

November 17, 2009

Jean DeMaster, Executive Director
Human Solutions, Inc.
12350 SE Powell Blvd.
Portland, OR 97236

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: The Rockwood Building
Requested by: Human Solutions, Inc.

Dear Ms. DeMaster:

On October 30, 2009, you submitted a request on behalf of Human Solutions, Inc. asking if the Prevailing Wage Rate law would apply to a proposed construction project known as the Rockwood Building. Sufficient information to make a determination was received on November 10, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Human Solutions, Inc., a private non-profit entity, currently owns property located at 181st Ave and NE Couch St. in Gresham, Oregon.
2. Human Solutions, Inc. proposes to construct a new three-story mixed use structure at this Gresham location. The building will include 47 apartments on the upper two floors which will be rented to people with income levels no more than 55 percent of the median family income. The ground floor will house a Multi-Service Center. The Multi-Service Center will be occupied by eight regional social service agencies that will provide services to low-income families in the Rockwood neighborhood. The agencies include Head Start, meal services for low-income elderly, drug and alcohol counseling and intake services, outreach to homeless teens, employment programs, and a medical clinic for low-income families.
3. The Rockwood Building will be constructed with a single construction contract, although Human Solutions, Inc. will be tracking costs separately for the residential and commercial portions of the building. The total project cost is estimated to be \$16,855,784.

4. Funds of multiple public agencies in excess of \$750,000 will be used on this project. Some of the funds are earmarked for the residential portion of the building and some are earmarked for the commercial portion of the building.
5. When the building is completed, the residential and commercial portions of the project will be segregated into two “condominiums” under separate ownership entities. Each “condominium” will be owned by different limited partnerships, and each limited partnership will be comprised of Human Solutions, Inc. and a yet-to-be-determined private investor.

CONCLUSIONS OF LAW

1. The proposed construction project will be privately owned, and more than \$750,000 in funds of public agencies will be used on the project. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) will apply to the project.
2. ORS 279C.827(2) and (3) require the Commissioner of the Bureau of Labor and Industries to divide a project if appropriate, considering the factors listed in ORS 279C.827(1). Pursuant to subsection (2) of this statute, a public works project of the type described in ORS 279C.800(6)(a)(B), such as the Rockwood Building, may be divided between the parts of the project that use public funds and the parts of the project that do not use public funds. However, both the residential and commercial parts of this building will use public funds, so division of the project is not appropriate under ORS 279C.827(2). Subsection (3) of this statute also requires that the parts of a project that are publicly owned be divided from the parts that are privately owned, if appropriate. However, all parts of this project are privately owned, so division of the project is not appropriate under ORS 279C.827(3). In addition, in making determinations related to this issue, ORS 279C.827 requires the commissioner to consider such factors as the physical separation of the project structures, the timing of work on the project phases or structures, and whether the combined improvements or structures have an overall purpose or function. The Rockwood Building is one single building and as such, there is no physical separation between the commercial and residential portions of the project. The work on both the commercial and residential portions of the project will be done at generally the same time, and the combined commercial and residential portions of the project have an overall purpose to serve low-income people in the Rockwood neighborhood. As such, the commercial and residential portions of the Rockwood Building are considered to be one single project.
3. The Rockwood Building includes both residential and commercial space and, as such, does not meet the definition of “residential construction” in ORS 279C.810(2)(d)(D). Therefore, the exemption for residential construction that is privately owned and that predominately provides affordable housing under ORS 279C.810(2)(d) will not 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 proposed construction of the Rockwood Building.

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

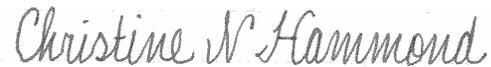
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: November 17, 2009

Brad Avakian, Commissioner
Bureau of Labor and Industries

A handwritten signature in cursive script that reads "Christine N. Hammond". The signature is written in black ink on a white background.

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

Certificate of Service

On November 17, 2009, I mailed the Prevailing Wage Rate Determination for the Rockwood Building construction project to the requestor and public agencies associated with this project, as follows:

Jean DeMaster, Executive Director
Human Solutions, Inc.
12350 SE Powell Blvd.
Portland, OR 97236

Mariana Negoita, Housing Resources Section
Oregon Housing and Community Services
725 Summer St. NE, Suite B
Salem, OR 97301-1266

Vince Chiotti, Housing Division
Oregon Housing and Community Services
725 Summer St. NE, Suite B
Salem, OR 97301-1266

Elaine Fultz, Community Revitalization
City of Gresham
1333 NW Eastman Parkway
Gresham, OR 97030

Michael Prothe
Portland Development Commission
222 NW 5th Ave.
Portland, OR 97209

Gail Quail
Portland Development Commission
222 NW 5th Ave.
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Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries