



Oregon

Bureau of Labor and Industries

Brad Avakian
Commissioner

May 13, 2015

Tim Pickett
Operations Director
Oregon Travel Information Council
DBA Oregon Travel Experience
1500 Liberty St. SE, Suite 150
Salem, OR 97302

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: French Prairie Rest Areas
Requested by: Oregon Travel Information Council

Dear Mr. Pickett:

On May 7, 2015, you submitted a request on behalf of the Oregon Travel Information Council, DBA Oregon Travel Experience (“OTE”) requesting a determination of whether the asphalt sealing of the French Prairie Rest Areas (the “Project”) are subject to the Prevailing Wage Rate laws. On May 12, 2015, you sent this office emails responding to some questions I had regarding the project.

Sufficient information to make a determination was received on May 12, 2015, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. The French Prairie Rest Area is located at milepost 281 on the Interstate 5 Freeway just outside Wilsonville, Oregon. The rest area is owned by the Oregon Department of Transportation (“ODOT”). Pursuant to an interagency agreement, OTE manages select rest areas for ODOT, including the rest area at issue here.
2. The rest area is made up of six parking lots – three on the northbound side and three on the southbound side of I-5. OTE sought to seal the asphalt parking lots, thereby extending the working lives of the lots. The lots were sealed one at a time in order to keep the rest area open and in operation during the Project.
3. The total cost to seal all six lots was \$100,000. The funds for sealing the Project were state highway fund dollars generated from the DMV Records Convenience Fee.

PORTLAND
800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

SALEM
3865 Wolverine St. NE; E-1
Salem, OR 97305-1268
(503) 378-3292
FAX (503) 373-7636

EUGENE
1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(541) 686-7623
FAX (541) 686-7980

BEND
Apprenticeship and Training
Worksource Bend
1645 NE Forbes Rd, Ste 106
Bend, OR 97701-4990
(541) 322-2435
FAX (541) 389-8265

Oregon Relay TTY:711

www.oregon.gov/boli
AN EQUAL OPPORTUNITY EMPLOYER

MEDFORD
Apprenticeship and Training
119 N Oakdale Ave.
Medford, OR 97501-2629
(541) 776-6201
FAX (541) 776-6284



CONCLUSIONS OF LAW:

1. The French Prairie Rest Area Project was an improvement, the reconstruction of which was carried on or contracted for by a public agency to serve the public interest. Therefore, the definition of "public works" under ORS 279C.800(6)(a)(A) applies to this project.
2. The French Prairie Rest Area Project is a single project. When determining whether multiple contracts constitute a single project, the commissioner considers the following:
 - a. The physical separation of the project structures. While there are six separate parking lots, three on each side of the freeway, together they make up one rest area.
 - b. The timing of the work on project phases or structures. The parking lots were all sealed over the course of less than three months, between June 9, 2014 and August 26, 2014.
 - c. The continuity of project contractors and subcontractors working on project parts or phases. The same contractor, Affordable Asphalt Maintenance, was used for all six parking lots.
 - d. The manner in which the public agency and the contractors administer and implement the project. It appears that initially, OTE treated each parking lot as a separate phase of the project. However, in a meeting held on November 5, 2014, it appears that you realized that it should have been treated as one whole project.
 - e. Whether a single public works project includes several types of improvements or structures. In this instance, the project included clearing the asphalt surface of dirt, moss and loose debris and sealing the asphalt with a polymer modified 100% asphalt-based emulsion for all six parking lots.
 - f. Whether the combined improvements or structures have an overall purpose or function. The project has the overall purpose of preserving and extending the working life of all six parking lots and the French Prairie Rest Area in general.

Considering these factors, the Bureau determines that the sealing of the parking lots should have been considered one project.

3. No other exemption from the Prevailing Wage Rate laws under ORS 279C.810 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, would apply to the French Prairie Rest Area 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.

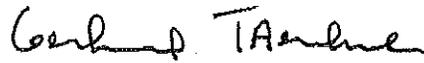
If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel 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: May 13, 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 May 13, 2014, I sent the Prevailing Wage Rate Determination for the French Prairie Rest Areas to the requestor and affected agencies via email and as follows:

Tim Pickett
Operations Director
Oregon Travel Information Council
DBA Oregon Travel Experience
1500 Liberty St. SE, Suite 150
Salem, OR 97302

Certified Mail – Return Receipt Requested
Article #: 7014 0510 0001 9849 7174



Rachel Diamond
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries