



New Contractor Registration Requirements Are Now in Full Effect

As discussed in a previous F3 Newsflash issued when Senate Bill 854 (“SB 854”) was signed by Governor Brown last August, all contractors and subcontractors listed on bid proposals for “public works” projects were required to register with the Department of Industrial Relations (“DIR”) as of March 1, 2015. Further, as of April 1, 2015, no contract may be awarded if these new DIR contractor registration requirements have not been met. (DIR maintains an up-to-date listing of registered contractors [here](#).) Additionally, on all public works projects awarded on or after April 1, 2015, contractors and subcontractors must submit electronic certified payroll records to the Labor Commissioner. This requirement to provide electronic certified payroll records will apply to all public works projects, whether new or ongoing, as of January 1, 2016.

SB 854 also requires public agencies to notify the DIR within five days of a contract award for any public works project. The notification is accomplished by electronically submitting the DIR form known as the PWC-100. (Previously, this reporting requirement only applied to specific circumstances; however, SB 854 expanded the requirement to all public works projects.) The PWC-100 can be accessed [here](#).

Unfortunately, there is no firm guidance on the definition of the term “contract award” (i.e. governing board approval or full execution of the contract by both contractor and public agency). For this reason, the safest approach is to file the PWC-100 within five days after the contract award is approved by the agency, which is usually when the governing board approves the award of the project to the selected contractor.

As we noted when SB 854 was signed, these are important requirements that public agencies should have already started to incorporate into their bidding and contract documents. Time has passed quickly and the significant April 1 deadline is now upon us. As with any new requirement, it is unclear how enforcement of these new regulations will be handled. However, in order to avoid being the first to find out, it is important to make sure all bidding and contract documents include the DIR contractor registration and electronic reporting requirements, in addition to making sure public agencies timely file the PWC-100 form with DIR. Such compliance will avoid the situation of a contract potentially being declared void or funding for a project being withheld. For those projects that were already subject to DIR monitoring requirements, existing monitoring should continue; however, DIR will no longer charge agencies for monitoring costs.

Finally, when considering whether these new requirements apply to your project, it is important to keep in mind the broad definition of “public works” in Labor Code section 1720. The following is language from Labor Code section 1720(1), one of seven subsections of the definition:

Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public

utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

If you have any questions regarding this matter or would like assistance incorporating new language into procurement documents and contracts, please call one of our six offices.

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