

Community College Facility Coalition
Citrus Community College District
December 2, 2014

SB 854
DIR CONTRACTOR REGISTRATION
DLSE PREVAILING WAGE RATE
ENFORCEMENT & MONITORING

DIR REGISTRATION

- Required to be “qualified” to: (i) bid public works; (ii) be listed subcontractor; and (iii) perform public works
- All public works contractors and subcontractors
- Registration fees to State Public Works Enforcement Fund

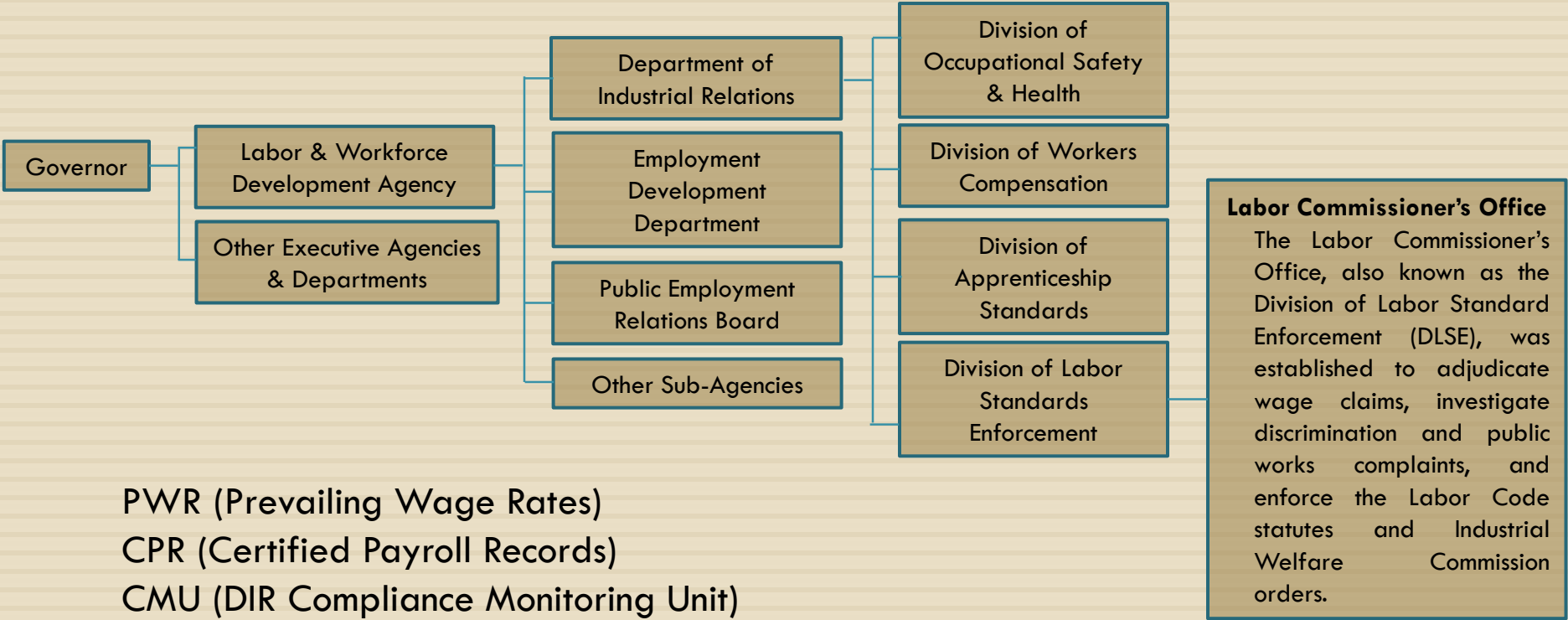
DLSE PWR MONITORING & ENFORCEMENT

- CPR submittal to DLSE
- DLSE monitors and enforces PWR; all public works
- Eliminates DIR CMU Labor Compliance
- DIR registration administrative costs & DLSE PWR activities funded by DIR registration fees

ACRONYMS DEFINED

DIR (Department of Industrial Relations)

DLSE (Division of Labor Standards Enforcement)



PWR (Prevailing Wage Rates)

CPR (Certified Payroll Records)

CMU (DIR Compliance Monitoring Unit)

LCP (Labor Compliance Program)

SB 854 IMPLEMENTATION TIMELINE

June, 2014

July 1, 2014

Jan. 1, 2015

Mar. 1, 2015

Apr. 1, 2015

Jan. 1, 2016

SB 854
Signed

DIR Contractor Registration Begins
DIR CMU Projects Convert to DLSE PWR Monitoring/Enforcement
District Notice to DIR of Public Works Contract Award

Calls for Bids and Contract Documents Incorporate
Notice of DLSE Monitoring and CPR Submittal to DLSE

DIR Contractor Registration Required
(Bids submitted after March 1)

