

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Greener Environments, Inc. dba Wild Bloom**      Case No: **23-0132-PWH**

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected prime contractor, Greener Environments, Inc. doing business as Wild Bloom (Greener), requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on May 25, 2023. Pursuant to Rule 27,<sup>1</sup> on February 5, 2024, the appointed Hearing Officer, Ed Kunnes, issued an Order to Show Cause (OSC) Why the Assessment Should Not Be Dismissed as Untimely under Labor Code section 1741, subdivision (a),<sup>2</sup> and set the matter for oral argument on March 11, 2024.<sup>3</sup> For the reasons set forth below, the Director finds that DLSE served the Assessment untimely. Accordingly, the Director issues this Decision dismissing the Assessment.

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<sup>1</sup> For ease of reference, individual sections of the Department of Industrial Relations' prevailing wage hearing regulations found at California Code of Regulations, title 8, section 17201 et seq., "are referred to as 'Rules' using only their last two digits." (Rule 01, subd. (d).)

<sup>2</sup> All section references are to the Labor Code unless otherwise specified.

<sup>3</sup> Prior to issuing the OSC and setting the hearing, the Hearing Officer received briefing and declarations from the parties. The parties attached exhibits to the declarations in support of their written argument. DLSE used Arabic numerals to identify their exhibits; Greener Environmental used letters. The exhibits used by Greener Environmental came from the DLSE investigation file and bore DLSE's bates-stamp.

## FACTS

Greener performed work under a public works contract between the McFarland Unified School District (Awarding Body) and James E. Thompson, Inc., the prime contractor, for construction of the McFarland Middle School Sports Complex (Project). (Exhibit I, p. 57.) The Awarding Body's Agent, Mangini Associates, Inc., filed a document entitled "Notice of Completion and Acceptance of Public Works Project" (Notice of Completion and Acceptance) on February 16, 2021, with the Kern County Assessor-Recorder's Office. (Dvorak Declaration, ¶ 5, and Exhibit No. 3.) The recorded Notice of Completion and Acceptance contains a statement that the Project was, "actually completed on the 20th day of November 2020, and was accepted by McFarland Unified School District on the 20th day of November 2020." The superintendent of the McFarland Unified School District, S. Aaron Resendez, signed the Verification on the form Notice of Completion and Acceptance on November 20, 2020. (*Ibid.*) The Notice of Completion was recorded more than 15 days after the Awarding Body indicated work had been completed and accepted.

On August 19, 2021, the Center for Contract Compliance filed a complaint with DLSE naming Greener. (Exhibit H, p. 382.) The allegations in the complaint included failure to pay prevailing wages and violation of apprenticeship requirements. The complaint indicated that the Project was no longer active and that there was a Notice of Completion dated November 20, 2020. (Exhibit G, pp. 43-45.) The complainant attached a copy of the Notice of Completion and Acceptance to the complaint. (Exhibit I, p. 64.)

On April 14, 2022, DLSE sent out an initial packet to the parties including the Awarding Body. (Exhibit H, p. 382.) DLSE Included in the initial packet a Request for Information directed to the Awarding Body that specifically included a request for either a "Notice of Completion" or "Acceptance Document." (Dvorak Declaration, ¶ 4, and Exhibit 1.) The Awarding Body received the request on April 19, 2022. (*Ibid.*) On April 21, Greener provided to DLSE by email a copy of its payroll and other documents. (Exhibit H, p. 382.) Greener's certified payroll records (CPRs) indicated that November

9, 2020 was the last day an employee was on the Project, and that it was the final payroll for the Project. (Exhibit D.)

On January 20, 2023, Deputy Labor Commissioner Deisy Dvorak (Dvorak) emailed the Awarding Body following up on the request for documents. (Exhibit H, pp. 382-383.) On February 1, 2023, the Awarding Body answered Dvorak and provided the recorded Notice of Completion and Acceptance, and Greener's CPRs. (Dvorak Declaration, ¶ 5, and Exhibit 2.) On May 16, 2023, Dvorak submitted a penalty review for the case to the Senior Deputy, who approved it on May 18, 2023. (Exhibit E, pp. 433-434.) Dvorak prepared and served the Assessment on May 25, 2023. (Dvorak Declaration, ¶ 8, and Exhibit 6.)

## **DISCUSSION**

### The Date of Acceptance of the Public Work Controls the Outcome of the Question of Timeliness in this Matter.

Under section 1741, subdivision (a), if the Labor Commissioner determines after an investigation, that there has been a violation of the California Prevailing Wage Law, section 1720 et seq., "the Labor Commissioner shall with reasonable promptness issue [an assessment] to the contractor or subcontractor or both." Section 1741, subdivision (a) specifies further in part:

The assessment shall be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

Acceptance equals completion. (Civ. Code, § 9200, subd. (a).) In the public works context, "acceptance has been defined as that date at which someone with authority to accept does accept unconditionally and completely." (*Madonna v. State of California* (1957) 151 Cal.App.2d 836, 840, citation omitted.) A notice of completion is valid if recorded within 15 days after the date of completion. (Civ. Code, § 9204.) The 18-month period for service of the assessment is tolled if the Awarding Body fails to timely

furnish the Labor Commissioner, after written request, a valid notice of completion or a document evidencing the Awarding Body's acceptance of the Project on a particular date, whichever occurs later. (§ 1741.1, subd. (b)(2).)

