

PW opinion letter-09-30-14

September 30, 2014

Re: Prevailing Wage Obligation for the Relocation of Utilities under M.G.L. c. 6C § 44

Dear XXXX:

Following discussions with MassDOT and the Attorney General's Office, the Department of Labor Standards (DLS) issues this letter to set forth responsibilities to ensure payment of the prevailing wage in the relocation of utilities. As you know, M.G.L. c. 6C, § 44 addresses the relocation of utilities or utility facilities due to MassDOT construction projects. Section 44(c) requires that "any relocation of facilities carried out pursuant to this section which is not performed by employees of the owner shall be subject to sections 26 to 27F, inclusive, of chapter 149" [prevailing wage law]. In other words, when utility companies contract out the relocation work on MassDOT projects, the prevailing wage applies to that work.

The DLS is responsible for administering the prevailing wage law. M.G.L. c. 149, § 27 requires the DLS to "prepare, for the public officials or public bodies whose duty it shall be to cause public works to be constructed, a list of the several jobs usually performed on various types of public works upon which mechanics and apprentices, teamsters, chauffeurs and laborers are employed..." The public official or public body must request from the DLS the wage rates to be paid on each job required for the project "prior to awarding a contract for the construction of public works." G.L. c. 149, § 27 requires the public body to incorporate the wage schedule into the call for bids and "to furnish a copy of said schedule, without cost, to any person requesting the same." The public body must request an annual update of wage rates for multi-year projects. The general contractor must obtain annual updates of wage rates from the public body, and all contractors and subcontractors must pay their employees at the established rates.

Although it is the utility companies that contract with private contractors to undertake utility relocation construction work, the public body involved in the associated public works construction project under G.L. c. 6C, § 44 is MassDOT. As such, MassDOT is required to request a wage schedule from the DLS when MassDOT requires utility relocation. MassDOT will include the wage schedule with the utility agreements when they are forwarded for execution.^[1] The wage schedule will be the same as that used on the MassDOT construction project with which the utility relocation work is associated. For multi-year contracts, MassDOT will obtain and provide annual updates to the wage schedule to the utility contractors in the same manner as it would to the general contractor on all its projects.

MassDOT will post the wage schedule and updates at the worksite, and will include information in the utility agreement that the utility contractor must post the schedule and updates at the utility worksite for the duration of the work. Contractors and subcontractors must keep and submit to MassDOT certified payroll records and a signed statement of compliance on a weekly basis in accordance with M.G.L. c. 149, section 27B. MassDOT may require the utility company to collect the certified payroll and statement of compliance as long as the documents are submitted to MassDOT on a weekly basis.^[2]

Further information on the prevailing wage and reporting requirements may be found at the Department of Labor Standards website at www.mass.gov/dols.

Please do not hesitate to contact this office if you have any questions.

Very truly yours,

Jean Zeiler

[1] If the work is performed by employees of the utility owner, the work will not be subject to the prevailing wage rates; the owner, contractor or subcontractor will have the rate sheets in the event any part of the relocation is performed by workers other than the utility owner's employees.

[2] *The requirement to submit a weekly payroll and statement of compliance is in addition to the requirement for each contractor or subcontractor to furnish to the awarding authority a statement of compliance within fifteen days after completion of its portion of the work.*