STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

AID Builders, Inc. Case No. 23-0147-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor, AID Builders, Inc. (AID), submitted a request for review of the Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on August 9, 2023, with respect to work performed by AID on the Campus-wide Accessibility Improvements, Phase 4 Project (Project), for the Riverside Community College District (Awarding Body), in the County of Riverside. The Assessment determined that $130,030.08 was due in unpaid prevailing wages, training funds, liquidated damages, and statutory penalties. On June 21, 2024, DLSE filed a statement of issues advising that, on or about April 10, 2024, AID's Surety paid DLSE $57,790.07, the assessed wages and training funds, which DLSE applied as a credit to the amount due under the Assessment. On June 21, 2024, DLSE filed a motion pursuant to Rule 26, subdivision (a) [Cal. Code Regs., tit. 8, § 17226, subd. (a)],[1] to amend the Assessment downward to reflect removal of $20,700 in Labor Code section 1776 penalties and $10,000 in Labor Code section 1771.1 penalties (Amended Assessment) on the grounds that they were not warranted.[2] As the proposed amendment did not prejudice AID, the Hearing Officer granted the motion. (Rule 26, subd. (b).)

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[1] Individual sections of the Prevailing Wage Hearing Regulations, California Code of Regulations, title 8, section 17201 et seq., are referred to as "Rules" using their last two digits only. (Rule 01, subd. (d).)

[2] All subsequent section references are to the California Labor Code, unless otherwise specified.

Hearing Officer Jessica L. Pirrone held a Hearing on the Merits on June 28, 2024. Luong Chau appeared as counsel for DLSE. There was no appearance by AID. Deputy Labor Commissioner Phyo Maw testified in support of the Amended Assessment. The Hearing Officer submitted the matter for decision on June 28, 2024. To date, AID has not sought relief for its non-appearance as permitted under Rule 46.

In the Statement of Issues, DLSE stipulated that AID timely filed the Request for Review. The following issues for Decision remain:

- Whether the Project was a public work subject to payment of prevailing wages and employment of apprentices under sections 1720 - 1861.
- Whether DLSE served the Assessment timely under section 1741.
- Whether DLSE made its enforcement file available timely.
- Whether DLSE used the correct prevailing wage classifications in the audit.
- Whether DLSE used the correct prevailing wage determinations in the audit.
- Whether the hours worked as listed in the audit were correct.
- Whether AID is liable for liquidated damages under section 1742.1, subdivision (a).
- Whether AID is liable for penalties under section 1775.
- Whether AID is liable for penalties under section 1813.
- Whether AID submitted contract award information to all applicable apprenticeship committees in a timely and sufficient manner as required by section 1777.5.
- Whether AID requested from all applicable apprenticeship committees the dispatch of apprentices as required by section 1777.5.
- Whether AID employed apprentices on the Project in the minimum ratio required by section 1777.5.
- Whether AID is liable for section 1777.7 penalties.
- Whether AID uploaded certified payroll records (CPRs) in compliance with section 1771.4 subdivision (a)(3)(A)(ii).
- Whether AID is liable for penalties under section 1771.4 subdivision (a)(3)(B).

For the reasons set forth below, the Director of Industrial Relations finds that DLSE carried its initial burden of presenting evidence at the Hearing that provided prima facie support for the Amended Assessment. (Rule 50, subd. (a).) As no representative appeared for AID, the evidence stood unrebutted. Thus, AID failed to carry its burden to prove the bases for the Amended Assessment were incorrect. (Rule 50, subd. (b).) Accordingly, the Director issues this Decision affirming the Amended Assessment.

FACTS

Failure to Appear.

On January 30, 2024, counsel for AID advised the Hearing Officer and parties via email that "it would no longer be representing AID Builders," and that future communication regarding this matter should be sent to Ed H. Albadry on behalf of AID Builders, Inc. Following that email, AID failed to appear at the duly noticed March 28, 2025, Settlement Conference and the April 8, 2025, Prehearing Conference. At the April 8, Prehearing Conference, the Hearing Officer granted the Enforcing Agency's request that the matter be set for a Hearing on the Merits.

On April 9, 2024, the Hearing Officer's secretary sent notice that the Hearing on the Merits was set for June 28, 2024, at 10:00 a.m. The Notice was served via email to the addresses on record, including to ealbadry@aidbuilders.com on behalf of AID. On June 14, 2024, DLSE filed and served by email and overnight delivery its Witness List, Exhibit List and Amended Exhibit List. On June 21, 2024, DLSE filed and served by email and overnight delivery its Statement of Issues, Second Amended Exhibit List, and Motion to Amend the Assessment to reduce penalties. On June 28, 2024, DLSE filed and served by email its Third Amended Exhibit List.[3] AID did not serve a Witness List, Exhibit List, or Statement of Issues.

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[3] DLSE's Third Amended Exhibit list identifies Exhibit nos. 1-20, by document and page number. The links to the Exhibits were named Exhibits 1-23 and Exhibit 24. The Exhibits themselves are not individually identified by Exhibit number, and the page numbers on the Exhibit List do not match the numbers on the Exhibits. For example,

On June 28, 2024, counsel for DLSE and DLSE's witness appeared for the Hearing on the Merits. There was no appearance for AID. The Hearing Officer proceeded to conduct the Hearing to formulate a recommended decision as warranted by the evidence. (Rule 46, subd. (a) ["Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party's absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party"].)

The Hearing Officer admitted into evidence without objection DLSE Exhibit Nos. 1 through 24. DLSE called Maw to testify regarding the Project, his investigation, and findings.[4] His unrebutted testimony regarding the salient facts is summarized below.

<u>The Project.</u>

The Awarding Body issued a Notice Inviting Bids dated May 4, 2022.[5] On June 22, 2022, the Awarding Body entered into a contract with AID for $902,000 to perform all work on the Project, which entailed removal and replacement of existing concrete sidewalks, planters, curbs, parking lot slurry, striping, ADA signage and ramps, and wheelchair seat relocation (the Contract.)[6] Article 8 of the Contract, entitled "Prevailing Wages," incorporates by reference the statutes and regulations related to public works, and states:

> Wage rates for this Project shall be in accordance with the general prevailing rate . . . as determined by the director of the Department of Industrial Relations. ... Monitoring and

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Exhibit number 17 is the Penalty Review. On the Exhibit List, Exhibit 17 is at page nos. 678-684. But, the Penalty Review is actually at page nos. DLSE 689-695.

[4] DLSE Exhibit nos. 1 (the Assessment), 2 (the Audit Summary and Worker Audit Worksheets), and 17 (the Penalty Review), also set forth Maw's methodology and findings.

[5] DLSE Exhibit no. 3a (Proof of Publication /Notice Inviting Bids).

[6] DLSE Exhibit No. 4 (the Contract).

> enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner

The Notice of Completion for the Project was recorded on April 20, 2023.[7]

The Amended Assessment.

In April, May, and June 2023, the Awarding Body sent letters to AID advising AID of its prevailing wage violations.[8] DLSE opened its investigation in May 2023.[9] Maw testified that, for each of the four workers at issue, he followed the same methodology to determine the applicable scopes of work, applicable Prevailing Wage Determinations (PWDs), hours worked, and difference between the amount AID paid to the workers and the amount the workers were owed under applicable law. That methodology included: conducting worker interviews;[10] reviewing worker-prepared calendars reflecting the hours they claim to have worked;[11] determining the applicable scopes of work based on the workers' descriptions of their duties;[12] examining photographic evidence,[13] Project Inspector's Reports, and other documentation related to the Project;[14] researching the correct PWDs based on the scopes of work,[15] project location,

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[7] DLSE Exhibit No. 6 (Notice of Completion Recorded April 20, 2023).

[8] DLSE Exhibit nos. 7 and 8 (Awarding Body's Letters to AID Builders, dated April 7, 2023 and June 22, 2023, respectively).

[9] DLSE Exhibit no. 24.

[10] DLSE Exhibit Nos. 10-13.

[11] *Ibid.*

[12] *Ibid.*

[13] DLSE Exhibit No. 16.

[14] DLSE Exhibit No. 9.

[15] DLSE Exhibit Nos. 14 and 15

and bid advertisement date;[16] and calculating the difference between the amount the workers reported being paid and the amount they were owed based on the applicable PWDs and hours worked.[17] Additionally, Maw researched whether AID met its obligations to seek the dispatch of and hire apprentices and submit and upload CPRs.[18] Maw also analyzed whether AID Builders' violations were willful for the purpose of imposing penalties.[19]

Following his investigation, Maw concluded that the workers' duties fell into the Iron Worker and Labor and Related classifications and the corresponding PWDs were C-20-X-1-2022-1 and SC-23-102-2-2021-1, respectively.[20] Based on the PWDs, the hours worked, and amounts paid, Maw concluded that AID owed $56,891.76 in prevailing wages and $808.32 in training funds, which the Surety paid in full on or about April 10, 2024.[21] DLSE applied a credit for the amount the Surety paid.

