

DEPARTMENT OF INDUSTRIAL RELATIONS

Katrina S. Hagen, Director

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Audrey K. Singh
Mullen & Henzell, LLP
112 East Victoria Street
Post Office Drawer 789
Santa Barbara, California 93102-0789

Re: Public Works Case No. 2019-018
115 West Anapamu Street, Sanctuary Centers of Santa Barbara
County of Santa Barbara

Dear Ms. Singh:

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 California 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 the applicable law, it is my determination that the construction of the 35-unit residential project at 115 West Anapamu Street for Sanctuary Centers of Santa Barbara (Sanctuary Centers) is not subject to prevailing wage requirements.

Facts

Since 1976, Sanctuary Centers, a 501(c)(3) nonprofit corporation, has provided mental health services to indigent adults. The services offered include inpatient residential treatment in its 12-bed facility, outpatient group and individual psychiatric therapy, low income housing, career development services, as well as mental health services for the incarcerated.

A. The 35-Unit Residential Project at 115 West Anapamu Street.

Sanctuary Centers seeks to expand its services by constructing a 35-unit residential complex at 115 West Anapamu Street (Project). The Project is planned as a five-story 37,235 square foot building, which will include 6,500 square feet of medical/dental clinic space, as well as clinic space for mental health and substance abuse services, a laundry facility and a tenant community room.

The Project will be located immediately behind Sanctuary Center's 8-unit low-income housing building, known as the Hollister Apartments. Currently, two cottages and

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

a 30-plus parking space lot exist where the Project will be located. Sanctuary Centers has owned this site since 1995.

The estimated construction cost of the Project is \$11,967,169. A preliminary report notes the funding sources for the construction of the Project as: \$6.5 million in private donations, \$2 million Integrated Care Clinic Partner Contributions, and \$2 million in foundation grants. Sanctuary Centers states it also expects to receive \$1.5 million in “No Place Like Home” funding as a below-market interest rate loan through the County of Santa Barbara.

Sanctuary Center asserts that the 35 units in the Project will be subject to at least a 20-year deed restriction or regulatory agreement limiting occupancy to individuals or families with no or very low income, and in no case more than 80 percent of the area’s median income.

B. The “No Place Like Home” Program.

In 2004, California voters approved Proposition 63, an initiative statute known as the Mental Health Services Act (MHSA). (Welf. & Inst. Code, § 5771.1, citing credit Initiative Measure (Prop. 63, § 11, approved Nov. 2, 2004, eff. Jan. 1, 2005). The MHSA imposes a one-percent tax on personal income that exceeds \$1 million. (Rev. & Tax. Code, § 17043, subd. (a).) These funds provide increased monies to counties for personnel and other resources to support mental health programs. The tax proceeds are deposited in the Mental Health Services Fund and used to promote mental health programs. (Rev. & Tax. Code, § 19602.5, subd. (a).)

In 2016, the California Legislature established the “No Place Like Home” (NPLH) program, which would receive funds from the Mental Health Services Fund. (Assem. Bill No. 1618 (2015-2016 Reg. Sess.); Stats. 2016, ch. 43, §§ 1-9.) The NPLH Act² promotes permanent supportive housing for individuals who are in need of mental health services and are experiencing homelessness or are at risk for chronic homelessness.

The NPLH Act delegates authority to the California Health Facilities Financing Authority (CHFFA) and California Department of Housing and Community Development (HCD) to implement the NPLH Program. (Welf. & Inst. Code, § 5849.1, subd. (b)(13).) CHFFA and HCD enter into contracts for HCD to provide services under the NPLH Program. CHFFA is authorized to issue revenue bonds and provide loans to HCD to fund NPLH Program services. (Welf. & Inst. Code, §§ 5849.35, 5849.7.) The bonds issued by CHFFA are repaid by funding from the Mental Health Services Fund. (Welf. & Inst. Code, §§ 5829.1, subd. (b)(15), 5890, subd. (f).) Counties can apply for these funds through HCD. (Welf. & Inst. Code, §§ 5849.7, subd. (c)(1), 5849.9, subd. (a)). Counties, in turn, can award NPLH funds to eligible projects.

² In 2018, California voters approved Proposition 2. The measure simply ratified the NPLH Program, including CHFFA’s authority to issue up to \$2 billion in bonds. (See Welf. & Inst. Code, § 5849.15.) Proposition 2 also amended the MHSA to authorize an increased amount of transfers from MHSA funding to the NPLH program.

Sanctuary Centers submitted an application to the County of Santa Barbara seeking NPLH funds for the Project. To receive NPLH funding for the Project, Sanctuary Centers must provide permanent supportive housing for individuals needing mental health services and are experiencing homelessness or are at risk for chronic homelessness. Sanctuary Centers asserts the NPLH funds will be structured as a \$1.5 million below-market interest rate loan.

Discussion

All workers employed on public works projects must be paid at least the prevailing wage rates applicable to their work. (§ 1771.) Section 1720, subdivision (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.

Public funds in this context are not limited to a direct payment of money from a public entity to a contractor. Instead, section 1720, subdivision (b) provides in relevant part that “paid for in whole or in part out of public funds” means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

...

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

....

(§ 1720, subds. (b)(1), (b)(4).)

Section 1720, subdivision (c)(5)(E) (hereafter section 1720(c)(5)(E)) states that, notwithstanding subdivision (b):

...

(5) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

...

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent

of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

Sanctuary Centers expects to receive NPLH funding for the Project from the County of Santa Barbara in the form of loan, which Sanctuary Centers concedes will be structured as a below-market interest rate loan. A below-market interest rate loan from a public entity to fund a construction project is a form of public funding under the prevailing wage law. (§ 1720, subd. (b)(4) [paid for in public funds means “loans, interest rates . . . charged at less than fair market value . . . by the state or political subdivision.”])

Notwithstanding this public funding, the Project meets the requirements of section 1720(c)(5)(E), which provides an exemption from the prevailing wage requirements when a project is “paid for in whole or in part out of public funds “in the form of below-market interest rate loans.” (*Housing Partners I, Inc. v. Duncan*, (2012) 206 Cal.App.4th 1335, 1345.)

To qualify for the exemption, a residential project must meet specific affordability criteria where at least 40 percent of the units are restricted for 20 years to individuals or families earning no more than 80 percent of the area median income. (§ 1720, subd. (c)(5)(E).) The affordability criteria of section 1720(c)(5)(E) appear to be satisfied for this Project. Sanctuary Centers asserts that all 35 units of the Project will be restricted to individuals or families with very low to no income, but in no case more than 80 percent of the area median income. These restrictions will exist for 20 years by means of a deed restriction. Based on Sanctuary Centers’ representations, the Project satisfies all the criteria and qualifies for the exemption under section 1720(c)(5)(E).

Conclusion

For the foregoing reasons, the construction of the 35-unit residential project at 115 West Anapamu Street for Sanctuary Centers of Santa Barbara is not subject to prevailing wage requirements.³

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Katrina S. Hagen
Director of Industrial Relations

³ This determination is based on the factual representations made by Sanctuary Centers which may change as this Project has not yet begun construction. Changes to the funding or underlying facts may alter the conclusions reached in this determination.