

WSR 23-20-100
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 3, 2023, 8:53 a.m.]

Title of Rule and Other Identifying Information: WAC 296-127-050 Filing of statements of intent to pay prevailing wages and affidavits of wages paid for contracts under two thousand five hundred dollars.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is proposing to update the threshold amount in WAC 296-127-050 from the outdated \$2,500 threshold used by awarding agencies of the alternate filing procedures (combined intent and affidavit form) on public works projects, to be consistent with recent changes to RCW 39.12.040 Statement of intent to pay prevailing wages. In order to avoid future rule making if the amounts are changed in statute in the future, L&I is proposing to remove the dollar amounts in rule and cross reference directly to the statute (RCW 39.12.040).

Reasons Supporting Proposal: The 2023 Washington state legislature passed 2SSB 5268, which modifies the statute related to small works roster and limited public works requirements. This bill amended RCW 39.12.040 Statement of intent to pay prevailing wages, changing the threshold amount for awarding agencies wanting to utilize the alternate filing procedures (combined intent and affidavit form) on public works projects up to \$5,000 from the current \$2,500.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Statute Being Implemented: RCW 49.12.040 as amended by 2SSB 5268 (chapter 395, Laws of 2023).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Reasa L. Pearson, Tumwater, Washington, 360-999-7226; Implementation and Enforcement: Jody Robbins, Tumwater, Washington, 360-902-5330.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments change the threshold on the use of the alternate filing procedures (combined intent and affidavit form) on public works projects without material change as required under RCW 39.12.040.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Reasa L. Pearson, L&I, Fraud Prevention and Labor Standards, Prevailing Wage, P.O. Box 44540, Olympia, WA 98504-4540, phone 360-999-7226, email PrevailingWageRules@Lni.wa.gov, AND RECEIVED BY December 4, 2023.

October 3, 2023
Joel Sacks
Director

OTS-4963.1

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-050 Filing of statements of intent to pay prevailing wages and affidavits of wages paid (~~for contracts under two thousand five hundred dollars~~) per RCW 39.12.040(2). A contract awarding agency may, as part of a public works contract, enter into an agreement with a contractor to approve statements of intent to pay prevailing wages and affidavits of wages paid on behalf of the department (~~for contracts wherein the total amount does not exceed two thousand five hundred dollars~~) as provided in RCW 39.12.040(2), pursuant to the following terms:

- (1) The agreement must be incorporated into the bid specifications and contract document;
- (2) Statement of intent forms and affidavit of wages paid forms, provided by the department, must be filed with the contract awarding agency by the contractor prior to the disbursement of public funds;
- (3) Contract awarding agencies must retain copies of all statements of intent to pay prevailing wages received pursuant to this section for a period of not less than three years;
- (4) Contract awarding agencies must send to the department copies of all affidavits of wages paid received pursuant to this section within (~~thirty~~) 30 days of receipt from the contractor;
- (5) The contract awarding agency shall accept full responsibility and liability for payment of any valid wage claims directly to the claimant;
- (6) The contract awarding agency may proceed against any contractor found to have violated the provisions of the statute, and may debar such contractor from consideration for future contracts for up to one year and will provide the department with the names and contractor registration or other employer identification numbers of any such debarred contractors within (~~thirty~~) 30 days of the debarment; and
- (7) Contract awarding agencies and contractors shall not enter into contracts or agreements to perform public work that subdivide or otherwise disaggregate any public works project of more than (~~two thousand five hundred dollars~~) the dollar amount outlined in RCW 39.12.040 (2)(e), to enable such public works project to be awarded pursuant to this section.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-050, filed 12/18/91, effective 1/31/92.]