

Orange Construction Corporation

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OCT 14 2015

RESEARCH INFORMATION
AND ANALYSIS DIVISION

Via Hand-Delivery

October 12, 2015

Workforce West Virginia
Attn: Prevailing Wage Comments
112 California Avenue
Charleston, WV 25305

RE: Objection to the 2015 WV Prevailing Wage Rates pursuant to WV Legislative Rule 96
CSR 04, September 30, 2015

Dear Workforce West Virginia,

I am writing to you as President of Orange Construction Corporation to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning prevailing wages. WFWV has not complied with the letter or the spirit of the prevailing wage law reform that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

Following is a list of specific reasons that Orange Construction Corporation objects to the 2015 WV Prevailing Wage rates and the WFWV methodology for calculation these rates:

1. Orange objects to the fact that the detailed methodology used by WFWV has not been provided to the public. The ability to provide a comprehensive objection is frustrated by the lack of information about WFWV's procedure in determining the prevailing wage rates. Only a summary of the methodology is available on WFWV's website for the public to view. This lack

of prevailing wage reform during this time, it would have been prudent to allow employer fair notice and reasonable time to ask questions and provide responses that did not have to be hastily prepared.

Recommendation: Extend the response time period for completion of the survey to encourage maximum participation by employers.

5. Orange objects on the basis that WFWV acknowledges that only 21% of the prevailing wages were established using U.S. Bureau of Labor Statistics data, although the statute provides that the methodology for determining prevailing wages shall include "the average rate of wages published by the U. S. Bureau of Labor Statistics". The summary of the methodology available to the public does not explain how BLS-OES statistics are used in the process to determine the 2015 prevailing wage rates.

Since 1884, the Bureau of Labor Statistics of the U.S. Department of Labor, an independent statistical agency, has been the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decision-making. <http://www.bls.gov/bls/infohome.htm>

It stands to reason that the WV Legislature mandated WFWV to utilize the BLS data because the BLS is the single most qualified and unbiased source of reliable wage data that is readily available. As both WFWV and BLS are both funded by the USDOL, it is logical to expect cooperation between the two agencies and even a deference by WFWV to the more than 130 years of experience in the field of economic and employment data compilation and statistical analysis. If WFWV believes that BLS data is not reliable as a data source, it should bear the hefty burden to show why a federal agency whose sole purpose is to gather such data should be disregarded.

At the very least, WFWV should be able to provide, as BLS does, an independent and unbiased evaluation of wages in WV. It is very concerning that news reports revealed that WFWV consulted extensively with Steve White, Executive Director of the Affiliated Construction Trades Council, a division of the WV State Building & Construction Trades Council regarding the development of the methodology and definition of wage classifications. If WFWV is interested in collaborating with the WV construction industry regarding the establishment of a fair and accurate prevailing wage in WV, Orange, who performs will gladly provide assistance and insight.

Recommendation: (1) Utilize BLS-OES data as the primary source of wage data and supplement with actual wage data compiled by scientifically valid data collection methods from employers excluding all wages paid on publicly funded construction projects; (2) Provide a thorough explanation of how BLS-OES data was used and not used in the final publication of the new prevailing wage rates; and (3) If representatives of the construction industry are utilized as consultants or participate in development of any aspect of the development of prevailing wages in WV, then WFWV should include construction employers.

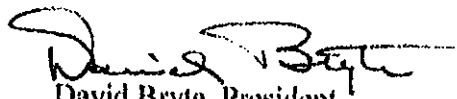
6. WFWV included fringe benefit contrary to the mandate of the WV Legislature. The term of "compensation" was replaced during the drafting of the statute with the term "wages" with the specific intent to exclude fringe benefits from the evaluation of prevailing wage rates. On February 25, 2015, when asked directly by Delegate Caputo from Marion County if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney, Tracy Webb, responded by saying that it would. This reason was cited by member of the legislature both in that committee and during floor debate as a reason not to support the legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Contrary to the clear legislative intent, WFWV included fringe benefits in the surveys to employers and in the calculation of the prevailing wage.

Recommendation: (1) Exclude the fringe benefits from the published rates and survey process in accordance with the statute; and (2) Seek further guidance from the WV Legislature on how fringe benefits are to be presented in the prevailing wage determination, if at all.

The issues that have ensued regarding prevailing wage reform in WV have been disruptive and damaging to construction employers and will ultimately jeopardize job opportunities in our industry. Orange, like many in our industry, looks to WFWV to honor the letter and spirit of the amendment to the WV Prevailing Wage Act and to develop a fair, unbiased and accurate prevailing wage. Orange supports a fair living wage for employees who work on public improvement projects but also supports the WV taxpayers' right to not be burdened by overpriced public construction for the sake of special interest groups' agendas.

Please do not hesitate to contact me if you have questions.

Sincerely,


David Bryte, President
Orange Construction Corporation

October 30, 2015

ORANGE CONSTRUCTION CORPORATION
170 OLD CHEAT ROAD
MORGANTOW, WV 26508

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

112 California Avenue • Charleston, WV 25305

An agency of the Department of Commerce

An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

www.workforcewv.org

American Job Center

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.

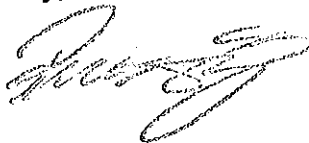
Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate

calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

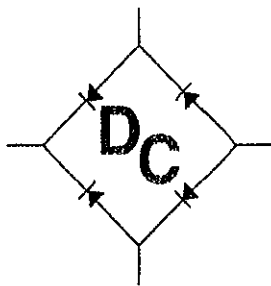
Sincerely,

A handwritten signature in dark ink, appearing to read 'Russell Fry', with a stylized, flowing script.

Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File



D-C ELEVATOR COMPANY, INC.

"An Employee-Owned Company"

Corporate Office

124 Venture Court, Suite 1
Lexington, KY 40511
(859) 254-8224
Fax (859) 231-8740

Branch Offices

140 East Woodlawn Ave.
Louisville, KY 40214
(502) 363-5961
Fax (502) 363-6026

182 Swartz Drive
Suite 200
Hazard, KY 41701
(606) 436-2288
Fax (606) 436-1140

512 Slack St.
Charleston, WV 25301
(304) 345-7222
Fax (304) 346-1086

Field Offices

8459 US 42 Suite 253F
Florence, KY 41042
(859) 746-8990

3240 Lone Oak Road
P.M.B. 153
Paducah, KY 42003
(270) 444-7952

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Elevator Contractors



Via Hand-Delivery

October 13, 2015

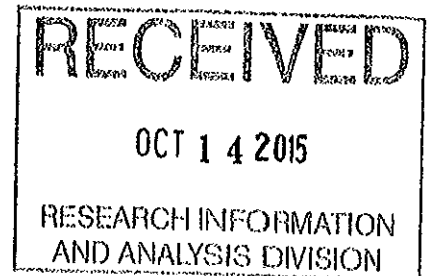
Workforce West Virginia
Attn: Prevailing Wage Comments
112 California Avenue
Charleston, WV 25305

RE: Objection to the 2015 WV Prevailing Wage Rates pursuant to WV
Legislative Rule 96 CSR 04, September 30, 2015

Dear Workforce West Virginia,

I am writing to you as President of D-C Elevator Company, Inc. to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning prevailing wages. WFWV has not complied with the letter or the spirit of the prevailing wage law reform that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.



Following is a list of specific reasons that D-C Elevator Company, Inc. objects to the 2015 WV Prevailing Wage rates and the WFWV methodology for calculation these rates:

1. D-C Elevator Company, Inc. objects to the fact that the detailed methodology used by WFWV has not been provided to the public. The ability to provide a comprehensive objection is frustrated by the lack of information about WFWV's procedure in determining the prevailing wage rates. Only a summary of the methodology is available on WFWV's website for the public to view. This lack of transparency inhibits meaningful discourse about whether the WFWV methodology is consistent with the legislative intent of §21-5A et. seq. and undermines the efficacy of public comment pursuant to WV Legislative Rule 96 CSR 04. **For this reason, D-C Elevator Company, Inc. reserves the right to supplement this protest after reasonable opportunity for review of WFWV's detailed methodology and conclusions.**

Recommendation: Provide the full report outlining WFWV prevailing wage calculation methodology to the public and allow for sufficient time for review and questions prior to conducting the survey.

2. D-C Elevator Company, Inc. objects to the inclusion of prevailing wage rates in the survey. It is clear that the overriding purpose of the amendment to the WV Prevailing Wage Act was to correct the WVDOL wage determination methodology which consistently resulted in artificially inflated prevailing wage rates. Reliance on prevailing wage data from 2014 and earlier, which the Legislature implicitly deems unreliable as a data source, perpetuates the problem which §21-5A et. seq. was enacted to address. As such, considering the clear legislative intent, prevailing wage rates cannot be considered "appropriate economic data" under the statute. Even the WVDOL surveys excluded prevailing wage rates from its surveys for obvious reasons. There can be no doubt that the inclusion of prevailing wages heavily impacted the results of WFWV's survey, particularly in instances where employers reported prevailing wage fringes paid as cash.

Recommendation: Exclude all prevailing wages, state and federal, from the wage data compiled in the establishment of prevailing wages.

3. WFWV failed to compile data in a manner that would accurately reflect the "actual rate of wages paid in the regions of this state", WV Code §21-5A-5(2). First, by limiting available wage information to four selected weeks, WFWV has excluded 77% of the relevant data regarding the "actual rate of wages paid" by employers in the WV construction industry. It is no more burdensome for D-C Elevator Company, Inc. to provide wage rates by classification for the entire year than it is to provide this data for 4 weeks of the year.

Second, WFWV claims that there was a 73.6% response rate to the surveys from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations. This equates to approximately 11% of the total 4,998 surveys that were sent to employers. This methodology does not generate a sufficient data set from which the "actual rate of wages" can be determined.

Recommendation: (1) Survey all construction wages paid for the year, excluding prevailing wages; (2) Provide guidance on how to average wages for employees whose rates may have changed during the year; (3) Provide guidance on how to report wages for employees who work in different classifications during the year; and, (4) Provide guidance on how to report wages for part-time, seasonal, or sporadic employees.

4. WFWV only provided one week to respond to the surveys; although a one-week extension was eventually granted. Given the uncertainty and controversy surrounding the issue of prevailing wage reform during this time, it would have been prudent to allow employer fair notice and reasonable time to ask questions and provide responses that did not have to be hastily prepared.

Recommendation: Extend the response time period for completion of the survey to encourage maximum participation by employers.

5. D-C Elevator Company, Inc. objects on the basis that WFWV acknowledges that only 21% of the prevailing wages were established using U.S. Bureau of Labor Statistics data, although the statute provides that the methodology for determining prevailing wages shall include "the average rate of wages published by the U. S. Bureau of Labor Statistics". The summary of the methodology available to the public does not explain how BLS-OES statistics are used in the process to determine the 2015 prevailing wage rates.

Since 1884, the Bureau of Labor Statistics of the U.S. Department of Labor, an independent statistical agency, has been the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decision-making, <http://www.bls.gov/bls/infohome.htm>

It stands to reason that the WV Legislature mandated WFWV to utilize the BLS data because the BLS is the single most qualified and unbiased source of reliable wage data that is readily available. As both WFWV and BLS are both funded by the USDOL, it is logical to expect cooperation between the two agencies and even a deference by WFWV to the more than 130 years of experience in the field of economic and employment data compilation and statistical analysis. If WFWV believes that BLS data is not reliable as a data source, it should bear the hefty burden to show why a federal agency whose sole purpose is to gather such data should be disregarded.

