

Agenda Type: Regular
User Department: Choose an item.

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

DEPARTMENT: Engineering and Construction Management
AGENDA DATE December 9, 2014
CONTACT PERSON/PHONE: Irene D. Ramirez, Interim City Engineer, (915) 212-1831
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 Urban Associates Inc. through its subcontractor Beltran Electrical Contractors, Inc. for the City project known as Sun Metro Operations Maintenance Facility, Contract No. 2012-074 and that the City Engineer be authorized to withhold payment to the contractor for the assessment of penalties for the violation and to withhold money due under the Contract from the final payment to contractor pending a final determination of the violation and authorize the City Engineer to notify the Department of Labor.

BACKGROUND / DISCUSSION:

The City of El Paso Engineering and Construction Management Department after reviewing the employees certified payrolls from Beltran Electrical Contractors, Inc. subcontractor for the Sun Metro Operations Maintenance Facility, Contract No. 2012-074, 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 six (6) 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 590 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 six (6) employees were not paid in accordance with the City's prevailing wage rates for a total cumulative period of 590 days, the actual penalty amount for the possible violation is \$35,400.00.

The amount is calculated as follows: \$60.00 per day x 590 days = \$35,400.00

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 occurred and would authorize the City Engineer to notify the Department of Labor and pursuant to Chapter 2258 of the Government Code, that the City Engineer be authorized to withhold payment to the contractor for the assessment of penalties for the violation and to withhold money due under the Contract from the final payment to contractor pending a final determination of the violation.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also) Information copy to appropriate Deputy City Manager

RESOLUTION

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 a good cause to believe that the contractor, Urban Associates, Inc. through its subcontractor Beltran Electrical, has violated Section 2258 of the Texas Government Code with regard to the payment of individuals for the project known as "Sun Metro Operation & Maintenance Facility, Contract 2012-074" and that the City Engineer be authorized to notify the Department of Labor and pursuant to Chapter 2258 of the Government Code, that the City Engineer be authorized to withhold payment to the contractor for the assessment of penalties for the violation and to withhold money due under the Contract from the final payment to contractor pending a final determination of the violation.

ADOPTED THIS _____ DAY OF _____, 2014.

THE CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM

Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT

for Irene D. Ramirez, P.E.
Interim City Engineer



Engineering and Construction Management Department

Mayor

Oscar Leaser

City Council

District 1

Ann Morgan Lilly

District 2

Larry Romero

District 3

Emma Acosta

District 4

Carl L. Robinson

District 5

Dr. Michiel R. Noe

District 6

Claudia Ordaz

District 7

Lily Limón

District 8

Cortney C. Niland

City Manager

Tommy Gonzalez

Delivered via e-Mail

December 3, 2014

Urban Associates Inc.
Michael A. Montes, President
1400 Geronimo Drive
El Paso, Texas 79925
mike@urbanassociatesinc.com

Beltran Electrical Contractors Inc.
Alfredo Beltran
860 Kastrin
El Paso, TX 79907
melissab1121@yahoo.com

RE: Sun Metro Operations Maintenance Facility
Contract No. 2012-074, Beltran Electrical Contractors, Inc.


Dear Mr. Montes:

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 the City Council of such a finding. This recommendation will be presented to Council at the December 9, 2014 City Council meeting.

Section 2258.023 of the Texas Government Code requires a contractor to pay sixty dollars (\$60) 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 six (6) employees were not paid in accordance with the City's prevailing wage rates for a total period of 590 days. The actual penalty amount for the violation is \$35,400.00. Attached is a spreadsheet which shows how the penalties were calculated.

Please let me know if you have any questions.

Sincerely,


FOR: Irene D. Ramirez, P.E., CFM, CNU-a
Interim City Engineer

cc: : Sol Cortez, Assistant City Attorney

Irene D. Ramirez, P.E., CFM, CNU-A, Interim City Engineer
City 2 | 218 N. Campbell St. | El Paso, Texas 79901 | (915) 212-0065
Dedicated to Outstanding Customer Service for a Better Community

EMPLOYEE NAME	Classification	WEEK ENDING	HOURS WORKED	# of Days Worked	\$60 Per Day Violation	Total Owed
Josue Cornejo	Skilled Laborer	10/20/2013	40.00	5	60.00	300.00
		10/27/2013	40.00	5	60.00	300.00
		11/3/2013	40.00	5	60.00	300.00
		11/10/2013	40.00	5	60.00	300.00
		11/17/2013	40.00	5	60.00	300.00
		11/24/2013	32.00	4	60.00	240.00
		12/1/2013	40.00	5	60.00	300.00
		12/8/2013	24.00	3	60.00	180.00
		12/15/2013	40.00	5	60.00	300.00
		12/22/2013	32.00	4	60.00	240.00
		12/29/2013	40.00	5	60.00	300.00
		1/5/2014	29.00	4	60.00	240.00
			437.00	55		\$ 3,300.00
EMPLOYEE NAME	Classification	WEEK ENDING	HOURS WORKED	# of Days Worked	\$60 Per Day Violation	Total Owed
Kevin Ponce	Skilled Laborer	8/25/2013	16.00	2	60.00	120.00
		9/1/2013	0.00	0	60.00	0.00
		9/8/2013	32.00	4	60.00	240.00
		9/15/2013	40.00	5	60.00	300.00
		9/22/2013	40.00	5	60.00	300.00
		9/29/2013	40.00	5	60.00	300.00
		10/6/2013	40.00	5	60.00	300.00
		10/13/2013	40.00	5	60.00	300.00
		10/20/2013	40.00	5	60.00	300.00
		10/27/2013	40.00	5	60.00	300.00
		11/3/2013	40.00	5	60.00	300.00
		11/10/2013	40.00	5	60.00	300.00

No Work

		11/17/2013	40.00	5	60.00	300.00
		11/24/2013	40.00	5	60.00	300.00
		12/1/2013	40.00	5	60.00	300.00
		12/8/2013	40.00	5	60.00	300.00
		12/15/2013	40.00	5	60.00	300.00
		12/22/2013	40.00	5	60.00	300.00
		12/29/2013	29.00	4	60.00	240.00
		1/5/2014	37.00	5	60.00	300.00
		1/12/2014	40.00	5	60.00	300.00
		1/19/2014	40.00	5	60.00	300.00
		1/26/2014	40.00	5	60.00	300.00
		2/2/2014	40.00	5	60.00	300.00
		2/9/2014	32.00	4	60.00	240.00
			906.00	114		\$ 6,840.00
EMPLOYEE NAME	Classification	WEEK ENDING	HOURS WORKED	# of Days Worked	\$60 Per Day Violation	Total Owed
Ramon Lujan	Electrician	10/20/2013	40.00	5	60.00	300.00
		10/27/2013	39.00	5	60.00	300.00
		11/3/2013	40.00	5	60.00	300.00
		11/10/2013	40.00	5	60.00	300.00
		11/17/2013	40.00	5	60.00	300.00
		11/24/2013	40.00	5	60.00	300.00
		12/1/2013	32.00	4	60.00	240.00
		12/8/2013	30.50	4	60.00	240.00
		12/15/2013	40.00	5	60.00	300.00
		12/22/2013	40.00	5	60.00	300.00
			381.50	48		\$ 2,880.00
EMPLOYEE NAME	Classification	WEEK ENDING	HOURS WORKED	# of Days Workded	\$60 Per Day Violation	Total Owed
Gilbert De La Fuente	Electrician	8/25/2013	40.00	5	60.00	300.00

		9/1/2013	40.00	5	60.00	300.00
		9/8/2013	40.00	5	60.00	300.00
		9/15/2013	37.00	5	60.00	300.00
		9/22/2013	40.00	5	60.00	300.00
		9/29/2013	40.00	5	60.00	300.00
	Electrician Apprentice	10/6/2013	40.00	5	60.00	300.00
		10/13/2013	40.00	5	60.00	300.00
		10/20/2013	40.00	5	60.00	300.00
		10/27/2013	40.00	5	60.00	300.00
		11/3/2013	32.00	4	60.00	240.00
		11/10/2013	40.00	5	60.00	300.00
		11/17/2013	40.00	5	60.00	300.00
		11/24/2013	40.00	5	60.00	300.00
		12/1/2013	8.00	1	60.00	60.00
		12/8/2013	40.00	5	60.00	300.00
			597.00	75		\$ 4,500.00
EMPLOYEE NAME	Classification	WEEK ENDING	HOURS WORKED	# of Days Workded	\$60 Per Day Violation	Total Owed
Jesus Antonio Sandoval Ortiz	Common Laborer	7/28/2013	40.00	5	60.00	300.00
		8/4/2013	30.00	4	60.00	240.00
		8/11/2013	40.00	5	60.00	300.00
		8/18/2013	40.00	5	60.00	300.00
		8/25/2013	40.00	5	60.00	300.00
		9/1/2013	37.00	5	60.00	300.00
		9/8/2013	28.00	4	60.00	240.00
		9/15/2013	40.00	5	60.00	300.00
		9/22/2013	32.00	4	60.00	240.00
		9/29/2013	40.00	5	60.00	300.00
		10/6/2013	24.00	3	60.00	180.00
		10/13/2013	40.00	5	60.00	300.00
		10/20/2013	40.00	5	60.00	300.00
		10/27/2013	40.00	5	60.00	300.00
		11/3/2013	38.00	5	60.00	300.00
		11/10/2013	24.00	3	60.00	180.00

