

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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January 6, 2005

Paul V. Simpson, Esq.  
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Re: Public Works Case No. 2004-033  
Stacey & Wilbeck, Inc.  
Metropolitan Transit Development Board

Dear Mr. Simpson:

This is in response to your August 3, 2004, correspondence inquiring about the prevailing wage liabilities of your client, Stacey & Wilbeck, Inc. ("SWI"), the general contractor on the above-referenced light rail system in the City of Mission Viejo.

You have advised that SWI has entered into a rental agreement with EDDCO, a supplier of portable toilets and trash dumpsters. EDDCO delivers and services the portable toilets and trash dumpsters at regular intervals. The portable toilets are pumped periodically, and the trash dumpsters are hauled to an off-site location on a weekly basis.

You have also advised that SWI purchases ballast material from Bud's Trucking, a third party supplier and a hauling company, which is obligated to deliver the ballast materials to the jobsite. Bud's trucking purchases the ballast materials from another third party material supplier, Hanson Aggregates, whose operation is an ongoing business that provides materials to various public and private projects in the geographic area.

Finally, you have informed us that SWI also contracts with ANCON Marine to off-load materials from rail cars at the Port of San Diego. ANCON Marine's drivers then transport the materials via trucks over approximately 15 miles of public road to the jobsite where SWI employees off-load the materials from Ancon Marine's trucks to its stockpiles.

To answer most of your questions it is necessary to define the obligation to pay prevailing wages for transportation of materials to and from public works sites. Generally, on-haul delivery of materials by subcontractors or their employees is covered work while on-haul of material by material suppliers or their employees is not. *O.G. Sansone Company v. Dept. of Transportation* (1976) 55

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Cal.App.3d 434, 127 Cal.Rptr. 799; PW Case No. 99-037, *Alameda Corridor Project/A&A Ready Mix Concrete and Robertson's Ready Mix Concrete* (April 10, 2000).

Turning to your questions, you have asked whether the delivery of the portable toilets and trash dumpsters to the jobsite by EDDCO employees is subject to prevailing wage requirements. From the information you have provided, it would appear that these deliveries are not public work because they are made by a bona fide material supplier, which is not subject to the requirement to pay prevailing wages.

The off-haul of the trash dumpsters to an off-site location by EDDCO employees, however, is subject to prevailing wage requirements under Section 1720.3, which states: "For the limited purpose of Article 2 (commencing with Section 1770), "public works" also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." Here, EDDCO hauls the dumpsters containing refuse to an outside disposal location with respect to a contract involving the City of Mission Viejo, a subdivision of the state.

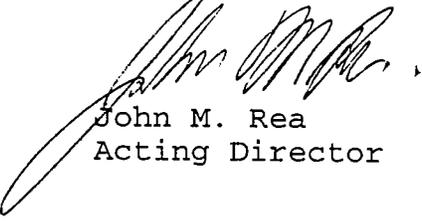
Further, the delivery to the jobsite of ballast materials by Bud's Trucking employees and materials by ANCON Marine employees from the Port of San Diego are subject to prevailing wage requirements because, under *Sansone*, it is work performed by subcontractors to SWI in the execution of a contract for public work. In the context of a subcontract, it is irrelevant that SWI employees off-load the materials from ANCON trucks to the jobsite. Similarly, the return trip by ANCON Marine's drivers to pick up another load for transportation to the jobsite is also covered work because it is work performed in the execution of the public works contract.

Finally, you have asked whether the servicing of the portable toilets is subject to prevailing wage requirements. Under Labor Code section 1720(a)(1) and 1771, public work is defined as construction, alteration, demolition, installation, repair and maintenance done under contract and paid for with public funds. It appears that the work is done under contract and paid for with public funds. The pumping of toilets, however, does not fall within any of the enumerated types of work, including maintenance, which is defined in relevant part in Title 8, California Code of Regulations, section 16000, as "[R]outine, recurring and usual work for the preservation, protection and keeping of any publicly

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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. The servicing of the toilets is not maintenance because the toilets are not publicly owned facilities.

Sincerely,



John M. Rea  
Acting Director