

Prevailing wage opinion letter-10-16-09

Re: Attorney General Bid Protest Decision, dated October 8, 2009 Re: Town of XXXX AMR Installation Project and ZZZZ, Inc.

Water Meter Installation: Incidental On-site Work

You have asked us, in connection with the above-captioned decision, to advise the Attorney General's Office regarding the applicability of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27. Specifically, you have asked whether workers must be paid the state prevailing wage for certain on-site work performed by water meter installers, including taking photographs and recording the latitude and longitude of the AMR module, which is incidental to the installation of the meter. [\[1\]](#)

Analysis

Installation of water meters in public and private facilities for the purpose of measuring water consumption for consumer billing is considered construction of public works and subject to the state prevailing wage law. *See DLI Policy Statement, July 9, 1993 and DOS Letter to Wayne Travis, Mass Installation, Inc., dated January 21, 2004 ("2004 DOS Letter")*. The parties to the underlying bid protest, ZZZZ, Inc. and YYYY, employ workers who are paid the prevailing wage when performing water meter installation work in residential homes and other facilities.

The Massachusetts prevailing wage law applies to the construction of public works by the commonwealth, or by a county, town, authority or district. 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. In the 2004 DOS Letter, we advised that off site tasks related to the installation of water meters, including driving from site to site during the day, attending trainings or meetings, or dropping off door knob notices, does not constitute an addition to or alteration of a public work, and, therefore, payment of the prevailing wage for such work is not required. The instant case is distinguishable as it involves strictly on site tasks performed by the installer which are incidental to the installation of the meter and can not be meaningfully separated from the task at hand. Accordingly, the prevailing wage is applicable to the incidental tasks which comprise the installation of the water meter.

Sincerely,
Patricia A. DeAngelis
Legal Counsel

[\[1\]](#) Because the Attorney General's factual determinations reflect that both parties to the bid protest paid the prevailing wages for the work in question, we consider this an advisory opinion which will not change the outcome of the underlying bid protest.