



REQUEST FOR PROPOSALS

LABOR COMPLIANCE CONSULTING SERVICES

***VARIOUS SCHOOL FACILITIES CONSTRUCTION AND
MODERNIZATION PROJECTS***

***SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
FACILITIES MANAGEMENT DEPARTMENT***

September 29, 2006

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***REQUEST FOR PROPOSALS
FOR
LABOR COMPLIANCE CONSULTING SERVICES
VARIOUS CONSTRUCTION AND MODERNIZATION PROJECTS
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
FACILITIES MANAGEMENT DEPARTMENT***

SEPTEMBER 29, 2006

1. REQUEST FOR PROPOSALS

The San Bernardino City Unified School District (“District”) is requesting proposals and a statement of qualifications from qualified firms and persons to provide professional services for labor compliance consulting services (“Services”) for various new construction and modernization projects of the District’s Facilities Capital Improvement Program, estimated construction cost of \$700,000,000 to \$830,000,000.

2. PROPOSALS DUE DATE AND TIME

In order to be considered, one (1) original and three (3) copies of the proposal must be received by the District at the address stated in Paragraph 3 herein below by personal delivery or by U.S. Mail by the following date and time:

October 13, 2006, 4:00 P.M., Pacific Time

The District reserves the right to reject any proposal received after the deadline stated immediately above.

3. CONTACT PERSON AND ADDRESS FOR SUBMISSION OF PROPOSALS

Interested, qualified firms and persons (collectively referred to as “Consultants”) are invited to submit proposals to the following contact person and address:

Melissa Pérez, Procurement
Facilities Management Department
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
777 North “F” Street, San Bernardino, California 92410
Tel: 909-881-8008 ext 1308-264 * Fax: 909-495-1775
melissa.perez@sbcusd.com

4. SEALED ENVELOPE, CLEARLY MARKED

Proposals must be submitted in a sealed envelope, addressed to the contact person and address indicated above, with the name and address of the Consultant in the upper, left corner, under which should be clearly printed: PROPOSAL FOR LABOR COMPLIANCE CONSULTING SERVICES

5. *FACILITIES PROGRAM DESCRIPTION*

The District's Facilities Capital Improvement Program consists of new construction and modernization projects of various sizes and scopes of work for K-12 school facilities with an estimated construction cost of \$700,000,000 to \$830,000,000 over the next five (5) years.

6. *REQUESTS FOR INFORMATION*

Questions about the Request for Proposal ("RFP") process or the District's Facilities Capital Improvement Program may be directed to:

Melissa Pérez, Procurement
Facilities Management Department
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
777 North "F" Street, San Bernardino, California 92410
Tel: 909-881-8008 ext 1308-264 * Fax: 909-495-1775
melissa.perez@sbcusd.com

7. *SCOPE OF SERVICES*

Services will include but not necessarily be limited to those services set forth in the ATTACHMENT B.

8. *SELECTION PROCESS AND SCHEDULE*

8.1 *Selection Process.* The District intends, through this RFP, to establish a shortlist of Consultants eligible to provide Services for various construction projects as determined by the District through review and numerical ranking of the Consultants' qualifications and proposals at the sole discretion of the District. Subsequent to establishing the shortlist, the District will at its sole discretion, and based on the numerical ranking workload considerations of the Consultants, enter into negotiations for a master agreements with selected Consultants. The District may enter into agreements with more than one Consultant who submitted proposals in response to this RFP.

Upon the execution of master agreements with Consultants and as the District identifies the need for the subject services, the District will request a proposal from one or more Consultants related to the specific construction project(s). Upon selection of a Consultant to perform the services, a work order called Assignment of Project ("AOP") will be issued by the District. The AOP will show a total not-to-exceed cost to the District and line items that specify the services to be provided by the Consultant. The District anticipates issuing numerous AOP's in order to meet the overall needs of its Facilities Capital Improvement Program.

8.2 *Selection Schedule.* The tentative schedule for the selection process is as follows, subject to revision in accordance with the needs of the District.

<i>Date</i>	<i>Event</i>
September 29, 2006	Issuance of RFP for Services
October 13, 2006	Proposals due by 4:00 P.M. Pacific Time

9. DISTRICT POLICIES REGARDING SUBMISSIONS OF PROPOSALS

- 9.1 No Reimbursement.** The District will not reimburse Consultants for costs that they incur in preparing their proposals.
- 9.2 Right to Request Additional Information.** The District reserves the right to request additional information from the Consultants in order to make a fully informed decision regarding selection of the Consultants.
- 9.3 Right to Reject.** The District reserves the right to reject any and all proposals.
- 9.4 Independent Contractor.** Consultants hired by the District as a result of this RFP will be independent contractors and not employees of the District.
- 9.5 Insurance Requirements.** Although not required for the proposals, Consultants must meet the District requirements for insurance coverage delineated in ATTACHMENT C. Consultants must provide proof of insurance satisfactory to the District as a condition precedent to the District's execution of agreements with Consultants.
- 9.6 Criminal Background Investigation.** Although not required for the proposals, Consultants must submit a completed and signed *Form Fingerprint and Criminal Background Check Certification – In accordance with Department of Justice (DOJ) fingerprint and criminal background investigation requirements of Education Code section 45125.1 et sec.*, a copy of which is attached hereto as ATTACHMENT D, as a condition precedent to the District's execution of agreements with Consultants.
- 9.7 Section 16: Disabled Veterans Business Enterprise.** Prior to, and as a condition precedent for final payment under any contract for the subject services, the Consultant shall provide appropriate documentation to the District, identifying the amount paid to disabled veteran business enterprises in connection with the Consultants performance of the agreement, so that the District can assess its success at meeting this goal. In accordance with Education Code Section 17076.11, this District has a participation goal for disabled veteran business enterprises of at least three (3) percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to Leroy F. Greene School Facilities Act of 1998 for construction or modernization of school facilities and expended each year by the District. A copy of Board of Education Policy Number 3323 is attached hereto as ATTACHMENT E.

