

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2018-026

TO: John Engen, Dale Bickell, Tiffany Brander, Ellen Buchanan, Chris Behan, Leigh Griffing, John Wilson, Don Verrue, Kevin Slovarp, Brian Hensel, Troy Monroe, Donna Gaukler, Morgan Valliant, David Selvage, Chris Boza, Monte Sipe, Matt Lawson, Steve Johnson, Department Attorney

FROM: Jim Nugent, City Attorney

DATE: November 23, 2018

RE: Montana's prevailing wage law (Montana's Little-Davis Bacon Act) applies to Public Works construction projects in which the total cost of the contract exceeds \$25,000.00

FACTS:

Inquiry and discussion has occurred recently concerning the applicability of Montana's prevailing wage laws with respect to construction projects.

ISSUE:

What is the monetary threshold that triggers Montana's prevailing wage laws with respect to city government public works construction projects?

CONCLUSION:

Public works Construction contracts for construction services that are in excess of \$25,000.00 are subject to Montana's prevailing wage laws pursuant to title 18, chapter 2, part 401 MCA et. seq., known as Montana's Little –Davis Bacon law.

LEGAL DISCUSSION:

Title 18, chapter 2, part 4 of Montana's state construction laws is entitled "SPECIAL CONDITIONS-STANDARD PREVAILING RATE OF WAGES". These laws are commonly referred to as Montana's prevailing wage laws also known as Montana's Little Davis Bacon law.

Pursuant to Montana's prevailing wage laws, pursuant to subsection 18-2-401(3) MCA the term "construction services" is defined to mean:

“(3) (a) ‘construction services’ means work performed by an individual in building construction, heavy construction and remodeling work. . (b) The term does not include: (i) engineering, superintendence, management, office or clerical work on a public works contract; or (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.”

Pursuant to subsection 18-2-401(11) MCA the term “public works contract” is defined to mean

“(11)(a) ‘public works contract’ means a CONTRACT FOR CONSTRUCTION SERVICES let by the state, county, MUNICIPALITY, school district, or political subdivision OR FOR NONCONSTRUCTION SERVICES LET BY THE state, county, MUNICIPALITY, or political subdivision IN WHICH THE TOTAL COST OF THE CONTRACT IS IN EXCESS OF \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction 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 human services.” (emphasis added)

It should also be noted and emphasized that section 18-2-422 MCA it is statutorily required that when standard prevailing wages are likely to have to be paid for a public works contract, both the bid specifications as well as public works contract must include and set forth the standard prevailing wage rate applicable to the work. Section 18-2-422 MCA is entitled “BID SPECIFICATION AND PUBLIC WORKS CONTRACT TO CONTAIN STANDARD PREVAILING WAGE RATE AND PAYROLL RECORD NOTIFICATION.

It should also be observed that construction projects involving construction of buildings by another party/entity occurring on government owned land, that after construction is completed and then leased to the government are public works construction projects that are subject to Montana’s prevailing wage laws. See the 1985 Montana Supreme Court decision in David L. Hunter, Commissioner Montana Department of Labor and Industry v. City of Bozeman 216 M 251, 700 P2d 184(1985) involving factual circumstances where a private company built a vehicle storage facility on City of Bozeman land, then leased the facility back to the City of Bozeman was in effect a sale back to the City of Bozeman and was therefore in effect a public works construction contract and the construction of the building was subject to Montana’s prevailing wage laws. Damages for unpaid wages were awarded against the City of Bozeman in the amount of \$17,554.76.

CONCLUSION:

Public works construction contracts for construction services that are in excess of \$25,000 are subject to Montana’s prevailing wage laws pursuant to title 18, chapter 2, part 401 MCA et. seq. known as Montana’s Little Davis Bacon Act.

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/s/ Jim Nugent

Jim Nugent, City Attorney
JN:jb