



Purpose

Provide guidance for changes made to the State Apprentice Requirements included in construction contracts.

Background

RCW 39.04.320 sets requirements for Apprentice Utilization on public works projects. Awarding Agencies are responsible for including the requirements in their contracts and the Department of Labor and Industries (LNI) is responsible for administration of the Apprenticeship Program statewide.

To align with LNI's interpretation of the law, changes were made to the Apprentice Utilization General Special Provision (GSP) to:

- Clearly define Labor Hours that must be included in the calculation to determine utilization,
- Specify that utilization must be 15.0% or more (rounding up is not allowed)
- Require that utilization must be met using both certified payroll and affidavits, and
- Update Good Faith Effort (GFE) documentation requirements.

Guidance

The updated GSP language better defines the term Labor Hours used in the calculation to include all employees working on the project who are subject to prevailing wage laws. This can include off-site manufacturers and truck drivers, even if they are not considered a subcontractor as defined in Standard Specification 1-08.1. The definition of Labor Hours is further clarified to include working supervisor and foreman hours if they are covered under prevailing wage laws based on the time spent performing laborious activities as defined in WAC 296-127. Simply adding supervisor or foreman to the employee's title does not exempt their hours from the calculation.

When determining compliance, Apprentice Utilization must be at least 15.0%, and cannot be rounded up if Apprentice Utilization is calculated at 14.5% - 14.9%. Any Apprentice Utilization lower than 15.0% will require a GFE.

During the life of the project, Apprentice Utilization is actively monitored through LNIs Prevailing Wage Intents and Affidavits (PWIA) system using the certified payroll calculated percentage. In addition, the affidavit calculated percentage shown in PWIA must be at least 15.0% to be compliant. All affidavits must be filed before determining if the Apprentice Utilization Requirement was met. Failure to achieve



**Washington State
Department of Transportation**

CONSTRUCTION BULLETIN

State Construction Office
Multimodal Development & Delivery

**State Apprenticeship Requirement
Changes**

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at least 15.0% Apprentice Utilization as shown in PWIA for certified payrolls and affidavits will require a GFE.

GFEs now require documentation to solicit apprentices from an approved training program be included, along with at least one of the additional elements shown in the GSP. GFEs must show the continuous efforts the Contractor made to meet the 15.0% requirement throughout the life of the project.

Resources

GSP 1-07.9(3).OPT1.GR1 – Attached

Construction Manual SS 1-07.9(3) - Attached

RCW 39.04.320

WAC 296-127

LNI's Labor Hours Defined for Apprentice Utilization – Included in CM Attachment

Implementation Plan

Updated GSPs will be available and required for use in all Contracts advertised after September 3, 2024 if the engineer's estimate meets the dollar threshold to include Apprentice Utilization Requirements.

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(September 3, 2024)
Apprentice Utilization

This Contract includes an Apprentice Utilization Requirement. Fifteen percent or more of project Labor Hours shall be performed by Apprentices. Apprentice Utilization will be determined using the L&I online Prevailing Wage Intent & Affidavit (PWIA) system.

Definitions

For the purposes of this specification the following definitions apply:

1. Apprentice is a person enrolled in a State-approved Apprenticeship Training Program.
2. Apprentice Utilization is the Apprentice labor hours expressed as a percentage of the project Labor Hours based on certified payrolls or the affidavit of wages paid, whichever is least. The percentage is not rounded up.
3. Apprentice Utilization Requirement is the minimum percentage of apprentice labor hours required by the Contract.
4. Good Faith Efforts (GFE) describes the Contractor's efforts to meet the Apprentice Utilization Requirement including but not limited to the specific steps as described elsewhere in this specification.
5. Labor Hours are the total hours performed by all workers receiving an hourly wage who are subject to prevailing wage requirements for work performed on the Contract as defined by RCW 39.04.310. Labor Hours are determined based on the scope of work performed by the individuals, rather than the title of their occupations in accordance with WAC 296-127.
6. State-approved Apprenticeship Training Program is an apprenticeship training program approved by the Washington State Apprenticeship Council.

Electronic Reporting

The Contractor shall use the PWIA System to submit the "Apprentice Utilization Plan" and GFE documentation. Reporting instructions are available in the application.

Apprentice Utilization Plan

The Contractor shall submit an "Apprentice Utilization Plan" by filling out the Apprentice Utilization Plan form (WSDOT Form 424-004) within 30 calendar days of execution, demonstrating how and when they intend to achieve the Apprentice Utilization Requirement. The Plan shall be in sufficient detail for the Engineer to track the Contractor's progress in meeting the utilization requirements and be updated and resubmitted as the Work progresses or when ordered by the Engineer.

