

# Labor Compliance Program Manual

Approved and Adopted by the Governing Board  
of the Contra Costa County Flood Control & Water Conservation District:

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Approved by the Director of Industrial Relations:

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## LABOR COMPLIANCE PROGRAM MANUAL

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## LABOR COMPLIANCE PROGRAM MANUAL

### PREFACE

The Contra Costa County Flood Control & Water Conservation District (the “District”) has instituted this Labor Compliance Program for the purpose of implementing labor compliance requirements that pertain to specified public works projects. This program is applicable to all District public works projects that are funded in whole or in part under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Pub. Resources Code, § 75001 et seq.), commonly known as Proposition 84.

Section 1770 et seq. of the California Labor Code (“Labor Code” hereafter) requires contractors on state-funded public works projects to pay their workers based on the prevailing wage rates established and issued by the California Department of Industrial Relations (“DIR”), Division of Labor Statistics and Research (“DLSR”).

Labor Code section 1771.5 requires an awarding body to identify prevailing wage requirements in bid invitations, contract language and at pre-construction conferences, to review payroll records to verify compliance with the Labor Code, and to withhold contract payments when payroll records are delinquent or inadequate or when underpayments have occurred.

Labor Code section 1776 requires contractors to keep accurate payroll records of trades workers on public works projects and to submit copies of certified payroll records upon request.

Labor Code section 1777.5 requires contractors to employ registered apprentices on public works projects.

The District’s Labor Compliance Program (“LCP” or “Program”) contains labor compliance standards required by state and federal laws, regulations and directives, as well as policies and contract provisions, which include, but are not limited to, the following:

1. Contractors’ payment of applicable general prevailing wage rates.
2. Contractors’ employment of properly registered apprentices.
3. Contractors’ provision of certified payroll records upon request, but not less than weekly.
4. Program’s monitoring of District construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Program’s presentation at pre-construction conferences with contractors and subcontractors.
6. Program’s withholding of contract payments and imposition of penalties for noncompliance.
7. Program’s preparation and submittal of annual reports.

A Labor Compliance Officer (“LCO”) will represent the District in enforcement of this LCP.



## **LABOR COMPLIANCE PROGRAM MANUAL**

# **SECTION I LEGAL REQUIREMENTS**

## LABOR COMPLIANCE PROGRAM MANUAL

### SECTION I. LEGAL REQUIREMENTS

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## INTRODUCTION

This LCP is applicable to all District public works projects that are funded in whole or in part under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Pub. Resources Code, § 75001 et seq.), commonly known as Proposition 84.

This LCP contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as policies and contract provisions.

All projects to which this LCP applies will be so noted in all bid and contract documents. In addition, any request for proposals, advertisement for bids or construction contract will contain language appropriate to the requirements of prevailing wage law as contained in Labor Code sections 1771, 1775, 1777.4, 1813 and 1815.

In establishing this LCP, the District adheres to the requirements enunciated in section 1771.5, subdivision (b), of the Labor Code, which provides as follows:

1. All bid invitations and public works contracts and purchase orders shall contain appropriate language concerning the requirements of Labor Code sections 1720-1861 (Chapter 1 of Part 7 of Division 2 of the Labor Code) (hereinafter the “Public Works Chapter of the Labor Code”).
2. A pre-job conference shall be conducted with the contractor and subcontractor to discuss federal and state labor law requirements applicable to the contract.
3. Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
4. The awarding body (i.e., the District) shall review, and, if appropriate, audit payroll records to verify compliance with the Public Works Chapter of the Labor Code.
5. The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.
6. The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.
7. The awarding body shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the DIR

Should applicable sections of the Labor Code or title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, the District will modify any affected portions of this program accordingly.

## I. GOVERNING LAWS

Labor Code section 1771.7 identifies certain public works projects that require an awarding body (a department, board, authority, officer or agent that awards a contract for public work) to adopt and enforce, or contract with a third party to adopt and enforce, an LCP as a condition of project authorization, project funding, or use of specified contracting authority.

Statutes and regulations governing LCPs include:

California Labor Code (§§ 1720-1743, § 1750, §§ 1770-1781, §§ 1810-1815, §§ 1860-1861)

California Code of Regulations, title 8, division 1, chapter 8

- Subchapter 3: Payment of Prevailing Wages upon Public Works (sections 16000-16404)
- Subchapter 4: Awarding Body Labor Compliance Programs (sections 16421-16802)
- Subchapter 6: Prevailing Wage Hearings (sections 17201-17270)

## II. PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code section 1720 *et seq.*, and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The DLSR predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

### A. Types of Contracts to Which the LCP Applies

As provided in California Public Resources Code section 75075, the body awarding any contract for a public works project that is financed in any part from funds made available under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (the “Act”) shall adopt and enforce, or contract with a third party to enforce, an LCP pursuant to Labor Code section 1771.5, subdivision (b), for application to that public works project.

Accordingly, upon approval by the DIR Director (“Director”), this LCP shall apply to contracts awarded by the District for public works using funds derived from the Act.

### B. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body labor compliance programs are established by the California Code of Regulations, title 8, section 16422. Contracts are not subject to the jurisdiction of the LCP until after the Director’s approval of the LCP.

### III. COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS

The District publicly advertises upcoming public works projects that will be awarded according to a competitive bidding process. All District bid advertisements (or bid invitations), design-build requests, and public works contracts and purchase orders shall contain appropriate language concerning the requirements of the Public Works Chapter of the Labor Code. Notice of the approval of the District's LCP will be given in the call for bids and in the contract or purchase order, and will also be posted at the job site. The notice shall contain, at a minimum, the effective date of the Director's approval, a statement whether the limited exemption from prevailing wages pursuant to Labor Code section 1771.5, subdivision (a), applies to contracts under the jurisdiction of the LCP, a telephone number to call for inquiries, questions or assistance with regard to the LCP, and the name of the agent or office administering the LCP.

### IV. PRE-JOB CONFERENCE

After the District awards the public works contract, and prior to the commencement of the work, a mandatory Pre-Job Conference (Kick-Off Meeting or Job Start Meeting) shall be conducted by the Labor Compliance Officer (LCO) with the contractor and those subcontractors listed in the contract bid documents.

At that meeting, the LCO will discuss federal and state labor law requirements applicable to the contract, including prevailing wage requirements, respective record-keeping responsibilities, the requirement for the submittal of certified payroll records to the District and the prohibition against discrimination in employment.

The LCO will provide the contractor and each subcontractor with a Checklist of Labor Law Requirements (a copy of which is attached as **Exhibit A**) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages. (Lab. Code, § 1770, *et seq.*)
2. The contractor's duty to employ registered apprentices on public works projects. (Lab. Code, § 1777.5.)
3. The penalties for failure to pay prevailing wages or to employ apprentices, including forfeitures and debarment. (Lab. Code, §§ 1775, 1776, 1777.1, 1777.7 and 1813.)
4. The requirement to keep certified payroll records and to submit copies to the District within 10 days of request by the District, as required by Labor Code section 1776, and penalties for failure to do so under Labor Code section 1776, subdivision (h). This requirement includes and applies to all subcontractors performing work on District projects even if their portion of the work is less than one half of one percent of the total amount of the contract.

5. The prohibition against employment discrimination under the Labor Code (see §§ 1735 and 1777.6) and applicable provisions of the California Government Code; the California Public Contracts Code; and Title VII of the Civil Rights Act of 1964.
6. The prohibition against accepting or extracting kickback from employee wages. (Lab. Code, § 1778.)
7. The prohibition against accepting fees for registering any person for public works (Lab. Code, § 1779) or placing work orders where the filling of those orders involves the charging of fees. (Lab. Code, § 1780.)
8. The requirement to list all subcontractors. (Pub. Contracts Code, § 4104.)
9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed. (Lab. Code, §§ 1021 and 1021.5; Cal. Bus. & Prof. Code, § 7000 et seq.)
10. The prohibition against unfair competition. (Bus. & Prof. Code, §§ 17200-17208.)
11. The requirement that contractors and subcontractors be properly insured for workers compensation. (Lab. Code, § 1861.)
12. The requirement that the contractor abide by occupational safety and health laws and regulations that apply to the particular construction project.
13. The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.
14. The requirement to provide itemized wage statements to employees. (Lab. Code, § 226.)

The contractors and subcontractors present at the meeting will be given the opportunity to ask questions of the LCO relative to the items contained in the Checklist of Labor Law Requirements. The checklist will then be signed by the contractor's representative, a representative of each subcontractor and the LCO.

At the Pre-Job Conference, the LCO will provide the contractor with a copy of the District's LCP package, which will include: the Checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations and/or website link to DIR for prevailing Wage Determinations, blank certified payroll record forms, fringe benefit statements, and State apprenticeship requirements,.

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractors, if and when such substituted contractors are approved by the District.

## V. PREVAILING WAGE RECORDS AND PAYMENT REQUIREMENTS

### A. Payroll Records

#### 1. Maintenance of Records

- a. Payrolls, Basic Payroll Records. The contractor and each subcontractor shall maintain payrolls and basic payroll records (including timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working on District projects subject to the LCP. Such records shall include the name, address and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid.
- b. Certified Weekly Payroll Records. The contractor and each subcontractor shall maintain weekly certified payroll records. Use of the current version of DIR's "Public Works Payroll Reporting Form" (A-1-131) and Statement of Employer Payments (PW 26) will constitute presumptive compliance with this requirement, provided the forms are filled out accurately and completely.

#### 2. Submittal of Payroll Records

- a. Basic Payroll Records. Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the LCO at any time and shall be submitted within 10 days following the receipt of the request.
- b. Certified Payroll Records. The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the LCO within 10 days of any request by the District. The contractor shall be responsible for the submittal of payroll records for all of its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor or subcontractor under penalty of perjury, indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director, and that the classifications set forth for each employee conform with the work performed.

#### 3. Use of Electronic Reporting Forms. The certified payroll records required by Labor Code section 1776 may be maintained and submitted electronically subject to all of the following conditions:

- a. The reports must contain all of the information required by Labor Code section 1776, with the information organized in a manner that is similar or identical to how the information is reported on Form A-1-131;

- b. The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, LCPs and the DIR;
  - c. Reports submitted to this LCP must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;
  - d. The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public under Labor Code section 1776, subdivision (e), whether the records are provided electronically or as hard copies; and
  - e. No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.
4. Review of Subcontractor Certified Payroll Records. The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by subcontractors to their employees by periodic review of the subcontractors' certified payroll records.

5. Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them. Rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done.

The contractor shall make the records required to be maintained under this section available for inspection by any authorized representative of the District and the DIR at all reasonable hours at the principal office of the contractor.

6. Responsibility for Subcontractors. The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors. Moreover, the prime contractor is responsible for Labor Code violations of its subcontractors in accordance with Labor Code section 1775.

## B. Payment to Employees

Employees must be paid unconditionally, and at least once each week, the full amounts that are due and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (Sunday through Saturday, for example) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, whereas, in fact, he or she is merely a journey level mechanic supplying only his or her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day and 40 hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage determination.

## **VI. APPRENTICES**

Apprentices shall be permitted to work as such only when they are individually registered under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.

Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he or she actually performed. Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with Labor Code section 1777.5 requires all public works contractors and subcontractors to:

1. Submit contract award information to the apprenticeship program for each apprenticeable craft or trade in the area of the project;

2. Request dispatch of apprentices from the applicable apprenticeship program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyperson work; and
3. Contribute to the applicable apprenticeship program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an apprenticeship program, they shall be made to the California Apprenticeship Council, Post Office Box 511283, Los Angeles, CA 90051-7838.

If the contractor or subcontractor is registered to train apprentices, it shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor or subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

## **VII. PAYROLL RECORDS REVIEWS, INSPECTIONS AND AUDITS**

### **A. Certified Payroll Records Review**

1. **Requirement.** Payroll records furnished by contractors and subcontractors in accordance with the California Code of Regulations, title 8, sections 16401 and 16421, subdivision (a)(3), shall be reviewed by the LCP as promptly as practicable after receipt thereof, but in no event more than 30 days after receipt.
2. **Definition.** “Review” for this purpose means inspection of the records furnished to determine if (1) all appropriate data elements identified in Labor Code section 1776, subdivision (a), have been reported; (2) certification forms have been completed and signed in compliance with Labor Code section 1776, subdivision (b); and (3) the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon, with confirmation of payment in the manner and to the extent described below.

### **B. Confirmation of Certified Payroll Records**

1. **Requirement.** For each month in which a contractor or subcontractor reports having workers employed on the public work, the LCP will randomly undertake the confirmation of furnished payroll records for at least one worker for at least one weekly period within that month. The LCP will also undertake a confirmation whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the LCP that payroll records furnished by a contractor or subcontractor are inaccurate.

2. Definition. “Confirmation” of payroll records furnished by contractors and subcontractors means an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of title 8 of the California Code of Regulations), or any other reasonable method of corroboration.

#### C. On-Site Visits

1. Requirement. Representatives of the LCP shall conduct in-person inspections at the site or sites at which the contract for public work is being performed (“On-Site Visits”). On-Site Visits may be undertaken randomly or as deemed necessary by the LCP, but shall be undertaken during each week that workers are present at sites at which the contract for public work is being performed.
2. Minimum Standards. All On-Site Visits shall include visual inspection of (1) the copy of the determination(s) of the Director of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code section 1773.2, and (2) the Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with section 16429 of title 8 of the California Code of Regulations, listing a telephone number to call for inquiries, questions, or assistance with regard to the LCP.
3. Other. On-Site Visits may include other activities deemed necessary by the LCP to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors. The contractor shall permit representatives of the LCP and the Department of Industrial Relations to interview tradesworkers during working hours on the project site.

#### D. Audits of Certified Payroll Records

1. Requirement. An audit, as defined below, shall be prepared by the LCP whenever the LCP has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. An audit may also be prepared at the request of the Labor Commissioner.
2. Definition. An “audit” for this purpose is a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code sections 1775 and 1813, as determined by the LCP after consideration of the best information available as to actual hours worked, amounts paid, and classifications of workers employed in connection with the public work. Such available information may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours,

and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

3. Audit Standards. An audit will contain sufficient details to enable the Labor Commissioner, if requested to determine the amount of forfeiture under section 16437 of title 8 of the California Code of Regulations, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures. The Audit Record Form, a copy of which is attached as **Exhibit B** demonstrates the level of detail necessary to verify compliance with Labor Code requirements. The following forms, included in Exhibit B, will be utilized: (1) Public Works Investigation Worksheet; (2) Public Works Audit Worksheet and (3) Prevailing Wage Determination Summary. A brief narrative identifying the bid advertisement date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made will be submitted with the completed audit forms.
4. Audit Records. The LCP shall maintain records supporting an audit to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code section 1742 and the Prevailing Wage Hearing Regulations found at sections 17201-17270 of title 8 of the California Code of Regulations.

E. Notification of Opportunity to Resolve Wage Deficiency

1. Notice Requirement. After the LCP has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared, the LCP will notify the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner.
2. Opportunity to Submit Exculpatory Information. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the “good faith mistake” factors set forth in Labor Code section 1775, subdivisions (a)(2)(A)(i) and (ii).
3. Resolution. The LCP shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code section 1775 if:
  - a. Based on the contractor’s submission, the LCP reasonably concludes that the failure to pay the correct wages was a good faith mistake;
  - b. The LCP has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations; and

- c. The underpayment of wages is promptly corrected and proof of such payment is submitted to the LCP.
4. Records. For each instance in which a wage deficiency is resolved in accordance with the foregoing, the LCP shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the audit prepared pursuant to Subsection VII.D. of this Manual along with any exculpatory information submitted to the LCP by the affected contractor or subcontractor.

## **VIII. REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER**

- A. Debarment Policy. It is the policy of the District that the public works prevailing wage requirements set forth in Labor Code sections 1720-1861 be strictly enforced. In furtherance thereof, contractors and subcontractors found to be willful violators under Labor Code section 1777.1 will be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract within the state of California for the performance of construction and/or maintenance services for a period not to exceed three years in duration. The duration of the debarment period will depend upon the nature and severity of the Labor Code violations and mitigating or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.
- B. Report of Willful Violation

If an investigation reveals that a willful violation of the Public Works Chapter of the Labor Code has occurred, the LCO will make a written report to the Labor Commissioner, which shall include: (1) An audit consisting of a comparison of payroll records to the best available information as to the actual hours worked, and (2) the classification of workers employed on the public works contract.

Under Labor Code section 1777.1, subdivision (d), a willful violation “occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.”

Six (6) types of willful violations are reported:

1. Failure to Comply with Prevailing Wage Rate Requirements

Except for good faith mistakes, the failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and District contracts) will be determined a willful violation whenever less than the stipulated basic hourly rate is paid to trades workers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.

2. Falsification of Payroll Records, Misclassification of Work and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records.

3. Failure to Submit Certified Payroll Records

Refusal to comply with a request by the LCP for submittal of certified payroll records or substantiating information or records will be determined to be a willful violation of the Labor Code. Refusal to correct inaccuracies or omissions that have been discovered in certified payroll records will also be determined to be a willful violation of the Labor Code.

4. Failure to Pay Fringe Benefits

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate. The failure to pay or provide fringe benefits and/or make trust fund contributions on a timely basis is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

5. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

6. Taking of Kickbacks

Accepting or extracting kickbacks from employee wages under Labor Code section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

## **IX. ENFORCEMENT ACTIONS**

- A. General Duty. The LCP has a duty to the Director under Section 16434, subdivision (a), of title 8 of the California Code of Regulations to enforce the requirements of the Public Works

Chapter of the Labor Code and applicable provisions of title 8 of the California Code of Regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determination as a source of information and guidance in making enforcement decisions. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code section 1742, subdivision (b), and Sections 17201-17270 of title 8 of the California Code of Regulations.

B. Investigation of Complaints. Upon receipt of a written complaint alleging that a contractor has failed to pay prevailing wages as required by the Labor Code, the LCP shall do all of the following:

1. Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
2. Within 15 after receipt of complaint, provide the affected contractor with the notice required under Labor Code section 1775, subdivision (c), if the complaint is against a subcontractor;
3. Notify the complaining party in writing of the resolution of the complaint within 10 days after the complaint has been resolved by the LCP;
4. Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the LCP; and
5. Notify the complaining party at least once every 90 days of the status of a complaint that has been resolved by the LCP but remains under review or in litigation before another entity.

C. Enforcement of Apprenticeship Standards. The duties of the LCP with respect to apprenticeship standards are as follows:

1. The LCP shall (a) inform contractors and subcontractors bidding public works about apprenticeship requirements, (b) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (c) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.
2. The LCP shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including requiring that (a) any contributions required pursuant to Labor Code section 1777.5, subdivision (m), are paid to the appropriate entity, (b) apprentices are paid no less than the prevailing apprentice rate, (c) workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (d)

the regular prevailing wage rate is paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code section 1777.5, subdivision (g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

- D. Written Summary. For each public work project subject to the LCP's enforcement of prevailing wage requirements, the LCP shall maintain a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project.
1. The summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner.
  2. The summary will be maintained using the "Suggested Single Project Labor Compliance Review and Enforcement Report Form," a copy of which is attached as **Exhibit C**.
  3. Compliance records for a project shall be retained until the later of:
    - a. At least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted; or
    - b. One year after a final decision or judgment in any litigation under Labor Code section 1742.
  4. A written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that can be transmitted by e-mail or compact disk and would be acceptable for the filing of documents in a federal or state court within this state.

E. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate

1. Withholding Requirements
  - a. When payroll records are delinquent or inadequate, the LCP shall withhold contract payments as required by Labor Code section 1771.5, subdivision (b)(5).
    - i. The prior approval of the Labor Commissioner of this withholding is not required.
    - ii. The LCP will only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the LCP has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor.
    - iii. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

- b. The contractor shall be required to cease all payment to a subcontractor whose payroll records are delinquent or inadequate until the LCP provides notice that the subcontractor has cured the delinquency or deficiency.

2. Definitions

- a. “Withhold” means to cease payments by the awarding body, its agents or others who pay on its behalf to the general contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code section 1729.
- b. “Contracts.” Except as otherwise provided by agreement, only contracts under a single master contract, including a design-build contract, or contracts entered into as stages of a single project, may be the subject of withholding.
- c. “Delinquent payroll records” means those not submitted on the date set in the contract.
- d. “Inadequate payroll records” are any one of the following:
  - i. A record lacking any information required by Labor Code section 1776;
  - ii. A record that contains the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;
  - iii. A record remaining uncorrected for one payroll period, after the LCP has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code section 1776 and section 16401 of title 8 of the California Code of Regulations.

3. Notice of Withholding of Contract Payments. When contract payments are withheld under this section, the LCP shall provide the contractor and subcontractor, if applicable, with immediate written notice that:

- a. States that payments are being withheld due to delinquent or inadequate payroll records, and identifies what records are missing or states why records that have been submitted are deemed inadequate;
- b. Specifies the amount being withheld; and
- c. Informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code section 1742, limited

to the issue of whether the records are delinquent or inadequate or the LCP has exceeded its authority under section 16435 of title 8 of the California Code of Regulations.

The Notice of Temporary Withholding of Contract Payments Due to Delinquent or Inadequate Payroll Records (8 CCR § 16435) form, a copy of which is attached as **Exhibit D**, will be used by the District to give notices of withholding under this Subsection IX.E.

4. Penalty. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties will be assessed under Labor Code section 1776, subdivision (h), for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code section 1776, subdivision (h), requires the prior approval of the Labor Commissioner under section 16436 of title 8 of the California Code of Regulations.

