

Facilities, Construction and Property Practice Group

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AALRR Alert



Thomas W. Kovacich
Cerritos
562.653.3200
tkovacich@aalrr.com

Robert Fried
Pleasanton
925.227.9200
rfried@aalrr.com

Andres C. Hurwitz
Cerritos
562.653.3200
ahurwitz@aalrr.com

W. Bryce Chastain
Pleasanton
925.227.9200
bchastain@aalrr.com

What You Need to Know About the New Registration Program for Public Works Contractors

In an effort to secure a consistent funding source for the enforcement of prevailing wage requirements and to streamline the monitoring enforcement process, the California legislature approved and Governor Brown has signed a contractor registration program through amendments to Division 2, Part 7, Chapter 1 of the Labor Code. This Alert will outline the nuts and bolts of the legislation (known as SB 854) and what public works contractors and awarding bodies need to know to properly register and comply with the new proposed requirements.

Beginning July 1, 2014, the new contractor registration program subjects contractors to an annual non-refundable fee initially set at \$300 paid directly to the Department of Industrial Relations (DIR). This requirement is applicable to all contractors and subcontractors who intend to bid on or perform work on public works projects. On-line registration (payable only by credit card) will mandate minimum qualifications including (1) workers compensation coverage for any employees, (2) the use of subcontractors who

are also registered public works contractors, (3) CSLB contractor licenses, if applicable, (4) no outstanding unpaid wage or penalty assessments due to any employee or agency, (5) no debarments and no recent registration violations, and (6) no prior violation of registration requirements once the requirements become effective. (As proposed, there will be a grace period through 2016 so that first time violators will be able to avoid a 12-month disqualification by paying an additional \$2000 penalty.) The \$300 fee has been likened to a driver's license which would entitle the contractor to bid on and perform work on public works.

All registrants will be listed on the DIR website so that contractors and awarding bodies would have the ability to confirm whether a company with which they are doing business is indeed registered. A contractor or subcontractor which elects not to pay the annual fee will be disqualified from bidding on or performing public works until once again registered.

The new legislation includes several "protections." For example, inadvertent listing of an unregistered subcontractor on a bid would not necessarily invalidate that bid. A contract that includes an unregistered contractor or subcontractor would be subject to cancellation but is not void as to the work already performed, and the unregistered contractor or subcontractor could be replaced with a properly registered one. Further, if a project is initially believed to be a private project but turns out to be a public work, there will be a grace period for a contractor to either register or get off the job with no consequences for prior failure to register.

As noted above, registration will begin July 1, 2014. The requirement that only registered contractors and subcontractors may be listed on

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any bid proposal becomes effective March 1, 2015, and the requirement that only registered contractors and subcontractors may be awarded a public works contract will be effective April 1, 2015. Public agencies must take care to begin vetting all contractors and subcontractors listed on public works proposals, whether on bids or alternative forms of proposal, through the DIR website no later than April 1, 2015 in order to ensure they are not in violation of this requirement. DIR will no longer charge awarding bodies for prevailing wage compliance monitoring under the Compliance Monitoring Unit after June 30, 2014.

The new registration fee is expected to generate close to \$12 million to support the current costs of the DIR public works program, and for no other purpose, including administration of the contractor registration requirement, all DIR costs for administering and enforcing public works requirements, and other enforcement by the Labor Commissioner on monitored public works projects. The Labor Enforcement and Compliance Fund, paid by all California employers, and a variety of other cobbled together funding sources, would no longer be relied upon to fund public works enforcement.

Awarding bodies will be required to submit contract award notices (PWC-100) for all public works projects, and contractors and subcontractors will be required to submit Certified Payroll

Records to the Labor Commissioner on all projects starting in January 2016.

The intent of this legislation, as announced by the DLSE, is to (1) provide a consistent and reliable funding source for the enforcement of prevailing wage laws in California, (2) to protect employees and honest employers, and (3) to maximize the state's ability to ensure that employers comply with the prevailing wage laws.

SB 854 began as a simple change in how compliance and project monitoring will be funded at the DIR level. However, in addition to the registration fee, the actual language of SB 854 extends to numerous other substantive risk areas affecting compliance. To the extent the contractor registration process is transparent for all participants; this itself may well mark a sea change in public works compliance in California. The individual past history reporting requirements and putative reach to construction compliance history outside of California are completely new and could be a trap for the contractor that does not understand the reporting requirements or its implications on handling litigation relating to public works or wage claims before administrative bodies or in the civil courts. It will be especially important for contractors and public bodies to consult counsel experienced in prevailing wage and civil law when questions arise.