STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

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Re: Public Works Case No. 2024-003
Homeowner-Occupied Accessibility Improvement Reimbursement Program
City of Laguna Woods

Dear Mr. Macon and Ms. Patterson:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced reimbursement program under California's prevailing wage laws and is made pursuant to California Labor Code section 1773.5[1] and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that work performed under the Homeowner-Occupied Accessibility Improvement Reimbursement Program presented by the City of Laguna Woods is public work subject to prevailing wage requirements insofar as it applies to multi-family housing. However, an exception applies when rehabilitation work is performed on single-family homes.

Facts

The City of Laguna Woods (hereafter City) proposes to use Permanent Local Housing Allocation (PLHA)/Low Income Senior Accessibility Modification funds from the California Department of Housing and Community Development (HCD) to implement a "Homeowner-Occupied Accessibility Improvement Reimbursement Program" (hereafter

[1] Unless otherwise indicated, all further statutory references are to the California Labor Code and all subdivision references are to the subdivisions of section 1720.

the Program)[2] to promote housing accessibility for certain lower-income senior households (as defined). The Program is described as follows:

A. Program Eligibility Requirements.

- **Age and income:** To be eligible, households must have at least one senior (*i.e.*, a person at least 55 years old) occupant, and income must be at or below sixty percent (60%) of the Area Median Income ("AMI"), adjusted for household size.[3] For improvements made within "cooperative residential units," the term "homeowner" would mean the person or persons named on the Certificate of Membership.

- **Housing types:** Single- and multi-family housing located in Laguna Woods would be eligible, including condominium and cooperative residential units. According to City, many City homes are condominium and cooperative units, and "most residential units are located in multi-unit residential buildings" and considered condos, even when fully detached. An estimated eight households would be eligible under Program.

- **Eligible improvements:** "Accessibility improvements" eligible for Program reimbursement would include (but not be limited to) installation of ramps, grab bars, electric wheelchair lifts, toilets, and windows that are compliant with the Americans with Disabilities Act (ADA);[4] widening of doorways; and/or other accessibility improvements subject to determination of eligibility for PLHA funds by County of Orange (hereafter "County") staff.

- **Reimbursement maximum:** Each eligible household (based on the foregoing) would be limited to one reimbursement agreement in any 12-month period, and no reimbursement agreement would provide for reimbursement exceeding $4,999.00[5] (subject to PHLA funds availability).

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[2] The Program is also referred to in City response documents as "Accessibility Improvement Reimbursement Program between County of Orange and City of Laguna Woods."

[3] Responses from City and County appeared to differ on occupancy vs. ownership requirements, *i.e.*, City has stated that whether the senior *rents* or *owns* the home does not matter; whereas County stated that the Program requires *owner* occupancy. For ease of reference, the term "homeowner" is used herein.

[4] The ADA does not apply to private residences, but the Department interprets this to mean accessibility improvements that could accommodate persons with disabilities.

[5] Some response documents stated maximum reimbursement would be $5,000.

B. Reimbursement Arrangement Under the Program.

Once eligibility is determined, the homeowner enters into a "reimbursement agreement" with City, and then contracts independently with contractors to complete the accessibility improvements in a manner compliant with applicable law (including California Building Standards Code). Homeowners are solely responsible for the selection, contracting, direction, and payment of contractors; and City expects that some homeowners would choose to serve as "owner-builders" to complete the accessibility improvements, subject to Business and Professions Code section 7044 *et seq.* Once the improvements are completed, City inspects the work, and then issues refunds directly to the homeowners. City is not a party to any of the work agreements between the contractors and the homeowners.

C. Program Funding from PLHA.

City proposes to use Permanent Local Housing Allocation (PLHA) funds from HCD. According to HCD, PLHA provides funding to local governments for housing-related projects and programs to help address unmet housing needs of local communities. (See Health & Saf. Code, § 50470, subd. (b)(2)(D)(vii) [PLHA funds may be used by local governments for "[a]ccessibility modifications."])

