

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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February 24, 2005

Stephen C. Tedesco, Esq.  
Littler Mendelson  
650 California Street, 20<sup>th</sup> Floor  
San Francisco, CA 94108-2693

Re: Public Works Case No. 2004-014  
URS Signet Testing Laboratories, Inc.  
Santa Clara Valley Transportation Authority Highways Projects

Dear Mr. Tedesco:

This constitutes the determination of the Director of Industrial Relations, made pursuant to Title 8, California Code of Regulations, section 16001(a), concerning the applicability of the California public works laws to certain work on the above-referenced project. Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that at the time URS Signet Testing Laboratories, Inc. ("Signet") performed inspection, sampling and testing work for the Santa Clara County Transit District ("District") Measure A/B Program highway projects, such work was considered not public work subject to the payment of prevailing wages.

On March 3, 1999, District issued a request for proposal ("RFP") for construction management services to assist its staff in managing the design and construction of several highway improvement projects known as the Measure A/B Program. Thereafter, District entered into an agreement entitled "Agreement between Santa Clara Valley Transit District and Santa Clara Valley Highway Associates for Measure A/B Highway Program Controls and Construction Management Services ("Agreement")" with Santa Clara Valley Highway Associates ("Contractor"), a joint venture of Hatch Mott MacDonald, Inc. and HNTB Corporation. The overall scope of services under the Agreement includes program management, project controls, project reporting, value engineering, cost estimating, quality assurance, design oversight, construction management, document control, and contract assistance. The funds for the contract were raised by Measure B of the County of Santa Clara, a countywide half-cent sales tax increase approved by the voters for a period of nine years from April 1, 1997 to March 30, 2006.

In November, 2000, Contractor, subcontracted with Signet for the construction material inspection, sampling and testing services for two of the highway projects, the San Tomas Expressway Widening at Sunnyoaks, and the Route 17 at Hamilton Avenue Off-Ramp Improvement.

What is now Labor Code Section<sup>1</sup> 1720(a)(1) defines public work as construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds. The work performed by Signet was done under contract and paid for entirely with public funds. The question is whether the work is construction.

The applicable statutory and administrative law to be followed is that in effect on the date of an RFP on projects where the public entity awards the contract.<sup>2</sup> Here, the RFP issued in March, 1999. As such, a determination whether the inspection, sampling and testing here is construction requires a review of the statutory and administrative law in effect at that time. In March 1999, neither the prevailing wage laws nor the administrative determinations included inspection, sampling and testing within the definition of public work.<sup>3</sup> The Director's public works coverage determinations at that time held that inspection and testing work did not constitute construction.<sup>4</sup>

For these reasons, the inspection, sampling and testing work performed by Signet employees was not considered to be public work at the time of the RFP for the Project, and prevailing wages are not required for this work.

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<sup>1</sup> All statutory references are to the Labor Code, unless otherwise indicated.

<sup>2</sup> See Department's December 29, 2000, *Important Notice* concerning prospective enforcement of Senate Bill 1999.

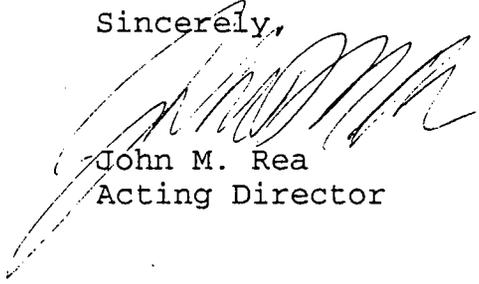
<sup>3</sup> Effective January 1, 2001, Senate Bill 1999 amended Section 1720(a) to include pre-construction activities, including inspection and land surveying, within the definition of construction. Beginning in approximately November, 1999, after the adoption of the precedential public works coverage determination procedure under Government Code Section 11425.60, Department precedential determinations found inspection and testing work to be covered under both what is now Section 1720(a)(1) and Section 1772. See e.g., PW 99-014, *Family Services Building Geotechnical Work/County of San Diego* (November 5, 1999); PW 99-070, *Olivenhain Dam Project Soil Drilling and Testing/San Diego Water Authority* (February 23, 2000); and PW 99-046, *Northridge Earthquake Recovery Project/California State University* (June 9, 2000).

<sup>4</sup> E.g., *Kenko, Inc.*, (August 15, 1989); PW 91-023, *Chemistry and Biological Sciences Building*, (July 12, 1991); PW 95-019, *McCourtney Road Landfill Remediation Project* (February 1, 1996).

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director