

PROPOSED
PREVAILING WAGE FILING AND WAGE RATE DETERMINATION
REQUIREMENTS BY CONTRACT TYPE

The Prevailing Wages on Public Works Act (chapter 39.12 RCW), identifies two types of contracts: (1) “public building service maintenance (janitorial) contracts,” and (2) all other contracts for work subject to prevailing wage requirements. This document addresses the determination of the prevailing wage effective date and filing requirements for these contracts and how the requirements apply to various subsets of public work contracts.

Public Building Service Maintenance (Janitorial) Contracts

“Public building service maintenance contracts” means janitorial service contracts pursuant to WAC 296-127-023, and covers only work performed by janitors, waxers, shampooers, and window cleaners.

- For these contracts, the prevailing wage rates which are in effect on the date when the bids are required to be submitted to the contract awarding public agency are the minimum wage rates which must be paid for the first year of such contracts. Building service maintenance contracts of more than one year in duration, however, must include wage increase language recognizing the potential for future variance in applicable prevailing wages and specifying that the wages which a contractor shall pay its employees must be adjusted annually to recognize and follow the most recently promulgated increases in prevailing wages each year after the first year of the contract.
- Contractors hired to perform work under an annual or multi-year public building service maintenance contract must file annually, opening the contract year with a Statement of Intent to Pay Prevailing Wages (Intent) and closing the contract year with an Affidavit of Wages Paid (Affidavit).

Public Work Construction (Non-Janitorial Contracts)

The typical public works construction type contract has a fixed scope, such as the construction of a building, the remodeling of a classroom, the paving of a specific stretch of road, the replacement of an HVAC system, etc.

- With limited exception as provided in WAC 296-127-011(3)(b) and WAC 296-127-011(4), the prevailing wage rates for such contracts are the rates that are in effect on the date when the prime contractor’s bid is due for submission to the contract awarding agency. These rates remain in effect for the duration of the contract.
- For this type of contract which may extend over more than one year, each and every contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work contemplated by the contract, files an Intent at the beginning of the contract and an Affidavit upon completion of the project.

Job Order Contracts (JOC)

The legislature has permitted some limited use of Job Order Contracting. For this type of contract, the contractor agrees to a fixed period of performance, for an indefinite quantity, and the contract provides for the use of negotiated, definitive work orders as defined in RCW 39.10.210(7). See chapter 39.10 RCW. Pursuant to the provisions in chapter 39.10 RCW:

- Only public bodies authorized by chapter 39.10 RCW may use job order contracting procedures.
- Each work order issued under chapter 39.10 RCW is a new, separate contract. See RCW 39.10.450(6).
- The prevailing rates of wage in effect on the award date for the individual work order will apply to all work performed under that specific work order. Each job order constitutes a separate contract and requires an Intent and Affidavit, specific to that job order, from each and every contractor and subcontractor performing work under that job order.
- In instances when the prime contractor subcontracts all work and does not self-perform any job order, the prime contractor may file an annual set of Intents and Affidavits, opening each contract year with an Intent and closing each contract year with an Affidavit.

Practice Note: Indicate in the notes section of the form that it is an annual filing by the prime contractor for a job order contract.

- Under circumstances when the prime contractor subcontracts all work, the subcontractors follow their normal JOC procedure and file an Intent and Affidavit for each individual job order, using the date of the job order for identifying the effective date for prevailing wage rates.

Practice Note: Electronic online filing requires a work-around for JOC. When filing an Intent under these circumstances, the subcontractor should indicate its status as “prime” (not a subcontractor) on the form. This allows entry of the correct contract bid/award dates, job address, start date, and contract details.

Indicate in the form notes section that this is a JOC filing on an individual job order.

“Hybrid”/Recurring Maintenance and Repair Contracts

Public awarding agencies increasingly have been entering into contracts that do not fit squarely within either type of contract contemplated by prevailing wage law. Rather, these “hybrid” contracts, which closely resemble JOC contracts, are of an indefinite quantity, and pertain to facility maintenance and repair. Under these contracts, the agency directs the contractor to accomplish tasks or mini-projects within a general scope of the contract and payment is based on unit/lump sum prices, time and materials, or a negotiated price for each task or mini-project. The contracts are generally on an annual basis, with optional renewals, although some agencies have multi-year contracts of this nature. Because they do not neatly fit into the contract classifications referenced above, applying prevailing wage requirements to these contracts poses a number of challenges for the prevailing wage program. In order for the program to satisfy its compliance responsibilities it must have specific information about where prevailing wage work is being performed, when it is being performed, who is performing the work, and what specific trade classifications apply to the work.

Strict application of the prevailing wage statute to these contracts requires contractors to file an Intent at the beginning of the contract, and an Affidavit upon completion of each “call-out” or project. However, in an effort to accommodate awarding agency interests in streamlining their contracts to promote efficiency and cost savings, alternative “hybrid” filing provisions and dates for wage rate determination may be used for such multiple-project contracts provided the following criteria are met:

- 1) The contract must be for maintenance/repair work that is not part of a prevailing works construction contract;
- 2) The work to be performed under the contract must be a recurring, specific type or scope of work, i.e., “graffiti removal,” perhaps with other types or scopes of incidental work included; and
- 3) The work must be performed at a specific, identifiable location or set of locations, i.e., “ABC University XYZ Campus graffiti removal” is okay, but “ABC University Campuses graffiti removal” is not okay.

If these criteria are met, the contract qualifies for “hybrid” filing provisions and wage rate determination dates as follows:

- The prevailing wage rates which are in effect on the date when the bids are required to be submitted to the contract awarding public agency are the minimum wage rates which must be paid for the first year of such contracts. Contracts of more than one year in duration, however, must include wage increase language recognizing the potential for future variance in applicable prevailing wages and specifying that the wages which a contractor shall pay its employees must be altered annually to recognize and follow the most recently promulgated increases in prevailing wages every year after the first year of the contract.
- Prime contractors hired to perform work under an annual or multi-year public contract must file annually, opening the contract year with an Intent and closing the contract year with an Affidavit.
- For any work that a subcontractor performs under the contract, the subcontractor must file an Intent and Affidavit for each work authorization and subcontract. The subcontractor will use the prime contractor’s bid due date in filing the Intent and Affidavit forms and in determining the applicable wage rate.

Intents and Affidavits for annual maintenance/repair contracts that meet the “hybrid” criteria noted above will be routinely approved. However, to ensure the criteria are met, forms processors may need to make further inquiry. In those instances, you will receive a phone call or correction notice requesting more information. Your cooperation in responding promptly and completely to such inquires will help us complete our review of your project forms in a timely manner.

Other “On-Call” or Maintenance and Repair Contracts

For any other type of general “on-call” maintenance and repair contract that does not meet the criteria identified above for “hybrid” or “job order contracting” treatment, each instance of performance or “call-out” is regarded as a separate project. For those types of contracts:

- The prevailing rates of wage in effect on the award date for each “call-out” must be used.
- An Intent must be filed at the beginning of the contract period and Affidavit must be filed following completion of each individual project or “call-out.”

If you anticipate a contract that varies in any way from the annual and multi-year maintenance/repair “hybrid” or JOC type contract described above and you plan to include multiple projects or “call outs” under one contract, please check with the prevailing wage program about your specific situation to determine the applicable wage rate and filing requirements: pw1@Lni.wa.gov, (360) 902-5335.