

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Sierra Nevada Stucco

Case No. 14-0296-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Sierra Nevada Stucco (Sierra), requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) regarding the CRC Elk Grove Center (Project) performed for the Los Rios Community College District in Sacramento County. The Assessment determined that \$89,244.20 in unpaid prevailing wages and statutory penalties was due. On October 17, 2014, DLSE's motion to amend the Assessment to \$65,776.14 was granted. A telephonic hearing on the merits was held on October 21, 2014, before Hearing Officer Kumani L. Armstrong. David Cross and Kathleen Hansen appeared for DLSE. Sierra failed to appear at hearing. Now, based on unrebutted evidence showing that Sierra failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

Facts

Prime contractor Diede Construction, Inc. (Diede) filed a request for review of the Assessment in case number 14-0267, pursuant to California Labor Code section 1742.¹ On October 16, 2014, DLSE informed the Hearing Officer that it settled all claims for unpaid wages, training funds, and section 1813 penalties with Diede. The sole remaining issue for hearing is the assessment of penalties against Sierra under section 1775.

¹ All further statutory references are to the California Labor Code, unless otherwise indicated.

Failure to Appear: Sierra failed to appear at hearing. The case proceeded in Sierra's absence and the Hearing Officer recommends decision based on the evidence presented pursuant to California Code of Regulations, title 8, section 17246, subdivision (a).

DLSE's evidentiary exhibits 1-3 and 6-24 were admitted into evidence without objection. Kathleen Hansen testified on behalf of DLSE.

Assessment: The facts stated below are based on Exhibits 1-3 and 6-24 submitted by DLSE, the Assessment, testimony presented at trial, and any other documents in the Hearing Officer's file.

On or about October 24, 2011, Diede entered into a public works contract with the Los Rios Community College District regarding the Project. On or about December 5, 2011, Diede subcontracted with Sierra to perform all Portland Cement Plastering work on the Project. The applicable prevailing wage determinations are NC-31-X-16-2011-3, NC-23-102-2011-2, and SAC-2011-2, and the applicable job classifications for all affected workers are Lather, Plasterer, Bricklayer, Stonemason, and Laborer.

DLSE assessed \$9560 in penalties under section 1775, at the rate of \$40.00 per violation, for 239 instances of failure to pay the applicable prevailing wage rates.

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." (Lab. Code § 90.5, subd. (a), and *see Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.)

Section 1775, subdivision (a) prescribes daily penalties for failing to pay the prevailing wage rate. During the relevant time period, penalties under section 1775 were set at a maximum of \$40.00 per violation.

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 or subcontractor 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 be commenced within 90 days,” that the contractor or subcontractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing.

The contractor or subcontractor “shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect.” (*Id.*) In this case, the record establishes the basis for the Assessment and Sierra presented no evidence to disprove the basis for the Assessment. Accordingly, the Assessment is affirmed in its entirety.

FINDINGS AND ORDER

1. Affected subcontractor Sierra filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.

2. Penalties under section 1775 are due in the amount of \$9560 for 239 violations at the rate of \$40.00 per violation.

The Civil Wage and Penalty Assessment is affirmed in full 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: 12/2/2014



Christine Baker
Director of Industrial Relations