City obtained the PLHA funds via application through the designated Urban County (*i.e.*, County of Orange) to implement the Program. The proposals are reflected in Contract No. 21-23-0006-PLHA between City and County, approved by the Laguna Woods City Council on November 17, 2021. County administers the PLHA funds and reimburses City for the selected PLHA activity.[6]

Discussion

All workers employed on public works projects must be paid at least the applicable prevailing wage rates. (§ 1771.) The standard and most common definition of "public works" is construction, 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) (hereafter section 1720(a)(1).) "There are three basic elements to a 'public work' under section 1720(a)(1): (1) 'construction, alteration, demolition, installation, or repair work'; (2) that is done under contract; and (3) is paid for in whole or in part out of public funds." (*Busker v. Wabtec Corp.* (2021) 11 Cal.5th 1147, 1157 *(Busker*).)

Also relevant to these analyses is that section 1720(a)(1)'s phrase "paid for in whole or in part out of public funds" includes "[t]he payment of money or the equivalent of money by the *state or political subdivision* directly to or *on behalf of* the public works contractor, subcontractor, or developer." (§ 1720, subd. (b)(1), italics added.) "Political subdivision" includes any *county, city*, district, *public housing authority*, or *public agency of the state*, and assessment or improvement districts. (§ 1721, italics added.)

[6] No other funding sources were anticipated, but City stated in response documents that if demand for Program exceeded available PLHA funds, or if PLHA funding plans change, then City's General Fund could be used to fund Program.

A. The Accessibility Improvements Are Public Work Under 1720(a)(1).

The Program involves (1) construction, alteration, demolition, *and/or* repair work, because it proposes to reimburse various home accessibility improvement projects that resemble "construction" and/or require at least one of the foregoing. Next, the work is (2) "done under contract" within the meaning of section 1720(a)(1), because senior homeowners would enter into contracts with contractors (not to mention into reimbursement agreements with City). City does not dispute these two elements.

Nor does City appear to dispute the third element, that Program funding is "paid for in whole or in part out of public funds." The funding source is PHLA funding from HCD. Moreover, City, County, and HCD, which provides PLHA funding, all appear to fall within the definition of either "state" or "political subdivision." (§§ 1720, subd. (b)(1); 1721.)

Although City's responses, including an opinion letter from its contract City Attorney, emphasized that City would not be a *direct* party to any contractor agreements, nor would City reimburse contractors directly, City does not appear to contest that the three elements of a public work under section 1720(a)(1) have been met. Rather, City pointed to three possible exceptions to prevailing wage requirements. The issue here is whether any exception applies.

B. 1771 Is Inapplicable Because the Program Costs More Than $1,000.

Along with raising section 1720, subdivision (c) exceptions, addressed below, City asserted that *if* accessibility improvements cost less than $1,000, then the Program would not need to require prevailing wages because section 1771 excludes "public works projects of one-thousand dollars ($1,000) or less." (§ 1771.)

The Department, however, notes that this assertion is at odds with the proposal to reimburse up to $4,900 (or $5,000) per household per 12-month period. Further, and practically speaking, City does not explain how it would *retroactively* distinguish between projects exceeding the $1,000 threshold or not (*i.e.*, requiring versus not-requiring prevailing wages) while administering a *post-facto* reimbursement program. Lastly, it seems fair to assume that most, if not all, of the qualifying improvements under the Program (*e.g.*, installation of ramps and wheelchair lifts) would likely exceed $1,000.

C. 1720(c)(1) Is Inapplicable Because of the Program's Funding Source.

Section 1720, subdivision (c)(1) (hereafter section 1720(c)(1)), provides exception to prevailing wage requirements applicable to public works:

> (c) Notwithstanding subdivision (b), all of the following apply:
>
> (1) *Private residential projects built on private property* are not subject to this chapter *unless the projects are built pursuant to an agreement with a state agency, a redevelopment agency, a successor agency to a redevelopment agency when acting in that capacity, or a local public housing authority*.

(§ 1720, subd. (c)(1), italics added.)

City argues the Program qualifies for this exception because the improvements are not "pursuant to an agreement" [with any entities listed in section 1720(c)(1)], because City is not party to the contractor agreements, nor would City issue reimbursements directly to contractors.[7] In support, City cites three coverage determinations: PW 2013-024 *South Gate Senior Villas, City of South Gate* (Nov. 13, 2013), reversed by the Los Angeles Superior Court on February 24, 2016, in *South Gate Senior Villas, L.P. v. Christine Baker, et al*, BS152917 (*South Gate*); PW 2016-033, *Mayfield Place Housing Project – City of Palo Alto* (Oct. 18, 2017) (*Mayfield*); and PW 2021-009, *350 Ocean Street Project – City of Santa Cruz* (Apr. 4, 2024) (*Ocean Street*).

