

DATE: June 29, 2017
TO: Clients and Colleagues
FROM: Clare M. Gibson
RE: Legal Update | SB 96 – Prevailing Wage Compliance

Senate Bill 96 (SB 96) was signed into law on June 27, 2017 as a budget trailer bill—which means that it is effective immediately, subject to limited express exceptions. SB 96 includes amendments to the Labor Code, the Public Contract Code, and other codes. This legal update is focused solely on amendments pertaining to public works contracts subject to prevailing wage requirements under Labor Code section 1720 et seq.

From the local agency perspective, the most significant of these changes relate to requirements for contractors and subcontractors to be registered with the Division of Industrial Relations (DIR) pursuant to Labor Code sections 1772.5 and 1771.1; and requirements for public agencies to 1) notify the DIR of award of public contracts, and 2) comply with and enforce provisions that pertain to the DIR registration requirements.

Here are the primary changes that will apply to prevailing wage contracts awarded by cities and other local agencies:

- **Notice of Award to DIR:** Local agencies must provide notification to the DIR within 30 days (previously 5 days) following award of a public works contract, but no later than the first day that workers are on the project. (Labor Code § 1773.3(a)(1).)
 - The notice of award must include all information required by Labor Code § 1773.3(a)(2), which now requires a list of all subcontractors, and the DIR registration numbers for the contractor and its subcontractors.
 - Local agencies must withhold final payment due to a contractor until at least 30 days following submission of all of the information required for the notice of award.

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- **Penalties for Non-compliance:** Local agencies may be subject to penalties of \$100 per day (up to \$10,000 total) for:
 - Failure to comply with the DIR notice of award requirements;
 - Permitting an unregistered contractor or subcontractor to perform work on the project; or
 - Issuing final payment to a contractor after an unregistered contractor or subcontractor performed work on the project. (Labor Code § 1773.3(c) and (d).)
- **Loss of State Funding:** If a local agency is determined to have “willfully” violated the applicable requirements for two or more projects within a 12-month period, it may lose eligibility for state funding or financial assistance for one year. (Labor Code § 1773.3(f).)
- **Small Contract Exemptions:** Projects of \$25,000 or less for construction, alteration, demolition, installation, or repair work, and projects of \$15,000 or less for maintenance work, are now exempt from the following requirements:
 - DIR registration requirements under Labor Code sections 1725.5 and 1771.1; and
 - Notice of award requirements under Labor Code section 1773.3.
- **Subcontractor List Form:** Public Contract Code section 4104 now requires that the DIR registration number for each subcontractor included on the subcontractor list form. If inadvertent omission of a subcontractor’s DIR number is cured within 24 hours after the bid opening, it will not be grounds for a bid protest.

Bottom Line: Cities and other local agencies should 1) ensure that their public works templates are updated to reflect these changes, particularly the new requirement for subcontractor list forms; and 2) consider in-house training to ensure that DIR notices of award and final payments are compliant with Labor Code section 1773.3.

Disclaimer: This legal update is not intended as legal advice, and further legal developments may affect the summary analysis provided herein.