



School Business Law Update

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PREVAILING WAGE OBLIGATIONS MAY APPLY TO SMALL REPAIR CONTRACTS THAT DO NOT HAVE TO BE COMPETITIVELY BID

Question:

In a recent windstorm, one of the district's schools sustained a small amount of damage to the roof, which needs to be repaired to keep the building watertight. The cost is expected to be \$2,000 to \$3,000, each, for materials and labor. A contractor who was asked for a quote inquired whether or not he would have to use prevailing wage rates on the project, as this would drive up the price of the work. What should the contractor be told?

Answer:

The roofing contractor providing the labor valued between \$2,000 and \$3,000 should be paying prevailing wage rates to all workers employed on the project, even though there is no obligation to competitively bid the contract for the work.

While prevailing wage rates only apply to public works projects, the threshold for requiring payment of prevailing wage rates is much lower than the threshold for requiring competitive bidding of the public works project. For competitive bidding purposes, a project is considered to be a "public works project" when it involves "an agreement for the erection, construction, alteration, **repair**, or improvement of any public structure, building, road, or other public improvement of any kind" (Public Contract Code Section 1101) and bidding is required (for districts that have not adopted Uniform Public Construction Cost Accounting) when the project involves an expenditure of \$15,000 or more. (Public Contract Code Section 20111(b).)

The definition governing application of the prevailing wage obligation is very similar, and also includes "repairs." For example, as defined in Labor Code Section 1720, the term "public works" includes "construction, alteration, demolition, installation, or **repair** work done under contract" That Code Section also applies the prevailing wage rate obligation to contracts for "maintenance work" while, for competitive bidding purposes, "maintenance" is not a public works project, such that "maintenance" work falls under the higher bid threshold. **Labor**

Code Section 1772 applies the prevailing wage obligation to all persons employed on public works, except for projects of \$1,000 or less. Thus, while the repair work would not require competitive bidding, payment of prevailing wage rates for the labor costs on the repair work would be required.

When in doubt, call legal counsel to discuss before entering into any contract for work on the district's facilities, whether prevailing wage rates apply and whether the work requires bidding.

— *William A. Hornback*

Client Alerts are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

Labor & Employment Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.