

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Enviro-Tech Solutions, Inc. dba Southland
Construction Co.**

Case No. 12-0305-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR

Affected contractor Enviro-Tech Solutions, Inc. dba Southland Construction Co. (Southland), made a timely request for review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the work of improvement known as the Boelter – HSSAS Student Creativity Center (Project) performed for the University of California, Los Angeles (UCLA) in Los Angeles County. The Assessment determined that \$134,665.72 in unpaid prevailing wages, fringe benefits and training funds, and \$49,425.00 in statutory penalties were due.¹ Southland did not deposit the Assessment amount with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1742.1, subdivision (b).² A Hearing on the Merits was held on May 3, 2013, in Los Angeles, California, before Hearing Officer Jessica L. Pirrone. David Cross appeared for DLSE. There was no appearance for Southland. Now, based on un rebutted evidence showing that Southland failed to pay the required prevailing wages and training funds, the Director of Industrial Relations affirms the Assessment.

¹ The Assessment was served along with an Audit Worksheet, which breaks down the amount due by worker and category of payment due. Twenty-four workers are listed on the first page of the Audit Worksheet and one worker is listed on the third page. It seems that the amounts due for the worker listed on the third page were not included in the total amounts listed on the Assessment. Because the contractor should be allowed to rely on the figures presented in the Assessment, this Decision relies on the figures in the Assessment, rather than the figures in the Audit Worksheet.

² All further statutory references are to the California Labor Code, unless otherwise indicated.

Facts

Failure to Appear: Monica Navaro³ filed a Request for Review of the Assessment on behalf of Southland and appeared telephonically on Southland's behalf at all three of the Prehearing Conferences. Navaro also personally appeared on March 13, 2013, the date on which the Hearing was originally set. At that time, Navaro requested a continuance in order to obtain counsel. She said she had not previously obtained counsel because her surety was participating as an interested party and she had been relying on her surety's counsel. But, her surety and its counsel would no longer be appearing because her surety had just filed for bankruptcy protection. Over DLSE's objection, Navaro's request for a continuance was granted, and the Hearing was continued to May 3, 2013 – the first date that all of the parties were available.

On the day of the Hearing, DLSE's counsel presented an undated letter from Navaro stating that there would be no appearance for Southland. The Hearing Officer proceeded to conduct the Hearing in Southland's absence for the purpose of formulating a recommended decision as warranted by the evidence pursuant to California Code of Regulations, title 8, section 17246, subdivision (a). DLSE's evidentiary exhibits were admitted into evidence without objection, and the matter was submitted on the evidentiary record, including the testimony of DLSE's investigator, Paul Tsan, and six workers: Eduardo Aguirre, Sr., Eduardo Aguirre, Jr., Jose Morales, Ulysses Palacios, Jose Chavez, and Herlindo Bugarin.

Assessment: The facts stated below are based on Exhibits 1 through 19 submitted by DLSE, other documents in the Hearing Officer's file, and the testimony at the Hearing.

On or about January 27, 2011, UCLA advertised for bid a project to construct an approximately 2,865 square foot infill addition to the southern exterior courtyard of Boelter Hall to accommodate the Henry Samueli School of Engineering and Applied Sciences in Los Angeles County. Southland was hired as the prime contractor and performed work between April 25, 2011, and February 26, 2012.

³ During a Prehearing Conference, Ms. Navaro established that she had authority to represent Southland by claiming that she was its Chief Executive Officer.

Aguirre, Sr., a working supervisor on the job, submitted a complaint to DLSE alleging Southland's failure to pay the prevailing wage. Aguirre, Sr.'s complaint precipitated the investigation, which led to the Assessment. On August 10, 2012, DLSE served the Assessment. On or about September 30, 2012, Southland served its Request for Review of the Assessment. The Assessment and attached Audit Worksheet reflect an underpayment of prevailing wages to 25 workers who worked in four separate classifications. The underpayments resulted from Southland's failure to pay for all hours worked at the correct rate and its failure to make training fund contributions.

Tsan testified that the Assessment is based on information workers provided to DLSE, DIR's website identifying registered apprentices,⁴ and Southland's Certified Payroll Records (CPRs).⁵ According to the Assessment and evidence at the Hearing, the classifications of the 25 workers at issue are as follows. Nine of the workers were classified as Laborer Group 1 for which the applicable prevailing wage determination is SC-23-102-2-2010-2. Seven of the workers were classified as Carpenter (Area 1) for which the applicable prevailing wage determination is SC-23-31-2-2010-1. Four of the workers were classified as Inside Wiremen for which the applicable prevailing wage determination is LOS-2010-2. Three of the workers were classified as Painter, Lead Abatement, for which the applicable prevailing wage determination is also LOS-2010-2. Two of the workers were classified as Iron Workers for which the applicable prevailing wage determination is C-20-X-1-2009-1.

