



May 4, 2015

Edwin C. Perry
Tonkon Torp LLC
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Beardsley Building Tenant Improvements
Requested by: Tonkon Torp LLC

Dear Mr. Perry:

On April 10, 2015, we received a request you submitted on behalf of Fountain Village Development, LLC, asking if the Prevailing Wage Rate laws would apply to the tenant improvements done at the Beardsley Building. Sufficient information to make a determination was received on April 30, 2015, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Fountain Village Development, LLC ("Fountain Village"), a private entity, owns the Beardsley Building located at 201 High Street SE in Salem, Oregon.
2. In November 2014, Fountain Village entered into ten-year lease agreements with three public agencies to lease space in the Beardsley Building: the Department of Human Services ("DHS"), the Construction Contractors Board ("CCB"), and the Public Utility Commission ("PUC"). DHS will lease approximately 32 percent of the square footage of the building; CCB will lease approximately 19 percent of the square footage of the building; PUC will lease approximately 48 percent of the square footage of the building.
3. Separate from, but "attached to and part of," each of the three leases, Work Letters require Fountain Village to "construct or arrange for the construction of" the tenant improvements requested by each of the public agencies leasing space in the building.

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4. Fountain Village has contracted for the requested tenant improvements. The work includes, among other things, updating existing spaces, constructing interview and hearings rooms, and expanding the space on the building's top floor. An existing 3,000 square foot balcony will be enclosed to add square footage for office use. Additionally, the parking lot will be restriped and numbers will be added to parking spaces.
5. The total project cost is estimated to be \$3,200,000.
6. Each agency will contribute funds of a public agency toward the cost of the tenant improvements. The lease agreement between DHS and Fountain Village shows DHS will contribute a monthly tenant improvement payment of \$2,495.05 for the life of the lease, for a total contribution of \$299,406.00. The agreements for other contributions are not yet finalized, but according to the Department of Administrative Services (DAS), who is assisting the three agencies with this project, CCB will contribute approximately \$22,000 for data and electrical cabling needed for the top floor. DAS also indicated that all three agencies will contribute a proportionate amount of the approximately \$119,100 cost for the audio/visual needs for a new hearing room, and for the building security system. Fountain Village will initially pay for these costs, but each agency will pay Fountain Village their proportionate share over time, with interest. In total, the project will use at least \$440,506 in funds of a public agency.
7. According to the lease agreements, Fountain Village will bear the amount of the improvement costs that exceed the tenants' share.

CONCLUSIONS OF LAW

1. Under ORS 279C.800(6)(b)(A), "public works" does not include the reconstruction or renovation of privately owned property that a public agency leases. "Reconstruction or renovation of privately owned property which is leased by a public agency" is defined under OAR 839-025-0004(23) as including "improvements of all types within the framework or footprint of an existing building or structure." The improvements for the project include work outside the framework of the existing building on the top floor, and parking lot improvements outside the footprint of the existing building. Therefore, the allowance under ORS 279C.800(6)(b)(A) does not apply to the project.
2. The project includes construction, reconstruction, major renovation or painting of a building, and is being contracted for, through their lease agreements with Fountain Village, by multiple public agencies to serve the public interest. Therefore, the project meets the definition of "public works" under ORS 279C.800(6)(a)(A).

3. The project uses funds of a private entity for constructing a privately owned building in which a public agency will occupy 25 percent or more of the square footage of the completed project. Therefore, the project meets the definition of "public works" under ORS 279C.800(6)(a)(C).
4. ORS 279C.810(2)(a) provides that the Prevailing Wage Rate laws will not apply to projects for which the contract price does not exceed \$50,000. The cost of the project will exceed \$50,000; therefore, this exemption does not apply to the project.
5. ORS 279C.810(2)(b) provides that the Prevailing Wage Rate laws will not apply to projects for which no funds of a public agency are directly or indirectly used. Under OAR 839-025-0004(9)(a)(B)(i), "indirectly used funds of a public agency" include amortizing the cost of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease. DHS will be contributing \$299,406.00 in funds of a public agency in this way. Additionally, all three agencies will be contributing an additional \$141,100, plus interest, through payments to Fountain Village for data and electrical cabling, audio/visual needs, and a security system. The project will use funds of a public agency; therefore, this exemption does not apply to the project.
6. No other exemption from the Prevailing Wage Rate laws under ORS 279C.810(2) applies 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, apply to the Beardsley Building Tenant Improvements 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

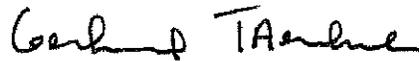
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 order 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.

Date: May 4, 2015

Brad Avakian, Commissioner
Bureau of Labor and Industries



Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On May 4, 2015, I mailed the Prevailing Wage Rate Determination for the Beardsley Building Tenant Improvements project to the requestor and associated public agencies, as follows:

Edwin C. Perry
Tonkon Torp LLC
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

Linda Riddell, Facilities Management Administrator
Department of Human Services
500 Summer Street NE, E-90
Salem, OR 97301

Michael Dougherty, Chief Operating Officer
Public Utility Commission
201 High Street NE
Salem, OR 97301

Laurie Hall
Construction Contractors Board
700 Summer Street NE, Suite 300
Salem, OR 97309

Liz Beaty, Leasing and Property Agent
Department of Administrative Services
Enterprise Asset Management
1225 Ferry Street SE, U100
Salem, OR 97301



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