



July 16, 2013

Connie Thorstad
Oregon Dept. of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: NO₂ Near Roadway Monitoring Project
Requested by: Oregon Department of Environmental Quality/DEQ

Dear Ms. Thorstad:

On July 8, 2013 you submitted a request on behalf of Oregon Department of Environmental Quality ("DEQ") asking if the Prevailing Wage Rate laws would apply to the NO₂ Near Roadway Monitoring Project (the "project"). Sufficient information to make a determination was received on July 11, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. The U.S. Environmental Protection Agency (EPA) promulgated new minimum monitoring requirements for the nitrogen dioxide (NO₂) monitoring network. In the new monitoring requirements, state and local air monitoring agencies are required to install near-road NO₂ monitoring stations at locations where peak hourly NO₂ concentrations are expected to occur.
2. DEQ is planning a NO₂ Near Roadway Monitoring Station along the east side of I-5 between I-205 and Highway 217 in Tualatin. DEQ will house scientific air quality monitoring equipment inside a pre-fabricated building.

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

MEDFORD

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



3. The project site is owned by the City of Tualatin (the "City"). DEQ and the City are preparing an Intergovernmental Agreement for use of the site. The City will not be charging DEQ any rent for use of the site.
4. Project work will include delivery and installation of the pre-fabricated building; installation of fencing and decking; the creation of a flat gravel pad for the pre-fabricated building; boring and trenching work for the electrical system; and the electrical system hookup. At this time, no foundation will be poured and the building will sit on the gravel pad. However, DEQ may consider changing the site development to include a permanent concrete foundation and to develop a non-asphalt roadway.
5. DEQ employees will install the fencing, decking and the gravel pad. DEQ will hire contractors to deliver and install the pre-fabricated building, to bore and trench for the electrical system, and to hook up the electrical system.
6. The total project cost is \$194,330.50. DEQ received a \$200,000 grant from the EPA; however, DEQ is administering the funds for the project. The entire project will be funded with funds of a public agency.

CONCLUSIONS OF LAW:

1. The definition of "public works" under ORS 279C.800(6)(a)(A) includes "buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest." OAR 839-025-0004(5) defines "construction" to be "the initial construction of buildings and other structures, or additions thereto."

The NO₂ Near Roadway Monitoring Project is a project for "construction." Although the building is pre-fabricated, new construction will occur because the project involves creating a flat gravel pad for the building, installation of the building and the boring, trenching and hookup work for the creation of a new electrical system. Likewise, the project will be carried on and contracted for by DEQ, a public agency, to serve a public interest. Therefore, the project meets the definition of "public works" under ORS 279C.800(6)(a)(A).

This conclusion will not change if DEQ decides to include a permanent concrete foundation and/or develop a non-asphalt roadway.

2. The exemption under ORS 279C.810(2)(a) for projects costing \$50,000 or less will not apply because the total project cost exceeds \$50,000. The total project cost includes the value of work performed by every person paid by a contractor or

subcontractor for the person's work on the project. The price of a project also includes all materials and supplies, if purchased specifically for the project.

DETERMINATION:

The Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the proposed construction, reconstruction, major renovation and/or painting of the HO₂ Near Roadway Monitoring 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, OR 97232

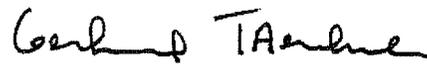
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: July 16, 2013

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



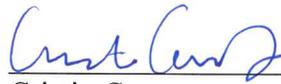
GERHARD TAEUBEL,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On July 16, 2013, I mailed the Prevailing Wage Rate Determination for the HO₂ Near Roadway Monitoring Project to the requestor, as follows:

Connie Thorstad
Oregon Dept. of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

Certified Mail – Return Receipt Requested
Article #: 7012 3050 0001 7255 2505



Cristin Casey
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries