

Chapter Ind 90
MUNICIPAL CONTRACTS FOR CONSTRUCTION OF PUBLIC WORKS

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Ind 90.01 Definitions. The following definitions shall apply in wage rate determinations made by the commission pursuant to section 66,293, Wis. Stats.:

(1) CONTRACTOR, as used in these rules, includes any contractor, subcontractor, agent or other person, doing or contracting to do all or a part of the work.

(2) AREA means the county or other locality from which labor for any project would normally be secured.

(3) LOCALITY means the geographical area from which the persons in the trades or occupations to be used in the performance and execution of the project will normally be secured for employment on such public works or other similar projects.

(4) TRADE OR OCCUPATION means one of the job classifications that identifies the specific work regularly done by laborers, workmen and mechanics in the erection, construction, remodeling or repairing of any building or any other works projects, on a contract basis on projects that are similar to the contract work in the area. The duties, kinds of work, and other component elements envisioned by the commission for job classifications of trades and occupations are those which prevail and are historically recognized in the construction industry for work on projects of a character similar to the contract work.

(5) EMPLOYEES WORKING ON THE PROJECT means laborers, workmen and mechanics employed directly upon the site of the work.

(6) LABORERS, WORKMEN AND MECHANICS include properly registered and indentured apprentices but exclude clerical, supervisory, and other personnel not performing manual labor.

(7) THE PREVAILING WAGE RATE included in a wage determination for any given trade or occupation is the hourly basic rate plus the hourly contributions for the types of economic or fringe benefits for that trade or occupation.

(8) HOURLY BASIC RATES of pay are the hourly wage rates on which overtime payments are computed.

(9) HOURLY CONTRIBUTIONS are the hourly contributions, or equivalent, for economic or fringe benefits in addition to the hourly basic rates. Payments for food, lodging, mileage, riding time, waiting time, call-in pay, overtime and other similar items are excluded. The rate of contribution or cost which is ordinarily an hourly rate, will be reflected in the wage determination as such. If the contributions or costs for certain economic or fringe benefits are expressed in a

formula or method of payment other than an hourly rate, the commission may at its discretion express in the wage determination the rate of contribution or cost used in the formula or method of payment. The equivalent converted per hour value of the contribution or cost expressed in a formula or method of payment other than an hourly rate will be included in the prevailing hourly wage rate.¹

(a) *Contribution irrevocably made by a contractor to a trustee or to a third person.* Contributions for economic or fringe benefits made to a trustee or to a third person irrevocably will be considered in ascertaining hourly contributions. The "third person" must be one who is not affiliated with the contractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund, except those used for apprenticeship training, must be set up in such a way that in no event will the contractor be able to recapture any of the required contributions paid in or in any way to divert the funds.²

¹ *Specific economic and fringe benefits.* (Interpretation)

(a) The term "other economic benefit" as used in section 103.49, Wis. Stats. is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the commission as they become prevailing. A particular fringe benefit need not be recognized beyond a particular area in order for the commission to find that it is prevailing in that area.

(b) To insure against considering and giving credit to any and all economic and fringe benefits some of which might be illusory or not genuine, the qualification required by the commission is that such economic and fringe benefits must be bona fide. No difficulty is anticipated in determining whether a particular economic or fringe benefit is bona fide in the ordinary case where benefits are those common in the construction industry and which are established under a usual fund, plan or program. The following are typical conventional economic and fringe benefits: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide economic and fringe benefits, but only where the contractor is not required by other federal, state, or local law to provide any of such benefits. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the commission.

(c) Economic and fringe benefits which a contractor is obligated to provide under other federal, state, or local law are excluded. No credit may be taken under section 66.293, Wis. Stats., for the payments made for such benefits. For example, payments for workmen's compensation insurance under either a compulsory or elective state statute are not payments for economic or fringe benefits under section 66.293. The omission in section 103.49, Wis. Stats., of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide economic and fringe benefits under section 103.49.

² Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor. In such case the return by the insurance company to the contractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan.

(b) *Fund, plan or program.* The contributions for economic and fringe benefits must be made pursuant to a bona fide fund, plan or program.³

(c) *Unfunded plans.* 1. The reasonable anticipated costs to a contractor pursuant to an enforceable written commitment to carry out a financially responsible plan or program, will be considered economic and fringe benefits.⁴

2. No type of economic or fringe benefit is eligible for consideration as a so-called unfunded plan unless:

- a. A copy has been supplied to the commission;
- b. It could be reasonably anticipated to provide benefits described in section 103.49, Wis. Stats., and Ind 90.01 (9);
- c. It is a bona fide commitment; and
- d. The plan or program providing the benefits has been communicated in writing to the laborers, workmen and mechanics affected.⁴

(10) **WAGE DETERMINATION** includes the original certification and subsequent certifications modifying, superseding, correcting or otherwise changing the provisions of the original decision of certification.⁵

(11) **PROJECT OF PUBLIC WORKS** includes building or work involving the erection, construction, remodeling or repairing, under contract with a Wisconsin municipality.

(12) **BUILDING OR WORK** includes construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work, excepting for the delivery of mineral aggre-

³ The phrase "fund, plan or program" is intended merely to recognize the various types of arrangements commonly used to provide economic and fringe benefits through employer contributions. In interpreting this phrase, the commission will be guided by the experience of the United States department of labor in administering the welfare and pension plans disclosure act and of the Wisconsin state insurance commissioner in administering employe welfare funds.

⁴ These provisions are intended to permit the consideration of economic and fringe benefits meeting the requirements and which are provided from the general assets of a contractor

⁵ As in the case of other economic and fringe benefits payable under section 66.293, Wis. Stats., an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with section 66.293.

⁶ (a) *Types of wage determinations:*

1. When economic and fringe benefits are prevailing for various classes of laborers, workmen and mechanics in the area, such benefits are includable in any commission determination. Illustrations, contained in footnote 9 Ind 90.04, set forth some of the different types of wage determinations which may be made in such cases.
2. When economic and fringe benefits for various classes of laborers, workmen and mechanics do not prevail in the area, the wage determination will contain only the hourly basic rates of pay, that is, only the cash wages which are prevailing for the various classes of laborers, workmen and mechanics. An illustration of this situation is contained in footnote 9 Ind 90.04.

(b) *Subsequent certifications:*

1. Subsequent certifications by the commission modifying, superseding, correcting or otherwise changing the provisions of the original decision or certification for a given wage determination request, must be made within 30 days after the commission receives the request for the wage determination.
2. If bids are not solicited within 120 days after the date of the original certification, or if the project is rebid after 120 days after the date of the original certification, then the municipality should request a new determination prior to soliciting bids.
3. Requests for prevailing wage rates for trades or occupations which are required in the work contemplated, but which are not included in the original certification, should be requested before bids are solicited.

gate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.⁷

(13) **HIGHWAY, STREET OR BRIDGE CONSTRUCTION** includes curb and gutter projects, and excludes without limitation because of enumeration street lighting systems, sanitary sewer, storm water sewer and water service and main construction projects, unless an integral part of the highway, street or bridge construction.

(14) **ERECTION, CONSTRUCTION, REMODELING OR REPAIRING** means all types of work done on a particular building or work at the site thereof in the construction or development of the project, including without limitation, erecting, construction, remodeling, repairing, altering, painting and decorating, the transporting of materials and supplies to or from the building or work done by the employees of the contractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work, by persons employed by the contractor.

(15) **SITE OF WORK** means the premises and vicinity upon which any building or work is to be performed under the contract.⁸

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.02 Apprentices. Prevailing wage rates are those prescribed in their indentures as approved by the commission (1) under state of Wisconsin apprenticeship law, chapter 106, Wis. Stats., or (2) under a bona fide apprenticeship program of an out-of-state contractor which

⁷ The terms include without limitation, buildings, structures, and improvements of all types such as sanitary sewer or sewage works, garbage incinerators, swimming pools, tennis courts, parks, playgrounds, golf links, bathing beaches, bathhouses, city halls, courthouses, jails, schools, hospitals, homes for the aged or indigent, dams, plants, parkways, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plans, scaffolding, drilling, blasting, excavating, clearing and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment whether or not a municipal agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished is not a "building" or "work" within the meaning of these rules and regulations unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence. Section 66.293, Wis. Stats., does not apply to wage rates and hours of employment of laborers, workmen or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products; except that this section does apply to laborers, workmen or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle. Ready-mix concrete is not a mineral aggregate under the provisions of section 103.49, Wis. Stats. Labor employed by a producer or commercial establishment which, although having a fixed place of business of the kind in some location, operates in a location specifically established in order to supply a particular job within the purview of section 66.293, Wis. Stats., or in a location used only sporadically when a project happens to be close at hand, comes under the provisions of section 66.293. Incidental or casual sale of material from such plants to others does not classify the same as a fixed commercial establishment.