10. REQUIRED PROPOSAL FORMAT AND CONTENT

- 10.1 Prescribed Proposal Format.** Proposals submitted in formats other than the format described herein may be rejected at the sole discretion of the District.
- 10.2 Proposal Format Requirements.** Proposals – one (1) original and three (3) copies – should be submitted in three-ring binders on 8 ½” by 11” paper, single-sided, with consecutive page numbers (*proposals not submitted in three-ring binders may be considered non-responsive; “bound” proposals may be considered non-responsive*). Sections of the proposals should be divided by labeled tabs that correspond to the Table of Contents. All text should be in a clear, legible font. Language should be clear, concise and economical. Judicious use of relevant, clearly identified photos is acceptable. Each section should conform to the page limits specified herein below in Paragraph 10.4.

- 10.3 *Emphasis of Proposals.*** In preparing proposals, Consultants should be mindful that, in addition to placing strong emphasis on the Consultant's overall ability to provide the required services described herein, major factors for the District's consideration will be the Consultant's successful experience on public projects and, more specifically, similar K-12 programs, and the specific credentials and experience of the firm's principals and the professionals to be working on District's projects. Consultants submitting proposals must include the qualifications and experience of the afore-mentioned individuals.
- 10.4 *Content and Order of Proposal and Selection Criteria.*** The proposals should contain the following sections in the order presented below. Consultants are instructed to note page limits and numerical scoring. Proposals that do not comply with this section may be considered non-responsive and as such may not be considered.

<u>Section Title</u>	<u>Page Limit</u>	<u>Points</u>
Section 1 - Letter of Interest	1	0
Section 2 - Table of Contents	1	0
Section 3 - Consultant Firm Data	3	15
Section 4 – Current Workload and Availability	1	15
Section 5 -Resumes (Principals and persons that the Consultant brings to the project)	As required	30
Section 6 – Proposed Cost of Services	1	25
Section 7 - Philosophy, Approach & Technical Capabilities	2	10
Section 8 - Litigation History - Construction	As required	5
Section 9 - Equal Employment Opportunity	As required	0
Section 10 - Additional Information (Optional)	1	0
Section 11 - Form Local Business Outreach Program	1	0
Total		100

Section requirements are as follows.

Section 1: Letter of Interest

The proposal should be introduced with a Letter of Interest that presents information that the Consultant deems to be of key relevance.

Section 2: Table of Contents

The Table of Contents should reflect the order stated herein and include section titles and page numbers.

Section 3: Consultant Firm Data

Include all of the following:

- A. Name of the consultant firm with address, telephone/fax numbers, email address
- B. Contact person's name and title
- C. Years in business of providing the Services described herein
- D. Number of current employees, including management dedicated solely to Labor Compliance.
- E. Type of business organization; i.e., sole proprietorship, partnership, corporation (include the state in which incorporated)
- F. Organization/Department Chart
- G. Consultant firm's statement of qualifications and experience to include most recent five (5) years successful experience on public works projects and, more specifically, K-12 programs similar to that of the District. Identify all K-12 projects and other public works projects on which your firm.
- H. Name of the person who will sign the agreement

Section 4: Current Workload and Availability

Indicate the Consultant's ability to provide services in a timely manner. List Consultant's current and anticipated commitments, with the start and anticipated completion dates, for personnel that Consultant will assign to the District's projects.

Section 5: Personal Resumes

Submit resumes for the Consultant's principals and for each professional that the Consultant will assign to the District's projects. Include the following data and any other information for each professional person that the Consultant deems relevant:

- i) Years of experience in providing Services
- ii) Education
- iii) Professional registrations, certifications and affiliations
- iv) Project-specific experience, with focus on public projects and emphasis on K-12 projects
- v) Qualifications and experience; (dates and duration) in the Services, and, for each project listed, the name of firm where employed.
- vi) Identify resources for training and mentoring of contractors.

Section 6: Proposed Cost of Services

6.1 Fee Structure

- 6.1.1 The consultant's proposed fee must be for "All Inclusive Services." Such services shall include all necessary services required of the LCP consultant from the award of contracts through the project close-out. No breakdown of services to "Basic Services" and "Additional Services" shall be accepted. No fee for "additional services" shall be agreed to by the District unless it is clearly for services outside of the LCP standard and required services.

- 6.1.2 Consultants are required to clearly identify in their proposals any exclusion of services. If no exclusions are stated in the proposal, it shall be deemed by the District that any and all LCP-related services shall be performed by the successful consultant.
- 6.1.3 Consultants are required to clearly identify in their proposals any work or staff involvement expected of the District during the duration of LCP services by the successful consultant.

6.2 Fee Basis

- 6.2.1 The successful consultant's fee shall be based on the construction cost prescribed in section 6.2.2 on a discounted percentage of sliding scale (Table "A"). The District reserves the right to negotiate the successful consultant's proposed discounted percentage.

