



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Labor and
Workforce Development**

LABOR STANDARDS AND SAFETY
Wage and Hour Administration

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**RE: CONTRACTING AGENCY REQUIREMENTS UNDER
TITLE 36 - PUBLIC CONTRACTS**

The purpose of this letter is to help you, as a political subdivision of the State, understand your contracting agency obligations under Title 36 - Public Contracts, also known as the Little Davis-Bacon Act.

Title 36 is a series of State laws that provide for a level playing field for all contractors and workers on public construction project sites in Alaska. These laws include the requirement for employers to pay prevailing wages, to pay workers weekly and unconditionally, to submit certified payrolls in a timely manner, and for prime contractors to pay specific fees associated with public construction projects.

In October 2019, the Alaska Attorney General issued a formal opinion, deeming the Alaska Statutes 36.10.150 of the State's 90% Employment Preference law, also known as the Alaska Resident Hire Law, as unconstitutional, and advised this office to cease its enforcement. Therefore, the DOLWD Wage and Hour Administration (Department) will no longer investigate or take enforcement action related to the Alaska Resident Hire Law. A copy of the formal opinion can be found here: http://law.alaska.gov/pdf/opinions/opinions_2019/19-005_AK-hire.pdf

Please do not hesitate contacting us if you have any questions or comments.
Thank you.

The Department of Labor and Workforce Development
Wage and Hour Administration

OBLIGATIONS OF THE CONTRACTING AGENCY:

Obligation #1:

You, as the contracting agency, must be able to recognize and identify a public construction project:

- “Public construction” or “public works” means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the State, a political subdivision of the State, or a regional school board.
- This definition includes improvements to “real property.” Typical contracts may be for new buildings, repair of existing buildings, painting contracts, term contracts, road service agreements, docks, equipment rental contracts, long-term leases, sidewalks, charter schools, remodeling projects, road upgrades, utility relocates that are integral to a project, or insurance proceeds used for repair or reconstruction. Determining whether the project is subject to Title 36 laws can be complicated. If you are in doubt -- and before the contract is put out to bid -- please contact your nearest Wage and Hour Administration office for clarification. This is especially true if you think the project may not be subject to Title 36 because the Wage and Hour Administration will enforce the provisions of the Act, including the retroactive payment of prevailing wages, on all projects that meet the definition of “public construction.”
- Title 36 applies to public construction projects that exceed \$25,000.00. If you have any question as to whether Title 36 applies, please contact your nearest Wage and Hour Administration office for a determination.

Obligation #2:

You, as the contracting agency, are required to identify the specific issue of *Pamphlet 600, Laborers' & Mechanics' Minimum Rates of Pay (Pam 600)*, that will apply to each contract and include that information in each project's bid specifications. *Pam 600* contains the prevailing rates of pay that apply to each public construction project. A list containing all current issues of *Pamphlet 600* can be accessed at: <http://labor.alaska.gov/lss/pamp600.htm>.

- *Pam 600* is published twice per year, once in the Spring (usually in April), and once in the Fall (usually in September). The rates that are in effect 10 days prior to the final date for submission of bids are the rates that will apply to each project. These rates will apply for 24 calendar months from the date the project is awarded to a prime contractor. At the end of the initial 24-month period, the latest wage rates issued by the Department shall become effective for the next 24-month period. This process repeats itself until the project is completed.
- Note that all contractors/subcontractors must have a current Alaska business license and be registered/licensed as a contractor to bid and work on a State-funded public construction project. Surveying and trucking companies are not required to be registered contractors.

Obligation #3:

You are required to include the entire applicable issue of *Pam 600* in the contract. *Pam 600* may also be incorporated into the contract by reference. In addition to the rates of pay, this pamphlet includes other required language that must be contained in the contract for the project.

Obligation #4:

You, as the contracting agency, are required to file a Notice of Award with the Department within 20 days of the award of the contract. Notices of Award must be filed through myAlaska:

<http://my.alaska.gov> using the “**LSS Online Filing Services**”.

- Each contracting agency has been set up in the online system. Contracting agencies are never linked to an individual myAlaska logon ID. This way, they are portable between employees, locations and regions, and are not at risk of becoming lost in the event of employee turnover. A new agency should never be created in order to change or personalize agency contact information. When necessary, the contracting agency’s contact information can be changed during the filing process or updated by Wage and Hour.

If you are a new contracting agency, or are unable to locate your contracting agency’s information using the search function, please contact your nearest Wage and Hour office. Please do not add a new agency until you have contacted the Department.

Obligation #5:

Utility relocation work is an integral part of the main public construction project. Therefore, if the maximum filing fee amount has already been met, or will be met, by the prime contractor for the entire aggregate of the project or phase, the utility company will not be required to pay any additional fee amount. On the other hand, if the maximum fee amount has not been met, or will not be met, by the prime contractor, the utility company will be required to pay the 1% filing fee up until the project maximum fee amount of \$5,000 is met.

When an additional filing fee amount is due on one of these projects, when inputting the total contract amount in the online myAlaska LSS Portal, please simply enter the amount as \$1.00. This will ensure that the utility is not charged a redundant fee. (If you input the full amount of the utility relocation project, it will trigger the entire 1% fee to be collected, which may require a reimbursement at a much later date). It would be beneficial to include the utility relocation amount in the text of the Notice of Award.

When you, as the contracting agency, let out a contract directly to the utility company, you must file a Notice of Award in the same manner described in Obligation #4. If the utility company is owned by the State, City, Municipality, etc., and they let out the contract, then they must file the Notice of Award. The Notice of Award should include identifying information such as the project name, the DOL project number associated with the primary contract, and/or another description of the public construction project that triggered the relocation work.

Obligation #6:

You, as the contracting agency, are required to report any change order that exceeds \$10,000.00 using the “**LSS Online Filing Services**” link.

Obligation #7:

You, as the contracting agency, are required to withhold accrued contract payments due the prime contractor at the Department’s direction during the life of the contract. The Department may withhold for unpaid filing fees, prevailing wages or fringe benefits, and/or employment preference penalties, to name a few.

Obligation #8:

You, as the contracting agency, are required to withhold final payment from the prime contractor until you have received a Notice of Completion that has been approved by the Department. *Alaska Statute 36.05.045(c)* provides that:

(c) A contracting agency

(1) may release final payment on a public construction contract to the extent that the agency has received verification from the Department of Labor and Workforce Development that

(A) the primary contractor has complied with (a) and (b) of this section;

(B) the Department of Labor and Workforce Development is not conducting an investigation under this title; and

(C) the Department of Labor and Workforce Development has not issued a notice of a violation of this chapter to the primary contractor or any other contractors working on the public construction contract; and

(2) shall withhold from the final payment an amount sufficient to pay the department's estimate of what may be needed to compensate the employees of any contractors under investigation on this construction contract, and any unpaid filing fees. [Emphasis added].

The Department is tasked with ensuring that all contractor obligations on a project have been met. Specifically, that all workers have been paid the applicable prevailing wage(s), per-diem, fringe benefits, etc., for the work they performed on the project. To this end, the Department's long-standing policy has been to request that contracting agencies refrain from releasing the final payment on a project until such time as the Department can confirm that these obligations have been satisfied. As a practical matter, when the project approaches completion, you, as the contracting agency, should always reach out to our office and verify that you are holding sufficient monies in reserve from the contract amount, in case we have an open investigation.

We look forward to a safe and productive season and hope this information is helpful to you in understanding and meeting your contracting agency obligations under *Title 36-Public Contracts*. Please note, this letter is intended as a broad guideline, and we suggest you review *Pamphlet 400, Title 36 - Public Contracts*, as it contains in detail your contracting agency's obligations under the law.

Please do not hesitate to contact one of our offices if you have any questions or need further information, clarification, or explanation.

Resources

Alaska Wage and Hour Administration web page:
<http://labor.alaska.gov/lss/whhome.htm>

Pamphlet 400, Title 36-Public Contracts:
<http://labor.alaska.gov/lss/forms/Pam400.pdf>

Pamphlet 600, Laborers' & Mechanics' Minimum Rates of Pay:
<http://labor.alaska.gov/lss/pamp600.htm>

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