

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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March 22, 2004

Brian Berthiaume
Field Supervisor
Foundation for Fair Contracting
3807 Pasadena Way, Suite 150
Sacramento, CA 95821

Re: Public Works Case No. 2003-045
Improvement Work, Shasta County District Attorney Family
Support Division, Department of Child Support Services
Redding, California

Dear Mr. Berthiaume:

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 tenant improvement work performed for the Shasta County District Attorney Family Support Division, Department of Child Support Services ("County"), in Redding, California, is a public work subject to the payment of prevailing wages. Other improvements, as described below, however, are not public work and therefore are not subject to prevailing wage requirements.

The Girard Fund ("Owner") owns a one-story office building ("Building") containing approximately 78,000 square-feet at 300 Locust Street, Redding, California. The Building is located on a larger parcel of real property. On September 7, 2001, County issued a Request for Proposals ("RFP") for a facility to house its child support operations. On May 7, 2002, Owner and County entered into a lease whereby County leased 40,000 square feet of the Building. The lease incorporated the provision of the RFP requiring that the tenant improvement work be done as a prevailing wage job.

On September 1, 2002, after the lease was signed, Owner entered into a contract with Donald E. Gallino Construction, Inc. ("Contractor") to undertake the tenant improvement work as required by the lease to the portion of the Building leased by County. On October 1, 2002, Contractor and Developer entered into another contract for the exterior paving, parking lot realignment, street work and preparation of six concrete pads for later use as

retail or food establishments ("additional improvements"). The additional improvements took place on the larger parcel. The second contract contained no prevailing wage requirements.

Labor Code¹ section 1720.2 states:

"Public 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 contract, more than 50 percent of the assignable square feet of the property are 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 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 contract.

Applying the elements of Section 1720.2 to this case, the construction contract for the tenant improvements was between private persons - Owner and Contractor. The property subject to the construction contract - the Building - is privately owned, but upon completion of the construction contract, more than 50 percent of the assignable square feet of the building will be leased to County for its use. Furthermore, the lease agreement between Owner and County was entered into prior to the construction contract, thus satisfying Section 1720.2(c)(1). In addition, the work was done according to specifications and criteria set forth

¹ All statutory references are to the Labor Code, unless otherwise specified.

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in County's RFP so the second condition, contained in 1720.2(c)(2), is also met.

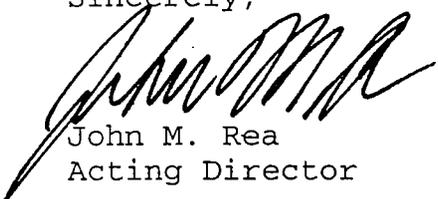
You urge that the additional improvements to the larger parcel are public work for which prevailing wages must be paid under Section 1720.2 on the basis that they would not have occurred without the signing of the lease.

Applying 1720.2 to the second construction contract between Owner and County, the condition in 1720.2(a) is met because the construction contract for the additional improvements is between private persons. The first condition in 1720(b) is met because the property subject to the second construction contract is privately owned. However, none of the parking lot spaces, the six concrete pads or the realigned Park Marina Drive (the cross street at 300 Locust) is leased to County so the second condition of 1720(b) is not met.² Finally, neither condition of 1720.2(c) is met because there was never a lease between Owner and County, and County did not provide plans, specifications or criteria for the additional improvement work.³

In summary, while the tenant improvement work related to County's lease is public work requiring the payment of prevailing wages, the construction of the additional improvements, not leased to County and performed under a separate construction contract, is not.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director

² Under its lease, County is entitled to parking on the parcel but parking lots are not considered in analyzing the threshold requirements of section 1720.2. PW 91-037, 2424 Arden Way (April 20, 1992). In addition, as noted in 2424 Arden Way, 1720.2 has been specifically applied to buildings, not parking lots or raw land. Finally, while County has the exclusive use of 160 parking spaces, these spaces are not separately leased to County; County merely maintains a license coupled with an interest. PW 91-037, 2424 Arden Way (April 20, 1992).

³ It should be noted that plans for the work contemplated by the second construction contract were approved by the City of Redding in 1999, before the request for proposals by County was issued and before the lease was signed.