Maw identified 142 prevailing wage violations. He also determined that AID's failure to pay the prevailing wage was willful given that the Awarding Body warned AID about its prevailing wage violations in writing, to no avail. The minimum penalty rate under section 1775 for a willful violation was $120 per violation. Therefore, the amount assessed under section 1775 was $17,040. Maw also found that AID failed to pay

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[16] DLSE Exhibit No. 3 (a).

[17] DLSE Exhibit Nos. 1-3.

[18] DLSE Exhibit Nos. 1 and 17.

[19] *Ibid.*

[20] DLSE Exhibit No. 17 ("4 workers interviewed in office . . . Performed 2 types of jobs: welding (Iron Worker A4) and core drill (Laborer G4)."), and DLSE Exhibits 14 and 15.

[21] See DLSE's Statement of Issues served June 21, 2024, at 3:3.

overtime on twelve occasions. The penalty rate under section 1813 for failing to pay overtime was $25 per violation, totaling $300 for twelve violations.[22]

Maw also found that AID did not comply with its apprenticeship-related obligations. Maw found that there were two Iron Worker apprenticeship programs and one Laborer apprenticeship program in the geographic region of the Project to which AID was required to transmit contract award information (DAS 140 or its equivalent) and request the dispatch of apprentices (DAS 142 or its equivalent).[23] But, AID did not submit contract award information or seek the dispatch of apprentices from any of the programs.[24] Additionally, Maw found that AID employed Iron Worker journeypersons on the Project for 656 hours and Laborer journeypersons for 480 hours, but did not employ any apprentices in those classifications.[25] Based on those facts, he found that AID's violations were willful and assessed penalties at the mitigated rate of $80 per violation. Maw calculated the number of penalties from the first day of work performed, August 3, 2022, to the last day of work performed, March 31, 2023 (240 days), resulting in a penalty of $19,200.[26]

Maw also found that AID failed to produce or upload CPRs. He assessed a $5,000 penalty for the failure to upload CPRs based on section 1771.4, which provides for a penalty of $100 per day up to $5,000.[27]

DLSE issued the Assessment on July 14, 2023. In a letter dated August 9, 2023, and stamped received August 15, 2023, AID, through its counsel, sent a

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[22] DLSE Exhibit Nos. 1, 2 and 17.

[23] DLSE Exhibit No. 17.

[24] *Ibid.*

[25] *Ibid.*

[26] DLSE Exhibit No. 1.

[27] DLSE Exhibit No. 1, pp. DLSE 1-2.

request for review of the Assessment.[28] On August 15, 2023, DLSE served AID with the Notice of Opportunity to Review Evidence.

DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code section 1720 et seq., requires the payment of prevailing wages to workers employed on public works projects. The purpose of the CPWL was summarized by the California Supreme Court as follows:

> The overall purpose of the prevailing wage law ... is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987, citations omitted (*Lusardi*).) DLSE enforces prevailing wage requirements not only for the benefit of workers but also "to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (§ 90.5, subd. (a) and see *Lusardi, supra,* 1 Cal.4th at p. 985.)

The prevailing rate of pay for a given craft, classification, or type of worker is determined by the Director of Industrial Relations in accordance with the standards set forth in section 1773. The Director determines the rate for each locality in which public work is performed (as defined in section 1724) and publishes a general Prevailing Wage Determination (PWD) for a craft, to inform all interested parties and the public of the applicable prevailing wage rates. (§ 1773.) Contractors and subcontractors are deemed

[28] DLSE Exhibit No. 18.

to have constructive notice of the applicable prevailing wage rates. (*Division of Labor Standards Enforcement v. Ericsson Information Systems* (1990) 221 Cal.App.3d 114, 125.)

Section 1775, subdivision (a), requires that contractors and subcontractors pay the difference to workers paid less than the prevailing rate, and prescribes penalties for failing to pay the prevailing rate. Section 1775, subdivision (a)(2) grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day based on specified factors. Section 1813 prescribes penalties for failing to pay the overtime rate as required in the applicable PWDs. Section 1771.4, subdivision (a)(3) prescribes penalties for failure to furnish electronic CPRs to the Labor Commissioner.

