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PREVAILING WAGE COMMISSION MEETING

December 1, 2014

9:30 a.m.

Department of Labor and Workforce Development

220 French Landing Drive

Nashville, TN 37243

Tennessee Conference Room

_________________________________________________

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APPEARANCES:

CHAIRMAN BURNS PHILLIPS  
Commissioner, TDOL

MR. R.T. SUMMERS  
Summers-Taylor, Inc.

MR. PETER HEIMBACH, JR.  
State Architect

MR. WAYBURN CRABTREE  
TDOT

MR. STEPHEN WRIGHT  
Wright Brothers Construction Co., Inc.

MS. SYDNE EWELL  
TDOL, Legal Counsel

MS. KIM Y. JEFFERSON, ESQ.  
Administrator, TDOL

MR. MARK FINKS  
Assistant Administrator, TDOL

MS. CHRISTINA J. TUGMAN  
Department of Labor and Workforce Development

MR. KENT STARWALT  
Tennessee Road Builders

MR. DANIEL BAILEY  
Attorney, TDOL
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CHAIRMAN PHILLIPS: So we'll call to order and roll call. Okay? And -- well, where is that?

You want me to do that?

MS. JEFFERSON: Yes.

CHAIRMAN PHILLIPS: So Mr. R.T. Summers, right?

MR. SUMMERS: Here, present.

CHAIRMAN PHILLIPS: Peter?

MR. HEIMBACH: Present.

CHAIRMAN PHILLIPS: Burns Phillips, here.

Wayburn?

MR. CRABTREE: Present.

CHAIRMAN PHILLIPS: Stephen?

MR. WRIGHT: Here, present.

CHAIRMAN PHILLIPS: So we have everybody here that we need, correct? Right? We do have a quorum.

MS. JEFFERSON: Yes.

CHAIRMAN PHILLIPS: Okay. So where do we go from there? Review and approve the minutes?

MS. JEFFERSON: Yes.
CHAIRMAN PHILLIPS: Did everybody have a chance to look at these and read these?
I'm assuming you did.

MR. CRABTREE: Yes, sir, I did.


MR. HEIMBACH: Appreciate having the transcript. It's nice.
I do have one request on the minutes, and that is: Mr. Starwalt is listed as
appearing, and I don't believe he spoke during the last meeting at all. And I would just request to move him to also present rather than appearing.

CHAIRMAN PHILLIPS: Technicality, but get it right, yeah. All right. Do I hear a second on that?

MR. SUMMERS: Second.

CHAIRMAN PHILLIPS: Okay. Anybody opposed?

Okay. So moved.

MS. JEFFERSON: And just for clarification, since the transcriptionist, court reporter, has already prepared those and we've already paid for those minutes, did you-all want us to change that as it appears on the website for
the previous meeting, or just correct that going forward?

MR. HEIMBACH: I think it's just -- we can just correct it going forward, I believe.

MS. JEFFERSON: Okay. Thank you.

MR. HEIMBACH: That's fine.

CHAIRMAN PHILLIPS: Any others?

Okay. Motion to approve the minutes?

MR. SUMMERS: So moved.

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: All right.

Second by Mr. Wayburn. So they are approved.

Conflict of Interest Disclosures.

MS. JEFFERSON: Ms. Tugman?

MS. TUGMAN: They're on file, so there's . . .

CHAIRMAN PHILLIPS: Okay. All right. Very good.

Okay. Old business. We have some old business, do we not, concerning the wage rates?

MS. TUGMAN: That's -- I'm sorry.

The wage rates are under new business.

CHAIRMAN PHILLIPS: Under new business?
MS. TUGMAN: Yes.

CHAIRMAN PHILLIPS: Okay. Any old business?

(Ms. Ewell entered the room.)

MS. TUGMAN: There's no old business.

Sydne, there's a seat up here for you.

MS. EWELL: I apologize.

CHAIRMAN PHILLIPS: Is there any old business to be taken care of?

MS. TUGMAN: I don't think so.

CHAIRMAN PHILLIPS: There's not?

Okay.

New business?

MR. FINKS: Okay. Well, the new business is: We need to set the prevailing wage rates for the 2015 Highway and Bridge Construction. And we've got a list of some of the -- of the wages that -- prevailing wage rates as calculated, preliminarily, and so we would turn that over to the Commission for discussion.

CHAIRMAN PHILLIPS: All right. Are there still some that are not correct or have --

MR. FINKS: There are some that it
could -- the company, Hawkins & Price, that were found -- I believe were not actually removed from the -- from the calculations, even though we had notified that company that they were not going to be -- their data was not going to be included in the calculations. And I -- so if we take it out completely, these numbers will change some of the -- of the classification rates and also change the -- possibly change the state average.

MR. SUMMERS: I checked the minutes, and I made the motion and I -- actually, it's my fault. I referenced one particular form, and that's the main one that was taken out. But there was at least one other one that had 60,000 hours of Class B operator on there that kept the Class B operator way up.

Looking at what they submitted, I'm not sure that what they submitted is even appropriate. They did not give a project title or contract number. They just listed a county, which is not according to our rules.

A brief description of a project:

It's underground utilities. We don't survey utility projects so -- also, they said -- I mean, our mailing list knows, so I don't think they
liked doing it anyway.

(Laughter.)

MR. SUMMERS: This is before we started calling them.

I would -- I would like the Commission to consider taking all of the Hankins & Price [sic] data out, because I just don't think it's appropriate or correct.

MR. HEIMBACH: And in addition to what Mr. Summers is talking about, I believe our correspondence with Hawkins & Price indicated that we're not going to include any of their data, and I think that's what Mr. Finks is referencing.

MR. FINKS: Yes, sir.

MR. HEIMBACH: And so I would concur with what Mr. Summers is saying.

MR. SUMMERS: That will dramatically change the -- the only way it will really change a bunch is the Class B operator. Just by my rough calculations, it would take the survey rate from 18.48 down to about 16.85 or 16.86. So it's going to take $1.70, $1.80 off of the survey rate which will put that back into a small increase, a 2 to 3 percent increase, which is very appropriate.
So the other ones, the hours are not big enough to make much difference. They could run the calculations, but I don't think it will --

MR. HEIMBACH: But that one change may change the state average?

MR. SUMMERS: It very possibly could, because it's $1,263,000 worth of -- of dollars.

MR. HEIMBACH: Right.

MR. SUMMERS: But it's 5 percent of the total dollars in the state.

MR. HEIMBACH: Right.

CHAIRMAN PHILLIPS: So is that a motion?

MR. SUMMERS: That would be my motion, to take all of the Hankins & Price [sic] data from the written wage calculations.

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: Anybody have any other discussion on that?

MR. CRABTREE: I think there was a question last time about whether this was a weighted average or whether it was an arithmetic average. Did we verify --
MR. FINKS: It was a weighted average, yes, sir.

CHAIRMAN PHILLIPS: A weighted average?

MR. FINKS: And that's why, once they've taken out 60,000 man-hours, would -- could make a difference in the state weighted average.

CHAIRMAN PHILLIPS: Any other comments?

Okay. Everybody in favor?

IN UNISON: Aye.

CHAIRMAN PHILLIPS: Okay. Opposed?

Motion carried.

MR. FINKS: With the Commission's action on that matter, we would need to change the ones that fall under Comment No. 3 if the state average changes. In fact, all of Note 3 -- the classifications that are affected by Note 3 would be changed also.

CHAIRMAN PHILLIPS: Just those four. Yeah, those four would be changed.

MR. FINKS: Yes, sir.

CHAIRMAN PHILLIPS: Okay.

MR. FINKS: And then it would also -- it could also affect Classification No. 4,
17, 23, and I think those are the ones.

CHAIRMAN PHILLIPS: Okay. Any other questions or comments?

MR. SUMMERS: You know, 17 and 23, with the number of hours they had and the number of hours across the state, are not going to change. It's just really No. 4 is the only thing that would change.

MR. FINKS: Do you want us to go on and run the calculations, and if it does change --

MR. SUMMERS: I guess we should.

MR. FINKS: Okay.

MR. HEIMBACH: You're probably correct arithmetically, but just to make sure.

MR. FINKS: And what we can do, since we've got to publish these rates today, we can send -- get the computer programmers to run these numbers again with taking the Hawkins & Price data out, and we would have to send the Commission members an e-mail today making sure that within the changes -- with whatever changes were shown, and get your approval by e-mail -- by e-mail today.

CHAIRMAN PHILLIPS: Is that problematic, number one, doing that, and number
two, everybody being able to respond today?

MR. FINKS: I believe we can get that done today. We should be able to get that done computerwise today. It may be this afternoon, but we should be able to get it done before close of business today.

MR. WRIGHT: It is Hawkins & Price and Hawkins Asphalt? There's really two companies?

