March 14, 2017

Labor Issues Solutions
Kevin Dayton
P.O. Box 4085
Monterey, CA 93942


*****Response sent via email to**************

Dear Mr. Dayton,

I am writing in response to your request for public records dated January 30, 2017, pursuant to the Public Records Act (“Act”) (Gov. Code § 6250, et seq.), requesting information regarding the Project Labor Agreement Policy.

Please see attached documents including all public records created or transmitted from November 9, 2016, to January 30, 2017.

Some records have been withheld pursuant to California Government Code section 6254(k) as attorney-client privileged communications.

If you have any questions, please contact me at (209) 937-8827.

Sincerely,

Connie Cochran
City Manager’s Office

cc: Tara Mazzanti, City Attorney
From: Omar Al-Hindi  
Sent: Thursday, November 10, 2016 10:16 AM  
To: Miguel Mendoza <Miguel.Mendoza@stocktonca.gov>  
Cc: Thinh Phan <Thinh.Phan@stocktonca.gov>; Jodi Almassy <Jodi.Almassy@stocktonca.gov>  
Subject: Fwd: Project Number: PW1519_STPL-5008-147

Miguel,

I'm not sure how to answer the question in this email. I appreciate the help.

-------- Forwarded message --------
From: "Samir Kharufeh" <SamK@ibew595.org>  
Date: Thu, Nov 10, 2016 at 9:37 AM -0800  
Subject: Project Number: PW1519_STPL-5008-147  
To: "Omar Al-Hindi" <Omar.Al-Hindi@stocktonca.gov>

Mr. Al-Hindi,

I wanted to inquire about this project, the engineers amount exceeds the $1 million threshold for the City Community Workforce and Training agreement but I don't see the agreement included in the bid documents. Will the agreement apply to this project and if not please state the reason.

Thank you,

FFY 2015-2016 STREET RESURFACING PROJECT  
This project is done in two phases. Phase I is done in the winter months of year 2017. The scope of work in Phase I includes extruded curbs, stamped concrete in median islands, ADA wheelchair ramps, truncated domes, two bus pads at BRT stops, removal and re-installation of curb, gutter, and sidewalk. Construction of Phase I is dependent on availability of funds with the City of Stockton. Phase II is done in the summer months of year 2017. Phase II scope of work includes base failure repairs, crack sealing, pavement patching/laying, pavement grinding, installing electrical traffic detector loops and detector hand holes, 2 asphalt concrete overlay and striping.

Sam Kharufeh  
Secretary Treasurer
From: Omar Al-Hindi
Sent: Monday, November 14, 2016 3:19 PM
To: Miguel Mendoza <Miguel.Mendoza@stocktonca.gov>
Cc: Concepcion Gayotin <Concepcion.Gayotin@stocktonca.gov>; Jodi Almassy <Jodi.Almassy@stocktonca.gov>; Robin Borre <Robin.Borre@stocktonca.gov>; Thinh Phan <Thinh.Phan@stocktonca.gov>
Subject: FW: FFY 2015-2016 STREET RESURFACING PROJECT - Applicability of City of Stockton CWTA

Miguel;

Please see response below from San Joaquin Building Trade Council.

From: Daniel Cardozo [mailto:DCardozo@adamsbroadwell.com]
Sent: Monday, November 14, 2016 2:53 PM
To: Omar Al-Hindi <Omar.Al-Hindi@stocktonca.gov>
Cc: Susana Wood <Susana.Wood@stocktonca.gov>; Tara Mazzanti <Tara.Mazzanti@stocktonca.gov>; Samir Kharufeh <SamK@ibew595.org>
Subject: FFY 2015-2016 STREET RESURFACING PROJECT - Applicability of City of Stockton CWTA

Mr. Al-Hindi,

Mr. Kharufeh is out of town and asked me to respond to you regarding this matter. As you know, the City Council adopted a Community Workforce and Training Agreement ("CWTA") that applies to all City construction projects where the total combined construction cost of the project exceeds one million dollars. The Street Resurfacing Project would qualify as a project subject to the CWTA. I am informed that you have asserted that the CWTA does not apply because all or some portion of the project will receive federal funds. This is not a correct reading of the CWTA.

