



January 2019

**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 addition, Title 36 contains the statutes and regulations that require contractors who perform work on public construction projects to adhere to employment preference requirements where applicable. This means that where a Zone of Underemployment has been established, Alaska residents who are eligible under AS 36.10.140 must be given a minimum 90% employment preference when performing work on public construction projects where funding allows. The preference applies on a project-by-project, craft-by-craft basis, and must be met each workweek by each contractor or subcontractor.

Effective July 1, 2017 through June 30, 2019, The Commissioner of the Department of Labor and Workforce Development has determined that the entire State of Alaska qualifies as a Zone of Underemployment. A new determination will become effective July 1, 2019. For more information on employment preference, please contact your nearest Wage and Hour Regional Office.

For the benefit of all contractors who are preparing their bids on any projects, we encourage you, as an agency, to include the attached language regarding 90% Alaskan employment preference within all bid specifications.

Thank you for your cooperation.

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 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 April (effective April 1), and once in September (effective September 1). 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 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 will continue to be considered an integral part of the public construction project. However, 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 an additional fee amount. On the other hand, if the maximum fee amount has not been, or will not be met, the utility company will be required to pay the 1% filing fee until the project maximum fee amount of \$5,000 has been met.

When you, the contracting agency, let out a contract to a utility company for utility relocation work that is integral to a public construction project, 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, they may file the Notice of Award. The Notice of Award must include identifying information such as the project name, the AKDOL project number associated with the primary contract, or another description of the public construction project that triggered the relocation work.

When the maximum filing fee has not been, or will not be assessed on the larger project, the 1% filing fee will be enforced up to a maximum \$5,000.00 on the combined contract amounts of the entire aggregate of the public construction contracts, to include all utility relocation contracts. Therefore, when you, the contracting agency, file a Notice of Award for a public construction contract, and that public construction contract triggers utility relocation work, you must include the cost of all utility relocation work in the prime contractor’s total contract amount. You (or the State, City or Municipality-owned utility company that let the relocate contract) must still file a separate Notice of Award for each utility relocation, however, you will input the total contract amount for the utility relocation contracts as \$1.00. This will ensure that the utility is not charged a redundant fee.

Obligation #6:

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

Obligation #7:

You 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 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, including specifically that all workers have been paid the applicable prevailing wage(s) 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 final payments 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 - - the Department's rule of thumb has always been ninety percent completion - - the contracting agency should always verify that it holds sufficient monies in reserve from the contract amount in the event that those funds may be required to cover any financial shortages that may be revealed as a result of an investigation by the Department.

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>

Alaska Wage and Hour Administration Offices

Email: statewide.wagehour@alaska.gov

Anchorage

Phone: (907) 269-4900
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Juneau

Phone: (907) 465-4842
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