



Oregon

Bureau of Labor and Industries

Brad Avakian
Commissioner

April 27, 2016

Kelly Kozisek, Chief Procurement Officer
Oregon State University
644 SW 13th Street
Corvallis, OR 97333-4238

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Oregon State University 150 Year Anniversary Interactive Exhibit Project
Requested by: Oregon State University

Dear Ms. Kozisek:

On April 13, 2016, you submitted a request on behalf of Oregon State University asking whether the Prevailing Wage Rate laws would apply to the proposed Oregon State University 150 Year Anniversary Interactive Exhibit Project ("the Project"). Sufficient information to make a determination was received on April 21, 2016, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Oregon State University ("OSU") is a public agency as that term is defined in ORS 279C.800(5).
2. The Oregon Historical Society is a domestic nonprofit corporation dedicated to making Oregon's history visible and accessible.
3. The Oregon State University Foundation ("Foundation") is a domestic nonprofit corporation. Per its website, the Foundation's mission is to strengthen OSU's capacity to broaden access to high-quality higher education, push the frontiers of knowledge, contribute to Oregon's prosperity, and enhance the quality of life for the citizens of the state and the nation through advocacy, fundraising, investment management, and stewardship as the IRS 501(c)(3) nonprofit corporation charged with receiving and administering private gifts for OSU. Per Article III of its Restated Articles of Incorporation, the Foundation operates primarily for the benefit and support of OSU.
4. OSU intends to contract for the design and construction of a museum Exhibit ("the Project") to commemorate OSU's 150th anniversary.
5. To be displayed at the Oregon Historical Society for approximately seven months during 2018, the Project will be interactive and communicate information about OSU's past, present, and future to audience members of all ages.

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6. OSU reports that it does not currently possess conceptual drawings or other documents related to the Project's design and construction. As such, OSU is unable to provide specific information about the Project's construction. Nevertheless, information provided by OSU indicates the Project will require "construction" as that term is defined in OAR 839-025-0004(5).
7. OSU will oversee the Project's bid solicitation process and will be party to the construction contract with the general contractor selected to build the Project.
8. OSU will have authority to select or terminate the Project's general contractor, and will have authority to select or amend the Project's construction design plans.
9. OSU will own the Project throughout its existence, from its run at the Oregon Historical Society to its potential reuse at OSU. No other party will have an ownership interest in the Project.
10. The Project's anticipated cost is \$1,000,000. The Project will be funded through contributions from OSU and the Foundation. OSU plans to contribute between 25 and 50 percent of the Project's required funds, while the Foundation intends to cover the rest. OSU reports its contribution will come from its general expense fund while the Foundation's contribution will be comprised of gifts and donations received by the Foundation. OSU reports that there are no particular Project costs or activities to which either party's contribution definitively will apply. OSU also reports that it is possible the Project will cost less than \$1,000,000.

CONCLUSIONS OF LAW

1. The Project constitutes construction that is carried on or contracted for by a public agency to serve the public interest. As such, the definition of "public works" under ORS 279C.800(6)(a)(A) will apply to the Project.
2. All funds used to finance the Project are funds of a public agency. OAR 839-025-0004(9)(a)(A) defines "directly used funds of a public agency" as "revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency's immediate custody or control." The funds comprising OSU's contribution to the Project are derived from OSU's immediate custody and control and are therefore funds of a public agency. The funds comprising the Foundation's contribution were collected for OSU's benefit and are therefore funds of a public agency. If, as expected, the combined total of the OSU and Foundation contributions equals or exceeds \$750,000, the definition of "public works" under ORS 279C.800(6)(a)(B) also will apply to the Project.
3. No exemption from ORS 279C.810(1) or ORS 279C.810(2) applies to the 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 Oregon State University 150 Year Anniversary Interactive Exhibit 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 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.

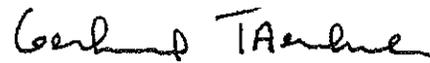
If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel 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: April 27, 2016

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



GERHARD TAEUBEL,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On April 27, 2016, I mailed the Prevailing Wage Rate Determination for the proposed Oregon State University 150 Year Anniversary Interactive Exhibit Project to the requestor and interested party below:

Kelly Kozisek, Chief Procurement Officer
Oregon State University
644 SW 13th Street
Corvallis, OR 97333-4238

Certified Mail – Return Receipt Requested
Article # 7015-1660-0000-2256-0241

Shelly Signs, Director
Oregon State University
University Events
205 Adams Hall
Corvallis, OR 97331

Certified Mail – Return Receipt Requested
Article # 7015-1660-0000-2256-0258



Michael Fevurly
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries