

DEPARTMENT OF INDUSTRIAL RELATIONS

Katrina S. Hagen, Director

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March 21, 2023

Daniel Huynh
Assistant General Manager
Los Angeles Housing Department
1200 West 7th Street, 9th Floor
Los Angeles, California 90017

Re: Public Works Case No. 2022-008
Lead Hazard Remediation Program
City of Los Angeles Housing Department

Dear Mr. Huynh:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Labor Code section 1773.5¹ and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of applicable law, it is my determination that work performed under the City of Los Angeles Housing Department's (LAHD) Lead Hazard Remediation Program (Program) is public work and therefore subject to prevailing wage requirements, but an exception applies when the work is performed on single-family homes.

Facts

According to documentation submitted by LAHD, LAHD established the Program in response to the serious health threat caused by lead-based paint. The Program's purpose is to facilitate the removal of lead-based paint hazards in private residences, with a focus on homes occupied by children under the age of six years old. (Motion for Lead Grant, page 1.) For the current work being contemplated by LAHD, the Program is funded by a grant in the amount of \$5,600,000 from the U.S. Department of Housing and Urban Development (HUD). HUD's funding provides for lead remediation and rehabilitation work on private properties where lead is present and occupants are low-income under HUD guidelines. (LAHD's Request for Coverage Determination (LAHD's Request) at page 1.)

Pursuant to the Scope of Work provided by LAHD, the remediation and rehabilitation work appears to consist of: scraping loose or peeling paint from roofs,

¹ Unless otherwise indicated, all further statutory references are to the California Labor Code.

porches, doors, and door frames; repairing or replacing components as needed; and repainting all treated areas. The types of housing eligible to receive the remediation and rehabilitation work include privately owned single-family homes, one-to-four-unit residential properties, and multi-unit residential properties beyond four units. (*Ibid.*) The work to be performed will be done pursuant to contracts entered into directly by and between contractors certified to perform lead construction work² and the individual property owners.

Discussion

Section 1720, subdivision (a)(1) (hereafter section 1720(a)(1)), defines “public works” to mean: “Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds.” “There are three basic elements to a ‘public work’ under section 1720(a)(1): (1) ‘construction, alteration, demolition, installation, or repair work’; (2) that is done under contract; and (3) is paid for in whole or in part out of public funds.” (*Busker v. Wabtec Corporation* (2021) 11 Cal.5th 1147, 1157.)

Here, the lead remediation work done under the Program meets the definition of a public work under section 1720(a)(1). Depending on what lead hazards are identified on the individual property, the Program lead remediation work may involve construction, alteration, demolition, installation, or repair work. For instance, depending on the condition of the lead-based paint or other hazard, a window may need to be removed to have a new window installed. In other situations where it may not be feasible to remove the lead hazard, drywall or other suitable materials can be used as an enclosure to cover up the lead hazard. The remediation work will be done under contract between the residential owners and the contractors, and is paid for out of LAHD funding. All three elements of a public work under section 1720(a)(1) are satisfied.

Section 1720, subdivision (c)(5)(C) (hereafter section 1720(c)(5)(C)), however, creates an exception to the prevailing wage requirements applicable to public works:

(c) Notwithstanding subdivision (b), all of the following apply:

...

(5) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects

² Persons engaging in certain types of lead construction work, including lead-related construction work, must be certified by the California Department of Public Health (CDPH). (Health & Saf. Code, §§ 105254, 20.) CDPH regulations define “lead-related construction work” to mean “any construction, alteration, painting, demolition, salvage, renovation, repair, or maintenance of any residential or public building, including preparation and cleanup, that, by using or disturbing lead-containing material or soil, may result in significant exposure of adults or children to lead.” (Cal. Code Regs., tit. 17, § 35040.)

is not subject to this chapter if one or more of the following conditions are met:

...

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a *single-family home*.

...

(§ 1720, subd. (c)(5)(C), italics added.)

