

John Thomas
Deputy County Attorney
Multnomah County
501 SE Hawthorne, Suite 500
Portland OR 97214

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*
Project: Solar Power Agreement Project
Requested by: Multnomah County

Dear Mr. Thomas:

On May 14, 2008, you submitted a request on behalf of Multnomah County ("County") asking whether a proposed project is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received by May 19, 2008, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The County proposes to enter into an agreement with Sun Edison LLC ("Sun Edison") for the purchase of solar-generated electricity to be used at several County buildings.
2. Sun Edison will own, install, operate, and maintain the solar electric photovoltaic systems, which will be installed on County-owned property.
3. The County will not provide funds for the installation of the systems.
4. At one of the facilities where a system is to be installed, the County will contract for the replacement of a roof in advance of the solar energy system installation. It has been represented that the County will administer this project separately from the solar energy system installation project and that the roof replacement work is not related to the solar energy project.

CONCLUSIONS OF LAW

1. The solar energy system installation project is intended to be privately owned. No funds of a public agency will support the project, and no public agency will occupy or use 25 percent or more of the square footage. Therefore, the definition of a "public works" under ORS 279C.800(6)(a)(B) and (C) will not apply to the project.

2. If, because of the County's contract for the roof replacement work, the project is a public works under ORS 279C.800(6)(a)(A), it is appropriate, pursuant to ORS 279C.827(3), to divide the project in order to separate the parts of the project that are public works from the parts of the project that are not public works. If the commissioner divides the project, parts of the project that are not public works are not subject to ORS 279C.800 to 279C.870. The roof replacement work, a public works, may be separated from the work related to the installation of the solar energy system.

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 solar energy system installation 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 requester 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

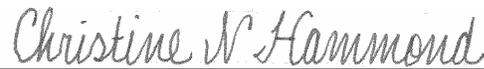
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: June 3, 2008

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 3, 2008, I mailed, by certified mail, the Prevailing Wage Rate Determination for the Solar Power Agreement project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

John Thomas
Deputy County Attorney
Multnomah County
501 SE Hawthorne, Suite 500
Portland OR 97214

Gerhard Taeubel, Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries