

DEPARTMENT OF INDUSTRIAL RELATIONS
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Desmond Lee, Esq.
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Re: Public Works Case No. 2011-023
LAX Delta Air Lines Terminal 5 Checked Baggage Inspection System (CBIS)
City of Los Angeles

Dear Mr. Lee:

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 section 16001(a) of title 8 of the California Code of Regulations. Based on my review of the facts presented in this case and an analysis of the applicable law, it is my determination that the construction of a Checked Baggage Inspection System (CBIS) for Delta Air Lines, Inc. (Delta) at Los Angeles International Airport (LAX) is a public work subject to California's prevailing wage requirements.

Facts

In response to mandates issued through the Aviation and Security Act of 2001 (Public Law 107-71), Los Angeles World Airports (LAWA)¹ implemented the Security Program In-Line Baggage Screening System projects at LAX and LA/Ontario International (ONT) Airports. To support U.S. commercial airports undertaking these projects, the federal Transportation Security Administration (TSA) established an Airport Letter of Intent program to provide partial financial reimbursement of costs related to implementing an in-line baggage handling system electronic explosive detection screening for checked baggage.

According to LAWA, the scope of work at LAX Terminal 5 (Terminal 5) is the modification and construction of a CBIS. The work includes the design and construction of baggage conveyor components, facility demolition, mechanical, plumbing, electrical, structural, building modifications, telecommunications infrastructure, a baggage screening matrix able to support the installation of Explosive Detection System (EDS) machines, checked baggage resolution areas, a local on-screen resolution room, an EDS network equipment room and the design of hardware and software for use with an in-line baggage screening application (Project).

¹ Los Angeles World Airports is the City of Los Angeles department that owns and operates a system of three airports: LAX, LA/Ontario International and Van Nuys.

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In September 2003, the Board of Airport Commissioners (BOAC) for LAWA authorized a Memorandum of Agreement (MOA) between LAWA and the TSA for reimbursement of up to 75% of the costs for the design, management, and construction of the in-line baggage system facilities at both LAX and ONT (Board Resolution No. 22031). LAWA agreed to fund the remaining 25% of the costs necessary to complete the work and seek reimbursement from the TSA in accordance with the MOA.

To provide additional funding for the Project, in September 2008, the BOAC authorized the execution of a new Other Transaction Agreement (OTA) with the TSA to provide and administer an additional \$25,000,000 in federal funding. The OTA permits the TSA to reimburse LAWA for 75% of allowable costs for design, supervision, and construction of the Project. The OTA requires LAWA to enter into a separate agreement to delegate Delta as the Project Manager responsible for management and performance of the project. According to LAWA, Delta, as Project Manager, is responsible for day-to-day oversight, approval of change orders, and direct supervision over construction contracts for the Project. Delta entered into a contract with Siemens Industry, Inc. on November 2, 2009, for construction of the Project.

On December 7, 2009, the BOAC approved a Reimbursement Agreement between LAWA and Delta to provide pass through of TSA funds from LAWA to Delta for approved costs to design and build the Project. LAWA has received and reimbursed Delta \$25,000,000 in TSA funding related to the Project.

Under the Lease Agreement between LAWA and Delta, LAWA acknowledged that Delta completed the following tasks associated with the Project: designed and constructed the inline baggage screening sortation system; replaced the outbound baggage system; renovated the Federal Inspection Services facilities and the security screening checkpoint facilities; and filled the existing rotunda area under Delta's Sky Club, which resulted in the creation of approximately 800 square feet of additional space in Terminal 5. The total cost for design and construction is \$79,922,317. Because \$25,000,000 of TSA funding has been received by Delta for work related to the Project, and LAX and Delta invested \$2,087,197 in Delta related proprietary items, LAWA will purchase the completed project from Delta for \$52,835,120. Construction of the project began in November 2009. According to Delta, the Project was deemed substantially complete on November 16, 2010.

Discussion

Labor Code section 1771² requires, with certain exceptions, prevailing wages be paid to all workers employed on public work. Section 1720, subdivision (a)(1) generally defines "public works" to mean: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" Section 1720, subdivision (b)(1) defines the phrase "paid for in whole or in part out of public funds" to include "the payment of money or the equivalent of money by the state or political subdivision" Section 1721 defines "political subdivision" as "any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts."

² All section references are to the Labor Code, unless otherwise provided.

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Further, section 16000 of title 8 of the California Code of Regulations provides that "public funds" includes "state, local and/or federal monies" and section 16001(b) provides as follows:

Federally Funded or Assisted Projects. 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.

Section 1722 defines "awarding body" as "department, board, authority, officer or agent awarding a contract for public work." Section 1722's promulgating regulation further defines "awarding body" as follows: "Any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding/letting a contract/purchase order for public works." (Cal. Code Regs., tit. 8, § 16000.)

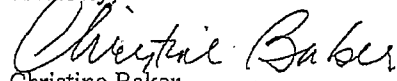
Here, the Project meets the definition of a public work set forth in section 1720, subdivision (a)(1). It is undisputed that the Project involves construction performed under contract. Also, the Project is paid for in whole or in part out of public funds within the meaning of section 1720, subdivision (b) in the form of both local and federal funds. Further, by virtue of TSA's 75% contribution of all funding awarded to LAWA, the Project is appropriately characterized as a federally funded or assisted project under section 16001(b) of title 8 of the California Code of Regulations.

For the following reasons, the Project is "controlled or carried out" by a California awarding body such that California's prevailing wage requirements would apply under section 16001(b) of title 8 of the California Code of Regulations. LAWA is an "awarding body" as defined by section 1722 and section 16000 of title 8 of the California Code of Regulations. The terms "controlled" and "carried out" are not defined by statute or regulation; however, the familiar meaning of these terms is found in dictionary definitions. "Control" is defined as the "power or authority to guide or manage" and "carry out" is defined as "to put into execution; to bring to a successful issue; to continue to an end or stopping point." (Webster's 3d. New Internat. Dict. (2002) pp. 344, 496.)

Here, documentation on the Project provided by LAWA including the MOA, OTA and the Agreement, make clear that LAWA maintains ultimate oversight and approval authority for virtually every aspect of the Project and will pay for and own the Project upon its completion. The key components of the Project, as documented, including design, construction, operation and ultimate ownership support the conclusion that the Project is carried out or controlled by LAWA within the meaning of section 16001(b) of title 8 of the California Code of Regulations. Accordingly, the Project is a public work subject to California's prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,


Christine Baker
Director