

Construction Contractors Beware: Think Twice Before Paying Prevailing Wage Assessments!

Labor & Employment Law Update

By Jeffrey Risch on April 2, 2021



Big Labor continues to use local, state and federal prevailing wage laws to target contractors they have a “beef” with. Since most prevailing wage audits are triggered by a complaint (including 3rd party complaints), trade unions and certain union-friendly organizations can easily turn in a contractor with the

general assertion that the contractor is not complying with applicable prevailing wage law. While contractors and merit shop trade associations could do likewise, they typically don’t for obvious business reasons. Having concentrated my practice on assisting contractors with prevailing wage disputes throughout the U.S., this trend not only continues but is ramping up in recent months. While contractors who intentionally cheat the system and ignore their legal obligations should get what they rightly deserve, many contractors are facing audit assessments that are simply off or incorrect. Paying a disputed assessment in the hope of not upsetting the government agency or believing that cooperation will bring you favor is arguably one of the worst things a contractor can do these days; failing to properly document your disputes with any assessment that you believe has been issued in error could be the 2nd worst thing.

In short, I am now seeing more and more audit findings that are just flat out wrong, in whole or in relevant part. Additionally, it is often the case that even if the ultimate assessment is correct, the discrepancy is based on a clerical mistake, an unintentional accounting or reporting error or a case of disputed worker classification. However, many general contractors and public bodies, especially local units of government, are being told that they must reject the bid of a contractor who has any past or pending prevailing wage complaint against it, even when the contractor is the low bidder. By rejecting bids or terminating

contracts with non-debarred contractors who are simply fighting the good fight with prevailing wage issues, these general contractors and public bodies are depriving contractors of fair due process, stifling competitive bidding and ignoring their obligations to the taxpayer.

In these times, contractors need to be extra cautious and careful in any and all communications with any government agency investigating prevailing wage compliance. To be clear, every complaint must be taken seriously by the contractor to ensure that the record ultimately reflects that the contractor is not only complying with its legal obligations, but also free to bid and perform public construction projects without interference.

With the above in mind, there are 5 basic rules for anyone performing public construction work to follow with an eye on growing prevailing wage enforcement:

1. Know your legal obligations under any and every local, state or federal prevailing wage ordinance/law that applies to your business (note: what's permissible under Federal Davis-Bacon may be unlawful under local/state prevailing wage law);
2. Ensure your business is complying with all applicable prevailing wage obligations for every worker, every day, every week, every job — not simply paying the correct rates but also keeping and maintaining detailed and accurate time and payroll records;
3. Never allow a prevailing wage audit or investigation to be closed or remain in limbo without some document that confirms your full compliance with your legal obligations (you will have to do this yourself);
4. Never sign any settlement agreement concerning prevailing wage issues without first reviewing it with competent legal counsel to help ensure that no admission of liability or guilt is made and to expressly state that you are free and clear to bid and perform future public construction work; and
5. Educate your local units of government on who you are and highlight your good name and business reputation — get to know the public officials, get involved and form relationships.

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