

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Engineering Department CITY CLERK DEPT.
AGENDA DATE: October 31, 2006 06 OCT 25 PM 11:31
CONTACT PERSON/PHONE: Rick Conner, 541-4423
DISTRICT(S) AFFECTED: N/A

SUBJECT:

That the City of El Paso, after conducting an investigation, has determined that there is good cause to believe that a violation of Texas Government Code Section 2258 has occurred in regard to the payment of individuals by L.D. Kemp Excavation Inc. for the City project known as "Clint Landfill Ph I cells 3-6 & Scale House, Contract No. 2005-281 and that the City Engineer be authorized to withhold payment to the contractor for the assessment of penalties for the violation as required under Chapter 2258 of the Texas Government Code.

BACKGROUND / DISCUSSION:

The City of El Paso Engineering Department after reviewing the employees certified payroll from L.D. Kemp Excavating, Inc., general contractor for the Clint Landfill Phase I Cells 3-6 & Scale House TCEQ MSW Permit No. 2284, determined there was a discrepancy between the hourly wages some employees were paid and the hourly wage rates that are required under contract and under federal regulation. This discrepancy prompted an investigation which revealed that a total of fifteen employees were not paid in accordance with the City's prevailing wage rates. The statute says that fines will be imposed in the amount of \$60 per day per employee as stated in Section 2258.023 of the Texas Government Code. The days that these employees were not paid under the contract's prevailing wage rates added to a total of 450 days.

The investigation also revealed that a possible violation of the wage rates has occurred. Because the City's investigation revealed that a total of fifteen employees were not paid in accordance with the City's prevailing wage rates for a total cumulative period of 450 days, the actual penalty amount for the possible violation is \$27,000.00. The amount is calculated as follows:

$$\$60.00 \text{ per day} \times 450 \text{ days} = \$27,000.00$$

By approval of this item, the City Council is making a determination that there is good cause to believe that a violation of the prevailing wage rates has occurred and would authorize the Engineering Department to withhold payment to L.D. Kemp.

PRIOR COUNCIL ACTION:

City Council has not considered nor taken prior action on this matter.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:

Rick Conner

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

Odyssey

CITY MANAGER:

CITY CLERK DEPT.

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DATE: 10/25/06

RESOLUTION

CITY CLERK DEPT.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City of El Paso, after conducting an investigation, has determined that there is good cause to believe that a violation of Texas Government Code Section 2258 has occurred in regard to the payment of individuals by L.D. Kemp Excavation Inc. for the City project known as "Clint Landfill Ph I cells 3-6 & Scale House, Contract No. 2005-281 and that the City Engineer be authorized to withhold payment to the contractor for the assessment of penalties for the violation as required under Chapter 2258 of the Texas Government Code.

ADOPTED THIS _____ DAY OF _____, 2006.

THE CITY OF EL PASO

John F. Cook, Mayor

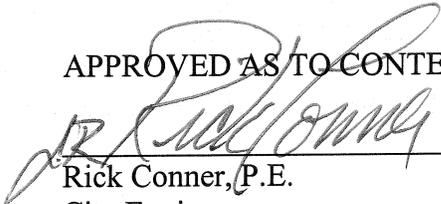
ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



Rick Conner, P.E.
City Engineer

JOHN COOK
MAYOR

JOYCE WILSON
CITY MANAGER



CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
J. ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
PRESI ORTEGA, JR., DISTRICT 5
EDDIE HOLQUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

CITY CLERK DEPT.
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ENGINEERING DEPARTMENT

CONTRACT COMPLIANCE ADMINISTRATION

(915) 541-4907 Fax (915) 541-4016

October 25, 2006

VIA: Facsimile (817) 281-1332

Mr. Mike Brackney
Vice President
L.D. Kemp Excavating, Inc.
5409 Denton Hwy
Fort Worth, TX 76148

RE: Clint Landfill Phase I Cells 3-6 & Scale House TCEQ MSW Permit No. 2284
Contract No. 2005-281

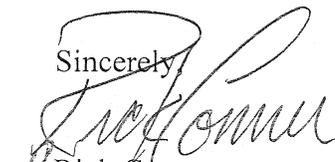
Dear Mr. Brackney:

As you are aware, the City has received information that you failed to comply with the City's prevailing wage rates for the above referenced contract. Our investigation has revealed that there is good cause to believe that a violation of the wage rates has occurred and we are therefore, prepared to make a recommendation to City Council of such a finding. This recommendation will be presented to Council at the October 31, 2006 City Council meeting.

