

June 13, 2014

TO: NECA Chapter Managers

From: Eddie Bernacchi

RE: DIR Public Works Enforcement Funding and Contractor Registration Legislation

Below is an update/summary regarding the proposed Department of Industrial Relations and the State Building and Construction Trades Council sponsored budget trailer legislation. Our firm led the negotiations on behalf of subcontractors. We have historically supported increased prevailing wage and apprenticeship standards enforcement. NECA leadership charged us with supporting this proposal, but only if we could get the measure into an acceptable form. I believe we have done so. This proposal will be passed as part of the 2014/2015 State budget. A copy of the final proposal is attached. Please contact me if you have any questions.

**DIR Public Works Enforcement Funding and Contractor Registration Legislation**

**Review:**

The Department of Industrial Relations (DIR) and the State Building and Construction Trades Council (SBCTC) with the support of its affiliated unions have proposed in the 2014-2015 California state budget, the attached language to restructure funding for administration and enforcement of prevailing wage and apprenticeship requirements by the DIR. Over the last three months we have negotiated on behalf of NECA contractors on this proposal. While we supported the overall goal of increased and more consistent prevailing wage and apprenticeship enforcement, we had concerns with the penalties for an inadvertent lapse in compliance and the total program costs to contractors.

As originally written, the proposal would have prohibited any contractor who was found to have not registered, even in the event of an inadvertent error, from bidding on public works projects for a period of one year. The proposal was also silent on the amount of total revenue the fee on contractors could produce before the registration or renewal fee had to be reduced. At our request both items were addressed. The current language now allows for a late renewal window of 90 days and a once a year per contractor "right to repair" with a \$2000 penalty. In addition, the new language caps the amount that the State Public Works Enforcement Fund can exceed related to the amount the legislature appropriates for the State Public Works Enforcement Fund at 25% and requires that any additional revenue stemming from the contractor registration fee must be allocated to reducing the contractor registration fee in the following year.

**Impact:**

The benefits of this proposal will be increased enforcement of prevailing wage and apprenticeship requirements and for the first time ever, a statewide list of public works eligible contractors will be made available. That list could prove useful to our industry compliance programs.

While we moved forward in support of this proposal with our suggested changes, we will need to be mindful that while nominal, this is another fee levied on our contractors and may not be embraced by all.

**Executive Summary:**

Under existing law – DIR administers and enforces the prevailing wage and related requirements found in Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code. This includes:

- Director’s determination of prevailing wage rates for all parts of the state
- Public Works coverage determinations by the Director
- Traditional enforcement through investigation of complaints by Labor Commissioner (including prevailing wage and apprenticeship violations)
- Proactive monitoring by Compliance Monitoring Unit (CMU), including review of all certified payroll records (CPRs), on state bond-funded projects and other specified projects
- Issuance and enforcement of civil wage and penalty assessments by Labor Commissioner
- Administrative appeal hearings conducted by DIR hearing officers
- Director’s approval and oversight of labor compliance programs (LCPs) that are required for Proposition 84 projects and authorized in some other circumstances

Currently these activities are funded through (1) billing in arrears to awarding bodies for services provided on CMU projects (mostly bond projects); (2) portion of the Labor Enforcement and Compliance Fund (LECF) assessment charged to all California employers; (3) General Fund; and (4) other minor sources.

The DIR/SBCTC proposal would replace current funding sources with a public works contractor registration fee that pays for all DIR administration and enforcement of prevailing wage requirements (activities listed above with revisions in how projects are monitored).

**Essentials of contractor registration program:**

Contractors will be subject to a registration and annual renewal fee that has been set initially at \$300. The fee is non-refundable and applies to all contractors and subcontractors who intend to bid on or perform work on public works projects (as defined under the Labor Code).

Contractors will register and pay the fee online and must meet minimum qualifications to be certified as eligible to work on public works projects:

- Licensed with the Contractors State License Board
- Must have workers’ compensation coverage for any employees and only use subcontractors who are registered public works contractors
- Must have no outstanding unpaid wage or penalty assessments due to any employee or agency
- Not under debarment

DIR will maintain a data base of registered contractors and subcontractors so that awarding bodies will be able to comply with requirement to only use qualified contractors and subcontractors.

Registration opens on July 1, 2014.

Requirement to list only registered contractors and subcontractors on bids becomes effective on March 1, 2015.

Requirement to only use registered contractors and subcontractors on public works projects applies to all projects awarded on or after April 1, 2015.

Registration will be performed online and payment of the registration fee or renewal fee will be by credit card at the time of registration.

Essentials of Public Works Enforcement Fund:

All contractor registration and renewal fees will go into Public Works Enforcement Fund and will be used to fund the following items and for no other purposes:

- Administration of contractor registration requirement
- DIR costs for administering and enforcing public works laws
- Labor Code enforcement by Labor Commissioner on monitored public works projects

Related changes in DIR's administration and enforcement of public works requirements:

Current requirements to use the CMU for only state bond-funded and other specified projects will be eliminated and replaced by requirements that allow the use of the CMU on all public works projects (as defined under the Labor Code).

Awarding bodies will be required to submit PWC-100 (contract award notice) for all public works projects (*requirement currently applies to about 90% of all projects*).

Contractors and subcontractors on all public works projects will be required to submit CPRs to the Labor Commissioner unless exempted from this requirement.

CPR submittal requirement will be phased in as follows:

- Will apply immediately to public works projects that are currently under CMU monitoring
- Will apply to new public works projects awarded on or after April 1, 2015
- May apply to other public works projects as determined by Labor Commissioner
- Will apply to all public works projects, new or ongoing, on and after January 1, 2016

Labor Commissioner may make exception to this requirement for:

- Projects covered by qualifying project labor agreement
- Projects undertaken by one of four remaining awarding bodies with legacy Labor Compliance Programs (LCPs) (Caltrans, City of Los Angeles, County of Sacramento, and Los Angeles Unified School District), so long as those programs remain approved by DIR

CPRs will be furnished online (as is done currently for CMU projects). DIR intends to continue making improvements to the process, including creating a means for general contractors to have online access to the CPRs submitted by their subcontractors.