



The Commonwealth of Massachusetts
Department of Labor and Workforce Development
Division of Occupational Safety

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

April 22, 1999

Ms. Mimi Turchinetz
Project Coordinator
Living Wage Ordinance
Office of Jobs and Community Services
43 Hawkins Street
Boston, MA 02114

Dear Ms. Turchinetz,

This letter is intended as a response to the questions raised by you during our recent telephone call. You have asked both the broad question of what kinds of contracts are covered by the prevailing wage law and the narrower question of whether contracts subject to the state purchasing law or the vertical and horizontal construction bidding statutes, (Mass. Gen. L. ch. 7, sec. 22-30, ch. 149, sec. 44A through 44M and ch. 30, sec. 39M, respectively) are subject to the prevailing wage law. I understand that the purpose of your inquiry is to determine which projects are exempt from the terms of Boston's Living Wage Ordinance, which explicitly exempts purchases and projects subject to the prevailing wage law.

The question of which projects and purchases are covered by the prevailing wage law is a difficult one. Unfortunately, the Division of Occupational Safety does not have a list of projects that are subject to the prevailing wage law, set forth at Mass. Gen. L. ch. 149, sec. 26 through 27H and ch. 121B, sec. 29. I am sure that consultation with the City's Legal Counsel will assist you in understanding the broad outlines of the prevailing wage law and its applicability. In addition, every call or advertisement for bids on prevailing wage projects issued by the City of Boston is required to include a reference to the prevailing wage law and every contract eventually entered on such projects is required to include the prevailing wage schedule issued by DOS. Therefore, the easiest way for you to determine whether a particular project or purchase is subject to the public bidding law is to obtain a copy of the City's advertisement or call for bids, or the contract ultimately entered as a result of public bidding, and review this material to

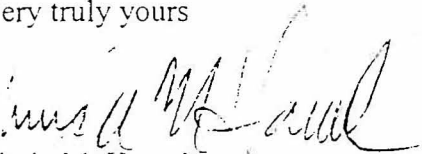
determine whether the prevailing wage law is referenced. In addition, I note that the City officials engaged in purchasing, public bidding and public works have extensive experience in working with this office to determine whether the prevailing wage law applies to a particular project, and they should therefore prove an invaluable resource to you in determining applicability matters. Finally, if you are unable to determine whether the prevailing wage applies to a particular project after reviewing the call for bids and the contract and discussing the matter with the City's staff, I suggest that you call DOS and ask to speak to Stewart Field, Program Manager for the Prevailing Wage Program.

As to your specific questions, because the state purchasing laws and regulations cited by you, Mass. Gen. L. ch. 7, sec. 22 through 30, apply to purchases of supplies and equipment, such purchases would generally not be covered by the prevailing wage law except for those cases in which the purchase contract involves the vendor's provision of a type of labor covered by the prevailing wage law. Contracts entered under these provisions would have to be considered by DOS on a case by case basis. As to the public bidding laws, note that simply because a project is exempt from the relevant provisions of the Commonwealth's public bidding laws, it is not necessarily exempt from the prevailing wage law. The vertical and horizontal construction public bidding laws have dollar thresholds, while the prevailing wage law does not. Therefore it is possible that a project might be exempt from the former provisions and yet subject to the latter. In addition, projects subject to the Commonwealth's vertical and horizontal construction public bidding laws are usually, although not always, covered by the prevailing wage law.

DOS typically makes administrative determinations regarding applicability through the issuance of decisions following hearings conducted under Mass. Gen. L. ch. 149, sec. 27A, informal letters, and telephone calls. I enclose copies of several 27A decisions to give you an idea of a few of the many types of public purchases covered by the prevailing wage law. However, I urge you to consult with your Legal Counsel, and City staff experienced in public purchasing and bidding, about specific applicability questions.

Please feel free to call me if you have any further questions about this matter.

Very truly yours



Linda M. Hamel
General Counsel
Division of Occupational Safety

cc: R. Prezioso
S. Field