When DLSE determines that a violation of the prevailing wage laws has occurred, DLSE issues a written civil wage and penalty assessment pursuant to section 1741. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within 60 days following service of the assessment. The assessment must be served within 18 months of the filing of a valid notice of completion. An affected contractor may appeal the assessment by filing a request for review under section 1742. DLSE transmits the request for review to the Director of the Department of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) At the hearing, DLSE has the initial burden of producing evidence that "provides prima facie support for the Assessment …." (Rule 50, subd. (a).) When that burden is met, "the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment … is incorrect." (Rule 50, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

Preliminary Findings as to AID's Failure to Pay Prevailing Wages and DLSE's Service of the Assessment.

The undisputed facts as set forth above establish that: the work was subject to payment of prevailing wages and employment of apprentices;[29] DLSE timely served the Assessment;[30] DLSE made its enforcement file available timely;[31] AID failed to pay the prevailing wage;[32] failed to upload CPRS;[33] and, failed to comply with apprenticeship requirements.[34] Set forth below is a discussion regarding AID's liability for: penalties under sections 1775 and 1813 for failing to pay the prevailing wage; penalties under sections 1777.7 and 1771.4 for failing to comply with its obligations to employ

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[29] As recited in the Facts section above, the Contract states that the Project is a public work subject to prevailing wage laws. Additionally, the Notice of the November 6, 2023, Prehearing Conference advised, in bold, that any issue regarding whether the Project was a public work subject to payment of prevailing wages and employment of apprentices had to be raised 10 days before the Prehearing Conference or the issue may be waived, and AID did not raise the issue timely or at all.

[30] As recited in the Facts section above, a valid Notice of Completion was recorded on April 20, 2023, and the Assessment was issued on July 14, 2023. Thus, the Assessment was served within the 18-month period set forth in section 1741, subdivision (a).

[31] As recited in the Facts section above, AID's Request for Review was dated August 9, 2023, and DLSE served AID with the Notice of Opportunity to Review Evidence on August 15, 2023. Thus, the Notice was provided well within the 10-day period required by California Code of Regulations, title 8, section 17224.

[32] As recited in the Facts section above, it is undisputed that AID did not pay the prevailing wage and its Surety paid the wages and training funds as assessed on or about April 10, 2024.

[33] As recited in the Facts section above, it is undisputed that AID did not produce or upload eCPRs to the Labor Commission during the Project or otherwise.

[34] As recited in the Facts section above, it is undisputed that AID failed to comply with any of the apprentice-related requirements found in section 1777.5 and the California Code of Regulations.

apprentices and submit CPRs; and liquidated damages for failing to pay, post, or deposit the amount assessed.

<u>DLSE Correctly Assessed Penalties Under Section 1775.</u>

Where, as here, a contractor fails to pay the prevailing wage, penalties are imposed pursuant to section 1775, subdivision (a). The contractor has "the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty." (Rule 50, subd. (c).) Abuse of discretion by DLSE is established if the "agency's nonadjudicatory action . . . is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy." (*Pipe Trades v. Aubry* (1996) 41 Cal.App.4th 1457, 1466.) In reviewing for abuse of discretion, however, the Director is not free to substitute his or her own judgment "because in [his or her] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.)

Section 1775, subdivision (a) states the following regarding the amount of the penalty:

> (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.
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> (2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:
>
> (i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
>
> (ii) Whether the contractor or subcontractor has a prior

record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars ($40) . . . unless the failure of the contractor . . . to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor . . .

(ii) The penalty may not be less than eighty dollars ($80) . . . if the contractor . . . has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars ($120)... if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

. . .

(C) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

Whether a violation is "willful" within the meaning of section 1775 is set forth in subdivision (e) of section 1777.1, which states that a violation is willful if the contractor "knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or deliberately refuses to comply with its provisions."

Here, AID "knew or reasonably should have known" of its obligations under the public works law as the Contract clearly states that the Project was a public work subject to payment of prevailing wages and refers to the relevant code sections. DLSE assessed the minimum penalty under section 1775 where the violation was willful. The burden was on AID to prove that DLSE abused its discretion in setting the penalty amount. AID did not appear and provided no evidence of abuse of discretion by DLSE in its selection of the penalty rate. Therefore, the rate of $120 per violation is affirmed.

