

December 10, 2010

Mike France, President
M & M Cycling, Inc.
d/b/a West End Bikes
1111 SW Stark Street
Portland, OR 97205

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: West End Bikes Tenant Improvements
Requested by: West End Bikes

Dear Mr. France:

On November 12, 2010, we received your request on behalf of West End Bikes ("WEB") asking if the Prevailing Wage Rate law would apply to tenant improvements on the building located at 1111 SW Stark Street in Portland, Oregon. Sufficient information to make such a determination was received on December 8, 2010, and therefore, the Commissioner issues the following determination:

FINDINGS OF FACT

1. The City of Portland (the "City") owns the building located at 1111 SW Stark Street, in the City of Portland, County of Multnomah, Oregon.
2. The City acting through the Portland Development Commission ("PDC") entered into a lease with M & M Cycling, Inc., an Oregon Corporation d/b/a West End Bikes. Lease terms are for a period of sixty (60) months consisting of approximately 7,235 square feet of retail and bike space in exchange for monthly rent starting at \$3,200.
3. WEB proposes to contract for "tenant improvements" consisting of internal and external construction. The tenant improvement project has been initiated, privately managed, and contracted for by WEB.
4. Proposed internal improvements include rebuilding stairway to the basement, remodeling restrooms, installing lighting, painting, and floor coverings. WEB will fund estimated \$130,000 cost of interior improvements with private funds of a lead vendor.

5. Proposed external improvements include painting, installing signage, windows, lighting, and electrical. WEB contemplates funding \$32,000 of the estimated \$132,000 cost of external improvements through participation in the PDC Storefront Improvement Program (“PDC SIP”). The total tenant improvement project cost is estimated at \$262,000.
6. PDC SIP assists business owners in need of rehabilitating their storefronts when located in target areas. The program provides applicants with technical, design, and funding assistance through a reimbursement grant. Applicants must first meet eligibility requirements, be approved, incur the initial construction costs, and after construction is completed PDC issues a reimbursement.
7. PDC is not a party to the construction contract and no party is obligated to construct the tenant improvements. While the PDC SIP imposes eligibility restrictions for WEB to receive reimbursement funds, the agency’s interest in the project is to facilitate storefront improvements in target areas of the City.

CONCLUSIONS OF LAW

1. The proposed project for tenant improvements at 1111 SW Stark Street in Portland, Oregon is a publicly-owned improvement that involves reconstruction. Therefore, the project could be a “public works” under ORS 279C.800(6)(a)(A).
2. The proposed reconstruction project must be “contracted for” by a public agency or “carried on” by a public agency to be a public works project under ORS 279C.800(6)(a)(A). The documents submitted under review indicate that PDC is not a party to the construction contract. WEB has authority to direct, terminate, and control the contactors while ultimately being responsible for costs, management, and overall control of the project. Therefore, PDC has not *carried on* or *contracted for* construction. As such, the proposed reconstruction project does not meet the definition of “public works” under ORS 279C.800(6)(a)(A).

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 proposed project for tenant improvements at 1111 SW Stark Street in Portland, Oregon.

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

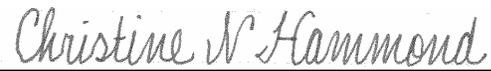
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: December 10, 2010

Brad Avakian, Commissioner
Bureau of Labor and Industries

A handwritten signature in cursive script that reads "Christine N. Hammond". The signature is written in black ink and is positioned above a horizontal line.

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

Certificate of Service

On December 10, 2010, I mailed the Prevailing Wage Rate Determination for West End Bikes Tenant Improvements Project to the requestor, public agency and interested parties associated with this project, as follows:

Mike France, President
M & M Cycling, Inc.
d/b/a West End Bikes
1111 SW Stark Street
Portland, OR 97205

Marsha Baker
Senior Prevailing Wage Specialist
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