If the Contractor is unable to demonstrate ability to meet the Apprentice Utilization Requirement in their Apprentice Utilization Plan, they must use the PWIA system to submit GFE documentation for review and comment with their Apprentice Utilization

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Plan. The Contractor shall actively seek out opportunities to meet the Apprentice Utilization Requirement during the construction Work.

Contacts

The Contractor may obtain information on State-approved Apprenticeship Training Programs at:

<https://secure.lni.wa.gov/arts-public/#/program-search>

Compliance

In the event the Contractor is unable to achieve the Apprentice Utilization Requirement, the Contractor shall use the PWIA system to submit GFE documentation for review and approval. If GFE documentation was previously submitted as part of the Apprentice Utilization Plan, it shall be updated and resubmitted. The GFE documentation for Apprentice Utilization based on certified payrolls shall be submitted after Substantial Completion but no later than 30 days after Physical Completion. After all affidavits of wages paid have been submitted, if the Apprentice Utilization based on the affidavits of wages paid is less than that of the Apprentice Utilization based on certified payrolls, a GFE shall be submitted based on the lower Apprentice Utilization.

If the Contractor fails to submit GFE documentation or if the Engineer does not approve the GFE, the Contractor will be subject to disciplinary actions as allowed under WAC 468-16-180.

Good Faith Efforts

The GFE shall describe in detail why the Contractor is not or was not able to attain the Apprentice Utilization Requirement. The GFE documentation shall include:

1. Documentation of ongoing correspondence for solicitation of Apprentices from a State-approved Apprenticeship Training Program(s) To be considered ongoing, the correspondence shall be not less than once a quarter, beginning at the start of Work and continuing every three months thereafter. The response from the solicited State-Approved Apprenticeship Training Program(s) when there is a lack of availability of Apprentices shall be included in the correspondence.

And one or more of the following:

2. Documentation that shows Contract requirements for TERO, Special Training or Disadvantage Business Enterprise requirements affect the ability to obtain Apprentice Labor Hours on the Contract.
3. Documentation demonstrating what efforts the Contractor has taken to require subcontractors to solicit and employ Apprentices. Documentation could be posters placed on site, emphasis in subcontracts about employing Apprentices, letters, memos or other correspondence from Contractor to subcontractor that put an emphasis on employing Apprentices.

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- 4. Documentation of other obstacles the Contractor faced that may demonstrate or solidify a satisfactory explanation of not meeting the Apprenticeship Utilization requirement.

Contractors may receive a GFE credit for graduated Apprenticeship hours through the end of the calendar year for all projects worked on as long as the Apprentice remains continuously employed with the same Contractor they were working for when they graduated. If an Apprentice graduates during employment on a project of significant duration, they may be counted towards a GFE credit for up to one year after their graduation or until the end of the project (whichever comes first). Determination of whether or not Contract requirements were met in good faith will be made by subtracting the hours from the journeyman total reported hours for the project and adding them to the apprenticeship hour total. If the new utilization percentage meets the Contract requirement, the Contractor will be reported as meeting the requirement in good faith.

Payment

All costs incurred by the Contractor for complying with this specification shall be included in the Contract prices for the Bid items of Work involved.

Figure 1-2



LABOR HOURS DEFINED FOR APPRENTICE UTILIZATION

APPRENTICE UTILIZATION	PREVAILING WAGE	
<p style="text-align: center;">RCW 39.04.310 – DEFINITION OF LABOR HOURS</p> <p>The total hours of workers receiving an hourly wage who are directly employed upon the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" <u>does not</u> include hours worked by foremen, superintendents, owners, and workers <u>who are not subject to prevailing wage requirements.</u></p>	<p style="text-align: center;">WAC 296-127-015 - SUPERVISORS</p> <p>Determinations as to whether individuals are workers, laborers, or mechanics are <u>based on the scope of work actually performed by the individuals, rather than the title of their occupations.</u></p> <p>(1) Where additional supervisory duties are required of workers, laborers, or mechanics by statute or regulation, the industrial statistician shall establish a rate of pay for a work classification to be called "journey level in charge." These rates shall be published in the semiannual prevailing wage publication.</p> <p><u>(2) Supervisors (e.g., foremen, general foremen, superintendents, etc.) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:</u></p> <p>(a) For each hour spent in the performance of manual or physical labor if it is for more than twenty percent but less than fifty percent of their hours worked on a public works project during any given week.</p> <p>(b) For all hours worked in any given week if they perform manual or physical labor for fifty percent or more of their hours worked on a public works project during such week.</p> <p>(3) If supervisors subject to the journey level prevailing wage rate are paid a salary, the compensation (salary divided by number of hours worked) must be equal to or greater than the prevailing wage rate for the type of work performed.</p>	<p style="text-align: center;">WAC 296-127-026 – OWNERS</p> <p>The prevailing wage requirements of chapter 39.12 RCW do not apply to:</p> <p>(1) Sole owners and their spouses.</p> <p>(2) Any partner who owns at least thirty percent of a partnership.</p> <p>(3) The president, vice president and treasurer of a corporation if each one owns at least thirty percent of the corporation.</p> <p>(4) Workers regularly employed on monthly or per diem salary by the state or any political subdivision created by its laws.</p>
	<p style="text-align: center;">SYNOPSIS FOR SUPERVISORS</p> <p><i>A supervisor (e.g., foremen, general foremen, superintendents, etc.) is subject to the prevailing wage requirements when they perform more than 20% of their week performing manual/physical labor on the project.</i></p> <p>If the supervisor performs trades work between 20% and 50% of their time on public works projects during the week, they must be paid prevailing wages for <u>each hour worked performing trades work.</u></p> <p><i>These hours must be reported to L&I and also be included in the total labor hours considered for apprentice utilization.</i></p> <p>If more than 50% of the supervisor's time is spent performing trades work on public works projects during the week, <u>all the supervisor's hours for the week</u> must be paid prevailing wages.</p> <p><i>These hours must be reported to L&I and also be included in the total labor hours considered for apprentice utilization.</i></p>	<p style="text-align: center;">SYNOPSIS FOR OWNERS</p> <p><i>An owner/operator that owns less than 30% of the business is subject to the prevailing wage requirements.</i></p> <p><i>These hours must be reported to L&I and also be included in the total labor hours considered for apprentice utilization.</i></p> <p style="text-align: center;">Example</p> <p>A corporation shares ownership between 4 individuals:</p> <ul style="list-style-type: none"> • President (CEO) 30% • Vice President (COO) 30% • Treasurer (CFO) 30% • Managing Director 10% <p>The company begins working on a public works project and needs the Managing Director to join the project to provide additional labor help.</p> <p><i>The Managing Director is treated as another worker for prevailing wage requirements. All of the Managing Director's hours must be reported to L&I and also be included in the total labor hours considered for apprentice utilization.</i></p>

State Apprenticeship and Federal Training Requirements

The State Apprenticeship requirement is separate from the Federal training requirement, and both could be required on a project if:

1. it is federally funded, and
2. training goals are assigned by OECR (Federal training goals are assigned as an hourly requirement).

If both requirements are included in the Contract, Apprentices that have been approved to count towards the Federal training requirement may also be counted towards the State Apprenticeship requirement if the Apprentice is registered in a program that is approved through the Washington State Apprenticeship Council. An Apprentice that is registered in an approved program by the Washington State Apprenticeship Council does not guarantee approval for the Federal trainee requirement. See CM 1-07.11 for information regarding the Federal trainee requirements.

Apprentice Utilization Plan

Within 30 days of Contract execution, the Contractor must submit an Apprentice Utilization Plan (DOT Form 424-004) to the Project Engineer using PWIA. Review the plan to determine if it aligns with the project Work and includes firms that are expected to perform the work on the project. The intent is to make sure all labor hours are accounted for in the plan and the requisite apprentice hours will be provided. The Apprentice Utilization Plan is an estimate and the Project Engineer must monitor Apprentice Utilization throughout the life of the project to ensure the Contractor is on track to meet the Contract requirement. If at any time it appears that the Apprentice Utilization Plan differs from actual Work that is performed, the Project Engineer may require the Contractor to update their Apprentice Utilization Plan and resubmit to PWIA. If Work changes significantly during the project, or the attainment is trending towards not meeting the requirement, request an updated plan to include the new scope of work, additional subcontractors, and how the Contractor intends to meet the 15.0% requirement.

If the Apprentice Utilization Plan indicates the Contractor will not meet the utilization requirements, a Good Faith Effort (GFE) must be submitted with the plan in PWIA. The GFE must meet the requirements of the Contract, indicating the reasons why the Contractor believes they will not meet the utilization requirement. The GFE will be reviewed by the Project Engineer noting any concerns with the GFE to-date.

Submittal of a GFE with the Apprentice Utilization Plan does not relieve the Contractor of the responsibility to solicit Apprentices or make other good faith efforts during the life of the project. The Contractor must submit an updated and final GFE at the end of the project showing good faith efforts were made throughout the project.

