

June 8, 2009

Peggy Mitchell, Contracts Compliance Analyst
Marion County Finance Department
PO Box 14500
Salem, OR 97309

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Improvement of River Road South over Portland and Western Railroad
Requested by: Marion County

Dear Ms. Mitchell:

On May 27, 2009, you submitted a request on behalf of Marion County ("County"), asking if the Prevailing Wage Rate law would apply to the project known as the Improvement of River Road South over Portland and Western Railroad. Sufficient information to make a determination was received on June 2, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Clear View II, LLC ("Clear View") plans to develop a subdivision in Salem, Oregon. The construction of this subdivision will necessitate the improvement of a nearby County-owned road through which a railroad track runs.
2. The railroad is owned by Portland and Western Railroad, Inc. ("P&W Railroad). P&W Railroad will be responsible for the improvement of the railroad crossing, and for the installation of flashing lights and crossing arms. This work is referred to as "Project A."
3. The road approaches to the railroad crossing are owned by Marion County. Clear View will be responsible for the improvement of the road approaches to the railroad crossing, and for the construction of sidewalks and bicycle paths across the railroad. This work is referred to as "Project B."
4. Although this project has been separated into two parts, pursuant to ORS 279C.827, the Bureau of Labor and Industries considers "Project A" and "Project B" to be parts of the same project. For clarity, these parts of the project will be referred to as Part A and Part B, respectively, in the remainder of this Order.

5. Clear View has already deposited \$537,028 with the County for the work to be done by P&W Railroad on Part A. Upon completion of this work, the County will pay this money to P&W Railroad.
6. Clear View will be responsible for the cost of Part B.
7. No public agency will manage or exercise substantial control over Part B, and no public agency will enter into a binding agreement for construction on Part B.

CONCLUSIONS OF LAW

1. OAR 839-025-0004(9)(a)(A) defines “directly used funds of a public agency” in part as “money . . . derived from a public agency’s immediate custody and control.” The \$537,028 given to the County by Clear View is in the County’s immediate custody and control, and is therefore funds of a public agency.
2. Part A is privately-owned, no part of the project will be occupied or used by a public agency, and less than \$750,000 in funds of a public agency will be used on the project. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) and (C) will not apply to Part A.
3. Part B is publicly-owned, and will include improvements that serve the public interest. However, Part B will not be carried on or contracted for by any public agency. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(A) will not apply to Part B.

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate law, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the project known as the Improvement of River Road South over Portland and Western Railroad.

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 HB 2140 Section 43 (Enrolled) OR Laws 2007. 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

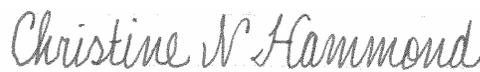
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: June 8, 2009

Brad Avakian, Commissioner
Bureau of Labor and Industries



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

Certificate of Service

On June 9, 2009, I mailed the Prevailing Wage Rate Determination for the Improvement of River Road South over Portland and Western Railroad project, as follows:

Peggy Mitchell, Contracts Compliance Analyst
Marion County Finance Department
PO Box 14500
Salem, OR 97309

Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries