



THE CITY OF SAN DIEGO

LABOR COMPLIANCE PROGRAM

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**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM
IMPLEMENTATION, OPERATION, PROCEDURES**

Contents

- I. City of San Diego Labor Compliance Program**
- II. Implementation Plan**
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CITY OF SAN DIEGO LABOR COMPLIANCE PROGRAM

PREFACE

The City of San Diego institutes this Labor Compliance Program for the purpose of implementing its policy relative to the labor compliance provisions of State and Federally funded public works contracts. This program is applicable to all public works projects which are designated as requiring prevailing wages.

California Labor Code Section 1770, *et seq.* requires that contractors on public works projects pay their workers based on prevailing wage rates established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

California Labor Code 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.

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

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

This Labor Compliance Program (“LCP”) 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:

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

Labor Compliance Officers (“LCOs”) will represent the City of San Diego in enforcement of this LCP.

SECTION I

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

General Labor Compliance Program

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

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INTRODUCTION

The City of San Diego institutes this general Labor Compliance Program (“LCP”) for the purpose of implementing its policy relative to labor compliance provisions of State and Federally-funded public works contracts and additionally to comply with the provisions of Labor Code section 1771.8 pertaining to the use of funds derived from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. This LCP contains labor compliance standards required by State and Federal laws, regulations and directives, as well as policies and contract provisions.

The California Labor Code Section 1770, *et seq.*, requires contractors on public works projects to pay their workers based on prevailing wage rates established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

In establishing this LCP, the City adheres to statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. Further, on applicable projects, the City intends to actively enforce this LCP by monitoring City construction sites for payment of prevailing wage rates and to require contractors and subcontractors with workers on applicable City projects to submit copies of certified payroll records demonstrating their compliance with payment of prevailing wage rates.

The City’s LCP includes January 21, 2009, revisions to Title 8 of the California Code of Regulations Sections 16000 – 16404 and 16421 – 16802. Should applicable sections of the Labor Code or undergo alteration, amendment or deletion, the City of San Diego will modify the affected portions of this program accordingly.

**SECTION I
PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS**

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

A. Types of Contracts to Which Prevailing Wage Requirements Apply

The City of San Diego institutes this general Labor Compliance Program [LCP] as provided in Section 1771.5(b) of the Labor Code. When the City determines a project to require prevailing wages, these sections of the Labor Code will be enforced on such projects.

As provided in Labor Code section 1771.8(a), an awarding body that chooses to use funds derived from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 shall initiate and enforce a Labor Compliance Program as described in subdivision (b) of section 1771.5 of the Labor Code with respect to that public works project. Accordingly, upon approval by the Director of the Department of Industrial Relations, the City of San Diego's LCP shall apply to public works using funds derived from this Bond Act.

B. Limited Exemption

As provided in Labor Code Section 1771.5(a), if a City of San Diego public works project would be otherwise subject to prevailing wage requirements except that the value is \$25,000 or less when the project is for construction or installation work or of \$15,000 or less when the project is for alteration, demolition, repair, or maintenance work, then the City shall not require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work for such projects. A project for construction, installation, alteration, demolition, repair, or maintenance work shall be identified as such in the call for bids, and in the contract or purchase order.

If, however, the amount of such a contract is changed and, as a result, exceeds the applicable limit under which the payment of the general rate of per diem wages is not required, workers employed on the contract after the amount due the contractor has reached the applicable limit shall be paid the general rate of per diem wages for regular, holiday or overtime work, as the case may be.

C. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body Labor Compliance Programs are established by Section 16425 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the City's LCP until after the program has received initial or final approval.

SECTION II
COMPETITIVE BIDDING ON CITY PUBLIC WORKS CONTRACTS

The City publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. All City bid advertisements or bid invitations and public works contracts contain appropriate language concerning requirements of the Labor Code.

SECTION III
PRE-CONSTRUCTION CONFERENCE

After the City awards a public works contract and prior to commencement of the work, a mandatory Pre-Construction Conference shall be conducted with the contractor and those subcontractors listed in its bid documents. A Labor Compliance Officer shall present information at this conference.

At that meeting, the Labor Compliance Officer will discuss Federal and State labor law requirements applicable to the contract, including prevailing wage requirements, respective record-keeping responsibilities, the requirement for submittal of certified payroll records to the City and the prohibition against discrimination in employment.

The Labor Compliance Officer will provide the contractor and each subcontractor with a Checklist of Labor Law Requirements (Attachment A to this document) and will discuss in detail the following checklist items:

1. Contractor's duty to pay prevailing wages [Labor Code Section 1770 *et seq.*].
2. Contractor's duty to employ registered apprentices on public works projects [Labor Code Section 1777.5].
3. Penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment [Labor Code Sections 1775, 1777.7, and 1813].
4. Requirement to maintain and submit copies of certified payroll records to the City, on a weekly basis, as required [Labor Code Section 1776] and penalties for failure to do so [Labor Code Section 1776(g)]. The requirement includes and applies to all subcontractors performing work on this project even if their portion of the work is less than one-half of one-percent (0.5%) of the total amount of the contract.
5. Prohibition against employment discrimination [Labor Code Sections 1735 and 1777.6; the Government Code and Title VII of the Civil Rights Act of 1964, as amended].
6. Prohibition against taking or receiving a portion of an employee's wages [Labor Code Section 1778] (kickback).

7. Prohibition against accepting fees for registering any person for public works [Labor Code Section 1779] or for filing work orders on public works [Labor Code Section 1780].
8. Requirement to list all subcontractors that are performing one-half of one percent (0.5%) of the total amount of the contract [Public Contract Code Section 4100 *et seq.*].
9. Requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed [Labor Code Section 1021] and under California Contractors License Law. Also, see Business and Professions Code Section 7000, *et seq.*
10. Prohibition against unfair competition [Business and Professions Code Sections 17200-17208].
11. Requirement that contractor and subcontractor be properly insured for Workers' Compensation [Labor Code Section 1861].
12. Requirement that the contractor abide by Occupational Safety and Health laws and regulations that apply to this particular public works project.
13. Prohibition against hiring undocumented workers and requirement to secure proof of eligibility/citizenship from all workers.
14. Requirement to provide itemized wage statements to employees under Labor Code Section 226.

Contractors and subcontractors present at the Pre-Construction Conference will be given the opportunity to ask questions of the Labor Compliance Officer relative to items contained in the Checklist of Labor Law Requirements. The checklist will then be signed by the contractor's representative and a representative of each subcontractor and the City's Labor Compliance Officer.

At the Pre-Construction Conference, the Labor Compliance Officer will provide the contractor with a copy of the City's LCP packet which includes: a copy of the approved LCP, the Checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations, blank certified payroll record forms, fringe benefit statements, State apprenticeship requirements, and a copy of the Labor Code relating to Public Works and Public Agencies [Part 7, Chapter 1, Sections 1720-1861].

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractors.

**SECTION IV
REVIEW OF CERTIFIED PAYROLL RECORDS**

A. Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (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 City 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, rate of pay (including rates of contributions for or costs assumed to provide fringe benefits), daily and weekly number of hours worked, actual wages paid and the payroll check numbers.

1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the City of San Diego Labor Compliance Officer as required. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor or each subcontractor indicating payroll records are correct and complete, wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations and classifications set forth for each employee conform with work performed.

Time cards, front and back copies of canceled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the Labor Compliance Officer at any time and shall be provided within ten (10) days following receipt of request.

2. Use of Electronic Reporting Forms

Certified payroll records required by Labor Code 1776 may be maintained and submitted electronically subject to all of the following conditions:

- a. The reports must contain all information required by Labor Code Section 1776, organized in a manner that is similar to how the information is reported on the Department of Industrial Relation's "Public Works Payroll Reporting Form" (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, Labor Compliance Programs, and the Department of Industrial Relations.
- c. Reports submitted to this Labor Compliance Program must be either (1) in the form of non-modifiable image or record that bears an electronic signature or includes a copy of an 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 pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies.
- 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.

3. Full Accountability

Each individual, laborer or craftsperson working on this 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 this contract must also submit a certified payroll record listing days and hours worked and the trade classification descriptive of work actually done.

The contractor shall provide records required under this section to the City of San Diego within five (5) days of each payday, and shall make these records available for inspection by the Department of Industrial Relations, and shall permit representatives of each to interview tradesworkers during working hours on the project site.

3. 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.

4. Payment to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts 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 each and 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/she is merely a journey level mechanic supplying only his/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.

The 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 eight (8) hours in a day and forty (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.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, 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/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 California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Submit contract award information to the apprenticeship committee 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 journeyman 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 420603, San Francisco, CA 94142.

If the contractor is registered to train apprentices, the contractor 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/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

C. Audit of Certified Payroll Records

Audits shall be conducted by the Labor Compliance Officer and shall also be conducted at the request of the Labor Commissioner to determine whether all tradesworkers on project sites have been paid according to the prevailing wage rates.

The audit record form (presented as Attachment B) demonstrates the sufficient detail that is necessary to verify compliance with Labor Code requirements.

**SECTION V
REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER**

If an investigation reveals that a willful violation of the Labor Code has occurred, the Labor Compliance Officer 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. Six (6) types of willful violations are reported:

A. Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and City contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to tradesworkers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.

B. 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 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.

C. Failure to Submit Certified Payroll Records

The contractors and subcontractors shall have ten (10) days upon notification by the Program Manager in which to comply with the requirement of submittal of weekly records and/or to correct inaccuracies or omissions that have been detected.

D. 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. 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.

E. Failure to Pay 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.

F. 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.

**SECTION VI
ENFORCEMENT ACTION**

A. Duty of the Awarding Body

The City of San Diego as the awarding body having an approved LCP has a duty to the Director of the Department of Industrial Relations to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code in a manner consistent with the practice of the Labor Commissioner. The City's LCP shall refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making decisions. The primary function of this LCP is to ensure public works contractors comply with prevailing wage requirements found in the Public Works Chapter of the Labor Code. The procedures specified herein, including proactive investigation methods, comprise the minimum obligations required of this LCP to operate as specified in sections 16248 and 16434. The City of San Diego Labor Compliance Program will:

1. Review payroll records furnished by contractors and subcontractors in accordance with Section 16421(a)(3), and in a format prescribed at Section 16401 of Title 8 of the California Code of Regulations, as promptly as practicable after receipt, but in no event more than 30 days after such receipt. "Review" for this purpose shall be defined as inspection of the records furnished to determine if:

- a. all appropriate data elements identified in Labor Code Section 1776(a) have been reported;
 - b. certification forms have been completed and signed in compliance with Labor Code Section 1776(b); and
 - c. correct prevailing wage rates have been reported as paid for each classification of labor listed, with confirmation of payment 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.
- 1) For each month a contractor or subcontractor reports workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month.

- 2) Confirmation shall be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest payroll records furnished by a contractor or subcontractor are inaccurate.
2. **Conduct in-person inspections at sites where public work is being performed.** Such On-Site Visits may be undertaken randomly or as deemed necessary, but shall be undertaken during each week that workers are present. On-Site Visits may include any activities deemed necessary to corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors. All On-Site Visits shall include visual inspection of:
 - a. the copy of the DIR wage determination(s) required to be posted at each job site in compliance with Labor Code Section 1773.2, and
 - b. Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with Section 16429, including a phone number for inquiries, questions, or assistance with regard to the LCP.
 3. **Respond to receipt of a written complaint** alleging failure of a contractor or subcontractor to pay prevailing wages by performing all of the following actions:
 - a. Within 15 days after receipt of the complaint, send a written acknowledgement to the complainant acknowledging receipt of the complaint and identifying the name, address, and phone number of the Labor Compliance Officer assigned to the complaint;
 - b. Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code Section 1775(c) if the complaint is against a subcontractor;
 - c. Notify the complainant in writing of the resolution of the complaint within ten days after the complaint has been resolved;
 - d. Notify the complainant in writing at least once every 30 days of the status of a complaint that has not yet been resolved; and
 - e. Notify the complainant in writing at least once every 90 days of the status of a complaint that has been resolved by the City's LCP but remains under review or in litigation before another entity.
 4. **With respect to apprenticeship standards**, perform the following:
 - 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 Labor Code Section 1773.3;
- c. refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards;
- d. enforce prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner to ensure that:
 - 1) any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity;
 - 2) apprentices are paid no less than the prevailing apprentice rate;
 - 3) workers listed and paid as apprentices on certified payroll records are, in fact, duly registered as apprentices with the Division of Apprenticeship Standards; and
 - 4) the regular prevailing wage rate is paid to any worker who is not a duly registered apprentice and for all hours worked in excess of the maximum ratio permitted under Labor Code Section 1777.5(g).

5. Maintain records for each public work project subject to prevailing wage requirements which include a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project.

- a. The summary shall be maintained using the form, Single Project Labor Compliance Review and Enforcement Report Form (in Appendix C) following 8 CCR §16434.
- b. 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.
- c. Records for a prevailing wage project shall be retained for the later of:
 - 1) at least one year after the acceptance of the public work or 5 years after cessation of all labor on a public work that has not been accepted; or
 - 2) one year after a final decision or judgment in any litigation under Labor Code Section 1742.
- d. A written summary or report includes information maintained electronically, provided the summary or report can be printed in hard copy form or is in an electronic format that can be transmitted by email or compact disk and would be acceptable for the filing of documents in a federal or state court of record in California.

- 6. Prepare an Audit as a written summary when there has been a violation** of the Public Works Chapter of the Labor Code resulting in the underpayment of wages.
- a. An Audit will include prevailing wage deficiencies for each underpaid worker with any penalties to be assessed under Labor Code Sections 1775 and 1813, as determined 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. An Audit may include, but is not limited to:
 - 1) worker interviews;
 - 2) complaints from workers or other interested persons;
 - 3) all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments;
 - 4) work schedules by days and hours; and
 - 5) disbursement by way of cash, check, or any other method, of funds to a person(s) by job classification and/or skill pursuant to a public works project.
 - b. An Audit will contain details sufficient to enable the Labor Commissioner, if requested to determine the amount of forfeiture under section 16437, 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. To meet such standards, the Audit Reporting Forms (included in the Forms section as Appendix B in this document) will be utilized:
 - 1) Public Works Investigation Worksheet
 - 2) Public Works Audit Worksheet
 - 3) Prevailing Wage Determination Summary
 - c. An Audit report will also include 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.
 - d. Records supporting an Audit shall be maintained by the City 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.

7. **Provide notification of an opportunity to resolve a wage deficiency** to the contractor and affected subcontractor prior to a determination of the amount of forfeiture by the Labor Commissioner after a determination that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared.
 - a. 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(a)(2)(A)(i) and (ii).
 - b. Based upon the contractor's submission, the City's LCP may reasonably conclude the failure to pay correct wages was a good faith mistake and the City 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 the following terms are met:
 - 1) the contractor and/or affected subcontractor have no known prior record of failure to meet their prevailing wage obligations;
 - 2) underpayment of wages to workers is promptly corrected; and
 - 3) proof of such payment is received by the City's LCP.
 - c. For each instance in which a wage deficiency is resolved in accordance with this regulation, the City's LCP shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall include:
 - 1) name and description of the public works project;
 - 2) contractor or affected subcontractor involved;
 - 3) gross amount of wages paid to workers to resolve the prevailing wage deficiency; and
 - 4) a copy of the Audit prepared for this incident including any exculpatory information submitted by the affected contractor or subcontractor.
8. **Recommend a withhold** of penalties, forfeitures, and underpayment of wages for violations of the requirements of this program.
9. **Ensure accord with Labor Code** Section 1771.5(b) that this LCP requires at a minimum the inclusion of appropriate language in bid requests, design-build requests, the contract, and purchase orders concerning California Labor Code Chapter 1 of Part 7 of Division 2:
 - a. A provision that contract payments are not made when payroll records are delinquent or inadequate; and
 - b. A pre-construction conference with listed contractors and subcontractors to discuss applicable federal and state labor law requirements as outlined in the Checklist of Labor Law Requirements (see Attachment A) with copies of forms furnished and discussed.

10. Take cognizance of prevailing wage violations under California Labor Code Section 1726 and take any appropriate action pursuant to and in accordance with that responsibility and authority.

11. Enforce prevailing wage requirements, consistent with the policy of the state by taking reasonable, vigorous and prompt action to determine whether violations exist and enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. This LCP shall neither avoid use of its enforcement authority based on cost considerations nor use its authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not limited to, prolonged or excessive withholdings of contract payments without making a determination a violation has occurred.

To the extent authorized by law, the City or a Joint Powers Authority to which the City is a party, may contract with a third party to initiate and enforce all or part of its LCP provided the third party is approved by the Director to operate an LCP. This shall not limit the City's authority to contract for services for the operation of its own approved LCP, including services by persons licensed or certified by the State of CA to practice law, architecture, engineering or accounting.

A private entity approved by the Director to operate an LCP and that operates an LCP pursuant to a contract with the City or a Joint Powers Authority with the City as a party shall have the same rights and responsibilities as the City in administering the LCP, including but not limited to complying with the conflict of interest provisions of the Political Reform Act including disclosure requirements for LCP employees and consultants who participate in making governmental decisions as defined under Title 2 CA Code of Regulations Section 18701 and maintaining, disclosing, or keeping confidential personnel information, payroll records, and other information and records in accordance with the Labor Code Section 1776, the CA Public Records Act and the Information Practices Act of 1977.

12. Pursue continual development of abilities to perform labor compliance oversight including securing training on enforcement of prevailing wage requirements, monitoring and investigation, and procedural requirements and responsibilities.

13. Designate employees for this program who participate in making decisions for this Labor Compliance Program and require those employees to file Statements of Economic Interest (FPPC Form 700) through the filing officer for the City of San Diego and to comply with other applicable requirements of the Political Reform Act (commencing with Section 87100 of the Government Code) in connection with this work.

14. Any failure of this Labor Compliance Program to comply with an requirement shall not of itself constitute a defense to the failure to pay prevailing wages or meet other obligations imposed by California Labor Code Chapter 1, Part 7, Division 2.

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

1. “Withhold” means to cease payments by the awarding body, its agents or others who pay on its behalf to the 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. A release bond under Civil Code Section 3196 may not be posted for release of funds being withheld for the violation of the prevailing wage law.
2. “Contracts” except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding, pursuant to Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5.
3. “Delinquent payroll records” means those not submitted on the basis set forth in the City Contract and the LCP.
4. “Inadequate payroll records” are any one of the following:
 - a. A record lacking the information required by Labor Code Section 1776.
 - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor.
 - c. 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 (1%) of the entire certified weekly payroll in dollar value and does 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. Prompt correction will stop any duty to withhold if such inaccuracies are *de minimus*.
5. When payroll records are delinquent or inadequate, the withholding of contract payments is required by Labor Code Section 1771.5 (b)(5) and does not require the prior approval of the Labor Commissioner. The City shall 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 City’s LCP has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate. A contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the City’s LCP provides notice that the subcontractor has cured the delinquency or deficiency.
 - a. When contract payments are withheld under this section, the City’s LCP shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following:

- 1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate;
 - 2) the specific amount being withheld; and
 - 3) notification of the contractor's or subcontractor's 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 City's LCP has exceeded its authority under this section.
- b. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
 - c. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations. Pursuant to Labor Code Section 1776, the contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

C. Withholding for Violation for Not Paying the Per Diem Prevailing Wages

1. 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.
2. "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of the contractor or subcontractor.
 - a. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Title 8, CCR Section 16000, *et seq.*
 - b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8 CCR Section 16000 *et seq.* and determined to be 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.
 - e. The withholding of contract payments when, after investigation, it is established that underpayment or violations have occurred requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of these regulations.

