

DEPARTMENT OF INDUSTRIAL RELATIONS

Christine Baker, Director

Office of the Director

1515 Clay Street, 17th Floor

Oakland, CA 94612

Tel: (510) 286-7087 Fax: (510) 622-3265



August 1, 2016

Brian A. Pierik

City Attorney

City of Camarillo

2310 East Ponderosa Drive, Suite 25

Camarillo, CA 93010-4747

Re: Public Works Case No. 2015-028
St. John's Pleasant Valley Hospital
City of Camarillo

Dear Mr. Pierik:

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 Labor Code section 1773.5¹ and 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 construction of a new addition at the St. John's Pleasant Valley Hospital (Project) is not public works and is therefore not subject to prevailing wage requirements.

Facts

On November 4, 2015, the City of Camarillo (City), Dignity Health, dba St. John's Pleasant Valley Hospital (St. John's), and St. John's Healthcare Foundation² (Foundation) entered into a Grant Agreement (Agreement). The Agreement provides funding for cardiac catheterization laboratory equipment (cath lab equipment) to be installed at the Project, a proposed \$77 million addition to St. John's. The City agreed to fund the purchase of the cath lab equipment, a component of the larger proposed Project, through the provision of a grant to the Foundation not to exceed \$500,000 (Grant).

The City requested a coverage determination on December 22, 2015 (Request for Determination), contending that the amount of the Grant in relation to the overall budgeted cost of the Project is de minimis for purposes of determining whether the Project is public works and subject to the prevailing wage provisions of the Labor Code. The City characterizes the overall estimated budget for the Project at \$77 million (Request for Determination; p. 2; Exhibit 2.), and the cost of the cath lab equipment alone is estimated to be over \$2 million. (*Id.*) The Project, when completed, will add 70,932 square feet to St. John's and is expected to increase the hospital capacity by 50 beds. (*Id.*)

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

² The Foundation raises and distributes funds on behalf of St. John's. (Agreement, p. 1.)

Discussion

Section 1771 generally requires the payment of prevailing wages to workers employed on public works. Section 1720, subdivision (a)(1) defines “public works” as “[c]onstruction, alteration, demolition, installation, or repair work done under contract, and paid for in whole or in part out of public funds” (§ 1720, subd. (a)(1).)

It is undisputed that the Project involves construction that is done under contract and paid for in part out of public funds. The sole question is whether the Project falls within the de minimis exception to the generally applicable provisions of section 1720 et seq.

If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(§ 1720, subd. (c)(3).) The threshold question, whether the Project is an otherwise private development project, is easily answered in the affirmative. According to the information provided with the Request for Determination, St. John’s and the Foundation are private entities, and with the exception of the City, no other entities are funding the Project. The Project is receiving no public subsidy, other than the Grant, and no public entity is participating in its development or retaining a proprietary interest in the overall development. Hence, the Project constitutes an otherwise private development project within the meaning of section 1720, subdivision (c)(3).

The sole focus of the City’s Request for Determination is to seek clarification as to whether its \$500,000 grant constitutes a de minimis subsidy to the Project. The term “de minimis” has been left undefined by the Labor Code, however, a general legal definition of the term provides that it describes a thing as being “. . . so insignificant that a court may overlook it in deciding an issue or case.” (Black’s Law Dict. (10th ed. 2014) p. 524.)

The public subsidy to the Project, as identified in the Request for Determination, consists solely of the Grant from the City to the Foundation in the amount of \$500,000. Given that the estimated cost of the entire Project is \$77 million, the amount of the Grant represents 0.65 percent of the overall projected budgeted cost of the Project. This public subsidy to the Project is proportionally small enough in relation to the overall cost of the Project that it is insignificant, and when measured relative to the estimated total cost of the Project, the availability of the Grant does not significantly affect the economic viability of the Project.³ As such, under section 1720,

³ This conclusion is consistent with prior determinations of the Department of Industrial Relations: PW 2008-010, *Sewer Line Construction, City of Corona* (August 4, 2008) [.4 percent]; PW 2008-038, *Solar Photovoltaic Distributed Generation Facility, Santa Cruz School District* (April 10, 2010) [.99 percent]; PW 2008-037, *The Commons at Elk Grove, City of Elk Grove* (January 2, 2009) [1.1 percent]; PW 2007-012, *Sand City Design Center, Sand City Redevelopment Agency* (May 15, 2008) [1.4 percent]; and PW 2004-024, *New Mitsubishi Auto Dealership, Victorville Redevelopment Agency* (March 18, 2005) [1.64 percent].

Determination Letter to Mr. Pierik
Re: Public Works Case No. 2015-028
Page 3

subdivision (c)(3), the public subsidy, in this instance, is de minimis within the context of the overall cost of the Project.

Conclusion

For the foregoing reasons, the Grant to the Foundation does not convert this otherwise private development project into a public work within the meaning of section 1720, and the Project is therefore not subject to prevailing wage requirements.

I hope this letter satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Christine Baker".

Christine Baker
Director