



Oregon

Bureau of Labor and Industries

Brad Avakian
Commissioner

August 12, 2015

Sydnee Dreyer
Huycke O'Connor Jarvis, LLP
823 Alder Creek Drive
Medford, OR 97504

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Roseburg Multi-Services Center
Requested by: Huycke O'Connor Jarvis, LLC

Dear Ms. Dreyer:

On July 27, 2015, you submitted a request on behalf of Investors IX, LLC, asking if the Prevailing Wage Rate law would apply to "the reconstruction/renovation of an existing structure [of] approximately 43,009 square feet" located in Roseburg, Oregon. However, the project includes not only reconstruction and renovation, but also new construction. A determination cannot be made on only a portion of a project, and therefore the determination will be made for the entire Roseburg Multi-Services Center project. Sufficient information to make a determination was received on August 10, 2015, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. On January 15, 2014, the State of Oregon's Department of Administrative Services ("DAS") issued a Request for Information on leasable office facilities in the Roseburg, Oregon area. DAS was looking for a suitable facility to be leased by the Department of Human Services ("DHS") for general office use and client services delivery.
2. Investors IX, LLC ("Investors IX"), an Oregon limited liability company, owns property located at 738 West Harvard Avenue in Roseburg, Oregon (the "Property"), which includes an existing building and a parking lot. On June 13, 2014, DHS issued a Request for Proposal to Investors IX to lease the Property.
3. On February 18, 2015, Investors IX entered into a fifteen-year lease agreement with DHS to lease the Property. DHS required substantial renovation work be done to the existing building, as well as construction of a "new building to be connected to the existing

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structure,” for a total of approximately 70,122 rentable square feet. DHS also required construction of a playground/outdoor visitation area of approximately 2,500 square feet adjacent to the building. DHS will use and occupy 100 percent of the square footage of the finished project, and the Property will be referred to as the Roseburg Multi-Services Center.

4. Exhibit D of the lease agreement, referred to as the Work Letter, requires Investors IX to construct or arrange for construction of specific improvements required by DHS for the Roseburg Multi-Services Center.
5. The total project cost will be approximately \$14,004,481. The cost for the renovation to the existing building will be approximately \$4,979,499; the cost for the new building will be approximately \$9,024,982.
6. Private financing for the project will include developer-provided funds and financing through a private bank.
7. DHS will contribute funds of a public agency toward the cost of the improvements to be done. The lease agreement between DHS and Investors IX requires DHS to pay a monthly tenant improvement payment of \$3,637.65 for the life of the lease, plus monthly interest, for a total contribution of \$654,777.12. On May 20, 2015, a Change Order Response was issued by Investors IX, requiring DHS to pay approximately \$49,000 for the construction of secured parking. On August 6, 2015, a second Change Order Response was issued by Investors IX, requiring DHS to pay an estimated \$112,966 for additions and modifications to the improvements required in the Work Letter. To date, DHS will contribute approximately \$816,743.12 in funds of a public agency toward the project.

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 project will include improvements done outside the framework of the existing building, including the construction of a “new building to be connected to the existing structure,” construction of a playground/outdoor visitation area, and parking lot improvements. 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 a lease agreement with Investors IX, by a public agency to serve the public interest. Therefore, the project meets the definition of “public works” under ORS 279C.800(6)(a)(A).

3. 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 \$654,777.12 in funds of a public agency in this manner. In addition, DHS will directly use fund of a public agency by paying Investors IX approximately \$49,000 for the construction of secured parking, and approximately \$112,966 for additions and modifications to the improvements required in the Work Letter. The project uses funds of a private entity and \$750,000 or more of funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a privately owned road, highway, building, structure or improvement of any type. Therefore, the project meets the definition of “public works” under ORS 279C.800(6)(a)(B).
4. The project uses funds of a private entity for constructing a privately owned road, highway, building, structure or improvement of any type in which a public agency will use or 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).
5. 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.
6. 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. The project will use funds of a public agency; therefore, this exemption does not apply to the project.
7. 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, will apply to the proposed Roseburg Multi-Services Center 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

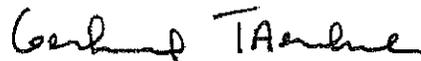
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: August 12, 2015

Brad Avakian, Commissioner
Bureau of Labor and Industries



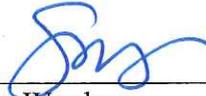
Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On August 12, 2015, I mailed the Prevailing Wage Rate Determination for the Roseburg Multi-Services Center project to the requestor and associated public agency, as follows:

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Huycke O'Connor Jarvis, LLP
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Medford, OR 97504

Linda Riddell
Department of Human Services
500 Summer St NE, E-90
Salem, OR 97301



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