

DEPARTMENT OF INDUSTRIAL RELATIONS

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August 14, 2023

Ann Wu, Hearing Officer
Office of the Director – Legal Unit
Department of Industrial Relations
355 South Grand Avenue, Suite 1800
Los Angeles, California 90071

Re: Public Works Case No. 2022-009
Mountain View Estates Mobile Home Park Expansion
Housing Authority of the County of Riverside

Dear Ms. Wu:

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, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Mountain View Estates Mobile Home Park Expansion for the Housing Authority of the County of Riverside is a public work subject to prevailing wage requirements.

Facts

A. The 2020 Purchase Agreements.

Desert Empire Homes offers mobile home sales, mobile home installations, and mobile home landscaping, according to its website. The Contractors State License Board (CSLB) lists Desert Empire Homes as a contractor that currently holds a "B" license and a "C-16/D06" license, and has maintained a contractors' license since 2004. Department of Housing and Community Development (HCD) records show that Desert Empire Homes has been licensed as a dealer of manufactured homes since 2003 and that Desert Empire Homes reports having one employee, who is also licensed with HCD as a salesperson of manufactured homes.

The Housing Authority of Riverside County (Housing Authority) is a state agency created in conformance with the Housing Authorities Law (Health & Saf. Code, § 34200 et

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.

seq.). On January 7, 1992, the Housing Authority adopted Resolution Number 92-002, which authorized the creation of Riverside Community Housing Corp. (RCHC). RCHC was created as an “affiliate” of the Housing Authority to engage in “financing, acquiring, developing, rehabilitating, owning, managing, and selling affordable housing for extremely low, low and moderate income persons in various developments or otherwise within the County of Riverside . . . [and] shall augment low and moderate income resident services and housing programs sponsored by the Housing Authority of the County of Riverside” RCHC is organized as a nonprofit public benefit corporation, and all of its officers appear to be County of Riverside employees. RCHC also shares the same address with the Housing Authority.

In two separate purchase agreements² executed in 2020 (collectively, Purchase Agreements), RCHC agreed to purchase a total of 107 mobile homes³ from Desert Empire Homes for a price not to exceed \$11,100,000. The Purchase Agreements provide that “RCHC agrees to purchase [107] mobile homes, installed and turnkey ready from Desert Empire Homes.” (Purchase Agreements, § 2.) The Purchase Agreements obligate the parties to “purchase and install” these mobile homes. (Purchase Agreements, § 2(a).) In each of the Purchase Agreements, Desert Empire Homes was required to “Install Mobiles no later than” a specified date, and to install at least 3 mobile homes a week, with the rate to be increased to meet “RCHC goals and deadlines.” (Purchase Agreements, § 3(f).) The Purchase Agreements further obligated Desert Empire Homes to carry workers’ compensation insurance and builder’s risk insurance. (Purchase Agreements, § 9.)

B. The Homekey Program.

The Purchase Agreements also referenced the Homekey program, which is administered by HCD. According to the Purchase Agreements, RCHC and the Housing Authority planned to jointly apply for Homekey funding to acquire the mobile homes for installation in the Mountain View Estates mobile home park, which is located in eastern Riverside County. The parties recognized that any acquisitions funded through Homekey would be subject to all the terms and conditions of the Homekey program, “such as Health and Safety Code Sections 50675.1.1 and 50675.1.2.” According to HCD’s 2021 report to the Legislature, \$7.25 million in Homekey funds were awarded for “Mountain View Estates Phase III”, which appears to be the name of RCHC’s and the Housing

² The two purchase agreements, one executed on September 1, 2020 and the other executed on December 18, 2020, are materially identical except that the September 2020 agreement was for the purchase and installation of 40 mobile homes for \$4 million, while the December 18, 2020 agreement was for the purchase and installation of 67 mobile homes for \$7.1 million (a total of 107 homes). All other relevant material terms were identical, except as otherwise indicated.

³ Although the Purchase Agreements refer to the homes as mobile homes, it is likely that the parties are referring to “manufactured homes.” The Manufactured Housing Act of 1980 defines “mobilehomes” and “manufactured homes” almost identically, except that mobilehomes is defined as structures that were constructed before June 15, 1976 and manufactured homes are structures constructed on or after June 15, 1976. (Health & Saf. Code, §§ 18007, 18008.) The two terms will be used interchangeably here.

Authority's proposed mobile home acquisition and installation. The Housing Authority did not provide any documents to the Department, despite the Department's written request for documents related to this matter, including any financing documents such as Homekey award letters or funding agreements, as well as the Department's granting of two requested extensions to the Housing Authority to provide the documents.

Discussion

A. The Housing Authority Fails to Timely Respond.

The Housing Authority did not provide an opinion letter, and provided documents in response to the Department's written request more than two weeks after they were due. The Division of Labor Standards Enforcement (DLSE) correctly noted that awarding bodies have a duty to forward to the Director within 15 days "any documents, arguments, or authorities it wishes to have considered in the coverage determination process." (Cal. Code Regs., tit. 8, § 16001, subd. (a)(2).) DLSE also noted that Department regulations impose a "continuing duty" on all parties to provide the Director "with relevant documents in their possession or control, until a determination is made." (Cal. Code Regs., tit. 8, § 16001, subd. (a)(3).) Lastly, DLSE stated that: "Where any party or parties' agent has a document in their possession, but refuses to release a copy, the Department shall consider that the documents, if released, would contain information adverse to the withholding party's position and may close the record and render a decision on the basis of that inference and the information received." (*Ibid.*) DLSE argues that because neither the Housing Authority, RCHC, nor Desert Empire Homes has provided the Homekey grant application, grant agreement, and other related documents, the Department should "infer that the documents are adverse to the Desert Empire Homes."

The Department's regulations apply to awarding bodies and is a quasi-legislative exercise of authority provided by statute. (See § 1773.5, subd. (a) ["The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, *including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.*"], italics added.) Section 16001 of the Department's regulations was duly-promulgated under the authority granted by Section 1773.5, and assists the Department and the Director in administering the prevailing wage law.

The Department initially requested documents and opinion letters from all parties on March 30, 2023. Desert Empire Homes requested an extension to May 1, 2023, which was granted to apply to all parties. The Housing Authority requested an extension to May 15, 2023, which was granted to apply to all parties. The Housing Authority requested a further extension to July 13, 2023, which was again granted to apply to all parties. DLSE and Desert Empire Homes responded on July 13, 2023. Despite requesting the extension, the Housing Authority did not respond. On July 17, 2023, the Department reminded the Housing Authority that it did not respond. The Department also referenced DLSE's citation to Section 16001, which imposes a duty on the Housing Authority to respond and provides the Department with the ability to close the record and issue a decision on the basis of information received and an inference that withheld documents "contain information adverse to the withholding party's position." (*Ibid.*) On July 19, 2023, a deputy county counsel responded simply: "The Housing Authority will respond to [the

Department's] letter shortly. Thanks." On July 31, 2023, the Housing Authority finally submitted a response to the Department's March 30, 2023 request. The Housing Authority's failure to respond to the Department's inquiries in a timely manner impedes the Department's ability to carry out its statutory mandates.

The Department does note that the Housing Authority did provide relevant documents showing that Desert Empire Homes is registered as a contractor with the Department (§§ 1725.5, 1771.1), and that the Housing Authority provided notice of the award of the project "Mountain View Estates Phase III" at some point to the Department. (§ 1773.3.) Information from the Housing Authority's documents suggests that it believes that the project is a public work subject to prevailing wage requirements, even if it did not submit an opinion letter expressly stating that position.

B. The Purchase Agreements Were Funded Through the Homekey Program and Called for the Installation of Manufactured Homes.

Desert Empire Homes argues that the "prevailing wage laws do not apply to private property and improvements to private property. The agreements for turn key mobile homes were not for the purpose of construction of public works but for the one hundred and seven (107) all-inclusive turn key mobile homes." Mobile homes, Desert Empire Homes insists, "are traditionally titled as personal property." Desert Empire Homes adds: "Any and all labor performed on the private property of Mountain View Mobile Home Park and on any privately owned mobile homes was not 'public works.'" This is the extent of Desert Empire Homes' argument. There is little in the way of citation to legal authorities, although there is citation to several dictionary definitions.

All workers employed on public works projects must be paid at least the applicable prevailing wage rates. (§ 1771.) Section 1720, subdivision (a)(1) (hereafter section 1720(a)(1)) defines "public works" to mean: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" "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 Corporation* (2021) 11 Cal.5th 1147, 1157 (*Busker*).)

While Desert Empire Homes appears to argue that there was no contract for construction, such an argument is factually and legally inaccurate. The Purchase Agreements state clearly that the parties are contracting for both the acquisition *and* installation of the mobile homes. Despite the argument that RCHC purchased "turn key" mobile homes, the Purchase Agreements required Desert Empire Homes to also install these mobile homes so that they can function as homes. The acquisition and installation under the Purchase Agreements are paid for out of funds from the Homekey program. These funds are undeniably public funds.⁴ (See Health & Saf. Code, §§ 50675.1.1-

⁴ DLSE correctly points out that Desert Empire Homes "never addresses the fact that all the funding for the purchase of the mobile homes came from public funds, and that the project never would have happened without the Homekey funds." DLSE also cites Section 50675.4(c)(2) of the Health and Safety Code as support that Homekey

50675.1.4.) Thus, the second and third elements to a public work under section 1720(a)(1) are easily satisfied.

C. The Installation of Manufactured Homes Constitutes Installation Under Section 1720(a)(1).

Turning to Desert Empire Homes' other argument regarding whether public works must be on public property, section 1720(a)(1) contains no language to suggest that public works is limited to work on public property, as none of the three elements in section 1720(a)(1) require work to be on public property. (*Busker, supra*, 11 Cal.5th at p. 1157; § 1720, subd. (a)(1).) The fact that work need not be on public property to be public works is also evident in other parts of section 1720. Subdivision (c) sets forth exceptions to the prevailing wage law for certain public works projects, including *privately-owned projects* built on *private property*, if the enumerated requirements are met. But the exceptions assume in the first instance that the privately-owned projects built on private property *are* or *can be* statutory public works projects – which runs counter to Desert Empire Homes' argument that public work must be on public property. If a private project built on private property that is funded with public funds cannot satisfy the enumerated requirements of the exception, then the project is a public work and the prevailing wage law applies. (See *Housing Partners I, Inc. v. Duncan* (2012) 206 Cal.App.4th 1335, 1339-41 [senior affordable housing project owned by *private* entity and built on *private property* was public work that did not meet requirements of exception].) This disposes of Desert Empire Homes' contention that public work must be an improvement to public property, a contention Desert Empire Homes failed to support with any authority.

Aside from arguing that public work must be on public property, Desert Empire Homes' other contention appears to be that work on "personal property" (such as a mobile home) is not public work. DLSE responds that Desert Empire Homes' characterization of the mobile homes is a "distortion of the term 'personal property,'" as mobile homes are large in size, require proof of occupancy, and are "installed," unlike most personal property. The Department need not delve too deeply into the question of whether mobile homes are personal property, because section 1720(a)(1) does not recognize a distinction between personal property and real property.

Construing Desert Empire Homes' argument in the most favorable light, it appears that Desert Empire Homes is making the following argument to challenge the first element of section 1720(a)(1): work on personal property, which is movable, even if it is work that would otherwise constitute construction or related work enumerated in section 1720(a)(1), cannot be public work. Had Desert Empire Homes cited legal authority for this argument (which it did not), it would have undoubtedly cited *Busker*, a California Supreme Court opinion, which held that installation work on or inside "rolling stock,"⁵ a form of personal

funds carry a prevailing wage requirement. The citation is unnecessary and inapposite, as that section applies only to loans, whereas Homekey is strictly a grant program.

⁵ "Rolling stock" as used by the California Supreme Court refers "broadly to encompass all types of conveyances," such as trains, buses, and ferries. (*Busker, supra*, 11 Cal.5th at p. 1154 fn. 5.)

property under the dictionary definition⁶ proffered by Desert Empire Homes, is not public work subject to prevailing wages.

A mobile, or manufactured, home, like rolling stock, is movable *when it is being transported*, but that is where the similarities end. Most significantly, *Busker* did not categorically state that all work involving any personal property was not public work. *Busker's* holding was that work *on or inside* rolling stock was not public work. In reaching that holding, *Busker* concluded that the term “public works” generally refers to work associated with “fixed works situated on or attached to land.” (*Busker, supra*, 11 Cal.5th at p. 1160.) The *Busker* court repeatedly referred to the general concept that to qualify as public works, the work is “generally confined to work on buildings or other structures.” (*Id.* at pp. 1164.) If the rolling stock were *installed as a fixed work* attached to land to serve as a structure, the result in *Busker* would have turned out differently.

Applying the principles expressed in *Busker*, it is clear that the installation of a mobile home is public work. A mobile home, or perhaps more accurately, a manufactured home, is “a structure that was constructed . . . is transportable in one or more sections . . . and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.” (Health & Saf. Code, § 18008, subd. (a).) Manufactured homes are structures, even if they are movable when transported from the factory to the installation site. And though they do not necessarily have to be installed on a foundation, Desert Empire Homes installed these homes for RCHC onto foundation systems.⁷ (Health & Saf. Code, § 18551.) These manufactured homes, like homes constructed onsite, contain kitchens, bathrooms, living rooms, and other amenities. As they are to be delivered “turn key” under the Purchase Agreements, Desert Empire Homes had to connect the plumbing, heating, air conditioning, and electrical systems to the required utilities before transferring the homes to RCHC. These homes were installed onto land as fixed works structures. Consequently, the work installing the home is work associated with “fixed work situated on or attached to land.” (*Id.* at p. 1160; see also PW 2014-041, *Site Work for New Modular Classroom Building – LPS Hayward Campus Leadership Public Schools* (Feb. 5, 2016); PW 2001-050, *Installation of Pre-Manufactured Modular Classrooms – San Diego Unified School District* (Jun. 23, 2002).)

In short, the installation of manufactured homes onto land, which was called for by the Purchase Agreements and paid for in part out of Homekey funds, is public work under section 1720(a)(1) and subject to the requirements in the prevailing wage law.

⁶ Desert Empire Homes cited the Merriam-Webster.com dictionary’s definition of “personal property” as “property other than real property consisting of things temporary or movable.”

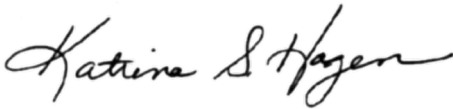
⁷ A manufactured home may retain its “chattel” status, even when installed on a foundation system. (Health & Saf. Code, § 18551, subd. (b).) This fact does not affect the analysis of whether the installation of a manufactured home is a public work.

Conclusion

For the foregoing reasons, the Mountain View Estates Mobile Home Park Expansion for the Housing Authority of the County of Riverside is a public work subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in black ink, reading "Katrina S. Hagen". The signature is written in a cursive, flowing style.

Katrina S. Hagen
Director of Industrial Relations