

District Operations Brief

November, 2016



PREVAILING WAGE

WHEN CONSERVATION DISTRICTS PAY IT AND WHEN THEY DON'T

Conservation districts, as we all know, are unique. That uniqueness extends into the world of contracting and bidding and, specifically, prevailing wages. The following guidance applies only to prevailing wages and when to pay them. This guidance does not cover the full contracting and bidding process.

Conservation districts (CDs) have the dubious distinction of having a “split personality”. On many projects they must comply with prevailing wages (and other statutory requirements) as a “municipality”. On other CD projects, they needn’t comply with prevailing wages (and other statutory requirements) because the CD is performing work as an “excepted” agency in relation to [RCW 39.04.010\(3\)](#).

When is a conservation district acting as an excepted agency and when as a municipality?

- As an excepted agency when the work under a contract is conservation of resources as described in [RCW 89.08.010](#) and reclamation of waste or undeveloped lands. For these activities, a CD is acting in the same capacity of an excepted agency per [RCW 89.16.040](#):
 “. . . and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts.”
- As a municipality for all other work.

Under most circumstances, land ownership beneath a project location has no bearing on whether a CD is performing work as an excepted agency or not. Similarly, the source of funding normally would have no bearing, but there may be grant restrictions that require payment of prevailing wages and possibly federal Davis-Bacon wage rates. If there is no cost (i.e., all the work/labor and materials are donated) to a sponsoring conservation district, then the project is not subject to prevailing wages.

Classification of Conservation District (CD) Work		
Work Performed	CD is Municipal Agency: Prevailing Wages Apply	CD is Excepted Agency: Prevailing Wages Do Not Apply
Work, construction, alteration, repair, maintenance, or improvement of CD owned facilities and buildings.	X	
Building service maintenance (janitorial) contracts for CD owned or leased facilities and buildings.	X	
Reclamation, conservation, and restoration of stream corridors		
Bridge or culvert replacement/installation for fish passage.		X
Installation of fish screens (steel modular and concrete cast in place units) on agricultural irrigation diversions.		X

"This information is provided as a courtesy to Washington State Conservation Districts. It is not legal or tax advice. For legal and tax status questions, we encourage you to consult qualified legal and accounting professionals."

Classification of Conservation District (CD) Work

Work Performed	CD is Municipal Agency: Prevailing Wages Apply	CD is Excepted Agency: Prevailing Wages Do Not Apply
Planting and seeding of riparian vegetation along the stream corridor and installation of irrigation systems on new riparian plantings.		X
Equipment usage and other work to move and/or place materials on site in the stream and along the stream corridor.		X
Fencing along stream corridors to keep livestock away.		X
Installation of erosion control blanket along stream corridors.		X
Installation of livestock crossings & watering facilities on streams.		X
Installation of in-stream diversions and pipelines to livestock troughs.		X
Site preparation and removal of buildings/obstructions in riparian corridors		X
Installation of in-stream diversions and pipelines to off-stream irrigation headworks.		X
Conservation and reclamation of water on private farm/ranch land		
In-stream sediment pond construction.		X
Hardened feed lot construction and drainage to sediment pond.		X
Irrigation systems for developed farm/ranch land		
Installation of agricultural pipelines on private land and public right-of-way for individual producers and irrigation districts.	X	
Plumbing of individual delivery points for agricultural irrigation systems.	X	
Topographical and archeological surveys for excepted work.		X
Aerial survey (LiDAR) and photography.		X
District hires its own intermittent or temporary work crew for seasonal work		X

Failure to comply with the provisions under the Prevailing Wage Law may subject the district to liability for all unpaid prevailing wages and penalties. A district must stipulate - both in the solicitation document and in the subcontract - that workers will receive the prevailing rate of wage and include applicable prevailing wage rates.

After the subcontract is awarded by the district, the subcontractor submits a Statement of Intent to Pay Prevailing Wages to the Department of Labor and Industries. The district may not make any payments to the subcontractor until they receive evidence that the Intent form has been approved by L & I. After the work is

This information is provided as a courtesy to Washington State Conservation Districts. It is not legal or tax advice. For legal and tax status questions, we encourage you to consult qualified legal and accounting professionals."

completed, the subcontractor submits the Affidavit of Wages Paid to the Department of Labor and Industries. The district may not make the final payment to the subcontractor until they receive evidence that the Affidavit form has been certified by L & I.

What difference does it make if a conservation district is acting as an excepted agency and when it is acting as a municipality?	
CD is Municipal Agency	CD is Excepted Agency
<p>Depending on estimated cost, a CD must:</p> <ul style="list-style-type: none"> • either advertise or request quotes • likely require a bid bond • likely require sealed bids or quotes • likely require public bid opening • likely have award and acceptance by Board • require performance and payment bond • require retainage • require prevailing wages 	<p>Depending on estimated cost, funding source and project, type, a CD:</p> <ul style="list-style-type: none"> • may contract with a landowner and pass through funds without requiring payment of prevailing wages • may request quotes rather than sealed bids • may contract for work with a private contractor without requiring payment of prevailing wages • may waive performance and payment bond • may waive retainage

More information...

The [Suggested Guidelines for Purchasing, Bidding, and Contracting for Washington State Conservation Districts](#) is a resource written by MRSC specifically to help conservation districts comply with State law.

MRSC’s 2009 [Small Public Works Roster Manual for Local Governments](#) has detailed information on bid bonds, performance/payment bonds, retainage, sales tax issues and prevailing wages. For this reason, these topics are not covered in detail in these Guidelines.

Questions? Contact your WSCC Regional Manager or John Carpita, MRSC (jcarpita@mrsc.org).

This information is provided as a courtesy to Washington State Conservation Districts. It is not legal or tax advice. For legal and tax status questions, we encourage you to consult qualified legal and accounting professionals."