City's reliance on *Ocean Street* is misplaced. A footnote in that determination *declined* to discuss the section 1720(c)(1) exception because a requesting party argued it was inapplicable amid a grant agreement with HCD, a state agency. (*Ocean Street*, PW 2021-009, pp. 4; 10, n. 8.). City's reliance on *South Gate* and *Mayfield* is also misplaced, as these determinations addressed the interplay between subdivisions (b) and (c)(1). (See generally *South Gate*, BS152917; *Mayfield*, PW 2016-033.) This interplay is not at issue here, because City does not dispute that Program's funding comes from a public source, *i.e.*, PLHA by way of HCD, and satisfies subdivision (b). Nor does City dispute that HCD is a state agency, *i.e.*, an entity type listed in section 1720(c)(1) that would *disqualify* the Program from this exception.[8]

Mayfield's hypothetical application of (c)(1) is nevertheless instructive on City's assertion regarding direct contracting. That is, *Mayfield* likens the phrase "pursuant to an agreement with" to *funding source*, by clarifying that "*if the public funding comes from* 'a state agency, redevelopment agency, or local public housing authority,'" then the project is generally subject to prevailing wage requirements, "as *funding from one of those public entities* takes the project out of the ambit of subdivision (c)(1)'s exemption." (*Mayfield* at p.5, italics added.) Here, the Program uses PLHA funding from HCD, thus the funding "comes from" or is "from" a state agency. City's proposal to attenuate the funding by rendering homeowners a go-between (between City and worker) does not change the fact that Program funding ultimately comes from a state agency. Allowing section 1720(c)(1)'s exception for reimbursement, rebate, or more convoluted payment arrangements could incentivize the sorts of "gamesmanship" that have been discouraged in other contexts. (See, e.g., PW 2024-016 *High-Efficiency Electric Home Rebate Act Program California Energy Commission* (Sept. 23, 2024) (*HEEHRA*)), *citing Cinema*

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[7] Department presumes the accessibility improvements are "private residential projects" and "built on private property," presumptions not addressed herein because City fails to qualify for this exception on other grounds.

[8] City references early drafts of Assembly Bill 199 (2017-2018), which had contemplated the term "a political subdivision" in lieu of "a state agency… etc." But City fails to explain why this is relevant. HCD is a state agency.

West, LLC v. Baker (2017) 13 Cal.App.5th 194, 216; *Hensel Phelps Construction Co. v. San Diego Unified Port Dist.* (2011) 197 Cal.App.4th 1020, 1033, etc.)

D. Homeowner-Occupied Accessibility Improvement Projects at Single Family Homes May Constitute Rehabilitation Under 1720(c)(5)(C).

Section 1720, subdivision (c)(5)(C) (hereafter section 1720(c)(5)(C)), creates another exception to the prevailing wage requirements applicable to public works:

> (c) Notwithstanding subdivision (b), all of the following apply:
>
> . . .
>
> (5) *Unless otherwise required by a public funding program*, the construction or rehabilitation of privately owned residential projects is not subject to 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*.

(§ 1720, subd. (c)(5)(C), italics added.)

In other words, this exception to prevailing wage requirements may apply if the public agencies herein do not require prevailing wage, and if the improvements are considered "rehabilitation" and done on single-family homes.

1. City Represents That Prevailing Wages Are Not "Otherwise Required"

With respect to section 1720(c)(5)(C)'s "Unless otherwise required" qualifier, City responded that it solicited input from HCD and County to confirm that neither HCD nor PLHA imposed prevailing wage requirements for the Program. A section of Contract No. 21-23-0006-PLHA between City and County references prevailing wage law compliance. ("California Labor Code Compliance," p. 37.) However, City interpreted this section to apply only if City is using "its subcontractors" for work completed "for County," and concluded this was not applicable in the Program's context. City identifies instead a previous section that applies, which states, "Subrecipient will comply with Davis-Bacon and/or State Prevailing Wage requirements, *when applicable*" ("Labor Standards," p.37, italics added). City thus represents prevailing wages are not "otherwise required" for the Program.

