

DEPARTMENT OF INDUSTRIAL RELATIONS  
OFFICE OF THE DIRECTOR  
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October 12, 2004

Alex Avila  
Carpenters/Contractors Compliance Committee  
533 South Fremont Street, Suite 510  
Los Angeles, CA 90071

Re: Public Works Case No. 2004-008  
Bakersfield Affordable Senior Apartment Complex  
City of Bakersfield

Dear Mr. Avila:

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 Bakersfield Affordable Senior Apartment Complex is a public work subject to the payment of California prevailing wages.

The City of Bakersfield ("City") signed an Agreement ("Agreement") dated February 20, 2002, with Bakersfield Senior Housing Center, Inc. ("BSC") to build a senior housing complex for low-income residents ("Project"). The Agreement provided that City and BSC would prepare the site for the housing complex so the site could be deeded to a single non-profit entity that would obtain federal funding to build the housing complex.

At the time of the Agreement, BSC owned land it received from City 20 years previously on which it provided services for senior citizens. BSC asked the City for assistance to build an apartment complex for some of the senior citizens, including assistance obtaining additional, contiguous property. City purchased the necessary property to combine with the property it had previously deeded to BSC. City contracted directly with construction firms to demolish the existing structures and to move existing utilities on the additional property. Federal prevailing wages under the Davis-Bacon Act were paid. Once the residents were relocated from the newly purchased property, the buildings were demolished and the utilities were relocated. City paid for this work with two grants of \$495,000 and \$437,000 from its HOME Investment Partnership funds ("HOME funds").

Letter to Alex Avila  
Re: Public Works Case No. 2004-008  
Page 2

City then deeded the vacant property to BSC at no cost. BSC obtained permission to change the parcel map so that the site became a single property. BSC deeded the property to a non-profit organization, Retirement Home Foundation ("RHF"), which agreed to construct, own, and operate the housing complex.

BSC, RHF and City applied for a grant from the federal Department of Housing and Urban Development ("HUD") under Section 202 Supportive Housing for Elderly Program ("202 grant") to be paid to RHF as the sole owner and operator of the housing complex. RHF received the 202 grant from HUD in the amount of \$7 million, paid directly from HUD to RHF. City is exercising no oversight of the construction of the Project. All construction-related activity is being paid at the federal Davis-Bacon Act prevailing wage rate.

Labor Code section 1720(a)(1) defines "public works" 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 this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

Section 1720(b) provides that "paid for in whole or in part out of public funds" includes the payment of money or the equivalent of money by the state or political subdivision directly to the public works contractor, subcontractor or developer, and the transfer by the state or political subdivision of an asset of value for less than fair market price.

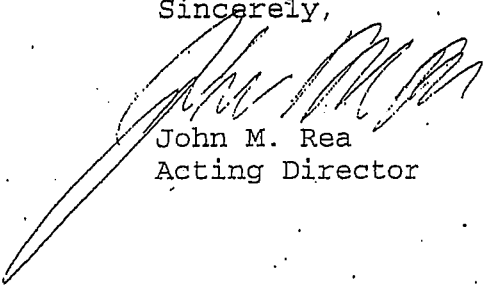
The Project is demolition and construction done under contracts between City and construction contractors and between RHF and construction contractors. The Project is also paid in whole with public funds. City's use of its HOME funds for demolition and construction on the additional property was, under Section 1720(b), the payment of money by a political subdivision directly to a public works contractor. In addition, the transfer of City-acquired property for no cost constitutes, under Section 1720(b), a transfer for less than fair market price. Therefore, the Project is a public work for which California's prevailing wages must be paid.<sup>1</sup>

<sup>1</sup> Federal prevailing wages under the federal Davis-Bacon Act were paid for both the site preparation and the construction of the housing complex. Here, however, City has also transferred City real property for less than fair market price. In addition, the HOME funds, originally federal in nature, were granted to the state, then City, which entities granted the funds for the Project. Under Title 8, California Code of Regulations, section 16001(b), the application of state prevailing wage rates is required whenever federally

Letter to Alex Avila  
Re: Public Works Case No. 2004-008  
Page 3

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director

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funded or assisted projects are controlled or carried out by California  
awarding bodies. As such, California prevailing wages are required.