Table A – Fee Sliding Scale	
\$16,000	For the first \$1 million or any part thereof, plus
1.60%	Of the next \$1 million or any part thereof, plus
0.25%	Of the next \$1 million or any part thereof, plus
0.15%	Of the next \$1 million or any part thereof, plus
0.32%	Of the next \$2 million or any part thereof, plus
0.31%	Of the next \$2 million or any part thereof, plus
0.46%	Of the next \$5 million or any part thereof, plus
0.44%	Of the next \$5 million or any part thereof, plus
0.42%	Of the next \$30 million or any part thereof, plus
0.40%	Of any remaining portion

- 6.2.2 The construction cost used to calculate the consultant's fee for LCP services shall be the bid-date construction cost. Such cost, and hence the consultant's fee, shall not be adjusted. Consultants are encouraged to factor in their proposed discounted rate the cost any such services if they feel such costs need to be included in the total cost used to determine successful consultant fee.
- 6.2.3 If a consultant prefers another method for calculation of the consultant's fee for LCP services, such preferred method must be proposed as an alternate, and in addition, to the discounted rate of the sliding scale listed on Table "A". In order to be considered by the District, all proposals must include a fee based on a percentage of the sliding scale listed on Table "A".
- 6.2.4 The District's capital improvement projects are funded through the State's School Facility Program (SFP) (50/50 and 60/40) or the Financial Hardship Program (FHP). Consultants may propose different discounts of the sliding scale listed on Table "A" for the projects that are in SFP or in FHP, as the case may be.

Section 7: Philosophy, Approach & Technical Capabilities

Describe the Consultant's philosophy and approach to providing the required services.

Describe the Consultant's capability to undertake appropriate methods to resolve problems associated with the services and to perform the required services.

Section 8: Civil Litigation History - Construction Related

List all construction-related litigation in the last five (5) years, filed either by an owner, owner's consultant or contractor, against the Consultant or Consultant's employees. State the beginning and end date, or anticipated end date, of each lawsuit, case or proceeding and the judgment or resolution or anticipated judgment or resolution.

Identify if the Consultant or any employee of Consultant is a party to an existing dispute with an owner, owner's consultant or contractor, or firm, related to any project that the Consultant provided the Services. If so, please describe the nature of the dispute and its anticipated outcome.

Identify if the Consultant has filed a petition for bankruptcy. If so, please provide the date the petition was filed and identify the jurisdiction in which it was filed.

Section 8.1: Criminal Prosecution History

Identify Consultant's personnel, if any, who have been a defendant or a person of interest in any criminal prosecution or grand jury indictments of principals of firm and employees, past and present. If so, please describe the nature of the case and its outcome or its anticipated outcome.

Identify if complaint(s) been lodged against the Consultant with the any local public agency, any agency of the State of California or any agency of any other State or any professional organization with which the Consultant is affiliated. If so, please describe the nature of the complaint and its outcome or its anticipated outcome.

Section 8.2: Insurance Claims History

Please describe the outcome of claims, if any, filed against Consultant's general liability or professional liability or automobile liability insurance carriers during the past five (5) years.

Section 9: Equal Employment Opportunity

Describe Consultant's equal employment opportunity policy.

The District is an equal opportunity employer and, as such, does not engage in unlawful, discriminatory employment or contracting practices. The District undertakes actions to ensure that employees and applicants are treated without regard to their race, color, ancestry, national origin, religion, marital status, sex, sexual orientation, physical or mental handicaps, medical condition, special disabled or Vietnam era status or, within the limits of the law and District regulations, age or citizenship. The District requires Consultants to follow these same practices in both employment and contracting matters and to communicate these policies within their organizations.

Section 9.1: U.S. Legal Residency

Identify if the Consultant and the employees that Consultant will assign to the District's projects are legal residents of the United States of America.

Section 10: Local Business Outreach Program. Consultants are requested to submit the Local Business Outreach Program (LBOP) registration form. The District is using this form to monitor the participation of all non-local, local, small, minority, and women in the Facilities Capital Improvement Program. Copies of the LBOP brochure and LBOP registration form are attached hereto as ATTACHMENT F.

Attachment A

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

Labor Compliance Program and Implementation Manual
for

State Funded School Facility Projects

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

**LABOR COMPLIANCE PROGRAM
AND IMPLEMENTATION MANUAL**

for

STATE FUNDED SCHOOL FACILITY PROJECTS

April 2003

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I. Introduction

Assembly Bill No. 1506, operative upon the passage of Proposition 47 in November 2002, added California Labor Code Section 1771.7. Section 1771.7 requires that a School District ("District") that uses funds from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 ("State Funds") for a public works project ("State Funded Project") must initiate and enforce, or contract with a third party to initiate and enforce, a Labor Compliance Program ("LCP") to ensure that workers on its school facilities projects which are State Funded ("State Funded Projects") are paid prevailing wages.

The components of an LCP are set forth in California Labor Code Section 1771.5, and include the following:

- The District shall provide in its call for construction bids that it has an LCP.
- The District shall conduct a Pre-Job conference for Contractors.
- Contractors shall be required to maintain and submit Certified Weekly Payrolls.
- The District shall review the submitted Certified Weekly Payroll records and verify compliance with prevailing wage laws.
- The District shall develop procedures for implementing the LCP and for withholding payments from Contractors when prevailing wage laws have been violated or upon determination that the submitted payroll records are delinquent or inadequate.
- The District shall prepare and file Annual Reports on its LCP.

A. Definitions.

The terms defined for general use in the LCP are numerous and for ease of use in this LCP, are included in Appendix "A."

B. Duties of the District.

In accordance with California Code of Regulations ("CCR") Section 16434, a District having an Initial or Final Approved LCP shall have a duty to the Director, as to State Funded Projects, to enforce the requirements of Labor Code 1720 - 1861 and applicable regulations in a manner consistent with the practice of DLSE.

Districts must make a written finding that it has complied with Labor Code Section 1771.5 and 1771.7 by initiating and enforcing, or contracting with a third party to initiate and

thirty years ago and represents public agencies exclusively. BAW&G principals and associates have over 100 years of education and special district experience in the areas of construction law, litigation, school district formation and reorganization, developer mitigation, school fees, bond counsel, real property acquisition, and environmental law.

