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Department of Labor Settles Debarment Proceeding Against General Contractor for Violations of Wage and Benefit Laws While Employee Class Action Remains Pending in Southern District of New York

Contractors and Subcontractors Beware! Following a Department of Labor (DOL) investigation into payment practices on two federally funded construction projects in Manhattan: the Ciena Project on East 100th Street and the Hobbs Court Project on 102nd Street, and the institution of debarment proceedings against the general contractor, Lettire Construction Corporation (Lettire), and several of the subcontractors on the project for multiple violations of wage and hour laws, the DOL and Lettire recently entered into a settlement that imposes numerous requirements and responsibilities on Lettire going forward. Subsequent to the DOL investigation, a class action was filed against the general contractor Lettire by the employees that remains pending in the Southern District of New York.

The DOL Investigation

The DOL examined the entire project, including project surveillance of the practices of both the contractor and the various subcontractors. Importantly the DOL found that the general contractor had failed to adequately monitor its lower-tier subcontractors to ensure that lower-tier subcontractors complied with prevailing wage and overtime requirements. DOL investigated 23 of the subcontractors performing work on the projects and concluded that 16 of them were in violation of wage and/or overtime laws. Violations included subcontractors failing to pay the prevailing wages and overtime compensation, providing inaccurate or falsified payroll records to the government, failing to keep accurate records of hours worked, failing to pay employees for all hours worked, and improperly classifying workers on the project resulting in underpayment of wages and fringe benefits. The investigation also revealed “under-bidding” by at least one second-tier subcontractor and that the general contractor failed to post required wage decisions at the work site. In total, the DOL found that 290 subcontractor employees were due \$1.4 million in back wages.

The DOL also found that the general contractor itself failed to pay the required prevailing wage rates and fringe benefits to certain employees, failed to pay some employees for all of the hours they worked, and submitted certified payrolls that did not accurately reflect the hours worked for certain weeks.

The Debarment Proceeding

As a result of the findings made during its investigation, the DOL initiated proceedings to debar the general contractor and its president from bidding or working on future federally funded projects for a period of three years. Secretary of Labor Hilda L. Solis stated that “[t]he Department [of Labor] will not hesitate to pursue legal action, including debarment, to ensure employees working on federally funded projects are properly paid under the law.” She has also noted that the DOL’s Wage and Hour Division’s New York City District Office has been investigating possible violations on a project wide basis, meaning that the DOL will focus its investigations, as it did here, on the payment practices of both contractors and subcontractors working on particular construction projects rather than investigating individual companies.

Debarment is a severe sanction for a contractor or subcontractor and can have disastrous consequences. In addition to affecting a contractor’s ability to perform work on federal projects, federal debarment often

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can result in state and local debarment and/or findings that a contractor or subcontractor is non-responsible and, therefore, cannot bid on state and local contracts.

The Settlement Between DOL and the General Contractor

In announcing its settlement with Lettire, DOL's Solicitor of Labor, M. Patricia Smith, stated: "This action should serve as a warning to other contractors that the Department's Wage and Hour Division has many enforcement tools available including surveillance of workers moving on and off project sites, withholding of contract funds, litigation and debarment, to hold all parties from the top of the contract chain to the bottom accountable for compliance with the law." The settlement with Lettire requires the contractor to: (a) take affirmative steps to ensure its and its subcontractors' future compliance with wage and hour laws; (b) guarantee payment for some of its subcontractors' violations as determined in court and administrative proceedings; and (c) guarantee future payment for any future violations committed by its subcontractors on federally funded local, state and federal prevailing wage projects. In connection with the settlement, Lettire agreed to hire a monitor approved by DOL's Wage and Hour Division to conduct regular compliance reviews of Lettire and its subcontractors on Davis-Bacon and other federally funded projects for at least three years. The monitor will provide training to Lettire's staff and its subcontractors and it will set up a hotline to receive confidential reports of any non-compliance. The monitor will also regularly report to the DOL the results of reviews and any incidents of non-compliance.

In addition, Lettire will be required to investigate prospective subcontractors going forward, including assessing subcontractor bids to determine if they are adequate to ensure financial compliance with the law on federal prevailing wage projects. Lettire also has agreed to establish internal controls, including an electronic timekeeping system and certified payrolls to ensure accuracy and timeliness of submissions, and to provide employees' notice of: (a) their job classification; (b) wage and fringe benefit rates; (c) the hot line number; and (d) their right to file a complaint without fear of retaliation.

In connection with its investigation of labor practices on these projects, DOL has also obtained three-year debarments of three of Lettire's subcontractors and is awaiting a decision in an administrative proceeding seeking debarment and approximately \$815,000 in back wages against two other subcontractors.

Ongoing Litigation Against the General Contractor

Violators of Wage and Hour laws are also subject to potential civil and criminal liability. Here, in addition to the debarment proceeding brought by the DOL against Lettire, employees of the general contractor filed a collective and class action against the contractor in the U.S. District Court for the Southern District of New York. The collective action allegations contend the contractor violated 29 U.S.C. Section 216(b) by having a policy that failed to pay its employees for all hours worked resulting in a failure to properly compensate for overtime worked. The class action contends that the contractor failed to pay the named plaintiffs and the class of employees at the prevailing wage rates for standard and overtime work and failed to pay all of the supplemental benefits required by law. These collective and class actions claims may be maintained against an employer regardless of whether a project is private, public or publically funded. A motion to conditionally certify the class has been briefed and remains pending.

This case underscores how important it is for contractors and subcontractors to: (a) know and comply with all applicable labor laws, including the Fair Labor Standards and Davis-Bacon Acts; and (b) adopt practices and procedures designed to monitor and ensure that any subcontractors performing work on a project are also in compliance with all applicable labor laws.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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