Apprenticeship Reporting

Apprentice reporting occurs through LNI's PWIA system via certified payrolls and affidavits of wages paid.

Certified payroll submission is a requirement of RCW 39.12.120 and must be submitted each week by the Contractor and all firms working on the project who are subject to prevailing wage laws. Contracts with an Apprentice Utilization requirement will be marked as such in PWIA by the State Construction Office when it is set up.

The Project Engineer must verify certified payrolls are submitted per SS 1-07.9(5) and monitor Apprentice Utilization at least monthly. If during monthly monitoring the Apprentice Utilization on the project falls below 15.0%, communicate with the Contractor the need for documentation demonstrating the efforts made to solicit Apprentices as part of the GFE.

After all "Affidavit of Prevailing Wages Paid" have been provided in accordance with SS 1-07.9(5)B, the Apprentice Utilization needs to be checked based on the affidavits.

Compliance

There are two ways the Contractor can meet the Apprentice Utilization Requirement:

- through project labor hours alone, or
- approval of a submitted GFE in combination with project labor hours.

Apprentice Utilization is calculated automatically in PWIA. Utilization is calculated as a percentage of the total hours worked by Apprentices when compared to the total project labor hours (both Apprentices and journey level workers). Project labor hours are recorded on certified payrolls and must include all labor hours that are covered under state prevailing wage laws. The Contractor must meet the Apprentice Utilization requirement as shown in PWIA using both certified payrolls and affidavits of wages paid calculations. The labor hours reported via certified payrolls should match those listed on the affidavits, but there may be occasions where they are different. Both should be checked for compliance and if the Apprentice Utilization Requirement is not met for either or both the Contractor must submit a GFE.

Good Faith Effort (GFE)

If the Contractor does not meet the Apprentice Utilization Requirement through labor hours alone based on the certified payrolls, they are required to submit a GFE to the Project Engineer using PWIA. The Project Engineer will review the GFE for compliance with the Contract requirements and either accept or reject it. GFEs must be submitted after Substantial Completion, and no later than 30 days after Physical Completion. If the Contractor does not submit a first draft of their GFE within 30 days of Physical Completion, the Project Engineer must consider the Contractor non-compliant.

If the Contractor does not meet the Apprentice Utilization Requirement based on the affidavit of wages paid, and the utilization based on affidavits is less than that of the utilization based on certified payrolls, they are required to submit a GFE to the Project Engineer using PWIA for the lower Apprentice Utilization.

All correspondence regarding Apprentice Utilization must be uploaded into PWIA.

The Contractor must document why they did not meet the apprenticeship requirement in their GFE and must provide backup documentation to include:

- Correspondence between labor organizations or Apprentice training centers and the Contractor or subcontractor seeking Apprentices at least quarterly. The correspondence must include requests for Apprentices and the responses received from the organization that was contacted.

The Project Engineer may approve a GFE without quarterly correspondence if monthly monitoring consistently showed the Contractor was meeting the requirement, but unforeseen changes towards the end of the project caused the utilization to fall under the required 15.0%.

And at least one of the following:

- Documentation and verification of impacts of DBE, Special Training or TERO goals had on the project.
- Documentation of efforts the Contractor made to solicit Apprentices and verification the expectations were communicated to subcontractors and lower tier subcontractors.
- Any other documentation and verification of other obstacles the Contractor may have faced to hinder their success to achieve the apprenticeship requirement.

The Project Engineer is responsible for reviewing and either approving or rejecting the GFE as they are engaged with the Contractor and have the information to determine if a good faith effort to meet the goal through labor hours was made. The Project Engineer may allow revisions to the submitted GFE by the Contractor.

Questions to consider when reviewing GFEs:

- Did the Contractor solicit Apprentices through multiple Apprentice programs and labor organizations?
- Did the Contractor begin looking for Apprentices during beginning stages of work and continue throughout the project duration?
- Did the Contractor follow up with Apprentice programs and labor organizations?
- Were there extenuating circumstances that you believe caused the shortfall?

The Project Engineer must submit all correspondence into PWIA for review by the State Construction Office and LNI. If the Contractor does not submit a GFE or the Project Engineer rejects the submitted GFE, the Contractor will be subject to disciplinary actions as allowed under WAC 468-16-180.

If the GFE is rejected or if it is known the Contractor will not be submitting a GFE, notify the Assistant State Construction Engineer (ASCE) and the Construction Administration Specialist at the State Construction Office.

The rejection notification needs to include a copy of the Contractor's GFE and the reason for not approving it. Notification of either acceptance or rejection must be in letter format and uploaded into PWIA.

