STATE OF CALIFORNIA

GRAY DAVIS, *GOVERNOR*

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

January 23, 2003

Ronald W. Brown, Esq.
Cook, Brown & Prager LLP
555 Capitol Mall, Suite 425
Sacramento, CA 95814-4503

Re: Public Works Case No. 2002-007
Dokken Engineering
Caltrans Contract No. 59A0275

Dear Mr. Brown:

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 Title 8, California Code of Regulations, section 16001(a). Based on my review of the documents submitted and the applicable laws and regulations pertaining to public works, it is my determination that the inspection and testing work performed by the employees of Dokken Engineering ("Contractor") is a public work requiring payment of prevailing wages. In addition, although the administrative, management and clerical work performed by professional engineers, project managers and clerical staff employed by Contractor would also appear to require the payment of prevailing wages, until further notice this Department will not enforce such obligations.

The Department of Transportation ("Caltrans") retains on a continuous basis general contractors to perform highway and bridge construction throughout the State of California. To make sure these contractors comply with the plans, specifications and safety requirements, Caltrans retains consultants to perform inspection and testing of the construction.

On June 30, 2001, Contractor entered into a $9.45 million, three-year contract with Caltrans to provide testing and inspection services for bridge construction/reconstruction projects throughout the State. Caltrans confirms the bridge construction/reconstruction work is being done under contract and is being paid for with state funds. The federal government is funding approximately 35 percent of the contract amount, with the balance coming from state highway funds.

With the above in mind, Contractor has requested a determination whether the work under its consulting agreement with Caltrans is a public work and, if so, whether prevailing wages have to be paid for different classifications of workers. These classifications are:

(1) EIT engineering technicians who, according to Contractor, perform the actual inspections and testing work;

(2) professional engineers, who interpret the data provided by the engineering technicians and prepare written reports;

(3) project managers/superintendents, who coordinate and manage the construction project; and,

(4) the clerical staff that, for example, process change orders and type reports.

Under what is now Labor Code[1] section 1720(a)(1) (as amended by Statutes of 2001, Chapter 938, section 2), "public works" are generally defined to mean "[c]onstruction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds... . For purposes of this paragraph, 'construction' includes work performed during the design and pre-construction phases of construction including...inspection...work." Section 1772 states, in relevant part, "workers employed by contractors or subcontractors in the execution of any contract for public work are deemed employed upon public work."

Contractor advises this Department it is the EITs/engineering technicians who perform the actual inspections and testing at the various Caltrans project sites.[2] This testing and inspection work is a public work for two reasons. First, the inspection is being done under contract and paid for with public funds. Starting in January 2001, SB 1999 expanded the definition of

---

[1] Unless otherwise noted, all statutory references herein refer to the California Labor Code.

[2] It is important to note that it is the work performed and not the title or classification that determines whether work is a public work. Thus, any employee performing testing and inspection work, regardless of the employee's official classification, would be entitled to the payment of prevailing wages.

construction to include inspections. Thus, the inspection work is a public work.[3]

Second, the testing and inspections are being performed in execution of the larger public work of bridge construction/ reconstruction. Therefore, under section 1772 the testing and inspection work is also a public work.[4]

Contractor has also asked this Department to determine whether the work performed by the clerical staff, project managers/superintendents and professional engineers it employs under the contract with Caltrans is also a public work. At this time, however, it is unnecessary to reach such a determination for the reasons that the Department has neither the prevailing wage determinations nor the personnel resources to establish such determinations or enforce prevailing wage obligations for these classifications. Accordingly, the Department declines to opine whether clerical employees, project managers/superintendents and professional engineers who do not perform actual testing and inspection work are entitled to prevailing wages and, until further notice, will refrain from enforcing such obligations for workers in these classifications.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Chuck Cake

Chuck Cake
Acting Director

---

[3] See *Field Technician Observation and Testing/Los Angeles County Sanitation District Sewer Line Project*, PW 2001-068 (July 19, 2002), where inspections during the construction phase fell within the definition of "construction" under 1720(a)(1).

[4] *Id.*, and see *Northridge Earthquake Recovery Project/California State University, Northridge*, PW 99-046 (June 9, 2000).