

Prevailing Wage Questions and Answers

Applying Prevailing Wages for Contracts Issued Under the Montana Procurement Act

Prepared by the Department of Labor and Industry (DLI) and the Department of Administration (DOA)

DISCLAIMER: THIS INFORMATION IS PROVIDED FOR THE PURPOSE OF GENERAL INFORMATION AND SHOULD NOT BE CONSIDERED AS LEGAL ADVICE OR COMPLETE COVERAGE OF THE TOPIC.

If you have a question about complying with the prevailing wage regulations (occupations, payroll forms, payment of fringe benefits, travel, or per diem, etc.), contact the DLI's Compliance & Investigations Bureau. Call (406) 444-6543 and ask to speak to a Prevailing Wage Compliance Specialist.

Prevailing Wage Rates are revised and adopted annually.

If you have questions regarding contracting, contact the State Procurement Bureau at (406) 444-2575 to speak to a Contracts Officer.

Q1. What contracts issued under the Montana Procurement Act are subject to the prevailing wage requirements?

A1. Generally, all public works contracts, whether for *construction* or *non-construction* services, which exceed a total contract value of \$25,000, are subject to payment of prevailing wages. A "public works contract" is defined in [18-2-401](#)(11)(a), MCA, as "a contract for construction services...or for non-construction services let by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is in excess of \$25,000."

Excluded from the definition of construction services are "engineering, superintendence, management, office, or clerical work on a public works project; or consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law."

It is required to pay prevailing wages in public works contracts for non-construction services, defined in [18-2-401](#)(9), MCA, as "...work performed by an individual, not including management, office, or clerical work, for:

- (a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;
- (b) custodial or security services for publicly owned buildings and facilities;
- (c) grounds maintenance for publicly owned property;
- (d) the operation of public drinking water supply, waste collection, and waste disposal systems;
- (e) law enforcement, including janitors and prison guards;



- (f) fire protection;
- (g) public or school transportation driving;
- (h) nursing, nurse's aid services, and medical laboratory technician services;
- (i) material and mail handling;
- (j) food service and cooking;
- (k) motor vehicle and construction equipment repair and servicing; and
- (l) appliance and office machine repair and servicing."

Q2. What is a "contract term" or "period" for purposes of applying the prevailing wage requirement? Is it only the initial contract term, or does it include possible renewal periods the State may employ?

A2. A "contract term" or "period" is the initial contract term *plus* any possible renewal periods the State may exercise. A contract with renewal periods that could make the total contract value exceed \$25,000 must include the application of the prevailing wage rates. Administrative Rules of Montana (ARM) [24.17.141](#) and [24.17.144](#) address the requirement to pay the prevailing rate of wages on public works contracts.

Q3. On occasion, the State of Montana issues bids from which multiple contracts to multiple vendors may be awarded. If the individual contracts issued as a result of a bid do not each exceed \$25,000 in total contract value, must the requirement for the payment of prevailing wages be included?

A3. In accordance with [18-2-401](#)(11)(a), MCA, and ARM [24.17.501](#), the requirement to pay the prevailing wage rates is determined by the total value of the contract or contracts resulting from a solicitation issued by the State. Thus, if the State issues a bid with the intent of issuing multiple contracts, *all* contracts awarded under that bid are subject to payment of prevailing wages if the total value of all the contracts awarded exceeds \$25,000.

Q4. If multiple contracts are issued under a single solicitation, and the contracts are awarded in multiple districts, does that affect the wage and benefit rates?

A4. Yes. All contracts must use the highest wage and benefit rates applicable to the relevant occupation, ARM [24.17.144](#) (2).



Q5. At times, a state agency may issue a bid for non-construction services for field sites around the state. Taken alone, none of the work at these sites would exceed the \$25,000 per year mark. However, if added together in the bid, the sum of the potential contracts would exceed \$25,000 per year. Should prevailing wages be required?

A5. Again, if the State issues a single bid for multiple contracts which total in excess of \$25,000, *all* contracts are subject to payment of the prevailing wages, as it is considered one contract regardless whether the bid is for field sites around the state.

Q6. Must business owners pay prevailing wages to family members in their employ?

A6. Yes. There is no exemption for family members of owners for the purposes of paying prevailing wages.

Q7. Must prevailing wages be paid when contracting with Sheltered Workshops for services such as janitorial or mail handling?

A7. To be exempt from paying the applicable prevailing rate of wages when contracting with Sheltered Workshops, the contractor must meet the requirements of [18-2-403\(5\)](#), MCA.

Q8. Does the specific prevailing wage rate or rate book have to be attached to the bid document or can it simply reference DLI's website?

A8. Section [18-2-422](#), MCA, and ARM [24.17.144](#) clearly require that all public works contracts and bid specifications must contain a provision stating for each job classification the standard prevailing wage rate, including the fringe benefits, the contractors and employers are obligated to pay. ***The appropriate wage rate booklet must be attached to the contract/bid documents.*** Simply referencing DLI's website is not acceptable. Both the IFB and RFP templates contain standard language for including the current prevailing wage rates.

Q9. When prevailing wage requirements apply to a contract, do the requirements apply to all disciplines within that contract, except for management, office, or clerical work?

A9. Not necessarily, as it depends on what work is called for in the contract. There may be services for a craft, trade, or occupation that are not non-construction services. However, when there is some question whether any portion of the work to be performed constitutes non-construction services, it is advisable to contact the Department of Labor and Industry (ARM [24.17.124](#)) for a new job classification and commensurate rate of wages and benefits for a particular craft, trade, or occupation.

Q10. What if a project includes several job categories and some of these categories are not listed in the rate books, e.g., boat or snowmobile operation? Do we assume that prevailing wage rates do not apply to these categories? How do we determine which rate should apply?

A10. The absence of specific job categories within a rate booklet does not necessarily imply payment of prevailing wages is not required. If there are job categories not listed in the rate books, you will need to contact DLI's Compliance & Investigations Bureau. Under ARM [24.17.124](#), a public contracting agency has the option to request establishment of a special job classification and commensurate rate of wages for a particular craft, classification, or type of worker needed for a particular project. Such a request must be made at least 30 days prior to advertising for bids or letting a contract.

Q11. Section [18-2-417](#), MCA, requires any public works contract that exceeds 30 months to be fully performed include a provision requiring an adjustment of a 3% increase to the prevailing rate of wages. When is this adjustment effective? Is it the State's responsibility to pay the adjusted rate?

A11. For a public works contract with an *initial* term of 30 months or longer, the prevailing wage rate must be adjusted 12 months after the contract is effective and must be applied every 12 months for the term of the contract. Any increase in the standard rate of prevailing wages for workers is the sole responsibility of the contractor and any subcontractors, and not the contracting agency. The 3% increase applies to the base wage *plus* the fringe benefit amount.

Although not required for this situation, the contracting agency may choose to include in the contract the requirement to pay increased wages and benefit amounts following each 12-month anniversary date of the contract.

Q12. What constitutes a 30-month contract? Is a one-year contract with three one-year renewals considered a 30-month contract?

A12. A contract becomes subject to the 3% rate increase when the contract length becomes more than 30 months. In the case of a one-year contract with three one-year renewals, if the initial 12-month contract is renewed annually, the 3% rate increase becomes effective upon the second renewal, and the 3% is paid starting in the third year of the contract beginning with the 25th month.



Q13. A contract is issued for a three-year period. The contractor is required to pay the prevailing wage in effect at the time the solicitation was issued with 3% increases every 12 months. What rate should the contractor pay if, after the initial three-year period, the contract is renewed for a new two-year period?

A13. If the initial contract provides for an extension of the contract at the same negotiated compensation rate originally agreed on, this constitutes a "renewal" that would utilize the same prevailing wage rates (base and fringe benefits) in effect at the time of the initial solicitation.

An increased or decreased compensation rate for the contractor during the agreed extension of the contract constitutes a "renegotiation" and the prevailing wage rates in effect at the time of such renegotiation would apply. In addition, the 30-month period restarts.

Q14. If a one-year contract with three one-year renewals is considered a 30-month contract, does the original wage rate specified in the solicitation need to be adjusted to the then-current wage rate, and then be adjusted by 3%?

A14. A contract which has the potential to exceed 30 months in duration will use the original wage rate (base and fringe benefits) throughout its duration unless the compensation rate for the contractor is renegotiated. See question 13.

