

DEPARTMENT OF INDUSTRIAL RELATIONS

Christine Baker, Director

Office of the Director

1515 Clay Street, 17th Floor

Oakland, CA 94612

Tel: (510) 622-3959 Fax: (510) 622-3265



January 31, 2017

Linda Silacci-Smith
Senior Department Analyst
County of El Dorado
360 Fair Lane
Placerville, CA 95667

RE: Public Works Case No. 2016-015
Snow Removal and Snow Staking Services
County of El Dorado

Dear Ms. Silacci-Smith:

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 snow removal work for the County of El Dorado (County) is a public work subject to the prevailing wage requirements of the California Labor Code.

Facts

The County currently has a contract with Mapes Enterprises to perform snow removal and snow staking work. The work is performed at various County-owned parking lots, handicap spaces, driveways, sidewalks and walkways in order to maintain access to the police station, jail, court, library, vector control, sheriff station and animal services. The snow removal will be done by all-wheel loaders, sand trucks, plow trucks, or walk behind blowers. The snow stakes will be installed and maintained for the purpose of delineating and identifying the areas of the parking lots, driveways, sidewalks and walkways from which snow will be removed.

The scope of services requires the contractor to furnish personnel, equipment, materials, supplies and services necessary to assist the Facilities Division of the Chief Administrative Office by providing snow removal and snow staking services for various County facilities. Billing rates for snow removal and snow staking services are based on an hourly rate. For the months of November through April, the County pays the contractor a minimum of \$3,000 per month as a stand-by fee.

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

Discussion

Labor Code section 1771 generally requires the payment of prevailing wages to workers employed on public works and also specifically requires prevailing wages for “maintenance” work. Regulations to implement California’s prevailing wage laws define “maintenance,” in relevant part, as: “[r]outine, 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.” (Cal. Code Regs., tit. 8, § 16000.) “Janitorial or custodial services of a routine, recurring or usual nature” are excluded from the definition of “maintenance.” (*Ibid.*)

A. The Work at Issue Constitutes Maintenance Because it is Routine, Recurring and Usual Work Done for the Preservation, Protection and Keeping of Publicly Owned and Operated Facilities.

The County’s contract requires snow to be removed any time snow levels reach or exceed two (2) inches and describes the order and time the snow must be removed by. For that reason, the work in question is routine, recurring and usual, albeit seasonal, in nature. The parking lots, handicap spaces, driveways, sidewalks and walkways are publicly owned or operated. The public uses these public passageways to access County facilities. Snow, if left to accumulate, cuts off access to these passageways, and public use of County facilities such as the police station, the courthouse, and the library is in turn impeded. Removing snow allows the public to safely drive, walk, and otherwise use the public passageways for their intended purposes. Snow removal² is therefore necessary to keep publicly-owned or operated facilities in a “safe and continuously usable condition” for which they have been designed. Unless an exception applies, the snow removal is public work because it constitutes “maintenance.”

B. The Work at Issue is Not Janitorial or Custodial in Nature.

As an attachment to its request, the County provided Public Works Case No. 95-020, *County of Nevada - Contract for Snow Removal Services* (November 7, 1995) (hereinafter “*County of Nevada*”) which states that snow removal is not public works, based on the exception for custodial services. *County of Nevada* reasoned that the snow removal contractor is a caretaker or keeper of the designated roads and therefore is a “custodian” of the roads. Because the snow removal contractor, as a “custodian,” performed “custodial services of a routine, recurring or usual nature,” *County of Nevada* determined that snow removal fell within the custodial exemption and therefore did not constitute “public works” within the meaning of the Labor Code.

“Custodial” is indeed defined as “relating to, providing, or being protective care or services for basic needs” while a “custodian” is defined as “one that guards and protects or maintains; esp: one entrusted with guarding and keeping property or records or with custody or guardianship of prisoners or inmates.” (Merriam-Webster’s Collegiate Dict. (11th ed. 2003) p. 308.) The scope of services in the County’s contract, however, describes work that goes beyond protective care or services for basic needs. The snow removal contractor here is not protecting or guarding the

² As a key component of snow removal, snow stakes identify the areas from which snow is to be removed to help prevent damage to snow removal equipment.

Determination Letter to Linda Silacci-Smith

Re: Public Works Case No. 2016-015

Page 3

parking lots; it is using all-wheel loaders, sand trucks, plow trucks, and walk behind blowers to remove snow from publicly-owned parking lots by a specific time in order to facilitate safe access to County buildings. The heavy machinery and manual labor involved in snow removal cannot be described as merely “protective care” or “custodial,” because the contractor is performing work without which the publicly-operated parking lots and passageways could not safely function.

To the extent custodial services are distinct from janitorial services, the snow removal work also does not constitute janitorial services. A janitor is defined as “one who keeps the premises of a building (as an apartment or office) clean, tends to the heating system, and makes minor repairs.” (Merriam-Webster’s Collegiate Dict. (11th ed. 2003) p. 669.) The snow removal does not take place in a building, nor will the snow removal contractor be keeping the premises of a building clean. Instead, the contractor will be clearing snow from the public passageways to allow public access. Accordingly, because none of the relevant exceptions apply, the snow removal work constitutes “maintenance” for purposes of the prevailing wage law.

Conclusion

For the foregoing reasons, the snow removal work for the County of El Dorado is a public work subject to the prevailing wage requirements of the California Labor Code.

I hope this letter satisfactorily answers your inquiry.

Sincerely,



Christine Baker
Director