



May 12, 2014

Linda Baumgartner
Purchasing Supervisor
Washington County, Department of Support Service
155 N First Avenue, Suite 270
Hillsboro, OR 97124-3072

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Hydroseeding Maintenance Contract
Requested by: Washington County

Dear Ms. Baumgartner:

On April 10, 2014, you submitted a request asking if the Prevailing Wage Rate laws would apply to a proposed Hydroseeding Maintenance Contract. Sufficient information to make a determination was received on April 30, 2014, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Washington County proposes to enter into a five-year on-call contract for hydroseeding. The work to be done under this proposed contract will reseed areas where vegetation has been removed due to routine road maintenance or emergency repair activities.
2. As needed over the course of the five-year contract, Washington County will provide the hydroseeding contractor with a list of road segments and locations to be hydroseeded, and a timeframe for the work to be accomplished. According to Washington County, the hydroseeding to be done will be associated with routine road maintenance or emergency repair activities. The routine maintenance may include cleaning roadside ditches, repairing roadside scarps, and stabilizing damaged embankments supporting road or bridge structures. Some of the routine maintenance activities and emergency repair activities may be subject to the prevailing wage rate laws, depending on the circumstances surrounding that work.

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



3. The small scale routine road maintenance work and emergency repairs will generally be performed by Washington County staff. Larger scale projects will be contracted out to contractors.

CONCLUSIONS OF LAW

1. As a stand-alone contract, the proposed Hydroseeding Maintenance Contract does not meet the definition of "public works" in ORS 279C.800(6)(a)(A), (B), (C), (D), or (E), as the scope of work does not include construction, reconstruction, major renovation or painting.
2. To extent that the County is contracting for hydroseeding work in connection with any contract exceeding \$50,000 that includes a covered activity (construction, reconstruction, major renovation or painting), the entire contract would be subject to the PWR laws. ORS 279C.827
3. If Washington County staff perform road maintenance or repair work that includes construction, reconstruction, renovation or painting, the project will meet the definition of "public works" under ORS 279C.800(6)(a)(A), as the project will be carried on by Washington County. If the project cost exceeds \$50,000, including the cost of materials and supplies the agency purchases for the project, the project will be subject to the prevailing wage rate laws. If hydroseeding work is done on this type of public works project under the Hydroseeding Maintenance Contract, the hydroseeding work will also be subject to the prevailing wage rate laws. ORS 279C.827

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 Hydroseeding Maintenance Contract, provided the work done under this contract is not associated with or performed on a public works project. If any work done under this Hydroseeding Maintenance Contract is associated with or performed on a project subject to the prevailing wage rate laws, such hydroseeding work will also be subject to the prevailing wage rate laws.

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

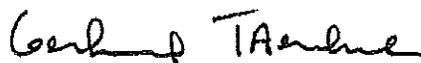
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: May 12, 2014

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 12, 2014, I mailed the Prevailing Wage Rate Determination for the proposed Hydroseeding Maintenance Contract to the requestor, as follows:

Linda Baumgartner
Purchasing Supervisor
Washington County, Department of Support Service
155 N First Avenue, Suite 270
Hillsboro, OR 97124-3072



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