F. Withholding Contract Payments When, After Investigation, It Is Established That Underpayment or Other Violation Has Occurred

1. Requirement. Under Labor Code section 1771.5, subdivision (b)(6), the District shall withhold contract payments in an amount equal to the underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.
2. Definitions. “Withhold” and “contracts” have the same meanings set forth in Subsection IX.E.2. above.
3. Violation by Subcontractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code section 1729.
4. Amount of Underpayment. “Amount equal to the underpayment” is the total of the following determined by payroll review, audit or admission of contractor or subcontractor:
  - a. The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Labor Code section 1773, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid;
  - b. The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Labor Code section 1773.1 and determined to be a part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid;
  - c. Estimated amounts of “illegal taking of wages”;

- d. Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council; and
  - e. Estimated penalties under Labor Code sections 1775, 1776 and 1813.
5. Labor Commissioner Approval. The withholding of contract payments when, after investigation, it is established that underpayment or other violations have occurred, requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of title 8 of the California Code of Regulations, as detailed in Subsection IX.G. below.

G. Forfeitures Requiring Approval by the Labor Commissioner

- 1. Definition. For purposes of this section and Subsection IX.H. below, "forfeitures" means the amount of wages, penalties and forfeitures assessed by the LCP and proposed to be withheld pursuant to Labor Code section 1771.6, subdivision (a), and includes the difference between the prevailing wage rates and the amount paid and penalties assessed under Labor Code sections 1775, 1776 and 1813.
- 2. Approval Requirements
  - a. If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1,000, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following:
    - i. Notice of Withholding of Contract Payments authorized by Labor Code section 1771.6, subdivision (a);
    - ii. An audit as defined in Subsection VII.D. above; and
    - iii. A brief narrative identifying the bid advertisement date of the contract for public work and summarization of nature of violation, basis of underpayment and factors considered in assessing penalties, if any, under Labor Code section 1775.
  - b. Approval by the Labor Commissioner of all other forfeitures shall be requested and obtained in accordance with section 16437 of title 8 of the California Code of Regulations.

H. Provisions Relating to Penalties

- 1. Labor Code § 1775, subd. (a)(1): The contractor and any subcontractor shall forfeit not more than \$200 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. The amount of the penalty will be determined by the Labor Commissioner.

2. Labor Code § 1776, subd. (h): In the event the contractor or subcontractor fails to comply with a written request for payroll records within a 10-day period, the contractor or subcontractor shall forfeit \$100 for each calendar day, or portion thereof, for each worker until strict compliance is effectuated.
3. Labor Code § 1813: The contractor or subcontractor shall forfeit \$25 for each worker 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 provisions of sections 1810-1815 of the Labor Code.

I. Determination of Amount of Forfeiture by the Labor Commissioner

1. Under section 16437 of title 8 of the California Code of Regulations, where the LCP requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:
  - a. The date that the public work was accepted, the date that a notice of completion was filed and the amount of funds being held in retention by the District;
  - b. Any other deadline, which, if missed, would impede collection;
  - c. Evidence of violation, in narrative form;
  - d. Evidence of violation obtained under section 16432 of title 8 of the California Code of Regulations and a copy of the audit prepared in accordance with section 16432, subdivision (e), of title 8 of the California Code of Regulations, setting forth the amounts of unpaid wages and applicable penalties;
  - e. Evidence that, before the forfeiture was sent to the Labor Commissioner, (i) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that any violation was caused by good faith mistake and promptly corrected when brought to the contractor or subcontractor's attention, and (ii) the contractor and subcontractor either did not do so or failed to convince the LCP of its position;
  - f. Where the LCP seeks not only amounts of wages but also a penalty as part of the forfeiture, and the contractor or subcontractor has unsuccessfully contended that the cause of violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, a short statement will accompany the proposal for a forfeiture with a recommended penalty amount pursuant to Labor Code section 1775, subdivision (a);
  - g. Where the LCP seeks only wages or a penalty less than \$50 per day as part of the forfeiture because the contractor or subcontractor has successfully contended that the cause of violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, the file should include the

- evidence as to the contractor or subcontractor's knowledge of his or her obligation, including the program's communication to the contractor or subcontractor of the obligation in the bid invitations, at the pre-job conference and in the pre-job conference agenda and records, and any other notice given as part of the contracting process. With the file will be a short statement, similar to that described in Subsection IX.I.f. above, and recommended penalty amounts, pursuant to Labor Code section 1775, subdivision (a);
- h. The previous record of the contractor and subcontractor in meeting their prevailing wage obligations; and
  - i. Whether the LCP has been granted approval on only an interim or temporary basis under sections 16425 or 16426 of title 8 of the California Code of Regulations or whether it has been granted extended approval under 16427 of title 8 of the California Code of Regulations.

The Request for Approval of Forfeiture form, a copy of which is attached as **Exhibit E**, will be used by the District to submit requests to the Labor Commissioner for a determination of the amount of a forfeiture.

- 2. The file or report shall be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than 30 days before the final payment, but not less than 30 days before the expiration of the limitations period set forth in Labor Code section 1741.
- 3. A copy of the proposed forfeiture and the file or report shall be served on the contractor and subcontractor at the same time they are sent to the Labor Commissioner. The LCP may exclude from the documents served on the contractor and subcontractor copies of documents secured from the contractor or subcontractor during an audit, investigation, or meeting if those documents are clearly referenced in the file or report.
- 4. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due.
- 5. The determination of the forfeiture by the Labor Commissioner becomes effective as follows:
  - a. Unless and until the LCP obtains extended authority under section 16427 of title 8 of the California Code of Regulations, the determination is effective on the date the Labor Commissioner serves, by first class mail, on the LCP, on the contractor and on the subcontractor, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement that sets out the amount of forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification, or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

- b. If and when the LCP obtains extended authority under section 16427 of title 8 of the California Code of Regulations, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. If this provision is applicable, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review.

J. Notice of Withholding of Contract Payments

1. Notice Requirement. The District will give notice of withholding of contract payments to the contractor and subcontractor, if applicable, as required by Labor Code section 1771.6, subdivision (a), and section 17220, of title 8 of the California Code of Regulations.
2. Service
  - a. The notice shall be served on the contractor and subcontractor, as applicable, by first-class and certified mail, pursuant to section 1013 of the Code of Civil Procedure.
  - b. The District shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the District.
3. Contents of Notice. The notice shall be sufficiently detailed to provide fair notice to the contractor of subcontractor of the issues at a hearing on the notice. The notice shall include all of the following information:
  - a. A description of the nature of the violation and basis for the notice.
  - b. The amount of wages, penalties and forfeitures due, including:
    - i. Amounts that have been or will be withheld from available contract payments; and
    - ii. Additional amounts that the District has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.
  - c. The procedures for obtaining review of the withholding of contract payments.
  - d. The name and address of the office to which a request for review may be sent;

- e. Notice of the opportunity to request a settlement meeting under section 17221 of title 8 of the California Code of Regulations; and
- f. The following statement, in bold or another type face that makes it stand out from the other text:

**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.***

A copy of the Notice of Withholding of Contract Payments (NWCP) to be used by the District is attached as **Exhibit F**.

## **X. DAMAGES, DEPOSITS AND DISTRIBUTIONS**

### **A. Liquidated Damages**

1. Liability. After 60 days following the service of a civil wage and penalty assessment under Labor Code section 1741 or a notice of withholding under Labor Code section 1771.6, subdivision (a), the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice 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.
2. Waiver. If the contractor or subcontractor demonstrates to the satisfaction of the Director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the Director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.
3. Distribution. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Labor Code section 203.5 shall not apply to claims for prevailing wages under this chapter.
4. Exception. Notwithstanding subdivision (a) of Labor Code section 1742.1, there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with DIR within 60 days following

service of the assessment or notice, for the DIR to hold in escrow pending administrative and judicial review. The DIR shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities that are found to be entitled to such funds.

B. Deposits of Penalties and Forfeitures Withheld

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages and the matter has been resolved without litigation by or against the Labor Commissioner, the LCP shall deposit penalties and forfeitures into the District's general fund.
2. Where collection of fines, penalties, or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and the District or its LCP are both parties, the fines, penalties or forfeitures shall be divided between the general funds of the state and the District, as the hearing officer or court may decide.
3. All penalties recovered in administrative proceedings or court action brought by or against the Labor Commissioner, and to which the District or its LCP is not a party, shall be deposited in the general fund of the state.
4. All wages and benefits that belong to an employee and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of administrative proceedings or any court action, and which have not been paid to the employee or irrevocably committed on the employee's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who shall handle such wages and benefits in accordance with Labor Code section 96.7.

C. Distribution of Forfeited Sums

1. Withholding Requirement. Pending a final order, or the expiration of the time period for seeking review of a notice of withholding, the District shall not disburse any contract payments withheld.
2. Priority. From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers employed on the public works project who are paid less than the prevailing wage rate.
3. Other. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Labor Code section 96.7. Penalties shall be paid into the General Fund of the District.

## **XI. REVIEW OF ENFORCEMENT ACTIONS**

### **A. Settlement Meetings**

1. General. A contractor or subcontractor may request a settlement meeting pursuant to Labor Code section 1742.1, subdivision (c), and section 17221 of title 8 of the California Code of Regulations.
2. Deadline to Request Meeting with District. Within 30 days following service of a Notice of Withholding of Contract Payments (NWCP), a contractor or subcontractor may, in writing, request a meeting with the District to attempt to settle a dispute regarding the NWCP.
3. Meeting Location and Time. Upon receipt of a timely written request for a settlement meeting, the District shall afford the affected contractor or subcontractor a reasonable opportunity to meet. The meeting may be held in person or by telephone and shall take place before expiration of the 60-day limit for filing a Request for Review under section 17222 of title 8 of the California Code of Regulations.
4. Confidentiality. 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. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding.

### **B. Request for Review of LCP Enforcement Actions**

1. Request for Review. A contractor or subcontractor may request review of an LCP enforcement action in accordance with Labor Code sections 1771.6, subdivision (b), and 1742 and sections 17201-17270 of title 8 of the California Code of Regulations.
2. Response to Request for Review. In responding to a request for review, the LCP shall have the rights and responsibilities of the Enforcing Agency (as defined in section 17202, subdivision (f) of title 8 of the California Code of Regulations) including but not limited to the obligations to serve notices, transmit the request for review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the NWCP.
3. Intervention. If a contractor or subcontractor seeks review of an LCP enforcement action, the Labor Commissioner may intervene to represent the District or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both.
4. Authority of LCP. Except in cases where the Labor Commission has intervened, the LCP shall have the authority to prosecute, settle, or seek the dismissal of any NWCP issued

pursuant to Labor Code section 1771.6 and any review proceeding under Labor Code section 1742, without any further need for approval by the Labor Commissioner. Whenever a LCP settles in whole or in part or seeks and obtains the dismissal of a NWCP or a review proceeding under Labor Code section 1742, the LCP shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commission upon request.

C. Review of Withholding of Contract Payments

1. General. The withholding of contract payments in accordance with Labor Code sections 1726 or 1771.5 shall be reviewable under Labor Code section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner.
2. Request for Review
  - a. Deadline; Where to Submit. An affected contractor or subcontractor may obtain review of the NWCP by transmitting a written request to the District within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP will become final.
  - b. Contents of Request for Review. A request for review shall clearly identify the NWCP from which review is sought, including the date of the NWCP, or it shall include a copy of the NWCP as an attachment. A request for review shall also set forth the basis upon which the NWCP is being contested.
3. Transmittal by District. Within 10 days following its receipt of the request for review, the District shall transmit to the Office of the Director-Legal Unit the request for review and copies of the NWCP, any audit summary that accompanied the NWCP, and a proof of service or other document showing the name and address of any bonding company or surety securing the payment of the wages covered by the NWCP.

The Notice of Transmittal form, a copy of which is attached as **Exhibit G**, will be used by the District to give the notice required by this Subsection XI.C.3.

4. Disclosure of Evidence
  - a. Notice. Within ten days following its receipt of a request for review, the District will notify the affected contractor or subcontractor of its opportunity to review, and procedures for reviewing, evidence to be used by the District at the hearing.
  - b. Deadline. Absent a written request or agreement of the affected contractor or subcontractor to extend the deadline, the District will make evidence available for review within 20 days of its receipt of the request for review. If the District

obtains evidence after the initial disclosure of evidence, the District will promptly disclose that evidence to the affected contractor or subcontractor.

The Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form, a copy of which is attached as **Exhibit H**, will be used by the District to give the notice required by this Subsection XI.C.4.

5. Hearing.
  - a. Deadline/Hearing Officer. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the Director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the DIR, but shall not be an employee of the Division of Labor Standards Enforcement.
  - b. Burden of Proof
    1. District Burden. The District will have the burden coming forward with evidence that the affected contractor or subcontractor was properly served with the NWCP and was provided a reasonable opportunity to review the evidence to be used by the District at the hearing, and that such evidence provides prima facie support for the withholding of contract payments.
    2. Contractor/Subcontractor Burden. If the District meets its initial burden, the affected contractor or subcontractor has the burden of proving that the basis for the NWCP is incorrect.
  - c. Procedures. The Director has adopted regulations setting forth procedures for hearings. See sections 17201-17270 of title 8 of the California Code of Regulations, excerpts of which are attached as **Exhibit I**.
6. Decision. Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the NWCP. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served by first-class mail on all parties pursuant to Section 1013 of the Code of Civil Procedure. Within 15 days after the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.
7. Review of Decision. An affected contractor or subcontractor may obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse

of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

8. Judgment

- a. Entry of Judgment. 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. Under Labor Code section 1742, subdivision (d), the clerk is required to enter judgment for the state against the person assessed in the amount shown on the certified order.
- b. Interest on Judgment. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes.

## **XII. STATEMENTS OF ECONOMIC INTEREST**

The District will determine and designate those employees and consultants who participate in making governmental decisions for the District within the meaning of Title 2 of the California Code of Regulations, sections 18700-18702.4. Those designated employees and consultants shall be required to file Statements of Economic interest (FPPC Form 700) and to comply with other applicable requirements of the Political Reform Act (commencing with Section 87100 of the Government Code) in connection with work performed on behalf of the District.

## **XIII. ANNUAL REPORTS**

The LCP will submit to the Director an annual report on the operation of its LCP no later than August 31 of each year, except as set forth below. The annual report will cover the 12-month period commencing on July 1 of the preceding calendar year and ending on June 30 of the year in which the report is due, unless the Director authorizes the LCP to use a different reporting period, in which case the annual report will be due no later than 60 days following the close of that reporting period. The report will be made on LCP Annual Report form LCP-AR1, a copy of which is attached as **Exhibit I**.

## **XIV. EXHIBITS**

**EXHIBIT A**  
**[Checklist of Labor Law Requirements]**

## Checklist of Labor Law Requirements

(CCR Title 8, Section 16421)

Ultimately the prime contractor is liable for their sub and specialty contractors. This checklist is a useful tool for the prime contractor to ensure that their sub and specialty contractors know their responsibilities on public works projects. Contractors who understand and comply with the law are more likely to deliver the job on time, on budget and done right the first time. We suggest the prime contractor encourage completion of this checklist by their sub and specialty contractors.

NAME (PRINT) \_\_\_\_\_ DATE \_\_\_\_\_

COMPANY \_\_\_\_\_ PHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_ FAX \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

PROJECT MANAGER \_\_\_\_\_ SUPERINTENDENT/FOREMAN \_\_\_\_\_

CERTIFIED PAYROLL \_\_\_\_\_ PHONE/EXT. \_\_\_\_\_

CONTRACTOR LICENSE NO. \_\_\_\_\_ EXP. DATE \_\_\_\_\_ SPECIALTY LICENSE NO. \_\_\_\_\_

SELF-INSURED CERTIFICATE NO. \_\_\_\_\_ WORKERS COMP. POLICY NO. \_\_\_\_\_

PROJECT NAME \_\_\_\_\_ PROJECT #/BID PACKAGE# \_\_\_\_\_

AWARDING BODY \_\_\_\_\_ ADVERTISEMENT DATE \_\_\_\_\_

IF SUB-CONTRACTING, LIST YOUR PRIME/GENERAL CONTRACTOR \_\_\_\_\_

CONTRACT AWARD AMOUNT \_\_\_\_\_

THE FEDERAL AND STATE LABOR LAW REQUIREMENTS APPLICABLE TO THE CONTRACT ARE COMPOSED OF, BUT NOT LIMITED TO, THE FOLLOWING:

### Payment of Prevailing Wage Rates

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract. *Labor Code Section 1770 et seq.*

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. Additionally, current wage rate information can be found at the DLSR web site, [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html).

### Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project and to comply with all aspects of *Labor Code Section 1777.5*, relating to Apprentices on Public Works. (1) Notify approved apprenticeship programs of contract award; (2) employ apprentices; (3) pay training fund contributions.

### Penalties

There are penalties required for contractor's/subcontractor's failure to pay prevailing wages and for failure to employ apprentices, including forfeitures and debarment under *Labor Code Sections 1775; 1776; 1777.1; 1777.7 and 1813*.

### Certified Payroll Reports

Under *Labor Code Section 1776*, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day for each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project.

This requirement includes and applies to all subcontractors performing work on Awarding Body projects even if their portion of the work is less than one half of one percent (0.05%) of the total amount of the contract.

The certified payroll records shall contain the same data fields listed on the *Public Works Payroll Reporting Form (A-1-131)* and contain or is accompanied by a declaration made under penalty of perjury. (*California Code of Regulations, Section 16401*).

Prime Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package. Any payroll not submitted in the proper form will be rejected. In the event that there has been no work performed during a

## Checklist of Labor Law Requirements, continued

given week, the Certified Payroll Report shall be annotated: "No work" for that week or a Non-Performance Statement must be submitted.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to *Labor Code Section 1776*.

Under *Labor Code Section 1776(g)* there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

### **Nondiscrimination in Employment**

There exist prohibitions against employment discrimination under *Labor Code Sections 1735 and 1777.6*, the *Government Code*, the *Public Contracts Code*, and *Title VII of the Civil Rights Act of 1964*.

### **Kickbacks Prohibited**

Contractors and subcontractors are prohibited from recapturing wages illegally by accepting or extracting "kickbacks" from employee wages under *Labor Code Section 1778*.

### **Acceptance of Fees Prohibited**

There exists a prohibition against contractor/subcontractor acceptance of fees for registering any person for public work under *Labor Code Section 1779*; or for filling work orders on public works contracts pursuant to *Labor Code Section 1780*.

### **Listing of Subcontractors**

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of one percent, pursuant to *Government Code Section 4104*.

### **Proper Licensing**

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under *Labor Code Section 1021* and under the California Contractor License Law found at *Business and Professions Code Section 7000 et seq.*

### **Unfair Competition Prohibited**

Contractors and sub-contractors are prohibited from engaging in unfair competition as specified under *Business and Professions Code Sections 17200 to 17208*.

### **Workers Compensation Insurance**

*Labor Code Section 1861* requires that contractors and subcontractors be insured properly for Workers Compensation.

### **OSHA**

Contractors and subcontractors are required to abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project.

### **Proof of Eligibility/Citizenship**

The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers, is required.

### **Itemized Wage Statement**

*Labor Code Section 226* requires that employees be provided with itemized wage statements.

## CERTIFICATION

I acknowledge that I have been informed and am aware of the foregoing requirements and that I am authorized to make this certification on behalf of \_\_\_\_\_  
(COMPANY NAME)

I fully understand that failure to comply with any of the above requirements may subject me, or my company, to penalties as provided above.

Contractor \_\_\_\_\_ (SIGNATURE) \_\_\_\_\_ (DATE)

Awarding Agency /Labor Compliance Program \_\_\_\_\_ (SIGNATURE) \_\_\_\_\_ (DATE)

**EXHIBIT B**  
**[Audit Record Form]**

## **AUDIT RECORD FORMS**

(For Use in 8 CCR § 16432 Audits)

An audit record is sufficiently detailed to verify compliance with the requirements of the Public Works Chapter of the Labor Code when the audit record displays that the following procedures have been followed:

1. Audit of the obligation to carry workers' compensation insurance means producing written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers' Compensation Insurance Rating Bureau.
  
2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: Whether contract award information was received, including an estimate of journeyman hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyman rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards.
  
3. Audit of the obligation to pass through amounts, made part of the bid, for apprenticeship training contributions to either the training trust or the California Apprenticeship Council, means asking for copies of checks remitted, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of canceled checks remitted.
  
4. Audit of "illegal taking of wages" means inspection of written authorizations for deductions (as listed in Labor Code Section 224) in the contractor's files and comparison to wage deduction statements furnished to employees (Lab. Code, § 226), together with an interview of several employees as to any payments made which are not reflected on the wage deduction statements.
  
5. Audit of the obligation to keep records of working hours (Cal. Code Regs., tit. 8, § 16432), and pay not less than required for hours worked in excess of 8 hours/day and 40 hours/week (Cal. Code Regs., tit. 8, § 16200(a)(3)(F)), means review and audit of weekly certified payroll records.
  
6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly certified payroll records for compliance with:
  - All elements defined as the General Prevailing Rate of Per Diem Wages in section 16000 of title 8 of the California Code of Regulations that were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site;

- All elements defined as Employer Payments to Workers set forth in section 16000 of title 8 of the California Code of Regulations that were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site.

Note: The following forms (attached hereto) will be used by the LCP in all audits.

