

PUBLIC WORKS:
PUBLIC BUILDINGS:
PREVAILING WAGE LAW:

A specification of the prevailing hourly rate of wages in the locality for each craft or type of workman needed to execute a state public works contract, including the prevailing rate for legal holiday and overtime work, either in the publication of the proposed state improvement or in the plans, specifications and conditions governing the details of the proposed contract, would fully comply with the requirements of House Bill No. 294 enacted by the 69th General Assembly and requiring such specification in the "call for bids."



November 18, 1957

Honorable Ralph McSweeney
Director
Division of Public Buildings
Capitol Building
Jefferson City, Missouri

Dear Mr. McSweeney:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"I will appreciate an opinion from your office regarding the proper form for advertising for bids on State work to Comply with the Prevailing Wage Law, Enacted 1957 Session General Assembly, Effective August 29, 1957 (Chap. No. 290, Section 210 through 310 RSMo.)."

After further consultation with you, we understand the precise question to be whether or not the advertisement for bids must contain a detailed statement of prevailing hourly rate of wages, including holiday and overtime, in the locality for each craft or type of workman needed to execute the contract.

Section 8.250, RSMo 1949, provides that no contract shall be made by an officer of this state or any board or organization existing under the laws of this state having the expenditure of public funds or moneys provided by appropriation from this state, in whole or in part, or raised in whole or in part by taxation for the erection or construction of any building, improvement, alteration or repair, the total cost of which exceeds the sum of \$10,000 "until public bids therefor are requested or solicited by advertising" for a specified length of time in designated newspapers.

The purpose of enactments such as Section 8.250, supra, is to secure competitive bidding on the part of intending contractors

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to the end that the public is protected from collusive contracts, favoritism, fraud, extravagance and to the end that public contracts may be secured at the lowest cost to the taxpayers. 43 Am. Jur., Public Works in Contracts, Sec. 26, p. 767.

The 69th General Assembly adopted what may be termed a prevailing wage on public works law, House Bill No. 294. Section 2 of said bill declares the purpose of said law as follows:

"It is hereby declared to be the policy of the state of Missouri that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed, shall be paid to all workmen employed by or on behalf of any public body engaged in public works exclusive of maintenance work."

Section 4 of said bill reads:

"Before any public body awards a contract for public works, it shall notify the department to ascertain the prevailing hourly rate of wages in the locality in which the work is to be performed, for each craft or type of workman needed to execute the contract or project. The public body shall specify in the resolution or ordinance and in the call for bids for the contract, what the prevailing hourly rate of wages in the locality is for each craft or type of workmen needed to execute the contract, also the general prevailing rate for legal holiday and overtime work, and it shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workmen employed by them in the execution of the contract. The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as found by the department or determined by the court on appeal shall be paid to all workmen performing work under the contract. It shall also require in all the contractor's bonds that the

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contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract."

We note that the above section provides that the public body shall specify in the "call for bids" for a contract for public works what the prevailing hourly rate of wages in the locality is for each craft or type of workman needed to execute the contract, including the prevailing rate for legal holiday and overtime work.

Said Act does not define the term "call for bids", nor do we find any judicial interpretation of this term by the appellate courts of this state. In the absence of such definition or interpretation, we must be guided by the rule of statutory construction set out in Section 1.090, RSMo 1949, to the effect that words and phrases shall be taken in their plain and ordinary and usual sense and technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

We are of the opinion that the term "call for bids" is more comprehensive in its meaning than the term publication as the latter term is used in Section 8.250 and that while the term "call for bids" would include the publication in a newspaper, it is not limited thereto.

Section 8.250 does not specify what the publication required by said section shall contain. It has been the long standing policy of this state, established by executive construction, to insert in the publication that the public authority intends to enter into a contract for designated public improvements; that sealed proposals will be received at a designated time and place and there opened and publicly read. It has not been the established practice to include in such publication the detailed plans and specifications covering the proposed project or general and special conditions governing the details of the proposed contract. To determine the details of the work and the conditions and requirements of the contract in order to submit an intelligent proposal an intending contractor must secure such detailed information from the public authority which is, of course, made available on request.

It is our thought that the term "call for bids" as used in House Bill No. 294 implies a communication to prospective bidders

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in sufficient detail so as to apprise intending bidders of the details and conditions of the proposed contract. A proposal submitted on details and conditions other than those under which the public authority desires to contract would not constitute a legal bid.

Therefore, it is our opinion that a specification of the prevailing hourly rate of wages in the locality for each craft or type of workman needed to execute a contract, including the prevailing rate for legal holiday and overtime work, either in the publication of the proposed public improvement or in the detailed plans, specifications and conditions governing the terms of the proposed contract, would fully comply with the requirements of House Bill No. 294, enacted by the 69th General Assembly.

Further, in support of the conclusion above reached, we note that Section 8.250, RSMo 1949, above referred to, requires publication in designated newspapers only when the total cost of the improvement exceeds the sum of \$10,000. We do not find any requirement either in this section, or elsewhere, for the publication in newspapers for state public works, the total cost of which does not exceed the sum of \$10,000. If the term "call for bids", as used in House Bill 294, supra, should be construed to be synonymous with newspaper publication, it would have no application to contracts for state public works, the sum total of which did not exceed \$10,000. We do not find any such exemption in said bill and are, therefore, of the opinion that it was intended to apply to all construction work (exclusive of maintenance), no matter what the amount, and that in using said term the legislature did not intend to limit its meaning to newspaper publication.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that a specification of the prevailing hourly rate of wages in the locality for each craft or type of workman needed to execute a state public works contract, including the prevailing rate for legal holiday and overtime work, either in the publication of the proposed state improvement or in the detailed plans, specifications and conditions governing the details of the proposed contract,

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would fully comply with the requirements of House Bill No. 294 enacted by the 69th General Assembly, requiring such specification in the "call for bids."

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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