At the very least, WFWV should be able to provide, as BLS does, an independent and unbiased evaluation of wages in WV. It is very concerning that news reports revealed that WFWV consulted extensively with Steve White, Executive Director of the Affiliated Construction Trades Council, a division of the WV State Building & Construction Trades Council regarding the development of the methodology and definition of wage classifications. If WFWV is interested in collaborating with the WV construction industry regarding the establishment of a fair and accurate prevailing wage in WV, D-C Elevator Company, Inc., who performs Elevator Construction and Repair, will gladly provide assistance and insight.

Recommendation: (1) Utilize BLS-OES data as the primary source of wage data and supplement with actual wage data compiled by scientifically valid data collection methods from employers

excluding all wages paid on publicly funded construction projects; (2) Provide a thorough explanation of how BLS-OES data was used and not used in the final publication of the new prevailing wage rates; and (3) If representatives of the construction industry are utilized as consultants or participate in development of any aspect of the development of prevailing wages in WV, then WFWV should include construction employers.

6. WFWV included fringe benefit contrary to the mandate of the WV Legislature. The term of "compensation" was replaced during the drafting of the statute with the term "wages" with the specific intent to exclude fringe benefits from the evaluation of prevailing wage rates. On February 25, 2015, when asked directly by Delegate Caputo from Marion County if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney, Tracy Webb, responded by saying that it would. This reason was cited by member of the legislature both in that committee and during floor debate as a reason not to support the legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Contrary to the clear legislative intent, WFWV included fringe benefits in the surveys to employers and in the calculation of the prevailing wage.

Recommendation: (1) Exclude the fringe benefits from the published rates and survey process in accordance with the statute; and (2) Seek further guidance from the WV Legislature on how fringe benefits are to be presented in the prevailing wage determination, if at all.

The issues that have ensued regarding prevailing wage reform in WV have been disruptive and damaging to construction employers and will ultimately jeopardize job opportunities in our industry. D-C Elevator Company, Inc., like many in our industry, looks to WFWV to honor the letter and spirit of the amendment to the WV Prevailing Wage Act and to develop a fair, unbiased and accurate prevailing wage. D-C Elevator Company, Inc. supports a fair living wage for employees who work on public improvement projects but also supports the WV taxpayers' right to not be burdened by overpriced public construction for the sake of special interest groups' agendas.

Please do not hesitate to contact me if you have questions.

Sincerely,



James S. Bowlds, President
D-C Elevator Company, Inc.

October 30, 2015

D-C ELEVATOR COMPANY, INC.
124 VENTURE COURT, SUITE 1
LEXINGTON, KY 40511

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

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Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

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AmericanJobCenter

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.

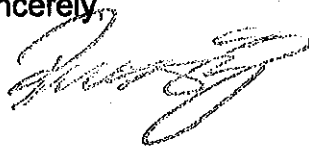
Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate

calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

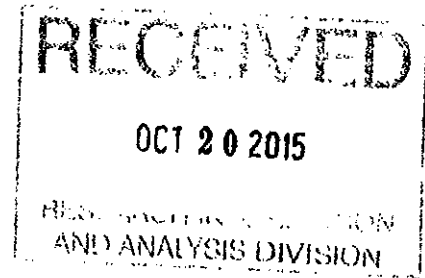
Sincerely,

A handwritten signature in black ink, appearing to read 'Russell Fry', written over a horizontal line.

Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File



October 12, 2015

Workforce West Virginia
Attn: Prevailing Wage Written Objections
112 California Avenue
Charleston, WV 25305

Dear Workforce West Virginia,

I am writing to you as President of Bear Contracting, LLC to object to Work Force West Virginia's ("WFWV") September 2015 Rule concerning the methodology used to determine the prevailing rate of wages to be used on public projects in West Virginia. Work Force West Virginia has not followed the prevailing wage law that was enacted earlier this year and we need to work together to resolve and develop a prevailing wage that represents all classifications. Please keep in mind that under the West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

These are the specific reasons that I object:

1. I find fault in that objections to the methodology of this calculation has not been made available to the public. Only a summary is available on WFWV's website. Many business owners prefer the full detail when evaluating wages. This is especially true when some of the new rates have gone down from what employees have been accustomed to being paid. Therefore, I believe it is extremely important to provide full details of your methodology so we can better explain to our employees how the wages were calculated and why each region is different as well as why some rates went up or down to the previous rate posted.
2. WFWV did not collect an accurate reflection of the wage rates paid due to the use of heavy restrictions during the survey process. By limiting wage information to only a selected four weeks the survey has excluded periods from contractors who have relevant data.

BEAR CONTRACTING, LLC

Post Office Box 1196, Bridgeport, WV 26330
WV # 028391
304-326-0160 or Fax 304-326-0054

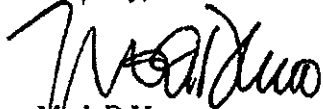
It appears that the four periods selected were periods which had heavy construction under the old prevailing wage system. Given that the previous prevailing wages rates were in dispute and the economic data in a limited sample size, this process excluded employers who were not performing commercial work in one of the four weeks that were selected. Since all of those public projects required 2014 wage rates, this means that the calculations were very heavily impacted by last year's prevailing wage, rather than the factors identified by the legislature statute. As a result WFWV claim that it had a 73.6% response rate, having received responses from 3,722 employers. However, the summary on line of the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows only 15% of the surveys returned were actually used or 11% of the total 4,998 surveys.

3. WFWV only gave the public notice and one week to respond. Despite internal efforts to increase the number of respondents past that time period, WFWV's brief public notice could have been dissuasive to contractors who noticed the short timeframe and decided not to complete the survey.
4. I object to the fact that only 21% of the prevailing wages established used the U.S. Bureau of Labor Statistics. Although the statute provides that the methodology for determining prevailing wages shall include "The average rate of wages published by the US Bureau of Labor Statistics." A better understanding of the methodology must be provided.
 - a. For example under the new wage rates: "Operator Group One" has a higher wage rate than "Operator Group Two" in three of the seven regions. In the other four regions, "Operator Group Two" has a higher wage rate than "Operator Group One." This is just one of numerous flaws.
5. WFWV included fringe benefit calculations against the will of the West Virginia Legislature. The term "wages" as defined by the statute does not include any language referring to or requiring Fringe Benefits be mandated on public projects in the state of West Virginia.
 - a. The definition of "Compensation" was altered in the committee substitute while being taken up before the House Government Organization Committee to the term "wages" which clearly does not include fringe benefits. The reason this was altered was to exclude a requirement to mandate fringe benefits on public projects. On February 25, 2015, when asked directly by a Delegate member of the committee if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney responded by saying; "that it would, in fact, no longer be a mandated requirement."

These specific aspects of the methodology adopted by WFWV make it more difficult for any business owner to successfully run their business. Ultimately this will mean fewer jobs for West Virginia construction workers due to the increased cost in wages for public construction. Employers need a prevailing wage that is calculated using a methodology that complies with the law and is reflective of the definition of prevailing wages.

Thank you for your immediate attention to this matter.

Sincerely,



Mark D Urso
President/Managing Member

October 30, 2015

Bear Contracting, LLC
PO Box 1196
Bridgeport, WV 26330

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and

112 California Avenue • Charleston, WV 25305

An agency of the Department of Commerce

An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

www.workforcewv.org

American Job Center

Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

- 2 See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

- 3 See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

- 4 See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite,

instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

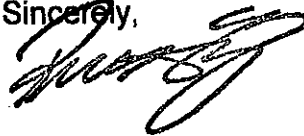
5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

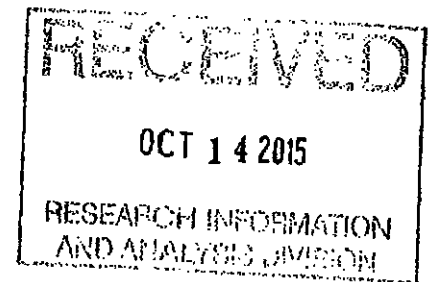
Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,



Russell Fry, Acting Director
WorkForce West Virginia

Enclosure
cc: File



October 12, 2015

Workforce West Virginia
Attn: Prevailing Wage Written Objections
112 California Avenue
Charleston, WV 25305

Dear Workforce West Virginia,

I am writing to you as President of Sutter Roofing Company to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning the methodology used to determine the prevailing rate of wages to be used on public projects in West Virginia. WorkForce West Virginia has not followed the prevailing wage law that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

These are the specific reasons that I object:

1. First and foremost, we object to the fact that the citizens of this state have been provided with a process to offer written objection to a methodology that has not been made available to the public. Only a summary of the methodology is available on WFWV's website making the written objection process one that is lacking in adequacy when attempting to evaluate the process that has been implemented. It is extremely difficult to determine the specific intentions of the methodology put forth by WFWV if they haven't even provided it for public viewing. This lack of transparency is cause for concerns with regards to the whole process.

SUTTER ROOFING & METAL CO., INC.

TELEPHONE (304) 624-6565 • FAX (304) 622-3637
STADIUM DRIVE • P.O. BOX 2036 • CLARKSBURG, WV 26302-2036
WV CONTRACTOR LICENSE WV000463

Recommendation: Provide the full report to the public immediately to allow for sufficient time to understand the specifics of the intentions of the various components of the survey process. Provide explanation as to why the release of the full report was not completed and the public was only left with a summary of the methodology to review in order to file objections.

1. We object to the use of 2014 prevailing wage rates in the use of the survey. WFWV did not collect adequate private sector data in order to determine the new prevailing rate of wages. Since WFWV relied on the use of previously generated public prevailing wage rates during four select weeks over the course of the previous year, it failed to take into account a major portion of the work performed in this state. Given that the previous prevailing wage rates were in dispute and the sole cause for this reform to begin with, they should have never been considered "appropriate economic data" which the statute calls for the use of. This process may exclude employers who may perform commercial work and residential work, but were simply not performing commercial work in one of the weeks that were selected. This leaves the process with insufficient data that is readily available but excluded for the sole reason of performing the methodology in this manner. Since all of those public projects required 2014 prevailing wage rates, this means that the calculations were very heavily impacted by last year's prevailing wage, rather than the factors identified by the legislature in the statute.

Recommendation: Remove the use of previous mandated public prevailing wage rates in the survey process and replace it solely with wage rates that are negotiated between employees and their employers at the time the survey is received.

2. WFWV did not collect an accurate reflection of the wage rates paid due to the use of heavy restrictions during the survey process. By limiting available wage information to four selected weeks you have potentially excluded contractors who have relevant data, but simply were not performing commercial work during that time period. Nowhere in the statute does it call for such heavy restrictions on residential wage rates, yet the methodology summary gives no explanation as to why that decision was made. WFWV claims that it had a 73.6% response rate, having received responses from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations; that comes to about 11% of the total 4,998 surveys that were sent to employers. This methodology is not providing for an accurate reflection of prevailing market rates due to heavy number of restrictions put in place during the process.

Recommendation: Remove data collection process that only accounts for four select weeks during the course of the previous year and simply survey construction employers as to what wage rates they have negotiated with between themselves and their employees on commercial construction. Also, please provide an explanation as to why only commercial construction wage rates were collected when the statute does not specifically cite their inclusion alone. Some contractors perform both residential and commercial work and those contractors with relevant data may have been excluded simply because

they did not do commercial work during one of four selected weeks. This process is removing entirely too much data from the process.