- Public Works Investigation Worksheet
- Public Works Audit Worksheet
- Prevailing Wage Determination Summary





PREVAILING WAGE DETERMINATION SUMMARY

| CODE NO. | CLASSIFICATION | WAGE DETERMINATION NO. | Effective Date | HOURLY RATE | Contributions | TRAINING | TIME 1/2 | HOLIDAY / TRAVEL & SUNDAY SUBSISTENCE | Other hourly Requirements |
|----------|----------------|------------------------|----------------|-------------|---------------|----------|----------|---------------------------------------|---------------------------|
| 1        |                |                        |                |             |               |          |          |                                       |                           |
| 2        |                |                        |                |             |               |          |          |                                       |                           |
| 3        |                |                        |                |             |               |          |          |                                       |                           |
| 4        |                |                        |                |             |               |          |          |                                       |                           |
| 5        |                |                        |                |             |               |          |          |                                       |                           |
| 6        |                |                        |                |             |               |          |          |                                       |                           |
| 7        |                |                        |                |             |               |          |          |                                       |                           |
| 8        |                |                        |                |             |               |          |          |                                       |                           |
| 9        |                |                        |                |             |               |          |          |                                       |                           |
| 10       |                |                        |                |             |               |          |          |                                       |                           |
| 11       |                |                        |                |             |               |          |          |                                       |                           |
| 12       |                |                        |                |             |               |          |          |                                       |                           |

WAGE DETERMINATION INFORMATION

| CODE NO. | CLASSIFICATION | WAGE DETERMINATION NO. |
|----------|----------------|------------------------|
| 1        |                |                        |
| 2        |                |                        |
| 3        |                |                        |
| 4        |                |                        |
| 5        |                |                        |
| 6        |                |                        |
| 7        |                |                        |
| 8        |                |                        |
| 9        |                |                        |
| 10       |                |                        |
| 11       |                |                        |
| 12       |                |                        |

**EXHIBIT C**

**[Suggested Single Project Labor Compliance Review  
and Enforcement Report Form]**

**Suggested Single Project Labor Compliance Review and Enforcement Report Form**  
[Appendix C following 8 CCR §16434]

Awarding Body: \_\_\_\_\_

Project Name: \_\_\_\_\_

Name of Approved Labor Compliance Program: \_\_\_\_\_

Bid Advertisement Date: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Notice of Completion Recordation Date: \_\_\_\_\_

Summary of Labor Compliance Activities

1. Contract Documents Containing Prevailing Wage Requirements (Identify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Prejob Conference(s) -- Attach list(s) of attendees and dates

3. Notification to Project Workers of Labor Compliance Program's Contact Person. [Explain Manner of Notification for each project work site.]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Certified Payroll Record Review

a. CPRs Received From:

Contractor/Subcontractor

For weeks ending ("w/e") through w/e

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

| <u>Classification</u> | <u>Determination No.</u> |
|-----------------------|--------------------------|
| _____                 | _____                    |
| _____                 | _____                    |
| _____                 | _____                    |

5. Further investigation or audit due to CPR review, information or complaint from worker or other interested person, or other reason:

a. Independent Confirmation of CPR Data

| <u>Contractor/Subcontractor</u> | <u>Worker Interviews (Yes/No)</u> | <u>Reconciled CPRs with Pay-checks or Stubs (Yes/No)</u> |
|---------------------------------|-----------------------------------|--|
| _____                           | _____                             | _____  |
| _____                           | _____                             | _____  |
| _____                           | _____                             | _____  |
| _____                           | _____                             | _____  |

b. Employer Payments (Health & Welfare, Pension, Vacation/Holiday) Confirmation

| <u>Contractor/Subcontractor</u> | <u>Recipients of Employer Payments</u> | <u>Written confirmation Obtained (Yes/No)</u> |
|---------------------------------|--|---|
| _____                           | _____                                  | _____   |
| _____                           | _____                                  | _____   |
| _____                           | _____                                  | _____   |
| _____                           | _____                                  | _____   |

c. Contributions to California Apprenticeship Council or Other Approved Apprenticeship Program

| <u>Contractor/Subcontractor</u> | <u>Recipients of Contributions</u> | <u>Written confirmation Obtained (Yes/No)</u> |
|---------------------------------|------------------------------------|---|
| _____                           | _____                              | _____   |
| _____                           | _____                              | _____   |
| _____                           | _____                              | _____   |
| _____                           | _____                              | _____   |

d. Additional Wage Payments or Training Fund Contributions Resulting from Review of CPRs

| <u>Contractor/Subcontractor</u> | <u>Additional amounts Paid to Workers</u> | <u>Additional Training Fund</u> | <u>Explanation</u> |
|---------------------------------|---|---------------------------------|--------------------|
| _____                           | _____                                     | _____                           | *                  |
| _____                           | _____                                     | _____                           | *                  |
| _____                           | _____                                     | _____                           | *                  |
| _____                           | _____                                     | _____                           | *                  |

\* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

| <u>Name of Complainant</u> | <u>Date Received</u> | <u>Resolution or Current Status</u> |
|----------------------------|----------------------|-------------------------------------|
| _____                      | _____                | *                                   |
| _____                      | _____                | *                                   |
| _____                      | _____                | *                                   |
| _____                      | _____                | *                                   |

\*Use separate page(s) to explain resolution or current status

7. Requests for Approval of Forfeiture to Labor Commissioner

| <u>Contractor/Subcontractor</u> | <u>Date of Request</u> | <u>Approved/Modified/Denied</u> |
|---------------------------------|------------------------|---------------------------------|
| _____                           | _____                  | _____                           |
| _____                           | _____                  | _____                           |
| _____                           | _____                  | _____                           |

8. Litigation Pending Under Labor Code Section 1742

| <u>Contractor/Subcontractor</u> | <u>DIR Case Number</u> |
|---------------------------------|------------------------|
| _____                           | _____                  |
| _____                           | _____                  |
| _____                           | _____                  |

9. (Check one): \_\_\_\_\_ Final report this project \_\_\_\_\_ Annual report this project

\_\_\_\_\_  
Authorized Representative for Labor Compliance Program

**EXHIBIT D**  
**[Notice of Temporary Withholding of Contract Payments Due to  
Delinquent or Inadequate Payroll Records (8 CCR § 16435)]**

|  |                       |
|--|-----------------------|
| [Name and Contact Information for person issuing Notice] |                       |
| Date:  | Case or Contract No.: |

**NOTICE OF TEMPORARY WITHHOLDING OF CONTRACT PAYMENTS DUE TO DELINQUENT OR INADEQUATE PAYROLL RECORDS (8 CCR §16435)**

|                                   |                              |
|-----------------------------------|------------------------------|
| Awarding Body:                    | Work performed in County of: |
| Project Name and Number (if any): |                              |
| Prime Contractor:                 |                              |
| Subcontractor:                    |                              |

Pursuant to Labor Code §1771.5(b)(5) and 8 CCR §16435, contract payments are being withheld due to delinquent or inadequate payroll records.

Contractor or subcontractor whose payroll records are delinquent or inadequate:

\_\_\_\_\_

The following payroll records are delinquent (specify weeks and due dates):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The following payroll records are inadequate (specify weeks and ways in which records are deemed inadequate under 8 CCR §16435(d)):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Estimated amount of contract payments due to contractor or subcontractor that are being withheld pursuant to this Notice:

\_\_\_\_\_

**See page 2 for additional information, including appeal rights.**

\_\_\_\_\_  
 Labor Compliance Officer

**Prime Contractor Obligations:** If contract payments are being withheld due to the delinquency or inadequacy of your subcontractor's payroll records, you are required to cease all payments to that subcontractor until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

### **Notice of Right to Obtain Review – Expedited Hearing**

An affected contractor or subcontractor may request review an expedited hearing to review this Notice of Withholding of Contract Payments under Labor Code §1742. *The only issue in any such review proceeding is whether the specified payroll records are in fact delinquent or inadequate within the meaning of 8 CCR §16435 or whether the Labor Compliance Program has exceeded its authority under 8 CCR §16435.* **To obtain an expedited hearing, a written request must be transmitted to the both the Labor Compliance Program and to the Lead Hearing Officer for the Director of the Department of Industrial Relations, as follows:**

[Name of Labor Compliance Officer,  
address, and fax number]

Office of the Director – Legal Unit  
Attention: Lead Hearing Officer  
***Expedited Hearing Request***  
Fax to: (415) 703-4277

The request for expedited hearing should specify the basis for challenging this Notice and include a copy of this Notice as an attachment. The request should also identify and provide contact information for the person who will represent the contractor or subcontractor at the hearing.

**Important Additional Information:** This is a Notice of Temporary Withholding of Contract Payments for Delinquent or Inadequate Payroll Records *only*. This is *not* a determination of liability for wages or penalties under Labor Code §§1775 and 1776 or any other statute. *Contract payments cannot continue to be withheld pursuant to this notice, once the required records have been produced.* However, the contractor and subcontractor may still be subject to the assessment of back wages and penalties and the withholding of contract payments if, upon investigation, a determination is made that the contractor or subcontractor violated the public works requirements of the Labor Code.

This Notice only addresses rights and responsibilities under state law. Awarding bodies, labor compliance programs, and contractors may have other rights or responsibilities under federal or local law, where applicable, and may also have additional rights or remedies under the public works contract.

---

**EXHIBIT E**  
**[Request for Approval of Forfeiture]**

**1. AWARDING BODY / THIRD PARTY LCP:**

|   |  |
|---|--|
| Name and Contact Information:   | Date of Request:   |
| Name and Contact Information for Awarding Body if different from LCP: | LCP Approval Status (specify if either interim or temporary or if LCP has extended authority): |

**2. PROJECT INFORMATION:**

|  |  |
|--|--|
| Project Name:                                    | Contract Number:   |
| Project Location:                                |  |
| Bid Advertisement Dates:                         | Estimated Date Project is to be completed:               |
| Acceptance Date of Project by the Awarding Body: | Notice of Completion/Date Recorded with County Recorder: |
| Other Relevant Deadline (specify):               | Amount being held in Retention:                          |

**3. CONTRACTOR INFORMATION:**

|   |   |
|---|---|
| Name and address of Affected Contractor:  | Name and address of Affected Subcontractor: |
| General Description of Scope of Work of the Entire Project:   |   |
| General Description of Scope of Work covered in the proposed Forfeiture (describe and attach relevant portions of contract or subcontract): |   |

**4. LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:**

| <b>Total Amount of Request for Notice of Withholding of Contract Payments:</b> |                        |                        |  |
|--|------------------------|------------------------|--|
| Wages Due:   | Training Funds Due:    | Total Penalties Due:   | Potential Liquidated Damages [Wages + Training Funds]: |
| LC 1775 Penalties Due:   | LC 1813 Penalties Due: | LC 1776 Penalties Due: | Other:   |

[Provide narrative summaries covering the following]:

- A. *Statement of Issues.*
- B. *Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).*
- C. *Audit Report (detailed explanation of how audit was completed addressing each of the issues above).*
- D. *Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).*
- E. *Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).*

**ATTACHMENTS**

- 1. Audit Summary (Appendix B)
- 2. 1<sup>st</sup> Bid Advertisement Publication
- 3. Notice of Completion
- 4. Scope of Work
- 5. Complaint form(s) and Declarations, if any

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Send the Request and all Attachments to:

Division of Labor Standards Enforcement  
Bureau of Field Enforcement  
Attn.: Regional Manager  
300 Oceangate Blvd., No. 850  
Long Beach, CA 90802

**COPIES OF THIS REQUEST, INCLUDING ALL ATTACHMENTS, SHALL BE SERVED ON THE AFFECTED CONTRACTOR AND AFFECTED SUBCONTRACTOR AT THE SAME TIME THAT IT IS SENT TO THE DIVISION OF LABOR STANDARDS ENFORCEMENT.**

**EXHIBIT F**  
**[Notice of Withholding of Contract Payments]**

|   |                             |
|---|-----------------------------|
| <b>Labor Compliance Program</b><br><hr/> <hr/> <hr/> <hr/> Phone:<br>Fax: | (SEAL )                     |
| Date:   | In Reply Refer to Case No.: |

### Notice of Withholding of Contract Payments

|                  |  |
|------------------|--|
| Awarding Body    | <sup>3</sup> Work Performed in County of |
| Project Name     | <sup>3</sup> Project No.                 |
| Prime Contractor |  |
| Subcontractor    |  |

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for \_\_\_\_\_ (Awarding Body) 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 sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

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

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---



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---

The Labor Compliance Program has determined that the total amount of wages due is: \$\_\_\_\_\_

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$\_\_\_\_\_

The Labor Compliance Program has determined that the amount of penalties assessed under Labor Code section 1776 is: \$\_\_\_\_\_

#### **LABOR COMPLIANCE PROGRAM**

---

By:\_\_\_\_\_

## Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments (NWCP) by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Labor Compliance Program

---

Review Office-Notice of Withholding of Contract Payments

---

---

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice 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 Compliance Program at the hearing within 20 days of the Labor Compliance Program'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 Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding this Notice**. 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. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, 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 Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to \_\_\_\_\_ at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Liquidated Damages

In accordance with Labor Code section 1742.1 (a), after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If this Notice 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 this 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 found due in this Notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of this 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.

In lieu of a cash deposit, the contractor may post an undertaking with the Department in full amount of the Notice of Withholding of Contract Payments. The undertaking shall be on the condition that, if any decision is issued by the Director upholding this Notice in any respect, the contractor shall pay the amount owed pursuant to a decision that is final under Labor Code Section 1742, unless the parties have executed a settlement agreement for the payment of some other amount, in which case the contractor shall pay the amount that the contractor is obligated to pay under the terms of the settlement agreement. The undertaking must provide that if the contractor fails to pay the amount

owed within 10 days of the date the decision is final or the execution of the settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount exceeds the undertaking is forfeited to the Labor Commissioner for the State of California for the purpose of satisfying the amounts owed under this Notice. A payment bond obtained by a contractor for the public works project which is the subject to this Notice shall not be accepted as an undertaking unless the following two conditions are completely satisfied: (1) the payment bond provides the payment of the full amount of this Notice, including but not limited to, all wages, training, trust contributions, and penalties, and (2) the conditions of payment set forth above are expressly agreed to by the affected contractor(s) and the surety which issued the payment bond. The undertaking should be forwarded to the Department as directed below. The Department's Accounting Office will hold the undertaking until the administrative and judicial review is completed. The disbursement of the bond funds will follow the same process as described above for a cash deposit.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Notice of Withhold Contract Payments and mailed to:

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

**The Amount of Liquidated Damages Available Under this Notice is \$\_\_\_\_\_.**

Distribution:

Prime Contractor  
Subcontractor  
Surety(s) on Bond

Attach:

Audit Summary  
Proof of Service

**EXHIBIT G**  
**[Notice of Transmittal]**

|   |                                    |
|---|------------------------------------|
| <p><b>LABOR COMPLIANCE PROGRAM</b></p> <hr/> <p>Review Office - Notice of Withholding<br/>of Contract Payments</p> <hr/> <hr/> <hr/> <p>Phone:<br/>Fax:</p> | <p>(SEAL )</p>                     |
| <p>Date:</p>  | <p>In Reply Refer to Case No.:</p> |

**Notice of Transmittal**

To: Department of Industrial Relations  
Office of the Director-Legal Unit  
Attention: Lead Hearing Officer  
P. O. Box 420603  
San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated \_\_\_\_\_, postmarked \_\_\_\_\_, and received by this office on \_\_\_\_\_.

Also enclosed please find the following:

- \_\_\_\_\_ Copy of Notice of Withholding of Contract Payments
- \_\_\_\_\_ Copy of Audit Summary

**LABOR COMPLIANCE PROGRAM**

---

By: \_\_\_\_\_

cc: Prime Contractor  
Subcontractor  
Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

**EXHIBIT H**  
**[Notice of Opportunity to Review Evidence Pursuant to Labor Code**  
**Section 1742(b)]**

|   |                                    |
|---|------------------------------------|
| <p><b>LABOR COMPLIANCE PROGRAM</b></p> <hr/> <p>Review Office - Notice of Withholding<br/>of Contract Payments</p> <hr/> <hr/> <hr/> <p>Phone:<br/>Fax:</p> | <p>(SEAL )</p>                     |
| <p>Date:</p>  | <p>In Reply Refer to Case No.:</p> |

**Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)**

To: Prime Contractor

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Subcontractor

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please be advised that this office has received your **Request for Review**, dated \_\_\_\_\_, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. \_\_\_\_\_.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

A(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business

hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

**Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attention:** \_\_\_\_\_

## Request to Review Evidence

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Regarding Notice of Withholding of Contract Payments Dated \_\_\_\_\_

Our Case No.: \_\_\_\_\_

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

\_\_\_\_\_  
Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

**EXHIBIT I**  
**[Prevailing Wage Hearing Regulations]**

*The following statutory excerpts are provided by the Contra Costa County Flood Control & Water Conservation District only for convenience and by way of explanation. Any changes to the referenced regulations will be automatically implemented by the District, without requiring revisions to this document. No guarantees are provided as to accuracy of the following.*

*The reader is directed to the actual code for complete, accurate representations of the current laws and regulations. Law Codes must be obtained from the Internet, law libraries or the Department of Industrial Relations. The California Code of Regulations is posted at the state website, <http://www.ccr.oal.ca.gov>.*

## **CALIFORNIA CODE OF REGULATIONS**

TITLE 8, CHAPTER 8, SUBCHAPTER 6

(Sections 17201 through 17270)

### **C O N T E N T S**

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## ARTICLE 1. GENERAL

### 17201. Scope and Application of Rules.

(a) These Rules govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code, as well as any notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776. The provisions of Labor Code section 1742 and these Rules apply to all such assessments and notices served on a contractor or subcontractor on or after July 1, 2001 and provide the exclusive method for an Affected Contractor or Subcontractor to obtain review of any such notice or assessment. These Rules also apply to transitional cases in which notices were served but no court action was filed under Labor Code sections 1731-1733 prior to July 1, 2001, in accordance with Section 17270 (Rule 70) below.

(b) These Rules do not govern debarment proceedings under Labor Code section 1777.1, nor proceedings to review determinations with respect to the violation of apprenticeship obligations under Labor Code sections 1777.5 and 1777.7, nor any criminal prosecution.

(c) These Rules do not preclude any remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.

(d) For easier reference, individual sections within these prevailing wage hearing regulations are referred to as "Rules" using only their last two digits. For example, this Section 17201 may be referred to as Rule 01.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Sections 1742, 1771.5, 1771.6(b), 1773.5, 1776, and 1777.1 – 1777.7, Labor Code; and Stats. 2000, Chapter 954, §1.

### 17202. Definitions.

For the purpose of these Rules:

(a) "Affected Contractor or Subcontractor" means a contractor or subcontractor (as defined under Labor Code section 1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code section 1741, or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to Labor Code section 1771.6, or to whom the Labor Commissioner or the Division of Apprentice Standards has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776;

(b) "Assessment" means a civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to Labor Code section 1741, and it also includes a notice issued by either the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code section 1776;

(c) "Awarding Body" means an awarding body or body awarding the contract (as defined in Labor Code section 1722) that exercises enforcement authority under Labor Code section 1726 or 1771.5;

(d) "Department" means the Department of Industrial Relations;

(e) "Director" means the Director of the Department of Industrial Relations;

(f) "Enforcing Agency" means the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; i.e., it refers to the Labor Commissioner when review is sought from an Assessment, the Awarding Body when review is sought from a Notice of Withholding of Contract Payments, and the Division of Apprenticeship Standards when review is sought from a notice issued by that agency that assesses penalties under Labor Code section 1776;

(g) "Hearing Officer" means any person appointed by the Director pursuant to Labor Code section 1742(b) to conduct hearings and other proceedings under Labor Code section 1742 and these Rules;

(h) "Joint Labor-Management Committee" means a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code).

(i) "Labor Commissioner" means the Chief of the Division of Labor Standards Enforcement and includes his or her designee who has been authorized to carry out the Labor Commissioner's functions under Chapter 1, Part 7 of Division 2 (commencing with section 1720) of the Labor Code;

(j) "Party" means an Affected Contractor or Subcontractor who has requested review of either an Assessment or a Notice of Withholding of Contract Payments, the Enforcing Agency that issued the Assessment or the Notice of Withholding of Contract Payments from which review is sought, and any other Person who has intervened under subparts (a), (b), or (c) of Rule 08 [Section 17208];

(k) "Person" means an individual, partnership, limited liability company, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character;

(l) "Representative" means a person authorized by a Party to represent that Party in a proceeding before a Hearing Officer or the Director, and includes the Labor Commissioner when the Labor Commissioner has intervened to represent the Awarding Body in a review proceeding pursuant to Labor Code section 1771.6(b).

(m) "Rule" refers to a section within this subchapter 6. The Rule number corresponds to the last two digits of the full section number. (For example, Rule 08 is the same as section 17208.)

(n) "Surety" has the meaning set forth in Civil Code section 2787 and refers to the entity that issues the public works bond provided for in Civil Code sections 3247 and 3248 or any other surety bond that guarantees the payment of wages for labor.

(o) "Working Day" means any day that is not a Saturday, Sunday, or State holiday, as determined with reference to Code of Civil Procedure sections 12(a) and 12(b) and Government Code sections 6700 and 6701.

NOTE: Authority cited: Sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Sections 2787, 3247, and 3248, Civil Code; Sections 12a and 12b, Code of Civil Procedure; Sections 6700, 6701, 11405.60 and 11405.70, Government Code; Sections 1720 et seq., 1722, 1722.1, 1726, 1741, 1742, 1742(b), 1771.5, 1771.6, 1771.6(b), and 1776, Labor Code; and 29 U.S.C. §175a.

### **17203. Computation of Time and Extensions of Time to Respond or Act.**

(a) In computing the time within which a right may be exercised or an act is to be performed, the first day shall be excluded and the last day shall be included. If the last day is not a Working Day, the time shall be extended to the next Working Day.

(b) Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid; or the date of delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(c) Where service of any notice, decision, pleading or other document is by first class mail, and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five days if the place of address is within the State of California, and 10 days if the place of address is outside the State of California but within the United States. However, this Rule shall not

extend the time within which the Director may reconsider or modify a decision to correct an error (other than a clerical error) under Labor Code section 1742(b).

(d) Where service of any notice, pleading, or other document is made by an authorized method other than first class mailing, extensions of time to respond or act shall be calculated in the same manner as provided under section 1013 of the Code of Civil Procedure, unless a different requirement has been specified by the appointed Hearing Officer or by another provision of these Rules.

NOTE: Authority cited: Sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Sections 1010 through 1013, Code of Civil Procedure; and Section 1742(b), Labor Code.

**17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.**

(a) Upon receipt of a Request for Review of an Assessment or of a Notice of Withholding of Contract Payments, the Director, acting through the Chief Counsel (see subpart (c) below), shall appoint an impartial Hearing Officer to conduct the review proceeding.

