

## DEPARTMENT OF INDUSTRIAL RELATIONS

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



April 16, 2003

Joseph Karbus  
City of Los Angeles  
Office of Contract Compliance  
600 South Spring Street, Suite 1300  
Los Angeles, CA 90014

Re: Public Works Case No. 2002-029  
Installation, Testing and Calibration of Truck Scale Cells  
City of Los Angeles - Hyperion Treatment Plant  
Miron Electric, Inc./Mettler-Toledo:

Dear Mr. Karbus:

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 Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts in this case and an analysis of the applicable law, it is my determination that the installation, wire termination, calibration and testing work performed by Mettler-Toledo under contract with Miron Electric, Inc. at the Hyperion Treatment Plant of the City of Los Angeles ("City") is a public work subject to the payment of prevailing wages.

On October 13, 2002, City advertised for bid engineering and electrical services for the Hyperion Treatment Plant located in City. Subsequently, Miron Electric Inc. ("Contractor") entered into a contract with City to perform these services. Under the contract, Contractor purchased from manufacturer, Mettler-Toledo, truck scale cells for installation and use at City's Hyperion Treatment Plant. Contractor also sub-contracted to Mettler-Toledo the installation, termination, calibration and testing of the scale cells. This work involves the replacement of deteriorating scales with three new scales and the retrofit of an existing scale to improve the truck weighing capabilities at the Hyperion truck loading facility. Mettler-Toledo's self-described "five phases of construction" consist of removal, replacement, wire termination and calibration of each scale. (Letter from Mettler-Toledo Sales/Application Engineer Scott W. Blumenstein, dated May 7, 2001.) Mettler-Toledo's work is to be performed on-site using Heavy Duty Test Truck and Certified Test Weights. The

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scales will have a concrete deck constructed by others and an existing above ground variable footer foundation.

Section 13 (Payment Of Employees) of Volume II of the Specifications For The Construction Services Contract (CISCO), General Conditions and General Requirements, states:

The CONTRACTOR and each Subcontractor shall pay each employee engaged in Work on the project under this Contract in compliance with the Federal and State wage provisions indicated on the appropriate page of the Proposal (General Instruction and Information for Bidders)...

Similarly, Section 15 (Prevailing Wages) of the Proposal, Construction Services Contract (CISCO), Volume I, pages 4-5, requires the payment of prevailing wages as determined by the Director of the Department of Industrial Relations to all workers employed in the execution of the contract.

What is now Labor Code section 1720(a)(1)<sup>1</sup> (as amended by statutes of 2001, chapter 938, section 2 (Senate Bill 975)) defines "public works" in relevant part as: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds."

Labor Code section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public works are deemed to be employed upon public work."

The electrical and engineering work performed by Contractor at the Hyperion Plant is public work because it is construction done under the Construction Services Contract and paid for with City funds, which are public. Likewise, the installation, wire termination, calibration and testing work performed by Mettler-Toledo is public work because it involves construction, installation,<sup>2</sup> and testing<sup>3</sup> work done under contract with

<sup>1</sup> All statutory section references are to the Labor Code.

<sup>2</sup> Although "installation" work was not specifically included in the prevailing wage laws (Section 1720(a)(1)) as construction until after the date of the advertisement for bid in this case, the Legislature's inclusion of "installation" simply codified pre-existing precedential public works determinations finding installation work to be covered work. See *Department of General Services, Installation of Modular Furniture*, PW 2000-052 (August 18, 2000) and authorities cited therein.

Contractor and paid for with public funds of City. Mettler-Toledo's work is therefore a public work within the meaning of section 1720(a)(1).

In addition to coverage under section 1720(a)(1), the work performed by Mettler-Toledo's employees at the Hyperion Plant is done in conjunction with the electrical and engineering work of Contractor.<sup>4</sup> For this reason, the work is public work under section 1772 also because it is performed by a subcontractor in the execution of a contract for public work and the Mettler-Toledo employees are therefore deemed to be employed upon a public work.<sup>5</sup>

For the above reasons and consistent with long-standing Department precedential determinations, the work performed by Mettler-Toledo at City's Hyperion Treatment Plant is public work for which prevailing wages must be paid.

You have also asked for classification and prevailing wage rate determinations concerning the work that is deemed covered by this determination. The further determinations you request may be obtained from this Department's Division of Labor Statistics and Research at (415) 703-4780.

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<sup>3</sup>Under longstanding Department precedent, "testing" is part of construction under Section 1720(a)(1) as well as work done in the execution of a public work under Section 1772. See *Inspection and Testing Work/Caltrans*, PW 2000-041 (October 12, 2000); *Family Services Building Geotechnical Work/County of San Diego*, PW 99-014 (November 5, 1999); *Olivenhain Dam Project, Soil Drilling and Testing/San Diego Water Authority*, PW 99-070 (February 23, 2000).

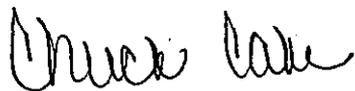
<sup>4</sup> The work order pertaining to the project at the Hyperion Plant indicates that a concrete platform was to be constructed on which to anchor the scales. As such work would also constitute construction, the employees of Mettler-Toledo also would be deemed to be employed upon public work to the extent their work is in the execution of that public work.

<sup>5</sup> It should also be noted that, while not statutory, the provisions in the contract requiring the payment of prevailing wages to all workers involved in the execution of the project may represent a contractual requirement to pay prevailing wages and legally enforceable by either the California Labor Commissioner or the affected workers under a third party beneficiary theory.

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director

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