DIR Contractor Registration Required
Contractors Submit CPRs to DLSE
(Contracts Awarded after April 1)

Contractors Submit CPRs
to DLSE for all Public
Works

Public Agency Law Group

Attorneys At Law

T: 310-640-0800 / F: 310-640-0818

swong@palg.net

SUMMARY

DIR/Labor Commissioner

- DIR contractor registration administration
- DIR maintains registered contractors database
- Contractors submit CPRs to DLSE
- DLSE monitors/enforces PWR
- DIR CMU Labor Compliance Program eliminated
- All public works projects

Contractors & Subcontractors

- DIR Registration
- DSLE CPR submittal
- Public Contract Code §4107 Substitution of Non-Registered Subcontractor

Public Owners

- Notify DIR of public works contract award
- Require DLSE CPR submittal
- Establish DLSE authority to monitor and enforce PWR
- Establish DIR registration requirements

Public Agency Law Group

Attorneys At Law

T: 310-640-0800 / F: 310-640-0818

swong@palg.net

TIMELINE SUMMARY



Key Dates

- July 1, 2014
 - DIR contractor registration begins
 - Existing DIR CMU projects convert to DLSE PWR monitoring and CPR submittal
 - District notice to DIR of public works contract award
- Contracts awarded after January 1, 2015
 - Call For Bids and Contract Documents establish:
 - DLSE CPR submittal
 - DLSE PWR monitoring and enforcement
- Bids submitted after March 1, 2015 and contracts awarded after April 1, 2015
 - Contractor/Subcontractors subject to DIR Registration requirements
 - DLSE CPR submittal
 - DLSE PWR monitoring and enforcement
- January 1, 2016
 - DLSE CPR submittal for all new and on-going public works projects

Public Agency Law Group

Attorneys At Law

T: 310-640-0800 / F: 310-640-0818

swong@palg.net

CONTRACTS AFFECTED BY DIR REGISTRATION REQUIREMENTS

- Construction (capital/modernization)
Design-Bid-Build Projects and Projects completed by alternative delivery mechanisms (design-build, multiple-prime, lease-leaseback, etc.)
- Maintenance & Repairs (above and below bid threshold)
- Carpeting
- Fixed and free-standing “modular office systems”
- Inspection/Survey Services
- Energy Conservation (Government Code §4217 and Prop 39)
- Project Waste Hauling (soils, concrete, asphalt, construction debris)
- Uniform Public Construction Cost Accounting

CONTRACTOR DIR REGISTRATION; LABOR CODE §1725.5

➤ Annual registration

- Initial year (July 1, 2014) \$300 registration fee
- Same registration year (7/1 – 6/30) for all contractors
- Subsequent years; “uniform amount” adjusted to support DLSE PWR activities

➤ Conditions to DIR Registration

- Workers Compensation Insurance
- Contractors' License, if applicable
- No delinquent liability for backwages
- Not subject to debarment
- No public works bid, award of public works contract or performance of public work in prior 12 months without DIR Registration

EFFECT OF NON-DIR REGISTRATION

- If public work bid, award of public works contract or performance of public contract in prior 12 months without DIR Registration, allowed to register if:
 - No violation of DIR Registration in prior 12 months
 - Payment of penalty registration fee
- Contractor failing to renew DIR Registration “prohibited from bidding on or engaging in the performance of any contract for public work” until renewal of DIR Registration
 - 90 day period after registration expiration for retroactive renewal

“INADVERTENT” LISTING OF NON- DIR REGISTERED SUBCONTRACTOR

➤ **Bid Proposal Responsiveness**

Labor Code §1771.1

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

- (1) The subcontractor is registered prior to the bid opening.
- (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
- (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

➤ **Public Contract Code §4107 Non-DIR Registered Subcontractor Substitution**

- Timing
- Instructions for Bidders & General Conditions Provisions

DISTRICT & DIR REGISTRATION REQUIREMENTS

- Amend Call for Bids/Advertisement
- Amend Subcontractors List
- Incorporate DIR Registration Verification Form
- Amend General Conditions
- Review Division 1 Specifications; Amend
- Amend Pre-Qualification Applications

DISTRICT “TO DO” LIST FOR DIR REGISTRATION

➤ **Modify Call for Bids/Advertisement**

- Bidder DIR registration as condition of bidder qualification to submit bid proposal and award of contract
- DIR registration required for all subcontractors

➤ **Modify Instructions for Bidders**

- Bidder DIR registration required for responsive bid proposal
- Bidder submittal of DIR Registration Verification with Bid Proposal
- Listed Subcontractors DIR Registration Number

➤ **Incorporate DIR Registration Verification Form**

➤ **Modify Subcontractors List for Subcontractor Registration No.**

➤ **Modify Contract Documents (General Conditions)**

- Obligation to maintain DIR registration throughout performance
- Contractor certification of subcontractors’ DIR registration as condition to payment

