

DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Tel: (415) 703-5050 Fax: (415) 703-5059/8

MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603



July 1, 2004

Stephen C. Tedesco, Esq.
Littler Mendelson
650 California Street, 20th Floor
San Francisco, CA 91408

Re: Public Works Case No. 2003-054
Mare Island Environmental Remediation Project
Western Early Transfer Parcel
City of Vallejo

Dear Mr. Tedesco:

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 Mare Island Environmental Remediation Project on the Western Early Transfer Parcel ("Project") is a public work subject to the payment of prevailing wages.

In September 2001, the City of Vallejo ("City"), a chartered city, and the U.S. Navy entered into an Environmental Service Cooperative Agreement Covering Mare Island Naval Shipyard ("Cooperative Agreement") as part of Navy's disposal of the Western Early Transfer Parcel ("Parcel") within City. The Cooperative Agreement contemplates the eventual transfer of the Parcel from Navy to the State Lands Commission, a state agency. Under the Cooperative Agreement, Navy will pay City up to \$5,961,000 for City to undertake the environmental remediation of the Parcel necessary to comply with CERCLA¹ and the Federal Facilities Site Remediation Agreement².

Pursuant to the Cooperative Agreement, City agrees to certain "environmental services" with respect to environmental conditions that pose a threat to human health and the environment. As can be ascertained from an examination of the appendices to the Cooperative Agreement, Navy is paying for, and City is agreeing to perform, such activities as soil boring and sampling, surface soil treatment, the removal or remediation of soil that is contaminated

¹ The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9620(h)(3)(C).

² This refers to an agreement among Navy, the California EPA, the Department of Toxic Substances Control and the San Francisco Region of the Regional Water Quality Control Board, dated September 29, 1992.

with hazardous substances, waste clearance, and disposal of contaminated material. Among the hazards to be encountered and dealt with are underground storage tanks, lead-based paint, asbestos, polychlorinated biphenyls, unexploded ordnance, and military munitions.

Also in September 2001, City and Roy F. Weston, Inc. ("Contractor") entered into the Mare Island Remediation Agreement ("MIRA") under which Contractor agreed to carry out City's environmental services obligations as required in the Cooperative Agreement. Also under MIRA, City is the sole grantee of funds received from Navy and City agrees to disburse payments to Contractor from a trust account as fiscal agent of City to hold City's deposit of funds from Navy.

Under what is now Labor Code section 1720(a)(1), public work is construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part with public funds. Here the remediation work constitutes alteration and demolition of the land and facilities, and is done under numerous contracts, including the MIRA and the Cooperative Agreement. *Priest v. Housing Authority of the City of Oxnard* (1969) 275 Cal.App.2d 751, 80 Cal.Rptr. 145.

The work is also being paid for with public funds. The term "public funds" is defined in the regulations to include federal monies.³ Another regulation provides: "The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort."⁴ The present case involves a federally funded project carried out by City as the awarding body. As such, the Project is a public work. Further, the MIRA indicates that City is the sole grantee of the funds. As such, the funds would be City funds. Whether considered federal or City, the funds are still public funds.

In the coverage determination request, you ask whether the Project is a municipal affair such that City's chartered city status exempts this otherwise public work from prevailing wage obligations. The prevailing wage law, a general law, does not apply to the public works projects of a chartered city so long as the projects in question are within the realm of municipal affairs.⁵ In general, the term is defined as a matter that affects the local citizens rather than the people of the state

³ Cal. Code Regs. tit. 8, § 16000.

⁴ Cal. Code Regs. tit. 8, § 16001(b).

⁵ *City of Pasadena v. Charleville* (1934) 215 Cal. 384, 10 P.2d 745; *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346, 175 Cal.Rptr. 647.

generally, whereas a matter of statewide concern extends beyond the local interests at stake.⁶

In *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115, 39 P.2d 412, the California Supreme Court set forth the following factors for determining whether a project was exclusively a municipal affair subject to the chartered city exemption: (1) the extent of non-municipal control over the project; (2) the source and control of funds used for the project; and (3) the nature and geographic scope of the project. Application of these factors to the present case is appropriate.

1. The Extent of Non-Municipal Control Over the Project.

Although the remediation work is being carried out pursuant to a contract let and entered into by City, much of the Cooperative Agreement, including the obligation to provide "environmental services", is incorporated by reference into the MIRA, which is an agreement between City and Navy. When completed, the remediation work must meet the environmental standards of federal and state law, including CERCLA and the Federal Facilities Site Remediation Agreement.

2. The Source and Control of Funds Used for the Project.

While City carries out the Project, federal monies are the sole source of funding for the Project. Such a non-municipal source takes the Project outside of a municipal affair.

3. The Nature and Geographic Scope of the Project.

Although the Parcel is within the city limits of City, the Project is being completed on federal land that will be deeded over to a State agency when the work is completed. The remediation work will also have a positive effect on the water quality of adjacent bodies of water that lay beyond the municipal boundaries of City, such as the Carquinez Straight and San Pablo Bay.

In view of these facts, the Project is not within the realm of a municipal affair, but involves a matter of statewide concern within the domain and regulations of the general laws of the state.⁷ Accordingly, the Project is subject to prevailing wage requirements.

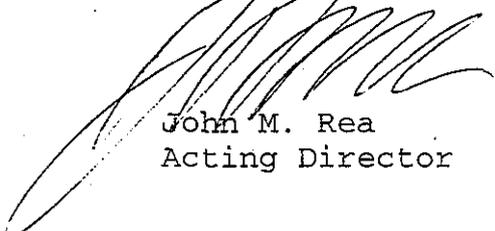
⁶ 66 Ops.Cal.Atty.Gen. 266, 271-72.

⁷ In *City of Long Beach v. Dept. of Industrial Relations* (Case No. B159333, review granted), the California Court of Appeal held that the prevailing wage law addressed matters of statewide concern. The consequence of that decision is that chartered cities can never assert their constitutional exemption from

Letter to Stephen C. Tedesco
Re: Public Works Case No. 2003-054
Page 4

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director

the payment of prevailing wages in purely administrative affairs. The California Supreme Court has, however, granted review of the decision (Case No. S118450), and its ruling will only be enforced prospectively on other projects.