

October 20, 2010

Joanna Lyons-Antley, City Attorney
City of Klamath Falls
PO Box 237
Klamath Falls, OR 97601-0361

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Replacement of Existing Water Lines
Requested by: City of Klamath Falls

Dear Ms. Lyons-Antley:

On August 9, 2010, you submitted a request on behalf of the City of Klamath Falls asking whether anticipated work to replace existing waterlines/mains on several different streets throughout the city during the next fiscal year would constitute a single project.

Sufficient information to make a determination was received on September 23, 2010, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The City anticipates that over the last, current and future fiscal years, it will execute several contracts for replacement of waterlines/mains (improvements) throughout the City. The City represents that the improvements will be in different locations, individually engineered, advertised at separate times, and will have separate contracts, but will be of a similar type of construction work.
2. The anticipated improvements have or will take place on various streets throughout the City, as the following table shows.

Street	Requester's Anticipated Cost	Contract Amount from WH-81*	Expected Dates of Work	First* Advertised	Contract Awarded to & Date*	First Tier Subcontractor(s) & Expected work time*
California Avenue	\$450,000	\$1,100,000.00	July 1, 2010; 180 days to complete	01/29/2010	Mountain Pacific Construction Inc. 03/15/10	Head Painting & Concrete United Pipe & Supply Knife River Materials April to October 2010
Wilford Avenue	\$300,000	\$209,939.60	August 25, 2010; 50 days to complete	05/21/2010	Klamath Pacific Corp. 06/21/10	None. July to August 2010

Street	Requester's Anticipated Cost	Contract Amount from WH-81*	Expected Dates of Work	First* Advertised	Contract Awarded to & Date*	First Tier Subcontractor(s) & Expected work time*
Alma Alley	\$98,000	\$118,788.00	Sept. 1, 2010; 60 days to complete	02/19/2010	Bobs Excavating, Inc. 04/19/10	None. April to July, 2010
Altamont & Crosby	\$550,000	\$476,300.00	Sept. 23, 2010; 40 days to complete	07/18/2010	Pilot Rock Excavation Inc. 09/07/10	Klamath Pacific Corp. Sept – Nov, 2010
Adams Street	\$100,000	Unknown	Sept. 27, 2010; 45 days to complete	Unknown	Unknown	Unknown
Bartlett Street	\$35,000	\$73,565.20	Sept. 27, 2010; 45 days to complete	07/19/2010	Bobs Excavating, Inc. 09/07/10	<i>Bartlett & Austin:</i> Rocky Mountain Construction LLC and Viking Concrete. Sept – Dec 2010
Stinson Street	\$75,000	Unknown	Sept. 27, 2010; 90 days to complete	Unknown	Unknown	Unknown
Etna Street	\$100,000	Unknown	July 1, 2011; 60 days to complete	Unknown	Unknown	Unknown
Bisbee Street	\$200,000	Unknown	July 1, 2011; 60 days to complete	Unknown	Unknown	Unknown
Gary Street	\$100,000	Unknown	July 1, 2011; 60 days to complete	Unknown	Unknown	Unknown

*** Information provided to BOLI by the City on Notice of Public Works forms WH-81**

3. In response to the timing of the work, the City said that actual work on the improvements began during the current fiscal year, but some started the previous fiscal year and finished this fiscal year; furthermore, some starting this fiscal year will finish next fiscal year, so many improvements span over two fiscal years.
4. The City has estimated that the construction costs for most of the improvements will be over \$50,000 in the course of one year from the same budget line item. However it is possible that the lowest responsible bidder for one or more of the waterline improvements will be less than \$50,000.

Note that pursuant to information provided to BOLI on the chart above, there are no known contracts below the \$50,000 threshold.

5. In January of 2000, the Bureau of Labor and Industries issued a Final Order in the Matter of City of Klamath Falls; case number 02-00, in which the City awarded several contracts for improvements to its municipal water system during the summer of 1998. The commissioner found that five of those contracts constituted part of a single public works project, and consequently, the City was required to comply with the prevailing wage rate laws with regard to each of the contracts. At that time the City's water system served

40,000 residential water customers as well as some industrial and commercial customers and included over 230 miles of water line.

CONCLUSIONS OF LAW

1. ORS 279C.827 and OAR 839-025-0310 prohibit dividing a public works project to avoid compliance with the PWR law. While BOLI is not asserting that a project has been divided to avoid compliance with the law, BOLI does apply these same factors in determining whether several contracts constitute a single project for the purposes of applying PWR law.

The factors used in making this determination include the physical separation of the project structures, the timing of the work, the continuity of contractors working on the project parts, the manner in which the public agency administers and implements the project, whether a single public works project includes several types of improvements or structures, the anticipated outcome of the improvements, whether the structures or improvements are similar to one another and combine to form a single, logical entity having an overall purpose or function, and other relevant matters.

2. As in the above determination, the improvements are part of a single system – the City of Klamath Falls municipal water system. The City advertised and awarded the improvements over a period of only a few months during a single construction season. The City used multiple contractors, in part, to enable several improvements to be done simultaneously. The City funded all aspects of this work. The contracts involved replacement of old water mains with new ones. The type of work on all the contracts was of a similar nature and is all part of a single, logical entity that has an overall purpose or function – the City’s municipal water system.
3. The proposed reconstruction project will be carried on and contracted for by a public agency and will serve the public interest. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(A) will apply to the project.
4. None of the exemptions from the Prevailing Wage Rate laws under ORS 279C.810(2)(d) will apply to this project.

DETERMINATION

Based on the foregoing, the contracts constitute part of a single public works project, the total which exceeds \$50,000. As such, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the Replacement of Existing Water Lines project .

This determination is based on the agency's file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator
Wage and Hour Division
Bureau of Labor and Industries
800 NE Oregon St., Suite 1045
Portland, Oregon 97232

If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: October 20, 2010

Brad Avakian, Commissioner
Bureau of Labor and Industries

Christine N. Hammond

Christine N. Hammond, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On October 20, 2010, I mailed the Prevailing Wage Rate Determination for the Replacement of Existing Water Lines construction project to the requestor and other parties associated with this project, as follows:

Joanna Lyons-Antley, City Attorney
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Rick Whitlock, City Manager
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Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries