

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2023-007

TO: Jordan Hess, Dale Bickell, Leigh Griffing, Donna Gaukler, Shirley Kinsey, Garrick Swanson, David Selvage, Nathan McLeod, Jeremy Keene, Kevin Slovarp, Brian Hensel, Triston Firth, Troy Monroe, Logan McInnis, Andy Schultz, Ashley Stayer, Ross Mollenhauer, Matt Lawson, Erin Pehan, Gordy Hughes, Brad Davis, Phil Keating, Mike Colyer, Scott Hoffman, Ian Ortlieb

CC: Department City Attorney

FROM: Jim Nugent

DATE May 16th, 2023

RE: Public Works contracts for construction or non-construction services costing in excess of \$25,000 are subject to Montana's Little Davis Bacon Act prevailing wage laws set forth in §18-2-4 MCA entitled Special Conditions – Standard Prevailing Rate of Wages.

FACTS:

Construction season has commenced. It is important to remind everyone about Montana's prevailing wage laws for construction and non-construction services.

ISSUE(S):

Does Montana's standard prevailing rate of wages apply to both public works construction and non-construction services contracts?

CONCLUSION(S):

Yes. Montana's Little Davis Bacon Act set forth in §18-2-401 MCA, et. seq. defines the term "public works contract" as including both construction as well as non-construction services contracts.

LEGAL DISCUSSION:

Montana state law sets forth Montana's Little Davis Bacon Act in §18-2-401 MCA, et. seq.: entitled "Special Conditions – Standard Prevailing Rate of Wages". The Montana Department of Labor and Industry is responsible for enforcement of Montana's Little Davis Bacon Act. The Montana Department of Labor and Industry annually sets forth the current prevailing wage amounts. Subsection §18-2-4 MCA defines the term "public works contract" as meaning:

“(11)(a) ‘Public works contract’ means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for non-construction services let by the state, county, municipality, or political subdivision IN WHICH THE TOTAL COSTS OF THE CONTRACT IS IN EXCESS OF \$25,000. The non-construction services classification does not apply to any school district that at any time prior to April 27th, 1999, contracted with a private contractor for the provision of non-construction services on behalf of the district.

(b) The term does not include contracts entered into by the Department of Public Health and Human Services for the provision of non-construction services for the provision of human services.” (emphasis added)

It is also important for city staffs to know that pursuant to §18-2-422 MCA, both bid specifications and public works contracts statutorily are to contain standard prevailing wage rates. §18-2-422 MCA states:

18-2-422. BID SPECIFICATIONS AND PUBLIC WORKS CONTRACT TO CONTAIN STANDARD PREVAILING WAGE RATE AND PAYROLL RECORD NOTIFICATION. ALL PUBLIC WORKS CONTRACTS AND THE BID SPECIFICATIONS FOR THOSE CONTRACTS MUST CONTAIN:

- (1) A provision stating for each job classification the standard prevailing wage rate including fringe benefits that the contractors and employers shall pay during construction of the project.
- (2) A provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under §18-2-423 MCA, for not less than 3 years after the contractor's or employer's completion of work on the project; and
- (3) A provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with §18-2-423 MCA. (emphasis added)

CONCLUSION(S):

Yes, Montana's Little Davis Bacon Act set forth in §18-2-401 MCA et. seq. defines the term "public works contract" as including both construction as well as non-construction services contracts.

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A handwritten signature in black ink, appearing to read "Jim Nugent", enclosed in a thin rectangular border.

Jim Nugent, City Attorney

JN: mcs