A project is exempt from the CWTA only "if the federal funding allocation includes a condition to receipt of the federal funds that prohibits the City from applying [the CWTA] to the Project." (CWTA, Sec. 2.4.5) I am not aware of any federal funding allocations for projects of this nature that include a prohibition on the use of a CWTA or similar agreement by the public agency receiving the funding. In the absence of such a prohibition, the City is obligated to apply the terms of the CWTA and the CWTA must be included in the bid documents. A failure to do so would subject the City to an enforcement action for failure to comply with the requirements of the CWTA.

Please feel free to give me a call at the number below should you have any questions regarding this matter.

Daniel L. Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814-4721
(916) 444-6201
dcardozo@adamsbroadwell.com

This e-mail may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.
Will do. We will clarify federal transportation funding requirements with Caltrans.

Gordon MacKay
Director of Public Works
City of Stockton, California

Please pull down the advertisement until this issue is resolved.
Miguel;

Please see response below from San Joaquin Building Trade Council.

From: Daniel Cardozo [mailto:DCardozo@adamsbroadwell.com]
Sent: Monday, November 14, 2016 2:53 PM
To: Omar Al-Hindi <Omar.Al-Hindi@stocktonca.gov>
Cc: Susana Wood; Tara Mazzanti; Samir Kharufeh
Subject: FFY 2015-2016 STREET RESURFACING PROJECT - Applicability of City of Stockton CWTA

Mr. Al-Hindi,

Mr. Kharufeh is out of town and asked me to respond to you regarding this matter. As you know, the City Council adopted a Community Workforce and Training Agreement ("CWTA") that applies to all City construction projects where the total combined construction cost of the project exceeds one million dollars. The Street Resurfacing Project would qualify as a project subject to the CWTA. I am informed that you have asserted that the CWTA does not apply because all or some portion of the project will receive federal funds. This is not a correct reading of the CWTA.

A project is exempt from the CWTA only "if the federal funding allocation includes a condition to receipt of the federal funds that prohibits the City from applying [the CWTA] to the Project." (CWTA, Sec. 2.4.5) I am not aware of any federal funding allocations for projects of this nature that include a prohibition on the use of a CWTA or similar agreement by the public agency receiving the funding. In the absence of such a prohibition, the City is obligated to apply the terms of the CWTA and the CWTA must be included in the bid documents. A failure to do so would subject the City to an enforcement action for failure to comply with the requirements of the CWTA.

Please feel free to give me a call at the number below should you have any questions regarding this matter..

Daniel L. Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814-4721
This e-mail may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.
Parminder,

A bit of up front context for you.

As I mentioned, the City has two ordinances which establishes preferences for local contractors or vendors (Local preference ordinance) and another which requires the contractor to utilize local labor pool within designate Stockton Zip Codes (Local employment ordinance). The ordinance links are as follows:

3.68.095 Local employment—Public works contractors: http://qcode.us/codes/stockton/view.php?topic=3-3_68-i-3_68_095

3.68.090 Local business preference: http://qcode.us/codes/stockton/view.php?topic=3-3_68-i-3_68_090

The attached COIN 09-04 is the guidance we have utilized which states that the above ordinances cannot be used on Federal Aid projects.