3. Provisions relating to the penalties under Labor Code Sections 1775 and 1813:
 - a. Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to the City, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.
 - b. Pursuant to Labor Code Section 1813, the contractor shall, as a penalty to the City on whose behalf the contract is awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week.

D. Forfeitures Requiring Approval by the Labor Commissioner

1. “Forfeitures” are the amounts of unpaid penalties and wages assessed by the City’s LCP and proposed to be withheld pursuant to Labor Code Section 1771.6(a) and includes:
 - a. the difference between prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and
 - b. penalties assessed under Labor Code Sections 1775, 1776 and 1813.
2. “Failing to pay the correct rate of prevailing wages” means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Labor Compliance Program and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code Sections 1742 and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (§§ 17201 through 17270).

Regardless of what is defined as “prevailing wages” in contract terms, noncompliance with the following are considered failures to pay prevailing wages:

- a. Nonpayment of items defined as “Employer Payments” and “General Prevailing Rate of Per Diem Wages” in Title 8 CCR Section 16000 and Labor Code Section 1771.
- b. Failure to provide complete and accurate payroll records, as required by Labor Code Section 1776.
- c. Paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program.
- d. Accepting or extracting kickbacks, in violation of Labor Code Section 1778.

- e. Engaging in prohibited actions related to fees for registration as a public works employee, in violation of Labor Code Section 1779.
 - f. Failure to pay overtime for work over eight (8) hours in any one day or forty (40) hours in any one week, in violation of Labor Code Sections 1813, 1815, or Title 8 CCR Section 16200(a)(3)(F).
- 3. If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1,000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code Section 1771.6(a); (2) an Audit as defined in section 16432(e) of these regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing in nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code Section 1775.
 - 4. For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with section 16437.

E. Determination of Amount of Forfeiture by the Labor Commissioner

- 1. Where the City's 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 and the date that a notice of completion was filed.
 - b. Any other deadline which, if missed, would impede collection.
 - c. Evidence of violation in narrative form.
 - d. Evidence that an "audit" or "investigation" occurred in compliance with Title 8 CCR Section 16432.
 - e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation, or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the awarding body of its position.
 - f. Where the City seeks not only amounts of wages but also a penalty as part of the forfeiture and the contractor has unsuccessfully contended that the cause of violation was a mistake, inadvertence or neglect, a statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775.
 - g. Where the City seeks only wages or a penalty less than fifty dollars (\$50) per day as part of the forfeiture and the contractor has successfully contended that the cause of

violation was a mistake, inadvertence or neglect, then the file should include the evidence as to the contractor's knowledge of its obligation, including the LCP's communication to the contractor of the obligation in the bid invitations, in the pre-construction conference agenda and records, and any other notice given as part of the contracting process. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amounts, pursuant to Labor Code Section 1775.

- h. The previous record of the contractor in meeting prevailing wage obligations.
 - i. Whether the City's LCP is approved on an interim or temporary basis under sections 16425 or 16426 above or extended approval under section 16427.
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 in no event less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.
 3. A copy of the file or report shall be served on the contractor at the same time it is sent to the Labor Commissioner.

The City may exclude from the documents served on the contractor/subcontractor or surety copies of documents secured from these parties 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 penalty and/or wages due.
5. The determination of the forfeiture by the Labor Commissioner is effective on the following date for Labor Compliance Programs having initial approval pursuant to Section 16426 of the California Code of Regulations:
 - a. On the date the Labor Commissioner serves by first class mail on the City and on the contractor, an endorsed copy of the proposed forfeiture, or a drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor is effective if made on the last address supplied by the contractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within thirty (30) days of receipt of the proposed forfeiture.
 - b. If the City's LCP is operating with extended authority under Section 16427, 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. In such cases, 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.

F. Liquidated Damages

1. In accordance with Labor Code Section 1742.1 (a) after 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issues 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.
 - a. 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.
 - b. If the contractor or subcontractor demonstrates to the satisfaction of the Director 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 discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.
2. Any liquidated damages shall be distributed to the employee along with the unpaid wages.
3. Section 203.5 shall not apply to claims for prevailing wages under this chapter.
4. If within 60 days following service of the assessment or notice, the full amount including penalties has been deposited with the DIR to hold in escrow pending administrative and judicial review, there shall be no liability for liquidated damages, under Section 1742.1 (b) notwithstanding subdivision (a). The DIR will release such funds, plus any earned interest, at the conclusion of all administrative and judicial review to the persons or entities found to be entitled to such funds.

G. Request for Review

1. A contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b) and may request review of a City of San Diego LCP enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and regulations found in sections 17201-17270 of Title 8 of the California Code of Regulations.
2. The City's LCP shall have the rights and responsibilities of the Enforcing Agency (as defined in section 17202(f) of Title 8 of the California Code of Regulations), in responding to such a request for review, including but not limited to:
 - a. serve notices;
 - b. transmit the Request for Review to the hearing office;

- c. provide an opportunity to review evidence in a timely manner;
 - d. participate through counsel in all hearing proceedings; and
 - e. meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.
3. If a contractor or subcontractor seeks review of a City LCP enforcement action, the Labor Commissioner may intervene to represent the City or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both.
 4. Except in cases where the Labor Commissioner has intervened, the City's LCP has the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments 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.
 5. The City's LCP shall document the reasons for any settlement or request for dismissal and make that documentation available to the Labor Commissioner upon request whenever the City settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742.

H. 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 City shall deposit penalties and forfeitures into its General Fund.
2. Where collection of fines, penalties or forfeitures results from court action to which the Labor Commissioner and the City are both parties, the fines, penalties or forfeitures shall be divided between the General Funds of the State and City, as the court may decide.
3. All amounts recovered by suit brought by the Labor Commissioner, and to which the City is not a party, shall be deposited in the General Fund of the State of California.
4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code Section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code Section 96.7.

I. Debarment Policy

It is the policy of the City that the public works prevailing wage requirements set forth in the California Labor Code, Section 1720-1861, be strictly enforced. In furtherance thereof,

construction contractors and subcontractors found to be repeat violators of the California Labor Code shall 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 the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the labor code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

SECTION VII NOTICE OF WITHHOLDING AND REVIEW THEREOF

A. Notice of Withholding of Contract Payments

After determination of the amount of forfeiture by the Labor Commissioner, the City shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body 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 awarding body. A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by the City is found as Attachment D to this document.

B. Review of NWCP

1. An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written request to the office of the LCP that appears on the NCWP within sixty (60) days after service of the NWCP. If no hearing is requested within sixty (60) days after service of the NWCP, the NWCP shall become final.
2. Within ten (10) days following the receipt of the request for review, the LCP shall transmit to the Office of the Director-Legal Unit the request for review and copies of the Notice of Withholding of Contract Payments, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. A copy of the required Notice of Transmittal to be utilized by the City is found as Attachment E to this document.
3. Upon receipt of a timely request, a hearing shall be commenced within ninety (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 department, but shall not be an employee of the Division of Labor Standards

Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the LCP at the hearing within twenty (20) days of the receipt of the written request for a hearing. Any evidence obtained by the LCP subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is found as Attachment F to this document.

The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within forty-five (45) days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying or dismissing the assessment. The decision of the director shall consist of a notice of findings and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP. Within fifteen (15) days of 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.

The Director has adopted regulations setting forth procedures for hearings under this subdivision. The regulations are found as Attachment G to this document.

4. 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 forty-five (45) days after service of the decision. If no petition for writ of mandate is filed within forty-five (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.
5. 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.
6. 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. The Clerk shall not charge for the service performed by him or her pursuant to this section.
7. This procedure shall provide the exclusive method for review of a NWCP by the City to withhold contract payments pursuant to Section 1771.7.

**SECTION VIII
DISTRIBUTION OF FORFEITED SUMS**

Before making payments to the contractor of money due under a contract for public work, the City shall withhold and retain therefrom all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the City until receipt of a final order that is no longer subject to judicial review.

Pending a final order or the expiration of the time period for seeking review of the notice of the withholding, the City shall not disburse any contract payments withheld.

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 shall have priority over all Stop Notices filed against the prime contractor.

Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the City that has enforced this chapter pursuant to Section 1771.7.

**SECTION IX
OUTREACH ACTIVITIES**

To ensure the successful implementation of the City's Labor Compliance Program, there shall be several outreach activities initiated and maintained.

A. Providing Information to the Public

Labor Compliance Officers shall be responsible for communication and outreach activities relative to public information on the City's LCP:

1. Regular presentations to contractors at all City Pre-Bid Conferences and Pre-Construction Conferences.
2. Ongoing communication via correspondence and with workers at City job sites when review of the certified payroll records reveals the possibility of prevailing wage violations.
3. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting with the City.

B. In-service Management Training on the Labor Compliance Program

The Labor Compliance Program shall provide ongoing management in-service training and workshops for City staff relative to the terms, requirements and administration of this Labor Compliance Program.

SECTION X ANNUAL REPORTS

A. Annual Report on Prevailing Wage Monitoring

The City's LCP will submit to the Mayor with copies to City Council members an annual report on prevailing wage monitoring in the format required by the DIR (LCP AR1) which will include the following information:

1. Progress report on the LCP in sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the LCP.
2. Annual reporting period (based on DIR designation) summary of:
 - a. Monitoring activities;
 - b. Record keeping activities;
 - c. Labor Code violations identified and reported to DLSE;
 - d. Statistical analysis of the prevailing wage violations on City public works projects;
 - e. Summary of outreach activities;
 - f. Certification of compliance with conflict of interest disclosure requirements as defined by Title 2, CA Code of Regulations section 18701; and
 - g. Current statement disclosing information required under section 16426 (a)2), (3) and (5).

