

## Prevailing Wage Program Opinion Letter

May 19, 2014

Re: Construction Management at Risk contract anniversary date

In response to several requests, the DLS issues this opinion letter to clarify the anniversary date and validity period of wage schedules issued in connection with Construction Management (CM) at Risk contracts bid under M.G.L. c. 149A. For clarity purposes, prior opinion letters addressing anniversary date and validity date for wage schedules for CM at Risk contracts are rescinded.[\[1\]](#)

The CM at Risk procurement process differs from the procurement process under M.G.L. c. 149, §§44A-J. The focus of this opinion letter is to address the issuance of prevailing wage schedules in relation to the several procurement steps involved in the CM at Risk contract process. CM at Risk projects are subject to the requirements of M.G.L. c. 149, §§ 26, 27, 27A-27D.

M.G.L. c. 149, § 27 provides, “Each year after the awarding of the contract, the public official or public body shall submit to the commissioner a list of the jobs upon which mechanics and apprentices and laborers are to be employed and shall request that the commissioner update the determination of the rate of wages to be paid on each job.”

Unlike the c. 149, §§A-J procurement process, which basically involves public notice of a project with prevailing wage rates, general bidding, and award of a contract, the CM at Risk procurement process proceeds in several steps. The first step of the CM at Risk delivery method is selection of a CM at Risk firm and execution of a contract between the public entity and the selected CM at Risk firm. This step does not require issuance of a prevailing wage schedule.

The next relevant step in the CM at Risk process is the start of procurement of construction services. The contract for construction services is negotiated as an amendment to the contract between the public entity and the CM at Risk firm, and is called a guaranteed maximum price (GMP) form of contract.[\[2\]](#) The GMP must be negotiated before any construction work begins, UNLESS the public agency executes a separate amendment to the CM at Risk firm contract to begin procurement of early construction scopes of work. G.L. c. 149A, § 7. The early construction scopes of work may involve Trade work in one of the eighteen trades subject to the sub-bidding process under G.L. c. 149, § 44F, or scopes of subcontractor work subject to the procurement processes under G.L. c. 149A, §8(j), or may be for work valued at a cost that is not subject to the bidding process. The public entity must obtain prevailing wage rates for the GMP amendment or for the amendment to procure early construction services, whichever is executed first.

The DLS seeks to conform as closely as possible the issuance of wage schedules and the anniversary date for annual updates under CM at Risk contracts to the deadlines under the general bidding and award process. Under the general bidding process, G.L. c. 149, §§ 44A-J, the anniversary date for the annual update of the wage schedule for multi-year contracts is the execution date of the general contract. The DLS has directed that the awarding authority must request an updated wage schedule two weeks before the anniversary date of execution of the general contract.

The procurement and execution of the contract between the public entity and the selected CM at Risk firm does not require issuance of a prevailing wage schedule. The wage schedule is issued in connection with the amendment to the contract to permit procurement of actual construction services. For CM at Risk projects, the anniversary date for the purpose of requiring the issuance of updated

prevailing wage rates is the earlier of: (1) the GMP amendment execution date, or (2) the execution date of the first amendment to the CM at Risk firm contract to permit procurement of construction services. This is in line with execution of a general bid contract, which permits construction work to begin on a project. Viewed differently, the earlier of these amendments represents the first time the Awarding Authority must request prevailing wage rates. For multi-year contracts, these rates will remain in effect until the anniversary date of the contract, as determined by the earlier of (1) or (2) above. An updated wage sheet must be requested two weeks before the anniversary date.

The other issue to address is the valid duration of the prevailing wage rates issued prior to award of the first scope of work. For general contracts bid under G.L. c. 149, § 44A-J, the wage schedule must be issued within 90-days of the bid. If a project is not bid within 90-days of issuance of the wage sheet, the Awarding Authority must request a new wage sheet.

For CM at Risk projects, the 90-day period is determined in relation to the bid for the first construction scope of work. For CM at Risk projects, Awarding Authorities must request a Prevailing Wage Schedule NOT sooner than 90-days before the earlier of: (1) the execution date of the GMP Amendment, or (2) the bid for the first construction scope of work.[\[3\]](#)

The DLS recognizes that the first awarded subcontracts may be for only a fraction of the total work for the project. Since that work must be paid at the prevailing wage, the Awarding Authority is obligated to request and the DLS must issue wage rates for that work. The DLS does not have authority to require an Awarding Authority to obtain more than one rate sheet for the same project within the same contract year, although the Awarding Authority may request updated rate sheets at any time. As in the case of a general bid contract under G.L. c. 149, §§ 44A-J, the wage rates for a CM at Risk contract will remain in effect for all subcontracts bid within the year following the anniversary date.

Please do not hesitate to contact the Department of Labor Standards with any questions.

Sincerely,

Jean Zeiler

General Counsel

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[\[1\]](#) Opinion Letters PW-2009-03-7.15.09 and PW-2009-04-8.6.09, and any others that address the period of validity and anniversary date for the wage schedules for CM at Risk contracts, are rescinded.

[\[2\]](#) The GMP amendment may be executed before any construction work begins, or it may be executed later in the process after the construction work has commenced.

[\[3\]](#) In the unlikely event that bidding is not required for the first scope of work procured prior to execution of the GMP Amendment, due to cost of the work or other reason, the Awarding Authority must request the rate sheet not sooner than 90-days before the award of the non-bid contract.