

## DEPARTMENT OF INDUSTRIAL RELATIONS

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



February 7, 2002

Sam Kissinger  
Road Sprinkler Fitters Local Union No. 669  
7050 Oakland Mills Road, Suite 200  
Columbia, MD 21046

Robert L. Peri  
Diamond Communications, Inc.  
P.O. Box 328  
Madera, CA 93639

Re: Public Works Case No. 2001-058  
Remodel of Office Building at 1735 E Street, Fresno  
Department of General Services Lease of Office Space

Dear Messrs. Kissinger and Peri:

This 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 facts of this case and an analysis of the applicable law, it is my determination that the remodeling work on the office building at 1735 E Street, Fresno, is not a public work and is therefore not subject to the payment of prevailing wages.

In this case, CL Properties IV ("CL Properties") awarded a construction contract to Lanco General Contractor, Inc. ("Lanco") on July 11, 2000, for the extensive remodeling of an office building located at 1735 E Street, Fresno. CL Properties is the owner of the building that will consist of 72,610 assignable square feet upon completion of the remodeling work.

On September 8, 2000, the Department of General Services ("General Services") entered into a lease with CL Properties to rent 35,400 net usable square feet of office space in the remodeled building for use by the Department of Justice.

Labor Code section 1720.2 states that "public work" also means any construction work done under private contract when all of the following conditions exist:

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(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exists:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

Applying section 1720.2 to the subject case, the construction contract is between private persons, CL Properties and Lanco, and the property subject to the contract is privately owned by CL Properties. However, of the 72,610 assignable square feet of the property, General Services has agreed to lease 35,400 square feet, which is approximately 48.8 percent of the assignable square feet of the property. Therefore, General Services is not leasing more than 50 percent of the assignable square feet of the building as required by section 1720.2.

In addition, the lease agreement between CL Properties and General Services was entered into after the construction contract. Therefore, the requirement of section 1720.2(c)(1) has not been met in this case. Further, although the lease agreement between CL Properties and General Services was entered into during the construction work, CL Properties represents that a private architect hired by CL Properties drew the plans for the remodel. For this reason, the requisite elements of section 1720(c)(2) are also not met.

In conclusion, the remodeling work on the office building at 1735 E Street, Fresno, is not a public work subject to the payment of prevailing wages because the requisite conditions required by section 1720.2 are not present in this case.

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I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Smith". The signature is written in dark ink and is positioned above the typed name and title.

Stephen J. Smith  
Director