If the original solicitation contemplates either an original contract term which exceeds 30 months, or periodic renewals which could cause the term of performance to exceed 30 months, the solicitation should, but is not required to, mention the requirement for a 3% increase in wages to be paid by the contractor.

Q15. If at time of renewal, the State has established new prevailing wage rates and the new prevailing wage rate represents a decrease, is a contractor responsible for adding 3% to the new lower prevailing wage rate?

A15. If the contract is renewed with no change in the compensation rate paid to the contractor, then the prevailing wage rate remains based on the rates in effect for the original contract, and the contractor must calculate increases on the original rates.

If the contract is renegotiated, with an increase or decrease in the compensation rate paid to the contractor, then the wage rate is based on the rates in force at the time the renegotiated contract is effective. This change in the compensation rate restarts the 30-month period.

A contract **renegotiation** restarts the 30-month period **AND** implements use of the **current** prevailing wage rates.

In the case of a contract renewal **with no renegotiation**, after 30 months, the 3% increase applies. The 3% increase continues to apply every 12 months if the contract is renewed without renegotiation.



EXAMPLES

30-MONTH CONTRACT	12-MONTH CONTRACT	12-MONTH CONTRACT	18-MONTH CONTRACT
3% must be applied every 12 months	1st 12 months NO 3% INCREASE	1st 12 months NO 3% INCREASE	1st 18 months NO 3% INCREASE
A renegotiation at the end of the contract restarts the 30-month period, AND current prevailing wage rates APPLY	2nd 12 months with NO renegotiation in contract NO 3% INCREASE	2nd 12 months WITH a renegotiation in contract 3% INCREASE DOES NOT APPLY, but current prevailing wage rates APPLY (30-month period restarts)	2nd 18 months with NO renegotiation in contract 3% INCREASE APPLIES starting in the 19th month (reached 30-month threshold)
A renewal at the end of the contract continues the 3% increase	3rd 12 months with NO renegotiation in contract 3% INCREASE APPLIES starting in the 25th month (reached 30-month threshold)	3rd 12 months with NO renegotiation in contract 3% INCREASE DOES NOT APPLY	3rd 18 months with NO renegotiation in contract 3% INCREASE APPLIES
	4th 12 months WITH a renegotiation in contract 3% INCREASE DOES NOT APPLY, but current prevailing wage rates APPLY (30-month period restarts)	4th 12 months with NO renegotiation in contract 3% INCREASE DOES NOT APPLY	4th 18 months WITH a renegotiation in contract 3% INCREASE DOES NOT APPLY, but current prevailing wage rates APPLY (30-month period restarts)
	5th 12 months with NO renegotiation in contract 3% INCREASE DOES NOT APPLY	5th 12 months with NO renegotiation in contract 3% INCREASE APPLIES	



30 – MONTH CONTRACT	12 – MONTH CONTRACT	12 – MONTH CONTRACT	18-MONTH CONTRACT
	6th 12 months with NO renegotiation in contract 3% INCREASE APPLIES starting in the 25th month (reached 30-month threshold again)	6th 12 months with NO renegotiation in contract 3% INCREASE APPLIES	
	7th 12 months with NO renegotiation in contract 3% INCREASE APPLIES	7th 12 months with NO renegotiation in contract 3% INCREASE APPLIES	

Q16. Section [18-2-421](#), MCA, requires that a notice of acceptance and the completion date of the project must be sent to the Department of Labor and Industry when a public works project in the amount of \$50,000 or more is accepted by the public contracting agency. Does the acceptance and completion date notice requirement of 18-2-421, MCA, apply to non-construction services? If so, when would the notice be issued?

A16. Yes, the notice applies to non-construction services including service contracts. The notice must be issued when all the terms of the contract have been satisfactorily performed, and when the initial contract and any permitted extensions have expired. The completion date of the project for non-construction services is the last date services were rendered. The notice should state the agency's approval and final acceptance of the project and provide the date of acceptance.

In addition, should a warranty period exist, the beginning and completion dates should be included. This notice then triggers DLI's 90-day audit period to determine whether the contractor has paid workers less than the standard prevailing wage. A sample Completion Notice is available at the following website: <http://spb.mt.gov/Procurement-Guide>.