B. Annual Report on the LCP to the Director of the Department of Industrial Relations

The City's LCP will submit to the Director of the Department of Industrial Relations an annual report on the operation of its LCP within sixty (60) days after the end of its annual reporting period as designated by the DIR's approval of the LCP. The annual report shall be made on the appropriate form LCP-AR1 and will contain, as a minimum, the following information:

1. Number of public works contracts awarded which are subject to prevailing wages and their total value.
2. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates, the total amount withheld from money due the contractors and the total amount recovered by action in any court of competent jurisdiction.
3. A summary of penalties and forfeitures imposed and withheld or recovered in a court of competent jurisdiction.

4. A special summary of all audits that were conducted upon request of Labor Commissioner.
5. A certification of compliance with conflict of interest disclosure requirements by employees and consultants who participate in making governmental decisions, as defined under Title 2, California Code of Regulations, section 18701 and a current statement disclosing the information required under section 16426(a)(2), (3) and (5).
6. Information in the Annual Report shall be reported in sufficient detail to afford a basis to evaluate the scope and level of enforcement activity of the LCP.

Copies of this report will be distributed to the Director of the Department of Industrial Relations and the Chief Operating Officer.

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

**CHECKLIST OF LABOR LAW REQUIREMENTS
FOR REVIEW AT PRE-CONSTRUCTION CONFERENCE**

(In accordance with CCR Section 16421 and 16430)

Federal and State labor law requirements applicable to the contract are composed of, but not limited to, the following:

- 1. Payment of Prevailing Wage Rates** The award of this public works contract requires that all workers employed on this project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors.

The contractor is responsible to obtain and comply with all applicable general prevailing wage rates for tradesworkers and any rate changes which may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.

- 2. Apprentices** It is the duty of the contractor and subcontractors to employ registered apprentices on this public works project per Labor Code Section 1777.5.
- 3. Penalties** Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit upon request accurate certified payroll records, failure to employ apprentices and failure to pay employees for all hours worked at the correct prevailing wage rate in accordance with Labor Code Sections 1775, 1776, 1777.7, and 1813.
- 4. Certified Payroll Records** Per Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker or other employee hired in connection with this public works project.

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 to his or her authorized representative on request.

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly. If there has been no work performed during a given week, the Certified Payroll Record for that week shall be annotated, "No Work."

- 5. Nondiscrimination in Employment** Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public

Contract Code; and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunities as delineated below:

Equal Employment Poster The equal employment poster shall be posted at the job site in a conspicuous place visible to employees and employment applicants for the duration of the project.

Records The contractor and each subcontractor shall maintain accurate records of employment information as required by the *Monthly Employment Report*. This report shall specify ethnicity and gender for each employee in a craft, trade or classification.

Reports A *Monthly Employment Report* for the contractor and for each of its subcontractors is required to be completed and submitted each month by no later than the fifth day of that month. Reports are to be for the previous month's work and are to be project specific. If no work was performed during that month, the form shall clearly state "No Work."

6. **Kickback Prohibited** Per Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages.
7. **Acceptance of Fees Prohibited** Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work [Labor Code Section 1779] or for filling work orders on public works contracts [Labor Code Section 1780].
8. **Listing of Subcontractors** Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent (0.5%) of the total effort [Government Code Section 4100, *et seq.*].
9. **Proper Licensing** Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed [Labor Code Section 1021 and Business and Professions Code Section 7000, *et seq.* under California Contractors License Law].
10. **Unfair Competition Prohibited** Contractors and subcontractors are prohibited from engaging in unfair competition [Business and Professions Code Sections 17200-17208].
11. **Workers' Compensation Insurance** All contractors and subcontractors are required to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of Labor Code Section 3700 [Labor Code Section 1861].
12. **OSHA** Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.

13. Undocumented Workers Contractors and subcontractors are required to follow federal regulations prohibiting the hiring of undocumented workers and requiring proof of eligibility/citizenship from all workers.

14. Itemized Wage Statements Contractors and subcontractors are required to observe Labor Code section 226 and provide itemized wage statements to employees.

In accordance with Federal and State laws, and with City policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

For the Contractor:

For the City of San Diego

Signature Date

Signature Date

Printed Name

Printed Name

ATTACHMENT B

CITY OF SAN DIEGO LABOR COMPLIANCE PROGRAM

AUDIT RECORD FORM (For Use with CCR Section 16432 Audits)

An audit record is sufficiently detailed to “verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2,” 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 thirty (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 [Labor Code Section 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 [Title 8 CCR Section 16432] and pay not less than required for hours worked in excess of eight (8) hours/day and forty (40) hours/week [Title 8 CCR Section 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:

- a. All elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Section 16000, which 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 Program Manager's office and posted at the public works job site.
- b. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which 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 Labor Compliance Officer's office and posted at the public works job site.

NOTE: Audit Record Worksheet forms are included in the "Forms" section of this handbook:

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

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:

<u>Contractor/Subcontractor</u>	<u>For weeks ending ("w/e") through w/e</u>
_____	_____
_____	_____
_____	_____
_____	_____

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 CA 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

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

NOTICE OF DEADLINES FOR FORFEITURES
(Under CCR Section 16437)

TO: (NAME OF CONTRACTOR)

This document requests the Labor Commissioner of California to approve a forfeiture of money you would otherwise be paid. The City Labor Compliance Officer is asking the Labor Commissioner of California to agree, in twenty (20) days, that the enclosed Evidence Report and package of materials indicates that you have violated the law.

Your failure to respond to City's request that the Labor Commissioner approve a forfeiture, by writing to the Labor Commissioner within twenty (20) days of the date of service (the date of postmark) of this document on you, may lead the Labor Commissioner to affirm the proposed forfeiture and may also end your right to contest those amounts further.

You must serve any written response on the Labor Commissioner and the City's Labor Compliance Officer by return receipt requested/certified mail. If you serve a written explanation, with evidence, as to why the violation did not occur or why the penalties should not be assessed, within the twenty (20)-day period, it will be considered.

If you change your address, or decide to hire an attorney, it is your responsibility to advise the City Labor Compliance Officer by certified mail. Otherwise, notices will be served at your last address on file, and deadlines may pass before you receive such notice.

ATTACHMENT E

LABOR COMPLIANCE PROGRAM City of San Diego 202 "C" Street, Mail Station 56P San Diego, CA 92101 Phone: 619 235-5785 Fax: 619 235-5209	(SEAL)
Date:	In Reply Refer to Case No.:

NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS

Awarding Body	Work Performed in County of
Project Name	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 the City of San Diego ("LCP") 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:

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

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

The Labor Compliance Program has determined the amount of penalties assessed under Labor Code Section 1776 is: \$_____

LABOR COMPLIANCE PROGRAM
City of San Diego

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 by transmitting a written request to the office of the Labor Compliance Program that appears below within sixty (60) days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

City of San Diego Labor Compliance Program
Review Office-Notice of Withholding of Contract Payments
202 "C" Street, Mail Station 56P
San Diego, CA 92101

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 twenty (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.

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 thirty (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 the 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:

City of San Diego Labor Compliance Program
Review Office-Notice of Withholding of Contract Payments
202 "C" Street, Mail Station 56P
San Diego, CA 92101

LIQUIDATED DAMAGES

In accordance with Labor Code Section 1742.1 (a) after 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issues 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. Additionally, 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. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter. Under Section 1742.1 (b) notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the department to hold in escrow pending administrative and judicial review. The department shall release such funds, plus any earned interest, at the conclusion of all administrative and judicial review to the persons or entities who are found to be entitled to such funds.

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

Distribution:

Prime Contractor
Subcontractor
Surety(s) on Bond

ATTACHMENT F

<p>LABOR COMPLIANCE PROGRAM City of San Diego Review Office - Notice of Withholding of Contract Payments 202 "C" Street, Mail Station 56P San Diego, CA 92101 Phone: 619 235-5785 Fax: 619 235-5209</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
City of San Diego

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.

ATTACHMENT G

<p>LABOR COMPLIANCE PROGRAM City of San Diego Review Office - Notice of Withholding of Contract Payments 202 "C" Street, Mail Station 56P San Diego, CA 92101 Phone: 619 235-5785 Fax: 619 235-5209</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 twenty (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:

**LABOR COMPLIANCE PROGRAM
City of San Diego
202 "C" Street, Mail Station 56P
San Diego, CA 92101
Phone: 619 235-5785
Fax: 619 235-5209
Attention: Labor Compliance Program Manager**

REQUEST TO REVIEW EVIDENCE

To: LABOR COMPLIANCE PROGRAM
City of San Diego
202 "C" Street, Mail Station 56P
San Diego, CA 92101
Phone: 619 235-5785
Fax: 619 235-5209

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.: _____

PREVAILING WAGE HEARING REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 8, CHAPTER 8, SUBCHAPTER 6
(SECTIONS 17201 through 17270)

C O N T E N T S

ARTICLE 1. GENERAL

- 17201. Scope and Application of Rules.
- 17202. Definitions.
- 17203. Computation of Time and Extensions of Time to Respond or Act.
- 17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.
- 17205. Authority of Hearing Officers.
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ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW

- 17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.
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[THERE IS NO ARTICLE 5]

ARTICLE 6. DECISION OF THE DIRECTOR

- 17260. Decision.
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ARTICLE 7. TRANSITIONAL RULE

- 17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

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 Apprenticeship 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 (d) 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 (e) 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 whom 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 which shall appear 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.

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: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1985 through 1988, Code of Civil Procedure; section 1563, Evidence Code; sections 11450.20 through 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: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 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: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 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 451, 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 through 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 through 11435.65, and 68560 through 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: 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.

