



Oregon

Bureau of Labor and Industries

Brad Avakian
Commissioner

December 7, 2015

Carolyn H. Connelly
Local Government Law Group PC
975 Oak Street, Suite 700
Eugene, OR 97401

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: New Hospital
Requested by: Local Government Law Group PC on behalf of Pacific Communities
Health District

Dear Ms. Connelly:

On October 21, 2015, you submitted a request on behalf of Pacific Communities Health District asking if the Prevailing Wage Rate laws would apply to the proposed project to build a new hospital in Newport, Oregon. Sufficient information to make such a determination was received on November 2, 2015, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Pacific Communities Health District ("the District") is a public agency as defined in ORS 279C.800(5). The District owns, and has in the past, operated the Pacific Communities Hospital in Newport, Oregon.
2. In late 2001, the District determined it would be more efficient and better serve the public interest to enter into an affiliation with a larger hospital group. On December 13, 2001, the District entered into a Lease and Operating Agreement ("Lease") with Samaritan Pacific Health Services, Inc. ("Lessee") and Samaritan Health Services, Inc. ("Samaritan"), both private non-profit corporations. The leased premises include the Pacific Communities Hospital and certain surrounding property.
3. Under the terms of the Lease, Lessee operates the Pacific Communities Hospital; its outpatient medical clinics; medical office space; and its home health, hospice, and home medical services, for a period of 30 years. During the Lease term, the

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District provides Lessee with financial and other support in relation to the operation of the hospital.

4. The District, Lessee and Samaritan have determined a need exists to replace the currently leased hospital facilities with new hospital facilities. Demolition of the existing hospital would create space where a new hospital could be constructed.
5. On August 10 and 12, 2015, without the District's authorization or knowledge, Lessee issued a "Request for Design and Construction Proposals for Pacific Communities Health District," for the proposed project. The District learned of the solicitation, and on September 28, 2015, instructed Lessee to terminate the solicitation until the Lease Addendum terms could be negotiated and a coverage determination could be obtained from the Bureau of Labor and Industries. Project proposals have not been solicited since.
6. A Lease Addendum for construction of a new hospital has not been executed, but the parties have informally agreed to the terms. In the Lease Addendum, Lessee requests and District provides permission for Lessee to demolish the existing hospital and replace it with a new hospital ("New Hospital") to be located on the leased premises. Lessee would construct and operate the New Hospital as part of its leased hospital facility operations.
7. The Lease Addendum states that if the proposed project is pursued, Lessee will be solely responsible for soliciting and entering into both the project design and construction contracts. The District will not be a party to these contracts, and the Lease Addendum specifically states the District shall not be responsible for any supervision or inspection of the design or construction work. However, the Lease Addendum provides that the District "reserves the right to inspect and verify matters relating to" the proposed project, as provided in Section 3 of the Lease Addendum.
8. In Section 3 of the Lease Addendum, referred to as "Project Oversight," the parties acknowledge the District's interest in verifying any new facility is properly constructed in a manner that complies with all applicable laws relating to hospitals and the provision of health services, and in a cost effective manner. Such project oversight includes the following:
 - A. Lessee shall, upon the District's request, provide the District with satisfactory evidence and information regarding any design and/or construction contractor whom Lessee has selected or with whom Lessee has entered into a contract. The District's review may entail ensuring all contractors possess necessary licenses, permits, knowledge, experience and ability to carry out their obligations at a price that is consistent with the allocated costs.
 - B. Lessee shall prepare and, at the District's request, provide to the District a budgeted total cost for the proposed project, together with plans and specifications. The proposed project "shall provide a replacement facility on

- the leased premises of good quality, suitable to meet the health care needs of [the District's] residents, within the limits of available funding.”
- C. At the District's request, Lessee shall allow the District to inspect the project to verify it is being constructed in accordance with the requirements of law and the Lease Addendum; and to review project costs and disbursements, to verify they are reasonable and within the limitation of Lessee's budget.
 - D. Lessee shall carry out the project in such a manner to avoid, as much as possible, the disruption of health care services now being provided.
 - E. Any changes in the budget must be approved by the District.
9. Under the “Remedies” section of the Lease Addendum, if Lessee does not proceed continuously with the proposed project in such a manner as is reasonable to insure completion of the proposed project, the District may apply to the Lincoln County Circuit Court to appoint a receiver to take possession of the New Hospital in the name of Lessee, and perform any and all work and labor necessary to complete the proposed project. The District is not obliged to pursue this remedy, and may exercise any other available remedy.
 10. The proposed project cost is estimated to be \$57,000,000. The District will contribute up to \$57,000,000 of the estimated project costs, in the form of bond proceeds approved for this proposed project by the voters in May of 2015. Lessee will equip and furnish the completed New Hospital in an amount not to exceed \$10,000,000.
 11. No plans or specifications for the proposed project are available at this time; however, no device will be constructed or installed on the New Hospital that uses solar radiation as a source of generating heat, cooling, or electrical energy.

CONCLUSIONS OF LAW

1. As proposed, the New Hospital project will not be carried on or contracted for by any public agency and is therefore not a “public works” under ORS 279C.800(6)(a)(A). However, if the project does not proceed as required by the Lease Addendum and the District utilizes one of its allowable remedies, this conclusion could change.
2. The proposed project is not privately owned construction and therefore, even though the project will use \$750,000 or more in funds of a public agency, it is not a “public works” under ORS 279C.800(6)(a)(B), as that statute is currently written. However, pursuant to 2015 Senate Bill 137, the language in this statute will be amended so that any project for constructing, reconstructing, painting or performing a major renovation on a road, highway, building, structure or improvement of any type that uses \$750,000 or more in funds of a public agency will be a “public works,” regardless of who owns the property. The amendments to this statute apply to public works projects for which a contracting agency advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the public works project, to a contract for a public works project into which a contracting agency enters on or after

January 1, 2016. Therefore, if the District enters into an agreement to provide \$750,000 or more in funds of a public agency for the proposed project on or after January 1, 2016, this project will be a “public works” under ORS 279C.800(6)(a)(B), as amended by 2015 Senate Bill 137.

3. Because the proposed project is not privately owned construction, the project is not a “public works” under ORS 279C.800(6)(a)(C).
4. The proposed project will not include the construction or installation of a device that uses solar radiation and is therefore not a “public works” under ORS 279C.800(6)(a)(D).

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 New Hospital project, as the project is currently proposed, if the District enters into an agreement to provide funds for this project prior to January 1, 2016. However, the Prevailing Wage Rate laws will apply to the New Hospital project if the District enters into an agreement to provide \$750,000 or more in funds of a public agency on or after January 1, 2016.

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

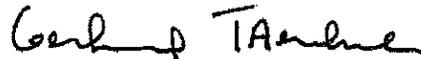
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: December 7, 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 December 7, 2015, I mailed the Prevailing Wage Rate Determination for the proposed New Hospital project to the requestor and interested party, as follows:

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