

John Manson
Assistant Director for Construction Services
Housing Authority of Portland
135 SW Ash Street
Portland, OR 97204

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*
Project: Martha Washington Building, Revised Project
Requested by: Housing Authority of Portland

Dear Mr. Manson:

On March 2, 2009, you submitted a request on behalf of the Housing Authority of Portland (“HAP”) asking whether a proposed project is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received by March 10, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. HAP proposes to manage the reconstruction of an apartment building on property currently owned by Multnomah County (“County”) at 1115 SW 11th Avenue in Portland, known as the Martha Washington building. The County proposes to transfer ownership to HAP, and HAP will subsequently transfer ownership to a private limited partnership. HAP will be the sole general partner in this partnership, owning .01 percent. An equity investor who is yet to be identified will be the limited partner, and will own 99.99 percent of the partnership.
2. Funds of multiple public agencies in excess of \$750,000 will be used to fund the reconstruction of this building.
3. The Martha Washington is a five-story building with the lowest level below grade on three sides of the building. The proposed plan for this level includes mostly storage space, with residential support services in the form of office space in less than 50 percent of the space. According to U.S. Department of Labor Davis-Bacon guidelines, a lowermost story is considered a first floor only if it is primarily above the exterior grade on one or more sides, and if it contains at least 50 percent living accommodations or related nonresidential uses.
4. Except for the building site manager, all occupants of the building will have incomes that are no greater than 60 percent of the area median income.

CONCLUSIONS OF LAW

1. The proposed project for the reconstruction of the apartment building is intended to be privately owned. \$750,000 or more in funds of a public agency will be used on the project. Therefore, the definition of “public works” in ORS 279C.800(6)(a)(B) will apply to this project.
2. The proposed project is for the reconstruction of an apartment building not more than four stories in height because the lowermost story is not considered to be a first floor. Therefore, the definition of “residential construction” in ORS 279C.810(2)(d)(D) will apply to this project.
3. The proposed project is for residential construction that will be privately owned and that predominantly provides affordable housing. Therefore, the exemption from the prevailing wage rate law provided for in ORS 279C.810(2)(d) will apply to this project.

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 proposed reconstruction of the Martha Washington building.

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

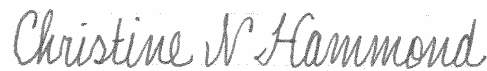
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: March 17, 2009

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 March 17, 2009, I mailed, by certified mail, the Prevailing Wage Rate Determination for the proposed Martha Washington Building revised project to the requestor/public agency associated with this project, as follows:

John Manson
Assistant Director for Construction Services
Housing Authority of Portland
135 SW Ash Street
Portland, OR 97204

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