Prevailing Wage Opinion Letter 05-01-06

May 1, 2006

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27H. Specifically, you have asked if the prevailing wage law applies to a project to replace defective ballasts pursuant to a warranty claim.

As I understand it, lighting fixtures were installed as part of an on-going school construction project in the City of XXXX. These fixtures contained Universal ballasts covered under a five-year warranty. At some point after installation, the installing contractor filed a warranty claim, and your company determined that the ballasts were defective and needed to be replaced. Your company will be contracting for the work and replacing the ballasts at no cost to the City.

The Massachusetts prevailing wage law applies to the construction of public works by municipalities. G.L. c. 149, §§26, 27. The term "construction" is defined, in pertinent part, as "additions to and alterations of public works." G.L. c. 149, §27D. Therefore, the original installation of the lighting fixtures, performed pursuant to a contract with the City, and paid for by the City, was construction of a "public work" and covered by the prevailing wage law. However, it is this agency's opinion that replacement of defective ballasts under the circumstances you have described (i.e. the manufacturer contracts for the work directly, at no cost to the public entity, and the scope of the work is limited to returning the public work to its original condition) would not constitute construction of a public work within the meaning of the law. Therefore, the prevailing wage law would not apply to this work.

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