I need your guidance of the following as described below:

In addition to the ordinances noted above, the City Council recently adopted a “Community Workforce and Training Agreement” (CWTA) which is attached. The key agreement points are:

1. The agreement applies to construction only.
2. The agreement applies to construction contracts exceeding $1 Million but in the future may be lowered to $250,000.
3. The signatory to the agreement is the City and Local Unions.
4. The agreement applies to City construction contracts and craft jurisdictions of one or all the unions that are party to the agreement (ref. 2.3 of agreement).
5. The agreement does not apply to projects where it is prohibited by state or federal law (ref 2.4.5 of agreement).
6. The agreement (if not prohibited) is to be included into the construction contract of the project and the subcontractors are to also agree to use it (Ref. 3.2 & 3.3 of agreement).
7. The agreement, in part, is intended to prevent unions from striking, stopping work or exercising lockouts.
8. Contractors bound by the agreement shall use the unions signatory to the agreement in filling jobs for the project.
9. The agreement supports the development of increased number of skilled construction workers from Stockton & SJ County.
10. The agreement establishes Local Hire goals and commitments that Stockton and/or SJ County residents, defined by the local employment ordinance above, shall perform a minimum of 50% of hours worked on project (Re 18.2.1).

11. The agreement aims to provide opportunity to Stockton businesses through the City’s Local Business Preference Ordinance (see above)

We need clear direction from Caltrans on whether the CWTA can be implemented on federal or state funded projects. Because our City Attorney may want inquire further into the legal obstructions, a Caltrans legal opinion would also be desirable. Short of a legal opinion, I would at least request a legal contact.

CWTA's are not a new and have benefits. A few sites for you ease of viewing, including other agreements:


https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=0ahUKEwirzIQ26a7OAhWExFQKHzcGwDx0QFghQMAk&url=http%3A%2F%2Fwww.ci.berkeley.ca.us%2FuploadedFiles%2FPublic_Works%2FLevel_3_-_Bids_-_Contracts%2FJuly%25202015%2520CWA%2520Final%2520%5B716231%5D.pdf&usg=AFQjCNHagyWmnix6Yn66Wdz6at59r65yzzQ&bvm=bv.139138859,d.cGw

Welcome to the COIN!

This is the fourth issue of Caltrans Local Assistance Program Construction Oversight Information Notice, or "COIN" for short. These short, single-topic bulletins are intended to provide outreach information and guidance to local agencies on issues pertaining to the construction of Federal-aid projects. They will cover a wide variety of subjects, including discussions of findings resulting from process reviews by Caltrans and/or FHWA, changes in procedures or regulations, reminders of existing procedures or best practices, and other timely information. The goal is to ensure proper and timely delivery of Federal-aid projects.

Our Fourth Topic: DO NOT USE LOCAL HIRING PREFERENCES

FHWA has requested Caltrans to remind local agencies that local hiring preferences are not to be included in local agency contracts using federal-aid funds. Such preferences are contrary to FHWA laws and regulations. Chapter 12 “Plans, Specifications & Estimates” of the “Local Assistance Procedures Manual” states in Section 12.10 RESTRICTED CONTRACT PROVISIONS that “Generally, local agencies may not use local hiring practices on federal-aid construction projects.” Currently there are no exceptions in California that would allow the use of local hiring practices or preferences on federal-aid contracts.

The primary basis behind the prohibition of local hiring preferences is that they are inconsistent with the principles of free and open competition, which is required in the federal-aid program at 23 United States Code (USC) 112, “Letting of Contracts”. Had Congress intended to allow local hiring preferences in federal-aid transportation contracts, they would have made it permissible as they did under 23 USC 140(d), “Native American Employment and Contracting and Tribal Employment Rights Ordinance.”

If a local agency uses local hiring preferences in its local agency funded contracts, be certain that the local hiring preferences provision is not included in the contracts using federal-aid funds as this will make the contract ineligible for federal-aid funds. Should you have any further questions regarding the use of local hiring preferences, please contact your District Local Assistance Engineer (DLAE).
Make sure they review the CWTA. It contains a component of local hire, but it is much more than that. In lieu of a better description, it should be referred to as a project labor agreement. We need to make sure Caltrans staff understand what they are "ruling" on, because this is a political hot potato.

Gordon MacKay
Director of Public Works
City of Stockton, California

---

From: Robin Borre
Sent: Wednesday, November 16, 2016 9:24 AM
To: Gordon MacKay <Gordon.MacKay@stocktonca.gov>; Eric Alvarez <Eric.Alvarez@stocktonca.gov>
Subject: RE: FFY 2015-2016 STREET RESURFACING PROJECT - Applicability of City of Stockton CWTA

Gordon –
I have scheduled a meeting with Eric for us to call Parminder today. I called Nabil yesterday to discuss this and he referred me to the previous CalTrans ruling and the COIN related to Local Hire which could not be applied to the Federal projects. We will be requesting a written legal opinion from them today. We will also put together a list of projects that will be on hold until this is received.

---

From: Gordon MacKay
Sent: Tuesday, November 15, 2016 6:37 PM
To: Robin Borre <Robin.Borre@stocktonca.gov>; Eric Alvarez <Eric.Alvarez@stocktonca.gov>
Subject: RE: FFY 2015-2016 STREET RESURFACING PROJECT - Applicability of City of Stockton CWTA

Do not respond to this. We should not be providing legal opinions/research to our attorneys. We are not lawyers. That’s their job. Debating with them is pointless.

Get a written answer from Caltrans re use of the CWTA on fed funded grants. Make sure they have a copy of the CWTA. Ensure that they know that a negative response will be scrutinized by legal staff, so they better be sure.

If it takes them a long time to decide, so be it.

Gordon MacKay
Director of Public Works
City of Stockton, California
Just passing on this email I received yesterday.
Thanks, please confirm that Caltrans does not consider this conversation to be a response to Eric’s request of 11/16. We await a response in writing that provides references to back up their position as well as legal contacts for further enquiries.

Gordon MacKay
Director of Public Works
City of Stockton, California

From: Robin Borre
Sent: Wednesday, November 23, 2016 8:37 AM
To: Gordon MacKay <Gordon.MacKay@stocktonca.gov>
Subject: FW: CWTA Question - Project Number: PW1519_STP-5008-147

Just passing on this email I received yesterday.
Dear Jodi;

I’m kind of concerned with the Pacific Avenue Project STPL-5008 (147), PW1519 delays. The dead line date for invoicing Caltrans is February 22, 2016. The following are some fact dates for this project:

- Received E76 on 08-22-2016
- Advertised on 11-09-2016
- Cancelled Advertisement on 11-16-2013
- City checking with Caltrans legal on the applicability of the CWTA agreement passed by CC in July 2016 (Robin) (Time unknown)
- Post programing of the $397,023 of RSTP funds.
- Post programming finance letters (Robin)
- FROE’s sent to Robin (11-18-2016)
- Review of FROE’s (Robin)
- Amend FFTIP (Robin)
- NEPA Re-validation
- RoW Revalidation
- Re-advertise project (Minimum 3 weeks)
- Go to City Council and ward Construction Contract
- Send award package and 1st invoice to Caltrans

The above is a lot for us to make the February deadline.

From: Robin Borre
Sent: Wednesday, November 23, 2016 8:36 AM
To: Omar Al-Hindi <Omar.Al-Hindi@stocktonca.gov>
Cc: Thinh Phan <Thinh.Phan@stocktonca.gov>; Jodi Almassy <Jodi.Altmassy@stocktonca.gov>; Eric Alvarez <Eric.Alvarez@stocktonca.gov>; Concepcion Gayotin <Concepcion.Gayotin@stocktonca.gov>; Miguel Mendoza <Miguel.Mendoza@stocktonca.gov>
Subject: RE: CWTA Question - Project Number: PW1519_STPL-5008-147

Thank you Omar –
Please do not respond to the gentleman that is inquiring about the resurfacing project. This project is on hold. Everyone please stop seeking information. This is a very sensitive subject at this point.

This has been elevated to Eric and Gordon. We are waiting for a formal legal opinion from CalTrans headquarters.

