STATE OF CALIFORNIA Edmund G. Brown, Jr., *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050

March 10, 2011

Melissa Jones, Executive Director
California Energy Commission
1516 Ninth Street
Sacramento CA, 95814-5512

Re: Public Works Case No. 2011-004
American Recovery and Reinvestment Act Funded Contract for
Installation of Residential Energy Efficient Retrofits on Single-Family Homes
California Energy Commission

Dear Ms. Jones:

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 rehabilitation of single-family homes (the "Project") funded by the federal American Recovery and Reinvestment Act through the California Energy Commission ("CEC") under the specific facts of this case are not subject to the prevailing wage requirements of the California Labor Code.

Facts

CEC has awarded funds for the installation of residential energy efficient retrofits to the CHF Homebuyers Fund ("CHF")[1] to establish and implement the Moderate Income Sustainable Technology ("MIST") Program (the "Program"). The Program will provide grants to homeowners for whole-house energy audits and quality control verifications. The Program will also administer a revolving loan fund to finance the implementation of comprehensive energy efficient retrofits on single-family homes. The Program will also issue grants to partially offset of the cost of the retrofit work.

The Program is funded by the American Recovery and Reinvestment Act of 2009 ("ARRA") under a grant agreement with the United States Department of Energy ("DOE") for CEC's State Energy Program ("SEP"). In order to comply with the specific liquidation date provided in CEC's grant agreement with DOE, all funds allocated under the CHF contract must be expended by March 31, 2012. Any funds not expended by this date may revert back to the DOE.

[1] CHF is a Joint Powers Authority established in 1993 by the Regional Council of Rural Counties. It serves both rural and urban counties and has 31 member counties and 16 associate member cities and counties. CHF was formerly known as the California Rural Home Mortgage Finance Authority.

The CEC awarded $16,500,000.00 to CHF to establish and implement the Program. The Program will create a sustainable, self-replenishing source of loan financing to fund comprehensive energy efficient retrofits for rural low-to-moderate income California homeowners. More specifically, the Program will provide grants to homeowners for Home Energy Rating System ("HERS") whole-house energy audits and quality control verifications, and administer a revolving loan program that will finance comprehensive energy efficient retrofits through 3 percent interest, 15-year loans coupled with a grant to partially offset the retrofit costs. The grants to homeowners will be used to offset both the cost of the pre-loan energy audits used to identify the needed energy efficient retrofits and the cost of the post-installation energy audits used to verify that the energy efficiency measures were implemented correctly. Homeowners will also receive a grant of up to the lesser of $1,250 or 15 percent of the Project's total costs to reduce the final loan amount necessary to perform the work. The Program will serve CHF's 31 member counties and 16 associate member cities and counties.

Under the Program, the loans to homeowners will be used to implement energy efficient retrofit measures, including, but not limited to, the following: the correction of thermal barrier defects, duct leakage, insulation defects, combustion safety hazards, air conditioner and furnace installation defects; the installation of attic, wall, and floor insulation; completion of building envelope and duct sealing; the replacement of air conditioners, furnaces, and/or water heaters with more energy efficient models; the installation of cool roofs, radiant barriers, energy efficient windows, low water usage toilets and showerheads, and photovoltaic systems.

To help ensure quality control, CHF will develop a list of HERS raters and contractors for homeowners to choose from. Homeowners may choose any HERS rater or contractor identified on the approved list and then contract with the chosen contractor to perform the energy audit and/or install the energy efficient retrofit measures. As part of the installation contract, the homeowner will apply for financing under the Program. Once the energy efficient retrofit measures are installed and verified, CHF will release the grant and loan proceeds into an escrow account established on behalf of the homeowner, pursuant to separate escrow instructions provided by the homeowner.

Discussion

Labor Code section 1771[2] generally requires the payment of prevailing wages to workers employed on public works. Section 1720, subdivision (a)(1)[3] defines public works to include: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds … ." Subdivision (b)(1) defines "paid for in whole or in part out of public funds" to mean "[t]he payment of money or the equivalent of money by the state or political subdivision." Subdivision (b)(4) also defines "paid for in whole or in part out of public funds" to mean "loans … that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision." California Code of Regulations, title 8, section

[2] All further statutory references are to the California Labor Code unless otherwise indicated.

[3] All further subdivision references are to section 1720.

16001(b) provides: "The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort."

Subdivision (c)(6)(C), however, provides an exemption from prevailing wages for projects meeting the following criteria:

> (c) Notwithstanding subdivision (b):
>
> . . .
>
> (6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:
>
> . . .
>
> (C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

The Project meets the elements of a public work under the above statutory provisions. The Project entails construction, alteration, demolition, installation or repair work that is to be performed under contract and paid for with public funds. CHF is providing the homeowners with below market-interest rate loans and grants. These below-market interest rate loans are "charged at less than fair market value" within the meaning of subdivision (b)(4) defining "paid for in whole or in part out of public funds." The grant funds are the "[t]he payment of money or the equivalent of money by the state or political subdivision." The source of funding is a federal grant. Under the regulation cited above governing federally funded or assisted projects, California's prevailing wage law applies because the Project is controlled or carried out by the CHF, a California awarding body.

The question is whether under the specific statutory exemption in subdivision (c)(6)(C), the CHF is providing assistance "to a household as either mortgage assistance, down payment assistance, or for the rehabilitation of a single-family home." The below-market rate loan and grant will be provided to allow individual homeowners to rehabilitate their homes by making them more energy-efficient and affordable. The work involved in these energy efficient retrofit programs qualifies as rehabilitation because it is intended to make a single family home more energy efficient and sustainable. Section 203(k) of the National Housing Act and the accompanying regulations found at Title 24, Code of Federal Regulations, Part 203, specifically describe the work to be performed under the terms of this program to be rehabilitation of a single family home including rehabilitation of existing structures to improve the thermal efficiency of the homes and installation of photovoltaic systems. Accordingly, the below-market interest rate loans and accompanying grants qualify as "[a]ssistance . . . for the rehabilitation of a single-family home" within the plain meaning of the statutory exemption.

For the foregoing reasons, based on the specific facts of this case, the individual homeowner energy efficient retrofit projects are exempt from California's prevailing wage requirements under the statutory exemption set forth in subdivision (c)(6)(C).

I hope this determination satisfactorily answers your inquiry.

Sincerely,

John C. Duncan

John C. Duncan
Director