

## A G E N D A



## Recommendation for Council Action (CMD)

Austin City Council

Item ID:

22049

Agenda Number

8.

Meeting Date:

February 14, 2013

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 a City construction project for prevailing wage complaints, in accordance with Texas Government Code, Section 2258.052, and as recommended by staff, on the following project: African American Cultural and Heritage Facility.

## 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; Rolando Fernandez 974-7749; 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 project 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 the project below and recommends Council adopt the following findings and makes the necessary initial determination as outlined below.

African American Cultural & Heritage Facility (Complaint received 11/30/2012)

- a. Prime Contractor: Barecky Construction Company
- b. Subcontractor: Bomax Contractors LLC
- c. Allegation: The complaint received alleges that four individuals were employed on this project by Bomax and were paid below the prevailing wage for performing Carpentry work.
- d. Findings: All four individuals were interviewed by City staff. Each one described performing the work of a Carpenter and demonstrated that they worked on this project. All four also claimed that they were not paid for overtime hours; one claimed that he did not receive his final payment. Documentation provided indicated that the individuals were employees of Bomax and were paid below the prevailing wage for Carpentry work.
- e. Initial Determination: Based on a review of the City records and written and oral testimony presented to staff, good cause does exist to make the initial determination that a prevailing wage violation occurred on the project.