Have a great holiday.
From: Jodi Almassy
Sent: Tuesday, November 29, 2016 5:06 PM
To: Singh, Parminder@DOT; Jodi Almassy; Robin Borre
Subject: RE: Stockton Community Workforce Training Agreement

Thank you Parminder

From: Singh, Parminder@DOT [mailto:parminder.singh@dot.ca.gov]
Sent: Tuesday, November 29, 2016 4:09 PM
To: Eric Alvarez <Eric.Alvarez@stocktonca.gov>; Jodi Almassy <Jodi.Almassy@stocktonca.gov>; Robin Borre <Robin.Borre@stocktonca.gov>
Subject: RE: Stockton Community Workforce Training Agreement

Hi Everyone,

As mentioned earlier, Caltrans will comment about the federal/state instructions for using Local Hiring Preference but will not comment on the agreement. I would send you the response about Federal Instructions by Friday. If agency does not follow the federal instructions then may lose funds.

Thanks
Parminder Singh, DLAE
Tel: 209-948-3689
Fax: 209-948-3820

From: Eric Alvarez [mailto:Eric.Alvarez@stocktonca.gov]
Sent: Tuesday, November 29, 2016 3:52 PM
To: Singh, Parminder@DOT <parminder.singh@dot.ca.gov>; Jodi Almassy <Jodi.Almassy@stocktonca.gov>; Robin Borre <Robin.Borre@stocktonca.gov>
Subject: RE: Stockton Community Workforce Training Agreement

Good Afternoon Parminder. I understand you have talked to Jodi Almassy a bit further on the subject CWTA agreement. When can I expect anything from Caltrans. Again, I suspect our City Attorney would like to confirm with Caltrans on the agreement. So I will need a contract from HQ legal. Otherwise, our attorneys office will certainly start with Harj at HQ Legal who we have dealt with and I do not want to waste her time. This is how important the CWTA issue is. Please advise.

From: Eric Alvarez
Sent: Tuesday, November 22, 2016 5:47 PM
To: Singh, Parminder@DOT <parminder.singh@dot.ca.gov>
Subject: FW: Stockton Community Workforce Training Agreement

Hi Parminder,

I understand you informed Omar Alhind at O&M that we can not use the CWTA. Did you get a response from your legal? What is the status. Thanks
From: Singh, Parminder@DOT
Sent: Tuesday, November 29, 2016 4:09 PM
To: 'Eric Alvarez' <Eric.Alvarez@stocktonca.gov>; Jodi Almassy <Jodi.Almassy@stocktonca.gov>; Robin Borre <Robin.Borre@stocktonca.gov>
Subject: RE: Stockton Community Workforce Training Agreement

HI Everyone,

As mentioned earlier, Caltrans will comment about the federal/state instructions for using Local Hiring Preference but will not comment on the agreement. I would send you the response about Federal Instructions by Friday. If agency does not follow the federal instructions then may lose funds.

Thanks
Parminder Singh, DLAE
Tel: 209-948-3689
Fax: 209-948-3820

From: Eric Alvarez [mailto:Eric.Alvarez@stocktonca.gov]
Sent: Tuesday, November 29, 2016 3:52 PM
To: Singh, Parminder@DOT <parminder.singh@dot.ca.gov>; Jodi Almassy <Jodi.Almassy@stocktonca.gov>; Robin Borre <Robin.Borre@stocktonca.gov>
Subject: RE: Stockton Community Workforce Training Agreement

Good Afternoon Parminder. I understand you have talked to Jodi Almassy a bit further on the subject CWTA agreement. When can I expect anything from Caltrans. Again, I suspect our City Attorney would like to confirm with Caltrans on the agreement. So I will need a contract from HQ legal. Otherwise, our attorneys office will certainly start with Harj at HQ Legal who we have dealt with and I do not want to waste her time. This is how important the CWTA issue is. Please advise.

From: Eric Alvarez
Sent: Tuesday, November 22, 2016 5:47 PM
To: Singh, Parminder@DOT <parminder.singh@dot.ca.gov>
Subject: FW: Stockton Community Workforce Training Agreement

Hi Parminder,

I understand you informed Omar Alhindi at O&M that we can not use the CWTA. Did you get a response from your legal? What is the status. Thanks

From: Eric Alvarez
Sent: Wednesday, November 16, 2016 7:31 PM
To: Singh, Parminder@DOT <parminder.singh@dot.ca.gov>; Robin Borre <Robin.Borre@stocktonca.gov>; Gordon

2
MacKay <Gordon.MacKay@stocktonca.gov>
Subject: Stockton Community Workforce Training Agreement

Parminder,

A bit of up front context for you.