SECTION II

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

Implementation Plan

SECTION II

IMPLEMENTATION PLAN

- Labor Compliance Officers receive construction contract awards/work schedules from various City Departments including the Public Utilities Department and Engineering & Capital Projects.
- Labor Compliance Officers participate in Pre-Construction Conference.
- Labor Compliance Officers conduct on-site interviews with contractors' employees and include interview sheets in Project Wage Files.
- Labor Compliance Officers verify information from certified payroll records.
- Labor Compliance Officers notify contractor in writing of any discrepancies with certified payroll records.
- If clarification/correction is not received from the contractor within two (2) weeks, Labor Compliance Officers will commence an investigation.
- 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.
- Labor Compliance Officers prepare and submit public works violation reports to Labor Commissioner as required.
- Labor Compliance Officers receive *Monthly Employment Report* from the contractor and its subcontractors; Program Manager maintains database of this information for year-end report.
- Labor Compliance Officers communicate on a regular basis with contractors, workers, building and trade organizations and other community entities and in-service management to City personnel.
- Labor Compliance Officers prepare and submit annual program reports to the Mayor with a copy provided to City Council members and the Director of the Department of Industrial Relations.
- Labor Compliance Program Administrator manages all facets and is the primary contact for the City's Labor Compliance Program.

SECTION III

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

Operational Manual

SECTION III

OPERATION MANUAL

Site Visitations

1. Safety is the paramount factor for any site visit to any City construction projects. Labor Compliance Officers shall not enter any area that appears unsafe. Labor Compliance Officers are expected to exercise reasonable caution at all times.
2. All authorized personnel visiting any City construction site are required to be properly identified as a City representative by wearing visible picture ID's (badge) or identifying themselves as such. Additionally, all authorized personnel are required to wear hard hats, safety shoes and safety vests.
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, Labor Compliance Officers will check in at the site's administrative office. Labor Compliance Officer will identify self and state the purpose of the visit. Labor Compliance Officer will sign in if required to do so. If the site superintendent cites some reason that denies access to the site, Labor Compliance Officer will promptly and politely remove self and make a note of this occurrence and include it in a report for the Project Wage File.
5. Labor Compliance Officer will check to see the following are displayed in the contractor's trailer:
 - EOE Posters
 - Posted prevailing wage sheets
 - Sign-in Log
 - Listing of subcontractors on site

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

6. There will be times when the site superintendent is somewhere on the site and/or there is no contractor present in the trailer. Labor Compliance Officers should check in at the City's Resident Engineer's trailer. The RE will also know which contractors are on site at that time. If all trailers are empty or locked, Labor Compliance Officers should locate the site superintendent or RE on the site prior to commencing interviews.

Interviewing

1. Once the Labor Compliance Officer has checked in with the site superintendent and obtained access to the site, the Labor Compliance Officer should 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 self, indicating they are a City representative needing only a few seconds of time to ask some very generic questions to ensure receipt of the proper rate of pay for the type of work performed. Again, no person's safety should be endangered in conducting these interviews. For instance, 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 but should be allowed to continue working until interviewed individually.

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, then that person should be interviewed if possible. If the Labor Compliance Officer is told the rest of a 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 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. If someone declines 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 City 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 your report to the Program Manager.
5. If an interviewee refuses to disclose a social security number, those wishes should be respected. However, interviewees should be assured that all information given is kept strictly confidential.
6. If an interviewee does not know their rate of pay (most tradespersons don't know), 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/she is an apprentice, the Labor Compliance Officer should make sure to ask "What period?" These can be anywhere from 1st to 10th. If the interviewee is not sure, ask how many years have been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.
8. Labor Compliance Officer's should ALWAYS thank each interviewee for their time.

9. Labor Compliance Officer's 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 contact the site inspector or job superintendent immediately and make a note on the site visitation log of what was observed. Upon return to the office, Labor Compliance Officers should report findings to the Program Manager.

Reporting

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

SECTION IV

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

Procedures

SECTION IV

PROCEDURES

Certified Payroll Verification Procedures

1. Various City departments including the Public Utilities Department and Engineering & Capital Projects will provide the Labor Compliance Officers with construction work schedules.
2. Upon receipt of certified payroll reports from prime and subcontractors once a week, Labor Compliance Officers will compare information from employee interviews, Daily Diaries and *Monthly Employee Reports* to the contractors certified payroll reports and the prevailing wage schedule.
3. Labor Compliance Officers will compare name and social security number with trade classification listed.
4. Labor Compliance Officers will ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule and job descriptions.
5. Labor Compliance Officers will check for employment of apprentices, correct rate of pay for period of apprenticeship and proper hourly ratio to journey workers.
6. Labor Compliance Officers will contact the contractor in writing and send by certified mail any inaccuracies in the verification of its certified payroll.
7. If clarification/correction is not received within two weeks from the contractor, the Labor Compliance Officer will commence an investigation.
8. Upon completion of an investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
9. Labor Compliance Officers will retain all original interview forms and annotate databases as applicable.

Site Monitor Procedures

1. Labor Compliance Officers will receive construction site work schedules from project managers or resident engineers.
2. Labor Compliance Officers will check in with 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 infractions observed while conducting an interview.
5. Interview forms will be included in Project Wage Files.
6. Any infractions observed by the Labor Compliance Officer will be reported to the Labor Compliance Program Administrator.

SECTION V

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

Forms

FORMS

- Labor Compliance Prevailing Wage Handout
- California Code of Regulations Checklist [8 CCR §16421] – Appendix A
- Apprentices on Public Works
- Excerpts from California Labor Code Relating to Apprentices on Public Works (DAS 10)
- Summary of Apprentice Requirements
- Public Works Contract Award Information (DAS 140)
- Training Funds Contributions (CAC 2)
- Contractor Fringe Benefit Statement
- Monthly Employment Report (sample)
- Certified Payroll Reporting (sample)
- DIR Public Works Payroll Reporting Form A-1-131 [8 CCR §16401]
- Prevailing Wage Determination (sample)
- Labor Compliance Site Visitation Interview Form
- Site Visitation Log
- Pre-Award Letter (sample)
- Post-Award Letter (sample)
- First Request for Certified Payrolls Letter (sample)
- Missing Documents List
- Certified Payroll Worksheet
- Certified Payroll Correction Letter (sample)
- Request for Approval of Forfeiture Amount
- Audit Record Worksheets [8 CA Code of Regulations §16432] – Appendix B
 - Public Works Investigation Worksheet
 - Public Works Audit Worksheet
 - Prevailing Wage Determination Summary
- Single Project Labor Compliance Review and Enforcement Report Form [8 CCR §16434]
– Appendix C

PREVAILING WAGE CONTRACTOR HANDOUT



THE CITY OF SAN DIEGO
202 C Street, MS 56P
San Diego, CA 92101

THE PUBLIC WORKS REQUIREMENTS ARE:

- (A) the appropriate number of apprentices is on the job site, as set forth in Labor Code Section 1777.5.
- (B) worker's compensation coverage, as set forth in Labor Code Sections 1860 and 1861.
- (C) keep accurate records of the work performed on the public works project, as set forth in Labor Code Section 1812.
- (D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in 8 CCR Section 16400(e).
- (E) other requirements imposed by law.
- (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 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.

THE CONTRACTOR AND SUBCONTRACTOR SHALL:

- (1) Pay not less than the prevailing wage to all workers, as defined in CCR's 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); and
- (7) Comply with Section 16101 of these regulations 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.
- (10) Comply with other requirements imposed by law.

APPRENTICE TRAINING

SEE LABOR CODE SECTION 1777.5 (e)

(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.

APPRENTICE TRAINING CONTRIBUTION REQUIREMENTS

SEE CALIFORNIA CODE OF REGULATIONS:
TITLE 8, ARTICLE 4,

16200(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. (if the trust fund is unable to accept such contributions) an equivalent amount shall be paid to the California Apprenticeship Council (CAC) administered by DAS.

3. If neither of the above will accept the funds, cash pay shall be as provided for in ccr's section 16200(a)(3)(I).
SEE CALIFORNIA CODE OF REGULATIONS:
TITLE 8, ARTICLE 10, SECTION 230.2

§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, (Rev. 10/91), or 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, GROUP 3, 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

No effect once the contract notice to bidders is published.

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 a double asterisks.*

CREDITS, FOR FRINGE BENEFIT PAYMENTS

SEE CALIFORNIA CODE OF REGULATIONS:
TITLE 8, GROUP 3, ARTICLE 4,

16200(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 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.

And memo from the division of industrial relations dated 11-15-90.

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.

EMPLOYEES SUBJECT TO PREVAILING WAGES

SEE LABOR CODE SECTION 1771, 1772 & 1776
City of San Diego General Conditions require all workers on the project shall be paid the wage of the trade they are most closely related to. This includes:

anyone 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, SECTION 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, GROUP 3, 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

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

3) 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:

(A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;

(B) retirement plan benefits;

(C) vacations and holidays with pay, or cash payments in lieu thereof;

(D) compensation for injuries or illnesses resulting from occupational activity;

(E) life, accidental death and dismemberment, and disability or sickness and accident insurance;

(F) supplemental unemployment benefits;

(G) 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;

(H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;

(I) See definition of "Employer Payments," (3).

(J) other bonafide benefits for employees, their families and dependents, or retirees as the Director may determine; and

(4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.

FRINGE BENEFITS DO NOT INCLUDE

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

(b) 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. Interested Party. When used

with reference to a particular prevailing wage determination made by the Director, includes:

PAYROLL RECORDS INCLUDE

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

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.

PERSONS REQUIRED TO RECEIVE PREVAILING WAGES

SEE LABOR CODE SECTIONS:

1771....., 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.