(b) The appointed Hearing Officer shall be an attorney employed by the Office of the Director – Legal Unit. However, if no attorney employed by the Office of the Director – Legal Unit is available or qualified to serve in a particular matter, the appointed Hearing Officer may be any attorney or administrative law judge employed by the Department, other than an employee of the Division of Labor Standards Enforcement.

(c) Any person appointed to serve as a Hearing Officer in any matter shall possess at least the minimum qualifications for service as an administrative law judge pursuant to Government Code section 11502(b) and shall be someone who is not precluded from serving under Government Code section 11425.30.

(d) The Director's authority under Labor Code section 1742(b) to appoint an impartial Hearing Officer, is delegated in all cases to the Chief Counsel of the Office of the Director or to the Chief Counsel's designated Assistant or Acting Chief Counsel when the Chief Counsel is unavailable or disqualified from participating in a particular matter. This delegation includes all related authority under Rule 40 [Section 17240] below to appoint a different Hearing Officer to conduct all or any part of a review proceeding as well as the authority to consider and decide or to assign to another Hearing Officer for consideration and decision any motion to disqualify an appointed Hearing Officer.

NOTE: Authority cited: Sections 7, 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Sections 11425.30 and 11502(b), Government Code; and Sections 7, 55, 59, and 1742(b), Labor Code.

**17205. Authority of Hearing Officers.**

(a) In any proceeding assigned for hearing and decision under the provisions of Labor Code section 1742, the appointed Hearing Officer shall have full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Director, to hold a prehearing conference, to issue a subpoena and subpoena duces tecum for the attendance of a Person and the production of testimony, books, documents, or other things, to compel the attendance of a Person residing anywhere in the state, to certify official acts, to regulate the course of a hearing, to grant a withdrawal, disposition or amendment, to order a continuance, to approve a stipulation voluntarily entered into by the Parties, to administer oaths and affirmations, to rule on objections, privileges, defenses, and the receipt of relevant and material evidence, to call and examine a Party or witness and introduce into the hearing record documentary or other evidence, to request a Party at any time to state the respective position or supporting theory concerning any fact or issue in the proceeding, to extend the submittal date of any proceeding,

to exercise such other and additional authority as is delegated to Hearing Officers under these Rules or by an express written delegation by the Director, and to prepare a recommended decision, including a notice of findings, findings, and an order for approval by the Director.

(b) There shall be no right of appeal to or review by the Director of any decision, order, act, or refusal to act by an appointed Hearing Officer other than through the Director's review of the record in issuing or reconsidering a written decision under Rules 60 [Section 17260] and 61 [Section 17261] below.

NOTE: Authority cited: Sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Section 11512, Government Code; and Section 1742(b), Labor Code.

#### **17206. Access to Hearing Records.**

(a) Hearing case records shall be available for inspection and copying by the public, to the same extent and subject to the same policies and procedures governing other records maintained by the Department. Hearing case records normally will be available for review in the office of the appointed Hearing Officer; provided however, that a case file may be temporarily unavailable when in use by the appointed Hearing Officer or by the Director or his or her designee.

(b) Nothing in this Rule shall authorize the disclosure of any record or exhibit that is required to be kept confidential or is otherwise exempt from disclosure by law or that has been ordered to be kept confidential by an appointed Hearing Officer.

NOTE: Authority cited: Sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Sections 6250 et seq. Government Code; and Section 1742(b), Labor Code.

#### **17207. Ex Parte Communications.**

(a) Except as provided in this Rule, once a Request for Review is filed, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to the appointed Hearing Officer or the Director, from the Enforcing Agency or any other Party or other interested Person, without notice and the opportunity for all Parties to participate in the communication.

(b) A communication made on the record in the hearing is permissible.

(c) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the Hearing Officer to be controversial in the context of the specific case. If so, the Hearing Officer shall so inform the other participant and may terminate the communication or continue it until after giving all Parties notice and an opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file so that all Parties have a reasonable opportunity to review it. Unless otherwise provided by statute or these Rules, the appointed Hearing Officer may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term "matters of procedure or practice" shall be liberally construed.

(d) A communication from the Labor Commissioner to the Hearing Officer or the Director which is deemed permissible under Government Code section 11430.30 is permitted only if any such written communication and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, is added to the case file so that all Parties have a reasonable opportunity to review it.

(e) If the Hearing Officer or the Director receives a communication in violation of this Rule, he or she shall comply with the requirements of Government Code section 11430.50.

(f) To the extent not inconsistent with Labor Code section 1742, the provisions of Article 7 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11430.10) of the Government Code governing ex parte communications in administrative adjudication proceedings shall apply to review proceedings conducted under these Rules.

(g) This Rule shall not be construed as prohibiting communications between the Director and the Labor Commissioner or between the Director and any other interested Person on issues or policies of general interest that coincide with issues involved in a pending review proceeding; provided that (1) the communication does not directly or indirectly seek to influence the outcome of any pending proceeding; (2) the communication does not directly or indirectly identify or otherwise refer to any pending proceeding; and (3) the communication does not occur at a time when the Director or the other party to the communication knows that a proceeding in which the other party to the communication is interested is under active consideration by the Director.

NOTE: Authority cited: Sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Sections 11430.10 through 11430.80, Government Code, and Section 1742(b), Labor Code.

#### **17208. Intervention and Participation by other Interested Persons.**

(a) The Labor Commissioner may intervene as a matter of right in any review from a Notice of Withholding of Contract Payments, either as the Representative of the Awarding Body or as an interested third Party.

(b) A bonding company and any Surety on a bond that secures the payment of wages covered by the Assessment or Notice of Withholding of Contract Payments shall be permitted to intervene as a matter of right in any pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; provided that, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and within either 30 days after the bonding company or Surety was served with a copy of the Assessment or Notice of Withholding of Contract Payments or 30 days after the filing of the Request for Review, whichever is later. Thereafter, any request to intervene by such a bonding company or Surety shall be treated as a motion for permissive participation under subpart (d) of this Rule. A bonding company or Surety shall have the burden of proof with respect to any claim that it did not receive notice of the Assessment or Notice of Withholding of Contract Payments until after the filing of the Request for Review.

(c) The employee(s), labor union, or Joint Labor-Management Committee who filed the formal complaint which led the Enforcing Agency to issue the Assessment or Notice of Withholding of Contract payments shall be permitted to intervene in a pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; provided that, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and there is no good cause to deny the request. Thereafter, any request to intervene by such employee(s), labor union, or Joint Labor-Management Committee shall be treated as a motion for permissive participation as an interested Person under subpart (d) of this Rule.

(d) Any other Person may move to participate as an interested Person in a proceeding in which that Person claims a substantial interest in the issues or underlying controversy and in which that Person's participation is likely to assist and not hinder or protract the hearing and determination of the case by the Hearing Officer and the Director. Interested Persons who are permitted to participate under this Rule shall not be regarded as Parties to the proceeding for any purpose, but may be provided notices and the opportunity to present arguments under such terms as the Hearing Officer deems appropriate.

(e) Rights to intervene or participate as an interested party are only in accordance with this Rule. Intervention or permissive participation under this Rule shall not expand the scope of issues under review nor shall it extend any rights or interests which have been forfeited as a

result of an Affected Contractor or Subcontractor's own failure to file a timely Request for Review. The Hearing Officer may impose conditions on an intervener's or other interested Person's participation in the proceeding, including but not limited to those conditions specified in Government Code § 11440.50(c).

(f) No Person shall be required to seek intervention in a review proceeding as a condition for pursuing any other remedy available to that Person for the enforcement of the prevailing wage requirements of Division 2, Part 7, Chapter 1 (starting with section 1720) of the Labor Code. NOTE: Authority cited: Sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Section 11440.50(c), Government Code; and Sections 1720 et seq., 1741, 1742, and 1771.6, Labor Code.

#### **17209. Representation at Hearing.**

(a) A Party may appear in person or through an authorized Representative, who need not be an attorney at law; however, a Party shall use the form Authorization for Representation by Non-Attorney [8 CCR 17209(b) (New 1/15/02)] to authorize representation by any non-attorney who is not an owner, officer, or managing agent of that Party.

(b) Upon formal notification that a Party is being represented by a particular individual or firm, service of subsequent notices in the matter shall be made on the Representative, either in addition to or instead of the Party, unless and until such authorization is terminated or withdrawn by further written notice. Service upon an authorized Representative shall be effective for all purposes and shall control the determination of any notice period or the running of any time limit for the performance of any acts, regardless of whether or when such notice may also have been served directly on the represented Party.

(c) An authorized Representative shall be deemed to control all matters respecting the interests of the represented Party in the proceedings.

(d) Parties and their Representatives shall have a continuing duty to keep the appointed Hearing Officer and all other Parties to the proceeding informed of their current address and telephone number.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

#### **17210. Proper Method of Service.**

(a) Unless a particular method of service is specifically prescribed by statute or these Rules, service may be made by: (1) personal delivery; (2) priority or first class mailing postage prepaid through the U. S. Postal Service; (3) any other means authorized under Code of Civil Procedure section 1013; or (4) if authorized by the Hearing Officer pursuant to Rule 11 [Section 17211] below, by facsimile or other electronic means.

(b) Service is complete at the time of personal delivery or mailing, or at the time of transmission as determined under Rule 11 [Section 17211] below.

(c) Proof of service shall be filed with the document and may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) copy of letter of transmittal.

(d) Service on a Party who has appeared through an attorney or other Representative shall be made upon such attorney or Representative.

(e) In each proceeding, the Hearing Officer shall maintain an official address record, which shall contain the names and addresses of all Parties and their Representatives, agents, or attorneys of record. Any change or substitution in such information must be communicated promptly in writing to the Hearing Officer. The official address record may also include the names and

addresses of interested Persons who have been permitted to participate under Rule 08(d) [Section 17208].

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1013, Code of Civil Procedure; and Section 1742(b), Labor Code.

**17211. Filing and Service of Documents by Facsimile or Other Electronic Means.**

(a) In individual cases the Hearing Officer may authorize the filing and service of documents by facsimile or by other electronic means, subject to reasonable restrictions on the time of transmission and the page length of any document or group of documents that may be transmitted by facsimile or other electronic means, and subject to any further requirements on the use of cover sheets or the subsequent filing and service of originals or hard copies of documents as the Hearing Officer deems appropriate. Filing and service by facsimile or other electronic means shall not be authorized under terms that substantially disadvantage any Party appearing or participating in the proceeding as a matter of right. A document transmitted by facsimile or other electronic means shall not be considered received until the next Working Day following transmission unless it is transmitted on a Working Day and the entire transmission is completed by no later than 4:00 p.m. Pacific Time.

(b) Filings and service by facsimile or other electronic means shall not be authorized or accepted as a substitute for another method of service that is required by statute or these Rules, unless the Party served has expressly waived its right to be served in the required manner.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

**17212. Administrative Adjudication Bill of Rights.**

(a) The provisions of the Administrative Adjudication Bill of Rights found in Article 6 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11425.10) of the Government Code shall apply to these review proceedings to the extent not inconsistent with a state or federal statute, a federal regulation, or a court decision which applies specifically to the Department. The enumeration of certain rights in these Rules may expand but shall not be construed as limiting the same or similar provision of the Administrative Adjudication Bill of Rights; nor shall the enumeration of certain rights in these Rules be construed as negating other statutory rights not stated.

(b) Ex parte communications shall be permitted between the appointed Hearing Officer and the Director in accordance with Government Code section 11430.80(b).

(c) The presentation or submission of any written communication by a Party or other interested Person during the course of a review proceeding shall be governed by the requirements of Government Code §11440.60 (b) and (c).

(d) Unless otherwise indicated by express reference within the body of one of these Rules, the provisions of Chapter 5 of Title 2, Division 3, Part 1 (commencing with section 11500) of the Government Code shall not apply to these review proceedings.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 11415.20, 11425.10 et seq. and 11430.80(b), Government Code; and Section 1742(b), Labor Code.

## **ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW**

### **17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.**

(a) An Assessment, a Notice of Withholding of Contract Payments, or a notice assessing penalties under Labor Code section 1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of Code of Civil Procedure section 1013. A copy of the notice shall also be served by certified mail on any bonding company issuing a bond that secures the payment of the wages covered by the Assessment or Notice and to any Surety on a bond, if the identities of such companies are known or reasonably ascertainable. The identity of any Surety issuing a bond for the benefit of an Awarding Body as designated obligee, shall be deemed "known or reasonably ascertainable," and the Surety shall be deemed to have received the notice required under this subpart if sent to the address appearing on the face of the bond.

(b) An Assessment or Notice of Withholding of Contract Payments shall be in writing and shall include the following information:

(1) a description of the nature of the violation and basis for the Assessment or Notice; and  
(2) the amount of wages, penalties, and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the Enforcing Agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.

(c) An Assessment or Notice of Withholding of Contract Payments shall also include the following information:

(1) the name and address of the office to which a Request for Review may be sent;  
(2) information on the procedures for obtaining review of the Assessment or Withholding of Contract Payments;  
(3) notice of the Opportunity to Request a Settlement Meeting under Rule 21 [Section 17221] below; and  
(4) the following statement that shall appear in bold or another typeface that makes it stand out from the other text:

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.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1013, Code of Civil Procedure; and Sections 1741, 1742, 1743, 1771.6 and 1776, Labor Code.

### **17221. Opportunity for Early Settlement.**

(a) The Affected Contractor or Subcontractor may, within 30 days following the service of an Assessment or Notice of Withholding of Contract Payments, request a meeting with the Enforcing Agency for the purpose of attempting to settle the dispute regarding the Assessment or Notice.

(b) Upon receipt of a timely written request for a settlement meeting, the Enforcing Agency shall afford the Affected Contractor or Subcontractor a reasonable opportunity to meet for such purpose. The settlement meeting may be held in person or by telephone and shall take place before expiration of the 60-day limit for filing a Request for Review under Rule 22 [Section 17222].

(c) Nothing herein shall preclude the Parties from meeting or attempting to settle a dispute after expiration of the time for making a request or after the filing of a Request for Review.

(d) Neither the making or pendency of a request for a settlement meeting, nor the fact that the Parties have met or have failed or refused to meet as required by this Rule shall serve to extend the time for filing a Request for Review under Rule 22 [Section 17222] below.

(e) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, such a settlement meeting shall be admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, such a settlement meeting, other than a final settlement agreement, shall be admissible or subject to discovery in any administrative or civil proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742, 1742.1 and 1771.6, Labor Code.

### **17222. Filing of Request for Review.**

(a) Any Request for Review of an Assessment or of a Notice of Withholding of Contract Wages shall be transmitted in writing to the Enforcing Agency within 60 days after service of the Assessment or Notice. Failure to request review within 60 days shall result in the Assessment or the Withholding of Contract Wages becoming final and not subject to further review under these Rules.

(b) A Request for Review shall be transmitted to the office of the Enforcing Agency designated on the Assessment or Notice of Withholding of Contract Payments from which review is sought.

(c) A Request for Review shall be deemed filed on the date of mailing, as determined by the U.S. Postal Service postmark date on the envelope or the overnight carrier's receipt in accordance with Rule 03(b) [Section 17203(b)] above, or on the date of receipt by the designated office of the Enforcing Agency, whichever is earlier.

(d) An additional courtesy copy of the Request for Review may be served on the Department by mailing to the address specified in Rule 23 [Section 17223] below at any time on or after the filing of the Request for Review with the Enforcing Agency. The service of a courtesy copy on the Department shall not be effective for invoking the Director's review authority under Labor Code section 1742; however, it may determine the time within which the hearing shall be commenced under Rule 41(a) [Section 17241(a)] below.

(e) A Request for Review either shall clearly identify the Assessment or Notice from which review is sought, including the date of the Assessment or Notice, or it shall include a copy of the Assessment or Notice as an attachment. A Request for Review shall also set forth the basis upon which the Assessment or Notice is being contested. A Request for Review shall be liberally construed in favor of its sufficiency; however, the Hearing Officer may require the Party seeking review to provide a further specification of the issues or claims being contested and a specification of the basis for contesting those matters.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742 and 1771.6(a), Labor Code.

### **17223. Transmittal of Request for Review to Department.**

Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall transmit to the Office of the Director – Legal Unit, the Request for Review and copies of the Assessment or Notice of Withholding of Contract Wages, any Audit Summary that accompanied the Assessment or Notice, and a Proof of Service or other document showing the name and address of any bonding company or Surety entitled to notice under Rule 20(a) [Section 17220(a)] above. The Enforcing Agency shall transmit these items to the following address.

Department of Industrial Relations Office of the Director - Legal Unit Attention: Lead Hearing Officer P.O. Box 420603 San Francisco, CA 94142-0603

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(a) and 1771.6(a), Labor Code.

**17224. Disclosure of Evidence.**

(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the Affected Contractor or Subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing on the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the Affected Contractor or Subcontractor the option, at the Affected Contractor or Subcontractor's own expense, to either (A) obtain copies of all such evidence through a commercial copying service or (B) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the Affected Contractor or Subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; provided that, this deadline may be extended by written request or agreement of the Affected Contractor or Subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the Enforcing Agency from introducing such evidence in proceedings before the Hearing Officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), provided that, such evidence is promptly disclosed to the Affected Contractor or Subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another Party in the proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(b) and 1771.6, Labor Code.

**17225. Withdrawal of Request for Review; Reinstatement.**

(a) An Affected Contractor or Subcontractor may withdraw a Request for Review by written notification at any time before a decision is issued or by oral motion on the hearing record. The Hearing Officer may grant such withdrawal by letter, order or decision served on the Parties.

(b) For good cause, a Request for Review so dismissed may be reinstated by the Hearing Officer or the Director upon a showing that the withdrawal resulted from misinformation given by the Enforcing Agency or otherwise from fraud or coercion. A motion for reinstatement must be filed within 60 days of service of the letter, order or decision granting withdrawal of the Request for Review or, in the event of fraud which could not have been suspected or discovered with the exercise of reasonable diligence, within 60 days of discovery of such fraud. The motion shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying

Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742 and 1771.6, Labor Code.

**17226. Dismissal or Amendment of Assessment or of Notice of Withholding of Contract Payments.**

(a) Upon motion to the appointed Hearing Officer, an Enforcing Agency may dismiss or amend an Assessment or Notice of Withholding of Contract Payments as follows:

(1) An Assessment or Notice of Withholding may be dismissed or amended to eliminate or reduce all or part of any claim for wages, damages, or penalties that has been satisfied or that is not warranted under the facts and circumstances of the case or to conform to an order of the Hearing Officer or the Director.

(2) An Assessment or Notice of Withholding may be amended to eliminate a claim for penalties as to the affected contractor upon a determination that the affected contractor is not liable for same under either Labor Code section 1775(b) [subcontractor's failure to pay prevailing rate] or Labor Code section 1776 (g) [failure to comply with request for certified payroll records].

(3) For good cause, an Assessment or Notice of Withholding of Contract Payments may be amended to revise or increase any claim for wages, damages, or penalties based upon a recomputation or the discovery of new evidence subsequent to the issuance of the original Assessment or Notice.

(b) The Hearing Officer shall grant any motion to dismiss or amend an Assessment or Notice of Withholding downward under subparts (a)(1) or (a)(2) absent a showing that such dismissal or amendment will result in the forfeiture of substantial substantive rights of another Party to the proceeding. The Hearing Officer may grant a motion to amend an Assessment or Notice of Withholding upward under subpart (a)(3) under such terms as are just, including where appropriate the extension of an additional opportunity for early settlement under Rule 21 [Section 17221]. Unless the Hearing Officer determines otherwise, an amended Assessment or Notice of Withholding shall be deemed fully controverted without need for filing an additional or amended Request for Review.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742, 1771.6, 1775(b) and 1776(g), Labor Code.

**17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.**

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may issue an Order to Show Cause why an Assessment, a Withholding of Contract Payments, or a Request for Review should not be dismissed as untimely under the relevant statute.

(b) An Order to Show Cause issued under subpart (a) of this Rule shall be served on all Parties who have appeared or been served with any prior notice in the matter and shall provide the Parties with at least 10 days to respond in writing to the Order to Show Cause and an additional 5 days following the service of such responses to reply to any submission by any other Party. Evidence submitted in support or opposition to an Order to Show Cause shall be by affidavit or declaration under penalty of perjury. There shall be no oral hearing on an Order to Show Cause issued under this Rule unless requested by a Party or by the Hearing Officer.

(c) After the time for submitting responses and replies to the Order to Show Cause has passed or after the oral hearing, if any, the Hearing Officer may do one of the following: (1) recommend that the Director issue a decision setting aside the Assessment or Withholding of Contract

Payments or dismissing the Request for Review as untimely under the statute; (2) find the Assessment, Withholding, or Request for Review timely and direct that the matter proceed to hearing on the merits; or (3) reserve the timeliness issue for further consideration and determination in connection with the hearing on the merits.

(d) A decision by the Director which sets aside an Assessment or Withholding of Contract Payments or which dismisses a Request for Review as untimely shall be subject to reconsideration and to judicial review in the same manner as any other Final Order or Decision of the Director. A determination by the Hearing Officer that the Assessment, Withholding, or Request for Review was timely or that the timeliness issue should be reserved for further consideration and determination in connection with the hearing on the merits shall not be subject to appeal or review except as part of any reconsideration or appeal from the Decision of the Director made after the hearing on the merits.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1741, 1742, 1771.5 and 1771.6, Labor Code.

**17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.**

(a) Upon the failure of an Affected Contractor or Subcontractor to file a timely Request for Review under Labor Code section 1742(a) and Rule 22(a) [Section 17222(a)] above, the Assessment or Notice of Withholding of Contract Payments shall become a “final order” as to the Affected Contractor or Subcontractor that the Labor Commissioner may certify and file with the superior court in accordance with Labor Code section 1742(d).

(b) Where an Assessment or Notice of Withholding of Contract Payments has become final as to at least one but not as to every Affected Contractor or Subcontractor, the Awarding Body shall continue to withhold and retain the amounts required to satisfy any wages and penalties at stake in a review proceeding initiated by any other Affected Contractor or Subcontractor until there is a final order in that proceeding that is no longer subject to judicial review.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1727, 1742 and 1771.6, Labor Code.