MS. TUGMAN: Yes.

MR. WRIGHT: Okay.

MR. SUMMERS: Hawkins Asphalt is already out. That's one we took out before.

MR. HEIMBACH: Do we need to go ahead and approve the rates in this meeting exclusive of the seven rates that might change, then?

MS. TUGMAN: That's usually what happens.

CHAIRMAN PHILLIPS: You want to do it exclusive of those? Okay.

MS. TUGMAN: And then once, you know, you approve the rates, according to what you guys have -- I'm sorry -- the Commission has a motion, then we send you the changes. And that's
usually how it happens. It's -- there's a motion that is made to go ahead and approve them with the changes.

MR. FINKS: I guess we could do it contingent upon the changes that the Commission has approved.

MR. HEIMBACH: I move that we accept the rates with the exception of Rates 4, 17, and 23 that may change due to calculation of removing Hawkins & Price information; and then exclusive of Rates 1, 8, 15, and 16 that may change due to the recalculation of the state average.

CHAIRMAN PHILLIPS: Second?

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: Okay. Any discussions on that?

Okay. So moved.

MS. JEFFERSON: Should we wait to hear back from everyone? Will everyone be able to respond before we publish this? We'll have to have a response before the end of business day because our deadline to publish this is today.

MR. FINKS: Is today.

MS. JEFFERSON: So that means that
we actually need a -- instead of the close of business day, would it be more proper to say by noon?

CHAIRMAN PHILLIPS: We have to have our response back before the end of the business day.

MS. JEFFERSON: Well, we have to have IT --

MR. WRIGHT: When is the end of your day?

MS. JEFFERSON: I'm sorry?

MR. WRIGHT: When is the end of your day?

MS. JEFFERSON: End of our business day is about 5:00 today. However, we have to give it to IT so that they can actually recalculate and do all the things that they need to do. So I was thinking that we receive the information from you-all by noon, if we could possibly do that by noon, we could give it to them, and they would have time in order to make the changes, and so we can actually have this posted by the end of -- we have to post it by the end of business day.

CHAIRMAN PHILLIPS: And it really turns on when you get us the --
MS. TUGMAN: Well, the rates have to be sent by today, of course, but -- of course, they don't go into effect until June the 1st of 2015. And, of course, we send out letters and so forth to any participants so they know what the rates are.

MS. JEFFERSON: So Christina, do you think that obtaining the information from the members before the end of the business day today is sufficient?

MS. TUGMAN: I think so. I think that once this information is taken out, Hawkins & Price -- because I've already sent an e-mail to Doris letting her know before the meeting that we have new information, we need to get it done today. She can take that out and recalculate everything, and then we can -- we'll have the percentages, the change in the percentage, and they can be recalculated. And we can send it out, I'm guessing, by noon, 1:00 or 2:00. Probably the latest, 1:30, because -- she can do it pretty quickly because it's only two forms that are going to be taken out.

And then it'll change the percentage, and it'll show up, and she'll come
down and -- with the information on the computer, and we can go from there. It shouldn't take that long.

MS. JEFFERSON: That's fine. I was just trying to make sure we were statutorily compliant.

MR. WRIGHT: I'm traveling most of the day, so if you need a response from me and do not get it, please call my cell phone, and I will stop and find a place with Wi-Fi and respond to you.

MR. SUMMERS: Or as long as three of us --

MR. HEIMBACH: Right.

MR. SUMMERS: As long as we have a quorum that responds, I think that's sufficient.

Now, Sydne, if we -- if the Commission decides by 5:00 today and sets the rates, doesn't that comply with the law rather than when they're published?

MS. JEFFERSON: Yes, I think --

MR. HEIMBACH: That was going to be my question, is: What's the actual statutory requirement? That they have to be set by the end of the day today? Is it the end of the business
day? Is it the end of the calendar day?

MS. TUGMAN: They have to be set by December 1st. That's what the law says.

MR. SUMMERS: They have to be set, but I'm not sure that IT has to put them on the website today.

MS. JEFFERSON: Well, that's true.

MR. HEIMBACH: Whether or not they have to be posted, I think, is the question.

MR. BAILEY: The statutory language says the Commission shall determine the prevailing wage rate pursuant to the terms of this part and give notice thereof on or before December 1st of each year.