The question is whether the specific statutory exception under section 1720(c)(5)(C) applies. Prevailing wage requirements in this case are not “otherwise required by a public funding program.” (§ 1720, subd. (c)(5)(C).) There is no indication that HUD’s funding requires prevailing wages, and the Program also does not appear to condition funding on prevailing wage requirements. The purpose of the Program, which is funded through LAHD funding, is for the renovation and repair of residences to remove hazardous lead-based paint. LAHD makes grant funding available directly to property owners for lead hazard remediation work on their residential property, where the occupants of the properties are low-income under HUD guidelines. Some of these funds will be provided to households to remove lead-based paint from single-family homes. The issue then is whether the renovation and repair of residences to remove hazardous lead-based paint is considered “rehabilitation,” which is not defined in the prevailing wage law or any implementing regulations.

Prior coverage determinations have explored what “rehabilitation” means under section 1720(c)(5)(C). In PW 2019-012, *Installation of Solar Photovoltaic Systems, Solar Watts Program – Housing Authority of the City of Los Angeles* (Oct. 24, 2019) (*Solar Watts*), the Department looked to the definitions of rehabilitation in the National Housing Act and enabling statutes for a number of California’s residential rehabilitation programs. The *Solar Watts* determination reasoned that these laws defined rehabilitation “broadly” and that “[c]entral to each of these definitions . . . is that rehabilitation is work done to a substandard residence with obsolete features to bring it up to current building or housing standards.” (*Id.* at p. 5.)³

For instance, *Solar Watts* examined the Marks-Foran Residential Rehabilitation Act of 1973 at Health and Safety Code section 37912, which defines “residential rehabilitation” as follows:

³ All the “definitions focus on repairs, renovations, or improvements that make a substandard residential structure meet applicable state or local building or housing standards. (See Health & Saf. Code, §§ 33753, subd. (h); 37912, subd. (i)(1); 50096-50097; 50765.2, subd. (e).)” (*Solar Watts, supra*, PW 2019-012 at p. 6, n. 5.)

(1) The construction, reconstruction, renovation, replacement, extension, repair, betterment, equipping, developing, embellishing, or otherwise improving residences consistent with standards of strength, effectiveness, fire resistance, durability, and safety, so that such structures are satisfactory and safe to occupy for residential purposes and are not conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any one or more of the following factors:

- (A) Defective design and character of physical construction.
- (B) Faulty interior arrangement and exterior spacing.
- (C) Inadequate provision for ventilation, lighting, and sanitation.
- (D) Obsolescence, deterioration, and dilapidation.

...

(Health & Saf. Code, § 37912, subd. (i)(1).)

The renovation and repair of residences to remove hazardous lead-based paint appear to meet the definition in the Marks-Foran Residential Rehabilitation Act of 1973, as the stated and apparent purpose of such work is to make the residences safer to occupy. Perhaps more importantly, the work will be “done to a substandard residence with obsolete features to bring it up to current building or housing standards,” a central consideration in the *Solar Watts* determination. A home with lead paint is substandard, and it is without question that removal of lead paint is a significant step in bringing the home up to current building or housing standards.

The Program therefore appears to provide funding assistance to a household for the rehabilitation of privately owned residential projects. However, the statute specifically limits the available exception for assistance being provided for the rehabilitation of a *single-family home*.

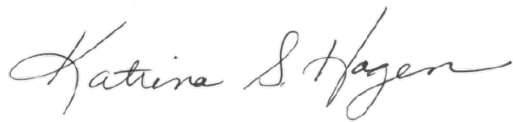
As outlined by LAHD, while a portion of the Program funds at issue will be used for lead-removal rehabilitation in single-family homes, said funds will also be used for lead-removal rehabilitation in one-to-four-unit residential properties, and multi-unit residential properties beyond four units. Under the clear language of the statute, assistance provided for rehabilitation to residential projects other than single-family residences does not qualify for the exception.

Conclusion

For the foregoing reasons, work performed under the City of Los Angeles Housing Department's Lead Hazard Remediation Program is public work and therefore subject to prevailing wage requirements, but an exception applies when the work is performed on single-family homes.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Katrina S. Hagen".

Katrina S. Hagen
Director of Industrial Relations