

DEPARTMENT OF INDUSTRIAL RELATIONS  
OFFICE OF THE DIRECTOR  
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June 1, 2005

Esteban Lizardo, Esq.  
1641 N. Mar Vista Avenue  
Pasadena, CA 91104

Re: Public Works Case No. 2002-096  
Request For Proposals: Planting, Operation, Maintenance and  
Monitoring of Owens Lake Southern Zones Managed Vegetation  
Project  
Los Angeles Department of Water and Power

Dear Mr. Lizardo:

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). Your inquiry concerns Agreement Number 47104-2 ("Agreement") entered into in response to the Request For Proposals referenced above. Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the work under this Agreement involving operation of the drainage and irrigation systems and the cultivation, harvesting and delivery of the salt grass plugs is not a public works. The work under the Agreement involving repair and maintenance of the drainage and irrigation systems, the transplantation of the salt grass plugs at the lakebed, including soil reclamation, and the monitoring of the managed vegetation site, is public work subject to prevailing wage requirements.

Owens Lake is a 110 square-mile dry, pre-historic lakebed located in Owens Valley. In 1913, the City of Los Angeles ("City"), by diverting water from the Owens River for use by City, converted the Lake to a dry lakebed covered by an alkali salt crust. For years, dust blowing from the lakebed has been a major contributor to violations of the federal particulate standard for dust in Owens Valley.

In 1998, City's Department of Water and Power ("LADWP") and the federal Great Basin Unified Air Pollution Control District entered into a Memorandum of Agreement ("MOA") to reduce the particulate pollution across 22.5 square miles of the lakebed. LADWP is implementing the MOA in phases. The first two phases - Design, Construction and Operation of the 2001 Shallow Flooding Project (northern zone) described in Bid Documents Number 9544 and Construction of the 2002 Owens Lake Managed Vegetation Dust

Mitigation Project (southeastern zone) described in Bid Documents Number 9682 - have been completed and the parties agree that the work involved in these two phases is subject to California's prevailing wage law.

The second phase referenced above resulted in a comprehensive irrigation and drainage system that converted the playa soils of the dry lakebed in the southeastern zone to a suitable and sustainable substrate for native plants, including salt grass, referred to herein as the "managed vegetation site."<sup>1</sup> The actual planting work performed at the managed vegetation site was the subject of a Request For Proposals ("RFP"), called Owens Lake Southern Zones Planting, Operation, Maintenance, and Monitoring, dated November 5, 2001. The contract, referenced as Agreement Number 47104-2 and dated March 5, 2002, was awarded by LADWP to Barnard Construction Company, Inc. ("BCCI"), the general contractor for the second phase, doing business as Owens Lake Farm Management Team ("OLFMT"), a consortium of farming contractors, including Greenheart Farms ("Greenheart").

The contract between LADWP and BCCI calls for the cultivation of salt grass plugs at off-site nurseries from LADWP supplied seeds and the transplantation of the harvested salt grass plugs into the managed vegetation site. The contract also requires BCCI to operate, repair, maintain and monitor the managed vegetation site over two growing seasons.<sup>2</sup> The public works coverage decision made herein concerns the work involved this contract. LADWP concedes that the contract calls for performance of public works with the exception of the "agricultural components to the work" described in Task Order 1.00, cultivation of salt grass plugs from seed and delivery of the harvested plants to the lakebed for planting, and Task Order 2.00, the transplantation of the plants at the lakebed including soil tillage, compaction and conditioning and then planting and growing.

To supply the plants, OLFMT contracted with G and C Equipment Corporation ("G&C"), a minority-owned business enterprise. G&C in turn contracted with Greenheart to grow the salt grass plugs at its established nursery, and deliver them to the managed vegetation site. Greenheart also subcontracted directly with OLFMT for the transplanting of the salt grass plugs at the site. In turn, Greenheart subcontracted with Rancho Harvest to do the

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<sup>1</sup> A second undertaking involving shallow flooding in the southeastern zone, Construction of Owens Lake Dust Mitigation Project - Phase II South, described in Bid Documents Number 9767, is not at issue in this coverage request.

