC Brokerage Company for delivery of gravel from Deep Holes Gravel Pit. RU Working agrees to pay TBC Brokerage \$75.00 per load of gravel. TBC Brokerage has no trucks but contracts Smith Trucking to provide 2 trucks; and J & J Hauling who owns one truck to deliver sand and gravel to the project. Both trucking companies are paid \$60.00 per load by TBC Brokerage Company.

RU Working is the contractor hired by the contracting agent. Therefore, employees of RU Working who work on the project site must be paid the prevailing wage rate for all time worked that is related to the project.

TBC Brokerage is providing the service of securing trucking businesses to deliver materials on behalf of RU Working to the project site. Since TBC Brokerage does not and will not have employees on the project site, they are not required to pay prevailing wage rates.

Smith Trucking and J & J Hauling are not suppliers because they do not provide the materials, they just provide the transportation. They are now project subcontractors because they were allowed to perform work on the project site. The truck drivers for Smith Trucking and J & J Hauling must be paid the prevailing wage rate for all time worked that is related to the project.

NOTE: The prime contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work. (Policy 4, Section D1.01)

EXAMPLE 3:

A driver employed by a material supplier, not employed by a project contractor, to deliver materials to a project site and who performs no other work on the project is not covered.

Orange Barrel Co. is in the business of supplying traffic control devices. Orange Barrel Co. provides traffic control devices to XYZ Asphalt, the project contractor, through a purchase order. Orange Barrel Co. will deliver and pickup the devices at the project site. Orange Barrel Co. will not place the devices into service. The prevailing wage rate does not apply to truck drivers because Orange Barrel Co. is just a supplier of the devices.

If Orange Barrel Co. places the devices into service on the project site, they become a project subcontractor. The construction mechanics employed by Orange Barrel Co. must be paid the prevailing wage rate at the appropriate classification for all time worked that is related to the project (i.e., truck drivers, laborers).

EXAMPLE 4:

Construction mechanics employed by a contractor or subcontractor to remove debris or clean the interior or exterior of a building in conjunction with construction, installation, remodeling, etc., of a covered state project prior to occupancy by personnel are covered by the prevailing rate requirements.

Workers, not employed by the contractor or subcontractor, that perform cleaning or other custodial services on a regular basis not related to construction, installation, etc., are not covered by the prevailing wage rate requirements.

CONSTRUCTION MECHANICS PROTECTED BY THE ACT**D1.02**

EXAMPLE 5:

A construction mechanic, employed by the contractor engaged on the project, assembles ductwork at the contractor's shop for installation at the project. The same construction mechanic loads, transports, unloads and installs the ductwork on the project. This construction mechanic is covered for all time worked in this example.

EXAMPLE 6:

A worker, employed by the contractor engaged on the project, assembles electrical panels offsite for installation at the project work site. The worker performs no work on the project work site. The time spent assembling the electrical panels is not covered by the Act.

EXAMPLE 7:

A supervisor/foreman who performs no construction mechanic work on the project is not covered by the Act.

A supervisor/foreman, who works on the project will be considered a construction mechanic if 40% or more of their duties, while working on the project, are as a construction mechanic. The mechanic will be compensated at least the journeyman rate for the classification involved for all project hours worked.

EXAMPLE 8:

- A. A complaint is received against George Johnson Wiring, Inc. for not paying prevailing wage rates to George Johnson. The contractor states Mr. Johnson is not covered because he is president of his corporation. Mr. Johnson performs skilled labor on the project site, is employed by a corporation, and therefore must be paid the prevailing wage rate.
- B. A complaint is received against Bill's Carpentry for not paying prevailing wage rates. Bill's Carpentry responds that all mechanics who worked on the site were independent contractors. The investigation will include examining the work circumstances to determine if there was an employer/employee relationship; if so, the prevailing wage rate must be paid.