

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

455 Golden Gate Avenue, Tenth Floor

San Francisco, CA 94102

(415) 703-5050



June 5, 2009

State of California
Department of Transportation
Division of Construction-Labor Compliance
Attn: Angela Shell
P.O. Box 9428741
Sacramento, CA 94274-0001

Double Barrel Environmental Services
Attn: Erik John Ricardo
1676 Palmyrita Avenue
Riverside, CA 92507

Re: Public Works Case No. 2009-008
Agreement No. 07A2407 - Homeless Sites Debris Removal and Disposal
California Department of Transportation

Dear Interested Parties:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced work under California's prevailing wage laws and is made pursuant to California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the homeless sites debris removal, transport and disposal work performed along state highway rights of way by Double Barrel Environmental Services ("Double Barrel") under the above-referenced Agreement is a public work subject to prevailing wage requirements.

Facts

In October 2008, Double Barrel and the California Department of Transportation ("Caltrans") entered into Agreement No. 07A2407 for Homeless Sites Debris Removal and Disposal ("Agreement"). Double Barrel is an environmental services company and holds a General Engineering Contractor license and a Hazardous Substances Removal license. The Agreement calls for the removal, transport and disposal of debris from "homeless sites" along state-maintained highways, freeways, routes and rights of way properties located within Caltrans District 7, which includes Los Angeles and Ventura counties. Work under the Agreement began in November 2008 and continues to date. Under the Agreement, which is to remain in effect for a two year term, Double Barrel will be paid \$1.134 million.

The debris being removed includes furniture, clothing and other material left behind by transients and/or vagrants at these homeless sites including bio-waste and other hazardous waste of an infectious nature such as needles and human waste. The scope of work also requires that

ordinary debris be hauled to landfills for disposal and that the bio-waste and other hazardous waste be hauled to biological waste sites for disposal.¹

Under the Agreement, Double Barrel is required to respond to individual task orders generated by Caltrans. The homeless sites identified in the task orders are discovered by Caltrans personnel during routine inspections. Each of the task orders identifies the particular site to be cleared with reference to a highway designation, i.e., S/B 405 fence line, S/B 405 Nordhoff off-ramp, etc. Carrying out the work required under a task order may require closure of a shoulder, on-ramp, off-ramp or lane.²

According to Caltrans, the work under the Agreement is necessary to keep state highway rights of way in a continually safe and usable condition because homeless campsite debris poses a health and safety threat to both Caltrans workers and the motoring public.

In the Invitation for Bid, Caltrans notified prospective bidders that California's prevailing wage rates applied to the work in question. After Caltrans awarded the contract to Double Barrel, Double Barrel contacted the Department with questions it had concerning coverage. Double Barrel disputes Caltrans' assertion that the work qualifies as a public work of maintenance. The Department made available copies of prior coverage determinations in an effort to assist the parties. As the Department's efforts failed to resolve the dispute, Double Barrel and Caltrans submitted formal coverage determination requests. Only in the course of the Department's investigation, conducted in response to the filing of the requests, did the interested parties provide the Department with copies of the Invitation for Bid and Addendum, Executed Service Agreement Contract, task orders and other relevant documentation necessary for making a determination regarding coverage.

Discussion

California Labor Code section 1771³ requires payment of prevailing wages to workers on public works projects. Section 1771 is applicable to "contracts let for maintenance work." Under California Code of Regulations, title 8, section 16000, "maintenance" under section 1771 includes:

- (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

¹ The Bid Proposal instructed prospective bidders to include a dump fee estimate of \$36,000 in their bids.

² In the Notice to all Prospective Bidders summarizing the questions submitted, attached as Addendum No. 1 to the Invitation for Bid, Caltrans disclosed that lane closures were performed 10 percent of the time in the performance of this work during the previous year.

³ All statutory references are to the California Labor Code unless otherwise indicated.

Section 1720.3 also includes as "public works" the "hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency...."

The primary question presented here is whether Agreement No. 07A2407 for Homeless Sites Debris Removal and Disposal is a contract for maintenance work within the meaning of section 1771 and its implementing regulation.

Under the definition of maintenance quoted above, the work in question must be of a routine, recurring and usual nature. In the last 10 years, Caltrans has executed 24 multi-year contracts statewide for homeless sites debris and bio-waste removal. Both the volume of contracts and their geographic scope speak to the routine and usual nature of this work. Because these homeless sites are situated in locations that cannot be fenced, such as overcrossings, bridges, landscaped areas within the shoulders of roadways, and properties adjacent to highways owned by Caltrans for future projects, homeless persons eventually return to these sites, once they are cleared, to set up camp again. This results in a recurring, ongoing need for the debris removal work. As such, the work under the Agreement is routine, recurring and usual.

Double Barrel argues that because the work is scheduled only upon the discovery of a site, the work is more random in nature than routine, recurring and usual. District 7 encompasses a vast area, including Los Angeles and Ventura counties, and contains 42 freeways and highways. Over 100 million vehicle miles are traveled in District 7 per day.⁴ Double Barrel is correct that homeless sites may go undetected until they are discovered during a routine inspection. At that point, a task order is prepared and the site is cleared. Due to the vastness of the territory involved, the debris removal work appears to be organized around task orders rather than a pre-arranged schedule. Contrary to Double Barrel's contention, the manner of scheduling the work does not negate the routine, recurring and usual nature of the work.

Also under the definition of maintenance quoted above, the work in question must be to preserve, protect and keep a publicly owned or operated facility in a safe and continually usable condition. There is no dispute that the state highway system constitutes a publicly owned or operated facility. Caltrans, as the awarding body, determined that the debris removal work qualified as maintenance because the debris poses a health and safety threat to both Caltrans workers and the motoring public. Caltrans was correct in its determination. The debris removal work is needed because unlike scattered roadside litter, the large volume of debris concentrated at a homeless site can move into and obstruct the roadways, constituting a direct impediment to the motoring public. That the work sometimes requires closure of a shoulder, on-ramp, off-ramp or lane shows the potential threat to the safe operation of the state highway system posed by the accumulation of debris at these sites. Also, these sites pose a safety threat to Caltrans workers and the public because the sites contain bio-waste (feces, blood, vomit and urine), used hypodermic needles, broken glass, metals and decaying trash. Caltrans notes a past history of court citations it has received due to vermin breeding in accumulated garbage. As such, the homeless sites debris removal work is necessary to keep the state highway system in a safe and continually usable condition.

⁴ <http://www.dot.ca.gov/dist07/aboutus/profile/>

Double Barrel disputes Caltrans' characterization of the work as necessary to keep state highway rights of way in a continually safe and usable condition, asserting that if the homeless sites posed such a problem they would be cleared immediately rather than assigned a 90 day service window. Double Barrel mischaracterizes the task orders. Although the task orders contain language allowing from 30 to 90 days for completion of the work, all of the task orders have a specific start date that is set from one to 30 days from the date of the task order. Some task orders also include a scheduled time to meet with Caltrans. For example, one task order dated November 24, 2008, gives a start date of November 25, 2008, and also notes:

East Bound 134, at Figueroa on ramp Post Mi. 11.6-General Clean up of Homeless encampment. On Ramp Closure is required-Caltrans will set closure ... meet at Altadena Maintenance Station at 7:00am.

Double Barrel concedes that accumulated debris at homeless sites contributes to the proliferation of disease and vermin, but disputes Caltrans' characterization of the health and safety risk to the traveling public, describing the campsites as hidden, remote and not subject to pedestrian traffic. The task orders, however, indicate that the campsites are not entirely hidden from the traveling public. Seven of 14 task orders concern sites located near freeway on-ramps or off-ramps, clearly in proximity to motorists. A task order dated January 15, 2009, demonstrates that such campsites are sufficiently within the public view to draw complaints. It states:

S/B 5 from pm. 33.2 to pm. 36, There are three large camps with 3 small camps. I have several complaints on these camps.

Double Barrel cites PW 2005-028, *Self Generated Waste Program and Highway Spill Program, California Department of Transportation* (May 17, 2006) for the proposition that collection of bio-waste from homeless encampments does not constitute maintenance. In *Self Generated Waste*, however, the subject work consisted of the collection and hauling away of pre-packaged containers of waste material, not the actual clearing of the sites.

Double Barrel also cites PW 2001-005, *Trash/Debris Removal from Railroad Rights-of-Way and Facilities, Blue and Green Lines, Los Angeles County Metropolitan Transportation Authority* (August 8, 2001) and PW 2004-040, *Liquid Waste Disposal Services for the Los Angeles County Metropolitan Transportation Authority* (August 29, 2005) in support of its position. In *Blue and Green Lines*, the Director determined that removal and hauling of trash from light railroad *rights of way* was routine, recurring and usual work needed to keep the light rail system safe and in a continually usable condition. In *Liquid Waste*, the Director concluded that the removal and hauling of waste material from Metropolitan Transportation Authority (MTA) facilities constituted maintenance because the waste could back up into an MTA service area, impeding service operations and creating a potentially unsafe condition. Double Barrel's reliance on these cases is misplaced. The determination herein is consistent with the analysis and conclusions reached in *Blue and Green Line* and *Liquid Waste*. Similar to *Blue and Green Line*, homeless campsite debris removal is necessary because the large volume of debris can migrate to the roadways and impede traffic. Similar to *Liquid Waste*, accumulated homeless campsite debris constitutes a health and safety threat to Caltrans workers.

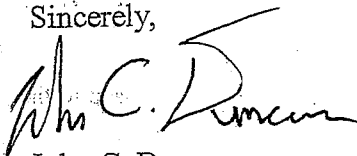
Letter to Department of Transportation and
Double Barrel Environmental Services
Re: Public Works Case No. 2009-008
Page 5

Section 1720.3 states that the hauling of refuse from a public works site to an outside disposal location is public work. Because the work under the Agreement qualifies as the public work of maintenance, section 1720.3 applies. The debris, bio-waste and hazardous materials constitute refuse. The landfills and biological waste sites to which the debris, bio-waste, and hazardous materials are being hauled are outside disposal locations. The elements of the statute are therefore met.

For the foregoing reasons, Agreement No. 07A2407 for Homeless Sites Debris Removal and Disposal is a contract for maintenance work subject to prevailing wage requirements under section 1771. In addition, the refuse hauling work is public works subject to prevailing wage requirements under section 1720.3.

I hope that this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Duncan". The signature is written in a cursive style with a large, sweeping initial "J".

John C. Duncan
Director