

A G E N D A



Recommendation for Council Action (CMD)

Austin City Council

Item ID:

18867

Agenda Number

12.

Meeting Date:

October 11, 2012

Department:

Contract Management

Subject

Approve a resolution making an initial determination as to whether good cause exists to believe that alleged wage violations occurred on City of Austin construction projects for prevailing wage complaints, in accordance with Section 2258.052 of the Texas Government Code, and as recommended by staff, on the following projects: 1) North West Recreation Center Expansion and Improvements; 2) Dittmar Gym Enclosure Rebid; 3) Austin Resource Center for the Homeless (ARCH) Shower Renovations; 4) African American Cultural & Heritage Facility; and 5) Austin Convention Center Concession Area Repair.

Amount and Source of Funding

Fiscal Note

There is no unanticipated fiscal impact. A fiscal note is not required.

Purchasing
Language:

Prior Council
Action:

For More
Information:

Frank Mays 974-7051; April Shaw 974-7141.

Boards and
Commission
Action:

MBE / WBE:

Related Items:

Additional Backup Information

Chapter 2258 of the Texas Government Code requires the City to investigate wage rate complaints on City public work contracts. In most cases Wage Compliance staff works with the contractor or subcontractor and if the contract is not closed, the City may withhold funds. The wage complaints on the following projects listed below have not been resolved. The City Council is empowered by state law to make an initial determination of whether good cause exists to believe a wage violation has occurred. After the issuance of the initial determination, if the contractor or subcontractor and any affected worker do not resolve the issue by agreement, the issue shall be submitted to binding arbitration pursuant to the requirements under state law. The arbitrator may rule on issues related to an alleged violation of the wage rate requirements, including a penalty owed to the City of \$60 per worker per day; however, the City is not a party to the arbitration.

The Contract Management Department Prevailing Wage Compliance staff performed a compliance review of each project and recommends Council adopt the following findings and makes the necessary initial determinations as outlined below.

1. North West Recreation Center Expansion and Improvements (Complaint received 04/30/2012, contract closed on 11/18/2011)
 - a. Prime Contractor: Fazzone Construction Co.
 - b. Subcontractor: Phoenix Mechanical Corporation
 - c. Allegation: The complaint received after contract closeout alleges that seven individuals were employed on this project by Phoenix Mechanical, and were paid below the prevailing wage for performing Sheet Metal work. Additionally, a subset of the seven individuals was allegedly not paid for additional work hours that were not identified on the payroll.
 - d. Findings: The certified payroll indicates that all employees in the complaint were classified as HVAC Mechanics and were paid the proper prevailing wage for that classification. One employee received back wages during a previous wage audit for performing Sheet Metal work at less than the prevailing wage for a short period of time. No evidence was found or provided that substantiated the claims that these employees performed Sheet Metal work on the project or did not receive payment for additional hours worked that did not appear on the payroll.
 - e. Initial Determination: Based on a review of the City records and documents presented, the evidence does not support an initial determination of the existence of good cause that the alleged wage violations occurred or that wages are owed to the workers.
2. Dittmar Gym Enclosure Rebid (Complaint received 04/30/2012, contract closed on 7/14/2011)
 - a. Prime Contractor: Barecky Construction Co.
 - b. Subcontractor: Phoenix Mechanical Corporation (Out of business)
 - c. Allegation: The complaint received after contract closeout alleges that eight individuals were employed on this project by Phoenix Mechanical, and were paid below the prevailing wage for performing Sheet Metal work and/or were not paid for additional hours worked that were not identified on the payroll.
 - d. Findings: One individual was paid below the prevailing wage for some declared Sheet Metal work on the certified payroll, and is entitled to back wages of \$205.12. He was classified as an HVAC Mechanic for the remainder of his time on the payroll and was paid the proper wages for that classification. Another individual was underpaid for some declared Sheet Metal work on the certified payroll and is entitled to back wages of \$1.94. Again, the remainder of his time on the payroll he was classified as an HVAC Mechanic and paid the proper wages. Besides these two cases, no evidence was found or provided that substantiated the remaining claims that these employees performed Sheet Metal work on the project, or did not receive payment for additional hours worked that did not appear on the payroll.
 - e. Initial Determination: Good cause does exist to make the initial determination that two workers are owed back wages in the amounts specified above. The Prime Contractor has

agreed to pay the wages for the two workers identified in subsection d. above. However, for the remaining six individuals, based on a review of the City records and documents presented, the evidence does not support an initial determination of the existence of good cause that the alleged wage violations occurred or that wages are owed to the workers.

3. Austin Resource Center for the Homeless (ARCH) Shower Renovations (Complaint received on 8/1/2012)
 - a. Prime Contractor: Kellogg, Brown and Root (KBR)
 - b. Subcontractor: Bomax Contractors LLC
 - c. Allegation: The complaint received after the sub contractor's project scope was complete alleges that seven individuals were employed on this project by Bomax and were paid below the prevailing wage for performing Carpentry work.
 - d. Findings: Only two of these employees are listed on the certified payroll provided to the City. These individuals were listed as being paid the rate of \$26 per hour which is above the prevailing wage for Carpenters on this project. However, a review of the corresponding pay stubs for these two employees indicated that they were actually paid at a rate of \$15 per hour. Therefore, they are each entitled to back wages of \$849.60 for the two weeks they worked on the project. Due to the discrepancies discovered in the review of the payroll, staff expanded their audit to request pay stubs for all weeks that Bomax performed subcontractor work on the project. However, the Prime Contractor was unable to obtain the additional records from Bomax.
 - e. Initial Determination: Good cause does exist to make the initial determination that two workers are owed back wages.
4. African American Cultural & Heritage Facility (Complaint received 8/1/2012)
 - a. Prime Contractor: Barecky Construction Company
 - b. Subcontractor: Bomax Contractors LLC
 - c. Allegation: The complaint received alleges that nine individuals were employed on this project by Bomax and were paid below the prevailing wage for performing Carpentry work.
 - d. Findings: Payments were not made on a weekly basis. Certified payrolls did not include the gross amount earned for all jobs worked for the week. The complainant provided information on payments for employees that were not reflected on the submitted certified payroll for that week. The information on payments submitted included payments to construction companies instead of an employee. Further, evidence of payment was not submitted for all employees and/or pay periods. Based on the documentation submitted, one of the individuals named in the allegation is owed back wages in the amount of \$312 for performing Carpentry work. Additionally, during our review, the submitted documentation reflects that a separate employee (not one of the nine complainants), who was classified as a Carpenter, is owed back wages in the amount of \$568.48.
 - e. Initial Determination: Good cause does exist to make the initial determination that two workers are owed back wages.
5. Austin Convention Center Concession Area Repair (Complaint received 8/1/2012)
 - a. Prime Contractor: Kellogg Brown & Root Services, Inc.
 - b. Subcontractor: Bomax Contractors LLC
 - c. Allegation: The complaint received alleges that two individuals were employed on this project by Bomax and were paid below the prevailing wage for performing Carpentry work.
 - d. Findings: Using the TCPN Cooperative, the contract issued did not specify the prevailing wage requirements, and specifically excluded Davis Bacon wage rates. The agreement describes the work completed at the Convention Center as renovation of the concessions area in the north hall.
 - e. Section 2258.023 of the Government Code provides that a contractor or subcontractor does not violate state law if the rates are not specified in the contract. Further, the State Statute does not apply to maintenance work. Because the Statute is not applicable, no initial determination is required.