⁸ The term "site of the work" normally contemplates a larger area than that which the completed building or work will actually occupy and will vary in size with the nature of the work required to be done on the project. Obviously, on some projects all of the work may be performed within a few feet from where the installation or work is or will be located, while on others requiring elaborate facilities such as a dam, or flood control project, the area may be quite extensive. In order to apply the phrase "site of work" in a sound and realistic manner, it is important to examine both the geographical and functional aspects of the work in question with some care.

is (a) registered with a state apprenticeship council recognized by the federal committee on apprenticeship, United States department of labor, or (b) registered directly with the bureau of apprenticeship, United States department of labor.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.03 Wages. Wages paid for work done in any given trade or occupation shall be computed at a wage rate not less than the prevailing wage rate listed in the certification. The type of work done, and not a previously assigned occupational title, shall determine the required minimum prevailing wage rate payable. The applicable rate for the type of work done shall be determined according to prevailing labor standards or local practices for the area.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.04 Meeting wage determination obligations. (1) A contractor performing work subject to a commission wage determination may discharge his minimum wage obligations for the payment of straight time wages and economic and fringe benefits by paying in cash, making payments or incurring costs for bona fide economic or fringe benefits of the types herein and before set forth, or by a combination thereof.^o

^oIllustration:

Hourly Basic Rate of Pay	Hourly Contributions for:				Prevailing Hourly Wage Rate (Minimum)	Trade or Occupation
	Health & Welfare Benefits	Vacation Benefits	Pension Benefits	Other Specified Benefits		
\$2.50	\$-----	\$-----	\$-----	\$-----	\$2.50	General Laborer
2.65	_a	_b	_c	_d	3.138	Truck Driver, Two Axle Truck
4.30	_e	-----	_f	-----	4.39	Electrician
4.00	0.15	-----	-----	-----	4.15	Carpenter
3.15	0.15	0.20	0.10	-----	3.60	Painter, Brush
4.00	0.15	-----	0.20	0.05 _g	4.40	Plumber
3.90	-----	0.10	-----	-----	4.00	Iron Worker, All Types

^o\$6.80 per week for welfare; \$0.17 M.H.E.

¹1 week vacation for 1 year of employment, 2 weeks for 3 years of employment; \$0.065 M.H.E.

²\$7.00 per week for pension; \$0.175 M.H.E.

³6 paid holidays; \$0.078 M.H.E.

⁴\$22.64 Blue Cross for family coverage and \$8.18 Blue Cross for individual coverage; \$0.047 M.H.E.

⁵1% of gross monthly labor payroll for pension; \$0.043 M.H.E.

⁶Apprenticeship program.

M.H.E. = Minimum Hourly Equivalent based on 40 hours and 52 weeks.

(It should be noted that this format is not necessarily in the exact form in which determinations will be issued; it is for illustration only.)

A contractor may credit the full amount of his economic or fringe benefit payments to a minimum wage obligation arising under section 103.49, Wis. Stats., under a plan or program which is not identical with one found prevailing by the commission. Thus the obligations for "Painter, Brush" (and any of the other classes of laborers, workmen, or mechanics in this illustration, including those for whom no economic or fringe benefits were found to be prevailing) may be met by an hourly rate, partly in cash and partly in payments or costs for bona fide economic and fringe benefits which total not less than \$3.60 (\$3.15 hourly basic rate plus 45 cents for economic and fringe benefits). The payments in such case may be \$3.35 in cash and 25 cents in payments or costs in bona fide economic and fringe benefits. Or, they may be \$3.00 in cash and 60 cents in payments or costs for bona fide economic and fringe benefits. Where an employer does not make payments or incur costs for economic or fringe benefits, he would meet his obligations for "Painter, Brush" in the illustration by paying directly to the brush painter a straight time hourly rate of not less than \$3.60.

