

# OFFICE OF THE CITY ATTORNEY

---

435 Ryman • Missoula MT 59802  
(406) 552-6020 • Fax: (406) 327-2105  
[attorney@ci.missoula.mt.us](mailto:attorney@ci.missoula.mt.us)

## **Legal Opinion 2019-020**

**TO:** John Engen, Dale Bickell, Tiffany Brander, Ellen Buchanan, Chris Behan, Leigh Griffing, Kevin Slovarp, Brian Hensel, Troy Monroe, Donna Gaukler, Morgan Valliant, David Selvage, Monte Sipe, Matt Lawson, Steve Johnson, Jeremy Keene, Dennis Bowman, Ross Mollenhauer, Lori Hart, Katie Emery, Aaron Bowman, Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE:** August 13, 2019

**RE:** Montana's prevailing wage law (Montana's Little-Davis Bacon Act) requires all public works contracts in which the total cost of the contract exceeds \$25,000.00 to include applicable standard prevailing wages in both bid specifications as well as the public works contract itself.

---

### **FACTS:**

It is important that city officials and staff are aware that with respect to all public works contracts in excess of \$25,000 that both the bid specifications as well as the public works contract for the project must include the applicable standard prevailing wages.

### **ISSUE:**

What public works contracts must include the standard prevailing wages in both the bid specifications as well as in the public works construction contract?

### **CONCLUSION:**

Pursuant to section 18-2-422 MCA, Public works Construction contracts for construction services as well as nonconstruction that are in excess of \$25,000.00 are required to include the applicable standard prevailing wages in both the bid specifications as well as the public works construction contract.

### **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 section 18-2-422, MCA both the bid specifications and public works contract are required to include the applicable standard prevailing wages if the contract cost exceeds \$25,000. This section of Montana Construction Contract Law states:

**“18-2-422 Bid specification 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, 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.”

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)

As noted above, section 18-2-422 MCA statutorily requires 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. Public works contracts awarded at less than \$25,000 cost should not be amended to exceed \$25,000 unless applicable standard prevailing wage laws are complied with for the public

works contract. Public works contract construction projects involving construction of buildings by another party/entity occurring on government owned land, that after construction is completed are 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. The Montana Supreme Court held that the lease transaction was in effect a sale back to the City of Bozeman and was therefore in effect a public works construction contract. 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 in 1985.

### **CONCLUSION:**

Pursuant to section 18-2-422 MCA, Public works Construction contracts for construction services as well as nonconstruction that are in excess of \$25,000.00 are required to include the applicable standard prevailing wages in both the bid specifications as well as the public works construction contract.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

---

Jim Nugent, City Attorney  
JN:ka