

## DEPARTMENT OF INDUSTRIAL RELATIONS

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April 16, 2003

Roy V. Kannada  
Labor Compliance Supervisor  
County of Sacramento  
Department of County Engineering  
and Administration  
Construction Management Division  
3020 Explorer Drive, Suite 3  
Sacramento, CA 95827-2727

Re: Public Works Case No. 2002-069  
Replacement of Concrete Sidewalks, Curbs and Gutters  
County of Sacramento (RFP 5695)

Dear Mr. Kannada:

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 Title 8, California Code of Regulations, 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 replacement of concrete sidewalks, curbs and gutters under County of Sacramento Request For Proposal 5695 ("Project") is a public works project subject to the payment of prevailing wages.

On May 8, 2002, the County of Sacramento ("County") issued Request for Proposal ("RFP") 5695 to establish an annual contract for the replacement of concrete sidewalks, curbs and gutters throughout County. The contract period was established for a maximum of five years with an initial annual term, followed by one-year extensions, at the option of County. (RFP, p. 1.)

The scope of the Project is the replacement of concrete sidewalks, curbs and gutters, and may include other types of concrete work, such as the construction of an access ramp, a wall to prevent soil erosion or a foundation to set a new piece of equipment (RFP, p. 1). The Project's scope is further identified and described in the "Vendor Price Proposal" (RFP, p. 29) as including curb and gutter replacement, curb and gutter removal, removal and replacement of sidewalk and alley cuts, driveway removal and replacement, tree root removal and other miscellaneous items such as flat work (slabs and patios), channel gutters, gutter drain work, bus stops, handicapped/sidewalk ramps and concrete saw cutting. (RFP, pp. 29-30.)

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Under the proposed annual contract, no individual job is to exceed \$6,500 for construction, alteration or improvements. (RFP, p. 1.) When an individual job is identified, County will issue a Contract Shipping Order ("CSO") for the particular job. The CSO will indicate the work to be performed, the quantity, price or rate, location, expected completion date and actual dollar amount to be paid upon completion of work. (Kannada letter (Request for Determination), p. 1). The County will award an annual contract to the "three most responsive, responsible contractors" using a matrix prepared by the County. (RFP, p. 4.)

At the time the RFP issued, County estimated its past annual expenditure on existing contracts for the same work to be approximately \$450,000. (RFP, p. 1.) Under Labor Code section<sup>1</sup> 1771.5, County, as an awarding body, maintains a labor compliance program approved by the Director of Industrial Relations.

Under what is now Section 1720(a)(1), (as amended by statutes of 2001, chapter 938, § 2), "public works" is defined as "construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds ... ." The concrete sidewalk, curb and gutter replacement, as well as the related work, constitute construction, alteration, demolition and/or repair work. The work is being performed under contract, and is clearly being paid for out of public funds. For these reasons, the above-described work is public work.

At issue in this case is whether the Project contracted for in the RFP and broken down into separate jobs, each under \$6,500, is exempt from the obligation to pay prevailing wages under the terms in Section 1771.5.

Pursuant to Section 1771.5, awarding bodies shall not require the payment of the general prevailing rate "for any public works project of twenty-five thousand dollars (\$25,000.00) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000.00) or less when the project is for alteration, demolition, repair or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program."

The Project in this case consists of the work described in the RFP as the replacement of concrete sidewalks, curbs and gutters and related work for County. All of the contemplated work is bid under a single contract. The contract term is to last at least a

<sup>1</sup> Unless otherwise indicated, all statutory section references are to the Labor Code.

year, renewable up to five years. Annual expenditure of existing contracts is approximately \$450,000 (RFP, p. 1). That amount clearly exceeds the two maximum threshold exemptions provided in Section 1771.5. Thus, there is no applicable exemption to the prevailing wage requirement.

The County's Contract and Purchasing Division ("the Division") asserts that the value of each job under the contract should be viewed as a "project" rather than the scope of the work under the entire contractual agreement. The Division contends that, because each of the individual jobs is limited to \$6,500, neither of the two Section 1771.5 thresholds will be reached in a single job and thus, the prevailing wage rate is not required.

Such a result is untenable, given the intent and purpose of the state's prevailing wage laws. Defining a single project by multiple jobs, subject to contractual "not to exceed" thresholds, would allow parties to circumvent the clear intent of the law. Title 8, section 16100(b)(6) specifically prohibits this interpretation. That section provides that public works projects cannot be "split or separated into smaller work orders or projects" for the purpose of evading the applicable provisions of Labor Code section 1771."<sup>2</sup>

Further, Section 1771.5, which expressly applies to labor compliance programs, provides an incentive for awarding bodies to ensure that entities carry out the intended purposes of prevailing wage law. That incentive is reflected in the two threshold exemptions. Applying the Division's interpretation of the term "project" would infer a meaning in the statute not intended by the Legislature, and would produce a result contrary to the prevailing wage protections afforded to workers in the state.

The Division further asserts that the purpose of establishing a single RFP bidding process, combined with individual CSO's, is to "streamline the procurement process so that each individual project does not require a separate RFP." An organization's internal policy, however, designed to reasonably reduce administrative expense and burden, cannot be the legal justification for failing to pay prevailing wages.

Lastly, the Division argues that if the project, rather than the individual jobs, is viewed as the entire amount of work contemplated under the contract, "the cost of construction will increase and fewer projects will be completed." Application of

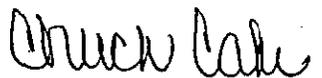
<sup>2</sup> Section 1771 generally requires the payment of the general prevailing wage rate of per diem wages to all workers employed on public works.

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the legally required prevailing wage rate does not and cannot turn on whether it would be economically advantageous to the contracting parties.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director

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