City of San Diego General Conditions require all workers not in a prevailing wage classification to be paid the wage most closely related to the craft or trade they are involved with.

WITHHOLDING PAYMENTS, JUSTIFICATION

SEE LABOR CODE SECTION: 1727 & 1771.5(b),(5)
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 5, SECTION

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.

(b) "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.

(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:

- (1) A record lacking the information required by Labor Code Section 1776;
- (2) A record which contains the required information but not certified, or certified by someone not an agent of the contractor or subcontractor;
- (3) 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 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 Title 8 CCR Section 16401.

(e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5 (b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall 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 Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; provided that a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance program provides notice that the subcontractor has cured the delinquency or deficiency.

(f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following:

- (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate;
 - (2) specifies the amount being withheld; and
 - (3) 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 Labor Compliance Program has exceeded its authority under this section.
- (g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
- (h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

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 a "Public Works"

Decision 94-017: stands for the payment of waste processors off site if the waste is exclusively from a "Public Works"

COURT DECISIONS:

Standard Traffic Services v. Department of Transportation (case 132667) Shasta: partners are due prevailing wages if working on a "Public Works"

CALIFORNIA CODE OF REGULATIONS

APPENDIX A: Checklist of Labor Law Requirements to review at pre-job conference, Section 16421, with suggested Certification by subcontractor.

The Federal and State Labor law requirements applicable to the contract are composed of but not limited to the following items:

Project _____

Contractor's Signature _____ **Date** _____

	Initials of City's Labor Compliance Representative	Initials of awarded Contractor's Representative
(1) The contractor's duty to pay prevailing wages under Labor Code Section 1770 <i>et seq.</i> , should the project exceed the exemption amounts;		
(2) The contractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;		
(3) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;		
(4) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776.; and penalties for failure to do so under Labor Code Section 1776(g);		
(5) The prohibition against employment discrimination under Labor Code Section 1777.6, the Government Code, and Title VII of the Civil Rights Act of 1964;		
(6) The prohibition against accepting or extracting kickbacks from employee wages under Labor Code Section 1778;		
(7) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filing work orders on public works under Labor Code Section 1780;		
(8) The requirement to list all subcontractors under Public Contract Code Section 4100 <i>et seq.</i> ;		
(9) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 <i>et seq.</i> ;		
(10) The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;		
(11) The requirement that the contractor be properly insured for Workers Compensation under Labor Code Section 1861;		
(12) The requirement that the contractor abide by the 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 under Labor Code section 226.		

**CITY OF SAN DIEGO LABOR COMPLIANCE PROGRAM
CALIFORNIA CODE OF REGULATIONS CHECKLIST**

After the City awards a public works contract and prior to commencement of work on that contract a mandatory Pre-Construction Conference shall be conducted by the Labor Compliance Officer with the contractor and those subcontractors listed in its bid documents. The following is a listing of labor law requirements applicable to a public works contract:

1. Payment of Prevailing Wage Rates

- a. All workers on the project are to be paid not less than the specified general prevailing wage rate by the contractor and its subcontractors unless subject to exemption.
- b. The contractor is responsible for complying with all applicable general prevailing wage rates for tradesworkers and any rate changes which occur during term of the contract.
- c. Prevailing wage rates and rate changes must be posted at the job site for workers to view.
- d. The Labor Compliance Officer will provide contractors with copies of prevailing wage rates upon request as well as copies of any revisions to prevailing rate wages received from the Department of Labor.

2. Apprentices It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects.

3. Penalties

- a. Penalties including forfeitures and debarment shall be imposed for contractor/subcontractor failure to pay prevailing wages for nonexempt projects and for failure to employ apprentices.
- b. Penalties shall also be imposed for failure to provide certified payroll records and to provide them by the date requested, failure to provide *Monthly Employment Reports* by the date requested, failure to pay workers for work in excess of eight (8) hrs/day for forty (40) hrs/week and for failure to be a properly licensed contractor or subcontractor.

4. Certified Payroll Records

- a. Contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number and work classification of each employee, the straight time and overtime hours worked each day and each week, the fringe benefits and the actual per diem wages paid to each journeyman, apprentice, worker or other employee hired in connection with a public works project.
- b. Employee payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor/subcontractor or shall be furnished to any employee or to his or her authorized representative on request.
- c. Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls to the Labor Compliance Officer when requested to do so but no less often than once a month. Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package. In the event that no work has been performed during a given week the Certified Payroll Record shall be annotated with the words "No Work" for that week.

5. Nondiscrimination in Employment--Equal Opportunity All contractors and subcontractors are required to avoid discrimination in employment and shall make good faith efforts to comply with the City's goal in hiring Disabled Veteran Business Enterprises.

6. **Kickback Prohibited** Contractors and subcontractors are prohibited from accepting or extracting “kickbacks” from employee wages.
7. **Acceptance of Fees Prohibited** Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work or for filling work orders on public works contracts.
8. **Listing of Subcontractors** Contractors are required to list all subcontractors hired to perform work on public works project when that work is equivalent to more than one-half of one percent (.5%) of the total effort.
9. **Proper Licensing** All contractors and subcontractors are required to be properly licensed.
10. **Unfair Competition** Contractors and subcontractors are prohibited from engaging in unfair competition.
11. **Workers’ Compensation Insurance** All contractors and subcontractors are required to be insured against liability for workers compensation or to undertake self-insurance.
12. **OSHA** Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.
13. **Undocumented Workers** Contractors and subcontractors are required to follow federal regulations prohibiting the hiring of undocumented workers and requiring proof of eligibility/citizenship from all workers.
14. **Itemized Wage Statements** Contractors and subcontractors are required to observe Labor Code section 226 and provide itemized wage statements to employees.

In accordance with Federal and State laws and with City policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements and fully understands that failure to comply with these requirements will subject it to the penalties cited herein. The contractor also herein certifies that it has been provided with a copy of the City Labor Compliance Program Package which includes:

1. Labor Law Requirements Checklist (included herein)
2. Applicable General Prevailing Wage Rate Determinations
3. Blank Certified Payroll Record forms
4. Fringe Benefit Statements
5. Blank Monthly Employment Report forms
6. State Apprenticeship Requirements (DAS-140)
7. Copy of Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861)

It is the contractor’s responsibility to provide copies of the City’s Labor Compliance Program Package to all listed subcontractors and to any substitutes subcontractors.

Contractor

Date

Name/Title of Contractor Authorized Representative

Name/Title of City of San Diego Labor Compliance Representative

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
28 CIVIC CENTER PLAZA, ROOM 525
SANTA ANA, CA 92701

TO ALL PUBLIC WORKS CONTRACTORS

Congratulations on having been awarded a public works project.

The Division of Apprenticeship Standards wishes to bring to your attention your responsibilities under California Labor Code Section 1777.5 Apprentices on Public Works. (Excerpts from California Labor Code relating to apprentices on public works. DAS-10 is attached).

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

- Submit contract award information within ten (10) days of contract award, to the applicable Joint Apprenticeship Committee, which shall include an estimate of Journeymen hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. This information may be submitted on the attached form. DAS 140.
- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentices work for every five hours of labor performed by a journeyman.
- Pay the apprentice rate on public works projects only to those apprentices who are registered as defined in Labor Code Section 3077.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contribution to the California Apprenticeship Council (CAC) at P.O. Box 420603, San Francisco, CA 94142.
- Training fund contributions to the CAC are due and payable on the 15th day of each month for work performed during the preceding month.
- Training fund contributions to the CAC shall be paid by check and shall be accompanied by a completed form CAC-2 (attached).

Failure to comply with the provisions of the Labor Code Section 1777.5 may result in the loss of the right to bid on all public works projects for a period of one to three years and the imposition of a civil penalty of \$100.00 for each calendar day of noncompliance. Contractors should provide a copy of this material to each subcontractor.

If the Division of Apprenticeship Standards can be of assistance to you, please contact our office at (714) 558-4126.

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

Chapter 1 of Division 2
APPRENTICES ON PUBLIC WORKS

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. 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 Apprenticeship Standards.

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, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards 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, the Division of Apprenticeship Standards, 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 shall 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.

(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) 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, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as 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.

(f) 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.

(g) The contractor or subcontractor shall have 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 twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or 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.

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

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, 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.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

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 (1) the apprenticeship standards and apprentice agreements under which he or she is training or (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, approval or denial of the

apprenticeship program 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 the 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 Division of Apprenticeship Standards, 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 Division of Apprenticeship Standards 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 will 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) 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. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program in proportion to the number of hours of training provided by the program for which the program did not receive contributions, weighted by the regular rate of contribution for the program. These grants shall be made from funds collected by the California Apprenticeship Council during the fiscal year pursuant to this subdivision from contractors that employed registered apprentices but did not contribute to an approved apprenticeship program. All these funds received during the fiscal year shall be distributed as grants.

(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) or 20 working days.

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.6. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077, of such employee.

1777.7. (a) A contractor or subcontractor that knowingly violates 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 shall be based on consideration whether the violation was a good faith mistake due to inadvertence. 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, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) (1) In the event a contractor or subcontractor is determined by the Administrator of Apprenticeship to have knowingly violated any provision of Section 1777.5, the Administrator shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive 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 Administrator of Apprenticeship.

(2) An affected contractor or subcontractor may obtain a review of the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the order of debarment or civil penalty. If the Administrator receives no request for review within 30 days after service, the order of debarment or civil penalty shall become final for the period authorized.

(3) Within 20 days of the timely receipt of a request for hearing, the Administrator shall provide the contractor or subcontractor the opportunity to review any evidence the Administrator may offer at the hearing. The Administrator shall also promptly disclose to the contractor or subcontractor any nonprivileged documents obtained after the 20-day time limit.

