

DEPARTMENT OF INDUSTRIAL RELATIONS

Katrina S. Hagen, Director

Office of the Director

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October 2, 2024

Tesi Bravo
CALSTART
48 S. Chester Ave.
Pasadena, CA 91106

Re: Public Works Case No. 2024-001
Installation of Electrical Vehicle Charging Stations Under the EnergIIZE Program
California Energy Commission

Dear Ms. Bravo:

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 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 applicable law, it is my determination that the installation of electrical vehicle charging stations and infrastructure through the EnergIIZE grant program is public work subject to prevailing wage requirements.

Facts

A. Clean Transportation Program Funding.

In 1974, the California legislature passed the Warren-Alquist State Energy Resources Conservation and Development Act to establish the entity presently known as the California Energy Commission (CEC). (Pub. Resources Code, § 25000, et seq.)

Assembly Bill 118 (Stats. 2007, c. 750) created the Alternative and Renewable Fuel and Vehicle Technology Program to be administered by the CEC. (Health & Saf. Code, § 44272, subd. (a).) The program was expanded to "develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. The emphasis of this program shall be to develop and deploy zero-emission technology and fuels in the marketplace where feasible and near-zero-emission technology and fuels elsewhere." (*Ibid.*) In 2021, the program was formally renamed the Clean Transportation Program. (Stats. 2021, c. 258, § 14.) The CEC

¹ Unless otherwise indicated, all further statutory references are to the California Labor Code.

expends money from the Alternative and Renewable Fuel and Vehicle Technology Fund in the State Treasury to implement the Clean Transportation Program. (Health & Saf. Code, § 44273, subd. (a).)

On July 27, 2020, the CEC released a grant solicitation and application package (GFO-20-603) entitled “Block Grant for Medium-Duty and Heavy-Duty Zero-Emission Vehicle Refueling Infrastructure Incentive Projects” under the Clean Transportation Program. This grant solicitation was to seek a block grant recipient to design and implement up to \$50 million in grant funds for various medium- and heavy-duty (MD/HD) zero-emission vehicle (ZEV) refueling infrastructure incentive projects throughout California. CALSTART, INC. (CALSTART) was awarded the agreement to administer these grant funds.

B. The EnergiIZE Program.

In April 2021, the CEC announced “Energy Infrastructure Incentives for Zero-Emission Commercial Vehicles (EnergiIZE Commercial Vehicles)”, a first-of-its-kind project that will provide funding for electric vehicle charging and hydrogen refueling infrastructure for zero-emission trucks, buses, and equipment, in California. This program will leverage large amounts of funding in order to rapidly deploy ZEV infrastructure for MD/HD ZEVs in a streamlined manner to address critical barriers and gaps to the deployment of MD/HD ZEV infrastructure, according to the announcement on the CEC’s website.²

CALSTART launched an internet website (www.energiize.org) to provide information about the EnergiIZE program. CALSTART also helped develop an EnergiIZE implemental manual to fully describe the program and the steps needed to access EnergiIZE funding.

First, an applicant must submit a funding application, which requires, among other things, “[c]onfirmation from the local utility that the project site is adequately prepared to receive the necessary energy for the planned infrastructure installation.” (EnergiIZE Implementation Manual, § 8.1, p. 30 (Aug. 2, 2022) <https://energiize.org/implementationmanual/EnergiIZE_Implementation+Manual_+Q3+2022+vFinal.pdf> [as of Sep. 30, 2024].) Once the applications are considered, successful applicants receive a notice of conditional award, after which they must provide supporting documents to EnergiIZE, such as “[p]roof of cost share and supporting documentation to demonstrate coverage of total project funds”; site plans; and general contractor’s license and insurance information. (*Id.* at § 8.2, p. 31.) Next, the successful applicant/recipient plans the project and submits the building permits. (*Id.* at § 8.3, pp. 31-32.) At this stage, recipients are eligible for “milestone” payments. (*Ibid.*) Finally, the recipient initiates construction, commissions the project after completion of construction, and submits final invoices to EnergiIZE for payment. (*Id.* at §§ 8.4-8.5, pp. 32-33.)

² See Energy Infrastructure Incentives for Zero-Emission Commercial Vehicles (EnergiIZE Commercial Vehicles) <<https://www.energy.ca.gov/proceeding/energy-infrastructure-incentives-zero-emission-commercial-vehicles-energiize>> [as of Sep. 30, 2024].

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*).)

The project involves installation “done under contract” within the meaning of section 1720(a)(1). “Installation” involves the bolting, securing, or mounting of fixtures to realty. (See, e.g., PW 2022-001, *Washington Unified School District - Fresno County* (Dec. 19, 2022); PW 2005-039, *Kiwi Substation - Orange County Water District* (Apr. 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).) The purpose of the EnergIIZE grant program is to incentivize the expansion of EV charging infrastructure. The recipients of the EnergIIZE grant presumably secure the EV charging equipment to realty. Thus, the recipients will engage in installation work. Moreover, such installation projects are done under contract by employees of private contractors. Thus, the project in question involves installation work done under contract within the meaning of section 1720(a)(1).

The issue is whether public funds paid for the installation. Section 1720, subdivision (b) provides the definitions for the phrase, “paid for in whole or in part out of public funds.” The only definition that potentially applies is: “The 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).)