**17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.**

Where a Notice of Withholding of Contract Payments seeks to recover wages, penalties, or damages in excess of the amounts withheld from available contract payments (see Rule 20(b)(2) [Section 17220(b)(2)] above), an Awarding Body may recover any excess amounts that become or remain due when the Notice of Withholding of Contract Payments has become final under Labor Code section 1771.6. To recover the excess amounts, the Awarding Body shall transmit to the Labor Commissioner the Notice together with any decision of the Director or court that has become final and not subject to further review. The Labor Commissioner in turn shall certify and file the final order with the superior court in accordance with Labor Code section 1742(d).

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(d) and 1771.6, Labor Code.

### **ARTICLE 3. PREHEARING PROCEDURES**

#### **17230. Scheduling of Hearing; Continuances and Tolling.**

(a) The appointed Hearing Officer shall establish the place and time of the hearing on the merits, giving due consideration to the needs of all Parties and the statutory time limits for hearing and deciding the matter. Parties are encouraged to communicate scheduling needs to the Hearing Officer and all other Parties at the earliest opportunity. It shall not be a violation of Rule 07 [Section 17207]'s prohibition on ex parte communications for the Hearing Officer or his or her designee to communicate with Parties individually for purposes of clearing dates and times and proposing locations for the hearing. The Hearing Officer may also conduct a prehearing conference by telephone or any other expeditious means for purposes of establishing the time and place of the hearing.

(b) Once a hearing date is set, a request for a continuance that is not joined in by all other Parties or that is for more than 30 days will not be granted absent a showing of extraordinary circumstances, giving due regard to the potential prejudice to other Parties in the case and other Persons affected by the matter under review. Absent an enforceable waiver (see subpart (d) below), no continuance will be granted nor any proceeding otherwise delayed if doing so is likely to prevent the Hearing Officer from commencing the hearing on the matter within the statutory time limit.

(c) A request for a continuance that is for 30 days or less and is joined by all Parties shall be granted upon a showing of good cause. Notwithstanding subpart (b) above, a unilateral request for a continuance made by the Party who filed the Request for Review shall be granted upon a showing of good cause if the new date for commencing the hearing is no more than 150 days after the date of service of the Assessment or Notice of Withholding of Contract Payments.

(d) If a Party makes or joins in any request that would delay or otherwise extend the time for hearing or deciding a review proceeding beyond any prescribed time limit, such request shall also be deemed a waiver by that Party of that time limit.

(e) The time limits for hearing and deciding a review proceeding shall also be deemed tolled (1) when proceedings are suspended to seek judicial enforcement of a subpoena or other order to compel the attendance, testimony, or production of evidence by a necessary witness; (2) when the proceedings are stayed or enjoined by any court order; (3) between the time that a proceeding is dismissed and then ordered reinstated under Rule 25 [Section 17225] above; (4) upon the order of a court reinstating or requiring rehearing of the merits of a proceeding; or (5) during the pendency of any other cause beyond the Director's direct control (including but not limited to natural disasters, temporary unavailability of a suitable hearing facility, or absence of budget authority) that prevents the Director or any appointed Hearing Officer from carrying out his or her responsibilities under these Rules.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

#### **17231. Prehearing Conference.**

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may conduct a prehearing conference for any purpose that may expedite or assist the preparation of the matter for hearing or the disposition of the Request for Review. The prehearing conference may be conducted by telephone or other means that is convenient to the Hearing Officer and the Parties.

(b) The Hearing Officer shall provide reasonable advance notice of any prehearing conference conducted pursuant to this Rule. The Notice shall advise the Parties of the matters which the

Hearing Officer intends to cover in the prehearing conference, but the failure of the Notice to enumerate some matter shall not preclude its discussion or consideration at the conference.

(c) With or without a prehearing conference, the Hearing Officer may issue such procedural Orders as are appropriate for the submission of evidence or briefs and conduct of the hearing, consistent with the substantial rights of the affected Parties.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11511.5, Government Code; and section 1742(b), Labor Code.

#### **17232. Consolidation and Severance.**

(a) The Hearing Officer may consolidate for hearing and decision any number of proceedings where the facts and circumstances are similar and consolidation will result in conservation of time and expense. Where the Hearing Officer proposes to consolidate proceedings on his or her own motion, the Parties shall be given reasonable notice and an opportunity to object before consolidation is ordered.

(b) The Hearing Officer may sever consolidated proceedings for good cause.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11507.3, Government Code, and section 1742(b), Labor Code.

#### **17233. Prehearing Motions; Cut Off Date.**

(a) Any motion made in advance of the hearing on the merits, any opposition thereto, and any further reply shall be in writing and directed to the appointed Hearing Officer. No particular format shall be required; however, the following information shall appear prominently on the first page: (1) the case name (i.e., names of the Parties); (2) any assigned case number; (3) the name of the Hearing Officer to whom the paper is being submitted; (4) the identity of the Party submitting the paper; (5) the nature of the relief sought; and (6) the scheduled date, if any, for the hearing on the merits of the Request for Review. The motion shall also include a Proof of Service, as defined in Rule 10 [Section 17210] above, showing that copies have been served on all other Parties to the proceeding.

(b) Prehearing motions shall be served and filed no later than 20 days prior to the hearing on the merits of the Request for Review. Any opposition shall be served and filed no later than 10 days after service of the motion or at least 7 days prior to the hearing on the merits, whichever is earlier. The Hearing Officer may in his or her discretion decide the motion in writing in advance of the hearing on the merits or reserve the matter for further consideration and determination at the hearing on the merits.

(c) There shall be no right to a separate oral hearing on any prehearing motion, except in those instances in which an oral hearing has been specially requested by a Party or the Hearing Officer and in which the enforcement or forfeiture of a fundamental right is at stake. When the Hearing Officer determines that such an oral hearing is necessary or appropriate, it may be conducted by telephone or other manner that is convenient to the Parties.

(d) With the exception of timeliness challenges under Rule 27 [Section 17227], prehearing motions which seek to dispose of a Request for Review or any related claim or defense are disfavored and ordinarily will not be considered prior to the hearing on the merits.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

#### **17234. Evidence by Affidavit or Declaration.**

(a) At any time 20 or more days prior to commencement of a hearing, a Party may serve upon all other Parties a copy of any affidavit or declaration which the proponent proposes to introduce

in evidence, together with a notice as provided in subpart (b). Unless another Party, within 10 days after service of such notice, delivers to the proponent a request to cross-examine the affiant or declarant, the right to cross-examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified in person. If an opportunity to cross-examine an affiant or declarant is not afforded after request therefore is made as herein provided, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subpart (a) shall be substantially in the following form with the appropriate information inserted in the places enclosed by brackets:

"The accompanying affidavit or declaration of [name of affiant or declarant] will be introduced as evidence at the hearing in [title and other information identifying the proceeding]. [Name of affiant or declarant] will not be called to testify orally, and you will not be entitled to question the affiant or declarant unless you notify [name of the proponent, Representative, agent or attorney] at [address] that you wish to cross-examine the affiant or declarant. Your request must be mailed or delivered to [name of proponent, Representative, agent or attorney] on or before [specify date at least 10 days after anticipated date of service of this notice on the other Parties]."

(c) If a timely request is made to cross-examine an affiant or declarant under this Rule, the burden of producing that witness at the hearing shall be upon the proponent of the witness. If the proponent fails to produce the witness, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence under Rule 44 [Section 17244].

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Rule 1613, California Rules of Court; Section 11514, Government Code; and Section 1742(b), Labor Code.

### **17235. Subpoena and Subpoena Duces Tecum.**

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for the production of documents at any reasonable time and place or at a hearing.

(b) Subpoenas and subpoenas duces tecum shall be issued by the Hearing Officer at the request of a Party, or by the attorney of record for a Party, in accordance with sections 1985 to 1985.6, inclusive, of the Code of Civil Procedure. The burden of serving a subpoena that has been issued by the Hearing Officer shall be upon the Party who requested the subpoena.

(c) Service of subpoenas and subpoenas duces tecum, objections thereto, and mileage and witness fees shall be governed by the provisions of Government Code sections 11450.20 through 11450.40.

(d) Subpoenas and subpoenas duces tecum shall be enforceable through the Contempt and Monetary Sanctions provision set forth in Rule 47 [Section 17247] below. A Party aggrieved by the failure or refusal of any witness to obey a subpoena or subpoena duces tecum shall have the burden of showing to the satisfaction of the Hearing Officer that the subpoena or subpoena duces tecum was properly issued and served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1985-1988, Code of Civil Procedure; Section 1563, Evidence Code; Sections 11450.20-11455.30, Government Code; and Section 1742(b), Labor Code.

### **17236. Written Notice to Party in Lieu of Subpoena.**

(a) In the case of the production of a Party of record in the proceeding or of a Person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena upon any such

witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the Party or Person. For purposes of this Rule, a Party of record in the proceeding or Person for whose benefit a proceeding is prosecuted or defended includes an officer, director, or managing agent of any such Party or Person.

(b) Service of written notice to attend under this Rule shall be made in the same manner and subject to the same conditions provided in section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

(c) The Hearing Officer shall have authority under Rule 47 [Section 17247] below to sanction a Party who fails or refuses to comply with a written notice to attend that meets the requirements of this Rule and has been timely served in accordance with section 1987 of the Code of Civil Procedure. However, the Hearing Officer may not initiate contempt proceedings against the witness for failing to appear based solely on non-compliance with a written notice to attend served on the Party's attorney. A Party seeking sanctions for another Party's failure or refusal to comply with a written notice to attend shall have the burden of showing to the satisfaction of the Hearing Officer that the written notice to attend was properly issued and timely served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1987, Code of Civil Procedure; Sections 11450.50-11455.30, Government Code; and Section 1742(b), Labor Code.

#### **17237. Depositions and Other Discovery.**

(a) There shall be no right to take oral depositions or obtain any other form of discovery that is not expressly authorized under these Rules.

(b) Oral depositions may be conducted only by stipulation of all Parties to the proceedings or by order of the appointed Hearing Officer upon a showing of substantial good cause. Oral depositions will be permitted only for purposes of obtaining the testimony of witnesses who are likely to be unavailable to testify at the hearing.

(c) Nothing in this Rule shall preclude the use of deposition testimony or other evidence obtained in separate proceedings, if such evidence is otherwise relevant and admissible.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1987, Code of Civil Procedure; Sections 11450.50-11455.30, Government Code; and Section 1742(b), Labor Code.

### **ARTICLE 4. HEARINGS**

#### **17240. Notice of Appointment of Hearing Officer; Objections.**

(a) Notice of the Appointment of a Hearing Officer under Rule 04 [Section 17204] above shall be provided to the Parties as soon as practicable and no later than when the matter is noticed for a prehearing conference or hearing.

(b) The Director may appoint a different Hearing Officer to conduct and hear the review or to conduct and dispose of any preliminary or procedural matter in a given case.

(c) A Party wishing to object to the appointment of a particular Hearing Officer, including for any one or more of the grounds specified in sections 11425.30 and 11425.40 of the Government Code or section 1742(b) of the Labor Code, shall within 10 days after receiving notice of the appointment and no later than the start of any hearing on the merits, whichever is earlier, file a motion to disqualify the appointed Hearing Officer together with a supporting affidavit or declaration. The motion shall be filed with the Chief Counsel of the Office of the Director at the address indicated in Rule 23 [Section 17223] above. Notwithstanding the foregoing time limits,

if a Party subsequently discovers facts constituting grounds for the disqualification of the appointed Hearing Officer, including but not limited to that the Hearing Officer has received a prohibited ex parte communication in the pending case, the motion shall be filed as soon as practicable after the facts constituting grounds for disqualification are discovered.

(d) Upon receipt of a motion to disqualify the appointed Hearing Officer, the Director may: (1) consider and decide the motion or appoint another Hearing Officer to consider and decide the motion, in which case the challenged Hearing Officer shall first be given an opportunity to respond to the motion, but no proceedings shall be conducted by the challenged Hearing Officer until the motion is determined; or (2) appoint another Hearing Officer to hear the Request for Review, in which case the motion shall be deemed moot.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 170.3(c)(1), Code of Civil Procedure; Sections 11425.30 and 11425.40, Government Code; and Section 1742(b), Labor Code.

#### **17241. Time and Place of Hearing.**

(a) A hearing on the merits of a timely Request for Review shall be commenced within 90 days after the date it is received by the Office of the Director. The hearing shall be conducted at a suitable location within the county where the appointed Hearing Officer maintains his or her regular office, unless the hearing is moved to a different county in accordance with subpart (b) below.

(b) Upon the agreement of the Parties or upon a showing of good cause by either the Party who filed the Request for Review or the Enforcing Agency, the hearing shall be conducted at a suitable location within either (1) the county where a majority of the subject public works employment was performed, or (2) any other county that is proximate to or convenient for the Parties and necessary witnesses.

(c) A suitable location under this section means one that is open and accessible to members of the public and which includes appropriate facilities for the recording of testimony. Any facility that is regularly used by any state agency or by the Awarding Body for public hearings and that will reasonably accommodate the anticipated number of Parties and witnesses involved in the proceeding, is presumed suitable in the absence of a contrary showing. Parties seeking to change the location of a hearing under subpart (b) shall make reasonable efforts to identify, agree upon, and arrange for the availability of a suitable location within a county specified in subpart (b)(1) or (b)(2).

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11425.20, Government Code; and Section 1742(b), Labor Code.

#### **17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.**

(a) Subject to the qualifications set forth below, the hearing shall be open to the public. If all or part of the hearing is conducted by telephone, television, or other electronic means, the Hearing Officer shall conduct the hearing from a location where members of the public may be physically present, and members of the public shall also have a reasonable right of access to the hearing record and any transcript of the proceedings.

(b) Notwithstanding the provisions of subpart (a), the Hearing Officer may order closure of a hearing or make other protective orders to the extent necessary to: (1) preserve the confidentiality of information that is privileged, confidential, or otherwise protected by law; (2) ensure a fair hearing in the circumstances of the particular case; or (3) protect a minor witness or a witness with a developmental disability from intimidation or other harm, taking into account the rights of all persons.

(c) Upon motion of any Party or upon his or her own motion, the Hearing Officer may exclude from the hearing room any witnesses not at the time under examination. However, a Party to the proceeding and the Party's Representative shall not be excluded.

(d) This section does not apply to any prehearing or settlement conference.

NOTE: Authority cited: Sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Section 777, Evidence Code, Section 11425.20, Government Code, and Section 1742(b), Labor Code.

#### **17243. Conduct of Hearing.**

(a) Testimony shall be taken only on oath or affirmation under penalty of perjury.

(b) Every Party shall have the right to call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut any opposing evidence. A Party may be called by an opposing Party and examined as if under cross-examination, whether or not the Party called has testified or intends to testify on his or her own behalf.

(c) The Hearing Officer may call and examine any Party or witness and may on his or her own motion introduce exhibits.

(d) The Hearing Officer shall control the taking of evidence and other course of proceedings in a hearing and shall exercise that control in a manner best suited to ascertain the facts and safeguard the rights of the Parties. Prior to taking evidence, the Hearing Officer shall define the issues and explain the order in which evidence will be presented; provided that, for good cause the Hearing Officer later may vary the order of presentation as circumstances warrant.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11513, Government Code; and Section 1742(b), Labor Code.

#### **17244. Evidence Rules; Hearsay.**

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(b) The rules of privilege shall be recognized to the same extent and applied in the same manner as in the courts of this state.

(c) The Hearing Officer may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(d) Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it either would be admissible over objection in a civil action or no Party raises an objection to such use. Unless previously waived, an objection or argument that evidence is insufficient in itself to support a finding because of its hearsay character shall be timely if presented at any time before submission of the case for decision.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 11513, Government Code; and Section 1742(b), Labor Code.

#### **17245. Official Notice.**

(a) A Hearing Officer may take official notice of (1) the Director's General Prevailing Wage Determinations, the Director's Precedential Coverage Decisions, and wage data, studies, and reports issued by the Division of Labor Statistics and Research; (2) any other generally accepted technical fact within the fields of labor and employment that are regulated by the

Director under Divisions 1, 2, and 3 of the Labor Code; and (3) any fact which either must or may be judicially noticed by the courts of this state under Evidence Code sections 451 and 452.

(b) The Parties participating in a hearing shall be informed of those matters as to which official notice is proposed to be taken and given a reasonable opportunity to show why and the extent to which official notice should or should not be taken.

(c) The Hearing Officer or the Director shall state in a decision, order, or on the record the matters as to which official notice has been taken.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 51, 452 and 455, Evidence Code; Section 11515, Government Code; and Section 1742(b), Labor Code.

#### **17246. Failure to Appear; Relief from Default.**

(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.

(b) For good cause and under such terms as are just, the appointed Hearing Officer or the Director may relieve a Party from the effects of any failure to appear and order that a review proceeding be reinstated or reheard. A Party seeking relief from non-appearance shall file a written motion at the earliest opportunity and no later than 10 days following a proceeding of which the Party had actual notice. Such application shall be supported by an affidavit or declaration based on the personal knowledge of the declarant, and copies of the application and any supporting materials shall be served on all other Parties to the proceeding. No application shall be granted unless and until the other Parties have been afforded a reasonable opportunity to make a showing in opposition. An Order reinstating a proceeding or granting a rehearing under this section may be conditioned upon providing reimbursement to the Department and the other Parties for the costs associated with the prior non-appearance.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 473, Code of Civil Procedure; and Section 1742(b), Labor Code.

#### **17247. Contempt and Monetary Sanctions.**

(a) If any Person in proceedings before an appointed Hearing Officer disobeys or resists any lawful order or refuses, without substantial justification, to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceedings, or violates the prohibition against ex parte communications under Rule 07 [Section 17207] above, the Hearing Officer may do any one or more of the following: (1) certify the facts to the Superior Court in and for the county where the proceedings are held for contempt proceedings pursuant to Government Code section 11455.20; (2) exclude the Person from the hearing room; (3) prohibit the Person from testifying or introducing certain matters in evidence; and/or (4) establish certain facts, claims, or defenses if the Person in contempt is a Party.

(b) Either the appointed Hearing Officer by separate order or the Director in his or her decision may order a Party, the Party's authorized Representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another Party as a result of bad faith actions or tactics that

are frivolous or solely intended to cause unnecessary delay as defined in section 128.5 of the Code of Civil Procedure. Such order or the denial of such an order shall be subject to judicial review in the same manner as a decision of the Director on the merits. The order shall be enforceable in the same manner as a money judgment or by the contempt sanction.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 128.5, Code of Civil Procedure; Sections 11455.10-11455.30, Government Code; and Section 1742(b), Labor Code.

#### **17248. Interpreters.**

(a) Proceedings shall be conducted in the English language. The notice advising a Party of the hearing date shall also include notice of the Party's right to request an interpreter for a Party or witness who cannot speak or understand English, or who can do so only with difficulty, or who is deaf or hearing impaired as defined under Evidence Code section 754.

(b) A request for an interpreter for a Party or witness shall be submitted as soon as possible after the requesting Party becomes aware of the need for an interpreter and prior to the commencement of the hearing. The request should include information that (1) will enable the Hearing Officer and Department to obtain an interpreter with appropriate skills; and (2) will assist the Hearing Officer in determining whether the Department or the requesting Party should pay for the cost of the interpreter.

(c) Upon receipt of a timely request, the Hearing Officer shall direct the Department to provide an interpreter and shall also decide whether the Department or the requesting Party shall pay the cost of the interpreter, based upon an equitable consideration of all the circumstances, including the requesting Party's ability to pay.

(d) A person is qualified to serve as an interpreter if he or she (1) is on the current State Personnel Board List of Certified Administrative Hearing Interpreters maintained pursuant to Government Code section 11435.25; and (2) has also been examined and determined by the Department to be sufficiently knowledgeable of the terminology and procedures generally used in these proceedings.

(e) In the event that a qualified interpreter under subpart (d) is unavailable or if there are no certified interpreters for the language in which assistance is needed, the Hearing Officer may qualify and appoint another interpreter to serve as needed in a single hearing or case.

(f) Before appointment of an interpreter, the Hearing Officer or a Party may conduct a brief supplemental examination of the prospective interpreter to see if that person has the qualifications necessary to serve as an interpreter, including whether he or she understands terms and procedures generally used in these proceedings, can explain those terms and procedures in English and the other language being used, and can interpret those terms and procedures into the other language. An interpreter shall not have had any prior substantive involvement in the matter under review, and shall disclose to the Hearing Officer and the Parties any actual conflict of interest or appearance of conflict. Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. A conflict may exist if an interpreter is an employee of, acquainted with, or related to a Party or witness to the proceeding, or if an interpreter has an interest in the outcome of the proceeding.

(g) The Hearing Officer shall disqualify an interpreter if the interpreter cannot understand and interpret the terms and procedures used in the hearing or prehearing conference, has disclosed privileged or confidential communications, or has engaged in conduct which, in the judgment of the Hearing Officer, creates an appearance of bias, prejudice, or partiality.

(h) Nothing in this section limits any further rights extended by Evidence Code section 754 to a Party or witness who is deaf or hard of hearing.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 754, Evidence Code; Sections 11435.05-11435.65, and 68560-68566, Government Code; and Section 1742(b), Labor Code.

**17249. Hearing Record; Recording of Testimony and other Proceedings.**

(a) The Hearing Officer and the Director shall maintain an official record of all proceedings conducted under these Rules. In the absence of a determination under subpart (b) below, all testimony and other proceedings at any hearing shall be recorded by audiotape. Recorded testimony or other proceedings need not be transcribed unless requested for purposes of further court review of a decision or order in the same case.