(2) Unconventional plans must be approved by the commission before credit will be given for costs under section 103.49, Wis. Stats.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.05 Overtime payments. Sums paid by a contractor for fringe and economic benefits shall be excluded in the computation of overtime. In no event can the rate upon which overtime is calculated be less than the amount determined by the commission as the hourly basic rate of pay (i.e., cash rate). Contributions by employees are not excluded from the rate upon which overtime is computed; that is, an employee's overtime rate is computed on his earnings before any deductions are made for the employee's contributions to economic and fringe benefits. The contractor's contributions or costs for economic and fringe benefits may be excluded in computing the overtime rate so long as the exclusions do not reduce the overtime rate below the hourly basic rate contained in the wage determination.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.06 Laborers, workmen and mechanics subject to section 66.293, Wis. Stats. Every laborer, workman or mechanic employed directly upon the site of the work by the contractor shall be subject to section 66.293, Wis. Stats., regardless of the contractual relationship alleged to exist.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.07 Payrolls and records. Every contractor shall keep, and, upon request of the commission, promptly furnish copies of any or all payrolls and records relating to work done, hours worked, and wages paid to laborers, workmen or mechanics, and shall allow the commission to examine original records relating to any and all work to which section 66.293, Wis. Stats., applies.⁴⁰

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.08 Procedure for requesting wage determination. (1) Under section 66.293, Wis. Stats., it is the duty of the municipality before soliciting bids on a contract for any project of public works except highway, street, or bridge construction and any other public works project for which the estimated project cost of completion is below \$2,500 where a single trade is involved and \$25,000 where more than one trade is involved on such project, to request the industrial commission of Wisconsin to ascertain the prevailing wage rates in all trades and occupations required in the work contemplated.

Such request should be sent to the Statistical Division of the Industrial Commission and shall include:

- (a) Popular or descriptive name of project.
- (b) Project number.
- (c) Exact location of project (Specify name of county and city, village and township).
- (d) Official name of municipality.

⁴⁰ Keeping proper payroll records is a necessary protection in the event of lien action. An additional protection for the municipality would be to require by ordinance, as under section 103.49, Wis. Stats., that the prevailing hours of labor, the prevailing wage rates, the hourly basic rates of pay and trades or occupations for all labor involved in each project to which section 66.293 (3), Wis. Stats., is applicable, shall, together with the provisions of section 66.293 (3) (a), be kept posted on the project by the employer in at least one conspicuous place for the information of the employees working on the project.

- (e) Name of agency of the municipality soliciting bids.
- (f) Estimated project cost of completion. The estimated project cost of completion shall be the estimate of the costs of the total construction contracts to be awarded.
- (g) Anticipated date for soliciting or advertising for bids.
- (h) Anticipated date for awarding of contract(s).
- (i) Proposed date for commencement of work on project.
- (j) Estimated date of completion of project.
- (k) General description of type of facility and facilities which will constitute the completed contract(s). (For example: Two story brick and concrete block school building about 200 feet x 400 feet with concrete floor, wood roof deck on wood laminated beams, and includes plumbing, heating and electrical work. Outside work includes excavating, black topping, grading, sidewalks, fencing, driveways, parking areas, and miscellaneous work.)
- (l) Desired date of receipt of prevailing wage rate schedule.
- (m) Will the federal government or any of its agencies furnish by loans or grants any part of the funds used in this contract? If yes, will the federal government or any of its agencies also prescribe a schedule of prevailing wage rates?
- (n) Name, title, address, and phone number of person to whom the schedule of prevailing wage rates is to be mailed.

(2) An application form will be mailed on request. Request may be made by letter if all above items of information are included therein. Requests should be mailed to the Statistical Division of the Industrial Commission.

(3) The industrial commission's statistical division should be notified about ensuing projects as far in advance as possible. However, the official request to the industrial commission to ascertain and determine the prevailing wage rate in all trades and occupations required in the work contemplated should, if possible, be made between 50 and 60 days before soliciting bids.

(4) A request for review of a wage determination may be filed within 10 days from the determination date, and prior to the date bids are solicited, if evidence is submitted with the request showing that the wage rates included therein do not represent the prevailing wage rates in the area, and if the review can be completed within 30 days after the commission received the request for the wage determination.¹¹

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.09 Procedure for requesting exemption from applying to commission for wage determinations. (1) The petition of any municipality for exemption from applying to the commission for ascertainment and determination of prevailing wage rates pursuant to section 66.293 (3) (d), Wis. Stats., should be sent to the Statistical Division of the Industrial Commission and shall include:

(a) A certified copy of the ordinance or other enactment setting forth the standards, policy, procedure and practice followed in ascertaining and determining prevailing wage rates and hours of labor in all trades and occupations required in the works contemplated.