II. Call for Bids

All District bid advertisements (or bid invitations) and construction contracts shall contain appropriate language concerning the requirements of Labor Code Sections 1720-1861 Public Works. See Attachment E for language to be incorporated into the District's construction contracts.

All Contractors responding to the District's bid advertisement must obtain and review plans for the public works project, as well as follow the District's pre-bid procedures.

III. Pre-Bid and Pre-Job Conferences

A. Optional Pre-Bid Conference

The District proposes that an optional Pre-Bid Conference may be held for all potential bidders. This optional conference shall be optional for potential bidders to attend unless otherwise determined by the District. The District reserves the right to revise to require that a Pre-Bid Conference be mandatory for all bidders on some or all of the District's projects subject to this LCP.

B. Mandatory Pre-Job Conference

After the District awards the Contract, a mandatory Pre-Job Conference shall be conducted by the LCP representative. The Contractor and those Sub-contractors listed in its bid documents shall attend this conference before commencement of the work.

At this conference, the federal and state labor law requirements applicable to the contract will be discussed and copies provided. A checklist of the federal and state labor law requirements discussed at this conference shall be kept. A sample checklist for use at the Pre-Job Conference, which is to be signed by the Contractor and Sub-contractors as a required component of the LCP, is shown in Attachment A.

IV. Certified Payroll Requirements

In accordance with Labor Code Section 1776 (Payroll Records) and CCR Sections 17202 - 17212 (Prevailing Wage Hearings), an LCP requires the Contractor to prepare the following

enforce, an LCP. A copy of the written finding must be transmitted to the State Allocation Board ("SAB"), at intervals to be determined by the SAB.

The District shall:

- (1) Obtain the Prevailing Wage rate from the Director in accordance with Labor Code Sections 1771 and 1773;
- (2) Specify the appropriate Prevailing Wage rates in accordance with Labor Code Section 1773.2 and 1777.5;
- (3) Post the above information at each jobsite or at a single location that is available to all workers;
- (4) Notify the Division of Apprenticeship Standards ("DAS") pursuant to Labor Code Section 1773.3; and
- (5) Inform contractors, to the extent feasible, of relevant public work requirements, at a pre-bid conference, call for bids, or at an award for bid conference. See Attachment A for a checklist developed to inform contractors of the applicable public works requirements.

If the SAB conducts a post-award audit of a State Funded Project, the SAB shall verify, in a manner to be determined by the SAB, that the District has complied with the requirements of initiating and enforcing an LCP.

C. Effective Dates.

The applicable dates for enforcement of a District's LCP are established by Section 16425 of the CCR. Contracts are not subject to the jurisdiction of the LCP until after the LCP has received Initial or Final Approval from the Director.

The LCP applies to a State Funded Project that commences on or after April 1, 2003. Work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the "commencement" of a State Funded Project.

D. Required Components of a Labor Compliance Program

According to Labor Code 1771.5 and CCR Section 16430, an LCP shall include, at least, the following requirements:

- (a) All bid invitations and construction contracts shall contain appropriate language concerning the requirements of Labor Code Sections 1720 - 1861. A Pre-Bid Meeting may be held by the District on such terms and conditions as it specifies in its bid invitation;

(b) A Pre-Job Conference shall be conducted with the selected Contractor and the Sub-contractors listed in that Contractor's bid before commencement of the work to discuss federal and state labor law requirements applicable to the contract. At this conference, copies of reporting forms shall be furnished. A Pre-Job Conference checklist, showing which federal and state labor law requirements were discussed, shall be kept for this Conference;

(c) Contractors and Sub-contractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll ("Certified Payroll") in accordance with Labor Code Section 1776. The Certified Payroll shall contain a statement of compliance signed under penalty of perjury by the Contractor. The DIR form, Public Works Payroll Reporting Form (A-1-131, 2/80), complies with this requirement, and is attached hereto as Attachment D;

(d) The District shall develop a plan for the orderly review, and, if appropriate, audit payroll records to verify compliance with Labor Code Section 1771.5;

(e) The District shall prescribe a policy for withholding penalties, forfeitures, and underpayment of wages for Contractor violations of Labor Code Sections 1720-1861; and

(f) The District's Contracts, subject to the Prevailing Wage requirement, shall contain a provision that payments due under the Contract shall not be made when the payroll records are delinquent or inadequate. Suggested language to be included in such construction contracts executed by the District is included in Attachment F.

E. Administration of the District's LCP.

The District will administer its LCP by use of a combination of existing personnel, District legal counsel, and possible use of a Third-Party Contract Administrator ("TPCA") in its efforts to fully comply with the provisions of Labor Code Section 1771.7.

Should applicable sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, San Bernardino City Unified School District will modify the affected portions of this program accordingly.

The District has designated the Director of Facilities position to oversee the District's LCP. Michael R. Perez has been the Director of Facilities for three years and previously held the same position at another school district. Mr. Perez has administered and overseen approximately one dozen modernization and new construction projects. Further, Mr. Perez has wide ranging experience working with a variety of school financing methods and recently participated in the District's bargaining unit negotiations. The District will appoint someone of comparable experience and authority should Mr. Perez no longer be the Director of Facilities.

The District's legal counsel, Bowie, Arneson, Wiles & Giannone ("BAW&G"), is under contract with the District to enforce, as necessary, any willful violations of the District's LCP and to litigate any matters on behalf of the District related to its LCP. BAW&G was founded

documents to comply with the certified payroll requirements, and maintain these records in the following manner, if necessary:

Payroll Records Requirements. Each Contractor and Sub-contractor 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 works project. Each payroll record shall contain, or be verified by, a written declaration in a format determined by the District, stating that it is made under penalty of perjury, and:

- (1) The information contained in the payroll records are true and correct; and
- (2) The employer has complied with the requirements of Labor Code Section 1771 (Payment of General Prevailing Wage Rate,) Section 1811 (Maximum Hours Per Day and Per Week), and Section 1815 (Overtime), for any work performed by his or her employees on the public works project.