Section 2258.023 of the Texas Government Code requires a contractor to pay sixty dollars for each worker for each calendar day or part of the day that the worker is paid less than the prevailing wage. Our investigation revealed that a total of fifteen employees were not paid in accordance with the City's prevailing wage rates for a total period of 450 days. The actual penalty amount for the violation is \$27,000.00. Attached is a spreadsheet which shows how the penalties were calculated.

Please let me know if you have any questions.

Sincerely,



Rick Conner
City Engineer

Cc: Lupe Cuellar, Assistant City Attorney
Pat Adatao, Deputy City Manager, Development and Infrastructure Services

Bid No. 2005-281

Clint Landfill

L.D. Kemp

PAYROLL VIOLATION-GOVERNMENT CODE 2258.023 (b)

Name	Classification / Payroll	Period worked	Hours	# of Days Worked	\$60 Per Day Violation	TOTAL OWED
Cody Highfield	Hoe, Excavator	01/04/06	48.00	5	\$60.00	\$300.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	40.00	5	\$60.00	\$300.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	40.00	5	\$60.00	\$300.00
		02/15/06	40.00	5	\$60.00	\$300.00
		02/22/06	40.00	5	\$60.00	\$300.00
		03/01/06	40.00	5	\$60.00	\$300.00
		03/08/06	31.50	3	\$60.00	\$180.00
Total			399.50	48		\$2,880.00
Jason Lipp	Excavator	01/04/06	40.00	5	\$60.00	\$300.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	40.00	5	\$60.00	\$300.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		Total			200.00	25
Benito Guzman	740 Truck	01/04/06	28.00	3	\$60.00	\$180.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	40.00	5	\$60.00	\$300.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	40.00	5	\$60.00	\$300.00
		02/15/06	40.00	5	\$60.00	\$300.00
		02/22/06	40.00	5	\$60.00	\$300.00
		03/01/06	40.00	5	\$60.00	\$300.00
		03/08/06	31.50	3	\$60.00	\$180.00
Total			379.50	46		\$2,760.00

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Name	Classification / Payroll	Period ending Worked	Hours	# of Days Worked	\$60 Per Day Violation	TOTAL OWED
Roberto Vasquez	740 Truck	01/04/06	10.00	1	\$60.00	\$60.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	47.00	5	\$60.00	\$300.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	35.50	4	\$60.00	\$240.00
		02/15/06	40.00	5	\$60.00	\$300.00
		02/22/06	40.00	5	\$60.00	\$300.00
		03/01/06	40.00	5	\$60.00	\$300.00
		03/08/06	40.00	5	\$60.00	\$300.00
		03/15/06	40.00	5	\$60.00	\$300.00
Total			412.50	50		\$3,000.00
A. Tinajero	Dozer Operator	01/04/06	18.00	2	\$60.00	\$120.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	40.00	5	\$60.00	\$300.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	40.00	5	\$60.00	\$300.00
		02/15/06	40.00	5	\$60.00	\$300.00
		02/22/06	16.50	2	\$60.00	\$120.00
		03/01/06	34.50	3	\$60.00	\$180.00
		03/08/06	40.00	5	\$60.00	\$300.00
Total			349.00	42		\$2,520.00
Carlos Hernandez	740 Truck	01/04/06	18.00	2	\$60.00	\$120.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	10.00	1	\$60.00	\$60.00
		01/25/06	40.00	5	\$60.00	\$300.00
Total			108.00	13		\$780.00

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Name	Classification / Payroll	Period ending worked	Hours	# of Days Worked	\$60 Per Day Violation	TOTAL OWED
<i>Peter Verdugo</i>	<i>Water Truck</i>	01/04/06	18.00	2	\$60.00	\$120.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	40.00	5	\$60.00	\$300.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	40.00	5	\$60.00	\$300.00
		02/15/06	10.00	1	\$60.00	\$60.00
		02/22/06	40.00	5	\$60.00	\$300.00
		03/01/06	40.00	5	\$60.00	\$300.00
		03/08/06	40.00	5	\$60.00	\$300.00
		03/15/06	40.00	5	\$60.00	\$300.00
Total			388.00	48		\$2,880.00
<i>Martin Aguilar</i>	<i>740 Truck</i>	01/04/06	18.00	2	\$60.00	\$120.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	40.00	5	\$60.00	\$300.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	40.00	5	\$60.00	\$300.00
		02/15/06	40.00	5	\$60.00	\$300.00
		02/22/06	40.00	5	\$60.00	\$300.00
		03/01/06	37.50	4	\$60.00	\$240.00
		03/15/06	40.00	5	\$60.00	\$300.00
Total			375.50	46		\$2,760.00
<i>Omar Alvidrez</i>	<i>Excavator</i>	01/04/06	18.00	2	\$60.00	\$120.00
		01/11/06	40.00	5	\$60.00	\$300.00
		01/18/06	26.50	3	\$60.00	\$180.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	29.50	4	\$60.00	\$240.00
Total			194.00	24		\$1,440.00

