



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Janet T. Mills
GOVERNOR

Bruce A. Van Note
COMMISSIONER

October 11, 2023

Dan Diffin, President
ACEC of Maine
451 Webbs Mills Road
Raymond, ME 04071

RE: Request to Eliminate Direct Labor Salary Rate Cap

Dear Dan:

Thank you for your letter of September 27, 2023. Although we understand your desire to lift or increase the salary cap and related annual inflation adjustment, after careful consideration, we have decided to move forward with the proposal included in the previously shared memo. As you are aware, those recommendations provide for the opportunity to review the limits and make adjustment in the future. The adjustment provisions were intentional, and we expect to monitor the process and collect wage data in preparation of those adjustments.

With regard to your specific requests for clarification, we offer the following.

1. Fixed Burden Hourly Rate Contracts will not be adjusted.
2. For the Adjustable-rate Contracts:
 - a. Starting January 1, 2024, Adjustable Burdened Hourly Rate contracts with a completion date beyond 12/31/24 may be adjusted under the new wage limit policy.
 - b. Adjustable Burdened Hourly rate contracts with a completion date on or before 12/31/24 remain subject to the prior wage limits.
3. The wage rate waiver process will remain the same. Forms will be updated and posted to the website.
4. The Department will continue to evaluate each waiver request on a case-by-case basis.
5. Requests for profit above 10% should be submitted as part of the proposal package. Profit above 10% will be approved on a case-by-case basis.

As stated in my previous letter, our intent was to implement the new wage policy by 10/1/23. I delayed that while we considered your comments and questions. The new wage rate limit and related policies will be implemented and announced through the Contract Procurement Office website on or before October 19, 2023.

Respectfully,

Bruce A. Van Note, Commissioner



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Janet T. Mills
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Bruce A. Van Note
COMMISSIONER

September 13, 2023

Dan Diffin, President
ACEC of Maine
451 Webbs Mills Road
Raymond, ME 04071

RE: Request to Eliminate Direct Labor Salary Rate Cap

Dear Dan:

Thank you for your letter of April 7, 2023. We appreciate and understand the importance of this matter to both ACEC and MaineDOT.

As such, I asked our Bureau of Project Development and Contract Procurement Office to consider the matter, evaluate solutions, and make a recommendation on how to proceed. For your information, their analysis and recommendation are attached.

Upon review of their recommendation and consideration of your request, I agree that it is time make adjustments to our salary cap. However, I am not convinced that complete elimination of the wage limits is in the best interest of the MaineDOT. I support their recommendation and believe that a properly implemented and maintained wage limit and waiver process allows for appropriate review and consideration of proposals with high individual salaries, adequately provides for the required expertise on all projects, and mitigates risk of revenue loss for our consultant partners. The recommendations include a significant increase in the cap, an annual cap increase, and a regular review period to allow for recalibration.

Please review the attached information and provide any comment back to me within 14 days. The department intends to implement the attached recommendation with any revisions I determine are necessary based upon feedback, through the Contract Procurement Office by October 1, 2023.

Sincerely,

A handwritten signature in blue ink, reading "Bruce A. Van Note".

Bruce A. Van Note
Commissioner

Enc

MEMORANDUM

To: Bruce Van Note, Commissioner
From: Todd Pelletier, Director, Bureau of Project Development
Subject: **Recommendation on MaineDOT Policy for Direct Labor Salary Rate Cap**
Date: September 13, 2023
cc: William Pulver, C.O.O.; Jeff Folsom, Assistant Director, Bureau of Project Development; Chad Lewis, Director, CPO

Background:

On April 7, 2023, the American Council of Engineering Companies (ACEC) of Maine submitted a formal request to eliminate the MaineDOT wage limit for consultant and subconsultant firms engaged to perform services for MaineDOT. This request has been evaluated by the Bureau of Project Development and Contract Procurement Office. We offer the following analysis summary and recommendation for your consideration.

History of MaineDOT Wage Limit

The history of the wage rate limit extends back to November 1997. Effective November 1, 1997, the maximum consultant and subconsultant reimbursement level for salary was set at \$50 per hour. This salary limit remained unchanged for over 20 years. Pursuant to a request from ACEC of Maine, the Department re-evaluated and adjusted the wage limit in 2018. The result was a partial increase in the limit. The policy was revised to allow up to \$62/hour for a maximum of two personnel per contract, one Project Manager and one Quality Control Engineer. For some time, the Department has considered waiver requests for compensation above the wage limit. All other personnel remained subject to the original limit of \$50 per hour.

Analysis:

We agree with the ACEC statement that the current \$50/hour rate limit, including the \$62/hour rate limit for Project Managers and Quality Control Engineers, is outdated. The real value of \$50 has significantly diminished since 1997 and the engineering profession overall has experienced a general increase in compensation. What was once intended to give pause only to the highest salaries is now below the salaries of senior level engineers that regularly perform ordinary assignments on typical MaineDOT projects.

