



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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May 2, 2003

Mr. Al Battista, Assistant To The Director
Plymouth Redevelopment Authority
11 Lincoln Street
Plymouth, MA 02360

Re: Applicability of Prevailing Wages for Land Donation.

Dear Mr. Battista:

I am responding to your letter dated March 18, 2003 to the Division of Occupational Safety ("DOS"). In your letter, you state that the Plymouth Redevelopment Authority ("PRA") intends to provide a home for a low and/or moderate income family in the Town of Plymouth.

In your letter you provide facts relevant to the home construction project. Specifically, you state that the Town of Plymouth will donate the parcel of land to the PRA and that the PRA will secure funding for the project by obtaining a mortgage from a private bank. You also state that the PRA will pay a contractor to construct the foundation for a modular home and that once the project is completed, the property will be sold to one of the twenty pre-qualified families.

For the reasons set forth below, it is the determination of this office that the requirements of the prevailing wage law apply to the Plymouth Redevelopment Authorities upcoming project.

The PRA is a public agency covered by the prevailing wage statute. The Massachusetts prevailing wage law, G. L. c.149, sections 26-27H sets forth requirements for public agencies when they engage in the construction, addition, or alteration of public works. Section 26 reads, in relevant part:

In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works *by the commonwealth, or by a town, authority or district, or by persons contracting or subcontracting for such works...*[Emphasis added.]

As stated in your letter, the Town of Plymouth will donate the land to the PRA, *a public agency*, which will in turn construct a foundation for a modular home.

There is "public work" involved. In addition to its requirement that the project must be undertaken by a public agency, the prevailing wage law also requires there to be a "public work" involved. Although this term is not defined in the prevailing wage statute, or any other Massachusetts statute, "public works" must include, at a minimum, real property such as land and buildings owned by a public agency. In this case, the PRA is the sole owner of the property until the property is sold to a low or moderate income family. Additionally, the fact that the PRA will borrow money to complete this project does not alter the analysis.

This project is "construction of public works." It is beyond dispute that the building of a home by the PRA is "construction of public works" given the prior analysis in this letter.

This determination is based on the above-mentioned facts and would require further review if the information provided to me were found to be in error or if the underlying facts were amended.

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Ronald E. Maranian
Program Manager

cc: Robert J. Prezioso
Deputy Director
Division of Occupational Safety

Kathryn B. Palmer
General Counsel
Division of Occupational Safety

Daniel Field
Division Chief
Office of the Attorney General