<sup>2</sup> BCCI advises the Department that its work under this contract includes the maintenance and operation of the shallow flooding in the northern zones.

actual transplanting, while Greenheart provided three of its employees to supervise Rancho Harvest's work. Greenheart subcontracted with Antonini Trucking, a trucking firm, to deliver the harvested plants to the managed vegetation site.

Prevailing wages are to be paid to workers employed on public works. Labor Code section 1771.<sup>3</sup> Public works is defined in pertinent part as: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds ... 'construction' includes work performed during the design and pre-construction phases of construction including, ... inspection and land surveying work." (Section 1720(a)(1).)

Section 1771 requires that prevailing wages be paid for public works contracts let for maintenance work. Maintenance is defined in California Code of Regulations, title 8, section 16000 as:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, touchup painting and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

(3) Landscape maintenance. See Public Contract Code Section 21002.

There is no dispute that the work described above was and is being performed under contract and is paid for with public funds. The question is whether the type of work involved in the Agreement

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<sup>3</sup> Unless otherwise indicated, all statutory section references are to the Labor Code.

qualifies as repair, alteration, inspection or maintenance under the above-cited Labor Code sections and regulation.

The repair of the irrigation and drainage systems is a public work because section 1720(a)(1) includes repair work as public work. The monitoring of the managed vegetation site, including the inspection of the drainage and irrigation systems, as well as the testing of the soils and the water used to irrigate are also covered work under section 1720(a)(1) because this work qualifies as inspection. (See PW 2001-068, *Field Technician Observation and Testing/Los Angeles County Sanitation Districts Sewer Line Project* (July 19, 2002).) The transplanted of the salt grass plugs and the soil reclamation work involves the preparation of the planting area, including shaping, tillage, scalping and compaction, as well as the digging of the soil in the planting of the salt grass plugs. This work involves alteration of the land and is therefore a public work under section 1720(a)(1). Finally, the maintenance of the drainage and irrigation systems and other public facilities at the managed vegetation site is a public work because this work falls within the definition of maintenance. It is routine, recurring work for the preservation and protection of a publicly owned facility for its intended purposes. (Cal. Code Regs., tit. 8, § 16000.)

The operation of the drainage and irrigation systems is not a public works because operation is not one of the enumerated types work identified in section 1720(a)(1). (See PW 94-027, *Groundwater Remediation Facilities/Burbank Operable Unit* (November 17, 1994) and 83 Ops.Cal.Atty.Gen. 166 (2000).)

The cultivation, harvesting and delivery of the salt grass plugs is not a public work because this work is being done by Greenheart, a material supplier. Material suppliers are not contractors to a public works project if they are in the business of selling such materials to the general public and the business is not established specifically to furnish materials for the project. (*O.G. Sansone v. Department of Transportation* (1976) 55 Cal.App. 3d 434.). Greenheart is an established nursery that sells to the general public and was not established specifically to furnish plants to the Project. The salt grass plugs were delivered in flats and the truck drivers were not involved in the planting operation. Therefore, the cultivation, growing and delivery of the salt grass plugs do not constitute a public works.

As mentioned above, LADWP argues that the planting of the salt grass plugs is not public work because it constitutes farming or agricultural work as defined in section 1140.4. This section is

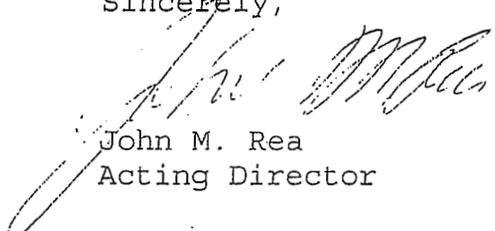
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part of the Agricultural Labor Relations Act ("ALRA"), which gives agricultural workers collective bargaining rights. The ALRA is irrelevant to the inquiry whether a type of work is public work because the statute does not address public works or prevailing wage requirements. Section 1720(a)(1), as set out above, solely defines what is public work. As noted above, the planting of the salt grass plugs requires alteration of the soil and therefore falls within the plain meaning and definition of a public works.

Finally, you ask for wage determinations. Please direct your inquiry to the Division of Labor Statistics and Research (415.703.4780), which is charged with the responsibility of making wage determinations for the various classifications.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director