		11/17/2013	37.00	5	60.00	300.00
		11/24/2013	40.00	5	60.00	300.00
		12/1/2013	32.00	4	60.00	240.00
		12/8/2013	40.00	5	60.00	300.00
		12/15/2013	28.00	4	60.00	240.00
		12/22/2013	40.00	5	60.00	300.00
		12/29/2013	40.00	5	60.00	300.00
		1/5/2014	40.00	5	60.00	300.00
		1/12/2014	40.00	5	60.00	300.00
		1/19/2014	40.00	5	60.00	300.00
		1/26/2014	40.00	5	60.00	300.00
		2/2/2014	40.00	5	60.00	300.00
		2/9/2014	40.00	5	60.00	300.00
		2/16/2014	40.00	5	60.00	300.00
		2/23/2014	40.00	5	60.00	300.00
		3/2/2014	40.00	5	60.00	300.00
		3/9/2014	40.00	5	60.00	300.00
		3/16/2014	40.00	5	60.00	300.00
		3/23/2014	40.00	5	60.00	300.00
		3/30/2014	40.00	5	60.00	300.00
		4/6/2014	8.00	1	60.00	60.00
		4/13/2014	48.00	6	60.00	360.00
		4/20/2014	32.00	4	60.00	240.00
			1438.00	182		\$ 10,920.00
EMPLOYEE NAME	Classification	WEEK ENDING	HOURS WORKED	# of Days Workded	\$60 Per Day Violation	Total Owed
Jesus Manuel Garcia	Skilled Laborer	8/11/2013	8.00	1	60.00	60.00
		8/18/2013	40.00	5	60.00	300.00
		8/25/2013	40.00	5	60.00	300.00
		9/1/2013	40.00	5	60.00	300.00
		9/8/2013	32.00	4	60.00	240.00
		9/15/2013	37.00	5	60.00	300.00
		9/22/2013	32.00	4	60.00	240.00
		9/29/2013	40.00	5	60.00	300.00
		10/6/2013	37.00	5	60.00	300.00

	10/13/2013	40.00	5	60.00	300.00
	10/20/2013	40.00	5	60.00	300.00
	10/27/2013	40.00	5	60.00	300.00
	11/3/2013	40.00	5	60.00	300.00
	11/10/2013	40.00	5	60.00	300.00
	11/17/2013	40.00	5	60.00	300.00
	11/24/2013	40.00	5	60.00	300.00
	12/1/2013	24.00	3	60.00	180.00
	12/8/2013	8.00	1	60.00	60.00
	12/15/2013	40.00	5	60.00	300.00
	12/22/2013	40.00	5	60.00	300.00
	12/29/2013	29.00	4	60.00	240.00
	1/5/2014	29.00	4	60.00	240.00
	1/12/2014	40.00	5	60.00	300.00
	1/19/2014	40.00	5	60.00	300.00
	1/29/2014	40.00	5	60.00	300.00
	2/2/2014	40.00	5	60.00	300.00
		916.00	116		\$ 6,960.00
SUM TOTAL			590	\$ 35,400.00	

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2258. PREVAILING WAGE RATES

SUBCHAPTER B. PAYMENT OF PREVAILING WAGE RATES

Sec. 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.

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



Sun Metro Operations Facility

Contract No. 2012-074

Awarded February 14, 2012



Prime Contractor:

Urban Associates, Inc.

Subcontractor:

Beltran Electrical Contractors, Inc.

The Project Compliance Division opened an investigation based on payroll discrepancies for employees of Beltran Electrical Contractors, Inc.



Initial Complaints (March 2014)

- *Beltran Electrical Contractors, Inc.*
 - *Received two complaints/affidavits –*
 - *Workers 1 & 2*

Finding 1 - neither worker appeared on payrolls

Finding 2 – after the investigation we discovered workers had been paid as laborers (skilled) but performed duties of electrician journeyman



Investigation

- *Received two complaints/affidavits –*
- *Workers 3 & 4*

*Finding 3 – Worker 3 –
registered journeyman electrician - paid
less than prevailing wage rate*

*Finding 4 – Worker 4 - classified as
apprentice – not properly registered -
performing duties of journeymen electrician*

*Finding 5 – Worker 5 & 6 – classified as
laborers – performed work of electrician*



Prevailing Wages - Building

Item		Fringes	Minimum Prevailing Wage
Laborer, Common	\$ 8.00	\$ 0.50	\$ 8.50
Laborer, Skilled	\$ 9.00	\$ 0.50	\$ 9.50
Electrician	\$ 20.53	\$ 7.40	\$ 27.93



Request for Authorization

- (1) Penalty Assessment pursuant Texas Government Code Sec. 2258.023.
 - (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.
- To withhold \$35,400.00 (\$60.00 per day x 590 days) from retainage



Authorization for City Engineer

- (2) To withhold Final payment pending the final finding of whether the employees are owed wages pursuant to Section 2258.051 of the Government Code.
- (3) To Notify the Department of Labor of the complaints received by the City and request an investigation by the Department of Labor.



Upon Authorization from City Council

1. The City will notify the Department of Labor of the complaints.
2. Pursuant to Section 2258.053 of the Government Code Contractor has 15 days from the initial finding made by City Council to resolve the issue by Agreement. The dispute must be submitted to binding arbitration if is not solved within the 15 days.
3. The City will assess penalties and pay the employees the wages owed based on the final determination from the funds retained from the Contractor's final payment.



Questions/Comments