

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



March 8, 2002

Lawna M. Dillon, RPA
Property Manager
Civic Center Professional Plaza
500 West Santa Ana Boulevard
Santa Ana, CA 92701

Re: Public Works Case No. 2001-042
Judicial Council Lease/Tenant Improvements
Civic Center Professional Plaza, Santa Ana

Dear Ms. Dillon:

This letter constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based upon my review of the documents submitted and an analysis of the relevant facts and the applicable law, I have determined that the tenant improvements to the Civic Center Professional Plaza at 500 West Santa Ana Boulevard (the "Premises") in the City of Santa Ana, is a public work subject to the payment of prevailing wages.

This case involves a Lease Agreement (the "Lease") between Civic Center Medical Arts Associates, LLP ("Landlord") and the California Department of General Services, Real Estate Services Division on behalf of the Judicial Council of California ("Tenant") that was executed on August 22, 2001. Under the Lease, Tenant will rent the entire fourth floor of the Civic Center Professional Plaza.

The Lease term commenced on December 1, 2001 and ends on November 30, 2008. The Lease calls for a monthly base rental of \$15,430.00, with CPI adjustments to the monthly rent on December 1, 2001 and each December 1st thereafter during the term of the lease. Tenant has access to parking and common spaces. Sewer, trash disposal, utilities and janitorial services are provided at the Landlord's expense.

The Lease requires Landlord to construct tenant improvements prior to Tenant's occupation of the Premises, per plans and specifications submitted by Tenant. The tenant improvements consist of interior office alterations and improvements to

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floors, exterior and interior walls and partitions, ceilings, doors, hardware, painting and the like.

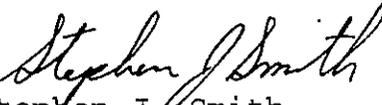
Paragraph 6 of the Lease provides that "[a]t Landlord's sole cost and expense ..." all required construction, improvements and/or alterations shall be completed and the Premises made ready for Tenant's occupancy. Landlord awarded the construction contract for the tenant improvements to Spruce Grove, Inc., contractor, on September 14, 2001. The construction contract price is \$661,367.70, from which \$83,220.00 is to be deducted if the contractor is not required to pay prevailing wages.

Paragraph 32 of the Lease requires a lump sum payment from Tenant to Landlord of \$378,147.70 for the tenant improvements. Paragraph 22 of the Lease allocates a maximum additional payment of \$83,220.00 if the tenant improvement work is defined as a public work subject to the payment of prevailing wages. Labor Code section 1720(a) defines public work to mean "Construction, alteration, demolition or repair work performed under contract and paid for in whole or in part out of public funds . . ."

Labor Code section 1720(a) is applicable to this arrangement between Landlord and Tenant. Here, the Lease calls for a lump sum reimbursement payment to Landlord earmarked for the alterations and improvements. The tenant improvements are construction and alteration work performed under a contract between Landlord and a contractor.¹ Since the Department of General Services is a State agency, the source of the funds for construction costs is, in part, public funds. Therefore, the construction of the tenant improvements constitutes a public work under section 1720(a) for which prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,


Stephen J. Smith
Director

¹ There is no requirement in section 1720(a) that the construction contract be between a public entity and a private entity. See, Public Works Determination No. 98-005, Goleta Amtrak Station, November 23, 1998.