

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENTS OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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February 8, 2005

Kathleen T. Breck, Esq.
Associate City Solicitor
City of Springfield Law Department
36 Court Street
Springfield, MA 01103

Dear Attorney Breck:

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149, §§26-27. Specifically, you have asked for a determination of the appropriate prevailing wage rate for change orders on a City construction project.

As I understand it, sometime in 2004, the City entered into a contract for certain improvements to Springfield City Hall and Symphony Hall. As required by law, the City requested prevailing wage rates from the Division of Occupational Safety (DOS) for the project. DOS issued a prevailing wage rate schedule on March 18, 2004. At some point during the project, the City requested proposals from the general contractor for change order work. A dispute has arisen over what prevailing wage rate applies to this work.

G.L. c. 149, §27, provides, in pertinent part, that:

[p]rior to awarding a contract for the construction of public works, said public official or public body shall submit to the commissioner a list of the jobs upon which mechanics and apprentices, teamsters, chauffeurs and laborers are to be employed, and shall request the commissioner to determine the rate of wages to be paid on each job . . . The commissioner, subject to the provisions of section twenty-six, shall proceed forthwith to determine the same, and shall furnish said official or public body with a schedule of such rate or rates of wages as soon as said determination shall have been made. In advertising or calling for bids for said works, the awarding official or public body shall incorporate *said schedule* in the advertisement or call for bids by an appropriate reference thereto, and shall furnish a copy of *said schedule*, without cost, to any person

requesting the same. *Said schedule* shall be made a part of the contract for said works and shall continue to be the minimum rate or rates of wages for said employees during the life of the contract.

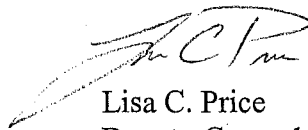
G.L. c. 149, §27 (emphasis added). It is clear from the plain language of G.L. c. 149, §27, that the prevailing wage schedule issued by the commissioner at the outset of the project is the schedule that remains in effect for the duration of that project. This same prevailing wage schedule also establishes the minimum wage rate for change order work, which constitutes an amendment to the original construction contract (as opposed to work that is not incidental to the original contract scope that would constitute a new contract and presumably require competitive procurement and a new prevailing wage request).

As you acknowledged, it is possible for local trade unions to negotiate future wage increases during an on-going project. The contractor is only obligated, under the prevailing wage law, to pay those scheduled increases which appear on the DOS prevailing wage schedule issued at the outset of the project. Those increases which are subsequently negotiated, which do not appear on "said schedule," do not affect the minimum rate established for the project.

Finally, your letter refers to several provisions in the City's contract governing "labor costs," the interpretation of which is in dispute. As the prevailing wage rates issued by DOS establish *minimum* wage rates, parties are free to agree to a higher rate of pay and to allocate those costs between the parties.¹ Any such agreements would constitute a matter of private contract, and this letter expresses no opinion as to the effect of these provisions in the City's contract.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,



Lisa C. Price
Deputy General Counsel

cc: Robert J. Prezioso, Commissioner, DOS
Kathryn B. Palmer, General Counsel, DOS
Chris Buscaglia, Deputy Division Chief, Office of the Attorney General, Fair
Labor & Business Practices Division

¹ Of course, any allocation of change order costs must take into account the requirements of G.L. c. 30, §§39I, 39N, 39O.