The law puts responsibility on the awarding body to notify DLSE of the status of a public works project under investigation. The awarding body is supposed to respond to a written inquiry for a copy of the valid notice of completion or document evidencing acceptance of the public work within 10 days. (§ 1741.1, subd. (b)(1).) If the awarding body has not filed a valid notice of completion and there is no document evidencing its acceptance of the public work on a particular date, the awarding body is required to notify DLSE of those facts. (*Ibid.*) "Thereafter, the awarding body shall furnish copies of the applicable document within 10 days after filing a valid notice of completion...or within 10 days of the awarding body's acceptance of the public work on a particular date." (*Ibid.*)

The focus of the timeliness inquiry is on acceptance when a notice of completion is invalid. An invalid notice of completion does not create an indefinite period for the issuance and service of an assessment. (*Department of Indus. Relations, Div. of Labor Standards Enforcement v. Fidelity Roof Co.* (1997) 60 Cal.App.4th 411, 418 (hereafter *Fidelity Roof*.) The date of acceptance controls. (*Ibid.*)

In this matter, it is undisputed that the Notice of Completion recorded by the Awarding Body was invalid. The Awarding Body recorded the Notice of Completion on February 16, 2021, more than 15 days after the date of completion listed in the notice, November 20, 2020. As a result, the date of acceptance of the public work triggers the 18-month period for service of the assessment in this matter.

#### DLSE Failed to Serve the Assessment Timely.

On August 19, 2021, DLSE received a document evidencing the date the Awarding Body had accepted the public work. (§ 1741.1, subd. (b)(2).) On that date, the Center for Contract Compliance filed a complaint with DLSE naming Greener and attached a copy of the Notice of Completion *and Acceptance* (emphasis added) to the complaint. The Notice of Completion and Acceptance indicated that the superintendent

of the McFarland Unified School District accepted the Project on November 20, 2020. DLSE did not claim the superintendent did not have authority to accept the job. (*Madonna, supra*, 151 Cal.App.2d at p. 840.) Thus, on August 19, 2021, DLSE had a document evidencing that someone with authority to accept the Project—the superintendent of the school district—did accept the Project unconditionally and completely. (*Ibid.*) “It is not necessary that the acceptance be embodied in a formal resolution.” (*Ibid.*) The Notice of Completion and Acceptance was sufficient to establish acceptance of the Project.

Nevertheless, when DLSE began its investigation on April 14, 2022—almost 8 months after receiving the complaint with the Notice of Completion and Acceptance—it requested from the Awarding Body a “Notice of Completion” or “Acceptance Document.” When the Awarding Body responded finally on February 1, 2023, it provided DLSE a copy of the Notice of Completion and Acceptance that DLSE had already. Further, the Awarding Body did *not* notify Dvorak that there was *no document* evidencing the Awarding Body’s acceptance of the public work on a particular date. (§ 1741.1, subd. (b)(1).) Rather, the Awarding Body provided a document evidencing acceptance. Thus, whether the Notice of Completion and Acceptance was a valid notice of completion, it constituted evidence of acceptance. The fact that the notice of completion was legally “invalid” did not mean that the accurate factual information about acceptance could be disregarded.

The 18-month statute of limitations ran from November 20, 2020 to May 20, 2022. The Center for Contract Compliance notified DLSE well within the limitations period—August 2021—of a potential violation. DLSE still had nine months from the filing of the complaint to issue an Assessment. Thus, “[t]he recording of a notice of completion [was] not essential to the enforcement of the prevailing wage law.” (*Fidelity Roof, supra*, 60 Cal.App.4th at p. 421.) Moreover, DLSE had received a document evidencing acceptance by the Awarding Body from the Center for Contract Compliance. Even if DLSE, in good faith, requested from the Awarding Body on April 14, 2022 a document evidencing acceptance, by the time it received a second copy of the Notice of

Completion and Acceptance on February 1, 2023, it had sufficient information to prepare an assessment, and no further tolling was appropriate. After all, DLSE had, since April 21, 2022, Greener's CPRs that documented the last payroll as being for the week ending November 14, 2020, and that the last day an employee was on the job as being November 9, 2020. The CPRs, coupled with the Notice of Completion and Acceptance DLSE received from the Center for Contract Compliance, was sufficient notice to DLSE to enable DLSE to determine the time within which to serve an assessment.

Even if the time to serve the assessment under section 1741 was tolled until February 1, 2023, when DLSE received the document evidencing the Awarding Body's acceptance of the Project on November 20, 2020, DLSE failed to serve the assessment timely. On April 19, 2022, when the Awarding Body received DLSE's request, 17 months had passed. One month remained to serve an assessment. On February 1, 2023, with tolling, DLSE had 21 days to serve an assessment. DLSE did not serve the Assessment in this matter until May 25, 2023, more than three months too late.

### **FINDING**

DLSE served the Assessment untimely under Labor Code section 1741, subdivision (a).

### **ORDER**

The Civil Wage and Penalty Assessment is dismissed as untimely. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 8/14/2024



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**Katrina S. Hagen, Director**  
California Department of Industrial Relations