Joint Venture (JV) Contractors are comprised of two or more firms that act as a single Contractor. Each partner in a JV will receive a strike letter of non-compliance in the event apprentice labor hours are not met and a submitted GFE is not approved or received.

Disciplinary Measures for Non-Compliance

WSDOT follows a three-strike disciplinary program for Contractors that fail to meet the Apprentice Utilization Requirement. A tracking sheet of Contractors with active letters on file can be found on the Construction Office SharePoint site.

The first and second offense in not meeting the Apprenticeship Utilization Requirement requires that a letter be sent to the Contractor informing them that they failed to meet the requirement of the Contract Specifications for apprenticeship. The letter will be sent digitally from the State Construction Office to the Contractor, with a copy of the letter to the Project Engineer and the Contract Ad and Award Office.

The letter will contain the following information at a minimum:

- Contractor name
- Contact person
- Contract number
- Contract title
- Percentage of Apprentice labor hours required
- Actual percentage of labor hours performed by apprentices
- Reason for the rejected GFE or statement that GFE documentation was not submitted
- Notification that the Project Engineer will note the missed requirement in the Prime Contractors Performance Report
- If second offense, the letter will provide the date the first letter was sent and inform the Contractor of the second offense in not meeting the Apprenticeship Utilization Requirements on a Contract.
- Notification that other active Contracts with WSDOT at the time of offense will require the Contractor to submit a Plan to the State Construction Office within 30 days of receipt of the letter. Failure to comply will lead to actions taken under [WAC 468-16-180\(3\)](#) and (4). The Plan will include the following at a minimum:
 - Each active project where the firm is the Contractor and apprenticeship is a requirement of the contract
 - The percentage of apprentice labor hours achieved at the time of plan submittal
 - Provide the dates the Contracts were awarded and provide the substantial, or physical dates if those dates have been received
 - Provide, in Contractors best judgment at the time of plan submittal if they will meet the percentage of apprentice labor hours required in the Contract
 - If they do not plan to meet Apprentice labor hours, what course of action will they pursue (such as GFE submittal) to meet apprenticeship attainment requirements
- Notice that future letters of non-compliance may result in action being taken as allowed under [WAC 468-16-180\(3\)](#) and (4)
- Inform the Contractor that this first offense will stay in effect until the Contractor has either:
 - Met Apprentice attainment requirements on three consecutive completed Contracts, or
 - Two calendar years have passed

If after the second letter to the Contractor, they fail to meet apprenticeship requirements before they have successfully completed three Contracts meeting the Apprenticeship Utilization Requirement, a third letter will be sent to the Contractor.

The letter will contain the following information at a minimum:

- Contractor name
- Contact person
- Contract number
- Contract title
- Percentage of Apprentice labor hours required
- Actual percentage of labor hours performed by apprentices
- Reason for a rejected GFE or failure of a GFE to be submitted
- Notification that the Project Engineer will note the missed requirement in the Prime Contractors Performance Report
- Notification that this is the third offense letter on not meeting the Apprenticeship Utilization Requirements (provide the dates the first and second offense letter were sent)
- Should the Contractor have other active Contracts with WSDOT at the time of the third offense letter, then the letter will require the Contractor submit a Plan to the State Construction Office, within 30 days of receipt of the letter. Failure to comply will lead to further actions taken under [WAC 468-16-180\(3\)\(e\)](#). The requirements of the Plan submittal are the same as those listed in the first offense letter.
- Notification that the Contractor is suspended of qualifications for a period of six months as allowed under [WAC 468-16-180\(3\)\(f\)](#) and (4)(b) starting on date established by the State Construction Office. After the suspension period, the next offense will be a first offense. Inform that a third offense within two years of previous suspension, prequalification may be revoked as allowed under [WAC 468-16-190](#) Revocation of qualifications.
- Notification that if additional non-compliance occurs during the suspension period, the State Construction Office will determine further warranted action.

SS 1-07.9(5) Required Documents

The requirements for the Contractor's compliance with prevailing wages are noted in [Standard Specifications](#) Section 1-07.9.

Specific wage rate determinations for State prevailing wages are noted in the Contract and are verified through the PWIA system. Effective January 1, 2020, all certified payrolls, Statement of Intent to Pay Prevailing Wages (Intent) and Affidavits of Wages Paid (Affidavits) are required to be submitted to the Project Engineer through LNI's PWIA system.

The State Construction Office will enter each Contract into PWIA after award and before execution. The funding source and apprenticeship requirements will be selected at the time the Contract is established in PWIA.