CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON
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April 30, 2012

James A. Coan, Sr.
Land Surveyors' Association of Washington
30442 – 227th Place SE
Black Diamond, WA 98010

Re: Appeal of L&I's denial of LSAW's Petition to Repeal WAC 296-127-01396

Dear Mr. Coan:

I am writing in response to your appeal of the Department of Labor & Industries' (L&I) denial of the petition to repeal WAC 296-127-01396 and remove construction site surveyors as a prevailing wage job classification. Your letter of appeal states that L&I has failed to adequately address the following four bases of the petition for repeal: (1) the rule is void for vagueness; (2) the policy purpose for the rule does not apply to professionals subject to state licensing requirements; (3) the language of the rule improperly includes professional service providers; and (4) the rule imposes unreasonable costs on land survey engineering firms and Washington taxpayers.

I have carefully considered the issues raised in your appeal, and deny the appeal for the reasons outlined below.

1. The appeal contends WAC 296-127-01396 is "void for vagueness" because the exception from the prevailing wage requirement is "ambiguous or, at best, vague." I do not agree. Subsection (1) defines what is included in the work of a construction site surveyor and subsection (2) defines what is not included in the scope of work of a construction site surveyor. L&I has described the purpose of its rule as distinguishing between surveying work that is related to "actual construction" and therefore does require payment of prevailing wage and surveying work that is not part of the actual construction and therefore does not require payment of the prevailing wage (such as a boundary line survey). This was accomplished by an explicit statement recognizing some survey services are outside the scope of subsection (1). The Washington Supreme Court has recognized that language included in a proviso that states what is not included in the enacting clause is not superfluous but rather "serves an important end" of "preclud[ing] a misinterpretation of the enacting clause that would extend it beyond its intended purview." *State ex rel. Heavey v. Murphy,* 138 Wn.2d 800, 811-812 (1999). When one considers WAC 296-127-01396 as a whole and in context, subsection (2) is not unconstitutionally vague. Additionally, the fact that a statute or rule may be ambiguous does not make it void. "[S]ome measure of vagueness is inherent in the use of language [so] impossible

standards of specificity are not required." *City of Seattle v. Abercrombie*, 85 Wn. App. 393, 399, 945 P.2d 1132 (1997) (citation omitted).

2. I agree with the observation in the petition that the policy underlying prevailing wage laws is to protect workers performing public works construction from substandard earnings and to preserve local wage standards. Your petition contends that professionals, unlike construction workers, enjoy the protection of licensing requirements which protect local wage standards and therefore should be excluded from the prevailing wage law. No provision of the Prevailing Wage Act contains such exclusion, and I disagree with the suggestion that professional licensing statutes serve the purposes of the prevailing wage law. The assumption that licensing requirements are a barrier to the undercutting of wage standards is not well-grounded. RCW 18.43.100 allows registration of out-of-state professional engineer or land survey applicants if they are registered in another state with equivalent standards and requirements. Additionally, the purpose of the prevailing wage law is to prevent the depression of local labor wage rates, and requires a prevailing wage rate set on a county basis to avoid employment of out-of-county labor that undercuts local wage rates. State licensing requirements, absent prevailing wage requirements, would have no chilling effect on intra-state competition that undercuts local wages.

3. Your primary legal argument is that surveyors exempt under the Davis-Bacon Act and implementing regulations should also be exempt under Washington's prevailing wage statute since the state law was modeled after the Davis-Bacon Act.

Washington's Prevailing Wage Act is based in part on the federal Davis-Bacon Act, but these laws are not identical. There are textual and policy differences between the two acts that generally work to provide broader coverage under the state's law. The courts have noted that when the Washington Legislature departs from the language of the Davis-Bacon Act, the cases and regulations interpreting the federal act will be less relevant and less persuasive with regard to interpretation of the state law. *Everett Concrete Products v. Dept. of Labor & Industries*, 109 Wn.2d 819, 824 (1988). The Washington Legislature included the "laborers and mechanics" covered by the Davis-Bacon Act, but also added the term "worker." Dictionary definitions of "worker" are broad and do not exclude those who perform professional work.

A broader scope in Washington's implementing regulations may well be appropriate in view of the remedial purposes of the state law. *See Silverstreak, Inc. v. Washington State Dept. of Labor and Industries,* 159 Wn.2d 868, 882 (2007) ("[T]he prevailing wage act is remedial legislation designed to protect the employees of government contractors in this state from substandard earnings and to preserve local wage standards. As such, the act and regulations promulgated thereunder are to be liberally construed in favor of the beneficiary of the act, the worker.").

Additionally, there is a long administrative history of inclusion of construction surveyors in L&I's administration of the prevailing wage law. This interpretation was noted in *Heller v. McClure & Sons, Inc.*, 92 Wn. App. 333, 340 (1998):

> Rather, the better view is that those workers on public works projects who are classified as "laborers, workers, or mechanics" are entitled to the prevailing wage when their work directly relates to the prosecution of the work that is contracted to be performed and necessary for the completion of that work. For example, the industrial statistician from the Department of Labor and Industries who testified at trial noted that a construction surveyor performs work that the department views as covered by the prevailing wage act, notwithstanding the fact that the survey work is not incorporated into the project itself.

(Emphasis added.) There has never been any indication by the Legislature that it disagrees with this interpretation. The prevailing wage laws have been revisited and revised by the Legislature on several occasions during this time period without any questions raised about this administrative interpretation. In light of this long history of state administrative interpretation and legislative acquiescence, I believe any changes should be made by the Legislature.

You also contend that surveyors are not "contractors" within the purview of the prevailing wage law. The applicable law, RCW 39.12.030, applies prevailing wage requirements to public works contracts with a "contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work contemplated by the contract." Further, RCW 39.12.030 says that "the specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract." Therefore, surveying work by a person doing or contracting to do the whole or any part of the work as part of a public works contract is covered by prevailing wage whether or not the surveyor is considered a "contractor."

4. Your letter expresses policy and practical concerns about the impact of the prevailing wage law. These concerns include potential additional costs on public work projects and the difficulty of managing wage differentials that may occur when firms employ only a portion of their employees in work covered by prevailing wage rates. These concerns are among the policy issues the Legislature considers when it adopts or amends a law, and are not a basis for repealing an administrative rule implementing the law.

For the reasons outlined above, I am denying your appeal.

Sincerely,

Christine O. Gregoire
Governor

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
PO Box 44000 • Olympia, Washington 98504-4000

February 17, 2012

Bryan L. Thorp, PLS, 2011 President
Land Surveyor's Association of Washington
30442 227th Place SE
Black Diamond, Washington 98010

Dear Mr. Thorp:

I am writing in response to your December 21, 2011, letter requesting the repeal of the prevailing wage scope of work description for Construction Site Surveyor, WAC 296-127-01396.

The Department of Labor and Industries (L&I) is declining your request to repeal WAC 296-127-01396. You will see in the attached letter from Ann Selover, Prevailing Wage Program Manager, that L&I believes that the rule is valid and its application of prevailing wages, upon a public works project, is consistent with and required by law.

If you do not agree with L&I's decision, pursuant to RCW 34.05.330, you have two options available to you:

1. You may appeal the denial to the Governor within 30 days of this letter, March 18, 2012; or
2. You may seek judicial review of L&I's decision, by petitioning the Superior Court of Thurston County for a declaratory judgment regarding the rule.

Sincerely,

Tamara M. Jones

Tamara M. Jones
Assistant Director of Government Affairs

cc: Judy Schurke, Director
Ernie LaPalm, Deputy Director of Field Operations
Jose Rodriguez, Assistant Director of Specialty Compliance Services

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
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February 17, 2012

Bryan L. Thorp, PLS, 2011 President
Land Surveyor's Association of Washington
30442 227th Place SE
Black Diamond, WA 98010

Re: Land Surveyors' Association of Washington (LSAW)
Petition to Repeal WAC 296-127-01396

Dear Mr. Thorp:

Thank you for your December 21, 2011 letter to Tamara Jones, Assistant Director, Legislative and Governmental Affairs requesting the repeal of the prevailing wage scope of work description for Construction Site Surveyor, WAC 296-127-01396.

Your communication along with its supporting documents includes a number of assertions including:

- L&I included professionals under the prevailing wage law;
- Survey firms are explicitly excluded from prevailing wage requirements under Davis-Bacon (federal) and Oregon laws;
- L&I was only looking at performing work upon a public work and not at the type of service (professional service) provided;
- Survey firms do not fit into the definition of "contractor;"
- WAC 296-127-01396 is impermissibly vague and ambiguous;
- Surveyors are afforded protections from foreign professionals by state licensing statutes; and
- WAC 296-127-01396 skewed the professional business model and raises costs for public works.

Your communications detail a long list of points. For clarity and ease of reading, your major conclusions will be addressed in this letter and the longer list of issues will be addressed in the attached comment and response document.

The Application of Prevailing Wages on Public Works, Chapter 39.12 RCW, to Professionals

I will address the points you raise regarding aspects of a "professional" status and whether prevailing wage requirements apply to professionals.

First, the Washington Supreme Court has provided guidance regarding the purpose and interpretation of the state's prevailing wage law.

> RCW 39.12 is remedial and should be construed liberally. A liberal construction should carry into effect the purpose of the statute... The purpose behind Washington's prevailing wage law can be discovered by understanding the purpose behind the federal prevailing wage law, the Davis-Bacon Act... The Davis-Bacon Act was enacted "to protect the employees of government contractors from substandard earnings and to preserve local wage standards... The employees and not the contractor or its assignee, are the beneficiaries of the Act."

Everett Concrete Products v. Dept. of Labor & Industries, 109 Wn.2d 819, 823, 748 P.2d 1112 (1988) (internal cites omitted).

Are Professionals Subject to Chapter 39.12 RCW?

You note that Surveyors are professional service providers regulated by chapter 18.43 RCW and these individuals must meet requirements and be registered as land surveyors under RCW 18.43.010. You state Land Surveying is a profession (not a trade) and the purpose of the prevailing wage law does not apply to professionals. You also say the prevailing wage policies for construction workers do not exist for professionals. The correct answer about the application of prevailing wage policies to a Surveyor will actually depend on what activities that professional performs on a public work.

The Washington State prevailing wage law has often been examined by the courts for details of how the law actually functions. The issue of an applicable prevailing rate of wage to specific work will look at the "type of work rather than where the work was performed or by whom it was done." *Lockheed Shipyard v. Labor & Industries*, 56 Wn. App. 421, 429-30, 783 P. 2d 1119 (1989).

The terms "professional" and "laborer, worker, or mechanic" are not defined in the prevailing wage law. A court may resort to a dictionary definition to determine the plain and ordinary meaning of terms when they are not defined in statute. *State v. Watson,* 146 Wn.2d 947, 956, 51 P.3d 66 (2002). *Black's Law Dictionary* Seventh Edition, West Group, St. Paul Minn., 1999, defines "worker" as "[o]ne who labors to attain an end; esp., a person employed to do work for another." *Black's* also has a definition for "labor which begins with "[w]ork of any type,

including mental exertion." *Black's* also defines a "professional" as [a] person who belongs to a learned profession or whose occupation requires a high level of training and proficiency."

Using *Black's* definitions, a "professional" performs work in his or her occupation and therefore is a "worker." The next question is whether Surveyor work requires the payment of prevailing wages in certain circumstances.

The Washington State Prevailing Wage Law, Chapter 39.12 RCW Does Not Specifically Exclude Professionals

RCW 39.12.020 requires the payment of not less than the prevailing rate of wage to the laborers, workers, or mechanics upon all public works. That statute provides an exemption for "workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws." The legislature could have, but did not provide any such exclusion from prevailing wage requirements for professionals.

RCW 39.12.030 requires public contracts for "construction, reconstruction, maintenance or repair" to specify that the laborers, workers or mechanics employed be paid at least the prevailing rate of pay. When a person is employed in the performance of "the whole or any part of the work contemplated by the contract" for that "construction, reconstruction, maintenance or repair" such a person must be paid no less than the prevailing rate of pay for their trade or occupation.