➤ **Pre-Qualification Applications**

- DIR registration verification
- Verification of Subcontractors’ DIR registration

CONTRACT DOCUMENTS MODIFICATIONS; DIR REGISTRATION

- **DIR Registration required to perform for contractor and all subcontractors**
- **Subcontractors subject to DIR Registration**
 - Listed
 - Non-Listed
 - Every tier
- **Contractor obligation to verify; prohibit performance by any non-DIR registered contractor**
- **Lapse in DIR Registration contractor/subcontractor as event of default**
- **No Contract Time or Contract Price adjustments for compliance with DIR Registration requirements**
- **Right to withhold payments for DIR Registration violations; release withheld payment after correction of violation, less District costs related to DIR Registration violation**

➤ **Contractors Submit CPRs to DLSE**

- Monthly submittal, or more frequently if required by project contract documents
- E-filing of CPRs in DLSE prescribed format

➤ **DLSE PWR monitoring / enforcement**

- Immediately effective for former DIR CMU projects (state-wide bond funded, design-build projects)
- Projects awarded after April 1, 2015
- Other projects designated by DLSE
- All new and on-going projects as of January 1, 2016

IMPLEMENTING DLSE PWR REQUIREMENTS

➤ **Revise Call for Bids/Contract Documents**

- Notice of DLSE PWR monitoring and enforcement; DLSE CPR Submittals
 - Bids advertised Fall, 2014 with contract award after January 1, 2015
 - Call for bids
 - General Conditions
- Notice of Required Job Site Postings
- Contractor CPR submittal to DLSE
 - Required for contracts awarded after April 1, 2015
 - Establish requirements in General Conditions
 - Establish frequency of CPR submittals and verification of CPR submittal

➤ **Contracts/Projects Affected**

- Public works projects valued at \$1,000 or more

SUMMARY DISTRICT ACTIONS

➤ **Fall, 2014**

- Revise bid/contract documents for bids to be awarded after January 1, 2015 for notice of DLSE PWR monitoring and contractor CPR submittal to DLSE
- Revise Uniform Public Construction Cost Accounting Pre-Qualification Application for DIR Registration confirmation
- Revise project specific or building program Pre-Qualification Application for DIR Registration confirmation
- Revise Design-Build Pre-Qualification Application for DIR registration
- Notify DIR of all public works contract awards

➤ **Winter, 2015**

- Revise Bid/contract documents for contracts bidding after March 1, 2015 or contracts awarded after April 1, 2015 (DLSE CPRs/PWR monitoring AND DIR registration)
- Develop process for verification of contractor/subcontractor DIR Registration

CONTRACT DOCUMENTS MODIFICATIONS; DLSE PWR MONITORING/ENFORCEMENT

➤ CPRs

- CPR submittal to DLSE; contractor/all subcontractors
- Frequency of CPR submittals
- Concurrent submittal to District/Verification of CPR submittals
- All subcontractors submittal as condition to payments

➤ Job Site Posting

- Delegate responsibility for posting to contractor
- Require all DLSE designated postings (substance, locations, etc.)

- Does SB 854 apply to architects/engineers?
- What is timing for the contractor to request consent to substitute an unregistered subcontractor?
- Do “non-listed” subcontractors need to be DIR registered?
- How is SB 854 implemented for an existing state-wide bond funded project or an existing design-build project?
- What happens if a contract is awarded to an unregistered contractor?
- If the contract documents require submittal of CPRs as a condition to payment, how do I verify that the contractor and subcontractors have submitted CPRs?

SB 854 KEY STATUTORY CHANGES

Labor Code	Description
Labor Code §1725.5 Added	DIR contractor registration process; registration criteria and implementation of DIR registration requirements
Labor Code §1771.1 Added	DIR registration required to be qualified to: (i) bid public works; (ii) public contract award; and (iii) public contract performance; process for handling “inadvertent error” listing unregistered subcontractor
Labor Code §1771.3 existing provisions repealed; and new provisions enacted	State Public Works Enforcement Fund
Labor Code §1771.4 added	Call for bids and contract documents establish contractor’s obligation for DLSE CPR submittal and PWR monitoring/enforcement
Labor Code §1771.7 amended	DIR CMU PWR enforcement for state-wide bond funded projects eliminated for contracts awarded after January 1, 2012 Contracts for state-wide bond funded projects awarded after January 1, 2012 subject to SB 854 DLSE PWR enforcement/monitoring and CPR submittal to DLSE
Labor Code § 1773.3 existing provisions repealed and new provisions enacted	District notice to DIR of public works contract award. Prior legislation required DIR notice of contract award only for DIR CMU Projects. As amended, notice to DIR required for all public works contract award.
Education Code §17250.30 and §81704	DIR CMU PWR only for design-build contract awarded before January 1, 2012 Design Build contracts awarded after January 1, 2012 subject to Labor Code §1771.4 CPR submittal to DLSE and DLSE PWR monitoring/enforcement