¹¹ The law provides that the commission shall make its wage determination within 30 days after it receives the request for the wage determination. Therefore, the amount of time available for a review of the wage determination is limited by this 30 day statutory time period.

(b) A current schedule of prevailing wage rates for all trades and occupations required for any project of public works, except highway, street or bridge construction, setting forth:

1. Trades and occupations required.

2. Prevailing wage rates, hourly basic rates of pay, hourly contributions for economic or fringe benefits, and prevailing hours of labor per day and per week for such trades and occupations.

3. Types of projects of public works, by kind and size on which such rates and hours apply.

4. Types of such economic or fringe benefits.

5. Effective dates of such rates, contributions and hours.

(c) Frequency of, method of, and responsibility for updating the schedule of prevailing wage rates.

(d) Name, title, address and phone number of person to whom the exemption order is to be mailed.

(2) Upon request of the commission, the municipality shall also supplement its petition with information pertinent to determining the granting of an exemption.

(3) An exemption will be granted for a period no longer than 18 months. A new petition shall be filed with the commission each time continuation of the exemption is desired beyond the termination date granting such exemption.

(4) Each exemption is subject to revocation for cause at any time, and also subject to observance of the applicable provisions of Wisconsin laws, rules and regulations of the industrial commission of Wisconsin, and of the agreements included in the petition and application. The provisions of sections 66.293 (3) (a), 103.49 (1), and 103.49 (2), Wis. Stats., remain in effect and are not included within an exemption.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

Ind 90.10 Procedure for review of wage determination if a request for review is filed with industrial commission.¹² (1) From information on file and submitted by interested persons, the commission shall select projects of a character similar to the project covered by the wage determination under review. Such selections shall be made from projects located in the city, village or township in which the contemplated project is located, and, if necessary, also from contiguous cities, villages and townships as described in Wis. Adm. Code section Ind 90.10 (2), below; from projects on which contract construction work was done in the current and preceding 12 months; from projects on which the commission has, or is furnished, needed wage rate and hourly contribution data; and from projects best fitting one or a combination of the alternate descriptions under Wis. Adm. Code section Ind 90.10 (1) (a), below.

(a) Type of building, structure, or other construction work of, or similar to, project covered by the wage determination under review:¹³

¹² The purpose of using a sample of projects—if a request for a review is filed with the industrial commission—is to reflect the source of labor and prevailing wage rates of trades or occupations having types of work and skills comparable to the trades or occupations under review objectively and efficiently.

¹³ Similar erection, construction, remodeling or repairing characteristics will be used as criteria.

1. Nonresidential buildings; dormitories, fraternity houses, nurses' homes, convents, and military barracks; and open deck parking structures.

a. School and other education buildings—include school, college, seminary, library, museum, observatory, nonmanufacturer-owned laboratory, zoo, etc., buildings; and affiliated nonhousekeeping dormitory, fraternity, convent, gymnasium, infirmary, heating plant, laundry, etc. buildings. (University hospital buildings are included under section Ind 90.10 (1) (a) 1. b.; houses and apartments for faculty and students are included under section Ind 90.10 (1) (a) 3. a., b., or c.)

b. Hospital and other health treatment and institution buildings—include general, TB, and mental hospital and sanatorium buildings; health center, clinic, rest home, and orphanage buildings; home for the aged, infirm, and indigent buildings; penitentiary, jail, reformatory, etc., building; and all affiliated nurses' home, staff dormitory, laundry, heating plant, garage, and workshop buildings. (Doctor office and related medical service buildings are included under section Ind 90.10 (1) (a) 1. i.; staff house and apartment buildings are included under section Ind 90.10 (1) (a) 3. a., b. or c.; and animal hospital buildings are included under section Ind 90.10 (1) (a) 1. k.)

c. Public administration buildings—include post office, city hall, court house, and governmental office buildings. (Temporary governmental office buildings are included under section Ind 90.10 (1) (a) 1. m.)