A sample Certification follows:

I, _____, (name printed), the undersigned, am the _____
(position in business) with the authority to act for and on behalf of
_____, (name of business and/or contractor) certify under penalty of
perjury that the records or copies thereof submitted herewith 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: _____

Inspection of Records. The Payroll Records of the Contractor 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 shall be made available for inspection or furnished upon request to a District or its LCP, the DLSE, and the DAS of the DIR at the Contractor's sole cost; and
- (3) A certified copy of all payroll records listed above 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 DAS or DLSE. 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 reasonable costs of reproduction by the Contractor, Sub-contractors, 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.

Format Required. The certified payroll records shall be on forms provided by the DLSE or shall contain the same information as the forms provided by the division. See Attachment D for a sample reporting format.

Timeline to Respond to Written Request. A Contractor or Sub-contractor shall file a certified copy of the records listed in the Payroll Records Request with the District or other entity that requested the records within 10 days after receipt of a written request.

Confidential Employee Information. Any copy of records made available for inspection as copies and/or furnished upon request to the public by the District, the DAS, or the DLSE shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or the Sub-contractor performing the contract shall not be marked or obliterated.

Contractor Notice to District. The Contractor shall inform the District of the location of the records listed under Payroll Record Requirements above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

Forfeiture for Failure to Comply with Written Record Request. The Contractor or Sub-contractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records listed above under Payroll Records Requirements. In the event that the Contractor or Sub-contractor fails to comply within the 10-day period to respond to a written request, he or she shall, as a penalty to the District, 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 DAS or the DLSE, these penalties shall be withheld from progress payments then due to the Contractor. A Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Sub-contractor to comply with this section.

District Contract Provisions. The District shall cause to be inserted into its public works contract stipulations to effectuate this section.

DIR Disclosure Requirement. The Director has adopted rules consistent with the California Public Records Act, Government Code Section 6250 *et seq.*, and the Information Practices Act of 1977, Civil Code Section 1798, *et seq.*, governing the release of such payroll records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

District Records Retention. Records received from the employing contractor shall be kept on file in the District's office for at least six (6) months following completion and acceptance of the project. Copies on file shall not be obliterated so as to protect the

confidentiality of the employee name, address, and social security number. The District may affirm or deny that a person is or was employed on a public works project, so long as no confidential information is released.

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 journeyperson work; and
3. Contribute to the applicable Apprenticeship Program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an Apprenticeship Program, they shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142.
4. If the contractor is registered to train apprentices, it shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

V. Review of Payroll Records; Site Visits and Audits to Verify Compliance; Reporting of Willful Violations to the Labor Commissioner

Audits shall be conducted routinely by the LCP and shall also be conducted at the request of the State Labor Commissioner to determine whether all tradesworkers on Project sites have been paid according to the prevailing wage rates. The audit record form in Attachment B demonstrates the sufficient detail that is required to verify compliance with the Labor Code requirements.

Site visits shall be conducted by the LCP to interview workers to determine the accuracy of Certified Payroll Reports. The steps to be followed are outlined in Attachment G-2 which also references the Interview Form and Site Visitation Logs, Attachments B-3 and B-4, respectively.

If an audit reveals that a willful violation of the Labor Code has occurred, the LCP 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, (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 District 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 of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records.

C. Failure to Submit Certified Payroll Records. The Contractors and Sub-Contractors shall have ten (10) days upon notification by the LCP in which to comply with the requirement of submittal of weekly and/or to correct inaccuracies or omissions that have been detected. Contractors who fail to submit Certified Payroll Records are subject to withholding of contract progress payments and/or penalties of \$25.00 per calendar day or portion thereof, per worker, until strict compliance is achieved, pursuant to Labor Code Section 1776(g).

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

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.

VI. Labor Compliance Committee

The District may form a Labor Compliance Committee ("LCC") whose purpose shall be to address disputes brought to its attention by its TPCA. The LCC will consist of one representative from the District who is appointed by the District Superintendent, one representative from its TPCA, and one representative from the Contractor or Sub-contractor.

VII. Procedures for Notice of Withholding Penalties and Forfeitures

A. Notice of Withholding of Contract Payments

After determination of the amount of forfeiture by the Labor Commissioner, the LCP shall provide notice of withholding of contract payments to the Contractor and Sub-contractor, 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 LCP 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. The Notice shall be sufficiently detailed to provide fair notice to the Contractor or Sub-contractor on the basis for the withholding.

B. Withholding of Forfeited Sums

Pursuant to Labor Code Section 1727 (Withholding to Satisfy Wage and Penalty Assessments), the District shall, prior to making payments to the Contractor of money due under a public work contract, withhold and retain all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner.

If the District has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a Sub-contractor's violations, the Contractor shall, upon the

request of the Labor Commissioner, withhold sufficient money due to the Sub-contractor under the contract to satisfy the assessment and transfer the money to the District.

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

Pursuant to Labor Code 1771.5(b)(6), the District shall withhold contract payments equal to the amount of the underpayment of prevailing wages and applicable penalties when, after an investigation, it has been determined that an underpayment has occurred. The investigation shall include a review of the payroll records, an audit of those records, and a finding by the LCP, or an admission by the Contractor or Sub-Contractor, that prevailing wages have been underpaid.

The underpayment is calculated as follows:

1. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages;
2. The difference between the amounts paid to workers and the correct amounts of Employer Payments determined to be part of the prevailing rate costs of the Contractor due for employment of workers in such craft, classification, or trade in which they were employed;
3. Estimated amounts of "illegal taking of wages"; and
4. Amounts of apprenticeship training contributions not paid to the Program Sponsor's Training Trust or the California Apprenticeship Council.

The District shall impose the penalties under Labor Code Sections 1775, 1777.7 and 1813, as applicable. Potential penalties are calculated as follows:

1. Pursuant to Labor Code Section 1775, the District shall impose a penalty of fifty dollars (\$50) for each calendar day, or portion thereof, on the Contractor for each worker paid less than the applicable prevailing wage rate. No penalties will be imposed on a Contractor for the failure of a Sub-contractor to pay prevailing wages if the Contractor had no knowledge of the failure to pay or unless the Contractor fails to comply with Labor Code Section 1775(b) (1) through (4);
2. Contractors or Sub-contractors found in violation of Labor Code Section 1777.5 shall forfeit as a civil penalty the sum of one hundred dollars (\$100) for each calendar day of noncompliance to the District. (Labor Code Section 1777.5 requires Contractors and Sub-contractors to employ registered apprentices on public works projects), and shall keep accurate payroll records relative to these apprentices per Section 1776 of the Labor Code; and
3. Pursuant to Labor Code Section 1813, the Contractor shall, as an additional penalty to the District, forfeit twenty-five dollars (\$25) for each worker employed by the Contractor or by any Sub-contractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar

week in violation of the provisions of Section 1813 of the Labor Code.

D. Disposition of Withheld and Forfeited Sums

1. The prevailing wage recovery process of this LCP is in accordance with Labor Code Section 1775, which provides that out of any funds withheld, recovered, or both, there shall first be paid the amount due each worker notwithstanding the filing of any Stop Notice by any person pursuant to Civil Code Section 3179, *et seq.* Therefore, all workers employed on a public works project who are paid less than the prevailing wage rate shall have priority over all Stop Notices filed against the Contractor.

2. In the event that there are insufficient funds available in the Contractor's account to pay the total amount of prevailing wage violations and penalty amounts due, the unpaid prevailing wages shall have priority and must, therefore, be paid first, in accordance with Labor Code Section 1775.

3. Furthermore, if insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all said underpaid workers; and all penalties shall be deposited in the General Fund of the District, pursuant to Labor Code Section 1771.7.

4. The amounts withheld shall not be disbursed by the LCP until receipt of a final order that is no longer subject to a judicial review.

E. Forfeitures Requiring Approval by the Labor Commissioner

1. "Forfeitures" are the amounts of unpaid penalties and wages assessed by the District for violations of the prevailing wage laws, whether collected by withholding from the contract amount, by suit under the contract, or both.

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 LCP, and which are appealable by the Contractor in court or before the Director of the DIR under Labor Code Sections 1742 and 1742.1. Regardless of what is defined as prevailing "wages" in the terms of the District's contract with the Contractor, noncompliance with the following are considered failures to pay prevailing wages:

- a. Nonpayment of Employer Payments and General Prevailing Rate of Per Diem Wages;
- b. Failure to maintain payroll records required by Labor Code Section 1776;
- c. Violation of Labor Code Section 1777.5, but only insofar as the failure consists of 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. Violation of Labor Code Section 1778 (Kickbacks);
- e. Violation of Labor Code Section 1779 (Fee for Registration);
- f. Violation of Labor Code Section 1813 (Forfeiture for Violation), Section 1815 (Overtime), and implementing regulations, 8 CCR Section 16200(a)(3)(F)-Overtime.

F. Determination of Amount of Forfeiture by the Labor Commissioner

1. When the potential forfeiture falls within the exclusive authority of the Labor Commissioner, District shall request 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 deadline by which contract acceptance and/or filing of a Notice of Completion, plus 180 days, will occur;
- b. Any other deadline which, if missed, would impede collection of the forfeiture;
- c. Evidence of the apparent violation in narrative form;
- d. Evidence that an "Audit" or "Investigation" by the LCP occurred;
- e. Evidence that the Contractor was given the opportunity to explain why he/she 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 District of its position;
- f. A statement of the recommended forfeiture and penalty amounts, pursuant to Labor Code Section 1775, if the violation includes potential both wages and penalties, and the Contractor has unsuccessfully claimed that the cause of violation was due to a mistake, inadvertence, or neglect of the Contractor;
- g. Evidence as to the Contractor's knowledge of its obligation, including documentation of the required references in the District's Notice Inviting Bids, the pre-job conference (i.e., agenda and checklist), and any other notice given by the District as part of the contracting process that identifies the LCP requirements. If the potential violation includes wages or a penalty less than \$50 per day as part of the forfeiture whether the Contractor has successfully claimed that the cause of violation was due to a mistake, inadvertence, or neglect by the Contractor. Included in this evidence should be a statement similar to that described in subsection (f) above with recommended penalty amounts, pursuant to Labor Code Section 1775;

h. Evidence of the Contractor's previous record in meeting prevailing wage obligations on other projects or on the same project prior to the alleged violation.

i. Whether the District's LCP has been granted Initial Approval, Extended Initial or Final Approval.

2. The file or report shall be served on the Labor Commissioner not less than 30 days before the Contract final payment or, if that deadline has passed, not less than 180 days before the expiration of the deadline to file suit under Labor Code Section 1741.

3. A copy of the file or report shall be served on the Contractor at the same time as it is sent to the Labor Commissioner. The District may exclude from the documents served on the Contractor copies of documents secured from the Contractor during an audit, investigation or meeting, if those documents are clearly referenced in the file or report. Along with the copy served on the Contractor shall be a Notice stating all deadlines and rights of the Contractor to contest the amount of forfeiture. A Notice of Deadlines for Forfeitures is attached as Attachment C.

