

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

455 Golden Gate Avenue, Tenth Floor

San Francisco, CA 94102

(415) 703-5050



**To All Interested Parties:**

**Re: Public Works Case No. 2003-033**

***Plumbing and Fire Sprinkler Installation, Humboldt County Department of Health and Human Services***

The Decision on Administrative Appeal, dated June 8, 2005, in PW 2003-033, *Plumbing and Fire Sprinkler Installation, Humboldt County Department of Health and Human Services*, was reversed in a published First District Court of Appeal opinion dated December 11, 2007. See *Plumbers and Steamfitters, Local 290 v. John Duncan, as Director, Department of Industrial Relations* (2007) 157 Cal.App.4th 1083.

## DEPARTMENT OF INDUSTRIAL RELATIONS

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January 6, 2004

Sid Berg  
Business Representative  
United Association Local Union 290  
Eureka Regional Field Office  
832 E Street  
Eureka, CA 95501

Re: Public Works Case No. 2003-033  
Plumbing and Fire Sprinkler Installation  
Humboldt County Department of Health and Human Services

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 documents submitted and an analysis of the relevant facts, it is my determination that the plumbing and fire sprinkler work<sup>1</sup> performed at the Professional Building, 507 F Street, Eureka, California ("Building") is public work subject to the payment of prevailing wages.

In April 2000, Kramer Properties, Inc. ("Owner") purchased the Building, which is a five-story, 40,000 square-foot office structure. In February 2002, the Department of Health and Human Services Administration Division of Humboldt County ("County") issued a Request for Proposal ("RFP") to lease office space in the Building for its offices. Under the RFP, County required the lessor to follow certain criteria for the building to meet County's needs. On January 14, 2003, Owner and County entered into a lease wherein County leased 25,595 square feet of the Building. Under the lease agreement, Owner is to comply with the building criteria County set forth in the RFP. These criteria include installing a fire sprinkler system as well as other tenant improvements. At the time the lease was signed, Owner was also contracting out other building improvements.

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<sup>1</sup> While you have requested a coverage determination for only the plumbing and fire sprinkler work, this coverage determination would apply to any other work on the Building that meets the requirements of Labor Code section ("Section") 1720.2.

On December 3, 2002, a contract was entered into between Owner and Don Clogston Fire Protection, Inc. to install a fire sprinkler system. The installation of this system had not been completed at the time the lease was signed.

On March 28, 2003, two contracts were entered into between Owner and Cruz Plumbing for plumbing work at the Building. One contract was for tenant improvements called for under the County lease with the requirement that prevailing wages be paid for this work. The other contract was for plumbing throughout the Building shell with no requirement that prevailing wages be paid.

Labor Code section 1720.2 states:

"[P]ublic works" also means any construction work done under private contract when all of the following conditions exist:

(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 exist:

(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 contract 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 facts of this case, the construction contracts for the fire sprinkler system and plumbing were between private persons - Owner and the two subcontractors. The property subject to the construction contract, Building, is privately owned by Owner. Upon completion of the construction contract, more than 50 percent of the assignable square feet of the Building (approximately 64%) will be leased to County, which is a political subdivision of the state. Thus the requirements of Sections 1720.2(a) and (b) are satisfied. This leaves the question whether the conditions in Section 1720.2(c)(1) or (2) are met.

As to the plumbing work, both construction contracts were entered into after the lease was signed, satisfying the condition under Section 1720.2(c)(1). Therefore the plumbing work is a public work under Section 1720.2.

As to the fire sprinkler system, the County provided criteria for this work and its construction was ongoing at the time the lease was signed. Therefore the condition under Section 1720.2(c)(2) is met, and the fire sprinkler work is a public work requiring payment of prevailing wages.

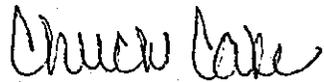
Owner argues that only the tenant improvement work should be covered and not the Building shell work since the construction on the Building shell would have occurred regardless of the lease. This fact does not insulate the Building shell work from prevailing wage requirements because Section 1720.2 does not distinguish between tenant improvement construction and other construction. Section 1720.2 applies to "any construction work done under private contract" as long as the enumerated requirements of the statute are met.

Owner's counsel argues that none of the work is public work because Section 1720.2 requires the existence of a construction contract between two separate entities, and here, he alleges, Owner is both the owner and the contractor, and there is no construction contract. This misrepresents the facts of this matter. Owner provided to this Department copies of documents constituting construction contracts between Owner and Clogston Fire Protection and between Owner and Cruz Plumbing to perform the work at issue in this case.

Letter to Sid Berg  
Re: Public Works Case No. 2003-033  
Page 4

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director