



May 17, 2012

Dolly Bullington, OPBC  
Contracts Officer  
Oregon Parks & Recreation Dept.  
725 Summer Street NE, Suite C  
Salem, OR 97301-1266

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Replacement/Repair of Solar Device and Associated Equipment –  
Repair Item #1 and Repair Item #2  
Requested by: Oregon Parks & Recreation Department

Dear Ms. Bullington:

On May 3, 2012, you submitted a request on behalf of the Oregon Parks & Recreation Department asking if the Prevailing Wage Rate law would apply to the Replacement/Repair of Solar Device and Associated Equipment, Repair Item #1 and Repair Item #2 (“project”). As noted below, there is currently insufficient information available to issue a determination regarding Repair Item #1. Sufficient information to make a determination regarding Repair Item #2 was received on May 15, 2012, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT:

1. Oregon Parks & Recreation Department (“OPRD”) is planning repair work on two solar equipment systems in the near future.
2. Repair item #1 involves direct repair to solar systems in a number of OPRD parks. Direct repairs could include repair, parts replacement and/or maintenance directly to the actual solar equipment.
3. Repair item #2 involves work on a solar hot water system in Eastern Oregon. The hot water system has a propane backup hot water heater which is used when there is insufficient sunlight to operate the solar system. The propane water heater is connected to the solar hot water system in order to transfer water from the

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propane water heater to the solar hot water system. This connection also signals the propane water heater to turn on when the solar hot water system isn't working. The propane water heater was installed as part of the solar hot water system. During the winter, the backup propane water heater froze along with some of the pipes. Replacement of the backup water heater and broken pipes is necessary to repair the total system to working conditions.

4. The Oregon Parks & Recreation Department is a public agency.
5. The total project costs for repair item #1 are unknown at this time, but could be over or under \$50,000. All funds would be funds of a public agency.
6. The estimated total project cost for repair item #2 is \$4,000. All funds will be funds of a public agency.

#### **CONCLUSIONS OF LAW:**

1. There is currently insufficient information available to make a determination as to whether repair item #1 is subject to the requirements of ORS 279C.800 to 279C.870. The contemplated project will involve the repair, parts replacement and/or maintenance on existing solar equipment. ORS 279C.800(6)(a)(A) provides that public works includes roads, highways, 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(11) defines "major renovation" to mean the remodeling or alteration of buildings and other structures within the framework of an existing building or structure." OAR 839-025-0004(22) defines "reconstruction" to include the restoration of buildings and other structures. Proposed repair item #1 could be a "public works" under ORS 279C.800(6)(a)(A) if the total project cost exceeds \$50,000 and the project will involve the reconstruction or major renovation of solar equipment that will be carried on and contracted for by OPRD, a public agency.
2. Repair item #1 will involve the repair, parts replacement and/or maintenance on existing solar equipment. A solar device is a device, structure or mechanism that uses solar radiation as a source for generating heat, cooling or electrical energy. ORS 279C.800(6)(a)(D)(i). Exemptions that regularly apply to public works under the Prevailing Wage Rate law do not apply to the construction or installation of solar devices. ORS 279C.800(6)(a)(D). OAR 839-025-0004(5) defines "construction" to mean the initial construction of buildings and other structures, or additions thereto. The prevailing wage rate law does not specifically define "installation," but words of common usage typically should be given their ordinary meaning. Information regarding whether the anticipated repair, parts replacement and/or maintenance work will rise to the level of "construction or installation" of a solar device is currently unavailable. However,

if the project does involve construction or installation of a solar device, then the project would be covered by prevailing wage rate law, whether the contract price exceeded \$50,000 or not.

3. If work done on a project subject to the prevailing wage rate law is covered by a warranty, then all work done under that warranty will also be subject to prevailing wage rate law. This is the case even if the warranty is contracted separately from the construction contract.
4. The definition of "public works" under ORS 279C.800(6)(a)(D) will apply to proposed repair item #2 because the project is for repair work to the propane backup water heater and some pipes that are connected to the solar hot water system. Because the propane water heater was installed as part of the solar hot water system, the replacement of the water heater would constitute installation of a solar device.

#### **DETERMINATION:**

Based on the foregoing, there is insufficient evidence as to whether 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 Replacement/Repair of Solar Device and Associated Equipment - Repair Item #1 project.

Based on the foregoing, 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 Replacement/Repair of Solar Device and Associated Equipment project - Repair Item #2 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

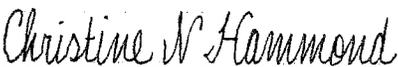
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: May 17, 2012

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries

  
CHRISTINE N. HAMMOND,  
Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

**Certificate of Service**

On May 17, 2012, I mailed the Prevailing Wage Rate Determination for the Replacement/Repair of Solar Device and Associated Equipment – Repair Item #1 and Repair Item #2 to the requestor, as follows:

Dolly Bullington, OPBC  
Contracts Officer  
Oregon Parks & Recreation Dept.  
725 Summer Street NE, Suite C  
Salem, OR 97301-1266

Certified Mail – Return Receipt Requested  
Article #: 7011 3500 0000 9886 4400



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