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July 1, 2013

Mike Moran
Prevailing Wage Compliance Working Group

Re: Advisory Opinion of the Nevada Labor Commissioner
Effective date for determining the applicable prevailing wage rate for
CMAR contracts under NRS Chapter 338

Dear Mr. Moran:

In response to your letter requesting an Advisory Opinion from the Nevada Labor Commissioner identifying *the effective date for determining the applicable prevailing wage rate for CMAR contracts under NRS Chapter 338*, the Office of the Labor Commissioner has conducted a comprehensive review of all relevant statutes and regulations. It is the position of the Labor Commissioner that the appropriate date for determining the prevailing wage rate for a CMAR project is the date the construction contract is *awarded* to the construction manager at risk per NRS 338.1696.

I. THE CMAR PROCESS – ADVERTISING, SELECTION, PRE-CONSTRUCTION, NEGOTIATIONS, AND CONTRACT AWARD

The Construction Manager at Risk (CMAR) selection process is set forth in Nevada Revised Statutes (NRS) 338.169 to 338.16995, inclusive. These provisions allow an awarding body to qualify a CMAR and to enter into a series of contracts with a CMAR for both pre-construction services and for the construction of the public work.

The process begins when, pursuant to NRS 338.1692, the awarding body or its authorized representative requests proposals for the selection of a CMAR. Upon qualification and selection of a CMAR, the awarding body and the CMAR may enter into a contract for pre-construction services pursuant to NRS 338.16935. During this pre-construction period or soon thereafter, the awarding body and the CMAR may enter into contract negotiations. NRS 338.1696 describes, in detail, the process for contract negotiation between the awarding body and the CMAR. If contract negotiations are successful, the awarding body and the CMAR may enter into a

construction contract pursuant to the provisions of NRS 338.1698 which state that the contract must comply with Nevada's prevailing wage law.

II. CMAR COMPLIANCE WITH NEVADA'S PREVAILING WAGE REQUIREMENTS

As stated in your letter, the time frame between the proposal date and the construction award date will frequently span more than one prevailing wage rate year.¹ This is readily apparent when you examine all the elements necessary for a CMAR project—from qualifying the CMAR through pre-construction, negotiation, and the finalization of the construction contract.

While Nevada statutes lay out each step in this process in great detail, it is not until the public body awards the construction contract to the CMAR (NRS 338.1698) that the requirements for compliance with Nevada's prevailing wage requirements are cited.

NRS 338.1698 - Required and authorized provisions in a contract for construction of public work or portion thereof awarded to construction manager at risk.

A contract awarded to a construction manager at risk pursuant to NRS 338.1696:

- (1) Must comply with the provisions of NRS 338.020 to 338.090, inclusive ...

Given the lengthy process and the extraordinary detail that the Nevada legislature put into this section of NRS 338, if a date other than the construction contract award date was contemplated, the legislature would have clearly identified the necessity for compliance with Nevada's prevailing wage requirements at an earlier stage in the CMAR process. For that reason, it is clear that the applicable prevailing wage rate is determined at the date the construction contract is awarded to the construction manager at risk.

CONCLUSION

After a thorough review of all applicable statutes and authority, it is the position of the Nevada Labor Commissioner that the appropriate date for determining the prevailing wage rate for a CMAR project is the date the construction contract is **awarded** to the construction manager at risk per NRS 338.1696.

Sincerely,



Thoran Towler
Nevada Labor Commissioner

¹ A prevailing wage rate year runs from October 1 through September 30 of the following year.