MS. JEFFERSON: Oh, okay. I knew I saw that December 1st somewhere. We have to -- actually, you-all have to set and we have to publish. So that was -- that's what I was concerned about. I wanted to make sure we did everything statutorily compliant. So today is the day for us to set the rates and to publish.

Christine?

CHAIRMAN PHILLIPS: Okay. So go back over the steps. As soon as this meeting is over, what's going to take place?
MS. TUGMAN: Once we leave this meeting, we will have Ms. Doris Burnett, who is with IT, we will have her delete Form 20140 -- I'm sorry -- 20140151 -- I'm sorry. I have all these forms in front of me.

Okay. Let's do this again. Delete Form 20140150, and also 20140149. And then once that is deleted, it will, of course, change the percentage and change the number of responses.

And the percentage changes will, of course, change from column to change 2014 to survey, and change from 2014 to 2015. And we will make the necessary changes and recalculate everything. And then we will send it to the Commission for approval, and once it has been approved, then the rates will be set.

They will be posted, of course, not in this format, but the regular format that is -- that we have for that form for each classification. Those will be posted on the website.

MR. SUMMERS: So they had -- Hawkins & Price had three forms?

MS. TUGMAN: They actually had four.
MR. SUMMERS: And Hawkins Asphalt had one?

MS. TUGMAN: I'm sorry. You're right. That is correct.

MR. SUMMERS: So this will take all of them out?

MS. TUGMAN: All of them out, yes, completely.

CHAIRMAN PHILLIPS: Any others?

MR. STARWALT: Can I just make a recommendation to y'all? And that would be: Your motion was to approve with the exception of?

MR. HEIMBACH: Yes.

MR. STARWALT: What about if y'all considered approving the rates pursuant to the change that they're going to make, and then a communication could be sent out to you with, "Here are the new rates," rather than have to approve them again through an e-mail?

And so, therefore, you're going to get the new rates, and then if there is a -- and then maybe the e-mail would say: "If there's objection to these, e-mail back with what the concern is."

That way, you're not having to take
another vote online or by e-mail --

MR. HEIMBACH: So the e-mail would be a vote without objection?

MR. STARWALT: Yes.

CHAIRMAN PHILLIPS: And the motion would be contingent upon --

MR. STARWALT: The motion would be approved pursuant to the changes. And so, therefore, once the changes are made, you're basically accepting the rates. You're going to get an e-mail back potentially if you decide to do this, and if there is something wrong, then you all sort of e-mail back and say, "Hey, this is still wrong." And then you raise the objection at that point.

MR. HEIMBACH: Right. That might be more consistent with the Sunshine law as well.

CHAIRMAN PHILLIPS: So you want to change the motion?

MR. HEIMBACH: So, yeah. Change the motion to where the seven rates that I quoted are accepted contingent upon revision by staff and without objection by the members via e-mail.

CHAIRMAN PHILLIPS: Second on that?

MR. WRIGHT: Second.
MR. SUMMERS: Sounds good.

CHAIRMAN PHILLIPS: Okay. Great.

MR. HEIMBACH: Thanks, Kent.

MR. CRABTREE: I have a question.

Once the rates are set, can they be amended?

MR. SUMMERS: We have, in the past, set rates, and the final calculations have been done after the rates. We've done this before, where at the last meeting, there had been some change to the rate that we didn't have the final calculation done but that the arithmetic followed our -- basically followed our motion.

And that's what we're asking now --

MR. CRABTREE: But maybe next week, if somebody found a mistake or something after the amended --

MR. SUMMERS: I don't think we'd have another shot at it. I think they have to be done today.

MS. JEFFERSON: It said today.

CHAIRMAN PHILLIPS: Anything else on that? Everybody good with that?

What's left, Kim? Anything?

MS. JEFFERSON: No, that's it.

That's all we have.
CHAIRMAN PHILLIPS: All right. So a motion to adjourn?

MR. CRABTREE: So moved.

MR. HEIMBACH: Second.

(Meeting adjourned at 9:52 a.m.)
CERTIFICATE

STATE OF TENNESSEE  )
COUNTY OF WILLIAMSON  )

I, Deborah K. Watson, RPR, CRR, LCR# 446, a Notary Public in the State of Tennessee, do hereby certify:

That the within is a true and accurate transcript of the proceedings taken on the 1st day of December, 2014.

I further certify that I am not related to any of the parties to this action, by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of December, 2014.

_________________________________
Deborah K. Watson, RPR, CRR, LCR# 446
Notary Public State at Large
My commission expires: 9/20/2016