



Ursillo, Teitz & Ritch, Ltd.

Counsellors At Law

2 Williams Street
(at South Main Street)
Providence, Rhode Island 02903-2918

Michael A. Ursillo*
Andrew M. Teitz, AICP*†
Scott A. Ritch*†

Troy L. Costa†
Amy H. Goins*†
Peter Skwirz*†
Admitted in RI*, MA†, NY‡

Tel (401) 331-2222
Fax (401) 751-5257
mikeursillo@utrlaw.com

MEMORANDUM

TO: The Honorable Mayor Frank Picozzi

CC: Aaron Mackisey, Chief of Staff

FROM: Michael A. Ursillo, City Solicitor; Peter Skwirz; Assistant Solicitor

DATE: January 19, 2024

SUBJECT: Application of prevailing wage requirements to City project funded by federal funds

On December 5, 2023, Dean Pimental, Senior Planner in the City's Planning Department, sent an email to Mark Ryan of the Rhode Island Department of Labor and Training asking if a certain City project was subject to prevailing wage requirements. The project is funded by \$5 Million in federal Economic Development Initiative Community Project (EDICP) funding in \$3 Million in federal American Rescue Plan Act (ARPA) funding. While Mr. Ryan has yet to reply, our office has been asked to opine on the issue.

First, with regard to the ARPA funding, the U.S. Department of Treasury put out an FAQ regarding the applicability of federal prevailing wage law (the "Davis-Bacon Act") that reads as follows:

"The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the CSFRF/CLFRF program [under ARPA], except for CSFRF/CLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (CSFRF/CLFRF

funds or otherwise) to enter into contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act, when CSFRF/CLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Acts”) may apply to projects. Please refer to FAQ 4.10 concerning projects funded with both CSFRF/CLFRF funds and other sources of funding.”

The Treasury FAQ is available at:

<https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

With regard to EDCIP funding, this is from a FY 2022 US Department of Housing and Urban Development (HUD) budget appropriation. HUD put out an FAQ regarding EDCIP funding for FY 2022 and it reads, in pertinent part:

“Congressionally designated grants of this type have not included Davis-Bacon prevailing wage laws; therefore, the grants do not trigger Davis-Bacon requirements unless the assisted project is also financed with other sources of funds that are subject to Davis-Bacon Act.”

The HUD FAQ is available at:

https://www.hud.gov/sites/dfiles/CPD/documents/EDI_Community_Project_Funding_Grants_V1_FAQ-2022-05.pdf.

Based on these FAQs, the City project funded by these federal funds is exempt from federal prevailing wage law. As to state prevailing wage law, it expressly incorporates federal prevailing wage law. See RIGL 37-13-8 and RI Dept. of Labor and Training Rule 260-RICR- 30-15-3.4(A). Thus, because the project is exempt from federal prevailing wage law, it would be exempt from state prevailing wage law as well. This opinion may be shared with the RI Department of Labor and Training on this issue.

S:\Warwick\Memo re applicability of prevailing wage to federally funded project.docx