

DEPARTMENT OF INDUSTRIAL RELATIONS  
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July 27, 2009

Patricia M. Gates  
Roberta D. Perkins  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-1091

Re: Public Works Case No. 2008-034  
Installation of Smart Classroom Technology  
Fresno Unified School District

Dear Ms. Gates and Ms. Perkins:

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 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 installation of Smart Classroom Technology ("SCT") for the Fresno Unified School District ("FUSD") is a public work subject to prevailing wage requirements.

#### Facts

On March 13, 2007, FUSD advertised a Request for Proposal ("RFP") for the "purchase, installation and training" relating to the placement of SCT in school classrooms. SCT is an interactive multimedia system. It consists of a data video projector, speakers, an interactive whiteboard<sup>1</sup> and a keypad for controlling the system. Optional accessories such as wireless microphones, video camcorders, tape recorders, document cameras and VCR, DVD and CD players can be purchased with the system. Laptop computers are not sold with the system, but can be connected to the system via USB cables.

On May 23, 2007, FUSD awarded a contract for SCT placement at the Williams and Olmos Elementary Schools to IVS Computer Technology ("IVS"). FUSD, using Measure K bond proceeds<sup>2</sup>, paid a total of \$476,261.11 to IVS for work performed under the contract. Of the \$476,261.11, \$402,261.11 was allocated toward purchase of the equipment and \$74,000 was allocated toward the installation. Subsequently, IVS entered into a contract with FUSD to provide

<sup>1</sup> The whiteboard is a touch-sensitive display that connects to a laptop computer and data video projector to display computer images. Computer applications can be controlled directly from the whiteboard.

<sup>2</sup> Measure K is a ballot measure passed in 2001 that authorizes FUSD to issue and sell \$199 million in bonds to pay for school construction, modernization and maintenance, as authorized by Education Code section 15100 et seq.

SCT to other schools. Sources of funding for work performed under that contract include Measure K bond proceeds and possibly Title I federal funds.<sup>3</sup>

The work of securing the projector, whiteboard and keypad to the classroom is described generally by the RFP's Scope of Work as follows:

Installation will consist of mounting the projector using false ceiling hardware, routing all required video, audio and control cables. The interactive whiteboard will mount on the wall at the same level the District mounts whiteboards in the classroom. The keypad shall be mounted on the wall to the left or right of the interactive whiteboard at the same height as the room light switch. The media faceplate shall be located below the keypad at the same height as the room power outlets.

The projector is attached to the ceiling through a hole in the ceiling tile. The projector connects to a sheet of metal called a "ceiling main plate" that rests over the T-bar frame rails.<sup>4</sup> The metal ceiling main plate is attached to the T-bar frame rails with four screws. The projector is powered through a conventional power outlet. Wires from the projector run through "Panduit"<sup>5</sup> to a junction box. The Panduit is attached to the wall using glue and screws. Optional accessories such as a document camera are connected to the system via audio/video cables that plug into the junction box.

The whiteboard is attached to the wall using a wall mount bracket. The wall mount bracket is metal and approximately four feet in length. It is placed in the middle of the whiteboard and secured to the wall using five screws. The whiteboard is connected to the laptop using a USB cable. The keypad is mounted on the wall next to the whiteboard and provides the instructor with the controls necessary to operate the SCT system.

The speakers are attached to the ceiling. The speakers are secured to pre-cut ceiling tiles with four metal retracting clips. The tiles are then inserted into the T-bar frame rails. The speakers are connected to the projector with speaker wire.

#### Discussion

Labor Code section 1720(a)(1)<sup>6</sup> generally defines "public works" to mean: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in

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<sup>3</sup> Title I is a \$13 billion federal program that provides financial assistance to local educational agencies and schools to help children living in poverty meet challenging state academic standards.

<sup>4</sup> The T-bar frame rails are part of the physical structure of the building and hold up the ceiling tiles.

<sup>5</sup> "Panduit" is a brand of conduit that is used to cover the audio/video cables and USB cable wiring.

<sup>6</sup> All statutory references are to the California Labor Code unless otherwise indicated.

part out of public funds ... ." The above-described work relating to the placement of SCT in FUSD classrooms is done under contract<sup>7</sup> and is paid for in whole or in part out of public funds in the form of Measure K bond proceeds and, possibly, Title I federal funds.<sup>8</sup> The only issue presented is whether the work constitutes "installation" within the meaning of section 1720(a)(1).<sup>9</sup>

"Installation" has consistently been defined in prior public works coverage determinations as work involving the bolting, securing or mounting of fixtures to realty. (See, e.g., PW 2005-039, *Kiwi Substation - Orange County Water District* (April 25, 2007); PW 2007-005, *Erection and Removal of Portable Fencing System - Peninsula Camp Ground - Folsom Lake State Recreation Area* (June 26, 2007); PW 2005-041, *Pre-rinse Spray Valve Program (Phase II) California Urban Water Conservation Council* (May 11, 2006).)<sup>10</sup> SCT components including the projector, whiteboard and keypad are mounted to the walls or ceilings of classrooms with screws. Speakers are secured to the ceiling with metal retracting clips and Panduit is glued and screwed to the wall to enclose the necessary wiring. Therefore, because SCT is affixed to the ceilings and walls of classrooms with screws or other means of attachment, the work described above constitutes "installation" under section 1720(a)(1).

In arguing against coverage, FUSD contends that because the SCT system can be removed from one classroom and moved to another, it is only temporarily attached to the realty and, therefore, the work of affixing the system to the walls and ceiling does not constitute installation under section 1720(a)(1). Simply because the SCT system can be uninstalled at some point in the future does not alter the basic analysis that compels coverage where the work in question entails the mounting, securing or bolting of items to the walls, ceiling or floor.<sup>11</sup> FUSD also argues that its contracts with IVS are contracts for the purchase of equipment, not contracts for public work. Coverage inquiries require analysis of the actual work involved. If the work qualifies as construction,

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<sup>7</sup> FUSD personnel perform the electrical work necessary to provide power outlets for the SCT system. Section 1771, which requires the payment of prevailing wages on public works projects, specifies that it is applicable only to work performed under contract and not to work carried out by a public agency with its own forces.

<sup>8</sup> FUSD's possible use of federal funding does not change the analysis. California prevailing wages are required whenever a federally funded or assisted project is controlled or carried out by a California awarding body, such as FUSD.

<sup>9</sup> The requesting parties also raise the additional issue whether the work entails alteration under section 1720(a)(1). They argue that the classrooms are being altered by the electrical work of running additional wiring necessary to power the SCT. As stated in footnote 7, FUSD personnel perform the electrical work and that work is exempt from prevailing wage requirements under section 1771. .

<sup>10</sup> The issue of whether a system of electronic equipment can be considered affixed to the realty was addressed in PW 2006-019, *Video Network Surveillance System Upkeep - City of Los Angeles, Department of Airports* (September 10, 2007), albeit in the context of maintenance rather than installation. To the extent the Video Network Surveillance System was found to be a fixture, the result herein is consistent.

<sup>11</sup> Consistent with the analysis herein that affixing items to the realty using screws and other similar methods of attachment constitutes installation, Civil Code section 660 defines fixture as that which is "permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws;... ."

alteration, installation, demolition or repair under section 1720(a)(1), it is covered work. FUSD's characterization of the contracts is not material to this analysis.

FUSD makes a series of arguments based on the Public Contract Code. FUSD argues that the work involved here cannot be "public work" under section 1720(a)(1) because it does not meet the definition of "public project" in Public Contract Code section 22002, subdivision (c), which includes [c]onstruction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased or operated facility. FUSD refers to several out of state judicial opinions that define public work or improvement similar to the definition of public project in the Public Contract Code in making the argument that the work of placing SCT in classrooms should not be considered public work under California law. FUSD further asserts that even if the work constitutes a "public project," FUSD has satisfied all its statutory obligations by complying with Public Contract Code section 20111, subdivision (b), which contains the bid advertisement and competitive bidding requirements for school districts. Finally, relying on *Steelgard, Inc. v. Jannsen* (1985) 171 Cal.App.3d 79 ("*Steelgard*"), FUSD asserts that even if the placement of SCT in classrooms constitutes installation under section 1720(a)(1), such installation work is exempt from prevailing wages because it is merely incidental to the purchase of SCT. In *Steelgard*, the court held that incidental work related to equipment purchases does not render a project a public project under the Public Contract Code. FUSD argues that such work likewise should not render a project a public work under section 1720(a)(1).

FUSD's reliance on the Public Contract Code is misplaced. The issue addressed in this determination is solely whether the work performed under the IVS contracts is a "public work" as defined by the Labor Code, not whether it qualifies as a "public project" under the Public Contract Code. Whether the parties have met their statutory obligations under the Public Contract Code is outside the scope of this determination. To the extent that FUSD is attempting to analogize the Labor Code to the Public Contract Code, the analogy fails because the definitions of *public project* and *public work* differ significantly with respect to installation work. The definition of public project in the Public Contract Code omits installation work while the Labor Code definition of public work expressly includes installation work. Similarly, none of the definitions of public work or improvement referred to in the out of state opinions on which FUSD relies include installation work and, therefore, do not provide any relevant guidance.<sup>12</sup> Finally, *Steelgard* is inapposite to the facts in this determination because, unlike the Public Contract Code, section 1720(a)(1) does not

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<sup>12</sup> In Minnesota, a public works project is defined as "erection, construction, remodeling, or repairing of a public building or other public work financed in whole or in part by state funds." (*C&C Teletronics, Inc. v. U.S. West Information Systems, Inc.* (1988) 414 N.W. 2d 758.) In Alaska, public works means the "on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state..." (1987 *Alaska Op. Atty. Gen. (Inf.)* 301.) In New Mexico, public work is defined as "construction, alteration, demolition or repair..." (*Universal Communications Systems, Inc. v. Smith* (1986) 104 N.M. 754.) In West Virginia, a public improvement is defined as the construction of "buildings, roads, highways, bridges...and all other structures upon which construction may be let to contract by the state..." and construction is defined as "any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract." (*Cooper v. Commtec/Pomeroy Computer Resources, Inc.* (2006) 12 Wage & Hour Cas.2d (BNA) 187.)

Letter to Patricia Gates and Roberta Perkins

Re: Public Works Case No. 2008-034

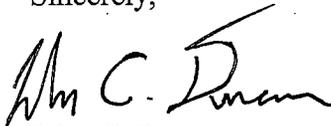
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have an exception for incidental work. In sum, FUSD's reliance on *Steelgard* and the Public Contract Code fail.

For the foregoing reasons, under the specific facts of this case, the installation of SCT for FUSD, as described above, is public work and requires the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Duncan". The signature is written in a cursive style with a large, stylized initial "J".

John C. Duncan

Director