April 5, 2000

Charles A. Corlin, Jr.
Tekon-Technical Consultants, Inc.
188 Farmington Road
Rochester, NH 03867-4352

Re: Prevailing Wage Applicability; Testing and Balancing of HVAC Systems

Dear Mr. Corlin:

Thank you for your letter dated April 25, 2000 concerning the applicability of the prevailing wage law to the testing and balancing of HVAC – Heating Ventilating and Air Conditioning – systems.

After considering the issues you raised, the determination issued on November 11, 1999 will remain in effect: Persons who test and balance HVAC systems as part of a public construction or alteration project involving the installation of a new system or the repair of an existing system must be paid prevailing wage rates. In other circumstances where testing and balancing is not part of a construction or alteration project, prevailing wage rates would not apply.

The issues raised in your letter relate more to the structure of your industry than to the applicability of your work under the prevailing wage law. Despite your company's classification for insurance purposes and your assertion that if testing and balancing is covered then the work of architects and consulting engineers should also be covered, the physical work of testing and balancing during an installation or repair project falls within the ambit of construction as defined in the prevailing wage law. See M.G.L. ch. 149, § 27D which reads, in relevant part, "the words 'construction' and 'constructed' as applied to public buildings and public works shall include additions to and alterations of public works, the installation of resilient flooring in, and the painting of, public buildings and public works ..."

Furthermore, your assertion that "HVAC systems are often never balanced" (emphasis added) is not consistent with the common understanding that HVAC systems usually require balancing after installation or repair. Nonetheless, the applicability of the prevailing wage law relies on the type of work being performed and not on the frequency of the work.

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Benjamin B. Tymann
Program Manager

cc: Robert J. Prezioso, Deputy Director
Linda Hamel, General Counsel