d. Public works and utilities buildings—include natural gas compressing stations, pumping stations and plants providing public services, such as transportation, communication, power, light, heat, water supply, sewage and garbage and refuse disposal, trash incineration, etc., together with affiliated buildings such as warehouses, garages, administration buildings, etc.

e. Amusement and recreational buildings—include buildings designed to provide amusement or recreation such as theatres, radio and TV studios, auditoriums, athletic and social clubs, arenas, bowling alleys, skating rinks, public bathhouses and boathouses, indoor swimming pools and gymnasiums. (Buildings of these types affiliated with hospitals and other institutions are included under section Ind 90.10 (1) (a) 1. b.; buildings of these types affiliated with schools and other education establishments are included under section Ind 90.10 (1) (a) 1. a.; and buildings of these types affiliated with military establishments are included under section Ind 90.10 (1) (a) 1. m.)

f. Parking garages and open deck parking structures open to public—include garage buildings and open deck parking structures to be used primarily for transient parking. (Parking lots are included under section Ind 90.10 (1) (a) 4. c.; storage garages affiliated with public utility companies are included under section Ind 90.10 (1) (a) 1. d.; storage garages affiliated with mercantile and service establishments are included under section Ind 90.10 (1) (a) 1. k.; and storage garages affiliated with governmental agencies are included under section Ind 90.10 (1) (a) 1. m.)

g. Service stations and repair garages—include also automobile repair shops. (Automobile showrooms are included under section Ind 90.10 (1) (a) 1. k.)

h. Residential garages and carports—include garages and carports to be built on residential property.

i. Nonpublic administration office, bank, and professional buildings—include loft buildings, buildings designed for doctors' offices and related services, administration buildings of labor unions, chambers of commerce, and trade associations.

j. Industrial buildings—include plants producing, processing and assembling goods and materials, together with affiliated buildings such as warehouses, garages, administration buildings, etc.; factories, newspaper and printing plants, central bakeries, laundry and dry cleaning plants, ice plants, etc.

k. Stores and other mercantile buildings—include buildings used in buying, selling, distributing and storing merchandise and materials or performing consumer services; stores, auto and other showrooms, commercial warehouses, grain elevators, garages for storing commercial vehicles, restaurants, taverns, nightclubs, bakery shops, laundromats, frozen food lockers, beauty and barber shops, animal hospitals, etc.

l. Churches and other religious buildings—include churches, synagogues, rectories, parish halls, Sunday school rooms, monasteries and convents. (Parochial schools and convents affiliated with schools are included under section Ind 90.10 (1) (a) 1. a.; convents affiliated with hospitals are included under section Ind 90.10 (1) (a) 1. b.; and military chapels are included under section Ind 90.10 (1) (a) 1. m.)

m. Other nonresidential government buildings—include governmental service buildings such as armory, police and fire station, workshop, and garage buildings; all nonhousekeeping buildings on military reservations and farms, community bomb shelters not associated with any other residential or nonresidential building.

n. Other nonresidential nongovernmental buildings—include non-governmental nonresidential buildings on farms, bathhouses and boat-houses on residential property, etc.

2. Nonhousekeeping residential buildings, other than dormitories, fraternity houses, nurses' homes and convents.

a. Transient hotels, motels, tourist courts and cabins, summer camps, lodge association buildings, and club buildings with bedrooms (YMCA's, etc.), rooming houses, and other similar nonhousekeeping residential buildings and shelters—include transient hotels, apartment hotels in which most of the space is intended for transient use, and motels, tourist courts and cabins designed primarily to accommodate transient trade. (Dormitories, fraternity houses, nurses' homes and convents are included under section Ind 90.10 (1) (a) 1. l., b. or a., depending upon their affiliation. Military barracks are included under section Ind 90.10 (1) (a) 1. m.)

3. Housekeeping residential buildings:

a. Apartment buildings—include buildings containing three or more housing units having a common basement, heating plant, stairs, or entrance; include buildings containing three or more housing units in combination with space for business, or professional use provided the buildings are primarily for residential purposes; also include apartment hotels in which most of the space is intended for non-transient occupancy.

b. One-family houses—include semi-detached and row houses—include buildings containing one housekeeping unit in combination with space for business or professional purposes provided the buildings are primarily for residential use.

c. Two-family buildings—include buildings containing two housing units which may be one above the other or side-by-side—include buildings containing two housekeeping units in combination with space for business or professional use provided the buildings are primarily for residential purposes.