EnergIIZE grants constitute the payment of public funds. (See PW 2024-016, *High-Efficiency Electric Home Rebate Act Program - California Energy Commission* (Sep. 23, 2024) [reimbursement grant programs may constitute payment of public funds].) EnergIIZE, administered by CALSTART, provides funds from the CEC that originate from the State Treasury. (See Health & Saf. Code, § 44273, subd. (a).)³ EnergIIZE grant recipients are therefore being paid public funds.

CALSTART argues that the EnergIIZE grant is not a payment of public funds for labor, alteration, construction, demolition, installation, and repair work because EnergIIZE reimburses the cost of designated items only, i.e., chargers, software, and warranty. CALSTART’s argument is legally and factually unsupported.

³ EnergIIZE funds are awarded through the Clean Transportation Program, which is funded by the Alternative and Renewable Fuel and Vehicle Technology Fund in the State Treasury.

According to the CALSTART website, EnergIIIZE pays for the purchase *and installation* of charging infrastructure.⁴ CALSTART's factual argument lacks merit. In the EnergIIIZE implementation manual, a section describes certain applicants for EnergIIIZE grant funding as being eligible for incentives towards constructing EV charging infrastructure:

Costs incurred prior and during the process of constructing an infrastructure site that do not directly go towards the purchase of equipment are considered soft costs. The soft costs eligible for incentives through EnergIIIZE are limited to the following categories. An invoice is required for incentives to be dispersed[sic]:

- Labor costs related to construction *paid at prevailing wage*.
- Architectural, design or legal fees for infrastructure planning.

(EnergIIIZE Implementation Manual, *supra*, § 6, p. 17.) CALSTART's characterization of what EnergIIIZE grants pay for is belied by the EnergIIIZE implementation manual, which CALSTART helped develop. Because the grant funding is available to pay for the construction of EV charging infrastructure, which is performed by private contractors, prevailing wage requirements apply to that construction. (§ 1720, subd. (a)(1); *Busker, supra*, 11 Cal.5th at p. 1157.)

CALSTART's argument as to this point is also without legal support. Even if the EnergIIIZE program specifically excluded construction or installation costs as being reimbursable, the construction or installation likely still would be paid for in part out of public funds. The purpose of the EnergIIIZE grant program is to have EV chargers and infrastructure *installed*. Incentives paid for out of public funds to subsidize the cost of the equipment or other component crucial to the deployment of the EV charger or infrastructure "serve to reduce a developer's project costs." (*Hensel Phelps Construction Co. v. San Diego Unified Port Dist.* (2011) 197 Cal.App.4th 1020, 1034 (*Hensel Phelps*).) For that reason, the EnergIIIZE funding is public funding for the purposes of the prevailing wage law, and construction or installation of EV chargers and other equipment subsidized by EnergIIIZE funding is subject to prevailing wage requirements. (*Ibid.*) If that were not the law, a public entity, in conjunction with a contractor, could simply assign all public funding to pay for all non-labor costs on a public works project and attempt to avoid prevailing wage requirements. As the Court of Appeal noted, the Supreme Court "specifically rejected" this type of "contract-based analysis." (*Azusa Land Partners v. Department of Industrial Relations* (2010) 191 Cal.App.4th 1, 35.) That is in large part due to the fact that "both the awarding body and the contractor may have strong financial incentives not to comply with the prevailing wage law." (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987.) Under these circumstances, the payment of public EnergIIIZE funds is clearly for the installation of the EV chargers and related infrastructure.

⁴ (CALSTART Press Release, *\$100 Million in State Funding Awarded for Truck and Bus Charging and Refueling* (Jan. 11, 2024) <<https://calstart.org/energiize-awards-100-million-dollars-in-state-funding-for-charging-infrastructure/>> [as of Sept. 30, 2024].)

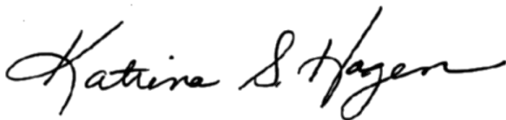
CALSTART alternatively argues that the project does not use public funds because the project “is predominantly self-funded.”⁵ The argument is likewise misplaced. Again, public works is defined as construction or installation work done under contract and “paid for in whole or *in part* out of public funds.” (§ 1720, subd. (a)(1), italics added.) The plain language of the statute clearly covers projects that are only partially paid with public funds. In fact, there are numerous examples in the case law of projects partially paid for out of public funds that constitute public works under section 1720(a)(1). (See, e.g., *Hensel Phelps, supra*, 197 Cal.App.4th at p. 1025 [hotel constructed with private funds and rent subsidies from public entity was a public work]; *Oxbow Carbon & Minerals, LLC v. Department of Industrial Relations* (2011) 194 Cal.App.4th 538, 550 [coke facility improvements funded by both private and public funds were public work].) Partial public funding is no bar to public works coverage.

Conclusion

For the foregoing reasons, the installation of electrical vehicle charging stations and infrastructure funded through the EnergIZE grant program is 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 fluid and cursive, with the first name being the most prominent.

Katrina S. Hagen
Director of Industrial Relations

⁵ While a project may initially be self-funded, the grant recipient receives public funds to offset the cost for the purchase and installation of charging equipment, which makes the project “paid for in whole or in part out of public funds.” (§ 1720, subd. (a)(1).)