

April 21, 2009

Brad Phillips, Supervisor
Oregon Department of Corrections
Box 334
777 Stanton Blvd.
Ontario, OR 97914

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Contract for the Assembly and Sale of Modular Housing
Requested by: Oregon Department of Corrections

Dear Mr. Phillips:

On March 31, 2009, you submitted a request on behalf of the Oregon Department of Corrections ("ODOC"), asking if the Prevailing Wage Rate law would apply to a contract requiring ODOC workforce (i.e., inmates) to construct modular housing at the Snake River Correctional Institution. Sufficient information to make a determination was received on April 7, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Trout Creek Orchards, LLC ("TCO"), a private limited liability corporation, entered into a contract with ODOC on January 6, 2009, to purchase modular housing units built by ODOC inmates.
2. TCO will pay ODOC to fabricate and assemble the modular housing units at the Snake River Correctional Institution. TCO will be responsible to transport the housing units and install them on TCO's private property in Parkdale, Oregon. The units will be used to house migrant farm workers.

CONCLUSIONS OF LAW

1. None of the work associated with the contract between TCO and ODOC to fabricate and assemble modular housing units will be carried on or contracted for by a public agency. Therefore, the contract between TCO and ODOC for the assembly and sale of modular housing units does not meet the definition of "public works" under ORS 279C.800(6)(a)(A).

2. The work to fabricate and assemble modular housing will not be done on private property. Therefore, this portion of the contract between TCO and ODOC for the assembly and sale of modular housing units does not meet the definition of “public works” under ORS 279C.800(6)(a)(B) or (C).
3. The installation of the modular housing units will be done on private property, but no funds of a public agency will be used for installation, nor will a public agency occupy or use any part of the finished project. Therefore, this portion of the contract between TCO and ODOC for the assembly and sale of modular housing units does not meet the definition of “public works” under ORS 279C.800(6)(a)(B) or (C).

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, do not apply to the contract for the assembly and sale of modular housing between Trout Creek Orchards, LLC and Oregon Department of Corrections.

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 HB 2140 Section 43 (Enrolled) OR Laws 2007. 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

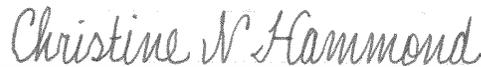
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: April 21, 2009

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 April 21, 2009, I mailed the Prevailing Wage Rate Determination for Manufacturing and Sale of Modular Housing contract between Trout Creek Orchards, LLC and Oregon Department of Corrections to the public agency associated with this project, as follows:

Brad Phillips, Supervisor
Oregon Department of Corrections
Box 334
777 Stanton Blvd.
Ontario, OR 97914

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