Section 1813 Penalties.

Section 1813 provides in pertinent part:

> The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provision of this article.

Based on Maw's investigation, he concluded that the four workers at issue worked overtime on 12 occasions, AID did not pay them the prevailing rate for those overtime hours, and therefore AID was liable for $300 in section 1813 penalties.[35] AID did not offer any evidence to the contrary and therefore has not met its burden of providing that the Assessment was incorrect as to section 1813 penalties. Accordingly, the Assessment is affirmed in this regard.

AID Failed to Comply with its Apprenticeship-Related Obligations and DLSE Assessed the Related Penalties Properly

Section 1777.5 and the applicable regulations require contractors working on Projects where the contract is for $30,000 or more, to employ apprentices to perform one hour of work for every five hours of work performed by journeypersons in the applicable craft or trade. (§ 1777.5, subd. (o); Cal. Code Regs, tit. 8, § 230.1, subd. (a).) Prior to commencing work on a contract for public works, every contractor must submit contract award information to applicable apprenticeship committees that can supply apprentices to the project. (§ 1777.5, subd. (e).) The Division of Apprenticeship Standards (DAS) has prepared form DAS 140, which a contractor may use to submit contract award information to an applicable apprenticeship committee. (Cal. Code Regs, tit. 8, § 230, subd. (a).) Whether the contractor uses form DAS 140 or prepares its own written notice, the contract award information must include among other things the

[35] DLSE Exhibit Nos. 1 and 17.

following: the exact location of the public work; the expected start date of the work; the number of apprentices to be employed; and, the approximate dates apprentices will be employed. Once contractors commence work, if they "are not already employing sufficient registered apprentices…to comply with the one-to-five ration [they] must request the dispatch of required apprentices from the apprenticeship committees…" (Cal. Code Regs, tit. 8, § 230.1, subd. (a).) DAS has prepared form DAS 142, which a contractor may use to request dispatch of apprentices.

The purpose of the two-step procedure of submitting contract award information to apprentice committees and requesting the dispatch of apprentices from apprentice committees is to facilitate the required employment of apprentices. The legislature emphasized the importance of compliance with the law by establishing civil penalties for noncompliance (§ 1777.7) as well as debarment (§ 1777.1). (See *GRFCO Inc. v. Superior Court* (2023) 89 Cal.App.5th 1295, 1301-1302.)

Here, DLSE's investigation revealed, and AID failed to rebut, that the contract for the Project was $902,000, and AID failed to submit a DAS 140 or equivalent or DAS 142 or equivalent to any applicable Laborer or Iron Worker apprenticeship program in the geographic area of the Project.[36] DLSE's investigation further revealed, and AID failed to rebut, that the minimum required Iron Worker and Laborer apprenticeship hours were 131 and 96 hours, respectively, and AID failed to employ any apprentices.[37]

The civil penalty for failing to comply with section 1777.5 is set forth in section 1777.7, which provides for a penalty not to exceed $100 for each full calendar day of

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[36] DLSE Exhibit 17, p. 693 (Maw's investigation revealed that the applicable committees in Riverside County were Laborers Southern California Joint Apprenticeship Committee and International Association of Bridge, Structural, Ornamental Reinforcing.).

[37] DLSE Exhibit 17, p 694 (Maw's investigation revealed that there were 656 Iron Worker journeyperson hours 480 Laborer journeyperson hours worked on the project; therefore, the minimum apprenticeship hours required was 131 and 96 hours, respectively.).

noncompliance. (§ 1777.7, subd. (a)(1).) Section 1777.7, subdivision (b) sets forth the factors the Labor Commissioner is required to consider when determining the penalty rate for apprenticeship violations:

(1) Whether the violation was intentional.

(2) Whether the party has committed other violations of Section 1777.5.

(3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

The phrase "knowingly violated Section 1777.5" is defined by regulation as follows:

> For purposes of Labor Code Section 1777.7, a contractor knowingly violates Labor Code Section 177.5 if the contractor knew or should have known of the requirements of that Section and fails to comply, unless the failure to comply as due to circumstances beyond the contractor's control. There is an irrebuttable presumption that a contractor knew or should have known the requirements of Section 1777.5 if the contract had previously been found to have violated Section, or the contract and/or bid documents notified the contractor of the obligation to comply with Labor Code provisions applicable to public works projects.

