Government solar projects skirt prevailing wage laws

By DON McINTOSH
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With an impact to the public treasury of several million dollars, solar panels are going up on the rooftops of four Multnomah County government buildings.

Union members familiar with government construction projects might think the installers would earn the prevailing wage, under the state's "little Davis-Bacon" law. The 70-year-old law was designed to level the playing field for construction companies on public works projects by setting wage standards for workers on a craft-by-craft basis. Annual wage surveys are conducted by the Oregon Employment Division, and the law is enforced by the Oregon Bureau of Labor and Industries (BOLI).

Prevailing wage laws ensure that construction workers earn decent family-supporting wages and health and pension benefits, while preventing contractors from winning large government projects by low-balling bids based on wages and benefits.

But that's not happening with the Multnomah County project or any of over a dozen similar government solar projects around the state.

SunEdison, a Maryland-based company that has financial backing from Goldman Sachs, got the contract to put solar up on the Multnomah County rooftops. A large array on the rooftops of a pair of county maintenance buildings in Gresham should be done by mid-February; similar arrays will go up on the county's headquarters building on Southeast Hawthorne and its Donald E. Long Juvenile Justice Center by year's end. Counted together, the county rooftops could be the state's largest photovoltaic array.

SunEdison does not have a state-certified apprenticeship training program, and it's paying nonunion installers $12 an hour.

If the project had paid prevailing wage, they would have earned $16- to $33- an hour for the same work.

Multnomah County's description of the project to potential bidders in September 2007 said it would require payment of the prevailing wage. In hindsight, that may have been well-intended naiveté. The way the deal is structured, there's no way it could be prevailing wage: SunEdison leases the rooftops, installs and owns the panels, and sells the electricity to the county. From the county's standpoint, the contract is little more than an elaborate power purchase agreement, hitched to a deal to lease rooftops. Nothing currently requires vendors or tenants to pay prevailing wage.

Last May, to remove any doubt, Multnomah County Deputy Attorney John Thomas sought a determination from BOLI that the project was not subject to the prevailing wage law, and BOLI agreed.

The reason: The public investment in the panels is indirect, in the form of

SunEdison program manager Jeremy Barnett (left) walks Multnomah County Commissioner Jeff Cogen through a photovoltaic array installed on the roof of the Yeon maintenance building. Because of the way the deal is structured, the $7 million-plus project is not subject to requirement to pay the prevailing wage. Photo courtesy of Multnomah County Commission

tax subsidies, not direct, in the form of spending.

Project costs are estimated to be between $7.5 million and $8.5 million. But the solar panels will replace just $65,000 a year of electricity the county is now buying from Portland General Electric. After 20 years, the county will have paid SunEdison $1.3 million — one-sixth the cost of the installation. Selling solar electricity doesn't pay for the project. Tax incentives do.

The federal Solar Investment Tax Credit reimburses 30 percent of the cost in the first year. Oregon's Business Energy Tax Credit (BETC) pays back another 50 percent over five years. And a federal tax formula for accelerated depreciation adds to the subsidy: It allows a solar system owner to say that the panels are entirely depreciated (used up, obsolete, worthless) in five years, with most of that (two-thirds) in the first year. Depreciation counts like a business expense, against income, so it reduces income tax. So in theory, depreciation could reduce an affluent taxpayer's tax bill by another 35 percent of the project's cost.

In reality, it's hard to line up ownership to take full advantage of the tax savings. A big part of SunEdison's business model is matching solar projects with individuals or entities that can use the tax savings. For each of the county rooftops, SunEdison set up a separate subsidiary corporation. Those corporations, which are eligible for the tax credits, can then be sold to corporations or individuals that owe taxes.

It may seem a strange and complex way to go solar. But such a set-up — where a third party builds and operates the solar array and sells electricity to the host — is becoming the norm on large projects.

Third-party-financed solar projects, at various stages of development, are under way at other local governments: Bend, Corvallis, Cottage Grove, Gresham, Hillsboro, Medford, Portland and Pendleton; Hood River and Umatilla counties; Mt. Hood Community College; and Tualatin Valley Water District.

None thus far have gone to a union contractor.

EC Company, a signatory contractor with International Brotherhood of Electrical Workers (IBEW) Local 48, bid on the Multnomah County project, but found it couldn't be done without an additional subsidy from Energy Trust of Oregon. SunEdison got the contract because it didn't need the subsidy. Could wages have had something to do with that?

The prevailing wage requirement takes wages out of competition, and makes sure that contractors who pay higher wages don't compete at a disadvantage.

"Third party ownership seems to be going to be the dominant model in solar financing," Multnomah County Commissioner Jeff Cogen told the Labor Press. "So it's worth revisiting whether it ought to be prevailing wage."

More than 80 percent of the Multnomah County solar project cost is subsidized by tax credits, but there are no requirements about the number or quality of the jobs produced, except that the county did specify that SunEdison try to employ women, minorities, and emerging small businesses.

Two years ago, the Oregon Legislature passed a law saying that private construction projects that get more than $750,000 of public subsidy have

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