

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

455 Golden Gate Avenue, Tenth Floor

San Francisco, CA 94102

(415) 703-5050



August 29, 2005

Dodie Costales, CFO
Island Environmental Services, Inc.
3359 W. Pomona Blvd.
Pomona, CA 91668

Re: Public Works Case No. 2004-040
Liquid Waste Disposal Services for the Los Angeles
County Metropolitan Transportation Authority

Dear Ms. Costales:

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 removal and off-hauling of waste material from MTA facilities is a public work subject to the payment of prevailing wages.

Facts

The Los Angeles County Metropolitan Transportation Authority ("MTA") entered into an agreement with Island Environmental Services, Inc. ("Contractor") for the removal and hauling of waste material from numerous MTA locations throughout the county to designated treatment, storage, and disposal facilities ("TSDFs"). Under the agreement, the Contractor removes, off-hauls and disposes of hazardous and non-hazardous liquid, silt, sediment, and other waste matter created as a result of the servicing and cleaning of MTA buses, trains, elevators and escalators by MTA employees. The waste matter collects in various fixtures and containers, most of which are located underground. Examples of those fixtures and containers are clarifiers, sump pits, trenches, water/oil separators, waste fuel tanks, elevator and escalator pits, and storage tanks. The waste collected by the Contractor includes oil and grease, volatile organic compounds, recoverable petroleum hydrocarbons, and various metals such as arsenic, copper, lead, mercury, and selenium. Much of the waste material is ultimately discarded into the sewer system after treatment; recoverable petroleum hydrocarbons comprise a small proportion of the waste that can be reused.

Based on historical usage data, MTA provides the Contractor with an advance schedule that typically provides for removal of the waste materials on a five to seven week basis at a given location. If the liquid waste materials were not removed, the materials would back up into MTA staff work areas and impede MTA's service operations.

Under the agreement, the Contractor travels to MTA locations with a 5,000 gallon vacuum truck. At the MTA facility, the Contractor pumps the waste matter from the fixtures and containers into the Contractor's truck, cleans out the various containers, and in some instances, refills them with water. Typically, the Contractor is on-site at MTA facilities for 4-5 hours during a day's run. Thereafter, and as a requirement of the agreement, the Contractor hauls the waste material to designated TSDFs in either Compton or Vernon, California. At the TSDFs, the Contractor's truck is weighed and TSDF employees sample the truck contents and transfer the waste to an above-ground storage tank. The TSDF charges the Contractor based on the amount of time spent there.

Discussion

Under what is now Labor Code section 1720(a)(1)¹, public works is defined as "construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds ... including ... inspection and land surveying work." Under section 1720.3, public works also includes "the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving...any political subdivision of the state."

Further, under section 1771, contracts let for maintenance are subject to the payment of prevailing wages. "Maintenance" is defined, in relevant part, in title 8, California Code of Regulations, section 16000, to include:

(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.

¹All statutory references are to the Labor Code, unless otherwise indicated.

To "preserve" something means to "keep [it] from harm, damage, etc.; protect; save" or "to keep up; carry on; maintain." To "protect" means "to shield from injury, danger or loss; guard; defend." To "keep" means "to maintain in good order or condition." (Webster's New World Dict. (3d college ed., 1988).) Also, under section 1772 workers employed in the execution of any contract for public work are deemed to be employed upon public work.

The work in question is being done under a contract between MTA and the Contractor. MTA is a political subdivision of the state that receives its funds from various tax revenues.² As such, the Contractor's work is paid from public funds. We examine whether the work performed falls within the types of work enumerated in sections 1720(a)(1), 1720.3, 1771, or 1772.

The Contractor's work in removing liquid waste and off-hauling the waste does not constitute construction, alteration, demolition, installation or repair work under section 1720(a)(1). But, in PW 2001-005, *Trash/Debris Removal from Railroad Rights of Way and Facilities, Blue and Green Lines/Los Angeles County Metropolitan Transportation Authority* (August 8, 2001), this Department found that removal of refuse and debris from MTA facilities was a public works. The refuse in that case included paper, dead vegetation, auto parts, shopping carts, bicycles, and furniture. The Department found coverage under section 1771 because the work was the routine and continual removal of trash/debris to keep the light rail system safe and usable. The hauling of debris in that case was also a public work under section 1720.3 because it constituted the hauling of refuse from a public works site.

Here, the Contractor's work is "routine, recurring and usual" in that on a daily basis the Contractor must visit MTA sites according to a regular schedule set by MTA according to historical usage data. These visits are made to perform the work of removing from ground facilities and off-hauling the liquid waste material that is generated by the servicing and cleaning of buses, trains, elevators and escalators. Without the removal of the liquid waste

² MTA was created in 1992 as a successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission. See, Pub. Util. Code § 130050.2. MTA is governed by a board of 14 public members, including five members of the Los Angeles County Board of Supervisors and the Mayor of the City of Los Angeles. Pub. Util. Code § 130051. MTA's funds are generated from state, local, and federal sources. The majority of funds come from county-wide sales tax, but MTA also receives a share of state and federal gasoline tax.

material, some of which consists of hazardous substances, the liquid waste would back up into service pits where MTA employees work, impeding service operations and creating a potentially unsafe condition. In that event MTA's facilities would not be preserved, protected or kept for their intended purposes in a safe and continually usable condition. Therefore, the contract work of removing the waste material is maintenance work under section 1771 requiring the payment of prevailing wages.

Off-hauling from a public works site does not generally require the payment of prevailing wages, except under certain circumstances. One such circumstance is where the contract specifies that the hauling be accomplished in a specific manner or to a specific location. PW 2001-005, *Williams Street Widening Project/Off-Hauling of Road Grindings, City of San Leandro* (January 6, 2005). Here, the agreement specifically requires a licensed hauler using a 5,000 gallon vacuum truck to transport the liquid waste material to specified TSDFs where the material is disposed. The agreement requires documentation of the disposal transaction by way of manifests and certificates of delivery within time constraints set forth by federal and State regulations governing the transportation and disposal of hazardous waste. The waste material is considered refuse for purposes of section 1720.3 even if a small proportion of it may eventually be treated and reused, since it is disposed of at the TSDFs. Also, much of the material is ultimately discarded into the sewer system after the treatment required by law. Hazardous waste is considered refuse even though it requires special handling under federal and state laws. See, *Precedential Public Works Decision on Administrative Appeal, PW 99-059, Route 30 Asbestos Pipe Removal Project/California Department of Transportation* (March 20, 2000). Therefore, the off-hauling work of the Contractor constitutes the hauling of refuse from a public works site to an outside disposal location under section 1720.3.

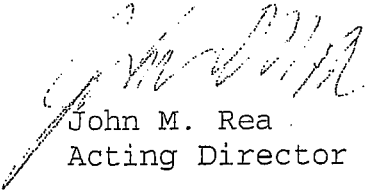
Also, because the agreement requires the Contractor to transport the waste material from MTA maintenance sites to the TSDFs, the off-hauling work is done in the execution of a contract for public works under section 1772. Therefore, the individuals performing the off-hauling are deemed to be employed upon public work and are entitled to the payment of prevailing wages for that work.

Accordingly, the Contractor's work in the removal and off-hauling of waste material from MTA facilities is a public work for which prevailing wages are required to be paid.

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director