ACEC is correct that the majority of states do not limit wage rates. Of those that do, the closest, and only Northeast state, is the New York State DOT (NYSDOT). Like Maine, NYSDOT has had a wage limit in place for more than 25 years. Interestingly, at the time Maine's wage limit was implemented in 1997, NYSDOT's wage limit was comparable to Maine's at \$54/hr. Unlike MaineDOT, NYSDOT did periodically update their wage limit. Since 1997, it has been revised 12 times. As of January 2023, NYSDOT wage limit stands at \$100/hour.

The Department basically has three options in dealing with this request: totally remove the wage limit as requested, modify the wage limit to more representative limit given current economics, or keep the limits the same.

Properly implemented, the wage rate limit, together with the waiver process, provides the opportunity for Department managers to consistently evaluate and determine when expert level personnel are appropriate for more complex assignments. For this reason, we do not recommend an elimination of the wage rate limit and waiver process. However, we do recognize that the current limits no longer represent the transition between a typical assignment and the more complex.

It is not clear how the original wage limit was selected as \$50/hour. Following implementation in 1997, the \$50/hour wage limit worked well for a time. It provided for nearly all consultant roles on typical MaineDOT assignments. For those assignments that required specialized subject matter experts with salary rates above the limit, the wage rate waiver process provided an opportunity for the Department and the consultant to discuss the specific assignment, the individual proposed, and determine fair and reasonable compensation.

In order to appropriately respond to ACEC's request, the team set out to determine what the equivalent rate of pay would be in today's dollars. Several methods were used to analyze this, all with similar results. For all methods, July 2000 was chosen as the starting point as the wage limit at this point in time was functioning as desired.

We considered applying the consumer price index to adjust the value of \$50/hour from July 2000 to today's dollars (July 2023). The equivalent value according to the US Bureau of Labor Statistics (BLS) Inflation Calculator is \$88.45/hour.

We also considered refining this calculation by using the BLS Employment Cost Index (ECI) for the period from 2005 to present. Using this method, and an employment category of Professional, Scientific, and Technical Services, yielded similar results at \$89.68/hr.

As another data point, we looked at the increase over time for our senior level engineers (Civil Engineer III) from 1997 to present. The salary increase over that time has been \$48,110, or \$23.13/hour. Adding that same increase to the \$50/hour cap translates to \$73.13.

Some of the long standing concerns about raising the limit came down to two primary issues: (1) the concern that if we raise what we are willing to pay consultants, we would potentially lose MaineDOT professional staff to the consultant community due to the potential higher salaries they may get if they were in the private sector, and (2) how will MaineDOT achieve cost control on its projects if consultants are free to just keep giving their employees industry competitive raises that ultimately just get passed on to us.

As far as losing staff to consultants, that has always been, and will continue to be, a possibility. Very often the public sector, when everything else is factored (benefits, leave, retirement, etc.), still competes fairly well in attractiveness as compared to the private sector. If anything, given the current generation's priority on work-life balance versus compensation, we have done very well in attracting and keeping quality staff even though the direct hourly wage compensation is less.

The issue of cost control is a real concern. However, this can and should be mitigated by the project and program managers effectively negotiating and questioning consultant proposals that have significant hours for mid to high level staff. In many cases, we don't need the most experienced or "A-Team" level staff to provide the services we need. We can be more than happy with lower-level staff on a majority of assignments. In cases where we do need the more seasoned and experienced staff, we would expect to provide that compensation.

Recommendation

It is our recommendation that the Department retain the wage limit and waiver process but adjust to account for the increases in engineering salaries over time. Furthermore, set regular adjustment intervals to maintain an appropriate value moving forward.

We recommend that the MaineDOT Policy on Reimbursement be revised and implemented as follows:

- Effective October 1, 2023, establish the maximum reimbursement level for salary cost of consultant and subconsultant firms engaged to perform services for the Department at \$85.00 per hour.
- With the wage limit increase, limit profit at 10% for planning and preconstruction engineering efforts and 8% profit for construction inspection assignments. Profit levels above these limits by approval of the respective Bureau Director and Director of CPO.
- Starting in 2025, annually on or about January 1, increase the wage rate limit 2.5%
- Starting in 2028, every four years, re-evaluate the wage limit and/or adjust the annual increase percentage.
- Fixed Burden Hourly Rate Contracts:
 - This wage limit increase applies to new contracts effective October 1, 2023.
 - Fixed Burden Hourly Rate contracts will remain under the wage limit policy in effect at the time of contract execution.
- Adjustable Burden Hourly Rate Contracts:
 - This wage limit increase applies to new contracts effective October 1, 2023.
 - Adjustable Burden Hourly Rate Contracts with a contract completion date on or before 12/31/24 will remain under the wage limit policy in effect at the time of contract execution.
 - Effective January 1, 2024, annual adjustments, as provided for in the MaineDOT Consultant Procurement Manual, will be subject to the wage limit in effect at the time of adjustment.