4. The Labor Commissioner shall affirm, reject, or modify the proposed forfeiture in whole or in part as to penalty and/or wages due.

5. For LCPs having Initial Approval pursuant to Section 16426 of the California Code of Regulations, the effective date of the Labor Commissioner's determination of the forfeiture on the date the Labor Commissioner serves by first class mail on the District and 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 its payroll records.

The Labor Commissioner's approval, modification, or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture or no more than 30 days after the Notice of Completion has been filed by the District.

For LCPs with a Final Approval, the effective date of the Labor Commissioner's determination of forfeiture is 20 days after receipt of the proposed forfeiture, unless the Labor Commissioner serves a Notice upon the District and the Contractor, within that time period, that the forfeiture request is subject to further review. This Notice will be included in the transmittal of the Labor Commissioner's determination of the forfeiture to the Contractor. The Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of receipt of the proposed forfeiture or no more than 30 days after the Notice of Completion has been filed, unless some other procedure has been adopted pursuant to 8 CCR 16427(d).

VIII. Procedures for Contract Payment Withholding When Payroll Records

are Inadequate or Delinquent

The Contractor or Sub-Contractor shall have 10 days in which to comply to a written notice specifying in what respects the payroll records are inadequate or delinquent. In the event that the Contractor fails to comply within the 10-day period, he or she shall, as a penalty to the District, forfeit \$25.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. See Attachments G3 and G4 for sample notices to Contractors.

The District shall withhold or cease payments to the Contractor where there is a violation of the LCP's Payroll Record Requirement. Where the violation is by a Sub-contractor, the Contractor shall be notified of the nature of the violation and reference made to the Contractor's rights under Labor Code Section 1729.

A release bond under Civil Code Section 3196 may not be posted for the release of funds being withheld for the violation of the prevailing wage law.

Violations of the Payroll Record Requirement may include, but are not limited to (1) delinquent payroll records, or payroll records that are not submitted on the basis set forth in the Contract and the LCP, or (2) inadequate payroll records, which 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 is certified by someone who is not an authorized agent of the Contractor or Sub-contractor; or
- c. A record which remains uncorrected for ten (10) days, after the District has given the Contractor notice of inaccuracies detected by an audit or records review. However, prompt correction of such inaccuracies will stop any duty to withhold payment to the Contractor if such inaccuracies do not amount to one (1) percent of the dollar value of the entire weekly certified payroll, and such inaccuracies 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 8 CCR Section 16401.

IX. Deposits of Penalties and Forfeitures

A. 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 District shall deposit penalties and forfeitures into its fund from which the costs of its LCP have been funded or its General Fund consistent with applicable law.

B. Where collection of fines, penalties or forfeitures results from a court action to which the Labor Commissioner and the District are both parties, the fines, penalties or

forfeitures shall be divided between the General Fund of the State and the District's fund from which the costs of the LCP have been funded or its General Fund, as the court may decide.

C. All amounts recovered by suit brought by the Labor Commissioner and to which the District is not a party, shall be deposited in the General Fund of the State of California.

D. All wages and benefits which belong to a worker and are withheld or collected from a Contractor or Sub-contractor, 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 shall handle such wages and benefits in accordance with Labor Code Section 96.7.

X. Appeals of LCP Enforcement Actions

A. Appeal Rights for Contractors and Sub-contractors

A Contractor or Sub-contractor has the following rights should he or she wish to challenge an enforcement action by the District.

1. A Contractor may appeal an LCP's Notice of Withholding of Contract Payment by serving a written request on the LCP who will then forward the Request to the Director of the DIR. Such notice must be served on the LCP within 60 days of the first date the Contractor was served by the LCP with a Notice of Withholding of Contract Payments, which has been approved by the Labor Commissioner. If no request is served within sixty (60) days after service of the Notice of Withholding of Contract Payment, the Notice of Withholding shall become final.

2. Within ten 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.

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. Any evidence obtained by the LCP subsequent to the twenty (20) day cutoff shall be promptly disclosed to the Contractor or Sub-contractor.

4. Upon receipt of a copy of the "Request for Review," the LCP, shall, within ten (10) days, forward to the Director of the DIR a Notice of Transmittal, a full copy of the record of

the Request, a copy of the Notice of Withholding of Contract Payments, and the audit. The Contractor and/or Sub-contractor and surety shall be provided a copy of the Notice of Transmittal and all attachments as well as a copy of the Prevailing Wage Hearing Regulations.

5. In accordance with Labor Code Section 1742, the Contractor or Sub-contractor shall be provided an opportunity to review the evidence to be utilized by the District at the hearing within 20 days of receipt of the written request. Any evidence obtained by the Labor Commissioner subsequent to the twenty (20) day cutoff shall be promptly disclosed to the Contractor or Sub-contractor. The Contractor or Sub-contractor shall have the burden of proving that the basis for the Notice of Withholding of Contract Payment is incorrect.

6. The Director of the DIR may request a supplemental report from the District on the activities of the LCP. This report will be an update of the Annual Report, which is discussed below.

7. Upon completion of the hearing, the Director of the DIR shall have 45 days in which to render a decision. Within 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.

8. Within 45 days following service of the decision, any affected Contractor or Sub-contractor may seek review of the decision by filing a writ of mandate with the appropriate Superior Court pursuant to Code of Civil Procedure Section 1094.5. The Director has adopted Regulations setting forth the procedures for the hearings. These Regulations are Attachment G-20 to 46.

B. Debarment Policy

It is the policy of this District that the prevailing wage requirements set forth in Labor Code Sections 1720 - 1861, be strictly enforced. To further this policy, Contractors and Sub-contractors who are, after investigation, found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for possible debarment from bidding on or otherwise being awarded any public work contract, within California, for the performance of construction and/or maintenance services for a 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 purposes.

