

803 KAR 1:055. Applicability of prevailing wage requirements.

RELATES TO: KRS 337.505-337.550

STATUTORY AUTHORITY: KRS 337.520(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.510(2) requires that all public works construction contracts with public authorities contain a stipulation that not less than the prevailing hourly rate of wages as determined by the Executive Director for the Office of Workplace Standards shall be paid to all laborers, workmen and mechanics performing work under the contract. KRS 337.530(1) provides that all public works contractors and subcontractors shall strictly comply with the prevailing wage requirements. The Executive Director of Workplace Standards is given authority through KRS 337.520(1) to make administrative regulations necessary to carry out the provisions and purposes of the prevailing wage statute and prevent the circumvention or evasion of the statute. The function of this administrative regulation is to set forth the criteria for determining what constitutes performing work under a public works contract and thus makes the prevailing wage requirements applicable.

Section 1. Coverage Criteria. (1) The manufacture or fabrication of construction materials or components by a construction contractor or subcontractor are deemed to be performed under the public works contract if such manufacture or fabrication is performed at the site of the public works project or other adjacent or nearby property used by the contractor or subcontractor.

(2) The "site of the project" is defined as follows:

(a) The "site of the project" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (b) of this subsection, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(b) Except as provided in paragraph (c) of this subsection, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the project" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) Not included in the "site of the project" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular public works contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or material person which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the project." Such permanent previously established facilities are not a part of the "site of the project", even where the operations for a period of time may be dedicated exclusively, or nearly so to the performance of a contract.

(3) Transportation of materials on the "site of the project" by employees of contractors or subcontractors for use at the "site of the project" is performing work under the contract and is thus covered by the prevailing wage provisions. Trucking firms engaged to haul materials for use at the "site of the project" from fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., which are part of the "site of the project" are deemed to be subcontractors and their employees are accordingly covered by the prevailing wage requirements. (16 Ky.R. 2088; eff. 5-10-90; TAm eff. 8-9-2007.)