

November 6, 2009



CHANGES TO THE PREVAILING WAGE ACT

Several changes to the Prevailing Wage Act (820 ILCS 130/1, et seq.) were enacted this year. Public Act 96-0437 imposes additional notification to contractors and subcontractors for public works projects of public bodies of Prevailing Wage Act requirements, including requiring a written notice of said requirements either on the purchase order or by separate document. This public act takes effect January 1, 2010, and amends portions of 820 ILCS 130/4.

Public Act 96-0437 also adds a requirement that when a public body or other entity covered by this Act has awarded work to a contractor without a public bid, contract or project specification, such public body or other entity shall provide the contractor with the required written notice of Prevailing Wage Act wage payment requirements for the project on the purchase order related to the work to be done or on a separate document. Included with this alert is a sample notice.

Public Act 96-0437 also provides that where a complaint is made and the Department of Labor determines that a violation occurred, the Department of Labor shall determine if proper written notice under this Section 4 was given. If proper written notice was not provided to the contractor by the public body or other entity, or to a subcontractor by

the contractor, public body or other entity, the Department of Labor shall order the public body, contractor or other entity to pay any interest, penalties or fines that would have been owed by the contractor or subcontractor if proper written notice were provided. The failure by a public body, contractor or other entity to provide written notice does not relieve the contractor or subcontractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under the Prevailing Wage Act. Back wages under this provision are limited to the difference between the actual amount paid and the prevailing rate of wages required to be paid for the project. The failure of a public body, contractor or other entity to provide the required written notice does not diminish the right of a laborer, worker, or mechanic to the prevailing rate of wages as determined under the Prevailing Wage Act.

Public Act 96-0437 also provides an alternative method for the required posting of a written notice indicating the prevailing wage rates for the public works project by the contractor or construction manager to whom a contract for public works is awarded to post at a location on the project site. In lieu of posting on the project site, a contractor which has a business location where laborers, workers, and

mechanics regularly visit may: (1) post in a conspicuous location at that business the current prevailing wage rates for each county in which the contractor is performing work; or (2) provide such laborer, worker, or mechanic engaged on the public works project a written notice indicating the prevailing wage rates for the public works project.

P.A. 96-0186 adds demolition projects to the definition of a public works project. This act is effective January 1, 2010.

P.A. 96-0058 expands the definition of public works projects to include all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions. This act is effective January 1, 2010.

[OWNER NAME (UNIT OF LOCAL GOVERNMENT)]
PREVAILING WAGE ACT
CONTRACTOR/SUBCONTRACTOR REQUIREMENTS
(to be attached to Purchase Order)

Contractor: _____ Date: _____
Contractor Representative Signature: _____
Name Printed: _____
Owner Representative Signature: _____
Name Printed: _____

Any public works project (including demolition projects) must adhere to all elements of the Prevailing Wage Act (820 ILCS 130/1-12). Not less than the most recent prevailing wage rate (as determined by the Illinois Department of Labor) must be paid to all laborers, workers, and mechanics performing work under the project.

Adherence to all requirements of the State of Illinois must be followed and Contractor must be familiar with same in order to perform the public works project required.

A. All laborers, workers and mechanics performing work under the contract must be paid no less than the prevailing rates of wages in the county in which the project is located. The contractor must include the same requirements in its project specifications and contracts for any subcontractors, which, in turn, must write the same requirements into their project specifications and contract for lower tiered subcontractors or suppliers. If the contractor awards work to a subcontractor without a contract or contract specification, the contractor shall provide the subcontractor with a written statement indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on this project.

B. The contractor and each subcontractor must make and keep, for a period of not less than three years, records of all laborers, mechanics and other workers employed by them on the project. The records must include each worker's name, address and telephone number when available, social security number, classification or classifications, the hourly wages

paid in each pay period, the number of hours worked each day, and the starting and ending times of each work day. Upon seven business days notice the contractor and each subcontractor shall make available for inspection these records to the Owner.

The contractor and each subcontractor must submit monthly a certified payroll to the public body in charge of the project. The certified payroll must consist of a complete copy of the required records, listed above, except the starting and ending times of each work day. The certified payroll must also be accompanied by a statement signed by the contractor or subcontractor representing that: (i) such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by the Wage Act; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

C. The most recent Prevailing Wage Rate Determination for _____ County is attached to and incorporated in the Contract Documents. Revisions of the following Prevailing Wage Rates are made periodically by the Illinois Department of Labor. These rates may be accessed by computer at <http://www.state.il.us/agency/idol/rates/rates.htm>. As required by the Prevailing Wage Act any and all such revisions supersede the Owner's June determination. Bidders and contractors performing work on this project are responsible for determining the applicable prevailing wage rates at the time of bid submission and performance of the Work. Failure of a

bidder/contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents.

D. The Illinois Department of Labor maintains a list of contractors and subcontractors found to have disregarded their obligations to employees under the Act. The list includes contractors and subcontractors who, on two separate occasions within five years have been determined to have violated the Act.

No contract may be awarded to a contractor or subcontractor appearing on the list, or to an entity in which the contractor or subcontractor has an interest, until four years have elapsed from the date of publication of the list. Please note that this list is available on the IDOL website at <http://www.state.il.us/agency/idol/listings/debar.htm>.

E. All contractors' and subcontractors' bonds shall include a provision as well guarantee the faithful performance of such prevailing wage clause as provided by this contract/specification or by other written instrument.

[Includes changes to the Prevailing Wage Act in Public Acts 96-0185 and 96-0437, effective 1/1/2010]

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