

June 15, 2010

Joel Kalberer
Weatherford Thompson
PO Box 667
Albany, OR 97321

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Oregon State University Bookstore
Requested by: Weatherford Thompson

Dear Mr. Kalberer:

On May 10, 2010, you submitted a request on behalf of Oregon State University Bookstore, Inc. asking if the Prevailing Wage Rate laws would apply to a proposed project to build a new retail bookstore on the Oregon State University campus. Sufficient information to make such a determination was received on June 9, 2010, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Oregon State University Bookstore, Inc. ("Bookstore, Inc.") is a private non-profit entity registered with the Oregon Secretary of State's Corporation Division on July 1, 1998. According to Oregon Department of Justice registration information for 501(c)(3) non-profit companies, the purpose of Bookstore, Inc. is to "maintain and operate college bookstores for the benefit and convenience of the students, faculty, and staff of Oregon State University."
2. Bookstore, Inc. proposes to build a new retail bookstore in an existing parking structure located on SW 26th Street and SW Washington Way in Corvallis, Oregon. This property is on the Oregon State University ("OSU") campus, and is owned by the State Board of Higher Education. The lowest level of the parking structure is currently empty space and not used for parking. The retail bookstore will be built in this space, and will extend slightly beyond the footprint of the existing structure. The proposed project will also include building a portion of the retail bookstore on the second level of the parking structure.
3. The State Board of Higher Education will continue to own the underlying property at SW 26th Street and SW Washington Way and the existing parking

structure at this location. Bookstore, Inc. will own the proposed building that will house the retail bookstore, and will own any other improvements it constructs on the land.

4. No lease has been signed yet, but according to the draft letter of intent for this project, Bookstore, Inc. will lease a portion of the property (i.e., the underlying land) on which the parking structure sits for an initial term of 35 years, with options for two additional 15-year periods. The lease rate will be one dollar per year and, for purposes of a scholarship endowment, one half of one percent of Bookstore, Inc.'s total annual sales in excess of \$15,000,000. The agreed use of the property will be for retail and food service operations, and for associated Bookstore, Inc. office and administrative space. At the expiration of the initial term of the lease, title to the real property improvements made on the property will revert to OSU.
5. OSU will not occupy or use any part of the proposed retail building.
6. The estimated cost of the proposed project is \$10,000,000. Bookstore, Inc. will obtain funding for the project from either private bank loans, or funding through the Oregon Facilities Authority ("OFA"), or from a combination of private and OFA funding.
7. OFA, part of the Office of the State Treasurer, is a public agency that facilitates the issuance of tax-exempt conduit revenue bonds for nonprofit organizations.

CONCLUSIONS OF LAW

1. The proposed project will involve the construction of a privately-owned building on publicly-owned land. Because the building to be constructed will be privately owned, the definition of "public works" under ORS 279C.800(6)(a)(B) and (C) should be considered for applicability to this project.
2. The proposed project may use an undetermined amount of funding through OFA. The funds provided through OFA are from tax-exempt conduit revenue bonds and are issued in accordance with ORS chapter 289. Pursuant to ORS 279C.810(1)(a)(J), "funds of a public agency" do not include bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289, unless the bonds or loans will be used for a public improvement.

As defined in ORS 279A.010(1)(cc), "public improvement" means "a project for construction, reconstruction or major renovation on real property by or for a contracting agency." The proposed project is not "by or for a contracting agency," so is not a public improvement. As such, any bonds or loans from the proceeds of bonds issued in accordance with ORS chapter 289 used on this project will not be considered "funds of a public agency." Therefore, the proposed project is not a "public works" under ORS 279C.800(6)(a)(B).

3. OSU will not occupy or use any of the square footage of the proposed construction project. Therefore, the proposed project is not a “public works” under ORS 279C.800(6)(a)(C).
4. If the proposed project were a public works under ORS 279C.800(6)(a)(A), the exemption would apply for projects that use no funds of a public agency, either directly or indirectly. ORS 279C.810(2)(b).

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 project to build a new retail bookstore on the Oregon State University campus.

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: June 15, 2010

Brad Avakian, Commissioner
Bureau of Labor and Industries

A handwritten signature in cursive script that reads "Christine N. Hammond". The signature is written in dark 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 June 15, 2010, I mailed the Prevailing Wage Rate Determination for the proposed project to build a new retail bookstore on the Oregon State University campus to the requestor, public agency and interested party associated with this project, as follows:

Joel Kalberer
Weatherford Thompson
PO Box 667
Albany, OR 97321

Steve Eckrich
OSU Bookstore, Inc.
PO Box 489
Corvallis, OR 97339

Randy Zentmire, Controller
OSU Bookstore, Inc.
PO Box 489
Corvallis, OR 97339

Mark McCambridge, Vice President for Finance and Administration
Oregon State University
640 Kerr Administration Building
Corvallis, OR 97331

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