As I mentioned, the City has two ordinances which establishes preferences for local contractors or vendors (Local preference ordinance) and another which requires the contractor to utilize local labor pool within designate Stockton Zip Codes (Local employment ordinance). The ordinance links are as follows:

3.68.095 Local employment—Public works contractors: http://qcode.us/codes/stockton/view.php?topic=3-3 68-i-3 68 095
3.68.090 Local business preference: http://qcode.us/codes/stockton/view.php?topic=3-3 68-i-3 68 090

The attached COIN 09-04 is the guidance we have utilized which states that the above ordinances cannot be used on Federal Aid projects.

I need your guidance of the following as described below:

In addition to the ordinances noted above, the City Council recently adopted a “Community Workforce and Training Agreement” (CWTA) which is attached. The key agreement points are:

1. The agreement applies to construction only.
2. The agreement applies to construction contracts exceeding $1 Million but in the future may be lowered to $250,000.
3. The signatory to the agreement is the City and Local Unions
4. The agreement applies to City construction contracts and craft jurisdictions of one or all the unions that are party to the agreement (ref. 2.3 of agreement)
5. The agreement does not apply to projects where it is prohibited by state or federal law (ref 2.4.5 of agreement)
6. The agreement (if not prohibited) is to be included into the construction contract of the project and the subcontractors are to also agree to use it (Ref. 3.2 & 3.3 of agreement)
7. The agreement, in part, is intended to prevent unions from Striking, stopping wok or exercising lockouts.
8. Contractors bound by the agreement shall use the unions signatory to the agreement in filling jobs for the project
9. The agreement supports the development of increased number of skilled construction workers from Stockton & SJ County.
10. The agreement establishes Local Hire goals and commitments that Stockton and/or SJ County residents, defined by the local employment ordinance above, shall perform a minimum of 50% of hours worked on project (Re 18.2.1).
11. The agreement aims to provide opportunity to Stockton businesses through the City’s Local Business Preference Ordinance (see above)
We need clear direction from Caltrans on whether the CWTA can be implemented on federal or state funded projects. Because our City Attorney may want inquire further into the legal obstructions, a Caltrans legal opinion would also be desirable. Short of a legal opinion, I would at least request a legal contact.

CWTA's are not a new and have benefits. A few sites for you ease of viewing, including other agreements:


Hi Everyone,

FHWA had a pilot program to utilize a local or other geographical labor hiring preferences for Federal funded projects for one year effective March 6,2015. DOT extended this pilot program for a period of one additional year until March 6,2017. This pilot program can be used only for the projects for which it is requested at the time of E76 and needs prior FHWA approval for every project, which involves Local hiring preference.

https://www.fhwa.dot.gov/construction/cqit/sep14local.cfm

https://www.transportation.gov/regulations/textension-dot-contracting-initiative-pilot-program

The procedure to request for use of the Local Hiring preference is included in the following link:

http://www.dot.ca.gov/hq/LocalPrograms/announcements/2015/Announcement-20150714.pdf

The work plan is needed for each project in which Local Hiring Preference is proposed by Local Agency.

U.S. DOT's Local Hiring Q&A are available on this link:

https://www.transportation.gov/opportunity/local-hire

I am not sure why city thinks that Caltrans is supposed to give the legal advice as requested below. From Caltrans perspective, the question is, to utilize a Local or other geographical hiring preference, in projects which have federal funds. The question is answered above.

The question from city was for both state and federal funds. During discussion with city professionals, I am informed that most of the city's local projects include federal funds, so the question is answered accordingly for federal funds, because all these projects will federalized.

If city does not follow the required federal procedure for every project, city will lose federal funds.

Thanks