2. Program Contemplates Both Single- and Multi-Family Housing

City response documents confirm the Program as currently conceived "would be offered to eligible persons living in either single- or multi-family homes." The latter would of course remove the Program from section 1720(c)(5)(C)'s exception; however, prior

coverage determinations discussing this exception have entertained distinctions between single- and multi-family homes. (See, e.g., *Lead Hazard*, PW 2022-008, pp. 4-5. Thus, section 1720(c)(5)(C) is discussed here insofar as the Program would apply to single-family homes only.[9]

3. "Rehabilitation" Has Been Defined Broadly

The sole remaining question is whether the Program's accessibility improvements are "rehabilitation." City opines that prior coverage determinations assessing section 1720(c)(5)(C) have interpreted "rehabilitation" broadly, citing installation of solar photovoltaic systems (PW 2019-012 *Installation of Solar Photovoltaic Systems, Solar Watts Program – Housing Authority of the City of Los Angeles* (Oct. 24, 2019) (*Solar Watts*); energy-efficient retrofits (PW 2011-004 *American Recovery and Reinvestment Act Funded Contract for Installation of Residential Energy Efficient Retrofits on Single-Family Homes – California Energy Commission* (Mar. 10, 2011) (*ARRA-CEC*); and lead hazard remediation (*Lead Hazard, supra*, PW 2022-008).

Again, the recent *HEEHRA* coverage determination assessed whether Energy Star-certified, energy-efficient electric upgrades qualified as "rehabilitation" and concluded they did. (*HEEHRA*, *supra*, PW 2024-016 (Sept. 23, 2024).) It revisited guidance applied in the foregoing coverage determinations, including federal and state authority beyond the realm of prevailing wage laws, and likewise concluded rehabilitation has been defined "broadly." (*Id.* at pp. 6-7.) For example:

- ***ARRA-CEC*** relied on "rehabilitation" definitions in the National Housing Act and accompanying regulations and concluded they described the energy-efficient improvements to be performed under the program, *i.e.*, "the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary) or repair of a structure, or facilities in connection with a structure…" (although the coverage determination did not directly quote this definition). (See National Housing Act, § 203(k)(2)(B), 12 U.S.C. § 1709(k)(2)(B); 24 C.F.R. § 203.50.) (See *ARRA-CEC*, *supra*, PW 2011-004, p. 3; see also *HEEHRA*, PW 2024-016, p. 6.)

- ***Solar Watts*** extended *ARRA-CEC* by further parsing "rehabilitation" under Section 203(k) and concluding it encompassed installation of solar photovoltaic systems, for several reasons. (*Solar Watts*, *supra*, PW 2019-012, pp. 5-6.) *Solar Watts* also looked to California authority, particularly regarding residential rehabilitation schemes, and concluded that central to certain federal and state definitions is that "rehabilitation" is "work done to a *substandard* residence with *obsolete features* to bring it up to *current*

[9] City represents it is unaware of County or HCD requirements or conditions that the Program be available to multi-family homes. Whether excluding multi-family homes from the Program violates other applicable authority (*e.g.*, fair housing) is beyond the scope of this determination.

building or housing standards." (*Id.* at p. 6 italics added; n. 5; see also *HEEHRA*, PW 2024-016, p. 7.)[10]

- ***Lead Hazard Remediation*** is perhaps most analogous to City's Program, involving a Los Angeles Housing Department (LAHD) program to remove lead-based paint hazards from private residences (*e.g.*, scraping, removing components, re-painting), with focus on low-income homes with children under age six. It was funded by a grant from the U.S. Department of Housing and Urban Development (HUD). (*Lead Hazard*, PW 2022-008*,* pp.1-2.) Similar to the Program, contractors certified to perform lead construction would contract directly with property owners, and remediation work would be paid from LAHD funding. (*Id.* at pp.2-3.) After ruling out HUD or other prevailing wage requirements, the Department relied on *Solar Watts* in parsing "rehabilitation" and concluded that renovation and repair to remove hazardous lead-based paint appeared to fall within the definition of rehabilitation in the Marks-Foran Residential Rehabilitation Act of 1973 because its apparent purpose is to make the residences safer to occupy, and because pursuant to the *Solar Watts* standard, "[a] home with lead paint is *substandard*, and it is without question that removal of lead paint is a significant step in bringing the home up to current building or housing standards." (*Id.* at p. 4.)[11]

Arguably, the Program differs from foregoing programs and improvements in that it serves a more *specific* segment of the population, *i.e.*, lower-income seniors, and what may be "substandard" for a "senior" individual may not be universally substandard.