The surveyor employed on a public works construction site that performs work necessary to or contemplated by the contract for public work, fits the statute's requirements under which the worker must be paid at least the prevailing rate of wage.

The Use of Federal or Other State Laws to Interpret Washington Law

You mention that the federal Davis-Bacon Act and the Oregon State prevailing wage law do not require Surveyors to be paid the prevailing rate of wage. Details on how other laws function may be informative but would not be controlling on how Washington courts would interpret Washington's prevailing wage law. The Washington Supreme Court has compared some requirements in the federal Davis-Bacon Act with our state law, first noting the usefulness of the similar statute:

> As noted, Washington's prevailing wage law is based on the Davis-Bacon Act, 40 U.S.C. 276a. BUILDING TRADES COUN., at 44. Thus, cases and regulations interpreting that act may be relevant and persuasive to an analysis of RCW 39.12.

Everett at 824.

In *Everett Concrete,* the Washington State Supreme Court rejected an argument that prevailing wage law, chapter 39.12 RCW, should be interpreted and applied in the same way as the federal prevailing wage law (the Davis-Bacon Act) because that principle does not apply when the statutes have different wording:

> ECP's argument would be persuasive if the language of RCW 39.12 was identical to that in the Davis-Bacon Act. However, a court need not adopt the construction placed on a similar statute in another state if the language of the statute in the adopting state is substantially different from the language in the original statute. 2A N. Singer 52.02. "[A] provision of the federal statute cannot be engrafted onto the state statute where the Legislature saw fit not to include such provision." *Nucleonics Alliance, Local 1-369 v. WPPSS*, 101 Wn.2d 24, 34, 677 P.2d 108 (1984).

Everett at 826.

The court discussed how the legislature chose language different from the Davis-Bacon Act for chapter 39.12 RCW and concluded it would work in a different manner than the similar federal law because of the difference in the wording:

> In this case, the Washington Legislature departed from the language of the Davis-Bacon Act when it enacted RCW 39.12. The Davis-Bacon Act provides for payment of prevailing wages to "mechanics and laborers employed DIRECTLY upon the site of the work". (Italics ours.) 40 U.S.C. 276a. In contrast, RCW 39.12.020 provides for payment of prevailing wages to "laborers, workmen or mechanics, upon all public works". The omission of the word "directly" from the language of RCW 39.12.020 leads to the conclusion that the Legislature intended the scope of the state prevailing wage law to be broader than that of the Davis-Bacon Act. ECP's reliance on regulations interpreting the Davis-Bacon Act is misplaced.

Everett at 826.

Another distinction between the federal and Washington State prevailing wage laws is the use in the federal law of the two words, "laborer or mechanic" and the state law which uses three words, "laborer, worker, or mechanic," to describe the employees who benefit from the prevailing wage requirements. Knowing that a Surveyor is a "worker" makes it unnecessary to determine if the Surveyor is a "laborer or mechanic" in considering when the state prevailing wage law applies to the work of a Surveyor.

Here, given the broader language used in chapter 39.12 RCW, your reliance on how other laws with different language will function is not persuasive or controlling on how the Washington State prevailing wage law is interpreted.

Performing Work upon a Public Work

Based on case law that directs the state prevailing wage law to be liberally interpreted for its purpose of worker wage protection (See *Everett* at 823), we believe that chapter 39.12 RCW requires the payment of the prevailing rate of wage to Surveyors (workers) employed upon a public work when they perform any part of the contract for construction, reconstruction, or repair of that public work.

Based on the analysis above, it is correct for the department to look at facts that show when such worker performs at least some part of the contract for construction, reconstruction, or repair of the public work (such as with the Construction Site Surveyor) and to apply a prevailing wage requirement to the workers employed in the performance of such work.

The statute does not provide an exception for professional service as you have argued. If the architect, a design professional, came onto the public works job and began to perform part of the contract for "construction, reconstruction, maintenance or repair," the architect would be entitled to prevailing wages, where that requirement did not exist for the design work unrelated to the performance of the construction work.

The scope of work description for the Construction Site Surveyor, WAC 296-127-01396, makes this distinction. Surveying work not related to the public works construction does not have a prevailing wage requirement. *See* WAC 296-127-01396(2). Under the rule and consistent with the requirements in law, survey work in support of the performance of the public works construction contract (work upon the public work) does have a prevailing wage requirement.

Survey Firms as "Contractors" on a Public Work

RCW 39.12.030 includes prevailing wage requirements for work by the "contractor, subcontractor, or other person" on a public work. It is not essential to be a "contractor" for prevailing wage requirements to apply to work performed upon a public work. Further, the prevailing wage rules define "contractor" to include entities that are required to pay industrial insurance premiums as a construction company. *See* WAC 296-127-010(5)(a).

The attached comment and response document addresses this industrial insurance risk class question from the rule's definition of "contractor." The non-construction risk class 4901-17 that survey firms may use for work not otherwise classified is not correct for work on construction projects where the construction industrial insurance rates will apply. *See* comment and response # 15 in the attached document.

The Construction Site Surveyor Scope of Work Description, WAC 296-127-01396 is Not Void for Vagueness

You assert that WAC 296-127-01396 is impermissibly vague and ambiguous. We do not agree. As explained above, the statute requires that prevailing wage requirements be applied to the Construction Site Surveyor performing work upon a contract for the public work. "Rules and regulations enacted by an agency are presumed valid and will be upheld if reasonably consistent with the statutes they implement." *See Brannon v. L&I*, 104 Wash.2d 55, 60, 700 P.2d 1139 (1985).

"In a constitutional challenge a statute is presumed constitutional unless its unconstitutionality appears beyond a reasonable doubt." *Seattle v. Shepherd*, 93 Wn.2d 861, 865, 613 P.2d 1158 (1980).

Finding a way to misread a law or regulation is not sufficient to invalidate the standard. "An Act that is sufficiently definite may overcome a void for vagueness challenge." *See American Legion Post # 149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 614; 192 P.3d 306 (2008).

