

May 11, 2010

Tim C. Smith
State Investments, LLC
PO Box 2099
Salem, OR 97308

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Tenant Improvements Project at 4040 Fairview Industrial Drive SE, Salem, OR
Requested by: State Investments, LLC

Dear Mr. Smith:

On April 23, 2010, you submitted a request asking if the Prevailing Wage Rate law would apply to tenant improvements in the office building located at 4040 Fairview Industrial Drive SE in Salem, Oregon. Sufficient information to make a determination was received on May 10, 2010, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. State Investments, LLC (“State Investments”), a domestic limited liability company, owns a building located at 4040 Fairview Industrial Drive SE in Salem, Oregon (“the building”).
2. Tyco Corporation began construction of the building in 2000 for use as a circuit board manufacturing plant. However, construction was halted before the building was complete, leaving an empty “shell.” To date, the approximately 82,000-square-foot building has been used only for storage.
3. Oregon Department of Transportation (“ODOT”) is in the process of entering into a lease with State Investments for this building. The lease will require State Investments to improve 75,000 square feet of space into commercial office space, and the remaining 7,000 square feet will be left as storage space.
4. The work to improve the space, referred to as tenant improvements, will include, but is not limited to, framing and finishing of interior walls, partitions and doors; relocation of interior stairs; installation of skylights; installation of plumbing, fire sprinklers and HVAC equipment; floor coverings; painting; installation of canopies over exterior doors; and patching the roof.

5. The total cost of the tenant improvements will be approximately \$5,535,921. ODOT will pay a lump sum of \$1,500,000 for tenant improvements 30 days after the certificate of occupancy is issued, and State Investments will pay \$1,000,000 toward tenant improvements. The remaining approximately \$3,000,000 in tenant improvement costs will be amortized over the first 120 months of ODOT's lease.

CONCLUSIONS OF LAW

1. The building located at 4040 Fairview Industrial Drive SE in Salem, Oregon, is a privately owned building. The described project will include construction of the privately-owned building, will use funds of a private entity, and will use more than \$750,000 in funds of a public agency. Therefore, the definition of "public works" in ORS 279C.800(6)(a)(B) will apply to this project.
2. ORS 279C.800(6)(b) excludes from the definition of public works "(t)he reconstruction or renovation of privately owned property that is leased by a public agency." However, construction of this building was never completed. The "tenant improvements" to be done will complete the building and are considered part of the initial building construction. Therefore, because the project at 4040 Fairview Industrial Drive SE in Salem, Oregon, is construction of a privately owned building or structure in which over 25 percent or more of the square footage of the completed project will be occupied or used by a public agency, the definition of "public works" under ORS 279C.800(6)(a)(C) will apply to the project.
3. None of the exemptions from the prevailing wage rate law in ORS 279C.810(2) apply to this project.

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the construction project at 4040 Fairview Industrial Drive SE in Salem, Oregon.

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

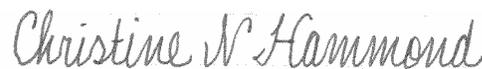
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: May 11, 2010

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 May 11, 2010, I mailed the Prevailing Wage Rate Determination for the construction project at 4040 Fairview Industrial Drive SE in Salem, Oregon, to the requestor, public agency and interested parties associated with the project, as follows:

Tim C. Smith
State Investments LLC
PO Box 2099
Salem, OR 97308

Dianne Munley
State Investments LLC
PO Box 2099
Salem, OR 97308

Gary Will, Senior Project Manager
Department of Transportation
885 Airport Road SE, Bldg X
Salem, OR 97301-4790

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