

Laura Craska Cooper
Ball Janik LLP
15 SW Colorado, Suite 3
Bend OR 97702

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*
Project: Baney Corporation Headquarters Building
Requested by: Ball Janik LLP

Dear Ms. Cooper:

On October 1, 2007, you submitted a request on behalf of your client, Baney Corporation (“Baney”), asking if the prevailing wage rate law would apply to construction of a headquarters building if space within the building were to be leased to a public agency. Sufficient information to make a determination was received on November 2, 2007, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Baney is currently constructing a headquarters building of approximately 23,000 square feet in Bend. The majority of the construction contracts for the building were executed between March 2007 and August 2007. At the time of your request, about 40% of the construction work had been completed. Baney intends to occupy approximately 12,000 square feet of the building and lease the remainder of the space.
2. On August 6, 2007, the state’s Department of Administrative Services (“DAS”) issued a “Leasing Project Announcement,” by which it solicited offers for the lease of office space totalling approximately 9,650 usable square feet (11,098 rentable square feet) in Bend for use by the Department of Environmental Quality (“DEQ”).
3. In September 2007, DEQ contacted Baney to express its interest in negotiating a lease for approximately 10,000 square feet of space. In the event that DEQ leases space from Baney, tenant improvements costing approximately \$520,000 would be required. DEQ will reimburse Baney for the costs of the tenant improvements through its lease payments.
4. Excluding DEQ’s payments for the costs of the tenant improvements, no public funds will be used to finance construction of the headquarters building.

5. Baney intends to occupy one floor of the two-story building and lease the other floor. Each floor will have its own HVAC system, its own utilities, and its own entrance.
6. Baney will solicit separate bids from subcontractors for the tenant improvements and contract for this work separately. It is expected that the construction work related to the tenant improvements will begin after the completion of the building's construction.

CONCLUSIONS OF LAW

1. In the event that DEQ leases approximately 10,000 square feet of space in the building, a public agency will occupy or use 25 percent or more of the square footage of the completed project, and the project will therefore meet the definition of a "public works" under ORS 279C.800(6)(a)(C).
2. Funds of a public agency are used for the project, project costs will exceed \$50,000, and no other exemptions apply to this public works project under ORS 279C.810.
3. The public agency is not involved in administering or implementing other parts of the project besides the leased space. The tenant improvements on one floor will be completed after other building construction is complete, and may be constructed by different subcontractors. Only construction of the floor of the building in which tenant improvements are to be completed for DEQ includes funds of a public agency or will be occupied or used by a public agency. Under HB 2140 Section 44 (Engrossed) OR Laws 2007, the project can be divided, so that only that part of the project that includes funds of a public agency or that will be used or occupied by a public agency will be subject to ORS 279C.800 to ORS 279C.870.

DETERMINATION

Based on the foregoing, if DEQ leases the space described above, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply prospectively to the construction of the space to be occupied by DEQ but not to the construction of the remainder of the 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.

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 HB 2140 Section 43 (Enrolled) OR Laws 2007. 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

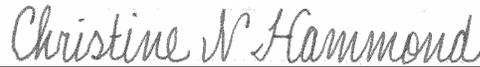
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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 20, 2007

Dan Gardner, Commissioner
Bureau of Labor and Industries



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

Certificate of Service

On November 20, 2007, I mailed the Prevailing Wage Rate Determination for Baney Corporation Headquarters Building Project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

Laura Craska Cooper
Ball Janik LLP
15 SW Colorado, Suite 3
Bend OR 97702

Dennis Kirk
Department of Environmental Quality
811 SW 6th Ave
Portland OR 97204

Gerhard Taeubel
Wage and Hour Division
Bureau of Labor and Industries