



Q&A Prevailing Wage Chat with an Expert

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Who are you and What is Naylor Construction Consulting?

My name is Wendy Ortman, and I am Chief Operations Officer and Co-owner of NCC. I have over 5 years of experience as a prevailing wage expert, and you can often find me speaking at events or doing workshops. NCC specializes in prevailing wage and labor compliance on public works construction projects in WA State. We frequently work with agencies, large prime contractors, and small businesses to ensure they are compliant with labor requirements, subcontracting, wage compliance, and more.

What do you see as the biggest challenge to small businesses entering public works contracting for the first time?

It's easy for small businesses to focus on what they do (i.e. painting, carpentry, etc) so they focus their bid on that part of it effectively but are unaware or underestimate the administrative burden that follows after they are selected for the project.

How do variations in regional prevailing wage determinations impact the competitive bidding process for federal construction contracts, and what strategies can contractors employ to ensure compliance while maintaining cost efficiency?

Federal wage determinations on Sam.gov are different than those for state/local. As a contractor, you have to be willing to reach out and get an answer on what wage determinations apply to the project. You will need to get the wage determination # and wage effectiveness date. Agencies must release this information to you in order for you to bid effectively. Also, watch out for Project Labor Agreements (PLAs) and other

workforce utilization requirements that impact your labor costs. These programs may also further impact your administrative burden. If you have more than 1-2 people in your firm, be sure you're communicating within your company. The people who estimate need to know the prevailing wage compliance requirements which may involve those in a different department. Make sure you know the requirements and involve your team in the process for success.

How do federal funds impact Prevailing wage funds?

If there are federal funds, it'll trigger Davis Bacon wages and may influence the date of the wage you use. Ask where the funding is coming from. Agencies and primes should make it very clear which wage to use. This usually works for the prime and 1-2 tiers of subcontractors, but when the flow down clauses get down to the 4th, 5th or 6th tier it can get lost. Businesses must demand (nicely) the information they need to be compliant with.

What strategies can project managers implement to adapt to changes in prevailing wage laws and regulations, ensuring effective budgeting and financial planning for long-term public infrastructure projects?

It benefits everyone from having a basic understanding of prevailing wage requirements. Take the classes and be current in your understanding. Be sure to assign someone on your team to bird dog changes or outsource that responsibility. The Planning and budgeting process for firms needs all eyes on it so the scopes match the wages match the location requirements, etc.

When would a professional services firm be required to file a prevailing wage intent?

Any contractor can file an intent and affidavit on the LNI site. This decision will depend on what you can afford and what the tradeoff is. Are you going to be able to file all the paperwork after working in the field all day? Note it takes a professional less time than for you to fumble through it.

Can you leverage technology to help with all this?

Yes. Payroll systems can significantly speed up the process. A popular one is LCP Tracker. This system allows contractors to upload payroll information and then turns it into a certified payroll document. You can build wage tables on the backend so that it automatically checks what the contractor entered and compares it to LNI requirements. These validations offer a valuable risk mitigation element for you, your primes, and the agency/owner.

What does LCP Tracker not do well? It can be difficult to set up on the back end especially if your firm is dealing with multiple jurisdictions. LCP Tracker doesn't replace the LNI system – you still need to report there, and that system does require social security numbers. Sometimes the LCP tracker is not set up to take those.

Another tip: Go to conferences and professional meetings – ask around about what's out there in terms of technology.

When do I need to file the intent? We are a professional services firm but hire a subcontractor that does Prevailing Wage covered work.

File the intent the moment the decision is made to hire a subcontractor so they can file their intent before coming on site.

When do you use the “combined” intent and affidavit form?

That is a preference dictated by the Owner/Agency. Typically limited to small works contracts (\$2500) or emergency contracts. In these cases, you do the work then file the form. You cannot hire subcontractors when using this form type.

What about the Owner operator exemption?

Be certain you meet the exemption requirement in the [WAC](#) (i.e. 30% owner). While you don't need to pay yourself as a owner/operator, you still must file intent, affidavit, and certified payroll.

Our Wage rate is going up 40%. What recourse do small businesses have?

In 2022, there was a major change in wage rates. Prior to that, the state would send wage surveys to employers and create a wage rate for that county. After a supreme court decision created a change in 2022, the state uses the highest collective bargaining for that region. CBAs are updated every 3-4 years. The industrial statistician handles wage updates and will look at the updated CBA rates. After rates are published, it's very difficult to make changes.

What if LNI publishes a rate that is incorrect?

You have to pay the incorrect rate until a correction is published.

What are the consequences of non-filing or filing incorrectly?

There are a lot of ways to get into hot water. They range from having a bad reputation all the way to debarment with penalties and interest owed. It's a small world so you don't want to earn a reputation for always being late or incorrectly filing. The agency can withhold payment for non-compliance which can disrupt payment for all.

What if the prime forgets to tell subs about prevailing wage?

They are obligated to flow down those clauses. Every contract must remain informed on federal contracts. On the state contracts, there might be an opportunity to point the finger if you can prove you were never notified, but it's better to just be an informed contractor. Ask the questions and document your requests.

What is one thing you recommend every public works contractor do to ensure compliance with prevailing wage?

Labor and Industries publishes a handy document with a lot of useful information. You can find it at LNI Handbook: <https://lni.wa.gov/forms-publications/f700-032-000.pdf>