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[10] California authority cited in *Solar Watts* included Community Development Law (Health & Saf. Code, § 33700 *et seq.*, specifically § 33753, subd. (h)), the Marks-Foran Residential Rehabilitation Act of 1973 (Health & Saf. Code, § 37910 *et seq.*, specifically § 37912, subd. (i)(1) ("Marks-Foran Act"), the Zenovich-Moscone-Chacon Housing and Home Finance Act (Health & Saf. Code, § 50090 *et seq.*, specifically §§ 50096-50097), and the Multifamily Housing Program (Health & Saf. Code, § 50765 *et seq.*, specifically § 50765.2, subd. (e)). (*Solar Watts, supra,* PW 2019-012, n. 5.) It also cited a regulatory definition supplementing §§ 50096-50097: "Rehabilitation includes reconstruction. Rehabilitation also includes room additions to prevent overcrowding. Rehabilitation also means repairs and improvements which are necessary to meet any locally-adopted standards . . . ." (*Id.* at p. 6, citing Cal. Code Regs., tit. 25, § 7716, subd. (*ll*).)

[11] *Lead Hazard* takes *Solar Watts* a step further by quoting in full the Marks-Foran Act's definition of "residential rehabilitation," *i.e.*, "(1) The construction, reconstruction, renovation, replacement, extension, repair, betterment, equipping, developing, embellishing, or otherwise improving residences consistent with standards of strength, effectiveness, fire resistance, durability, and safety, so that such structures are satisfactory and safe to occupy for residential purposes and are not conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any one or more of the following factors: (A) Defective design and character of physical construction; (B) Faulty interior arrangement and exterior spacing; (C) Inadequate provision for ventilation, lighting, and sanitation; (D) Obsolescence, deterioration, and dilapidation." (*Lead Hazard*, PW 2022-008*,* p.4, citing Health & Saf. Code, § 37912, subd (i)(1).) This definition is indeed broad as to encompass many accessibility improvements.

However, the broad definitions contemplated in prior coverage determinations do not appear to carry a strict universality requirement. For example, California regulations contemplate "room additions" to prevent overcrowding, a type of "rehabilitation" inapplicable to less populated residences. (Cal. Code Regs., tit. 25, § 7716, subd. (*ll*).)

Applying the Marks-Foran Act definition of "residential rehabilitation" as did *Lead Hazard*, the Program's proposals would indeed make residences safer to occupy for those opting for accessibility improvements. (Health & Saf. Code, § 37912, subd. (i)(1).) Updates like widened doorways and wheelchair lifts would improve "safety," "effectiveness," and "design and character of physical construction," to name a few, for occupants who use wheelchairs. Improvements like grab bars and updated toilets would arguably do the same for an even broader senior population. The Program's proposed improvements are also consistent with *Solar Watts*'s guidance that "substandard" or "obsolete" features be brought up to current standards. Key to this determination is that the reimbursement agreements would require contractors to "complete the accessibility improvements in a manner that complies with applicable law (including the California Building Standards Code)," according to City response documents.

Like the Program, the *Lead Hazard* program had proposed to include both single- and multi-unit housing. The Department concluded that under section 1720(c)(5)(C), assistance provided for residential rehabilitation projects *other than* single-family homes would not qualify for the exception. However, the exception was allowed for work performed on single-family homes. (*Lead Hazard*, *supra,* PW 2022-008*,* pp.2; 4-5.) Here, the Department concludes the same with respect to the Program.

This determination is based on the facts presented. "If the assumed facts concerning this project change, a different result may obtain." (PW 2003-014, *Phase II Residential Development Victoria Gardens – City of Rancho Cucamonga* (July 20, 2005).)

Conclusion

For the foregoing reasons, work performed under the Homeowner-Occupied Accessibility Improvement Reimbursement Program presented by the City of Laguna Woods is public work subject to prevailing wage requirements insofar as it applies to multi-family housing. However, an exception applies when rehabilitation work is performed on single-family homes.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Katrina S. Hagen
Director of Industrial Relations