Rather the courts will look to the ways in which the regulation does work:

> In a facial challenge, as here, we look to the face of the enactment to determine whether any conviction based thereon could be upheld. *Shepherd*, at 865 [613 P.2d 1158]. A statute is not facially vague if it is susceptible to a constitutional interpretation. *State v. Miller*, 103 Wn.2d 792, 794, 698 P.2d 554 (1985). The burden of proving impermissible vagueness is on the party challenging the statute's constitutionality. *Shepherd*, at 865 [613 P.2d 1158]. Impossible standards of specificity are not required. *Hi-Starr, Inc. v. Liquor Control Bd.*, 106 Wn.2d 455, 465, 722 P.2d 808 (1986).

State v. Aver, 109 Wash.2d 303, 306-07, 745 P.2d 479 (1987).

After much study and careful consideration, we believe the correct application of the statute is to distinguish between survey work on a public works construction contract that does require prevailing wages for the Construction Site Surveyor and work unrelated to such public works construction that does not require prevailing wages.

Protection from Foreign Professionals

You argue that Professional Surveyors are already protected from foreign professionals under state licensing law. This argument is tangential to one of the stated purposes of prevailing wage laws noted in case law discussing the federal Davis-Bacon Act "a purpose of the Davis-Bacon Act was to provide protection to local craftsmen who were losing work because contractors engaged in the practice of recruiting labor from distant cheap labor areas." *See Everett* at 824.

Your argument is a policy argument that might be considered when drafting a legislative document but it is not an actual analysis of what Washington's prevailing wage law, chapter 39.12 RCW, requires. Such an argument cannot negate the statute. Even as a policy argument about what the law should be, the argument is weakened by the very licensing law you rely upon which provides for licensing individuals who already hold similar licenses with foreign jurisdictions. *See* RCW 18.43.100, Registration of out-of-state applicants.

Even if the department found this assertion compelling, we would not be able to ignore the actual requirements in the prevailing wage law.

Business Models Affected by Prevailing Wage Requirements

You say that WAC 296-127-01396 skewed the professional business model and raises costs for public works. You may have some examples that relate to this policy issue. However, no matter how compelling the department might find a particular policy argument, we must follow the law's requirements and not what we think the law ought to be in any given situation. Here, we have been careful to conform to the requirements in chapter 39.12 RCW.

Conclusion

Although we understand your position and considerable analysis on the prevailing wage requirements of WAC 296-127-01396 for certain Surveyor work when part of the performance of a public works contract, we believe the rule is valid and its application of prevailing wages upon a public work when it is part of the performance of a public works contract is consistent with and required by Washington state prevailing wage law.

Thank you for the opportunity to respond to your concerns.

Sincerely,

L. Ann Selover

L. Ann Selover
Industrial Statistician
Program Manager

Enclosure

cc: Tamara Jones, Assistant Director
for Legislative and Governmental Affairs

LSAW Petition to Repeal WAC 296-127-01396
Construction Site Surveyor Scope of Work Description
LSAW Comment and Department Response

1. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: The rule does not do what it was intended to do.	**Department Response to Comment #1:** The rule was intended to distinguish between the surveying work related to the actual construction, reconstruction, maintenance or repair of a public work (which requires prevailing wages) from the surveying work unrelated to the actual construction, reconstruction, maintenance or repair of a public work (such as a boundary line survey which does not require prevailing wages under chapter 39.12 RCW). See RCW 39.12.030. We believe the rule is consistent with that intent.
2. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: The rule imposes unreasonable costs (see attached) - Information detailing the changes in the prevailing rates of wage by county before (2009) and after (2010) as a result of a new wage survey was attached to the LSAW communication.	**Department Response to Comment #2:** The Department properly conducted a wage survey for Construction Site Surveyor seeking wage data for that employment for the time period of January 1, 2008 to December 31, 2008. The responses received were the basis for the changes in the prevailing rates of pay (by county) for the Construction Site Surveyor. The time frame for the prior survey for this wage classification is unknown but the results from the prior survey were published many years ago on October 6, 1989. With about a twenty year time frame between surveys, it is not surprising that there are often significant wage differences in the results. The 60 page list of companies receiving the wage surveys can be accessed on our web site.
3. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: The agency has no authority to make this rule (see attached).	**Department Response to Comment #3:** Although not fully clear from the documents LSAW attached, this comment is likely related to the distinctions LSAW asserts between "professionals" and "trades" work. Those points are addressed in detail in some of the following comments and responses. However, if this is an actual question to L&I's rule making authority for the prevailing wage law and its scope of work descriptions, such authority is supported by statute including, but not limited to RCW 43.17.010, RCW 43.17.060, RCW 43.22.270, RCW 43.22.051, RCW 43.22.260, and chapters 34.05 RCW and 39.12 RCW.

4. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Land surveying is a profession not a trade.	**Department Response to Comment #4:** LSAW's implied message is that you must be a "trade" and cannot be a "professional" to be subject to prevailing wage requirements under chapter 39.12 RCW. That is incorrect. The prevailing wage law applies to the work by laborers, workers or mechanics working in a "trade ***or*** occupation" (emphasis added). See RCW 39.12.010, RCW 39.12.020, and RCW 39.12.030. Depending on the facts, a professional occupation can be subject to the prevailing wage requirements of chapter 39.12 RCW.
5. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: WAC 296-127-01396 is ambiguous and improperly imposes prevailing wage rates on professional service providers	**Department Response to Comment #5:** Not all survey work must meet prevailing wage requirements. The rule recognizes and provides for two possibilities: (1) Construction Site Surveyor work integral to a public work that does require prevailing wages, and (2) other Surveyor work that does not have any prevailing wage requirement. Rules and regulations enacted by an agency are presumed valid and will be upheld if reasonably consistent with the statutes they implement. *Brannan v. Department of Labor & Industries*, 104 Wn.2d 55, 60, 700 P.2d 1139 (1985). The rule includes adequate standards to only apply prevailing wage requirements to work upon a public work and sufficient standards to include "the whole or any part of the work contemplated by the contract..." *See* RCW 39.12.030. *See also Superior Asphalt & Concrete v. Dep't of Labor & Indus.*, 84 Wn. App. 401, 929 P.3d 1120 (1996) (Act "covers persons other than employees of contractors and subcontractors if those persons are doing or contracted to do any part of the work contemplated by the public works contract and the work is "required for such public work").
6. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: L&I agreed on a definition in a March 2006 meeting (with	**Department Response to Comment #6:** The representative from L&I present at this March 2006 meeting was then Industrial Statistician, David J. Soma. Mr. Soma indicates that LSAW did strongly assert that these professional services were not subject to the prevailing wage law. He does not indicate there was any agreement on that assertion.