4. Structures other than buildings and open deck parking structures, and other types of construction work.

a. Streets and highways, sidewalks, and curbs and gutters.

b. Bridges—include elevated highways.

c. Parking areas, parkways, athletic fields, golf links, bathing beaches, tennis courts, parks and playgrounds.

d. Airports—exclude buildings.

e. Dams and reservoirs.

f. River and harbor development and other marine construction—include dredging, underwater rock removal, pile driving, land reclamation, and harbor and waterways construction such as breakwaters, channels, cofferdams, dikes, docks, jetties, levees, locks, piers, watermarks, and wharves—exclude dams and reservoirs.

g. Shafts, tunnels, subways, viaducts.

h. Sewerage and waste disposal systems.

i. Water supply systems—exclude dams and reservoirs.

j. Electric power and heating systems—exclude dams and reservoirs.

k. Gas systems—natural and manufactured.

l. Communications systems.

m. Other non-building construction.

(2) (a) If 3 or more projects selected under section Ind 90.10 (1), above, are located in the city, village or township in which the project covered by the wage determination under review is located, and if this group of projects provides wage rate and hourly contribution data for the major trades or occupations under review, the commission will compute the modal wage rates and hourly contributions as set forth in section Ind 90.10 (3), below.

(b) If the selection standards set forth in section Ind 90.10 (2) (a), above, are not met, the commission will repeat the selection steps under section Ind 90.10 (1) for all cities, villages and townships contiguous with the city, village or township in which the project covered by the wage determination under review is located. If 3 or more selected projects are located in the city, village or township in which the project covered by the wage determination under review is located and all cities, villages and townships contiguous thereto, and if this group of projects provides wage rate and hourly contribution data for the major trades or occupations under review, the commission will compute the modal wage rates and hourly contributions, as set forth in section Ind 90.10 (3), below.

(c) If the selection standards set forth in section Ind 90.10 (2) (a) and (b), above, are not met, the commission shall continue the same procedure by selecting and including projects from each subsequent tier of contiguous cities, villages and townships, until the standards set forth in section Ind 90.10 (2) (a) and (b) are met.

(3) (a) From the most current data available on the projects finally selected under section Ind 90.10 (1) and (2), above, the commission shall prepare a tabulation showing each trade or occupation under

review, the hourly basic rate of pay plus the hourly contributions paid for each trade or occupation, the total number of workers employed at each such different rate, and the total number of manhours worked at each such different rate if such manhour figures are available.

(b) If the manhour figures are available for the majority of workers in a given trade or occupation, the manhours may be estimated for the remaining workers in such trade or occupation.

(c) If the hourly basic rate of pay plus the hourly contributions paid figure which has the largest number of manhours represents a collectively bargained rate for any given trade or occupation, then the commission shall accept the comparable current collectively bargained rate for such trade or occupation in the jurisdictional area wherein the project covered by the wage determination under review is located as the prevailing wage rate.¹⁴

(d) If the hourly basic rate of pay plus the hourly contributions paid figure which has the largest number of manhours represents a rate other than a collectively bargained rate for any given trade or occupation, the commission shall accept such rate as the prevailing wage rate.¹⁴

(e) If the number of manhours is not available for a given trade or occupation, the commission shall accept prevailing wage rates in the same manner as set forth in section Ind 90.10 (3) (c) and (d), above, but on the basis of the largest number of workers employed rather than on the basis of the largest number of manhours worked.¹⁴

(f) If a wage report does not specify the actual hourly basic rate of pay and the hourly contributions paid for any given trade or occupation, but merely indicates a collectively bargained rate, the commission may include the manhours and employment included in such report for such trade or occupation at the current collectively bargained rate in effect in the jurisdictional area wherein the contemplated project is located.

(g) Wis. Adm. Code section Ind 90.10 shall be limited to information reflecting the experience in the contract construction industry. The following are explicitly excluded:

1. Operative builders who build on their own account for resale or lease.

2. Investment builders who build structures on their own account for rental.

3. Force account construction (construction work performed by an establishment, primarily engaged in some business other than construction, for its own account and use and by its own employees).

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67.

¹⁴ In order for any wage changes to become effective under this procedure they must be made within 30 days after the commission receives the request for the wage determination. See Footnote 6 of Ind 90.01 (10).

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