(4) Within 90 days of the timely receipt of the a request for hearing, a hearing shall be commenced before an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to Section 11502 of the Government Code. The contractor or subcontractor shall have the burden of showing compliance with Section 1777.5. The decision to debar shall be reviewed by a hearing officer or court only for abuse of discretion.

(5) Within 45 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the debarment or civil penalty. The decision shall contain a notice of findings, findings, and an order. This decision shall be deemed the final decision of the Administrator and shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Administrator. Within 15 days of issuance of the decision, the hearing officer may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(6) An affected contractor or subcontractor may obtain review of the final decision of the Administrator 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 final decision to debar or to assess a civil penalty. If no petition for a writ of mandate is filed within 45 days after service of the final decision, the order shall become final. If the petitioner claims 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 light of the entire record.

(7) The Administrator may file a certified copy of a final order 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.

(c) 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 for 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 an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(d) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first-time violation and with the concurrence of the apprenticeship program, 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.

(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) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

Division of Apprenticeship Standards

APPRENTICES ON PUBLIC WORKS

SUMMARY OF REQUIREMENTS

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

- Submit contract award information to the applicable joint 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 will be employed.
- The contract award information shall be in writing, and shall be provided to the applicable apprenticeship committee within 10 days of the date of the agreement or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work. [California Code of Regulations, Title 8, Section 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.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contributions to the California Apprenticeship Council, P.O. Box 420603, San Francisco, CA 94142. Training contributions to the Council are due and payable on the 15th of the month for work performed during the preceding month.
- Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC2 form, Training Fund Contributions, or the following information [California Code of Regulations, Title 8, Section 230.2 c]:
 1. The name, address and phone 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(s).
- Pay the apprentice rate on public works projects only to those apprentices who are registered, as defined in Labor Code Section 3077:

Sec. 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 no less than 2,000 hours or reasonably continuous employment for such person for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

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 information to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENCE NO
MAILING ADDRESS, NUMBER & STREET	AREA CODE & TELEPHONE NO
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT	ESTIMATED NUMBER OF JOURNEYMAN HOURS
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	OCCUPATION OF APPRENTICE
	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 Committee)
2. We will comply with the standards of _____ Apprenticeship Committee for the duration of this job only. (Enter name of Committee)
3. We will employ and train apprentices in accordance with the California Apprenticeship Council Regulations, including s/s 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**

**CITY OF SAN DIEGO
CONTRACTOR FRINGE BENEFIT STATEMENT**

Contract Number / Name:	Contract Location:	Today's Date:
-------------------------	--------------------	---------------

Contractor / Subcontractor Name:	Business Address:
----------------------------------	-------------------

In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below.

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training and/or Other	\$ _____	PAID TO: Name: _____	Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training And/or Other	\$ _____	PAID TO: Name: _____	Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training And/or Other	\$ _____	PAID TO: Name: _____	Address: _____

Supplemental statements must be submitted during the progress of work should a change in rate of any of the classifications be made.

Submitted: Contractor / Subcontractor	By: Name / Title
---------------------------------------	------------------

MONTHLY EMPLOYMENT REPORT

Contractor: _____ Employer I.D Number: _____

Project Title: _____ Work Order Number: _____

Reporting Period: From: _____ To: _____ Bid Number: _____

Employee List		Male or Female	1 Ethnic Symbol	Craft	2 Employee Source	Number of Hours Worked
Last Name, First Name, Middle Initial	Social Security #					
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						

SAMPLE

1 Ethnic Symbol	
Black, African American	BL
Mexican American, Hispanic, Latino, Puerto Rican	MA
Native American, American Indian, Eskimo	NA
Asian, Pacific Islander	AP
Filipino	FI
Caucasian	CA
Other Ethnicity (not defined above)	OTH

2 Employee Source	
Apprenticeship Program	A
Employment Agency	E
Training Program	T
Union Hiring Hall	U
Other	O

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

Authorized Signature

Printed Name / Title

Date Prepared



PUBLIC WORKS PAYROLL REPORTING FORM

NAME OF CONTRACTOR OR SUB CONTRACTOR	CONTRACTORS LICENSE # SPECIALTY LICENSE #	ADDRESS
--------------------------------------	--	---------

PAYROLL NO. _____ FOR WEEK ENDING _____	SELF-INSURED CERTIFICATE # _____ WORKERS' COMPENSATION POLICY # _____	PROJECT OR CONTRACT NO. _____ PROJECT AND LOCATION _____
---	--	---

(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) N H E O O X L E O D M F I P W N T I G O H N S	(3) WORK CLASSIFICATION	(4) Day							(5) TOTAL HOURS	(6) HOURLY RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS								(9)		
			M	T	W	TH	F	S	S				THIS PROJECT	ALL PROJECTS	FED TAX	FICA (SOC SEC)	STATE TAX	SDI	VAC/ HOL	HEALTH & WELF	PENSION	NET WGS PAID FOR WEEK	CHECK NO.
			Date												TRANING	FUND ADMIN	DUES	TRV/ SUBS	SAVINGS	OTHER*	TOTAL DED- UCTIONS		
			Hours Worked Each Day																				

Form A 1-131 (New 2-80)
(form has been reduced to fit page)

S = Straight Time
O = Overtime
SDI = State Disability Insurance

*OTHER - Any other deductions, contributions and/or payment whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet if necessary

CERTIFICATION must be completed

I, _____, the undersigned, am _____ with the authority to act for and on behalf of _____,
(Name - Print) (position with business) (name of business and/or contractor)
certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ are the originals or true, full and correct copies of the originals which depict the payroll
(description, no. of pages)
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 more strict and/or more extensive form of certification.

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: _____

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS
CRAFT: # CARPENTER

DETERMINATION: SD-23-31-4-2000-1

ISSUE DATE: February 22, 2000

EXPIRATION DATE OF DETERMINATION: June 30, 2000** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

LOCALITY: All localities within Contra Costa County

CLASSIFICATION (JOURNEYPERSON) and	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Hours	Total Hourly Rate	Daily	Saturday ^a	Sunday
ENGINEERING CONSTRUCTION								1 1/2X	1 1/2X	Holiday
Carpenter (Heavy and Highway work)	\$25.25	2.30	1.01	2.72 b	.30	8	31.58	44.205	44.205	56.83
Light Commercial Bridge Carpenter (Highway work)	20.40	2.30	1.01	2.72 b	.30	8	26.73	36.93	36.93	47.13
Millwright	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Pile Driver	25.75	2.30	1.01	2.72 b	.30	8	32.08	44.955	44.955	57.83
Diver, Wet (up to 50 ft. depth)cd	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Diver, Standby	55.76	2.30	1.01	2.72 b	.30	8	62.09	89.97	89.97	117.85
Diver's Tender	28.38	2.30	1.01	2.72 b	.30	8	34.71	48.90	48.90	63.09
	27.38	2.30	1.01	2.72 b	.30	8	33.71	47.40	47.40	61.09

DETERMINATION: SD-23-31-4-2000-1A

ISSUE DATE: February 22, 2000

EXPIRATION DATE OF DETERMINATION: July 1, 2000** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

LOCALITY: All localities within San Diego County

BUILDING CONSTRUCTION

Carpenter	\$23.40	2.30	1.01	2.17 b	.30	8	29.18	40.88	40.88	52.58
Light Commercial	18.72	2.30	1.01	2.17 b	.30	8	24.50	33.86	33.86	43.22

DETERMINATION: SD-31-741-1-2000-1

ISSUE DATE: FEBRUARY 22, 2000

EXPIRATION DATE OF DETERMINATION: May 31, 2000* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

LOCALITY: All localities within San Diego County.

Classification (Journeyperson) and	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Hours	Total Hourly Rate	Daily	Saturday ^a	Sunday
Terrazzo Installer	\$29.55	2.30	1.01	1.72 b	-	8	34.58	49.355	49.355	64.13
Terrazzo Finisher	23.05	2.30	1.01	1.72 b	-	8	28.08	39.605	39.605	51.13

Indicates an apprenticeable craft. Rates for apprentices are available in the General Prevailing Wage Apprentice Schedules. ^a Saturday in the same workweek may be worked at straight-time rate for the first 8 hours if the employee was unable to complete the 40 hours during the normal workweek. ^b Includes supplemental dues. ^c Shall receive a minimum of 8 hours pay for any day or part thereof. ^d For specific rates over 50 ft. depth, contact the Division of Labor Statistics and Research.

DESCRIPTION:

Engineering Construction

Refers to construction which requires a Class A license and includes bridges, highways, dams and also power plants and other heavy industrial type projects.

Building Construction

Requires a Class B license and includes non-residential buildings (such as hospitals, government buildings, public schools) and commercial buildings (with the exception of industrial buildings).

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Holiday provisions for current or superseded determinations may be obtained by contacting the Prevailing Wage Unit at (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. Travel and/or subsistence requirements for each craft, classification or type of worker may be obtained from the Prevailing Wage Unit at (415) 703-4774.



CITY OF SAN DIEGO
Labor Compliance Program
202 "C" Street, MS 56P
San Diego CA 92101

CONSTRUCTION INTERVIEWS
Employee Statement

Side 1 of 2

CONFIDENTIAL

This document contains personal information and it shall be kept confidential in order to protect against unauthorized disclosure.

Company Employee:

CCO:

Project Name:

Job Site/Location:

Company:

Contract/K#:

DOH:

Date:

Race:

Sex:

QUESTIONS

1. What is your current position and salary?

2. How long have you worked for this company?

3. How did you hear about this job or company?

4. Do you believe you are earning a fair wage compared to others within your trade?

5. Are you receiving a fair share of overtime?

6. Have you ever been asked to work outside your trade? For more or less wages?

7. Do you belong to a Union? Did you belong to a Union before this job?

8. Has this company provided you with any type of formal or informal training (OJT)?

9. Have you received any formal or informal training or discussion regarding the company's Equal Employment Opportunity Policy?

