

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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September 10, 2007

Robert Weir, President
Metro Video Systems, Inc.
1220 East Imperial Avenue
El Segundo, CA 90245-2698Re: Public Works Case No. 2006-019
Video Network Surveillance System Upkeep
City of Los Angeles, Department of Airports

Dear Mr. Weir:

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 California Code of Regulations, title 8, 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 upkeep of the video network surveillance system ("VNET system") performed on-site at the Los Angeles International Airport ("LAX") under the service agreement described below is a public work subject to prevailing wage requirements.

Facts

On September 18, 2006, the City of Los Angeles ("City") entered into a service agreement with Metro Video Systems, Inc. ("Contractor") for performance of the work required in keeping the VNET system at LAX fully operational. Under this agreement, Contractor is to provide four categories of services: (1) base maintenance, not to exceed \$419,976; (2) LAX staff training, not to exceed \$60,300; (3) moves, additions, changes and minor upgrades required by an airport security and construction project, not to exceed \$100,000; and (4) contingency, not to exceed \$84,000. Contractor's request for a coverage determination is limited to the base maintenance portion of the contract.¹

The VNET system is owned by LAX and consists of approximately 640 high-definition closed-circuit television cameras ("CCTV cameras") that continuously record airport activities, and several hundred electronic devices designed for transmitting, viewing and preserving information recorded by the CCTV cameras, such as real-time video-cassette-recorders ("VCRs"), time-lapse VCRs, digital video recorders; color monitors, switchers, matrix controllers, multiplexers and fiber-optic transmitters. The data recorded on CCTV cameras is transmitted to the LAX Telecommunications Center and is provided to the Airport Police via a computer-aided dispatch system. The VNET system also includes emergency ring down phones, intercoms and alarms.

¹ Contractor has advised this Department that it has not performed any work within the third and fourth categories of services described above and has acknowledged that such work would be public work subject to the payment of prevailing wages. The second category, LAX staff training, does not fall under any definition of public work.

Many of the individual component devices that make up the VNET system are directly attached to the LAX facility by means of screws and bolts.² Some VNET system devices are mounted to metal cabinets by screws and bolts, and the cabinets are in turn mounted to the floor and the walls by screws and bolts.³ Other VNET system devices are placed in cabinets or housings in the walls and ceiling without screws or bolts.⁴ A few devices are freestanding.⁵

Under the service agreement, Contractor is required to be available 24 hours a day, seven days a week, including holidays. During regular business hours, two certified technicians employed by Contractor⁶ are stationed on-site at LAX and receive their work orders directly from the IT Operations Manager at LAX. After hours, including weekends and holidays, the technicians are required to respond to service calls at LAX within the hour.

The scope of work performed under the base maintenance portion of the service agreement can be broken down into two main categories: unscheduled service for broken or malfunctioning equipment⁷ and scheduled service. Regarding unscheduled service, Contractor's on-site technician analyzes the problem by taking measurements of the signals on an oscilloscope; removes the broken equipment; replaces it with a spare unit from Contractor's inventory; takes the broken unit to Contractor's shop where it is either repaired or shipped to the manufacturer for repair;⁸ and returns the repaired unit to the VNET system. The technicians perform some limited repairs on-site at LAX such as replacing batteries, broken power wires, broken cable connectors and broken fiber optic unit fuses and strands; and splicing cables.

Regarding scheduled service, Contractor is required to do the following for each piece of equipment within the VNET system: check, adjust or replace rusted or loose terminations and connectors; measure and record signal inputs and outputs; check performance based on

² Examples include fixed and conventional pan/tilt zoom CCTV cameras bolted or screwed to rectangular box-shaped housing units mounted on an arm, which is bolted to a pole mount adapter strapped to a pole; emergency phones bolted to light poles; and intercoms bolted to poles and walkways.

³ Examples include switchers, matrix controllers and video monitors.

⁴ Examples include VCRs and distribution amplifiers that slide onto a shelf in the cabinet and fully integrated pan/tilt cameras housed inside "dome systems." A dome system consists of a "Back Box" (similar to an electrical socket), a "Dome Drive" and a "Lower Dome," which is a glassy dome-shaped outer cover. The Back Box is mounted onto the ceiling or wall; the Dome Drive fits into the Back Box by manipulating two plastic tabs; and the Lower Dome is secured to the ceiling or wall with two screws.

⁵ Examples include desktop computers consisting of a monitor, keyboard and microprocessor tower.

⁶ The technicians are certified as system integrators by Pelco and Loronix, two of the manufacturers of the electronic devices that make up the VNET system.

⁷ Examples include VCRs that eat videotapes; monitors that scramble video images; multiplexers that are unable to track video; and CCTV cameras that are unable to pan left or right.

⁸ If a broken unit is not covered by the manufacturer's limited warranty, Contractor may repair the unit at Contractor's off-site shop or pay the manufacturer to repair it. Also, Contractor may decide to replace a broken unit with a new one instead of repairing it.

manufacturer's specifications; check and clean fiber connections; clean and adjust camera lenses and housings; clean and adjust VCR videotape recorder heads; and systematically replace CCTV cameras, VCRs and monitors.

Discussion

Labor Code section 1771⁹ generally requires the payment of prevailing wages to workers employed on "public works." Section 1771 is applicable to "contracts let for maintenance work." California Code of Regulations, title 8, section 16000 defines "maintenance," in relevant part, 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.