LSAW, ACEC, & L&I) of the (only) survey work that should be included in prevailing wage requirements: The "Construction layout Technician."	Rather, Mr. Soma indicates he communicated that L&I must look at the work that is performed (not any title or affiliation) to determine a prevailing wage requirement.
7. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Surveyors are professional service providers regulated by chapter 18.43 RCW	**Department Response to Comment #7:** We agree, surveyors are "professionals." In fact many occupations are conferred "professional" status under various state laws, and many are regulated by law. In fact, an example of a Washington statute defining "business professions" is below: "(2) "Business professions" means those business occupations or professions which are not health professions under chapter 18.129 RCW and includes, in addition to real estate brokers and salespersons under chapter 18.85 RCW, the following professions and occupations: Accountancy under chapter 18.04 RCW; architects under chapter 18.08 RCW; auctioneering under chapter 18.11 RCW; cosmetologists, barbers, and manicurists under chapter 18.16 RCW; contractors under chapter 18.27 RCW; debt adjusting under chapter 18.28 RCW; engineers and surveyors under chapter 18.43 RCW; escrow agents under chapter 18.44 RCW; landscape architects under chapter 18.96 RCW; water well construction under chapter 18.104 RCW; plumbers under chapter 18.06 RCW; and art dealers under chapter 18.110 RCW." RCW 18.118.020(2). As you will note, the "professionals" in RCW 18.118.020(2) include Surveyors, Contractors, Plumbers, and Water Well Construction. Depending on their specific activities, these professionals may very well engage in activities that have prevailing wage requirements under chapter 39.12 RCW.
8. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: LSAW asserts the surveyor work to establish a centerline	**Department Response to Comment #8:** We are always willing to provide guidance on specific facts – This generalization sounds incorrect. Most likely, the work to establish a centerline and elevation of a road being constructed would be a part of the work contemplated by the contract for public work. If so, RCW 39.12.030 would include such work in the activities subject to prevailing wage requirements.

and elevation of a road for a construction project is in the professional (and not a prevailing wage category).	
9. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Individuals are required to meet requirements and be registered as land surveyors under RCW 18.43.010.	**Department Response to Comment #9:** We agree. Such requirements to register and meet requirements are present for a number of professions that may, at times (depending on the facts), perform prevailing wage work.
10. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: WAC 296-127-01396 is void for vagueness [citing Keene v. Board of Accountancy, 77 Wn. App. 848, 854 (1995)].	**Department Response to Comment #10:** We do not agree. The rule distinguishes the surveying work related to the actual construction, reconstruction, maintenance or repair of a public work (which requires prevailing wages) from the surveying work unrelated to the actual construction, reconstruction, maintenance or repair of a public work (such as a boundary line survey which does not require prevailing wages under chapter 39.12 RCW). See RCW 39.12.030. A challenge for vagueness would be upheld only if the rule were impermissibly vague in all of its applications. *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982). Here, although LSAW may argue a way to misread the rule, the rule is read and used by many without such issues. Rules and regulations enacted by an agency are presumed valid and will be upheld if reasonably consistent with the statutes they implement. *Brannan v. Department of Labor & Industries*, 104 Wn.2d 55, 60, 700 P.2d 1139 (1985). The rule includes adequate standards to only apply prevailing wage requirements to work upon a public work and sufficient standards to include "the whole or any part of the work contemplated by the contract…" See RCW 39.12.030.

11. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: "Without exception … L&I is requiring all surveyors… to comply with prevailing wage laws."	**Department Response to Comment #11:** Not correct. For the work executed at a cost to the state or a municipality, the rule provides for two possibilities: (1) Construction Site Surveyor work integral to a public work that does require prevailing wages, and (2) other Surveyor work that does not have any prevailing wage requirement. Work unrelated to the public works construction does not have a prevailing wage requirement. For example, a municipality might have a boundary line survey performed for a property they plan to acquire. This work unrelated to a construction contract does not have any prevailing wage requirement.
12. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: The purpose of the prevailing wage law does not apply to professionals.	**Department Response to Comment #12:** The purpose of the prevailing wage law protects employees of government contractors from substandard wages. A "contractor" in this meaning would be any entity that has a contract with the public agency (state or a municipality) to perform work. The prevailing wage law covers the work of the laborers, workers, or mechanics employed to perform construction, reconstruction, maintenance or repair of a public work. Sometimes, a professional such as an engineer or surveyor includes such work in what they perform for the state or a municipality. When those facts are present, the professional performing the work of the laborer, worker, or mechanic employed on the public work does, in fact, have to be paid no less than the prevailing rate of pay to comply with chapter 39.12 RCW. It is not the title or who you are that matters, it is what you do, and when the work performed is contemplated by the public works contract, chapter 39.12 RCW does not provide for any exception for a professional.
13. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: The prevailing wage policies for construction workers do not exist for professionals	**Department Response to Comment #13:** Please see the answer to number 12 above. When a professional performs work of a laborer, worker, or mechanic on a public work such as the work of a construction worker (since the law looks at what the individual worker does and not their professional status or title may be) prevailing wage policies may very well exist for professionals whenever the professional performs work regulated by chapter 39.12 RCW.

14. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: WAC 296-127-01396 improperly includes professional service providers	**Department Response to Comment #14:** The legislature did not provide for any exemptions for professional service providers in chapter 39.12 RCW. Since there are not specific exemptions in law for Surveyors, professionals, or professional service providers, the rule, WAC 296-127-01396, appropriately looks at what work may be performed by Surveyors and separates that work into categories that require prevailing wages and work that does not require prevailing wages. Please see the response to comment # 1 above.
15. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Professional surveyors and technicians are not "contractors" within the meaning of the prevailing wage statute.	**Department Response to Comment #15:** First, it is important to note you do not have to be a "contractor" for prevailing wage requirements to apply to your work activities. RCW 39.12.030 applies prevailing wage requirements to public works contracts with a "contractor, subcontractor ***or other person*** doing or contracting to do the whole or any part of the work contemplated by the contract…" (emphasis added). This language shows the legislative intent for prevailing wage requirements to reach any person or entity even if they are not called a "contractor." Second, the prevailing wage definition of "contractor" in rule (WAC 296-127-010) includes those who are "required to pay industrial insurance premiums as a construction company." This can be the case for surveyor work on a public works construction project. There is a large industrial insurance risk class (4901-17) for land surveying services "N.O.C." (not covered by another classification, or not otherwise covered). This ("N.O.C.") means that if another risk class applies, this risk class is no longer appropriate to use in those other circumstances. *See* WAC 296-17A-4901. When working on a construction project, there are some otherwise categorized risk classes that can and do become applicable to work a surveyor may perform on the construction site. For example, these include but are not limited to 0101-00 (land clearing: highway, street and road construction, N.O.C.), 0101-01 (land clearing: airport landing strips, runways and taxi ways; alleys and parking lots), 0101-02, 0101-03 (grading work, N.O.C.), 0101-04 (land clearing, N.O.C.), 0101-16 (railroad line: construction, maintenance, and repair, N.O.C.), 0101-17 (retaining wall: construction or repair when done in connection with

	road, street, and highway construction, N.O.C.), and 1007-21 (environmental and ecological surveyor services, N.O.C.). Not unlike the prevailing wage scope of work for the Construction Site Surveyor (WAC 296-127-01396), performing work on a public works construction project as contemplated by the construction contract can move the surveyor into prevailing wage requirements and also move that surveyor into an appropriate industrial insurance construction company risk class.
16. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: The April 12, 2007 Dave Soma letter to Randy Dubigk re: definition of contractor stating professional/technical service providers are not required to file Intents and Affidavits when no work that could be included in the definition of "contractor" is performed.	**Department Response to Comment #16:** Context is important regarding this point. Here WSDOT had inquired about work by designers (architects) to perform the design work. The question did not involve actual work on the construction of what was designed. A better way of stating the answer would be when the language of the contract for the work the entity is performing does not have entail any possibility that the contractor will be performing work that is subject to the prevailing wage requirements of chapter 39.12 RCW, filing of intents and affidavits is not required. An architect that does perform the work of a contractor on a public work would have prevailing wage requirements but that was not part of the questions that was asked and answered in this instance. The prevailing wage statute applies more broadly than the definition of "contractor" under the prevailing wage rules, WAC 296-127-010(5) cited by David Soma in his April 12, 2007 letter. Prevailing wage law applies to "the contractor, subcontractor, or other person" performing any part of the work contemplated by the public works contract. See RCW 39.12.030. Ann Selover's July 29, 2011 determination. http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp Prevailing wage requirements, such as Intents and Affidavits, apply when a professional/technical service provider performs work that is contemplated by the public works contract, i.e. work related to the construction, reconstruction, maintenance, or repair on a public work.
17. LSAW Comment Received in the Request to Repeal WAC 296-127-01396:	**Department Response to Comment #17:** This is incorrect. Please see Department Response to Comment #15.

Professional service providers are not "contractors" and therefore not within the purview of the Prevailing Wage Act.	
18. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Professional survey firms are not required to pay industrial insurance premiums as "construction companies"	**Department Response to Comment #18:** This is incorrect. Please see the response to #15 above which addresses this issue. The professional survey firm that complies with the industrial insurance requirements when performing work as part of the construction contract on a public work properly pays industrial insurance premiums in the corresponding construction risk class.
19. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: LSAW cite to page 2 of the prevailing wage "green" book for exclusion of work that is "clerical administrative, or professional in nature" claiming the "prevailing wage act specifically excludes" such work.	**Department Response to Comment #19:** This is improperly using a plain language section taken out of context. Here's the "green" book full text: The Prevailing Wage Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to ***work*** [Emphasis added.] that is clerical, executive, administrative or professional in nature. For example, the Act does not apply to the work of a secretary, engineer or administrator, ***unless such person is performing construction work, alteration work, repair work, etc.***[Emphasis added.] Prevailing Wage Act ***application depends on the nature of the work that is performed, regardless of the worker's job title.***[Emphasis added.] Any doubts or questions regarding the applicability of the prevailing wage law should be directed to the Prevailing Wage Office.

	On the same page 2 that LSAW cites, the "green" book contains instructions on how to use the booklet and how not to use the booklet. This tells the reader: "Do not rely on this plain language description without reading the laws and regulations. The informal discussions below are meant to be helpful when read in conjunction with the laws and WAC rules. They are not meant to be a substitute for reading and understanding the laws. After reading the laws and regulations, please do not hesitate to contact the Prevailing Wage Office with any questions you may have." LSAW has failed to follow the instructions provided and also misapplied the language that talks about certain work "in nature." When the "nature" of the work changes to performing the work of the construction contract, the answer would also change resulting in the prevailing wage requirement. Taken in context, the language actually rejects such an outright exclusion. Rather, it places an emphasis upon the actual work performed, not the title of the person performing the work.
20. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Chapter 296-127 [WAC] does not define professional work	**Department Response to Comment #20:** We agree but that is not conclusive for the prevailing wage requirement. If the statute provided any exclusion for professional work, such a definition would be vitally important. Moreover, since almost all work performed on public works construction is defined elsewhere as "professional" such a definition would be essential if professional work was not subject to prevailing wage requirements. See for example RCW 18.118.020 which defines surveyors, contractors and plumbers (among many others) as "business professions."
21. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Cite to a definition of "professional work" in chapter 39.80 RCW (see RCW 39.80.020) and also in chapter 60.04	**Department Response to Comment #21:** Please see the response to # 20 above. The professional status of surveyors is not in dispute, it just doesn't affect the prevailing wage requirements of chapter 39.12 RCW.