(b) Upon the application of any Party or upon his or her own motion, the Hearing Officer may authorize the use of a certified court reporter, videotape, or other appropriate means to record the testimony and other proceedings. Any application by a Party under this subpart shall be made at a prehearing conference or by prehearing motion filed no later than 10 days prior to the scheduled date of hearing. Upon the granting of any such application, it shall be the responsibility of the Party or Parties who made the application to procure and pay for the services of a qualified person and any additional equipment needed to record the testimony and proceedings by the requested means. Ordinarily the granting of such application will be conditioned on the applicant's paying for certified copies of the transcript for the official record and for the other Parties. The failure of a requesting Party to comply with this requirement shall not be cause for delaying the hearing on the merits, but instead shall result in the proceedings being tape recorded in accordance with subpart (a).

(c) The Parties may, at their own expense, arrange for the recording of testimony and other proceedings through a different means other than the one authorized by the Hearing Officer, provided that it does not in any way interfere with the Hearing Officer's control and conduct of the proceedings, and further provided that, it shall not be regarded as an official record for any purpose absent a stipulation by all of the Parties or order of the Hearing Officer.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

**17250. Burdens of Proof on Wages and Penalties.**

(a) The Enforcing Agency has the burden of coming forward with evidence that the Affected Contractor or Subcontractor (1) was served with an Assessment or Notice of Withholding of Contract Payments in accordance with Rule 20 [Section 17220]; (2) was provided a reasonable opportunity to review evidence to be utilized at the hearing in accordance with Rule 24 [Section 17224]; and (3) that such evidence provides prima facie support for the Assessment or Withholding of Contract Payments.

(b) If the Enforcing Agency meets its initial burden under (a), the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment or for the Withholding of Contract Payments is incorrect.

(c) With respect to any civil penalty established under Labor Code section 1775, the Affected Contractor or Subcontractor shall have 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.

(d) All burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code, and the quantum of proof required to establish the existence or non-existence of any fact shall be by a preponderance of the evidence, unless a higher standard is prescribed by law.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 500, 502, and 550, Evidence Code; and Sections 1742(b) and 1775, Labor Code.

**17251. Liquidated Damages.**

(a) With respect to any liquidated damages for which an Affected Contractor, Subcontractor, or Surety on a bond becomes liable under Labor Code section 1742.1, the Enforcing Agency shall have a further burden of coming forward with evidence to show the amount of wages that remained unpaid as of 60 days following the service of the Assessment or Notice of Withholding of Contract Payments. The Affected Contractor or Subcontractor shall have the burden of demonstrating that he or she had substantial grounds for believing the Assessment or Notice to be in error.

(b) To demonstrate "substantial grounds for believing the Assessment or Notice to be in error," the Affected Contractor or Subcontractor must establish (1) that it had a reasonable subjective belief that the Assessment or Notice was in error; (2) that there is an objective basis in law and fact for the claimed error; and (3) that the claimed error is one that would have substantially reduced or eliminated any duty to pay additional wages under the Assessment or Notice.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Sections 1742(b), 1742.1 and 1773.5, Labor Code.

**17252. Oral Argument and Briefs.**

(a) Parties may submit prehearing briefs of reasonable length under such conditions as the appointed Hearing Officer shall prescribe. Parties shall also be permitted to present a closing oral argument of reasonable length at or following the conclusion of the hearing.

(b) There shall be no automatic right to file a post-hearing brief. However, the Hearing Officer may permit the Parties to submit written post-hearing briefs, under such terms as are just. The Hearing Officer shall have discretion to determine, among other things, the length and format of such briefs and whether they will be filed simultaneously or on a staggered (opening, response, and reply) basis.

(c) In addition to or as an alternative to post-hearing briefs, the Hearing Officer may also prepare proposed findings or a tentative decision or may designate a Party to prepare proposed findings and thereafter give the Parties a reasonable opportunity to present arguments in support of or opposition to any proposed findings or tentative decision prior to the issuance of a decision by the Director under Rule 60 [Section 17260] below.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

**17253. Conclusion of Hearing; Time for Decision.**

(a) The hearing shall be deemed concluded and the matter submitted either upon the completion of all testimony and post-hearing arguments or upon the expiration of the last day for filing any post-hearing brief or other authorized submission, whichever is later. Thereafter, the Director shall have 45 days within which to issue a written decision affirming, modifying, or dismissing the Assessment or the Withholding of Contract Wages.

(b) For good cause, the Hearing Officer may vacate the submission and reopen the hearing for the purpose of receiving additional evidence or argument, in which case the time for the Director to issue a written decision shall run from the date of resubmission.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

## **ARTICLE 6. DECISION OF THE DIRECTOR**

### **17260. Decision.**

(a) The appointed Hearing Officer shall prepare a recommended decision for the Director's review and approval. The decision shall consist of a notice of findings, findings, and an order, and shall be in writing and include a statement of the factual and legal basis for the decision, consistent with the requirements of Labor Code section 1742 and Government Code section 11425.50.

(b) A recommended decision shall have no status or effect unless and until approved by the Director and issued in accordance with subpart (c) below.

(c) A copy of the decision shall be served by first class mail on all Parties in accordance with the requirements of Code of Civil Procedure section 1013. If a Party has appeared through an authorized Representative, service shall be made on that Party at the last known address on file with the Enforcing Agency, in addition to service on the authorized Representative.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1013, Code of Civil Procedure; Section 11425.50, Government Code; and Section 1742(b), Labor Code.

### **17261. Reconsideration.**

(a) Upon the application of any Party or upon his or her own motion, the Director may reconsider or modify a decision issued under Rule 60 [Section 17260] above for the purpose of correcting any error therein.

(b) The decision must be reconsidered or modified within 15 days after its date of issuance pursuant to Rule 60(c) [Section 17260(c)]. Thereafter, the decision may not be reconsidered or modified, except that a clerical error may be corrected at any time.

(c) The modified or reconsidered decision shall be served on the Parties in the same manner as a decision issued under Rule 60 [Section 17260].

(d) A Party is not required to apply for reconsideration before seeking judicial review of a decision of the Director. An application for reconsideration made by any Party shall not extend the time for seeking judicial review pursuant to Labor Code section 1742(c) unless the Director issues a modified or reconsidered decision within the 15-day time limit prescribed in subpart (b) of this section.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742, Labor Code.

### **17262. Final Decision; Time for Seeking Review.**

(a) The decision of the Director issued pursuant to Section Rule 60 [Section 17260] above shall be the final decision of the Director from which any Party may seek judicial review pursuant to the provisions of Labor Code section 1742(c) and Code of Civil Procedure section 1094.5; provided however, that if the Director has issued a modified decision pursuant to and within the 15-day limit of the Director's reconsideration authority under Section Rule 61 [Section 17261] above and Labor Code section 1742(b), the right of review and time for seeking such review shall extend from the date of service of the modified decision rather than from the original decision.

(b) The modification of a decision to correct a clerical error after expiration of the 15-day time limit on the Director's reconsideration authority shall not extend the time for seeking judicial review.

(c) The time for seeking judicial review shall be determined from the date of service of the decision of the Director under Code of Civil Procedure section 1013, including any applicable extension of time provided in that statute.

(d) Any petition seeking judicial review of a decision under these Rules may be served (1) upon the Director by serving the Office of the Director – Legal Unit where the appointed Hearing Officer who conducted the hearing on the merits regularly maintains his or her office; and (2) upon the Labor Commissioner (in cases in which the Labor Commissioner was the Enforcing Agency) by the serving the regular office of the attorney who represented the Labor Commission at the hearing on the merits. The intent of this subpart is to authorize and designate a preferred method for giving the Director and the Labor Commissioner formal notice of a court action seeking review of a decision of the Director under these Rules; it does not preclude the use any other service method authorized by law.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5. Reference: Sections 1013 and 1094.5, Code of Civil Procedure; and Section 1742, Labor Code.

### **17263. Preparation of Record for Review.**

(a) Upon notice that a Party intends to seek judicial review of a decision of the Director and the payment of any required deposit, the Department, under the direction of the appointed Hearing Officer, shall immediately prepare a hearing record consisting of all exhibits and other papers and a transcript of all testimony which the Party has designated for the inclusion in the record on review.

(b) The Party who has requested the record or any part thereof shall bear the cost of its preparation, including but not necessarily limited to any court reporter transcription fees and reasonable charges for the copying, binding, certification, and mailing of documents. Absent good cause, no record will be released to a Party or filed with a court until adequate funds to cover the cost of preparing the record have been paid by the requesting Party to the Department or to any third party designated to prepare the record. However, upon notice that a Party seeking judicial review has been granted in forma pauperis status under California Rule of Court 985, the Department shall bear the cost of preparing and filing the record where necessary for a proper review of the proceedings.

(c) The pendency of any request for the Department to prepare a hearing record shall not extend the time limits for filing a petition for review under Labor Code section 1742(c) and Code of Civil Procedure section 1094.5.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1094.5, Code of Civil Procedure; California Rule of Court 985; Section 68511.3, Government Code; and Section 1742(c), Labor Code.

### **17264. Request for Participation by Director in Judicial Review Proceeding.**

Although the Director should be named as the Respondent in any action seeking judicial review of a final decision, the Director ordinarily will rely upon the Parties to the hearing (as Petitioner and Real Party in Interest) to litigate the correctness of the final decision in the writ proceeding and on any appeal. The Director may participate actively in proceedings raising issues that specifically concern the Director's authority under the statutes and regulations governing the payment of prevailing wages on public work contracts, or the validity of related laws, regulations, or the Director's decisions as to public works coverage or generally applicable prevailing wage rates. Any Party may request the Director to file a response in the action by including a separate written request with any court pleading being served on the Director in accordance with Rule 62(d) [Section 17262(d)]. Any such separate written request should

specify briefly what issues are raised by the petition that extend beyond the facts of the case and warrant the Director's participation.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1094.5, Code of Civil Procedure and Section 1742(c), Labor Code.

#### **ARTICLE 7. TRANSITIONAL RULE.**

##### **17270. Applicability of These Rules to Notices Issued Between April 1, 2001 and June 30, 2001.**

(a) These Rules shall apply to any notice issued by the Labor Commissioner or an Awarding Body with respect to the withholding or forfeiture of contract payments for unpaid wages or penalties under the prevailing wage laws in effect prior to July 1, 2001; provided that, the party seeking review has not commenced a civil action with respect to such notice under the provisions of Labor Code sections 1731-1733 [repealed effective July 1, 2001].

(b) An Affected Contractor or Subcontractor may appeal any such notice served between April 1, 2001 and June 30, 2001 by filing a Request for Review with the Enforcing Agency that issued the notice, in the manner and form specified in Rule 22 [Section 17222] above. Any such Request for Review shall be in writing and shall include a statement indicating the date upon which the contractor or subcontractor was served with the notice of withholding or forfeiture.

(c) This Rule shall not extend the time available to appeal the notice under the former law. A Request for Review of a notice issued prior to July 1, 2001 must be filed with the Enforcing Agency within ninety (90) days after service of the notice.

(d) A contractor or subcontractor who has sought review of a notice issued prior to July 1, 2001 by filing a court action under the repealed provisions of Labor Code sections 1731-1733 on or after July 1, 2001, shall, if said action would have been timely under those sections, be afforded the opportunity to dismiss the action without prejudice, after entering into a stipulation that the proceeding be transferred to the Director for hearing in accordance with these Rules. The stipulation shall also provide that the time for commencing a hearing under Rule 41 [Section 17241] shall not begin to run until the case has been formally transferred to and received by the Office of the Director.

(e) Any hearing request made pursuant to Labor Code section 1771.7 [repealed effective July 1, 2001] that has not been heard and decided by a Hearing Officer prior to July 1, 2001 shall be handled in accordance with these Rules.

NOTE: Authority cited: Sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: Section 1742(b), Labor Code.

**EXHIBIT J**  
**[LCP Annual Report (Form LCP-AR1)]**

**LCP-ARI**

**LABOR COMPLIANCE PROGRAM ANNUAL REPORT**

*Format for Awarding Body that enforces its own Labor Compliance Program for some but not all projects*

Report for the reporting period  
(mm/dd/yyyy) \_\_\_\_\_ to \_\_\_\_\_  
(mm/dd/yyyy)

|  |                              |
|--|------------------------------|
| 1. Name of Labor Compliance Program (LCP) :  |                              |
| 2. LCP I.D. Number (assigned by DIR):  | 3. Date of Initial Approval: |
| 4. Contact person (include name, title, address, telephone, fax, and e-mail, if available):  |                              |
| 5. Did LCP perform any LC § 1771.5 enforcement activities during the 12 months in the reporting period?<br>Please check one: <input type="checkbox"/> Yes    If Yes, proceed to item 6 on the next page<br><input type="checkbox"/> No    If No, complete the information below, sign the form and submit to DIR, Office of the Director, Attn: LCP Special Assistant,<br>455 Golden Gate Avenue, 10th Floor, San Francisco CA 94102 |                              |
| What suggestions do you have for the Department of Industrial Relations to better assist you with your program in the coming year? (attach additional sheets if necessary)   |                              |
| <b>SUBMITTED BY:</b> _____ Name and Title _____ Date _____<br>Signature  |                              |



**LCP-ARI**

C. For any amount identified in item B for which approval of forfeiture not requested from the Labor Commissioner, please explain below.

| Project Name | Amount Assessed | Amount Recovered | Explanation |
|--------------|-----------------|------------------|-------------|
|              |                 |                  |             |
|              |                 |                  |             |
|              |                 |                  |             |
|              |                 |                  |             |
| <b>Total</b> |                 |                  |             |

D. For any amount identified in item B for which approval of forfeiture was requested from the Labor Commissioner, please provide the following:

| Project Name | Amount Assessed |           |           | Amount Recovered |           |           |
|--------------|-----------------|-----------|-----------|------------------|-----------|-----------|
|              | LC § 1776(g)    | LC § 1775 | LC § 1813 | LC § 1776(g)     | LC § 1775 | LC § 1813 |
|              |                 |           |           |                  |           |           |
|              |                 |           |           |                  |           |           |
|              |                 |           |           |                  |           |           |
| <b>Total</b> |                 |           |           |                  |           |           |

E. Identify cases that are or were the subject of LC § 1742 proceedings.

| Project Name | Contractor | Nature of Violation | ODL Case # | Current Status |
|--------------|------------|---------------------|------------|----------------|
|              |            |                     |            |                |
|              |            |                     |            |                |
|              |            |                     |            |                |

F. Did you refer any contractor to the Labor Commissioner for debarment per LC § 1777.1?

Please check one:  Yes  No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: \_\_\_\_\_

G. Did you refer any apprenticeship violation to the Division of Apprenticeship Standards (DAS)?

Please check one:  Yes  No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: \_\_\_\_\_



Contra Costa County  
**Flood Control**  
& Water Conservation District

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Julia R. Bueren,  
ex officio Chief Engineer  
Steve Kowalewski,  
Deputy Chief Engineer

## **LABOR COMPLIANCE PROGRAM MANUAL**

### **SECTION II**

### **IMPLEMENTATION PLAN**

## **Section II. IMPLEMENTATION PLAN**

- The Labor Compliance Officer receives construction contract awards/work schedules.
- The Labor Compliance Officer participates in the Pre-Job Conference.
- The Labor Compliance Officer conducts on-site interviews with contractors' employees.
- The Labor Compliance Officer enters information from interviews into database/spreadsheet.
- The Labor Compliance Officer verifies information from certified payroll records.
- The Labor Compliance Officer notifies contractor in writing of any discrepancies with certified payroll records.
- If clarification/correction is not received from the contractor within two weeks, Labor Compliance Officer will commence an investigation.
- Upon completion of the investigation, the Labor Compliance Officer will send a report to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
- The Labor Compliance Officer prepares and submits public works violation reports to Labor Commissioner as required.
- The Labor Compliance Officer prepares and submits annual program reports to the Director of the Department of Industrial Relations.
- The Labor Compliance Officer manages all facets and is the primary contact for the District's LCP.



Contra Costa County  
**Flood Control**  
& Water Conservation District

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Julia R. Bueren,  
ex officio Chief Engineer  
Steve Kowalewski,  
Deputy Chief Engineer

## **LABOR COMPLIANCE PROGRAM MANUAL**

### **SECTION III**

### **OPERATIONS PLAN**

## SECTION III. OPERATIONS PLAN

### Site Visitations

1. Safety is the paramount factor for any site visit to District construction projects. The Labor Compliance Officer shall not enter any area that appears unsafe. The Labor Compliance Officer is expected to exercise reasonable caution at all times.
2. All authorized personnel visiting any District construction site are required to be properly identified as a District representative by wearing visible picture IDs, or identifying themselves as such. Additionally, all authorized personnel are required to wear hard hats and safety shoes on construction sites.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.
4. Upon arrival at a site, the Labor Compliance Officer will check in at the site superintendent's (contractor's) trailer prior to any interviewing. In the event there is not a construction trailer, the Labor Compliance Officer will check in at the site's administrative office or with the on-site foreman. The Labor Compliance Officer will identify himself or herself and state the purpose of the visit. The Labor Compliance Officer will sign in if required to do so. If the site superintendent or foreman cites some reason that denies access to the site, the Labor Compliance Officer will promptly and politely remove himself or herself, make a note of this occurrence and report the incident to the District Resident Engineer.
5. The Labor Compliance Officer will check to see that the following are displayed in the contractor's trailer or elsewhere on site:
  - Equal Employment Opportunity (EEO) Posters
  - Prevailing wage sheets
  - Sign-In Log
  - Listing of subcontractors on site

If any of these items is not readily visible, the Labor Compliance Officer will remind the contractor that these postings are part of the contractual requirements. On subsequent visits, the Labor Compliance Officer will make sure that these items are posted, or the contractor will be found to be in noncompliance.

### Interviewing

1. Once the Labor Compliance Officer has checked in with the site superintendent and obtain access to the site, the Labor Compliance Officer will try to locate tradespersons working in clusters; for instance, several painters, electricians, roofers, etc. working in one area. The workers should be approached individually in a non-threatening, professional manner. The Labor Compliance Officer should identify himself or herself and indicate that he or she is a District representative and needs only a few seconds of time to ask some very generic questions to ensure the workers are receiving the proper rate of pay for the type of work they are doing. Again, no person's safety should be endangered in conducting these interviews. For example, the Labor Compliance Officer should not insist that someone on a scaffold 40 feet in the air come down for an interview. Employees should not be asked to form a line until the Labor Compliance Officer can get to them; instead, they should be allowed to continue working until individually interviewed.

These interviews are random; two or three tradespersons for each subcontractor are more than sufficient for one visit. Any persons missed are usually picked up on the next visit. If only one tradesperson is at the site, that person should be interviewed if possible. If the Labor Compliance Officer is told the rest of the crew will be there in an hour, the Labor Compliance Officer should not wait unless total site interviewing will take that length of time. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. A contractor tradesperson should also be interviewed.

2. Using the Labor Compliance Site Visitation Interview form, each interviewee should be asked the following: Name, social security number, employer, title (trade), rate of pay and task being performed at the time of interview.
3. Should someone decline to speak with a Labor Compliance Officer, those wishes should be respected. If someone asks if the interview is union-related, they should be told no. The District works with both open and closed shop trades.
4. If a Labor Compliance Officer tries to interview someone who does not speak English and communication in the appropriate language cannot occur, the Labor Compliance Officer should try to locate a coworker who can interpret. If an entire crew is unable to speak English and no interpreter is available, this should be included in a report to the District Resident Engineer.
5. If an interviewee refuses to disclose a social security number, those wishes should be respected.
6. If an interviewee does not know their rate of pay, the Labor Compliance Officer should ask for a guesstimate. If the response is, "whatever prevailing wage is," that response should be indicated on the form.
7. If an interviewee indicates that he or she is an apprentice, the Labor Compliance Officer should make sure to ask, "What period?" (There are 10 periods of apprentice training.) If the interviewee is not sure, the Labor Compliance Officer should ask how many years the interviewee has been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.
8. Labor Compliance Officers should ALWAYS thank each interviewee for their time.
9. Labor Compliance Officers are there to collect information only, not to dictate how to perform jobs. Should a Labor Compliance Officer witness a potentially unsafe or unwarranted condition, the Labor Compliance Officer should report this finding immediately to the site inspector or job superintendent and make a note on the site visitation log of what was observed. Upon return to the office, the Labor Compliance Officer should report findings to the District Resident Engineer.

### Reporting

1. All original interview forms completed by Labor Compliance Officers shall be included in Project Wage Files no later than the end of each workweek.



Contra Costa County  
**Flood Control**  
& Water Conservation District

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Julia R. Bueren,  
ex officio Chief Engineer  
Steve Kowalewski,  
Deputy Chief Engineer

## **LABOR COMPLIANCE PROGRAM MANUAL**

### **SECTION IV**

### **PROCEDURES**

## **SECTION IV. PROCEDURES**

### Certified Payroll Verification Procedures

1. The District's Construction Engineering Division will provide the Labor Compliance Officer with construction work schedules.
2. Upon receipt of the requested certified payroll reports from prime and subcontractors, the Labor Compliance Officer will compare information from employee interviews, Daily Diaries prepared by the Resident Engineer, and Monthly Employment Utilization Reports submitted by the contractor to the contractors' certified payroll and the prevailing wage schedule.
3. The Labor Compliance Officer will check to see that prevailing wage listed for each worker is correct for the classification listed, using the prevailing wage schedule and job descriptions.
4. The Labor Compliance Officer will check for employment of apprentices, correct rate of pay for period of apprenticeship, and proper hourly ratio to journey workers.
5. The Labor Compliance Officer will notify the contractor of all discrepancies found in the contractor's certified payroll. The notice, accompanied by a request for correction or clarification of the discrepancies, will be in writing and sent by certified mail.
6. If clarification/correction is not received within two weeks from the contractor, the Labor Compliance Officer will commence an investigation.
7. Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
8. The Labor Compliance Officer will retain all original interview forms and annotate databases as applicable.

### Site Visitation Procedures

1. Labor Compliance Officers will receive construction site work schedules from the District Resident Engineer.
2. Labor Compliance Officers will check in with the site administrative office/site superintendent
3. Labor Compliance Officers will conduct interviews with workers, utilizing the Labor Compliance Site Visitation Interview form.
4. Labor Compliance Officers will note on the form any Labor Code violations observed while conducting an interview.
5. Interview forms will be included in Project Wage Files.
6. Labor Compliance Officers will report any Labor Code violations observed to the District Resident Engineer.