4. WFWV only gave public notice of one week to respond. Despite internal efforts to increase the number of respondents past that time period, WFWV's brief public notice could have been dissuasive to contractors who noticed the short timeframe and decided not to complete the survey.

Recommendation: Extend the time period allotted for contractors to fill out the survey providing for ample time to complete the steps necessary and not be concerned with a short time frame.

5. I also object because, according to WFWV, only 21% of the prevailing wages it established used U.S. Bureau of Labor Statistics, although the statute provides that the methodology for determining prevailing wages shall include "the average rate of wages published by the U. S. Bureau of Labor Statistics. The summary of the methodology available to the public does not adequately express how BLS-OES statistics are used in the process to determine the prevailing rate of wages. Improper usage of BLS-OES data through minimal supplementation has caused for unexplainable variances in the wage rate calculations by our assessment. For example, "Operator Group One" has a higher wage rate than "Operator Group Two" in three of the seven regions of the state. In the other four regions, "Operator Group Two" has a higher wage rate than "Operator Group One." Also, mechanics have a lower wage rate than that of laborer/helpers in all but one of the seven regions of the state. This is clearly not reflective of the construction market's rates or conditions. These examples clearly indicate that the methodology used with regards to the minimal usage of comprehensive BLS-OES data, and heavy reliance on restrictive surveys is not reflective of market rates and is inherently flawed. This must be revised to create a more stable and reliable system of calculating the prevailing rate of wages.

Recommendation: Provide a full description of how required BLS-OES data was used in the final publication of the new prevailing wage rates and explain why they were used to such little extent when the statute clearly calls for their use.

Recommendation: Use available BLS data as your primary source of data the survey results to supplement that data where it is needed rather than relying on a flawed methodology which has no minimum response rate.

6. WFWV included fringe benefit calculations against the will of the West Virginia Legislature. The term "wages" as defined by the statute does not include any language referring to or requiring Fringe Benefits be mandated on public projects in the state of West Virginia. The summary of the methodology available does not give an adequate description as to why this significant mandate was ultimately added to the law when it is not specifically required by the statute. The summary of the methodology states that the term "wages" has a standard meaning in West Virginia; however the term "wages" is

clearly defined in the statute as "the hourly rate paid for work performed by an employee for an employer." Due to the lack of any specific citation of "fringe benefits," "fringe packages," or a definition of fringe benefits anywhere in the statute itself, WFWV cannot impose such a mandate.

The definition of "Compensation" was altered in the committee substitute while being taken up before the House Government Organization Committee to the term "wages" which clearly does not include fringe benefits. The reason this was altered was to exclude a requirement to mandate fringe benefits on public projects. On February 25, 2015, when asked directly by a Delegate member of the committee if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney responded by saying that it would, in fact, no longer be a mandated requirement. This reason was cited by numerous members of the legislature both in that committee and during floor debate as a reason not to support this legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Despite that clear explanation, fringe benefits were still included in the methodology and were surveyed as a result. We strongly object to this aspect of the methodology.

Recommendation: Exclude the fringe benefits from the published rates and survey process for this specific item is clearly not included in the statute. The summary of the methodology claims that "wages" in West Virginia carries a standard definition. That definition needs to be defined more broadly and a description needs made to the public as to why this item was included when it was made clear by legislative attorneys who drafted the bill, it was removed in the committee substitute that was ultimately codified in to the West Virginia Code.

These specific aspects of the methodology adopted by WFWV make it more difficult for me to successfully run my business because our prevailing wage is not accurate, and because there is no predicting how WFWV will calculate prevailing wage given that there are noticeable discrepancies in the published wage rates when being compared to standard market rates and conditions. Ultimately this will mean fewer jobs for West Virginia construction workers due to the increased cost for public construction which limits the amount of revenue for additional projects to be bid to the industry. Employers need a prevailing wage that is calculated using a methodology that we can see, adequately evaluate, which complies with the law and is reflective of the definition of prevailing wages, those being rates that prevail in the private market. If we have that, then we will have a fair prevailing wage that employers can work with. Please fix these problems and calculate prevailing wages as the law intended, so that we can move forward.

Sincerely,



David W. Sutter, President
Sutter Roofing & Metal Co., Inc.

October 30, 2015

SUTTER ROOFING COMPANY
PO BOX 2036
CLARKSBURG, WV 26302-2036

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce

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An agency of the Department of Commerce

An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

www.workforcewv.org

AmericanJobCenter

West Virginia's Labor Market Information website. This report is available to the public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

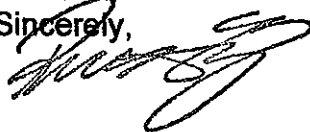
6. See Exhibit 1 for the text of the sixth objection.

Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,



Russell Fry, Acting Director
WorkForce West Virginia

Enclosure
cc: File

Chandler Swope
702 3 Springs Drive
Bluefield, WV 24701

Via Hand-Delivery

October 12, 2015

Workforce West Virginia
Attn: Prevailing Wage Comments
112 California Avenue
Charleston, WV 25305

RECEIVED

OCT 14 2015

RESEARCH INFORMATION
AND ANALYSIS DIVISION

RE: Objection to the 2015 WV Prevailing Wage Rates pursuant to WV Legislative Rule 96
CSR 04, September 30, 2015

Dear Workforce West Virginia,

I am writing to you as a former business owner and concerned citizen to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning prevailing wages. WFWV has not complied with the letter or the spirit of the prevailing wage law reform that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

Following is a list of specific reasons that I object to the 2015 WV Prevailing Wage rates and the WFWV methodology for calculating these rates:

1. I object to the fact that the detailed methodology used by WFWV has not been provided to the public. The ability to provide a comprehensive objection is frustrated by the lack of information about WFWV's procedure in determining the prevailing wage rates. Only a summary of the methodology is available on WFWV's website for the public to view. This lack of transparency inhibits meaningful discourse about whether the WFWV methodology is consistent with the legislative intent of §21-5A et. seq. and undermines the efficacy of public comment pursuant to WV Legislative Rule 96 CSR 04. **For this reason, I reserves the right to supplement this protest after reasonable opportunity for review of WFWV's detailed methodology and conclusions.**

Recommendation: Provide the full report outlining WFWV prevailing wage calculation methodology to the public and allow for sufficient time for review and questions prior to conducting the survey.

2. Swope Construction Co. object to the inclusion of prevailing wage rates in the survey. It is clear that the overriding purpose of the amendment to the WV Prevailing Wage Act was to correct the WVDOL wage determination methodology which consistently resulted in artificially inflated prevailing wage rates. Reliance on prevailing wage data from 2014 and earlier, which the Legislature implicitly deems unreliable as a data source, perpetuates the problem which §21-5A et. seq. was enacted to address. As such, considering the clear legislative intent, prevailing wage rates cannot be considered "appropriate economic data" under the statute. Even the WVDOL surveys excluded prevailing wage rates from its surveys for obvious reasons. There can be no doubt that the inclusion of prevailing wages heavily impacted the results of WFWV's survey, particularly in instances where employers reported prevailing wage fringes paid as cash.

Recommendation: Exclude all prevailing wages, state and federal, from the wage data compiled in the establishment of prevailing wages.

3. WFWV failed to compile data in a manner that would accurately reflect the "actual rate of wages paid in the regions of this state", WV Code §21-5A-5(2). First, by limiting available wage information to four selected weeks, WFWV has excluded 77% of the relevant data regarding the "actual rate of wages paid" by employers in the WV construction industry. It is no more burdensome for a business owner to provide wage rates by classification for the entire year than it is to provide this data for 4 weeks of the year.

Second, WFWV claims that there was a 73.6% response rate to the surveys from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations. This equates to approximately 11% of the total 4,998 surveys that were sent to employers. This methodology does not generate a sufficient data set from which the "actual rate of wages" can be determined.

Recommendation: (1) Survey all construction wages paid for the year, excluding prevailing wages; (2) Provide guidance on how to average wages for employees whose rates may have changed during the year; (3) Provide guidance on how to report wages for employees who work

in different classifications during the year; and, (4) Provide guidance on how to report wages for part-time, seasonal, or sporadic employees.

4. WFWV only provided one week to respond to the surveys; although a one-week extension was eventually granted. Given the uncertainty and controversy surrounding the issue of prevailing wage reform during this time, it would have been prudent to allow employer fair notice and reasonable time to ask questions and provide responses that did not have to be hastily prepared.

Recommendation: Extend the response time period for completion of the survey to encourage maximum participation by employers.

5. I object on the basis that WFWV acknowledges that only 21% of the prevailing wages were established using U.S. Bureau of Labor Statistics data, although the statute provides that the methodology for determining prevailing wages shall include "the average rate of wages published by the U. S. Bureau of Labor Statistics". The summary of the methodology available to the public does not explain how BLS-OES statistics are used in the process to determine the 2015 prevailing wage rates.

Since 1884, the Bureau of Labor Statistics of the U.S. Department of Labor, an independent statistical agency, has been the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decision-making, <http://www.bls.gov/bls/infohome.htm>

It stands to reason that the WV Legislature mandated WFWV to utilize the BLS data because the BLS is the single most qualified and unbiased source of reliable wage data that is readily available. As both WFWV and BLS are both funded by the USDOL, it is logical to expect cooperation between the two agencies and even a deference by WFWV to the more than 130 years of experience in the field of economic and employment data compilation and statistical analysis. If WFWV believes that BLS data is not reliable as a data source, it should bear the hefty burden to show why a federal agency whose sole purpose is to gather such data should be disregarded.

At the very least, WFWV should be able to provide, as BLS does, an independent and unbiased evaluation of wages in WV. It is very concerning that news reports revealed that WFWV consulted extensively with Steve White, Executive Director of the Affiliated Construction Trades Council, a division of the WV State Building & Construction Trades Council regarding the development of the methodology and definition of wage classifications. If WFWV is interested in collaborating with the WV construction industry regarding the establishment of a fair and accurate prevailing wage in WV, I, as a former owner of one of the larger construction employers in WV with 31 years of experience will gladly provide assistance and insight.

Recommendation: (1) Utilize BLS-OES data as the primary source of wage data and supplement with actual wage data compiled by scientifically valid data collection methods from employers

excluding all wages paid on publicly funded construction projects; (2) Provide a thorough explanation of how BLS-OES data was used and not used in the final publication of the new prevailing wage rates; and (3) If representatives of the construction industry are utilized as consultants or participate in development of any aspect of the development of prevailing wages in WV, then WFWV should include construction employers.

6. WFWV included fringe benefit contrary to the mandate of the WV Legislature. The term of "compensation" was replaced during the drafting of the statute with the term "wages" with the specific intent to exclude fringe benefits from the evaluation of prevailing wage rates. On February 25, 2015, when asked directly by Delegate Caputo from Marion County if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney, Tracy Webb, responded by saying that it would. This reason was cited by member of the legislature both in that committee and during floor debate as a reason not to support the legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Contrary to the clear legislative intent, WFWV included fringe benefits in the surveys to employers and in the calculation of the prevailing wage.

Recommendation: (1) Exclude the fringe benefits from the published rates and survey process in accordance with the statute; and (2) Seek further guidance from the WV Legislature on how fringe benefits are to be presented in the prevailing wage determination, if at all.