RCW (see RCW 60.04.011).	
22. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Construction layout activities would still be covered in the scopes of work for Laborers and for Power Equipment Operators after repeal of WAC 296-127-01396.	**Department Response to Comment #22:** Certain such work does fall into other scopes of work. Where one or more trades or occupation classifications may perform the same work, compliance with chapter 39.12 RCW is achieved by paying the lower of those possible prevailing rates of pay. Absent the Construction Site Surveyor prevailing rate of pay, this construction layout work as described would have to be paid as a Laborer or Power Equipment Operator even if performed by a Surveyor. There are various tasks that are covered by more than one scope of work. That does not lead to the conclusion that one or several scopes covering the same task at issue should be disregarded from application of prevailing wage requirements depending on whether the person performing the work is a "professional."
23. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Laborers and Operators are "trades"	**Department Response to Comment #23:** We agree Laborers and Operators are trades. They are also occupations. That does not compel us to conclude that construction site surveyors are not subject to prevailing wage requirements when they perform work under WAC 296-127-01396(1). They only need to be one of the two for purposes of the prevailing wage law. The prevailing wage law applies to certain work by "trades" ***or*** "occupations." See RCW 39.12.010. This comment attempts to distinguish the Professional Surveyor from the trades. Given that the professional Surveyor is an occupation, we need not answer that question for this prevailing wage matter.
24. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Contracts for public work have specifications that require the use of professional land	**Department Response to Comment #24:** Yes, we agree. That does not compel us to conclude that construction site surveyors are not subject to prevailing wage requirements when they perform work under WAC 296-127-01396(1). In fact, many licenses and certifications may be required for any number of types of work used on a public work. Such requirements are parallel to and not essential for the answers to the application of the prevailing wage law.

surveyors who are properly registered.	
25. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Accurate location of where the project is to be constructed requires the professional surveyor	**Department Response to Comment #25:** Yes, the actual performance of a public works construction contract may often require a professional surveyor. This fact does not affect the presence or absence of requirements to pay the prevailing rate of wage in chapter 39.12 RCW.
26. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: The federal Davis-Bacon Act exempts surveyors (people working in a professional capacity) See 29 C.F.R. § 5.2 (m); § 541.301(a)	**Department Response to Comment #26:** The federal law and the state law are not identical and their respective requirements are not necessarily the same. This is one such example. Details on how other laws may be interpreted and applied is informative but not controlling in applying Washington law. However, [A] provision of the federal statute cannot be engrafted onto the state statute where the Legislature saw fit not to include such provision. *Nucleonics Alliance, Local 1-369 v. WPPSS,* 101 Wn.2d 24, 34, 677 P.2d 108 (1984), cited in *Everett Concrete Products v. Dept. of Labor & Industries,* 109 Wn2d 819, 826, 748 P. 2d 1112 (1988). The court in *Everett* discussed the different language chosen by the legislature for chapter 39.12 RCW and concluded it would work in a manner different from the similar federal law because of the difference in wording: In this case, the Washington Legislature departed from the language of the Davis-Bacon Act when it enacted RCW 39.12. The Davis-Bacon Act provides for payment of prevailing wages to "mechanics and laborers employed DIRECTLY upon the site of the work". (Italics ours.) 40 U.S.C. 276a. In contrast, RCW 39.12.020 provides for payment of prevailing wages to "laborers, workmen or mechanics, upon all public works". The omission of the word "directly" from the language of

	RCW 39.12.020 leads to the conclusion that the Legislature intended the scope of the state prevailing wage law to be broader than that of the Davis-Bacon Act. ECP's reliance on regulations interpreting the Davis-Bacon Act is misplaced. *Everett* at 826. Another distinction between the federal and Washington State prevailing wage laws is the use in the federal law of the two words, "laborer or mechanic" and the state law which uses three words, "laborer, worker, or mechanic," to describe the employees who benefit from the prevailing wage requirements. Knowing that a Surveyor is a "worker" makes it unnecessary to determine if the Surveyor is a "laborer or mechanic" in considering when the state prevailing wage law applies to the work of a Surveyor. Here, given the broader language used in chapter 39.12 RCW, your reliance on how other laws with different language will function is not persuasive or controlling on how the Washington State prevailing wage law functions.
27. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Establishing reference points to establish centerlines and rights of way for the construction contractor is the surveyor's primary duty, a professional service exempt from prevailing wage	**Department Response to Comment #27:** There is nothing in chapter 39.12 RCW that provides the exemption that LSAW asserts. Please see Department Responses to Comments #12, 13, and 19.
28. LSAW Comment Received in the Request to Repeal WAC 296-127-	**Department Response to Comment #28:** The letter to which this document is attached looks in some detail at the relationship between the state prevailing wage law and how other laws

01396: USDOL does not consider an instrumentman, rodman, chainman, party chief, etc. to be a laborer or mechanic (Exhibit L) but a crew member doing primarily "manual work" such as clearing brush is a laborer or mechanic for such time spent in the manual duties.	on a similar topic may function. In short, the state law is broader than the federal law in a number of areas and chapter 39.12 RCW does apply prevailing wage requirements to some work that the Davis-Bacon Act would not reach. This can be such an example when the work is part of performing the contract for public works construction. Whether or not Washington prevailing wage requirements apply depends on the specific work performed, not on the worker's title. . *See* WAC 296-127-013(3) and *Lockheed Shipyard v. Dep't of Labor & Indus.*, 56 Wn. App. 421, 429-430 (1989). Please see Department Responses to Comments #12, 13, and 19.
29. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Washington law includes "laborers, workers, or mechanics" but does not define the terms – LSAW used laws from other jurisdictions (Oregon, Davis-Bacon) to obtain a definition – arguing that duties that are primarily professional are excluded from the categories of "laborers, workers, or mechanics.	**Department Response to Comment #29:** It is true that chapter 39.12 RCW does not define the terms "laborer, worker or mechanic." It is also true that the state law includes the word "worker" and the federal law does not. "Worker" has a broad definition that includes professionals (please see the letter to which this document is attached). Please see Department Response to Comment #26. Also, the terms "professional" and "laborer, worker, or mechanic" do not have definitions in the prevailing wage law. *Black's Law Dictionary* Seventh Edition, West Group, St. Paul Minn., 1999, defines "worker" as "[o]ne who labors to attain an end; esp., a person employed to do work for another." *Black's* also has a definition for "labor which begins with "[w]ork of any type, including mental exertion." Black's also defines a "professional" as [a] person who belongs to a learned profession or whose occupation requires a high level of training and proficiency." Using *Black's* definitions, a "professional" does perform work in their occupation and therefore is a "worker." That leaves us with the question of whether the work of a Surveyor is, at times, within the universe of the prevailing wage requirements in chapter 39.12 RCW.

30. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Oregon, USDOL & Washington law all look to the actual duties performed by the laborer, worker or mechanic.	**Department Response to Comment #30:** Yes, in the context of the respective laws the actual duties performed are important. However, the federal law does not look at the "worker" and that may also be true for the Oregon law. Washington law does include the "worker." It is the actual tasks performed that Washington considers in determining whether prevailing wage requirements apply. *See Lockheed Shipyard v. Dep't of Labor & Indus.*, 56 Wn. App. 421, 429-430 (1989). Please see Department Responses to Comments #1, 5, 7, 9, 11, 12, 13, 14, 15, 19, and 20.
31. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Washington looks to Davis-Bacon for guidance since the state law is modeled on the federal law	**Department Response to Comment #31:** Yes, but this is not an absolute guide. Rather, in a number of instances, the courts have determined the Washington State prevailing wage law is broader than the federal Davis-Bacon Act thereby applying prevailing wage requirements to work the federal law does not reach.
32. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Differences between the "professional business model" and the "construction company structure" (permanent staff vs. call the union) argues that permanent employees (like supervisors) are exempt from prevailing wages –	**Department Response to Comment #32:** There is no exemption in chapter 39.12 RCW for permanent staff of a business. As far as inconsistencies between a "business model" or "business plan" and the law, such inconsistencies arguably are deficiencies in the business model or plan when the law applies to such work. It's not possible to adopt a business model and expect that it will somehow override requirements in law. The referenced distinctions are not applicable to a determination of whether particular work falls within prevailing wage requirements under Washington law. The specific tasks performed determine whether work is subject to prevailing wage requirements, regardless of how the employee is classified by the employer (permanent versus non-permanent).

Further argues craft workers are non-permanent employees with fewer benefits and fluctuating work. "Applying prevailing wages to permanent employees is not consistent with the professional business model and intrudes into the hierarchical scheme of the firm.	
33. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Surveyors appear to be the only professional employees singled out for prevailing wages. It appears that no other professional service provider on a construction project has a prevailing wage requirement.	**Department Response to Comment #33:** No. In all cases, it is necessary to look at what work the professional of any type may perform on a public work and conform to the law. A professional performing part of the contract for construction, reconstruction, maintenance or repair of a public work will have this prevailing wage requirement under chapter 39.12 RCW. Please see Department Response to Comment #7.
34. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Washington could save dollars by having professionals outside the scope of the prevailing	**Department Response to Comment #34:** This is a policy argument that is useful for choices about how a legislative document might be written but once the law is established cost savings arguments would not override wage requirements in statute. The opinion is interesting, however, it does not pertain to the purpose and intent of prevailing wage law, which is the protection of worker wages and preservation of local wage standards.

wage law.	
35. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: WAC 296-127-01396 includes professionals under the prevailing wage law.	**Department Response to Comment #35:** We agree. Further, that inclusion is required by the statute. Please see the Department Response to Comment #7.
36. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: L&I is looking only at the performing of services on the public works project and not looking at the types of services that the surveyor is performing.	**Department Response to Comment #36:** L&I is properly looking at (1) services performed on the public works project and (2) the type and nature of those services. Please also see Department Response to Comment #14.
37. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Survey firms do not fit within the definition of "contractor."	**Department Response to Comment #37:** Please see Department Response to Comment #15.
38. LSAW Comment Received in the Request to Repeal WAC 296-127-01396:	**Department Response to Comment #38:** The other laws are interesting but do not control how the Washington State law functions. Chapter 39.12 RCW does not contain an exclusion for surveyor work.

Survey firms are explicitly excluded under Oregon and federal prevailing wage laws.	Not addressing whether the statement is accurate, please see Department Responses to Comments #26, 29, and 30.
39. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: Licensing affords the surveyor protection against "foreign" professionals.	**Department Response to Comment #39:** The apparent argument is that professional surveyors are already protected from foreign professionals under state licensing law. This argument is tangential to one of the stated purposes of prevailing wage laws noted in case law discussing the federal Davis-Bacon Act "a purpose of the Davis-Bacon Act was to provide protection to local craftsmen who were losing work because contractors engaged in the practice of recruiting labor from distant cheap labor areas." See *Everett* at 824. The argument is a policy argument that might be considered when drafting a legislative document but not an actual analysis of what is required by the actual language of state's prevailing wage law, chapter 39.12 RCW. Such an argument cannot negate the statute. Even if used as only that policy argument about what the law should be (rather than what the law actually is) the basis of the argument is weakened by the very licensing law you rely upon which provides for licensing individuals who already hold similar licenses with foreign jurisdictions. See RCW 18.43.100, Registration of out-of-state applicants. Even if the department found this assertion compelling, we would not be able to ignore the actual requirements in the prevailing wage law.
40. LSAW Comment Received in the Request to Repeal WAC 296-127-01396: "WAC 296-127-01396 should be repealed with the determination that surveyors are indiscriminately	**Department Response to Comment #40:** We disagree on this conclusion. Compliance with chapter 39.12 RCW does require prevailing wage requirements for work to perform construction, reconstruction, maintenance or repair on a public works contract. Surveyors are only subject to prevailing wage requirements under WAC 296-127-01396 when they perform tasks of a "laborer, worker, or mechanic" related to the "construction, reconstruction, maintenance or repair" on a public works contract. This is consistent with the

included within Washington's prevailing wage law."	department's application of prevailing wage law across all trades and occupations, and is not an "indiscriminate" inclusion of surveyors under the law's requirements.