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Name	Classification / Payroll	Period ending worked	Hours	# of Days Worked	\$60 Per Day Violation	TOTAL OWED
<i>Raul Morales</i>	<i>740 Truck</i>	01/18/06	40.00	5	\$60.00	\$300.00
		01/25/06	33.00	4	\$60.00	\$240.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	40.00	5	\$60.00	\$300.00
		02/15/06	30.00	3	\$60.00	\$180.00
		02/22/06	40.00	5	\$60.00	\$300.00
		03/01/06	40.00	5	\$60.00	\$300.00
		03/08/06	20.50	2	\$60.00	\$120.00
		03/15/06	40.00	5	\$60.00	\$300.00
Total			323.50	39		\$2,340.00
<i>Alberto Hernandez</i>	<i>Dozer Operator</i>	01/18/06	30.00	3	\$60.00	\$180.00
		01/25/06	40.00	5	\$60.00	\$300.00
Total			70.00	8		\$480.00
<i>Alberto Estrada</i>	<i>740 Truck</i>	01/18/06	7.00	1	\$60.00	\$60.00
		01/25/06	40.00	5	\$60.00	\$300.00
		02/01/06	40.00	5	\$60.00	\$300.00
		02/08/06	40.00	5	\$60.00	\$300.00
		02/15/06	40.00	5	\$60.00	\$300.00
		02/22/06	40.00	5	\$60.00	\$300.00
		03/01/06	40.00	5	\$60.00	\$300.00
		03/08/06	40.00	5	\$60.00	\$300.00
		03/15/06	40.00	5	\$60.00	\$300.00
Total			327.00	41		\$2,460.00
<i>Jamie Chaves</i>	<i>Service Truck</i>	01/25/06	40.00	5	\$60.00	\$300.00
Total			40.00	5		\$300.00
<i>Jose Acosta</i>	<i>740 Truck</i>	02/08/06	40.00	5	\$60.00	\$300.00
Total			40.00	5		\$300.00
<i>Elias Gudino</i>	<i>Hoe, Excavator</i>	03/08/06	40.00	5	\$60.00	\$300.00
		03/15/06	40.00	5	\$60.00	\$300.00
Total			80.00	10		\$600.00
GRAND TOTAL				450		\$27,000.00

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Westlaw

CITY CLERK DEPT.

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V.T.C.A., Government Code § 2258.023

C

Effective: [See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness
 Government Code (Refs & Annos)
 Title 10. General Government (Refs & Annos)
 Subtitle F. State and Local Contracts and Fund Management
 Chapter 2258. Prevailing Wage Rates
 Subchapter B. Payment of Prevailing Wage Rates

→ § 2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

- (a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- (b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
- (c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

CREDIT(S) Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Prior Laws:

Acts 1933, 43rd Leg., p. 91, ch. 45.
 Acts 1969, 61st Leg., p. 1354, ch. 410, § 1.
 Acts 1993, 73rd Leg., ch. 606, § 1.
 Vernon's Ann.Civ.St. art. 5159a, § 2(b).

LIBRARY REFERENCES

2000 Main Volume

Labor Relations ↪ 1268.

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V.T.C.A., Government Code § 2258.023

Westlaw Topic No. 232A.

C.J.S. Labor Relations §§ 1141-1142.

RESEARCH REFERENCES

2005 Electronic Pocket Part Update

Encyclopedias

TX Jur. 3d Public Works & Contracts § 64, Wage Payment Obligations of Contractors.

TX Jur. 3d Public Works & Contracts § 66, Arbitration of Wage Payment Disputes.

Treatises and Practice Aids

Brooks, 22 Tex. Prac. Series § 5.17, Prevailing Wage.

NOTES OF DECISIONS

In general 1

1. In general

The penalty provision of this section is mandatory. Op.Atty.Gen. 1998, No. DM-469.

A contractor who violates this section must pay the penalty even if the worker agreed to the lower wage. Op.Atty.Gen. 1998, No. DM-469.

V. T. C. A., Government Code § 2258.023, TX GOVT § 2258.023

Current through the end of the 2005 2nd Called Session of the 79th Legislature

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