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## **LABOR COMPLIANCE PROGRAM MANUAL**

### **SECTION V**

### **HANDOUTS AND FORMS**

## **PURPOSE OF THIS SECTION**

This section of the LCP Manual contains selected forms used to comply with and administer the LCP, as well as summaries of applicable legal requirements.

The Pre-Job Conference LCP Package for Contractors consists of documents to be provided to contractors and subcontractors who are listed in the contract bid documents at a meeting held after the District awards the public works contractor and before work commences.

Other forms consist of a variety of forms that will be used by the LCO to administer the LCP.



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## **LABOR COMPLIANCE PROGRAM**

### **Pre-Job Conference LCP Package for Contractors**

Notice to Contractors:

Included in this packet are materials to assist your company in complying with the Contra Costa County Flood Control and Water Conservations District's (District) Labor Compliance Program (LCP). The District staff monitors and enforces the LCP. If you have questions about how to comply with the LCP, please call the Labor Compliance Officer at (925) 313-2000.

The following documents are included in this packet:

1. Prevailing Wage Contractor Handout (7 pages)
2. Checklist of Labor Law Requirements (2 pages)
3. Apprentices on Public Works Projects -- Summary of Requirements (2 pages)
4. Excerpts from the California Labor Code Relating to Apprentices on Public Works (9 pages)
5. DIR DAS 140, Public Works Contract Award Information (1 page)
6. DIR CAC 2, Training Fund Contributions (1 page)
7. DIR DAS 142 (1 page)
8. DIR PW 26 Statement of Employer Payments (1 page)
9. DIR A-1-131 Public Works Payroll Reporting Form (2 pages)
10. Monthly Employment Utilization Report (1 page)
11. Public Works Declaration (1 page)
12. How to Determine Prevailing Wage Rates (1 page)
13. Non-Performance Payroll Report (Statement of Non-Performance) (1 page)

## **Labor Compliance Program**

### **PREVAILING WAGE CONTRACTOR HANDOUT**

#### **PUBLIC WORKS REQUIREMENTS:**

- (1) The appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5;
- (2) Worker's compensation coverage, as set forth in Labor Code Sections 1860 and 1861;
- (3) Keep accurate records of the work performed on the public works project, as set forth in Labor Code Section 1812;
- (4) Inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in 8 CCR Section 16400(e);
- (5) Withhold monies. See Labor Code Section 1727;
- (6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771;
- (7) Deny the right to bid on public work contracts to contractors or subcontractors who have violated public work laws, as set forth in Labor Code Section 1777.7;
- (8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815. Exception: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid [as specified in 8 CCR Section 16200(a)(3)(F)];
- (9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779;
- (10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860; and
- (11) Other requirements imposed by law.

#### **THE CONTRACTOR AND SUBCONTRACTOR SHALL:**

- (1) Pay not less than the prevailing wage to all workers, as defined in the California Code of Regulations Section 16000(a), and as set forth in Labor Code Sections 1771 and 1774;
- (2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works job sites;
- (3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;
- (4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;
- (5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;
- (6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director as set forth in 8 CCR Section 16200(a)(3);
- (7) Comply with 8 CCR Section 16101 regarding discrimination.

- (8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;
- (9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and
- (10) Comply with other requirements imposed by law.

**APPRENTICE TRAINING:**

SEE LABOR CODE SECTION 1777.5 (e)

Prior to commencing work on a contract for public works, every contractor shall submit contract award information (via submittal of a DAS-140) to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

**APPRENTICE TRAINING CONTRIBUTION REQUIREMENTS:**

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 4, § 16200(a)(3)(G)

**Wage rates, training contributions and apprenticeship contributions.**

Apprenticeship rates shall be determined by the Director of Industrial Relations using apprentice wage standards set forth in the collective bargaining agreement and/or approved by the California Apprenticeship Council. A contractor or subcontractor on a public works contract must pay training fund contributions or apprenticeship contributions in one of the following manners:

1. Into the appropriate craft apprenticeship program in the area of the site of the public work; or
2. An equivalent amount shall be paid to the California Apprenticeship Council (CAC) administered by DAS (if the trust fund is unable to accept such contributions).
3. If neither of the above will accept the funds, cash pay shall be as provided for in the California Code of Regulations Section 16200(a)(3)(I).

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 10, § 230.2

**Payment of Apprenticeship Training Contributions to the Council.**

- (a) Contractors who are neither required nor wish to make apprenticeship training contributions to the applicable local training trust fund shall make their training contributions to the Council. Contractors may refer to the Director of the Department of Industrial Relations applicable prevailing wage determination for the amount owed for each hour of work performed by journeymen and apprentices in each apprenticeable occupation.
- (b) Training contributions to the Council are due and payable on the 15th day of each month for work performed during the preceding month.
- (c) Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC-2 Form, Training Fund Contributions or contain the following information:
  - (1) The name, address, and telephone number of the contractor making the contribution.
  - (2) The contractor's license number.
  - (3) The name and address of the public agency that awarded the contract.
  - (4) The jobsite location, including the county where the work was performed.
  - (5) The contract or project number.
  - (6) The time period covered by the enclosed contributions.
  - (7) The contribution rate and total hours worked by apprenticeable occupation.

**CERTIFYING PERSON:**

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, § 16000

**Definitions.**

A person with the authority to affirm under penalty of perjury that the records provided, depict truly, fully and correctly the type of work performed, the hours worked, days worked and amounts paid.

**CHANGES TO PREVAILING RATE AFTER AWARD:**

SEE LABOR CODE SECTION: 1773.6

If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality, he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published. *Exceptions: classifications marked as double asterisks*

**CREDITS, FOR FRINGE BENEFIT PAYMENTS:**

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 4, § 16200(a)(2)(I)

Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3). In the event that the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages.

***THE RULE:***

The contractor can pay amounts for individual benefits different than the state shows in the wage reports so long as it is not more than the total amount permitted for all benefits. Any contractor paid amount less than the total benefit requirements listed in the state wage reports must be paid to the employee.

**EMPLOYEE'S SUBJECT TO PREVAILING WAGES:**

SEE LABOR CODE SECTIONS 1771, 1772 & 1776

***All workers on the project shall be paid the wage of the trade they are most closely related to. This includes: any one on site, and off site even at remote manufacturing facilities.***

- 1771 Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.
- 1772 Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.
- 1776(a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

**EMPLOYER PAYMENTS:**

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, § 16000

**Definitions.**

- (1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees;
- (2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and
- (3) The rate of contribution irrevocably made by the contractor or subcontractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

**FRINGE BENEFIT PAYMENT REQUIREMENTS:**

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, § 16000

**Definitions.**

All fringe benefits must be irrevocably paid to an authorized fund or to the employee.  
No unpaid amounts are allowed.

*Fringe Benefits Include:*

The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:

- (1) Medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;
- (2) Retirement plan benefits;
- (3) Vacations and holidays with pay, or cash payments in lieu thereof;
- (4) Compensation for injuries or illnesses resulting from occupational activity;
- (5) Life, accidental death and dismemberment, and disability or sickness and accident insurance;
- (6) Supplemental unemployment benefits;
- (7) Thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;
- (8) Occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;
- (9) See definition of "Employer Payments," (3).
- (10) Other bonafide benefits for employees, their families and dependents, or retirees as the Director may determine; and
- (11) Travel time and subsistence pay as provided for in Labor Code Section 1773.8.

Fringe Benefits Do Not Include:

The term “general prevailing rate of per diem wages” does not include any employer payments for:

- (1) Job related expenses other than travel time and subsistence pay;
- (2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;
- (3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;
- (4) Industry or trade promotion;
- (5) Political contributions or activities;
- (6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal, State, or local law to provide such benefit; or
- (7) Such other payments as the Director may determine to exclude.

**PAYROLL RECORDS INCLUDE:**

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, § 16000

**Definitions.**

All time cards, bank certified cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

**PERSONS REQUIRED TO RECEIVE PREVAILING WAGES:**

SEE LABOR CODE SECTIONS:

1771 Prevailing wages shall be paid to all workers employed on public works.

1774 The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

**WITHHOLDING PAYMENTS, JUSTIFICATION:**

SEE LABOR CODE SECTIONS: 1727 & 1771.5(b),(5)

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 5, § 16435

16435(a) “Withhold” means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

- (1) “Contracts.” Except as otherwise provided by agreement, only contracts under a single master contract, or contracts entered into as stages of a single project, may be the subject of withholding.
- (2) “Delinquent payroll records” means those not submitted on the date set in the contract.
- (3) “Inadequate payroll records” are any one of the following:
- (4) A record lacking the information required by Labor Code Section 1776;
- (5) A record which contains the required information but is not certified, or certified by someone not an agent of the contractor or subcontractor;
- (6) A record remaining uncorrected for one payroll period, after the awarding body has given the contractor notice of inaccuracies detected by audit or record review, provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to one percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401.

**DIRECTOR OF INDUSTRIAL RELATIONS PRECEDENTIAL DECISIONS WHICH REQUIRE PREVAILING WAGES:**

Decision 92-036: Stands for the payment of out-of-state workers if they are working on California “Public Works”

Decision 93-019: Stands for the payment of truck drivers removing, delivering or relocating material on “Public Works”

Decision 94-017: Stands for the payment of waste processors off site if the waste is exclusively from “Public Works”

**COURT DECISIONS:**

*Standard Traffic Services v. Department of Transportation* (County of Shasta, Case No. 132667): Partners are due prevailing wages if working on “Public Works”

# Checklist of Labor Law Requirements

(CCR Title 8, Section 16421)

Ultimately the prime contractor is liable for their sub and specialty contractors. This checklist is a useful tool for the prime contractor to ensure that their sub and specialty contractors know their responsibilities on public works projects. Contractors who understand and comply with the law are more likely to deliver the job on time, on budget and do it right the first time. We suggest the prime contractor encourage completion of this checklist by their sub and specialty contractors.

NAME (PRINT) \_\_\_\_\_ DATE \_\_\_\_\_

COMPANY \_\_\_\_\_ PHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_ FAX \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

PROJECT MANAGER \_\_\_\_\_ SUPERINTENDENT/FOREMAN \_\_\_\_\_

CERTIFIED PAYROLL \_\_\_\_\_ PHONE/EXT. \_\_\_\_\_

CONTRACTOR LICENSE NO. \_\_\_\_\_ EXP. DATE \_\_\_\_\_ SPECIALTY LICENSE NO. \_\_\_\_\_

SELF-INSURED CERTIFICATE NO. \_\_\_\_\_ WORKERS COMP. POLICY NO. \_\_\_\_\_

PROJECT NAME \_\_\_\_\_ PROJECT #/BID PACKAGE# \_\_\_\_\_

AWARDING BODY \_\_\_\_\_ ADVERTISEMENT DATE \_\_\_\_\_

IF SUB-CONTRACTING, LIST YOUR PRIME/GENERAL CONTRACTOR \_\_\_\_\_

CONTRACT AWARD AMOUNT \_\_\_\_\_

THE FEDERAL AND STATE LABOR LAW REQUIREMENTS APPLICABLE TO THE CONTRACT ARE COMPOSED OF, BUT NOT LIMITED TO, THE FOLLOWING:

## Payment of Prevailing Wage Rates

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract. *Labor Code Section 1770 et seq.*

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. Additionally, current wage rate information can be found at the DLSR web site, [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html).

## Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project and to comply with all aspects of *Labor Code Section 1777.5*, relating to Apprentices on Public Works. (1) Notify approved apprenticeship programs of contract award; (2) employ apprentices; (3) pay training fund contributions.

## Penalties

There are penalties required for contractor's/subcontractor's failure to pay prevailing wages and for failure to employ apprentices, including forfeitures and debarment under *Labor Code Sections 1775; 1776; 1777.1; 1777.7 and 1813*.

## Certified Payroll Reports

Under *Labor Code Section 1776*, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day for each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project.

This requirement includes and applies to all subcontractors performing work on Awarding Body projects even if their portion of the work is less than one half of one percent (0.05%) of the total amount of the contract.

The certified payroll records shall contain the same data fields listed on the *Public Works Payroll Reporting Form (A-1-131)* and contain or is accompanied by a declaration made under penalty of perjury. (*California Code of Regulations, Section 16401*).

Prime Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package. Any payroll not submitted in the proper form will be rejected. In the event that there has been no work performed during a

## Checklist of Labor Law Requirements, continued

given week, the Certified Payroll Report shall be annotated: "No work" for that week or a Non-Performance Statement must be submitted.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to *Labor Code Section 1776*.

Under *Labor Code Section 1776(g)* there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

**Nondiscrimination in Employment**

There exist prohibitions against employment discrimination under *Labor Code Sections 1735 and 1777.6*, the *Government Code*, the *Public Contracts Code*, and *Title VII of the Civil Rights Act of 1964*.

**Kickbacks Prohibited**

Contractors and subcontractors are prohibited from recapturing wages illegally by accepting or extracting "kickbacks" from employee wages under *Labor Code Section 1778*.

**Acceptance of Fees Prohibited**

There exists a prohibition against contractor/subcontractor acceptance of fees for registering any person for public work under *Labor Code Section 1779*; or for filling work orders on public works contracts pursuant to *Labor Code Section 1780*.

**Listing of Subcontractors**

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of one percent, pursuant to *Government Code Section 4104*.

**Proper Licensing**

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under *Labor Code Section 1021* and under the California Contractor License Law found at *Business and Professions Code Section 7000 et seq.*

**Unfair Competition Prohibited**

Contractors and sub-contractors are prohibited from engaging in unfair competition as specified under *Business and Professions Code Sections 17200 to 17208*.

**Workers Compensation Insurance**

*Labor Code Section 1861* requires that contractors and subcontractors be insured properly for Workers Compensation.

**OSHA**

Contractors and subcontractors are required to abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project.

**Proof of Eligibility/Citizenship**

The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers, is required.

**Itemized Wage Statement**

*Labor Code Section 226* requires that employees be provided with itemized wage statements.

### CERTIFICATION

I acknowledge that I have been informed and am aware of the foregoing requirements and that I am authorized to make this certification on behalf of \_\_\_\_\_  
(COMPANY NAME)

I fully understand that failure to comply with any of the above requirements may subject me, or my company, to penalties as provided above.

Contractor \_\_\_\_\_ (SIGNATURE) \_\_\_\_\_ (DATE)

Awarding Agency /Labor Compliance Program \_\_\_\_\_ (SIGNATURE) \_\_\_\_\_ (DATE)

## **APPRENTICES ON PUBLIC WORKS - SUMMARY OF REQUIREMENTS**

Compliance with California Labor Code Section 1777.5 and applicable provisions of Title 8 of the California Code of Regulations requires all public works contractors and subcontractors to:

- Submit contract award information to an applicable apprenticeship committee, including an estimate of the journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices would be employed.

Contractors shall provide contract award information to the apprenticeship committee for each applicable apprenticeable craft or trade in the area of the site of the public works project that has approved the contractor to train apprentices.

Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project.

The contract award information shall be in writing and may be set forth on DAS Form 140, Public Works Contract Award Information. The information shall be provided to the applicable apprenticeship committee within 10 days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. (Cal. Code Regs., tit. 8, § 230.)

- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentice work for every five hours of labor performed by a journeyman, unless an exemption applies.

Contractors who are not already employing sufficient registered apprentices to comply with the one-to-five ratio must request the dispatch of required apprentices from the applicable apprenticeship committees by giving written notice at least 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. All requests for dispatch must be in writing, sent by first class mail, facsimile or email. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

- Contribute to the California Apprenticeship Council the same amount that the Director of Industrial Relations determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the Council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project.

Contributions to the Council are due and payable on the 15th of the month for work performed during the preceding month, and shall be submitted to:

DIR – California Apprenticeship Council  
P.O. Box 511283  
Los Angeles, CA 90051-7838

Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC-2 Form, Training Fund Contributions, or the following information (Cal. Code. Regs., tit. 8, § 230.2, subd. (c)):

1. The name, address and telephone number of the contractor making the contribution.
  2. The contractor's license number.
  3. The name and address of the public agency that awarded the contract.
  4. The jobsite location, including the county where the work was performed.
  5. The contract or project number.
  6. The time period covered by the enclosed contributions.
  7. The contribution rate and total hours worked by the apprenticeable occupation.
  8. The name of the program(s) that provided apprentices, if any.
  9. The number of apprentice hours worked, by apprenticeable occupation and by program.
- Pay every apprentice, as defined in Labor Code section 3077, who is employed upon a public works project the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered.

Labor Code § 3077: The term "apprentice" as used in this chapter, means a person at least 16 years of age who has entered into a written agreement, in this chapter called an "apprentice agreement," with an employer or program sponsor. The term of apprenticeship for each apprenticeable occupation shall be approved by the chief, and in no case shall provide for less than 2,000 hours or reasonably continuous employment for such person and for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

## EXCERPTS FROM THE CALIFORNIA LABOR CODE RELATING TO APPRENTICES ON PUBLIC WORKS

### Chapter 1 of Part 7 of Division 2 APPRENTICES ON PUBLIC WORKS

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1771.3, 1771.5, or 1777.5, or any other statute providing for the payment of fees to the Department of Industrial Relations for enforcing prevailing wage requirements on that project, shall, within five days of the award, send a copy of the award to the department. In lieu of responding to any specific request for contract award information, the department may make such information available for public review by posting on its Internet Web site. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Labor Standards Enforcement.

1773.5. (a) The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as

computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request. (e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter, except Section 1777.5, within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(c) Whenever a contractor or subcontractor performing a public works project has failed to provide a timely response to a request by the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records pursuant to Section 1776, the Labor Commissioner shall notify the contractor or subcontractor that, in addition to any other penalties provided by law, the contractor or subcontractor will be subject to debarment under this section if the certified payroll records are not produced within 30 days after receipt of the written notice. If the commissioner finds that the contractor or subcontractor has failed to comply with Section 1776 by that deadline, unless the commissioner finds that the failure to comply was due to circumstances outside the contractor's or subcontractor's control, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year and not more than three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(d) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(e) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(f) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(g) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(h) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(i) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade

determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the

contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

1777.7. (a) (1) A contractor or subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Labor Commissioner, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5, the Labor Commissioner may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Labor Commissioner imposing the debarment or civil penalty by transmitting a written request to the office of the Labor Commissioner that appears on the determination within 60 days after service of the determination of debarment or civil penalty. If no hearing is requested within 60 days after service of the determination, the determination shall become final.

(2) The provisions of Section 1742 shall apply to the review of any determination issued pursuant to subdivision (a) or (b), subject to the following:

(A) The provisions of Section 1742 and any regulations implementing that section shall apply to a responsible officer who requests review of a determination under this section to the same extent as any affected contractor or subcontractor who requests review.

(B) In the review of a determination under this section, the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(3) For purposes of this section, a determination issued pursuant to subdivision (a) or (b) includes a determination that has been approved by the Labor Commissioner and issued by an awarding body that has been authorized to assist the director in the enforcement of Section 1777.5 pursuant to subdivision (p) of that section. The Labor Commissioner shall have the right to intervene in any proceeding for review of a determination issued by an awarding body. If the involvement of the Labor Commissioner in a labor compliance program enforcement action is limited to a review of the determination and the matter is resolved without litigation by or against the Labor Commissioner or the department, the awarding body shall enforce any applicable penalties, as specified in this section, and shall deposit any penalties and forfeitures collected in the General Fund.

(4) The Labor Commissioner may certify a copy of the final order of the Director of Industrial Relations and file it with 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. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination imposing a penalty under this section shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) (1) The Labor Commissioner shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

(A) Whether the violation was intentional.

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

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

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

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

(2) If a party seeks review of a decision by the Labor Commissioner to impose a monetary penalty or period of debarment, the Director of Industrial Relations shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and the substantive requirements of this section, including the limitations period for issuing a determination under subdivision (a) or (b), shall be in accordance with the regulations of the California Apprenticeship Council. The Director of Industrial Relations may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.

## PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

**Do not send this form to the Division of Apprenticeship Standards.**

|   |   |
|---|---|
| NAME OF YOUR COMPANY  | CONTRACTOR'S STATE LICENSE NO               |
| MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE                          | AREA CODE & TELEPHONE NO.                   |
| NAME & ADDRESS OF PUBLIC WORKS PROJECT                                    | DATE YOUR CONTRACT EXECUTED                 |
|   | DATE OF EXPECTED OR ACTUAL START OF PROJECT |
| NAME & ADDRESS OF PUBLIC AGENCY AWARDDING CONTRACT                        | ESTIMATED NUMBER OF JOURNEYMEN HOURS        |
|   | OCCUPATION OF APPRENTICE                    |
| THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S)) | ESTIMATED NUMBER OF APPRENTICE HOURS        |
|   | APPROXIMATE DATES TO BE EMPLOYED            |
|   |   |

***This is not a request for dispatch of apprentices.***

*Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations*

*Check One Of The Boxes Below*

1.  We are already approved to train apprentices by the \_\_\_\_\_  
Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee
  
2.  We will comply with the standards of \_\_\_\_\_  
Apprenticeship Committee for the duration of this job only. Enter name of the Committee
  
3.  We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

*Signature* \_\_\_\_\_

*Date* \_\_\_\_\_

*Typed Name* \_\_\_\_\_

*Title* \_\_\_\_\_

**State of California - Department of Industrial Relations DIVISION  
OF APPRENTICESHIP STANDARDS**

State of California  
 Department of Industrial Relations  
 California Apprenticeship Council  
 P.O. Box 101325  
 Pasadena, CA 91189-0005

## TRAINING FUND CONTRIBUTIONS

Please use a separate form for each jobsite, listing the occupations for the jobsite. One check payable to the California Apprenticeship Council may be submitted for all jobsites and/or occupations. Training fund contributions are not accepted by the California Apprenticeship Council for federal public works projects, unless the project is administered by a public agency or for non-apprenticeable occupations such as utility technicians, lead abatement worker, etc.

