


Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Bureau of Field Enforcement- Public Works TEL: 562-983-1453 FAX: 562-499-6439 DATE: April 9, 2020	Gavin Newsom, Governor  In Reply Refer to Case No: 40-62500
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CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body North Orange County Community College District - Purchasing Department	Work Performed in County of Orange
Project Name Cypress College - Bid #1718-24, Parking Lot 5 Expansion	Project No. Bid #1718-24
Prime Contractor G. B. Construction, Inc., a California corporation	
Subcontractor KSM Construction, Inc., a California corporation	

After an investigation concerning either the payment of wages to workers employed in the execution of the contract for the above-named public works project or compliance with the apprenticeship standards found in Labor Code section 1777.5, or both, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Wage Violations: KSM Construction, Inc., ("CONTRACTOR"), failed to pay the correct prevailing wages due to underpayment of straight time and overtime rate. CONTRACTOR failed to provide accurate payroll records that include all workers on the project. CONTRACTOR underpaid training funds due to California Apprenticeship Council or to an applicable apprenticeship committee.

Apprenticeship Violations: CONTRACTOR failed to provide Contract Award Information (Form DAS 140) to all apprenticeship committees able to provide Cement Mason, Iron Worker, and Operating Engineer apprentices to the site of the public works for a total of 88 violations.

The attached Audit Summary further details the basis for this Assessment and itemizes the calculation of wages and penalties due under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$23,863.70

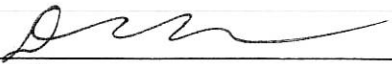
The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$45,890.00 (1775 is 382 violations x \$120/violation)
(1813 is 2 violations x \$25/violation)

The Division has determined that the amount of penalties assessed under Labor Code section 1777.7 is: \$5,280.00 (88 violations x \$60/violation)

The Division has determined that the amount of penalties assessed under Labor Code section 1776 against KSM Construction, Inc., a California corporation is: \$0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By 
 Derrick Nguyen
 Industrial Relations Representative

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

State of California - Labor Commissioner
Civil Wage and Penalty Assessment Review Office
PO Box 32889
Long Beach, CA 90832

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Derrick Nguyen at the following address:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Public Works Unit
300 Oceangate, Suite 850
Long Beach, CA 90802

Payment of Civil Wage and Penalty Assessment

Payment of the assessed wages and/or penalties must be made by check or money order payable to the Division of Labor Standards Enforcement and mailed to the following address along with a copy of this Civil Wage and Penalty Assessment:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Cashiering Unit
2031 Howe Avenue, Suite #100
Sacramento, CA 95825

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Liquidated Damages

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 remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 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. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Accounting - Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is: **\$23,863.70**

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Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	\$23,863.70
Penalties Due Under Labor Code sections 1775 and 1813:	\$45,890.00
Penalties Due Under Labor Code section 1777.7:	\$5,280.00
Penalties Due Under Labor Code sections 1776:	\$0.00
Total Withholding Amount:	\$75,033.70

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☒ **If this box is checked**, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	\$23,863.70
Penalties Due Under Labor Code sections 1775 and 1813:	\$45,890.00
Penalties Due Under Labor Code section 1777.7:	\$5,280.00
Penalties Due Under Labor Code sections 1776:	\$0.00
Total Withholding Amount:	\$75,033.70

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL**

I, Cristina Dulce, do hereby certify that I am a resident of or employed in the County of
Los Angeles, over 18 years of age, and not a party to the within action, and that I am employed at
and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement
300 Oceangate, Suite 850
Long Beach, CA 90802

On April 9, 2020, I served the within: (1) Civil Wage and Penalty Assessment

by placing a true copy thereof in an envelope addressed as follows:

College District - Purchasing
Department
1830 W. Romneya Drive, 8th Floor
Anaheim, CA 92801
Jenney Ho

G. B. Construction, Inc., a California
corporation
1531 W. Redondo Beach Blvd.
Gardena, CA 90247
Kyu C. Kim

KSM Construction, Inc., a California
corporation
19204 S. Figueroa Street, Unit 101
Gardena, CA 90248
Min Tak Yoon

G. B. Construction, Inc., a California
corporation
4112 Denver Ave
Yorba Linda, CA 92886
Kyu C Kim

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid,
and then depositing it in the United States mail in Long Beach by:

☒ Ordinary first class mail
☒ Certified mail
☐ Registered mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on April 9, 2020, at Long Beach, County of Los Angeles, California



SIGNATURE

STATE CASE NO.
40-62500

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL**

I, Cristina Dulce, do hereby certify that I am a resident of or employed in the County of
Los Angeles, over 18 years of age, and not a party to the within action, and that I am employed at
and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement
300 Oceangate, Suite 850
Long Beach, CA 90802

On April 9, 2020, I served the within: (1) Civil Wage and Penalty Assessment

by placing a true copy thereof in an envelope addressed as follows:

Arch Insurance Company
Harborside 3, 210 Hudson St, Ste 300
Jersey City, NJ 07311
Bond Number: SU1150398

Arch Insurance Company
2710 Gateway oaks Drive, Suite 150N
Sacramento, CA 95833
Bond Number: SU1150398

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid,
and then depositing it in the United States mail in Long Beach by:

- ☒ Ordinary first class mail
☒ Certified mail
☐ Registered mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on April 9, 2020, at Long Beach, County of Los Angeles, California



SIGNATURE

STATE CASE NO.
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