

July 19, 2010

David Hobbs, Assistant Director, Facility and Planning  
Portland State University  
PO Box 751  
Portland, OR 97207-0751

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: 4<sup>th</sup> Floor Athletics Office Remodel  
Requested by: Portland State University

Dear Mr. Hobbs:

On June 22, 2010, you submitted a request on behalf of Portland State University, asking if the Prevailing Wage Rate law would apply to the 4<sup>th</sup> Floor Athletics Office Remodel project, located on the 4<sup>th</sup> floor of the University Center Building. There are, or will, be several other projects being done in the University Center Building during the time the 4<sup>th</sup> Floor Athletics Office Remodel project is being done. You asked if this work would be considered part of the same project as the 4<sup>th</sup> Floor Athletics Office Remodel project. Sufficient information to make a determination was received on July 15, 2010, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. Lorentz Bruun Construction (“Contractor”) has contracted with Portland State University (“PSU”) to remodel the 4<sup>th</sup> Floor Athletics Office in the University Center Building. The scope of work includes, in part, removing portions of carpeting and replacing with wood flooring; removing selected partitions, doors, and systems furniture; and constructing a conference room and several hard-wall offices. The contract between Contractor and PSU calls for Contractor to do all work on a pro bono basis; PSU will not pay any compensation to Contractor, nor will they pay for or reimburse Contractor for any cost or expenses of any kind associated with this project. The work will involve other contractors and PSU alumni, all of whom will donate the labor and materials for this project.
2. Planning for the 4<sup>th</sup> Floor Athletics Office Remodel project began after a new head football coach was hired in December 2009. The remodeled space will allow PSU to attract new recruits to the football program. The plan calls for work on the project to be done from June 18, 2010 through September 30, 2010.

3. PSU's Sociology Department has recently moved out of the 4<sup>th</sup> floor space they occupied in the University Center Building. English as a Second Language Department ("ESL"), a sub-department of the Department of Applied Linguistics, will be moving into part of the vacated space this summer (Suite 400). ESL requested new carpeting in the central hallways in Suite 400, and in April 2010, PSU began the process of finding a contractor to do the work. The work was recently contracted out to Contract Flooring Consultants, LLC, for a total of \$11,434.00. The work will be done from approximately June 25, 2010 through October 30, 2010.
4. The Department of Applied Linguistics ("DAL") will also be moving into part of the vacant space on the 4<sup>th</sup> floor this summer (Suite 485). To accommodate this move, carpeting will be replaced and the HVAC system that services this area will be modified. No contractor has been selected yet. The estimated project cost is \$19,423. It is anticipated that the work will be done in August 2010.
5. PSU's Transportation and Parking Services Department is also doing some work in the University Center Building. In March 2010, PSU awarded a contract to Skanska USA Building, Inc. for parking renovation. The scope of work includes, in part, relocating the vehicular exit, entrance and curb on SW Harrison Street. The cost of this work will be \$461,226.00. Work on this contract began in March 2010 and will continue through December 2010.
6. In May 2010, PSU awarded a contract to Holes Unlimited Concrete Cutting, Inc., to demolish and remove a wall and concrete slab in the parking portion of the building to allow room for bike parking. The cost of this work will be \$3,950.00. Work on this contract began in May 2010 and will continue through July 2010. The parking renovation work and the contract for concrete demolition are being treated as a single project subject to the PWR laws.

## CONCLUSIONS OF LAW

1. The project to remodel the 4<sup>th</sup> Floor Athletics Office will be a major renovation carried on and contracted for by a public agency to serve the public interest. Therefore, this project meets the definition of "public works" under ORS 279C.800(6)(a)(A).
2. ORS 279C.827(1)(c) and OAR 839-025-0310 list factors to consider when making a determination whether multiple contracts should be considered a single project. The factors include the physical separation of the work, the timing of the work, whether the same contractor(s) will be used on the work, the manner in which the agency and contractors administer and implement the work, what the anticipated outcome is of the work, and whether the combined improvements combine to form a single logical entity with an overall purpose or function. In this case, PSU has awarded or will

award five contracts for work done in the University Center Building: the Athletics Office remodel, the parking renovations, the bike project, Suite 400 hallway remodel, and Suite 485 remodel. The 4<sup>th</sup> Floor Athletics Office Remodel is being done for a different department than the other contracts, is being administered and implemented differently from the other contracts, the anticipated outcome of the 4<sup>th</sup> Floor Athletics Office Remodel project is different from the other contracts, and the 4<sup>th</sup> Floor Athletics Office Remodel project does not combine with the other four contracts to form a single logical entity with an overall purpose or function. Therefore, the 4<sup>th</sup> Floor Athletics Office Remodel project is a stand-alone project that is not related to the other four contracts for reconstruction and renovation work occurring in the University Center Building in the same general time period.

3. No funds of a public agency will be used either directly or indirectly on the 4<sup>th</sup> Floor Athletics Office Remodel project. As this is a stand-alone project that is not related to any other work being done in the University Center Building, the exemption applies for projects which use no funds of a public agency, either directly or indirectly. ORS 279C.810(2)(b).

## **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the proposed 4<sup>th</sup> Floor Athletics Office Remodel 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

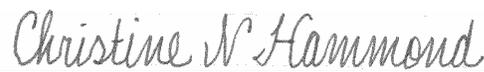
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: July 19, 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 July 20, 2010, I mailed the Prevailing Wage Rate Determination for the proposed 4<sup>th</sup> Floor Athletics Office Remodel project to the requestor/public agency associated with this project, as follows:

David Hobbs, Assistant Director, Facility and Planning  
Portland State University  
PO Box 751  
Portland, OR 97207-0751

---

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