The chaos that has ensued regarding prevailing wage reform in WV has been disruptive and damaging to construction employers and will ultimately jeopardize job opportunities in our industry. I, like many in our industry, looks to WFWV to honor the letter and spirit of the amendment to the WV Prevailing Wage Act and to develop a fair, unbiased and accurate prevailing wage. I support a fair living wage for employees who work on public improvement projects but also supports the WV taxpayers' right to not be burdened by overpriced public construction for the sake of special interest groups' agendas.

Please do not hesitate to contact me if you have questions.

Sincerely,



Chandler Swope
Concerned Citizen

October 30, 2015

CHANDLER SWOPE
702 3 SPRINGS DRIVE
BLUEFIELD, WV 24701

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

112 California Avenue • Charleston, WV 25305

An agency of the Department of Commerce

An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

www.workforcewv.org

American Job Center

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.

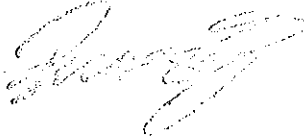
Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate

calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell Fry", is written over a light blue horizontal line.

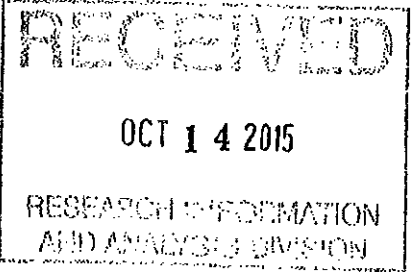
Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File



West Virginia
Chapter



Via Hand-Delivery

October 14, 2015

Workforce West Virginia
Attn: Prevailing Wage Comments
112 California Avenue
Charleston, WV 25305

RE: Objection to the 2015 WV Prevailing Wage Rates pursuant to WV Legislative Rule 96
CSR 04, September 30, 2015

Dear Workforce West Virginia,

I am writing to you as President & CEO of the Associated Builders and Contractors of West Virginia ("ABCWV"), a statewide trade association representing commercial contractors, industry suppliers and industry related associates to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning prevailing wages. WFWV has not complied with the letter or the spirit of the prevailing wage law reform that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

Following is a list of specific reasons that ABCWV objects to the 2015 WV Prevailing Wage rates and the WFWV methodology for calculation these rates:

1. ABCWV objects to the fact that the detailed methodology used by WFWV has not been provided to the public. The ability to provide a comprehensive objection is frustrated by the lack of information about WFWV's procedure in determining the prevailing wage rates. Only a summary of the methodology is available on WFWV's website for the public to view. This lack of transparency inhibits meaningful discourse about whether the WFWV methodology is consistent with the legislative intent of §21-5A et. seq. and undermines the efficacy of public comment pursuant to WV Legislative Rule 96 CSR 04. **For this reason, [Company] reserves the right to supplement this protest after reasonable opportunity for review of WFWV's detailed methodology and conclusions.**

Recommendation: Provide the full report outlining WFWV prevailing wage calculation methodology to the public and allow for sufficient time for review and questions prior to conducting the survey.

2. ABCWV objects to the inclusion of prevailing wage rates the survey. It is clear that the overriding purpose of the amendment to the WV Prevailing Wage Act was to correct the WVDOL wage determination methodology which consistently resulted in artificially inflated prevailing wage rates. Reliance on prevailing wage data from 2014 and earlier, which the Legislature implicitly deems unreliable as a data source, perpetuates the problem which §21-5A et. seq. was enacted to address. As such, considering the clear legislative intent, prevailing wage rates cannot be considered "appropriate economic data" under the statute. Even the WVDOL surveys excluded prevailing wage rates from its surveys for obvious reasons. There can be no doubt that the inclusion of prevailing wages heavily impacted the results of WFWV's survey, particularly in instances where employers reported prevailing wage fringes paid as cash.

Recommendation: Exclude all prevailing wages, state and federal, from the wage data compiled in the establishment of prevailing wages.

3. WFWV failed to compile data in a manner that would accurately reflect the "actual rate of wages paid in the regions of this state", WV Code §21-5A-5(2). First, by limiting available wage information to four selected weeks, WFWV has excluded 77% of the relevant data regarding the "actual rate of wages paid" by employers in the WV construction industry. It is no more burdensome for ABCWV to provide wage rates by classification for the entire year than it is to provide this data for 4 weeks of the year.

Second, WFWV claims that there was a 73.6% response rate to the surveys from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations. This equates to approximately 11% of the total 4,998 surveys that were sent to employers. This methodology does not generate a sufficient data set from which the "actual rate of wages" can be determined.

Recommendation: (1) Utilize BLS-OES data as the primary source of wage data and supplement with actual wage data compiled by scientifically valid data collection methods from employers excluding all wages paid on publicly funded construction projects; (2) Provide a thorough explanation of how BLS-OES data was used and not used in the final publication of the new prevailing wage rates; and (3) If representatives of the construction industry are utilized as consultants or participate in development of any aspect of the development of prevailing wages in WV, then WFWV should include construction employers.

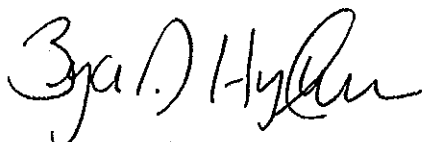
6. WFWV included fringe benefit contrary to the mandate of the WV Legislature. The term of "compensation" was replaced during the drafting of the statute with the term "wages" with the specific intent to exclude fringe benefits from the evaluation of prevailing wage rates. On February 25, 2015, when asked directly by Delegate Caputo from Marion County if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney, Tracy Webb, responded by saying that it would. This reason was cited by member of the legislature both in that committee and during floor debate as a reason not to support the legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Contrary to the clear legislative intent, WFWV included fringe benefits in the surveys to employers and in the calculation of the prevailing wage.

Recommendation: (1) Exclude the fringe benefits from the published rates and survey process in accordance with the statute; and (2) Seek further guidance from the WV Legislature on how fringe benefits are to be presented in the prevailing wage determination, if at all.

The issues that have ensued regarding prevailing wage reform in WV have been disruptive and damaging to construction employers and will ultimately jeopardize job opportunities in our industry. ABCWV, like many in our industry, looks to WFWV to honor the letter and spirit of the amendment to the WV Prevailing Wage Act and to develop a fair, unbiased and accurate prevailing wage. ABCWV, supports a fair living wage for employees who work on public improvement projects but also supports the WV taxpayers' right to not be burdened by overpriced public construction for the sake of special interest groups' agendas.

Please do not hesitate to contact me if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan J. Hoylman", written in a cursive style.

Bryan J. Hoylman, President & CEO
ABCWV

October 30, 2015

ASSOCIATED BUILDERS & CONTRACTORS, INC. - WV CHAPTER
1510 KANAWHA BOULEVARD, WEST
CHARLESTON, WV 25387

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

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An agency of the Department of Commerce

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www.workforcewv.org

AmericanJobCenter

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

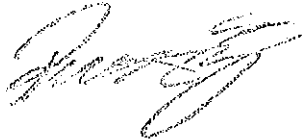
6. See Exhibit 1 for the text of the sixth objection.

Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell Fry", written over a light blue horizontal line.

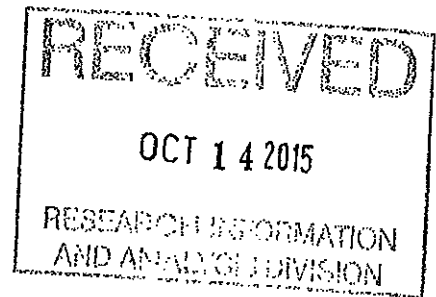
Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File



MARCH-WESTIN
COMPANY, INC.



Via Hand-Delivery

October 12, 2015

Workforce West Virginia
Attn: Prevailing Wage Comments
112 California Avenue
Charleston, WV 25305

RE: Objection to the 2015 WV Prevailing Wage Rates pursuant to WV Legislative Rule 96
CSR 04, September 30, 2015

Dear Workforce West Virginia,

I am writing to you as Vice-President of March-Westin Company to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning prevailing wages and the 2015 WV Prevailing Wage Rates. WFWV has not complied with the letter or the spirit of the prevailing wage law reform that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

Following is a list of specific reasons that March-Westin objects to the 2015 WV Prevailing Wage rates and the WFWV methodology for calculation these rates:

1. March-Westin objects to the fact that the detailed methodology used by WFWV has not been provided to the public. The ability to provide a comprehensive objection is frustrated by the lack of information about WFWV's procedure in determining the prevailing wage rates.

Only a summary of the methodology is available on WFWV's website for the public to view. This lack of transparency inhibits meaningful discourse about whether the WFWV methodology is consistent with the legislative intent of §21-5A et. seq. and undermines the efficacy of public comment pursuant to WV Legislative Rule 96 CSR 04. **For this reason, March-Westin reserves the right to supplement this protest after reasonable opportunity for review of WFWV's detailed methodology and conclusions.**

Recommendation: Provide the full report outlining WFWV prevailing wage calculation methodology to the public and allow for sufficient time for review and questions prior to conducting the survey.

2. March-Westin objects to the inclusion of prevailing wage rates the survey. It is clear that the fundamental purpose of the amendment to the WV Prevailing Wage Act was to correct the WVDOL wage determination methodology which consistently resulted in artificially inflated prevailing wage rates. Reliance on prevailing wage data from 2014 and earlier, which the Legislature implicitly deems unreliable as a data source, perpetuates the problem which §21-5A et. seq. was enacted to address. As such, considering the clear legislative intent, prevailing wage rates cannot be considered "appropriate economic data" under the statute. Even the WVDOL surveys excluded prevailing wage rates from its surveys for obvious reasons. There can be no doubt that the inclusion of prevailing wages heavily impacted the results of WFWV's survey.

Recommendation: Exclude all prevailing wages, state, local and federal, from the wage data compiled in the establishment of prevailing wages.

3. WFWV failed to compile data in a manner that would accurately reflect the "actual rate of wages paid in the regions of this state", WV Code §21-5A-5(2). First, by limiting available wage information to four selected weeks, WFWV has excluded 77% of the relevant data regarding the "actual rate of wages paid" by employers in the WV construction industry. It is no more burdensome for March-Westin to provide wage rates by classification for the entire year than it is to provide this data for 4 weeks of the year.

Second, WFWV claims that there was a 73.6% response rate to the surveys from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations. This equates to approximately 11% of the total 4,998 surveys that were sent to employers. This methodology does not generate a sufficient data set from which the "actual rate of wages" can be determined.

Recommendation: (1) Survey all construction wages paid for the year, excluding prevailing wages; (2) Provide guidance on how to average wages for employees whose rates may have changed during the year; (3) Provide guidance on how to report wages for employees who work in different classifications during the year; and, (4) Provide guidance on how to report wages for part-time, seasonal, or sporadic employees.

4. WFWV only provided one week to respond to the surveys; although a one-week extension was eventually granted. Given the uncertainty and controversy surrounding the issue

of prevailing wage reform during this time, it would have been prudent to allow employer fair notice and reasonable time to ask questions and provide responses that did not have to be hastily prepared.

Recommendation: Extend the response time period for completion of the survey to encourage maximum participation by employers and minimize errors.

5. March-Westin objects on the basis that WFWV acknowledges that only 21% of the prevailing wages were established using U.S. Bureau of Labor Statistics data, although the statute provides that the methodology for determining prevailing wages shall include "the average rate of wages published by the U. S. Bureau of Labor Statistics". The summary of the methodology available to the public does not explain how BLS-OES statistics are used to determine the 2015 prevailing wage rates.

Since 1884, the Bureau of Labor Statistics of the U.S. Department of Labor, an independent statistical agency, has been the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decision-making, <http://www.bls.gov/bls/infohome.htm>

It stands to reason that the WV Legislature mandated WFWV to utilize the BLS data because the BLS is the single most qualified and unbiased source of reliable wage data that is readily available. As both WFWV and BLS are both funded by the USDOL, it is logical to expect cooperation between the two agencies and even a deference by WFWV to the more than 130 years of experience in the field of economic and employment data compilation and statistical analysis. If WFWV believes that BLS data is not reliable as a data source, it should bear the burden to show why a federal agency whose sole purpose is to gather such data should be disregarded.

At the very least, WFWV should be able to provide, as BLS does, an independent and unbiased evaluation of wages in WV. It is very concerning that news reports revealed that WFWV consulted extensively with Steve White, Executive Director of the Affiliated Construction Trades Council, a division of the WV State Building & Construction Trades Council regarding the development of the methodology and definition of wage classifications. If WFWV is interested in collaborating with the WV construction industry regarding the establishment of a fair and accurate prevailing wage in WV, March-Westin, as one of the largest construction employers in WV with 31 years of experience will gladly provide assistance and insight.

Recommendation: (1) Utilize BLS-OES data as the primary source of wage data and supplement with actual wage data compiled by scientifically valid data collection methods from employers excluding all wages paid on publicly funded construction projects; (2) Provide a thorough explanation of how BLS-OES data was used and not used in the final publication of the new prevailing wage rates; and (3) If representatives of the construction industry are utilized as consultants or participate in development of any aspect of the development of prevailing wages

in WV, then WFWV should include construction employers, without regard to whether those contractors' employees are affiliated with a union or not.

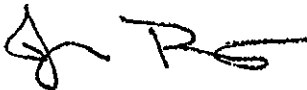
6. WFWV included fringe benefit contrary to the mandate of the WV Legislature. The term of "compensation" was replaced during the drafting of the statute with the term "wages" with the specific intent to exclude fringe benefits from the evaluation of prevailing wage rates. On February 25, 2015, when asked directly by Delegate Caputo from Marion County if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney, Tracy Webb, responded by saying that it would. This reason was cited by member of the legislature both in that committee and during floor debate as a reason not to support the legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Contrary to the clear legislative intent, WFWV included fringe benefits in the surveys to employers and in the calculation of the prevailing wage.

Recommendation: (1) Exclude the fringe benefits from the published rates and survey process in accordance with the statute; and (2) Seek further guidance from the WV Legislature on how fringe benefits are to be presented in the prevailing wage determination, if at all.

The chaos that has ensued regarding prevailing wage reform in WV has been disruptive and damaging to construction employers and will ultimately jeopardize job opportunities in our industry. March-Westin, like many in our industry, looks to WFWV to honor the letter and spirit of the amendment to the WV Prevailing Wage Act and to develop a fair, unbiased and accurate prevailing wage. March-Westin supports a fair living wage for employees who work on public improvement projects but also supports the WV taxpayers' right to not be burdened by overpriced public construction for the sake of special interest groups' agendas.

Please do not hesitate to contact me if you have questions.

Sincerely,



James Ridgeway, Vice-President of Operations
March-Westin Company, Inc.

cc: Russel L. Fry, Acting Executive Director, WFWV
Jeff Green, Director of Research, WFWV

October 30, 2015

MARCH-WESTIN COMPANY, INC.
360 FRONTIER STREET
STAR CITY, WV 26505

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

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An agency of the Department of Commerce

An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

www.workforcewv.org

AmericanJobCenter

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.

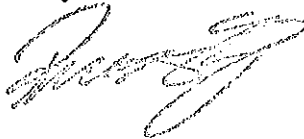
Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate

calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

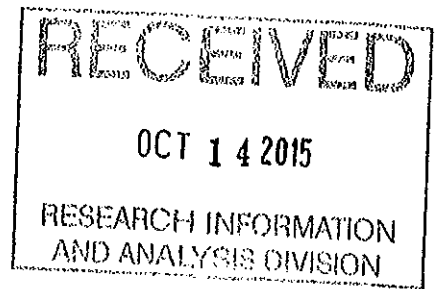
Sincerely,

A handwritten signature in dark ink, appearing to read 'Russell Fry', written in a cursive style.

Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File



Via Hand-Delivery

October 12, 2015

360 Frontier Street, Morgantown, WV 26505
304.599.4880 Fax 304.599.7509

Workforce West Virginia
Attn: Prevailing Wage Comments
112 California Avenue
Charleston, WV 25305

RE: Objection to the 2015 WV Prevailing Wage Rates pursuant to WV Legislative Rule 96
CSR 04, September 30, 2015

Dear Workforce West Virginia,

I am writing to you as Vice-President of Back-East, Ltd to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning prevailing wages and the 2015 WV Prevailing Wage Rates. WFWV has not complied with the letter or the spirit of the prevailing wage law reform that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

Following is a list of specific reasons that Back-East objects to the 2015 WV Prevailing Wage rates and the WFWV methodology for calculation these rates:

1. Back-East objects to the fact that the detailed methodology used by WFWV has not been provided to the public. The ability to provide a comprehensive objection is frustrated by the lack of information about WFWV's procedure in determining the prevailing wage rates. Only a

summary of the methodology is available on WFWV's website for the public to view. This lack of transparency inhibits meaningful discourse about whether the WFWV methodology is consistent with the legislative intent of §21-5A et. seq. and undermines the efficacy of public comment pursuant to WV Legislative Rule 96 CSR 04. **For this reason, Back-East reserves the right to supplement this protest after reasonable opportunity for review of WFWV's detailed methodology and conclusions.**

Recommendation: Provide the full report outlining WFWV prevailing wage calculation methodology to the public and allow for sufficient time for review and questions prior to conducting the survey.

2. Back-East objects to the inclusion of prevailing wage rates the survey. It is clear that the fundamental purpose of the amendment to the WV Prevailing Wage Act was to correct the WVDOL wage determination methodology which consistently resulted in artificially inflated prevailing wage rates. Reliance on prevailing wage data from 2014 and earlier, which the Legislature implicitly deems unreliable as a data source, perpetuates the problem which §21-5A et. seq. was enacted to address. As such, considering the clear legislative intent, prevailing wage rates cannot be considered "appropriate economic data" under the statute. Even the WVDOL surveys excluded prevailing wage rates from its surveys for obvious reasons. There can be no doubt that the inclusion of prevailing wages heavily impacted the results of WFWV's survey.

Recommendation: Exclude all prevailing wages, state, local and federal, from the wage data compiled in the establishment of prevailing wages.

3. WFWV failed to compile data in a manner that would accurately reflect the "actual rate of wages paid in the regions of this state", WV Code §21-5A-5(2). First, by limiting available wage information to four selected weeks, WFWV has excluded 77% of the relevant data regarding the "actual rate of wages paid" by employers in the WV construction industry. It is no more burdensome for Back-East to provide wage rates by classification for the entire year than it is to provide this data for 4 weeks of the year.

Second, WFWV claims that there was a 73.6% response rate to the surveys from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations. This equates to approximately 11% of the total 4,998 surveys that were sent to employers. This methodology does not generate a sufficient data set from which the "actual rate of wages" can be determined.

Recommendation: (1) Survey all construction wages paid for the year, excluding prevailing wages; (2) Provide guidance on how to average wages for employees whose rates may have changed during the year; (3) Provide guidance on how to report wages for employees who work in different classifications during the year; and, (4) Provide guidance on how to report wages for part-time, seasonal, or sporadic employees.

4. WFWV only provided one week to respond to the surveys; although a one-week extension was eventually granted. Given the uncertainty and controversy surrounding the issue

in WV, then WFWV should include construction employers, without regard to whether those contractors' employees are affiliated with a union or not.

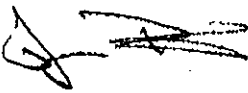
6. WFWV included fringe benefit contrary to the mandate of the WV Legislature. The term of "compensation" was replaced during the drafting of the statute with the term "wages" with the specific intent to exclude fringe benefits from the evaluation of prevailing wage rates. On February 25, 2015, when asked directly by Delegate Caputo from Marion County if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney, Tracy Webb, responded by saying that it would. This reason was cited by member of the legislature both in that committee and during floor debate as a reason not to support the legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Contrary to the clear legislative intent, WFWV included fringe benefits in the surveys to employers and in the calculation of the prevailing wage.

Recommendation: (1) Exclude the fringe benefits from the published rates and survey process in accordance with the statute; and (2) Seek further guidance from the WV Legislature on how fringe benefits are to be presented in the prevailing wage determination, if at all.

The chaos that has ensued regarding prevailing wage reform in WV has been disruptive and damaging to construction employers and will ultimately jeopardize job opportunities in our industry. Back-East, like many in our industry, looks to WFWV to honor the letter and spirit of the amendment to the WV Prevailing Wage Act and to develop a fair, unbiased and accurate prevailing wage. Back-East supports a fair living wage for employees who work on public improvement projects but also supports the WV taxpayers' right to not be burdened by overpriced public construction for the sake of special interest groups' agendas.

Please do not hesitate to contact me if you have questions.

Sincerely,



James Ridgeway, Vice-President
Back-East, Ltd

cc: Russel L. Fry, Acting Executive Director, WFWV
Jeff Green, Director of Research, WFWV

October 30, 2015

BACKEAST, LTD.
360 FRONTIER STREET
MORGANTOWN, WV 26505

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

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American Job Center

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.


Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate

calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell Fry", is written over a light blue horizontal line.

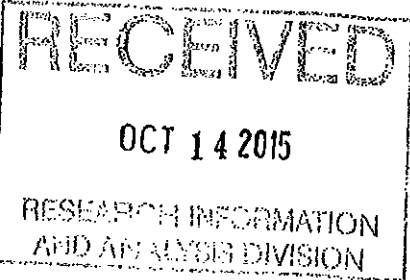
Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File



Mechanical Contracting, Consultation & Design-Build Service



Via Hand-Delivery

October 12, 2015

Workforce West Virginia
Attn: Prevailing Wage Comments
112 California Avenue
Charleston, WV 25305

RE: Objection to the 2015 WV Prevailing Wage Rates pursuant to WV Legislative Rule 96
CSR 04, September 30, 2015

Dear Workforce West Virginia,

I am writing to you as Vice-President of A. Durer, Inc. to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning prevailing wages and the 2015 WV Prevailing Wage Rates. WFWV has not complied with the letter or the spirit of the prevailing wage law reform that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

Following is a list of specific reasons that A. Durer objects to the 2015 WV Prevailing Wage rates and the WFWV methodology for calculation these rates:

I. A. Durer objects to the fact that the detailed methodology used by WFWV has not been provided to the public. The ability to provide a comprehensive objection is frustrated by the lack of information about WFWV's procedure in determining the prevailing wage rates. Only a

summary of the methodology is available on WFWV's website for the public to view. This lack of transparency inhibits meaningful discourse about whether the WFWV methodology is consistent with the legislative intent of §21-5A et. seq. and undermines the efficacy of public comment pursuant to WV Legislative Rule 96 CSR 04. For this reason, A. Durer reserves the right to supplement this protest after reasonable opportunity for review of WFWV's detailed methodology and conclusions.

Recommendation: Provide the full report outlining WFWV prevailing wage calculation methodology to the public and allow for sufficient time for review and questions prior to conducting the survey.

2. A. Durer objects to the inclusion of prevailing wage rates the survey. It is clear that the fundamental purpose of the amendment to the WV Prevailing Wage Act was to correct the WVDOL wage determination methodology which consistently resulted in artificially inflated prevailing wage rates. Reliance on prevailing wage data from 2014 and earlier, which the Legislature implicitly deems unreliable as a data source, perpetuates the problem which §21-5A et. seq. was enacted to address. As such, considering the clear legislative intent, prevailing wage rates cannot be considered "appropriate economic data" under the statute. Even the WVDOL surveys excluded prevailing wage rates from its surveys for obvious reasons. There can be no doubt that the inclusion of prevailing wages heavily impacted the results of WFWV's survey.

Recommendation: Exclude all prevailing wages, state, local and federal, from the wage data compiled in the establishment of prevailing wages.

3. WFWV failed to compile data in a manner that would accurately reflect the "actual rate of wages paid in the regions of this state", WV Code §21-5A-5(2). First, by limiting available wage information to four selected weeks, WFWV has excluded 77% of the relevant data regarding the "actual rate of wages paid" by employers in the WV construction industry. It is no more burdensome for A. Durer to provide wage rates by classification for the entire year than it is to provide this data for 4 weeks of the year.

Second, WFWV claims that there was a 73.6% response rate to the surveys from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations. This equates to approximately 11% of the total 4,998 surveys that were sent to employers. This methodology does not generate a sufficient data set from which the "actual rate of wages" can be determined.

Recommendation: (1) Survey all construction wages paid for the year, excluding prevailing wages; (2) Provide guidance on how to average wages for employees whose rates may have changed during the year; (3) Provide guidance on how to report wages for employees who work in different classifications during the year; and, (4) Provide guidance on how to report wages for part-time, seasonal, or sporadic employees.

4. WFWV only provided one week to respond to the surveys; although a one-week extension was eventually granted. Given the uncertainty and controversy surrounding the issue

of prevailing wage reform during this time, it would have been prudent to allow employer fair notice and reasonable time to ask questions and provide responses that did not have to be hastily prepared.

Recommendation: Extend the response time period for completion of the survey to encourage maximum participation by employers and minimize errors.

5. A. Durer objects on the basis that WFWV acknowledges that only 21% of the prevailing wages were established using U.S. Bureau of Labor Statistics data, although the statute provides that the methodology for determining prevailing wages shall include "the average rate of wages published by the U. S. Bureau of Labor Statistics". The summary of the methodology available to the public does not explain how BLS-OES statistics are used to determine the 2015 prevailing wage rates.

Since 1884, the Bureau of Labor Statistics of the U.S. Department of Labor, an independent statistical agency, has been the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decision-making, <http://www.bls.gov/bls/infohome.htm>

It stands to reason that the WV Legislature mandated WFWV to utilize the BLS data because the BLS is the single most qualified and unbiased source of reliable wage data that is readily available. As both WFWV and BLS are both funded by the USDOL, it is logical to expect cooperation between the two agencies and even a deference by WFWV to the more than 130 years of experience in the field of economic and employment data compilation and statistical analysis. If WFWV believes that BLS data is not reliable as a data source, it should bear the burden to show why a federal agency whose sole purpose is to gather such data should be disregarded.

At the very least, WFWV should be able to provide, as BLS does, an independent and unbiased evaluation of wages in WV. It is very concerning that news reports revealed that WFWV consulted extensively with Steve White, Executive Director of the Affiliated Construction Trades Council, a division of the WV State Building & Construction Trades Council regarding the development of the methodology and definition of wage classifications. If WFWV is interested in collaborating with the WV construction industry regarding the establishment of a fair and accurate prevailing wage in WV, A. Durer, as one of the largest construction employers in WV with 31 years of experience will gladly provide assistance and insight.

Recommendation: (1) Utilize BLS-OES data as the primary source of wage data and supplement with actual wage data compiled by scientifically valid data collection methods from employers excluding all wages paid on publicly funded construction projects; (2) Provide a thorough explanation of how BLS-OES data was used and not used in the final publication of the new prevailing wage rates; and (3) If representatives of the construction industry are utilized as consultants or participate in development of any aspect of the development of prevailing wages

in WV, then WFWV should include construction employers, without regard to whether those contractors' employees are affiliated with a union or not.

6. WFWV included fringe benefit contrary to the mandate of the WV Legislature. The term of "compensation" was replaced during the drafting of the statute with the term "wages" with the specific intent to exclude fringe benefits from the evaluation of prevailing wage rates. On February 25, 2015, when asked directly by Delegate Caputo from Marion County if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney, Tracy Webb, responded by saying that it would. This reason was cited by member of the legislature both in that committee and during floor debate as a reason not to support the legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Contrary to the clear legislative intent, WFWV included fringe benefits in the surveys to employers and in the calculation of the prevailing wage.

Recommendation: (1) Exclude the fringe benefits from the published rates and survey process in accordance with the statute; and (2) Seek further guidance from the WV Legislature on how fringe benefits are to be presented in the prevailing wage determination, if at all.

The chaos that has ensued regarding prevailing wage reform in WV has been disruptive and damaging to construction employers and will ultimately jeopardize job opportunities in our industry. A. Durer, like many in our industry, looks to WFWV to honor the letter and spirit of the amendment to the WV Prevailing Wage Act and to develop a fair, unbiased and accurate prevailing wage. A. Durer supports a fair living wage for employees who work on public improvement projects but also supports the WV taxpayers' right to not be burdened by overpriced public construction for the sake of special interest groups' agendas.

Please do not hesitate to contact me if you have questions.

Sincerely,



Phillip L. Weser, Vice-President
A. Durer, Inc., Inc.

cc: Russel L. Fry, Acting Executive Director, WFWV
Jeff Green, Director of Research, WFWV

October 30, 2015

A. DURER, INC.
425 INDUSTRIAL AVENUE
MORGANTOWN, WV 26505

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

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An agency of the Department of Commerce

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www.workforcewv.org

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public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.

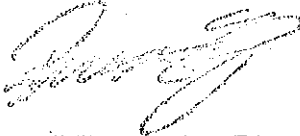
Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate

calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell Fry", is written over a faint, circular official seal.

Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File

The Law Office of Vincent Trivelli, PLLC

178 Chancery Row
Morgantown, West Virginia 26505
Phone (304) 291-5223 • Toll Free 1-866-266-5948
Fax (304) 291-2240 • E-mail: vmtriv@westco.net

October 13, 2015

Russell L. Fry
Acting Executive Director
WorkForce West Virginias
112 California Avenue,
Charleston, WV 24304

Re: Written Objections to Methodology for Calculating the
Prevailing Hourly Rate and Wages and Hourly Rate of Wages

Dear Mr. Fry:

On behalf the West Virginia State Building and Construction Trades Council, ("Council")¹, pursuant to Section 4 of Title 96, Series of 04, West Virginia Prevailing Wage Act, I am filing the following written objections regarding the methodology for calculating the prevailing wage hourly rate of wages and hourly rate of wages filed with the West Virginia Secretary of State filed on or about September 30, 2015. The Council however wants to be clear that their focus is on improving the process that has been set forward and that these objections are suggestions in the vein.

These comments, (or objections in accordance with the regulations), are intended as an effort to ensure the prevailing wage determinations better reflects the reality of the construction market in West Virginia. The Council is supportive of your efforts to determine prevailing wages.

The prevailing wage law is critical to ensuring taxpayers get the best value for their investment. Volumes of studies and research show prevailing wage laws create a level playing field for contractors to compete, preserve the established free-markets in the private sector from governmental spending that may otherwise drive down wages and put local businesses at a competitive disadvantage, and result in a quality product at a favorable price for taxpayers.

It is our understanding that the methodology utilized in determining the prevailing wage hourly rate and hourly rate of wages filed on or about September 30, 2015 was the methodology described in the Summary of "Methodology to Calculate the Prevailing Rate of Wages in West Virginia", on or about June 1, 2015.

In reviewing the Methodology and the wage rates the Council has the following suggestions (objections):

¹ The West Virginia State Building and Construction Council, AFL-CIO
600 Leon Sullivan Way
Chadeston, WV 25301

- Exclusion of certain fringe benefits. The Prevailing Wage Survey Sheet at column 11 "Other Benefits" instruction (see also p. 10 #13) specifically excludes certain important fringe benefits. While the Council concurs that payments required by federal, state or local law such as workers' compensation or unemployment insurance are not fringe benefits, the Council believes it is a mistake to exclude payments to programs that perform critical drug and alcohol testing and safety training. As our state and all others face massive substance abuse issues it is exactly programs such as these that should be encouraged.
- "Other benefits". The Council believes the process for collecting payments to "other benefits" in the Prevailing Wage Survey Sheet at column 11 (see also p. 10 #13) can be improved. The form itself does not provide a location for responders to describe the benefits they have included in this column. Without information as to the purpose of the "other benefit" data or details as to whether more than one "other benefit" is included in the amount entered to the form WorkForce will find it difficult if not impossible to ascertain if the benefit is allowable or not.
- The use of a "trimmed weighted average" in calculating actual rate of wages paid. As discussed in the Summary, WorkForce West Virginia' methodology utilizes a trimmed average wage rate weighted by employment. Such a methodology, if applied in all cases, works to depress the wage and fringe benefit rates that become the prevailing wage rates. Nobody works for the average wage. If a certain wage and benefit level is found for the majority of workers in a region we believe that wage and benefit should be the established prevailing wage. If a majority rate is not found then the weighted average could be utilized. The Council suggests using the trimmed average wage rate weighed by employment only if a majority wage rate cannot be found.
- Apprentices. Clarification is needed as to the proper wages and benefits to pay apprentices that are indentured into a federally recognized apprenticeship program. Employers who participate in such programs should be allowed to pay wages and benefits that are consistent with their approved apprenticeship standards and remain in compliance with the state prevailing wage law.
- Covered occupations and their definition. The Council has concerns in three areas. First, some occupations such as sprinkler fitter have been left out of the list of occupations, although they are cross referenced to Plumber - Pipefitter. A sprinkler fitter is a licensed occupation in West Virginia and should be included as a separate job title for prevailing wage purposes. Second, there are listed job titles for which there is insufficient work to be listed separately. For example Stripper Operator may be better merged with Laborers. Similarly the titles of Diver and Dredger may be better placed under another occupational title. Third, there are some occupations where descriptions do not accurately reflect how work is done in this market. The job title Asbestos Insulator - Fire Stop Technician is very confusing and not really found in the industry. Asbestos Insulator by itself may make the most sense. In addition many of the duties of the Insulation Worker are more appropriate under the Asbestos Insulator heading, however a portion of those duties described are more commonly performed by the Carpenter. Similarly the work of the Drywall Taper is currently cross referenced to the

Drywall Installer but is more commonly done by the Painter. The Council suggests that a discussion be held with all aspects of the construction industry to work through these issues.

As I indicated above the Council is supportive of your efforts and intends these comments to be constructive in improving the prevailing wage over time. We recognize the huge undertaking your office was called upon to do and commend your efforts. However, in the event that others may file objections that may disagree with your efforts, the Building Trades Council reserves the right to intervene in those proceedings to protect the Council's members.

Sincerely,



Vincent Trivelli

October 30, 2015

The Law Office of Vincent Trivelli, PLLC
178 Chancery Row
Morgantown, WV 26505-5406

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 13, 2015), wherein you object to WorkForce West Virginia's methodology in determining the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce").