The issue presented is whether the upkeep of the VNET system as provided for under the base maintenance portion of the service agreement between City and Contractor constitutes "maintenance work" within the meaning of section 1771 and its implementing regulation. The second definition quoted above includes repairs, cleaning and other operations on equipment permanently attached to the buildings or realty as fixtures. Therefore, the threshold issue is whether the VNET system is permanently attached to the LAX buildings or realty as a fixture.

The fixture issue has arisen in "installation" cases under section 1720(a)(1). In determining whether an item is affixed to the realty and therefore deemed installed, the Department consistently has looked to the manner of attachment, i.e., whether the item was mounted, secured or bolted to the realty.¹⁰ Here, many individual components of the VNET system, such as the fixed and conventional pan/tilt cameras, emergency phones and intercoms, are mounted to the buildings or realty (ceilings, walls, walkways and poles) by bolts and screws; some devices, such as the switchers and matrix controllers, are mounted to metal cabinets, which in turn are mounted to the floor and walls by bolts and screws; other devices, such as the fully integrated pan/tilt CCTV cameras, are not mounted by bolts or screws; and still others, such as desktop computer components, are freestanding.

⁹ All statutory references are to the California Labor Code, unless otherwise indicated.

¹⁰ Consistent with this approach, see PW 2005-041, *Pre-rinse Spray Valve Program (Phase II), California Urban Water Conservation Council* (May 11, 2006) (the work involved in screwing on an energy and water efficient pre-rinse spray valve to an existing water faucet by means of a threaded connection found not to be installation); and PW 2005-012, *Sewer and Storm Lift Station Upgrade Project, City of Visalia/Goshen Community Service Project* (August 6, 2006) (the bolting of control panels to lift stations found to be installation).

Because of the massive scale of the VNET system and the varying degrees and methods of attachment of the individual devices to the buildings or realty, solely examining the manner of attachment of the individual component devices is insufficient to conclude whether the VNET system is a fixture. The Acting Director noted in the installation cases referred to above that the installation analysis was consistent with Civil Code section 660, which defines "fixture" as that which is "permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws;" When an item is not physically affixed to the realty in a manner described in Civil Code section 660, it nonetheless may be deemed a fixture under a "constructive annexation" analysis. In addition to the manner of attachment, the constructive annexation analysis includes consideration of two additional factors, which are the item's adaptability to the use and the purpose of the realty and the intention of the party in making the annexation permanent. See, e.g., *San Diego T. & S. Bank v. San Diego County* (1940) 16 Cal.2d 142, 149; *Simms v. County of Los Angeles* (1950) 35 Cal.2d 303, 309.

Applying these legal principles, the individual VNET devices have been adapted into a complex surveillance system designed to meet the unique security needs of LAX, one of the busiest international airports in the nation. Such an airport requires a high level of protection with minimal impact to the efficient flow of people and goods. Thus, the adaptability factor is met. The realities of terrorism make high-tech security systems a fact of contemporary life. As such, there can be no question that it is LAX's intention to annex the VNET system to the airport facility permanently. Such intent is supported by the fact that LAX owns the VNET system, and LAX has been wired to support it. Thus, the permanency factor is met.

In sum, based on the specific facts of this case, it is concluded that the VNET system equipment is permanently attached to LAX buildings or realty as a fixture.¹¹ The threshold requirement is therefore satisfied.

Turning to the other elements in the maintenance definition, the base maintenance portion of the service agreement is craft work designed to preserve LAX, a publicly owned and operated facility, in a safe, efficient and continuously usable condition for which it is intended because LAX would not be able to function without a fully operational security system. The scheduled and unscheduled service encompasses repairs, cleaning and other operations on equipment or machinery. As explained above, the VNET system equipment as a whole is a fixture. As such, the on-site work performed by Contractor's technicians at LAX meets the definition of maintenance.¹²

¹¹ This conclusion is consistent with cases analyzing other types of systems comprised of electronic equipment, albeit in the context of property tax assessment. For example, cable television and burglar alarm systems located in the subscriber's home were found to be fixtures of the subscriber's realty. *Tele-Vue Systems, Inc. v. Contra Costa County* (1972) 25 Cal.App.3d 340; *Morse Signal Devices of California, Inc. v. County of Los Angeles* (1984) 161 Cal.App.3d 570. In both cases, the courts noted that the foundational wiring and related equipment were affixed to the subscriber's home by means of clamps, screws, bolts and other means of attachment. *Morse Signal* reached a different tax conclusion but otherwise was consistent with *Tele-Vue Systems* in regards to the fixture analysis.

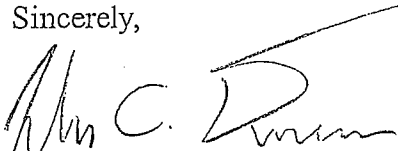
¹² The maintenance regulation refers to maintenance of a publicly owned or operated facility including equipment or machinery attached as a fixture. This definition does not appear to include work performed off-site. Therefore, coverage under this determination is limited to work performed on-site at LAX. Off-site repairs performed at Contractor's shop or by the manufacturer are therefore not covered.

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For the foregoing reasons, the upkeep of the VNET system performed on-site at LAX under the base maintenance portion of the service agreement is a public work subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Duncan". The signature is stylized and written in cursive.

John C. Duncan
Director