- The Department would reserve the right to modify these recommendations at any time it deems appropriate.

Cost Implications:

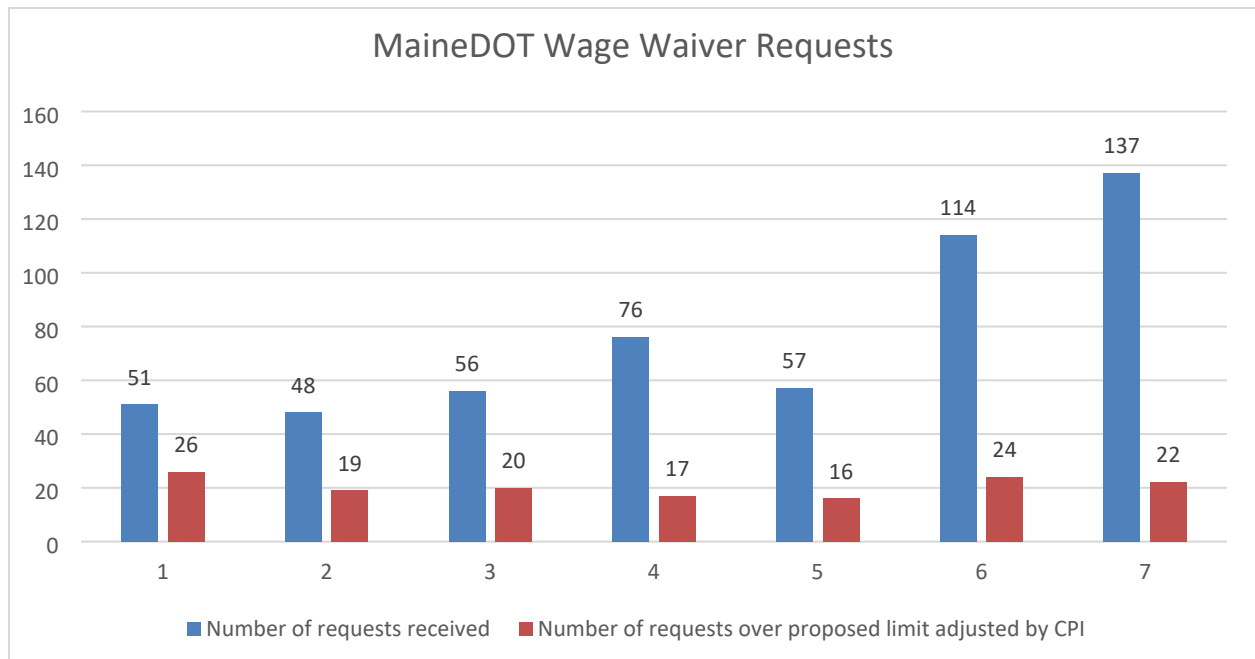
As with any policy recommendation, it is prudent to evaluate potential effects on cost. The team sampled a variety of recent consultant proposals where multiple wage rate waivers were requested and compared total contract cost under strict application of the current reimbursement policy vs application of the proposed revised policy. For these specific contracts, the cost difference ranged from 6% to 9% higher. The sampled projects represent the more complex work as compared to typical assignments so in general we can expect that most consultant contracts would be affected at the lower end of that range. Assuming an average, a conservative assumption may be a 7.5% increase in cost over all MaineDOT consulting engineering assignments.

Considering just capital projects, the effect of this change is small in relation to the overall capital work plan. Considering the current usage of consultants as a percentage of PE stands at about 85%, and PE costs represent about 6% of total project costs, the overall effect in terms of the capital work plan would be on the order of less than one percent additional cost.

Expected Outcomes:

The proposed increase to the wage limit should significantly reduce the number of wage rate waiver requests. This is as it should be. The wage limit should encompass all staff normally engaged in typical MaineDOT assignments. Only unusually complex assignments should lead to a waiver request for specialty or expert level personnel.

Despite the adjustment made in 2018, the number of wage rate waiver requests has continued to grow. Ten years ago in 2013, twelve total wage waiver requests were submitted. Last year in 2022, the Department received and responded to 137 total requests, approving just over seventy percent. The chart below compares the number of waiver requests received with the number of those requests that would have required a waiver had the original wage limit been adjusted each year by the Consumer Price Index.



Last year, twenty-two requests exceeded the proposed limit adjusted for inflation. It is expected that if the wage limit is periodically evaluated and adjusted that the wage rate waiver team should expect to respond to an average of 20 requests each year.

With the artificially low restriction lifted, the focus of the MaineDOT contract administrator will turn to verifying that the appropriate level staff is assigned to given tasks at acceptable levels of effort. For example, simple project scopes should not see the bulk of the engineering efforts accomplished by senior level engineers.