### California Apprenticeship Council

**\*\*Training Fund Contributions are due on the 15<sup>th</sup> of each month\*\***

**PLEASE TYPE OR PRINT IN BLACK OR BLUE INK. ALL FIELDS MUST BE FILLED IN TO ENSURE SUCCESSFUL SUBMISSION AND PROCESS OF PAYMENT.**

|  |                          |   |                              |         |
|--|--------------------------|---|------------------------------|---------|
| NAME AND ADDRESS OF CONTRACTOR/SUB CONTRACTOR MAKING CONTRIBUTION  |                          | CONTRACTOR'S LICENSE NUMBER   |                              |         |
|  |                          | CONTRACT OR PROJECT NUMBER  |                              |         |
|  |                          | JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE - GIVE NAME OF SCHOOL, HOSPITAL, BUILDING, etc. |                              |         |
| NAME AND ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT   |                          | PERIOD COVERED BY CONTRIBUTION (FROM - TO)  |                              |         |
| CLASSIFICATIONS OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC.)   | COUNTY WORK PERFORMED IN | ALL HOURS   | CONTRIBUTION RATE PER HOUR   | AMOUNT  |
|  |                          |   |                              | \$ 0.00 |
|  |                          |   |                              | \$ 0.00 |
|  |                          |   |                              | \$ 0.00 |
|  |                          |   |                              | \$ 0.00 |
|  |                          |   |                              | \$ 0.00 |
|  |                          |   |                              | \$ 0.00 |
|  |                          |   | TOTAL                        | \$ 0.00 |
| IF APPRENTICES WERE EMPLOYED, PLEASE LIST THE APPRENTICESHIP PROGRAM AND NUMBER OF APPRENTICE HOURS WORKED |                          |   |                              |         |
| TYPE OR PRINT YOUR NAME AND TITLE  |                          |   | DATE                         |         |
| EMAIL  |                          |   | AREA CODE & TELEPHONE NUMBER |         |



## REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

**DO NOT SEND THIS FORM TO DAS**

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/databases/das/pwaddrstart.asp> for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyman work, you must request and employ apprentices in no less than 8 hour increments.**

Date: \_\_\_\_\_

Contractor Requesting Dispatch:

To Applicable Apprenticeship Committee:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

License No. \_\_\_\_\_

Tel. No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Tel. No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Project Information:

Contract No. \_\_\_\_\_

Name of the Project: \_\_\_\_\_

Address: \_\_\_\_\_

Dispatch Request Information:

Number of Apprentice(s) Needed: \_\_\_\_\_ Craft or Trade: \_\_\_\_\_

Date Apprentice(s) to Report: \_\_\_\_\_ (72 hrs. notice required) Time to Report: \_\_\_\_\_

Name of Person to Report to: \_\_\_\_\_

Address to Report to: \_\_\_\_\_

*You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via first class mail, fax or email. **Proof of submission may be required.** Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit*

<http://www.dir.ca.gov/DAS/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>

DAS 142 (Revised 04/14)

## Statement of Employer Payments



|                           |        |  |                         |
|---------------------------|--------|--|-------------------------|
| Date:                     |        | In Reply, Refer to Case No:              |                         |
| Prime:                    |        |  |                         |
| Subcontractor:            |        |  |                         |
| PROJECT NAME:             |        |  |                         |
| PROJECT CONTRACT NO.:     |        | County/location:                         |                         |
| <b>HEALTH AND WELFARE</b> |        |  |                         |
| NAME OF PLAN              |        | Address, City and Zip                    |                         |
| ADMINISTRATOR             |        | Address, City and Zip                    |                         |
| CLASSIFICATION(S) USED    |        | CONTRIBUTION PER CLASSIFICATION PER HOUR |                         |
| CONTRIBUTIONS:            | WEEKLY | MONTHLY                                  | QUARTERLY      ANNUALLY |
| <b>PENSION</b>            |        |  |                         |
| NAME OF PLAN              |        | Address, City and Zip                    |                         |
| ADMINISTRATOR             |        | Address, City and Zip                    |                         |
| CLASSIFICATION(S) USED    |        | CONTRIBUTION PER CLASSIFICATION PER HOUR |                         |
| CONTRIBUTIONS:            | WEEKLY | MONTHLY                                  | QUARTERLY      ANNUALLY |
| <b>VACATION/HOLIDAY</b>   |        |  |                         |
| NAME OF PLAN              |        | Address, City and Zip                    |                         |
| ADMINISTRATOR             |        | Address, City and Zip                    |                         |
| CLASSIFICATION(S) USED    |        | CONTRIBUTION PER CLASSIFICATION PER HOUR |                         |
| CONTRIBUTIONS:            | WEEKLY | MONTHLY                                  | QUARTERLY      ANNUALLY |
| <b>TRAINING</b>           |        |  |                         |
| NAME OF PLAN              |        | Address, City and Zip                    |                         |
| ADMINISTRATOR             |        | Address, City and Zip                    |                         |
| CLASSIFICATION(S) USED    |        | CONTRIBUTION PER CLASSIFICATION PER HOUR |                         |
| CONTRIBUTIONS:            | WEEKLY | MONTHLY                                  | QUARTERLY      ANNUALLY |

IF YOU USE OTHER PLANS NOT LISTED ABOVE, YOU MAY USE THE BACK OF THIS FORM TO PROVIDE THIS ADDITIONAL INFORMATION



**NOTICE TO PUBLIC ENTITY**

**For Privacy Considerations**

**Fold back along dotted line prior to copying for release to general public (private persons).**

(Paper Size then 8-1/2 x 11 inches)



I, \_\_\_\_\_, the undersigned, am the  
(Name – print)

\_\_\_\_\_ with the authority to act for and on behalf of  
(Position in business)

\_\_\_\_\_, certify under penalty of perjury  
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of \_\_\_\_\_  
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)  
of the actual disbursements by way of cash, check, or whatever form to the individual or  
individuals named.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

A public entity may require a stricter and/or more extensive form of certification.

# Contra Costa County Flood Control and Water Conservation District Monthly Employment Utilization Report



|  |   |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|--|---|---|-------------------------|--------------------------------|---|----------|---|---------------------------|---|------------------------------------|---|---------------------|-------------------|---|---|---|---|--|
| Current Goals:<br>Minority: _____<br>Female: _____ | Reporting Period:<br>From: _____<br>To: _____ | Name and Location of Contractor:<br>_____ | Project Title:<br>_____ | Employer's I.D. No.:<br>_____  |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
| Construction Trade                                 | Classification                                | Total Construction Hours                  |                         |                                |   |          |   | Total Number of Employees |   | Total Number of Minority Employees |   |                     |                   |   |   |   |   |  |
|  |   | Total All Employees By Trade              |                         | Black (Not of Hispanic Origin) |   | Hispanic |   | Asian or Pacific Islander |   | American Indian or Alaska Native   |   | Minority Percentage | Female Percentage | M | F | M | F |  |
|  |   | M   | F                       | M                              | F | M        | F | M                         | F | M                                  | F |                     |                   |   |   |   |   |  |
|  | Journeyworkers                                |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Apprentices                                   |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Trainees                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Subtotal                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Journeyworkers                                |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Apprentices                                   |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Trainees                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Subtotal                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Journeyworkers                                |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Apprentices                                   |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Trainees                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Subtotal                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Journeyworkers                                |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Apprentices                                   |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Trainees                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Subtotal                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Journeyworkers                                |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Apprentices                                   |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Trainees                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Subtotal                                      |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Total Journeyworkers                          |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Total Apprentices                             |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Total Trainees                                |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
|  | Grand Total                                   |   |                         |                                |   |          |   |                           |   |                                    |   |                     |                   |   |   |   |   |  |
| Company Official's Signature and Title             |   | Telephone Number (including area code)    |                         |                                |   |          |   | Date Signed               |   | Page ____ of ____                  |   |                     |                   |   |   |   |   |  |

**PUBLIC WORKS DECLARATION**  
California Labor Code § 1776(a)

Awarding Body/District: \_\_\_\_\_

Employer (Contractor/Subcontractor): \_\_\_\_\_

Project: \_\_\_\_\_

Contract #: \_\_\_\_\_

On behalf of the above referenced Employer, the undersigned hereby declares:

1. I have authority to act on behalf of the Employer with respect to this matter.
2. The information contained in the payroll record for the week ending \_\_\_\_\_, 20\_\_\_\_ (Payroll No. \_\_\_\_\_) is true and correct.
3. The Employer has complied with the requirements of California Labor Code sections 1771, 1811 and 1815 for any and all work performed by its employees on the public works project set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, California

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

## How to Determine a Prevailing Wage Rates

The California Department of Industrial Relations (DIR) publishes prevailing wage determinations twice a year, on February 22 and August 22. The rates go into effect ten (10) days after publication.

Correct prevailing wage rates can be verified on the California Division of Labor Statistics and Research website:

<http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>

The steps to determine the prevailing wage rate for a given craft and project are as follows:

1. **Find the applicable determination.** The applicable determination is the one in effect at the time the project is first advertised for bids. The two yearly determinations are named with the year followed by a “1” or “2” – so the determination published on February 22, 2010 is “2010-1,” and the one published on August 22, 2010 is “2010-2.” Older determinations are collected on the site under “Superseded prevailing wage determinations.”
2. **Find the appropriate craft.** Some crafts have prevailing wages that are valid throughout the state; some are valid throughout Southern California; and some are valid only in Los Angeles County. Multiple places to find the craft you need may need to be checked.
3. **Look up the rate.** The determination contains a “Basic Hourly Rate” and a “Total Hourly Rate.” The Total Hourly Rate is the required total value of all wages and fringe benefit payments; the Basic Hourly Rate is the minimum rate that can be paid to workers on their paychecks, for contractors who pay the fringe benefit amounts to a trust fund or benefit plan.
4. **Check for predetermined increases.** Each determination is published with either a single asterisk (\*) or double asterisk (\*\*) after the expiration date. Determinations with a single asterisk will remain valid for the duration of the project; those with a double asterisk (\*\*) have predetermined rate increases that must be taken into account.
5. **Look up increases, if necessary.** They are published alongside the prevailing wage determination.
6. **Take fringe benefits and training funds into account.** A contractor’s Fringe Benefit Statement will state the hourly rate of fringe benefit contributions that are made; the wage rate plus the total of all those contributions must equal or exceed the Total Hourly Rate.

Many non-union contractors do not have benefit funds and pay the entire prevailing wage directly to the workers on their checks. It is important to note that the amount listed for “Training” may not be paid this way; it can only be paid to an approved apprenticeship program or to the California Apprenticeship Council.

# Non-Performance Payroll Report (Statement of Non-Performance)

Date: \_\_\_\_\_ Payroll Report No.: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

I, \_\_\_\_\_, do hereby state that no person(s) were employed on the  
*(Name of Signatory Party)*

construction project \_\_\_\_\_ Bid No. \_\_\_\_\_  
*(Project Name / Title)*

during the payroll period commencing on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

and ending on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*SIGNATURE OF AUTHORIZED REPRESENTATIVE*

\_\_\_\_\_  
*TITLE / POSITION*

\_\_\_\_\_  
*NAME OF AUTHORIZED PERSON*

\_\_\_\_\_  
*DATE*

Note: One copy of this form must be submitted within ten (10) calendar days following the close of the contractor's pay period for any pay period that the contractor did not employ workers on the contract site.

**This report is not required prior to the submission of the initial performance payroll report.**

# LABOR COMPLIANCE PROGRAM

## Other Forms

- Labor Compliance Site Visitation Interview Form (Bilingual) (1 page)
- Site Visitation Log (1 page)
- Sample Pre-Award Letter (1 page)
- Sample Post-Award Letter (1 page)
- Sample First Request for Certified Payrolls Letter (1 page)
- Sample Missing Documents List (1 page)
- Certified Payroll Worksheet (1 page)
- Sample Certified Payroll Correction Letter (1 page)
- Report of Action for Prevailing Wage Violations (1 page)



**LABOR COMPLIANCE SITE VISITATION INTERVIEW FORM**  
**FORMA DE ENTREVISTA DEL SITIO**  
**SOBRE CONDECENCIA LABORARIA**

Labor Compliance Officer 925-313-2000

SITE NAME/SITIO: \_\_\_\_\_ DATE/FECHA: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

CONTRACT #: \_\_\_\_\_ Interior / Exterior (circle)

CONTRACTOR/ CONTRANTE: \_\_\_\_\_

SUBCONTRACTOR/ SUBCONTRATANTE: \_\_\_\_\_

Name Person Interviewed/ Nombre de Persona Entrevistada: \_\_\_\_\_

S/S Number/ Numero de Seguro Social: \_\_\_\_\_

Position Title/ Posision O Titulo del Entrevistado: \_\_\_\_\_

Task Being Performed at Time of This Interview: \_\_\_\_\_  
Clase de Labor Desenpenando al Tiempo de Entrevista

Hourly Pay Rate/ Salario Horario: \$ \_\_\_\_\_

OBSERVATIONS:

Site Inspector: \_\_\_\_\_ Telephone \_\_\_\_\_

Project Superintendent: \_\_\_\_\_ Telephone \_\_\_\_\_

**LABOR COMPLIANCE SITE VISITATION INTERVIEW FORM  
(continued)**

Total number of workers observed on the visit: \_\_\_\_\_

Type of work observed: \_\_\_\_\_

\_\_\_\_\_

Type of workers observed: \_\_\_\_\_

\_\_\_\_\_

Was the worker believable?    Yes    No

Did the superintendent or foreman accompany you on the site?    Yes    No

Explain additional information received from the worker:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Interview Conducted by: \_\_\_\_\_





Contra Costa County  
**Flood Control**  
& Water Conservation District

Julia R. Boeren,  
ex officio Chief Engineer  
Steve Kowalewski,  
Deputy Chief Engineer

Via Certified Mail

July 21, 2015

Mr. John Doe  
ACME Painting  
13414 Labor Street  
Pleasant Hill, CA 94523

**Sample Pre-Award Letter**

Pre-Award Letter

Dear Mr. Doe:

The Contra Costa County Flood Control and Water Conservation District (FC District) has identified your firm as the apparent low bidder for Contract # \_\_\_\_\_ [CONTRACT NO., NAME OF PROJECT], and has scheduled board approval of a contract requiring your compliance with Division 2 Part 7 of the California Labor Code. This will require the payment of prevailing wages to all workers employed on the project and the reporting of the certified weekly payrolls to the FC District's Labor Compliance Officer (LCO). The Labor Code requires that, prior to the start of work, a person qualified to certify documents for your firm attend a review meeting with the awarding body concerning the Labor Code prevailing wage laws.

The LCO is formally requesting the appearance of the certifying person for the code review, the submittal of the required weekly certified payroll records or nonperformance reports.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776 subdivision (b) (2), which states, "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations" and California Code of Regulations section 16430 (a) (2).

The goal of the LCO is to provide the necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the California State Labor Code.

Please call the FC District's LCO at (925) 313-2000 to set an appointment and receive the necessary forms prior to the start of your project.

Sincerely,

[First Name, Last Name]  
Labor Compliance Officer [or other Title]  
Contra Costa County Flood Control  
& Water Conservation District

Originator:clerical  
Filepath  
Enclosures  
c:



Contra Costa County  
**Flood Control**  
& Water Conservation District

Julia R. Baeren,  
ex officio Chief Engineer  
Steve Kowalewski,  
Deputy Chief Engineer

Via Certified Mail

July 27, 2015

Ms. Jane Doe  
ACME Construction  
1234 Happy Drive  
Martinez, CA 94553

Post Award Letter

**Sample Post-Award Letter**

Dear Ms. Doe:

The Contra Costa County Flood Control and Water Conservation District (FC District) has awarded your firm a contract to perform work on Contract # \_\_\_\_\_ [CONTRACT NO., NAME OF PROJECT], which requires your compliance with Division 2, Part 7, Chapter 1 of the California Labor Code. This will require the payment of prevailing wages to all workers employed on the project and the reporting of the weekly payroll to the FC District's Labor Compliance Officer (LCO).

The Labor Code requires, prior to the start of work that a person qualified to sign and certify for your firm attend a review with the awarding body of the Labor Code prevailing wage laws.

Please call the FC District's Labor Compliance Officer at (925) 313-2000 to set an appointment and receive the necessary forms prior to the start of your project.

Sincerely,

[First Name Last Name]  
Labor Compliance Officer [or other title]  
Contra Costa County Flood Control  
& Water Conservation District

Originator:clerical  
Filepath  
Enclosures

c:



Contra Costa County  
**Flood Control**  
& Water Conservation District

Julia R. Bueren,  
ex officio Chief Engineer  
Steve Kowalewski,  
Deputy Chief Engineer

Via Certified Mail

July 27, 2015

John Doe  
ACME Construction Co.  
13414 Labor Street  
Pleasant Hill, CA 4523

First Request for Certified Payrolls

**Sample 1<sup>st</sup> Request for  
Certified Payrolls**

Dear Mr. Doe:

The Contra Costa County Flood Control and Water Conservations District's Labor Compliance Officer is formally requesting copies of Certified Payroll Records for the [CONTRACT NO., NAME OF PROJECT]. We are requesting the records from the beginning of the project through project completion for your firm and all subcontractors.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776 Subdivision (b) (2) and Section 1776 Subdivision (g) (3) and the contract general conditions requiring weekly employee payments and weekly certified payroll submittals.

Labor Code Section 1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code 1776 (g) (3) states: "The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section. The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she 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 calendar day, or portion thereof, for each worker, until strict compliance is effectuated."

Please forward all weekly Certified Payroll Records to: Contra Costa County Flood Control and Water Conservations District, 255 Glacier Drive, Martinez, CA 94553. If you have any questions, contact me at 925-313-2000.

Sincerely,

[First Name Last Name]  
Labor Compliance Officer [or other title]  
Contra Costa County Flood Control  
& Water Conservation District

### MISSING DOCUMENTS LIST

Prime Contractor: \_\_\_\_\_ Project: \_\_\_\_\_  
Original Request Date: \_\_\_\_\_ Date of This Request: \_\_\_\_\_

**The following documents for the \_\_\_\_\_ project shall be submitted to the Labor Compliance Officer:**

1. Monthly Employment Utilization Reports must be provided for:
2. Apprenticeship Training Agreement (similar to Form DAS 1) must be provided for:
3. Apprenticeship Training Agreement (similar to Form DAS 7) must be provided for:
4. Training Fund Contributions (Form CAC 2 or equivalent) must be provided for:
5. Public Works Contract Award Information (Form DAS 140) with the name, address and phone number of the training program notified by all project contractors must be provided for:
6. Fringe Benefits Statements (Form PW 26) must be provided for:
7. Signed Certified Payroll Report or Non-Performance Payroll Report (Statement of Non-Performance) with original signatures must be provided for:

Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package, which must be submitted to the District's Labor Compliance Officer **within 10 days of request**. In the event there has been no work performed during a given week, the certified payroll record shall be annotated with the words "No Work" for that week.

8. The Public Works Payroll Reporting Form (Form A-1-131) or equivalent must be provided.





Contra Costa County  
**Flood Control**  
& Water Conservation District

Julia R. Bueren,  
ex officio Chief Engineer  
Steve Kowalewski,  
Deputy Chief Engineer

Via Certified Mail

July 27, 2015

Ms. Jane Doe  
ACME Construction  
1234 Happy Drive  
Martinez, CA 94553

**Sample Certified Payroll  
Correction Letter**

Certified Payroll Correction Letter

Dear Mr. Doe:

The Contra Costa County Flood Control and Water Conservations District's Labor Compliance Officer has formally requested copies of Certified Payroll Records and Monthly Utilization Reports for [CONTRACT NO., NAME OF PROJECT]. We have reviewed your submittal and require additional information.

This new request is made pursuant to, and authorized by, California State Labor Code Sections 1774, 1775, 1776, 1777.5, 1777.7, 1810, 1813 and 1815. Additionally, the contract general conditions require weekly payment of employee wages.

Labor Code section § 1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code § 1776 (g) states: "The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section. The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she 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 calendar day, or portion thereof, for each worker, until strict compliance is effectuated."

Please correct and supply the data requested in the attachments and submit on approved forms to: Contra Costa County Flood Control and Water Conservations District, Labor Compliance Officer, 255 Glacier Drive, Martinez, CA 94553. If you have any further questions, please contact me at (925) 313-2000.

Sincerely,

[First Name Last Name]  
Labor Compliance Officer [or other title]  
Contra Costa County Flood Control  
& Water Conservation District



## Report of Action for Prevailing Wage Violations

Name of Project: \_\_\_\_\_

Contract Number: \_\_\_\_\_ First Advertised Date: \_\_\_\_\_

County Where Work Is Performed: \_\_\_\_\_ Date Notice of Completion Filed: \_\_\_\_\_

Date of Project Acceptance or Current Percent Complete: \_\_\_\_\_

Name and Address of Prime Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project's Scope of Work: \_\_\_\_\_

Contractors in Violation of the Labor Code and their Scope of Work: \_\_\_\_\_

\_\_\_\_\_

Statement of the Issues Identified to the Contractor: \_\_\_\_\_

\_\_\_\_\_

Summary of the Audit Investigation:

CPR Spread Sheets

Labor Code Sections Violated:

Summary of Penalty Assessment Justification: \_\_\_\_\_

\_\_\_\_\_

Identify Labor Code 1775 and 1813 Penalties Requested with Calculated Totals: \_\_\_\_\_

\_\_\_\_\_

Is the Violation Due to Mistake, Inadvertence or is it a Willful Failure to Pay the Correct Wages: \_\_\_\_\_

\_\_\_\_\_

Previous Record in Meeting Prevailing Wage Obligations: \_\_\_\_\_

\_\_\_\_\_

Identify and Provide All Correspondence: \_\_\_\_\_

Identify and Provide Any Contractor Response: \_\_\_\_\_

Recommend Penalty Assessment: \_\_\_\_\_