CONSTRUCTION INTERVIEWS
Employee Statement
Side 2 of 2

10. Have you observed the posting of the company's EEO Policy letter and EEO posters at project construction sites and/or in the company office?

11. Have you ever been encouraged by your employer to refer your friends (especially minorities and women) with construction trade experience to apply for employment at this company?

12. What do you believe the company's attitude is regarding the hiring of minorities and women?

13. Have you been aware of working with minorities, women, veterans or disabled individuals at this job site or others?

14. Do you believe the company has treated you fairly?

15. Does the company ensure and maintain a working environment free from harassment, intimidation and coercion at its job sites?

Additional Comments

Employee Signature

Date

Labor Compliance Officer

Date



CITY OF SAN DIEGO
Labor Compliance Program
202 "C" Street, MS 56P
San Diego CA 92101

**SUPERINTENDENT OR
FOREMAN
STATEMENT FORM**

Side 1 of 2

CONFIDENTIAL

This document contains personal information and it shall be kept confidential in order to protect against unauthorized disclosure.

Superintendent/Foreman:

CCO:

Project Name:

Contract/K#:

Company:

Date:

Race:

Sex:

QUESTIONS

1. How long have you worked for this company (DOH)?
2. How long have you been the superintendent or foreman?
3. How did you hear about this job or company?
4. What is your recruitment or hiring process?
5. Are you involved in the hiring process?
6. Do you maintain a record or file of names addresses and phone numbers of off-the-street applicants (females, minorities, disabled and veterans) for employment?
7. Do you refer them to your hiring official and/or to the Union?
8. Does the Union allow you to do your own recruitment?
9. Are you responsible for work assignments, layoffs and terminations?

Superintendent or Foreman Statement Form

Side 2 of 2

10. Are your personnel practices such as layoffs, terminations, etc..., monitored to insure that these practices have no discriminatory effect and ensures that the EEO Policy is being implemented?

11. Have any employees referred minorities, women, veterans or disabled individuals for employment opportunities with your company? Have any of these referrals been hired?

12. Have you received any formal or informal training, or discussion of the company's EEO Policy and affirmative action obligations as a government contractor?

13. Do you know who the company's EEO Coordinator is?

14. Do you inform and discuss the company's EEO Policy with your employees?

15. Does your company provide formal or on-the-job training to employees?

16. Do you ensure and maintain that construction sites are free from harassment, intimidation and coercion?

Additional Comments

Superintendent/Foreman Signature

Date

Labor Compliance Officer

Date



THE CITY OF SAN DIEGO

Labor Compliance Program
202 "C" Street, MS 56P
San Diego, CA 92101-4506

April 21, 2003

Certified Mail

Mr. John Doe
ACME Painting
13414 Labor Street
San Diego, CA 92103

Sample
Pre Award Letter

Dear Mr. Doe:

The City of San Diego has identified your firm as the apparent low bidder for Contract #03-XXX Portable Contract Moving Services and has scheduled board approval of a contract requiring your compliance with Division 2 Part 7 of the California Labor Code. This will require payment of prevailing wages to all workers employed on the project and reporting of certified weekly payrolls. The Labor Code requires, prior to the start of work, that 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 Labor Compliance Officer 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, and the monthly submittal of employment utilization reports, all identified in the contract general conditions.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776(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 Labor Compliance Officer is to provide necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code. Please call the City of San Diego's Labor Compliance Officer at (619) 533-4275 to set an appointment and receive necessary forms prior to the start of your project.

Respectfully,

Labor Compliance Program Administrator



THE CITY OF SAN DIEGO

Labor Compliance Program
202 "C" Street, MS 56P
San Diego, CA 92101-4506

April 27, 2003

Certified Mail

Jane Doe
ACME Flooring
8320 Camino Santa Fe
San Diego, CA 92103

Sample
Post Award Letter

Dear Ms. Doe:

The City of San Diego has awarded your firm a contract requiring your compliance with Part 7, Chapter 1 of the California Labor Code. This will require payment of prevailing wages to all workers employed on the project and reporting of the weekly payroll to the City's Labor Compliance Officer.

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.

The Labor Compliance Officer goal is to provide the necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code.

Please call the City's Labor Compliance Officer at (619) 533-4275 to set an appointment and receive the necessary forms prior to the start of your project.

Respectfully,

Labor Compliance Program Administrator



THE CITY OF SAN DIEGO

Labor Compliance Program
202 "C" Street, MS 56P
San Diego, CA 92101-4506

April 23, 2003

Certified Mail

John Doe
ACME Construction Co.
3170 Labor Street
San Diego, CA 92083-8318

Sample
1st Request for
Certified Payrolls

Mr. Doe:

The City of San Diego's Labor Compliance Officer is formally requesting copies of Certified Payroll Records and Monthly Employment Reports for the modernization of Cubberly, Jones and Fletcher. We are requesting 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 (b) (2) and Section 1776 (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 shall have ten (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 and Monthly Employment Reports on the City and State approved forms previously provided to: City of San Diego, Labor Compliance Officer, 202 "C" Street, Mail Station 56P, San Diego, CA 92101.

If you have any questions, contact me at (619) 533-4275.

Respectfully,

Labor Compliance Program Administrator

Prime Contractor:
Project:

Original Request: 02/08/03

This Request: 02/08/03

1. **Monthly Employment 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 must be provided for:**
7. **Signed certified Payroll report or 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 in the City's Labor Compliance Officer **within one week of each weekly paycheck**. 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. **To determine the required hours for apprentices on this project we will need the contractor to identify all sub-contractors who will perform work in involving less than \$30,000 or who will be on the project less than twenty (20) calendar days or both.**
9. **Either the Public Works Payroll Reporting Form (Form A-1-131) or the City of San Diego reporting form must be used.**

Sample

Missing Document List

ACME HIGH SCHOOL RE-ROOF
PRIME CONTRACTOR: ACME ROOFING CO., INC

Original Issue date: 00-00-0000

Latest Issue: 00-00-0000

REPORTING CONTRACTOR :COMMERCIAL AND INDUSTRIAL ROOFING CO.,INC								City of San Diego comments		
CONTRACTOR PROVIDED INFORMATION										
Employee Name & Social Security Number	Work Classification	Week Ending	Rate Paid	Fringes Paid	Gross Per Hour	Hours Worked	Gross Amount Paid	Prevailing Wage Rate	Amount they should have been paid	Difference
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
								Total Contractor Difference:		\$0.00

SAMPLE

\$0.00

Total Project Difference



THE CITY OF SAN DIEGO

Labor Compliance Program
202 "C" Street, MS 56P
San Diego, CA 92101-4506

March 1, 2003

Certified Mail

Mr. Doe
ACME Construction Co.
115 Market Place, Suite A
San Diego, CA 92103

Sample
Certified Payroll Correction Letter

Dear Mr. Doe:

The City of San Diego's Labor Compliance Officer has formally requested copies of Certified Payroll Records and Monthly Employment Reports for Bid Project Portable Contract 82-Phase 2. 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 certified payroll record submittals to the City's Labor Compliance Officer and weekly payment of employee wages.

Labor Code §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 shall have ten (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 portions 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: City of San Diego, Labor Compliance Officer, 202 "C" Street, Mail Station 56P, San Diego, CA 92101. If you have any questions, contact me at (619) 533-4275.

Respectfully,

Labor Compliance Program Administrator

Enc. (2)

Labor Compliance Program Regulations

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:

Total Amount of Request for Notice of Withholding of Contract Payments:			
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. 1st Bid Advertisement Publication
- 3. Notice of Completion
- 4. Scope of Work
- 5. Complaint form(s) and Declarations, if any

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.

Labor Compliance Program Regulations – Appendix B

Audit Record Worksheets [8 Cal. Code Reg. §16432]

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

DEPT. OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

PUBLIC WORKS INVESTIGATION WORKSHEET

Classification Code

EMPLOYEE'S NAME		SOCIAL SECURITY NUMBER						DEPUTY		OFFICE		DATE	Employer		Case Number								
PERIOD ENDING YEAR wk end		HOURS OF WORK						TOTAL	TOTAL	ACTUAL RATE	OTHER	TOTAL WAGES	Required	OTHER	TOTAL	AMOUNT	No. of Violations	PENAL-	No. of Violations	PENAL-	TOTAL	Amount Due	
		-Thu	-Wed	-Tue	-Mon	-Sun	-Sat	Fri	DAYS	HOURS	ST	COMPEN-	PAID	Wage	COMPEN-	WAGES	DUE AND		TIES		TIES	TRAINING	and Owing
		DATE	DATE	DATE	DATE	DATE	DATE	DATE	WORK-	WORKED	OT	SATION		Rates	SATION	REQUIRED	OWING		1775__		1813__	FUND	
							ED	ST,OT,DT	DT			Sl,Ol,DL											
	ST																					Rate	
	OT																						
	DT																						
	ST																					Rate	
	OT																						
	DT																						
	ST																					Rate	
	OT																						
	DT																						
	ST																					Rate	
	OT																						
	DT																						
	ST																					Rate	
	OT																						
	DT																						
	ST																					Rate	
	OT																						
	DT																						
	ST																					Rate	
	OT																						
	DT																						
	ST																					Rate	
	OT																						
	DT																						

ST hours worked
 OT hours worked
 DT hours worked

TOTALS

PREVAILING WAGE DETERMINATION SUMMARY

CODE NO.	CLASSIFICATION	HOURLY				HOLIDAY / TRAVEL &		Other hourly Requirements
		Effective Date	RATE	Contributions	TRAINING	TIME 1/2	SUNDAY SUBSISTENCE	
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		

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:

<u>Contractor/Subcontractor</u>	<u>For weeks ending ("w/e") through w/e</u>
_____	_____
_____	_____
_____	_____
_____	_____

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 Paychecks 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