Based on the un rebutted testimony regarding the work performed, the number of hours worked, and the amount paid, the record shows that Southland failed to pay the required prevailing wages. There is no evidence that Southland paid training fund contributions as required by the applicable prevailing wage determinations. There is also no evidence that Southland took the steps required to avoid liquidated damages.

⁴ Surkov Roman and Albeno Juan were classified as apprentices, but they were not registered apprentices. Accordingly, they were reclassified as journeymen in the Assessment.

⁵ Jose Chavez and Herlindo Bugarin were not listed on the CPRs, but the un rebutted testimony is that they worked on the job and their classifications were Labor Group 1 and Painter, Lead Abatement.

DLSE assessed \$45,000 in penalties under section 1775, for 910 instances of failure to pay the applicable prevailing wages. DLSE also assessed \$3,925 in penalties under section 1813 for 157 instances of failure to pay the proper overtime rate.

Discussion

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects. DLSE enforces prevailing wage requirements not only for the benefit of workers but also “to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a), and see *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.)

Section 1775 requires, among other things, that contractors and subcontractors pay the difference to workers who received less than the prevailing rate and also prescribes penalties for failing to pay the prevailing rate. During the relevant period, under section 1775, the penalty was a maximum of \$50 for each calendar day for each worker paid less than the prevailing wage. The penalty was a minimum of \$30 for each calendar day for each worker paid less than the prevailing wage where it is determined that the violation is willful.

During the relevant period, Section 1813 prescribed a fixed penalty of \$25.00 for each instance of failure to pay the prevailing overtime rate when due.

Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following the service of a Civil Wage and Penalty Assessment. Alternatively, an affected contractor, subcontractor or surety can escape liquidated damages by depositing the full amount of the Assessment with DIR under section 1742.1, subdivision (b).

When DLSE determines that a violation of the prevailing wage laws has occurred, a written Civil Wage and Penalty Assessment is issued pursuant to section 1741. An affected contractor may appeal that assessment by filing a Request for Review under section 1742. Subdivision (b) of section 1742 provides, among other things, that a Hearing on the Request for Review shall commence and the contractor shall be provided with an opportunity to review

evidence that DLSE intends to utilize at the hearing.

The contractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (§ 1742, subd. (b).) In this case, the record establishes the basis for the Assessment and Southland has presented no evidence to disprove the basis for the Assessment. Accordingly, the Assessment is affirmed. Because Southland neither paid the unpaid wages nor made a deposit of the amount of the Assessment with DIR pursuant to section 1742.1, subdivision (b) within 60 days after service of the Assessment, it is also liable for liquidated damages.

FINDINGS AND ORDER

1. Affected contractor Enviro-Tech Solutions, Inc. dba Southland Construction Co. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.

2. Unpaid wages are due in the amount of \$131,288.74.

3. Unpaid training fund contributions are due in the amount of \$3,376.98.

4. The unpaid wages found due in Finding No. 2 remained due and owing more than 60 days following issuance of the Assessment; therefore Enviro-Tech Solutions, Inc. dba Southland Construction Co. is liable for an additional award of liquidated damages under section 1742.1, subdivision (a) in the amount of \$131,288.74. No grounds to waive payment of these damages have been established.

5. Penalties under section 1775 are due in the amount of \$45,500.00 for 910 violations.

6. Penalties under section 1813 are due in the amount of \$3,925.00 for 157 violations.

7. The amounts found remaining due in the Assessment as affirmed by this Decision are as follows:

Wages Due:	\$131,288.74
Training Fund Contributions Due:	\$3,376.98

Penalties under section 1775, subdivision (a):	\$45,500.00
Penalties under section 1813:	\$3,925.00
Liquidated Damages under section 1742.1, subdivision (a):	\$131,288.74
TOTAL:	\$315,379.46

Interest shall accrue on unpaid wages in accordance with section 1741, subdivision (b).

The Civil Wage and Penalty Assessment is affirmed as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 5/30/2013



Christine Baker
Christine Baker
Director of Industrial Relations