

**Agenda Item Details**

Meeting	Feb 25, 2021 - Regular Voting Meeting
Category	12. CONSENT - FACILITIES
Subject	12.6 Wage Rate Compliance Finding for 2017 Bond Program - Govalle Elementary School
Type	Action (Consent)
Preferred Date	Feb 25, 2021
Absolute Date	Feb 25, 2021
Fiscal Impact	No
Budgeted	No
Goals	Fiscal Stewardship and Prioritization

SUBJECT:

Wage Rate Compliance Finding at 2017 Bond Program Govalle Elementary School

PRESENTERS:

Matias Segura, Operations Officer
Ylise Janssen, General Counsel

RECOMMENDATIONS:

That the Board of Trustees approve a finding in accordance with requirements of Texas Government Code § 2258.052 that good cause exists to believe that violations by Texas Star Fire System occurred in the payment of wages to three named workers alleged in the complaint filed by Christopher J. Willett, attorney with the Equal Justice Center, dated November 18, 2019 and February 12, 2020, on behalf of the workers.

BACKGROUND INFORMATION:

The district adopted the Davis-Bacon Prevailing Wage Rates on June 16, 2014.

Three workers, Louis Contreras, Ryan Dunman and Zachary Harold and unnamed workers were employed by Texas Star Fire System, a subcontractor to Balfour Beatty Construction, the contractor for the 2017 Bond Program new construction project, Govalle Elementary School.

The Equal Justice Center filed a complaint with Austin ISD on behalf of the three workers named above and unnamed other workers, on November 18, 2019 (Attachment 1) and February 12, 2020 (Attachment 2) alleging that all three named workers and unnamed workers should have been classified as sprinkler fitter workers and were underpaid by Texas Star Fire System, under the applicable general prevailing wage rates (salary and fringe benefits). The Equal Justice Center claims the three named employees are entitled to \$20,810.04 in wages and a fine of approximately \$7,980.

District staff investigated the complaint by reviewing certified copies of Texas Star Fire System payroll records and associated information. Also, staff encouraged Balfour and Texas Star Fire System to informally negotiate among the

parties to find a solution to wage claims. The district believed that a solution had been reached until informed by the Equal Justice Center on November 11, 2020 that claims remain unresolved. Therefore, staff requested that the district's construction auditor (Townsend and Associates) review the claims. The auditor provided the district with a report on February 4, 2021 (Attachment 3). While it appears that partial restitution of wages was made to one worker, the accuracy of the payment could not be validated because detailed calculation was not provided by Texas Star Fire System.

Among the auditor's findings were that the three named workers appeared not to be paid in compliance with Davis-Bacon Prevailing Wage Rates based on certified payroll. There are inconsistencies in the payment of fringe benefits and in the workers classification and wage rates. It is unknown who the unnamed workers are and therefore staff could not evaluate wage issues related to them at this time.

Staff has determined that a good cause exists to believe that violations by Texas Star Fire System occurred in the payment of prevailing wages to three named workers alleged in the complaints.

ADMINISTRATIVE CONSIDERATIONS:

The district adopted the Davis-Bacon Prevailing Wage Rates on June 16, 2014 in compliance with Texas Government Code §2258.022.

In accordance with Texas Government Code §2258.052, the district must make an initial determination as to whether good cause exists to believe that a violation of Texas Government Code §2258.023 has occurred. Government Code §2258.023 requires that a contractor, who is awarded a contract by a public body or a subcontractor of the contractor, must not pay less than the prevailing wage rates adopted by the public body. The district's initial determination must be made before the 31st day after the date the district receives information concerning an alleged violation, including a complaint by a worker.

After making such a determination, the district must notify in writing the contractor or subcontractor and any affected worker of its initial determination. Further, if the district finds that good cause exists to believe violations have occurred, the district shall retain any amount due to its contractor pending a final determination of the violation and then use such amounts retained to pay the worker any amounts determined to be due. Once the provisions of Texas Government Code §2258.052 have been satisfied, the Board of Trustees is not required to take any further action and the district shall have no liability in connection with the alleged violation except to pay the workers from retained funds allocated through state-mandated arbitration among the workers, the contractor and subcontractor.

Texas Government Code §§2258.053 to 2258.055 outline the final determination of prevailing wage claims. In summary, if the parties are unable to settle, the claims enter into binding arbitration under the Texas General Arbitration Act, and the costs of the arbitration are borne by the parties. The arbitration is final and may be enforced in court. The district is not a party to the arbitration.

CONTACT PERSONS:

Matias Segura, Operations Officer
Ylise Janssen, General Counsel

ATTACHMENTS:

Attachment 1 - Complaint to AISD Texas Star Letter - Govalle ES
Attachment 2 - Complaint to AISD Texas Star Additional Information - Govalle ES
Attachment 3 - Auditor Special Report - Govalle ES Prevailing Wage Rate

[Attachment 1 - Complaint to AISD Texas Star Letter -Govalle ES.pdf \(722 KB\)](#)

[Attachment 2 - Complaint to AISD Texas Star Additional Information - Govalle ES.pdf \(729 KB\)](#)

[Attachment 3 - Auditor Special Report - Govalle ES Prevailing Wage Rate.pdf \(1,523 KB\)](#)

Our adopted rules of Parliamentary Procedure, Robert's Rules, provide for a Consent Agenda listing several items for approval of the Board by a single motion. For each item listed as part of a consent agenda, the Board shall be furnished with background material. A consent agenda shall include items of a routine and/or recurring nature grouped together under one action item. A Board member may make a motion to remove an item from the consent agenda and shall include an explanation of the reasons for the removal in the motion. If the motion is seconded by another Board member, the item shall be removed from the consent agenda for separate discussion and separate vote.