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in the West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision.

A copy of your letter setting forth your objections and recommendations to the methodology used to calculate prevailing wage rates is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. WorkForce West Virginia (WFWV), in coordination with the Bureau of Business and Economic Research (BBER) at West Virginia University and the Center for Business and Economic Research (CBER) at Marshall University, modeled the West Virginia Prevailing Wage Survey on the state of Oregon, which also excludes payments and programs for drug testing.
2. Including a space for employers to describe "other benefits" can be addressed in future data collection efforts.

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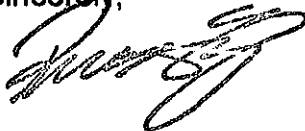
An agency of the Department of Commerce
An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

www.workforcewv.org

American JobCenter

3. As indicated in the prevailing wage methodology document co-authored by WFWV, BBER, and CBER, the majority observation, which is a modified mode calculation, is more appropriately applied to nominal, or categorical, data. It is the professional opinion of economists for all three organizations that the trimmed, weighted mean is the most robust method for calculating the prevailing wage rate.
4. Apprenticeship pay can be addressed in future data collection and calculation efforts.
5. It has been the intention from the initial design that job classifications would be reviewed and revised annually based on a review of the data received during data collection. This effort would also involve consultation with contractors in order to develop the most accurate job classification system possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Russell Fry', written in a cursive style.

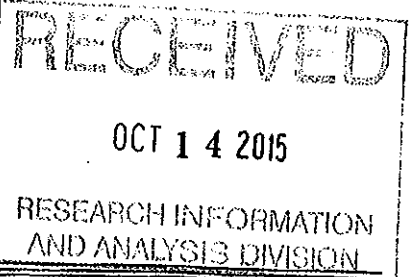
Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File

J. F. ALLEN COMPANY

General Contractors



P.O. Box 2049 • Buckhannon, West Virginia 26201-2049
Phone 304-472-8890
Fax 304-472-8897

Workforce West Virginia
Attn: Prevailing Wage Written Objections
112 California Avenue
Charleston, WV 25305

Dear Workforce West Virginia,

I am writing to you as President of J. F. Allen Company to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning the methodology used to determine the prevailing rate of wages to be used on public projects in West Virginia. WorkForce West Virginia has not followed the prevailing wage law that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

These are the specific reasons that I object:

1. First and foremost, we object to the fact that the citizens of this state have been provided with a process to offer written objection to a methodology that has not been made available to the public. Only a summary of the methodology is available on WFWV's website making the written objection process one that is lacking in adequacy when attempting to evaluate the process that has been implemented. It is extremely difficult to determine the specific intentions of the methodology put forth by WFWV if they haven't even provided it for public viewing. This lack of transparency is cause for concerns with regards to the whole process.

Recommendation: Provide the full report to the public immediately to allow for sufficient time to understand the specifics of the intentions of the various components of the survey process. Provide explanation as to why the release of the full report was not completed

and the public was only left with a summary of the methodology to review in order to file objections.

2. We object to the use of 2014 prevailing wage rates in the use of the survey. WFWV did not collect adequate private sector data in order to determine the new prevailing rate of wages. Since WFWV relied on the use of previously generated public prevailing wage rates during four select weeks over the course of the previous year, it failed to take into account a major portion of the work performed in this state. Given that the previous prevailing wage rates were in dispute and the sole cause for this reform to begin with, they should have never been considered "appropriate economic data" which the statute calls for the use of. This process may exclude employers who may perform commercial work and residential work, but were simply not performing commercial work in one of the weeks that were selected. This leaves the process with insufficient data that is readily available but excluded for the sole reason of performing the methodology in this manner. Since all of those public projects required 2014 prevailing wage rates, this means that the calculations were very heavily impacted by last year's prevailing wage, rather than the factors identified by the legislature in the statute.

Recommendation: Remove the use of previous mandated public prevailing wage rates in the survey process and replace it solely with wage rates that are negotiated between employees and their employers at the time the survey is received.

3. WFWV did not collect an accurate reflection of the wage rates paid due to the use of heavy restrictions during the survey process. By limiting available wage information to four selected weeks you have potentially excluded contractors who have relevant data, but simply were not performing commercial work during that time period. Nowhere in the statute does it call for such heavy restrictions on residential wage rates, yet the methodology summary gives no explanation as to why that decision was made. WFWV claims that it had a 73.6% response rate, having received responses from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations; that comes to about 11% of the total 4,998 surveys that were sent to employers. This methodology is not providing for an accurate reflection of prevailing market rates due to heavy number of restrictions put in place during the process.

Recommendation: Remove data collection process that only accounts for four select weeks during the course of the previous year and simply survey construction employers as to what wage rates they have negotiated with between themselves and their employees on commercial construction. Also, please provide an explanation as to why only commercial construction wage rates were collected when the statute does not specifically cite their inclusion alone. Some contractors perform both residential and commercial work and those contractors with relevant data may have been excluded simply because they did not do commercial work during one of four selected weeks. This process is removing entirely too much data from the process.

4. WFWV only gave public notice of one week to respond. Despite internal efforts to increase the number of respondents past that time period, WFWV's brief public notice could have been dissuasive to contractors who noticed the short timeframe and decided not to complete the survey.

Recommendation: Extend the time period allotted for contractors to fill out the survey providing for ample time to complete the steps necessary and not be concerned with a short time frame.

5. I also object because, according to WFWV, only 21% of the prevailing wages it established used U.S. Bureau of Labor Statistics, although the statute provides that the methodology for determining prevailing wages shall include "the average rate of wages published by the U. S. Bureau of Labor Statistics. The summary of the methodology available to the public does not adequately express how BLS-OES statistics are used in the process to determine the prevailing rate of wages. Improper usage of BLS-OES data through minimal supplementation has caused for unexplainable variances in the wage rate calculations by our assessment. For example, "Operator Group One" has a higher wage rate than "Operator Group Two" in three of the seven regions of the state. In the other four regions, "Operator Group Two" has a higher wage rate than "Operator Group One." Also, mechanics have a lower wage rate than that of laborer/helpers in all but one of the seven regions of the state. This is clearly not reflective of the construction market's rates or conditions. These examples clearly indicate that the methodology used with regards to the minimal usage of comprehensive BLS-OES data, and heavy reliance on restrictive surveys is not reflective of market rates and is inherently flawed. This must be revised to create a more stable and reliable system of calculating the prevailing rate of wages.

Recommendation: Provide a full description of how required BLS-OES data was used in the final publication of the new prevailing wage rates and explain why they were used to such little extent when the statute clearly calls for their use.

Recommendation: Use available BLS data as your primary source of data the survey results to supplement that data where it is needed rather than relying on a flawed methodology which has no minimum response rate.

6. WFWV included fringe benefit calculations against the will of the West Virginia Legislature. The term "wages" as defined by the statute does not include any language referring to or requiring Fringe Benefits be mandated on public projects in the state of West Virginia. The summary of the methodology available does not give an adequate description as to why this significant mandate was ultimately added to the law when it is not specifically required by the statute. The summary of the methodology states that the term "wages" has a standard meaning in West Virginia; however the term "wages" is clearly defined in the statute as "the hourly rate paid for work performed by an employee for an employer." Due to the lack of any specific citation of "fringe benefits," "fringe

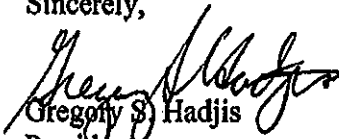
packages," or a definition of fringe benefits anywhere in the statute itself, WFWV cannot impose such a mandate.

The definition of "Compensation" was altered in the committee substitute while being taken up before the House Government Organization Committee to the term "wages" which clearly does not include fringe benefits. The reason this was altered was to exclude a requirement to mandate fringe benefits on public projects. On February 25, 2015, when asked directly by a Delegate member of the committee if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney responded by saying that it would, in fact, no longer be a mandated requirement. This reason was cited by numerous members of the legislature both in that committee and during floor debate as a reason not to support this legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Despite that clear explanation, fringe benefits were still included in the methodology and were surveyed as a result. We strongly object to this aspect of the methodology.

Recommendation: Exclude the fringe benefits from the published rates and survey process for this specific item is clearly not included in the statute. The summary of the methodology claims that "wages" in West Virginia carries a standard definition. That definition needs to be defined more broadly and a description needs made to the public as to why this item was included when it was made clear by legislative attorneys who drafted the bill, it was removed in the committee substitute that was ultimately codified in to the West Virginia Code.

These specific aspects of the methodology adopted by WFWV make it more difficult for me to successfully run my business because our prevailing wage is not accurate, and because there is no predicting how WFWV will calculate prevailing wage given that there are noticeable discrepancies in the published wage rates when being compared to standard market rates and conditions. Ultimately this will mean fewer jobs for West Virginia construction workers due to the increased cost for public construction which limits the amount of revenue for additional projects to be bid to the industry. Employers need a prevailing wage that is calculated using a methodology that we can see, adequately evaluate, which complies with the law and is reflective of the definition of prevailing wages, those being rates that prevail in the private market. If we have that, then we will have a fair prevailing wage that employers can work with. Please fix these problems and calculate prevailing wages as the law intended, so that we can move forward.

Sincerely,


Gregory S. Hadjis
President

October 30, 2015

J.F. ALLEN
PO BOX 2049
BUCKHANNON, WV 26201-2049

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

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www.workforcewv.org

American Job Center

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.

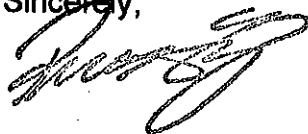
Response: WorkForce disagrees with the assertion that calculation of the prevailing rate of wages should exclude fringe benefits. Senate Bill 361 defined the term "wages" but is silent as to the meaning of "prevailing rate of wages." WorkForce interpreted the term "prevailing rate of wages" to include a fringe benefit because the legislative process that lead to the passage of Senate Bill 361 contemplated the use of fringe benefits. Moreover, excluding fringe benefits from the prevailing wage rate

calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,

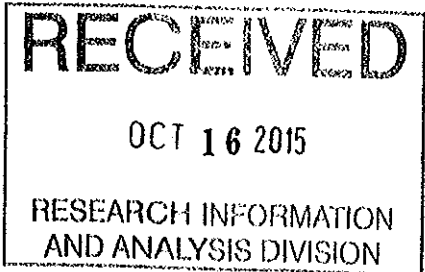
A handwritten signature in black ink, appearing to read "Russell Fry", written over a horizontal line.

Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File

Workforce West Virginia
Attn: Prevailing Wage Written Objections
112 California Avenue
Charleston, WV 25305



Dear Workforce West Virginia,

I am writing to you as a member of the Board of Directors for Environmental Construction Inc. to object to WorkForce West Virginia's ("WFWV") September 2015 Rule concerning the methodology used to determine the prevailing rate of wages to be used on public projects in West Virginia. WorkForce West Virginia has not followed the prevailing wage law that was enacted earlier this year. Under West Virginia Code § 21-5A-5, the methodology for determining prevailing wages is explained as follows:

On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed.

These are the specific reasons that I object:

1. First and foremost, we object to the fact that the citizens of this state have been provided with a process to offer written objection to a methodology that has not been made available to the public. Only a summary of the methodology is available on WFWV's website making the written objection process one that is lacking in adequacy when attempting to evaluate the process that has been implemented. It is extremely difficult to determine the specific intentions of the methodology put forth by WFWV if they don't at least provide it for public viewing. This lack of transparency is cause for concerns with regards to the whole process.

