

## DEPARTMENT OF INDUSTRIAL RELATIONS

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



April 16, 2003

Frederick A. Steiner  
Piping Industry Progress and Education  
Trust Fund  
510 Shatto Place, Suite 200  
Los Angeles, CA 90020

Re: Public Works Case No. 2002-087  
Shark Lagoon Project  
Long Beach Aquarium

Dear Mr. Steiner:

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 construction of the Shark Lagoon at the Long Beach Aquarium of the Pacific ("Project") is a public work subject to the payment of prevailing wages.

The Project is a new exhibit at the Long Beach Aquarium of the Pacific, a private non-profit corporation ("Corporation"). The construction of the Project cost \$3,279,000. The sources of funding to the Corporation for the Project are: \$1,775,000 in revenue bonds issued by the City of Long Beach Bond Financing Authority; a \$271,000 grant from state bond funds issued as a result of Proposition 12 (Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000, Public Resource Code section 5096.310(1)(1)); and \$967,000 in private contributions. The construction contract between Corporation and Kajima Construction Services, Inc. ("Contractor") was entered into on December 17, 2001.

Under what is now Labor Code section 1720(a)(1)<sup>1</sup> (as amended by statutes of 2001, chapter 938, section 2), "public work" 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.... For purposes of

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

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this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

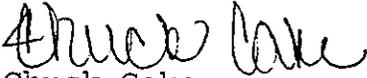
The Project is clearly construction done under contract since it involves the building of a new aquarium exhibit under a contract between Corporation and Contractor.

Corporation claims, however, that the Proposition 12 state grant is not "public funds" under Labor Code section 1720(b), and therefore the Project is not a public work. This position is without merit. At the time the construction contract was signed for the Project, section 1720(b) did not contain the definition of public funds Corporation relies upon. At that time, the requisite public funding element of a public work was contained in section 1720(a), which on its face and by Department precedential determination includes state grant money. See *Lewis Center for Earth Sciences*, PW 99-052 (November 12, 1999). Even under section 1720(b), however, the state grant funds would constitute public funds. Under section 1720(b)(1), such grant funds are "the payment of money . . . by the state . . . directly to . . . the public works . . . developer." Accordingly, the Project, which was funded in part by a combination of City and State funds, was paid for with public funds.

For these reasons, the Project is a public work within the meaning of Labor Code section 1720(a)(1), and prevailing wages are required.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

  
Chuck Cake  
Acting Director