(Cal. Code of Regs., tit. 8, § 231, subd. (h).)

The contractor has the burden of proving that the Labor Commissioner abused her discretion in assessing penalties. (§ 1777.7, subd. (d); Cal. Code Regs., tit. 8, § 17250.) Here, the Labor Commissioner assessed penalties at the mitigated rate of $80 per violation. Given the irrebuttable presumption that AID knowingly violated its apprenticeship obligations, the maximum penalty for knowing violations is $100 per violation, and AID made no attempt to prove the Labor Commissioner abused discretion in determining the penalty rate, the rate is affirmed. As the first day of work was

August 3, 2022, and the last day was March 31, 2023, there were 240 violations. Accordingly, the assessment of $19,200 in section 1777.7 penalties is affirmed.

AID Failed to Meet its Statutory Obligation to Upload CPRs and DLSE Assessed the Related Penalties Properly

Under Labor Code section 1771.4, subdivision (a)(3), contractors on public works are required to submit electronic CPRs in the manner prescribed by the Labor Commissioner. Contractors who fail to do so are subject to penalties under section 1771.4, subdivision (a)(3)(B) in the amount of $100 for each day of non-compliance up to $5,000 per project.

Here, DLSE submitted unrebutted evidence that AID failed to submit electronic CPRs during the entirety of the Project. As the Project exceeded 50 days, the maximum penalty of $5,000 applies.

AID is Liable for Liquidated Damages

The Assessment, which was issued on July 14, 2023, provides in relevant part:

> In accordance with Labor Code section 1742.1 (a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion that still remains unpaid.
>
> . . .
>
> Notwithstanding the above, in accordance with Labor Code section 1742.1(b), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the Assessment or Notice, for the Department to hold in escrow pending administrative and judicial review.

Here, it is undisputed that AID did not post the full amount of the Assessment with the Department of Industrial Relations or post an undertaking in that amount within 60 days following service of the Assessment. While AID's Surety did pay the wages on

April 10, 2024, as that was not within 60 days of service of the July 15, 2023, Assessment, liquidated damages are due under section 1742.1, subdivision (a).

Based on the foregoing, the Director makes the following findings:

FINDINGS AND ORDER

1. The Project was a public work subject to the payment of prevailing wages and the employment of apprentices.
2. DLSE served the Civil Wage and Penalty Assessment timely in accordance with section 1741.
3. AID Builders, Inc., filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.
4. DLSE timely made available to AID Builders, Inc., its enforcement file.
5. AID Builders, Inc., failed to pay the workers listed in the audit the prevailing wage for the work they performed on the Project.
6. AID Builders, Inc., failed to pay the workers listed in the audit for all hours they worked on the Project.
7. DLSE did not abuse its discretion in setting section 1775 penalties at the mitigated rate of $120 per violation for 142 violations; therefore, the resulting penalty of $17,040 is affirmed.
8. On twelve occasions, AID Builders, Inc., failed to pay the four workers listed in the audit the prevailing wage overtime rate; therefore, penalties under section 1813 for $300 is affirmed.
9. AID Builders, Inc., failed to seek the dispatch of apprentices or employ apprentices in the required ratio of journeypersons to apprentices.
10. DLSE did not abuse its discretion in setting section 1777.7 penalties at the mitigated rate of $80 per violation for 240 violations; therefore, the penalty of $19,200 is affirmed.
11. AID Builders, Inc., did not upload CPRs to the Labor Commissioner and the Project exceeded 50 days; therefore, the penalty under section

1771.4 of $5,000 is affirmed.

12. AID Builders, Inc., is liable for liquidated damages as no wages were paid, undertaking posted, or deposit made with the Department of Industrial Relations within 60 days of service of the Assessment.

The amounts found due in the Assessment, as affirmed by this Decision, are as follows:

Basis of the Assessment	**Amount**
Penalties under section 1775	$ 17,040.00
Penalties under section 1813	$ 300.00
Penalties under section 1771.4	$ 5,000.00
Penalties under section 1777.7	$ 19,200.00
Liquidated damages under section 1742.1	$ 56,981.76
TOTAL:	**$98,521.76**

The Civil Wage and Penalty Assessment, as amended, is affirmed as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 10/21/25

Jennifer Osborn, Director
California Department of Industrial Relations