Recommendation: Provide the full report to the public immediately to allow for sufficient time to understand the specifics of the intentions of the various components of the survey process. Provide explanation as to why the release of the full report was not completed and the public was only left with a summary of the methodology to review in order to file objections.

2. We object to the use of 2014 prevailing wage rates in the use of the survey. WFWV did not collect adequate private sector data in order to determine the new prevailing rate of wages. Since WFWV relied on the use of previously generated public prevailing wage rates during four select weeks over the course of the previous year, it failed to take into account a major portion of the work performed in this state. Given that the previous prevailing wage rates were in dispute and the sole cause for this reform to begin with, they should have never been considered "appropriate economic data" which the statute calls for the use of. This process may exclude employers who may perform commercial work and residential work, but were simply not performing commercial work in one of the weeks that were selected. This leaves the process with insufficient data that is readily available but excluded for the sole reason of performing the methodology in this manner. Since all of those public projects required 2014 prevailing wage rates, this means that the calculations were very heavily impacted by last year's prevailing wage, rather than the factors identified by the legislature in the statute.

Recommendation: Remove the use of previous mandated public prevailing wage rates in the survey process and replace it solely with wage rates that are negotiated between employees and their employers at the time the survey is received.

3. WFWV did not collect an accurate reflection of the wage rates paid due to the use of heavy restrictions during the survey process. By limiting available wage information to four selected weeks you have potentially excluded contractors who have relevant data, but simply were not performing commercial work during that time period. Nowhere in the statute does it call for such heavy restrictions on residential wage rates, yet the methodology summary gives no explanation as to why that decision was made. WFWV claims that it had a 73.6% response rate, having received responses from 3,722 employers. However, the "Prevailing Wage Methodology Statistics," prepared on September 30, 2015, shows that only 15% of the surveys returned were actually used in the prevailing wage calculations; that comes to about 11% of the total 4,998 surveys that were sent to employers. This methodology is not providing for an accurate reflection of prevailing market rates due to heavy number of restrictions put in place during the process.

Recommendation: Remove data collection process that only accounts for four select weeks during the course of the previous year and simply survey construction employers as to what wage rates they have negotiated with between themselves and their employees on commercial construction. Also, please provide an explanation as to why only commercial construction wage rates were collected when the statute does not specifically cite their inclusion alone. Some contractors perform both residential and commercial work and those contractors with relevant data may have been excluded simply because they did not do commercial work during one of four selected weeks. This process is removing entirely too much data from the process.

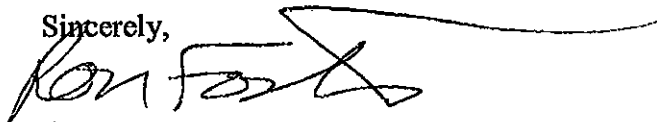
4. WFWV only gave public notice of one week to respond. Despite internal efforts to increase the number of respondents past that time period, WFWV's brief public notice

The definition of "Compensation" was altered in the committee substitute while being taken up before the House Government Organization Committee to the term "wages" which clearly does not include fringe benefits. The reason this was altered was to exclude a requirement to mandate fringe benefits on public projects. On February 25, 2015, when asked directly by a Delegate member of the committee if the change in definition would exclude the requirement to mandate fringe benefits, the House Government Organization Attorney responded by saying that it would, in fact, no longer be a mandated requirement. This reason was cited by numerous members of the legislature both in that committee and during floor debate as a reason not to support this legislation. Officials from WFWV and MU were both in attendance that day and made aware of this interpretation. Despite that clear explanation, fringe benefits were still included in the methodology and were surveyed as a result. We strongly object to this aspect of the methodology.

Recommendation: Exclude the fringe benefits from the published rates and survey process for this specific item is clearly not included in the statute. The summary of the methodology claims that "wages" in West Virginia carries a standard definition. That definition needs to be defined more broadly and a description needs made to the public as to why this item was included when it was made clear by legislative attorneys who drafted the bill, it was removed in the committee substitute that was ultimately codified in to the West Virginia Code.

These specific aspects of the methodology adopted by WFWV make it more difficult for me to successfully run my business because our prevailing wage is not accurate, and because there is no predicting how WFWV will calculate prevailing wage given that there are noticeable discrepancies in the published wage rates when being compared to standard market rates and conditions. Ultimately this will mean fewer jobs for West Virginia construction workers due to the increased cost for public construction which limits the amount of revenue for additional projects to be bid to the industry. Employers need a prevailing wage that is calculated using a methodology that we can see, adequately evaluate, which complies with the law and is reflective of the definition of prevailing wages, those being rates that prevail in the private market. If we have that, then we will have a fair prevailing wage that employers can work with. Please fix these problems and calculate prevailing wages as the law intended, so that we can move forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Foster", with a long horizontal flourish extending to the right.

Ron Foster
Member of the Board
Environmental Construction Inc.
PO Box 705
Scott Depot, WV 25560

October 30, 2015

ENVIRONMENTAL CONSTRUCTION, INC.
PO BOX 705
SCOTT DEPOT, WV 25560

To Whom It May Concern:

WorkForce West Virginia is in receipt of your letter (dated and received October 14, 2015), wherein you submitted written objections to the methodology used to determine the prevailing rate of wages in West Virginia.

The West Virginia Prevailing Wage Act requires WorkForce West Virginia to determine a methodology to calculate the prevailing rate of wages in West Virginia in coordination with the West Virginia University Bureau of Business and Economic Research (BBER) and the Center for Business and Economic Research at Marshall (CBER) (hereinafter, collectively, "Workforce"). W. Va. Code § 21-5A-5(2).

Pursuant to West Virginia C.S.R § 96-4-4, interested parties may file written objections to the methodology used to calculate (1) the prevailing rate of wages, and (2) the hourly rate of wages in West Virginia. See also W. Va. Code 21-5A-11(a). If such objections are determined to be meritorious, those objections and/or recommendations will be incorporated into the methodology used in the next succeeding year. However, if WorkForce determines that the concerns set forth in a written objection will not improve the methodology, WorkForce may dismiss that objection, subject to the objecting parties' rights to appeal that decision. The prevailing wage rates, and the methodology used to calculate them, are in the first iteration of a process that is subject to annual review by the agency and triennial refinement with the West Virginia Legislature's Joint Committee and Finance. See W. Va. Code § 21-5A-5(4) & (5).

A copy of your letter setting forth your objections and recommendations is attached hereto as Exhibit 1. WorkForce responds to the items raised in your letter as follows:

1. See Exhibit 1 for text of first objection.

Response: The full document describing the rationale, methodology, and formulae used to calculate the prevailing rate of wages may be accessed from Workforce West Virginia's Labor Market Information website. This report is available to the

112 California Avenue • Charleston, WV 25305

An agency of the Department of Commerce

An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

www.workforcewv.org

AmericanJobCenter

public and was co-authored by economists at West Virginia University's Bureau of Business and Economic Research, Marshall University's Center for Business and Economic Research, and WorkForce West Virginia's Research, Information, and Analysis Division.

2. See Exhibit 1 for the text of the second objection.

Response: WorkForce disagrees with the assertion that the survey did not sufficiently include private-sector data. WorkForce collected and compiled both private and public sector data for the purpose of calculating prevailing wage rates. WorkForce did not distinguish private and public sector data because the agency desired to recover as much data as possible in order to calculate the most accurate prevailing wage rate. Surveys were sent to employers in all sectors of construction in West Virginia, including:

- Residential Construction
- Non-residential Construction
- Heavy and Civil Engineering Construction
- Specialty Trade Contractors

This is consistent with the Bureau of Labor Statistics Occupational Employment Statistics' ("BLS") survey, which utilizes both public and private sector data and is therefore similarly influenced by existing prevailing wage rates.

It is possible to design a survey that would restrict the data to private sector projects only, but WorkForce believes that limiting the survey to private projects would generate insufficient data to publish statistically-reliable wage rates. However, taking these reservations into account, WorkForce will consider this recommendation for future refinement of the methodology.

3. See Exhibit 1 for the text of the third objection.

Response: WorkForce disagrees that the methodology should incorporate wage rate data from residential projects because residential projects are not associated with state or federally-funded projects. WorkForce believes that purely residential projects are not representative of the wage rates paid on public improvement projects in West Virginia.

WorkForce also disagrees with the assertion that it was inappropriate to use the four selected reference weeks included in the survey. WorkForce decided to adopt Oregon's prevailing wage survey model, based on their extensive experience and knowledge of the subject. Oregon's survey method, which uses the same quarterly reference weeks, has proven to be very robust and has provided accurate

prevailing wage rates for the state of Oregon over past 18 years. Furthermore, it is standard practice in survey research to use reference periods. Indeed, the BLS survey applies a similar reference period although the BLS survey targets only two reference weeks (the week of May 12 and the week of November 12) as opposed to the four selected weeks used in WorkForce's methodology.

4. See Exhibit 1 for the text of the fourth objection.

Response: WorkForce disagrees with the assertion that it failed to provide sufficient opportunity to respond to the survey. WorkForce allowed for more than three months of data collection from employers, starting in June and ending during the first week of September. The agency also conducted two web conferences to assist employers in responding to the survey and worked directly with employers who had not responded to the survey in order to facilitate collection of sufficient survey data.

5. See Exhibit 1 for the text of the fifth objection.

Response: WorkForce disagrees with the assertion that the methodology did not incorporate sufficient BLS data to satisfy the statutory mandate to use BLS data. West Virginia Code § 21-5A-5(2) directs Workforce to use all appropriate economic data, which includes, but is not limited to, (1) BLS data, and (2) the actual rates paid to workers in the regions of the state. The statute therefore does not limit WorkForce's analysis to BLS data, nor does it mandate what percentage of BLS data to allocate to prevailing wage rates. WorkForce used the survey to collect the actual rates employers paid workers across the state because that was the most effective method to recover accurate, regional wage information. BLS data, while highly-regarded, is limited because it does not identify construction by worksite, instead focusing on the employer's business or establishment location. In West Virginia's construction industry, it is common for employers to take jobs outside of their immediate business location. Moreover, some of the classifications are highly-specialized and of limited employment across the regions of the state. As a result, BLS data necessarily factored prominently in the calculation of the prevailing wage rates but WorkForce could not know to what extent until the survey data was collected and analyzed.

6. See Exhibit 1 for the text of the sixth objection.

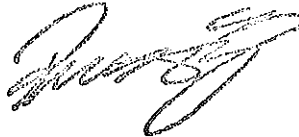
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calculation is inconsistent with every jurisdiction (both federal and state) that requires a prevailing wage rate on public projects.

In addition, WorkForce believes a fringe benefit calculation is implicit in the statute because W. Va. Code § 21-5A-11(a)(2) refers both to the "hourly rate of wages" and the "prevailing rate of wages" in directing WorkForce to establish a process to address written objections to the prevailing wage methodology. WorkForce interpreted these independent categories to mean that the "prevailing rate of wages" was different than the "hourly rate of wages," and that calculation of the prevailing rate of wages therefore required the use of the fringe benefit rate as something beyond the hourly wage rate. Consequently, WorkForce determined that the prevailing rate of wages should include the sum of both the base hourly rate of pay and a fringe benefit rate.

Consequently, it is determined that your recommendations do not improve the methodology for determining the prevailing rate of wages.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell Fry", written in a cursive style.

Russell Fry, Acting Director
WorkForce West Virginia

Enclosure

cc: File