XI. Outreach Activities

To ensure the successful implementation of the District's LCP, there shall be several outreach activities initiated and maintained.

Providing Information to the Public

The LCP shall communicate and conduct outreach activities to provide information on the District's LCP. The LCP will make information available to Contractors at optional Pre-Bid Conferences and mandatory Pre-Job Conferences. The LCP will maintain ongoing communication via correspondence with workers at District job sites when review of the Certified Payroll Records reveals the possibility of prevailing wage violations. The LCP may hold periodic meetings with Contractor organizations, Contractors and Sub-contractors interested in public works contracting with the District.

In-service Management Training on the Labor Compliance Program

The LCP shall provide information to District personnel on the requirements and administration of the Labor Compliance Program.

XII. Annual Report

A District shall submit to the Director of DIR, an annual report on the operation of its LCP within 60 days after the close of its fiscal year, or accompany its request for an extension of initial approval, whichever comes first, per 8 CCR 16431. The Annual Report shall also be submitted to the District's Governing Board. The annual report shall contain, at the minimum, the following information:

1. Number of contracts awarded utilizing State Funds, and their total value;
2. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction; and
3. 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 amount recovered by action in any court of competent jurisdiction; and a summary of all audits conducted at the request of the Labor Commissioner.

An LCP whose contract responsibilities are statewide, or which involves widely dispersed and numerous contracts, or which is required to report contract enforcement to federal authorities in a federal format, may adopt a summary reporting format to aggregate small contracts and estimate numbers and dollar values required by Regulations 16431(a)(1) and (2). A summary reporting format may be adopted by agreement with the Director after advance notice to interested parties, and a list of parties requesting such notice shall be kept by the Director.

Appendix A

Defined Terms

Affected Contractor or Sub-contractor. A Contractor or Sub-contractor to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code 1741, or to whom an District 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 Standard has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code Section 1776.

Area of Determination. The area of determining the prevailing wage is the "locality" and/or the "nearest labor market area" as determined by the Director. In determining the area, the mobility of each craft, classification and type of work will be considered.

Assessment. 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 either by the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code Section 1776.

Audit. An audit consists of a comparison of payroll records to the best available information as to the actual hours worked and classifications of workers employed on the contract. An audit is sufficiently detailed when it enables the LCP, and the Labor Commissioner in reviewing proposed penalties, to draw reasonable conclusions as to compliance with Labor Code Sections 1720 - 1861, and to enable accurate computation of underpayment of wages to workers and of applicable penalties and forfeitures.

Awarding Body. Any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding a contract order for public works that exercises enforcement authority under Labor Code Section 1726 or 1771.5. In this LCP, it is synonymous with District.

Bid. Any proposal submitted to an District in competitive bidding for the construction, alteration, demolition, repair, maintenance, or improvement of any structure, building, road, property, or other improvement of any kind.

Certified. The affirmation of a person with the authority to so affirm, under the penalty of perjury that the records are originals or are full, true and correct copies of the original and depict truly, fully and correctly the craft or type of work performed, hours and days worked, and the amounts by category listed, disbursed by way of cash, check, or in whatever form or manner to each person by job classification and/or skill pursuant to a public works contract.

Chief of DAS. Chief of Division of Apprenticeship Standards or a duly authorized representative.

Chief of DLSE/Labor Commissioner. Chief of the Division of Labor Standards Enforcement or a duly authorized representative.

Chief of DLSR. Chief of the Division of Labor Statistics and Research or a duly authorized representative.

Contractor. Contractor includes Sub-contractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works.

Coverage. This means being subject to the requirements of Part 7, Chapter I of the Labor Code as a "public work." This includes all formal coverage determinations issued by the Director of Industrial Relations.

DAS. Division of Apprenticeship Standards.

Date of Notice or Call for Bids. The date the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding. This may also be referred to as the Bid Advertisement Date.

Days. Unless otherwise specified means calendar days.

Deliberately. Deliberately means premeditated and intentional and does not include inadvertent error.

Delinquent Payroll Records. Delinquent Payroll Records are those not submitted by the Contractor or Sub-Contractor on the date set in the Contract.

District. District shall refer to the School District and is used interchangeably with Awarding Body.

DLSE. The Division of Labor Standards Enforcement.

DLSR. The Division of Labor Statistics and Research.

Director. The Director of the Department of Industrial Relations or his/her duly authorized representative.

Duly Authorized Representative. An employee of the Department of Industrial Relations.

Effective Date. The date upon which the determinations of the Director go into effect. This date is ten days after the issue date of the determination.

Employer Payments. Includes:

(1) The rate of contribution irrevocably made by a Contractor or Sub-contractor 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 Sub-contractor 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 Sub-contractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

Enforcing Agency. The Enforcing Agency is the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; that is, it refers to the Labor Commissioner when review is sought from an Assessment, the District 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.,

Expiration Date. The date upon which the determinations of the Director are subject to change.

Final Approval. Status of an District's LCP as determined by the Director of the DIR.

Firm. A firm means, but is not limited to, any individual, corporation, partnership, limited partnership, agency, association, organization or trust operating a business in the State of California whether or not licensed or permitted to do so.

Fraud. Fraud means a suggestion, as a fact, of that which is not true, by one who does not believe it to be true; or the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; or the suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or a promise, made without any intention of performing it.

General Prevailing Rate of Per Diem Wages. Includes:

- (1) The prevailing basic straight-time hourly rate of pay; and
- (2) The prevailing rate for holiday and overtime work; and
- (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

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

(L) The term "general prevailing rate of per diem wages" does not include any employer payments for:

(i) Job related expenses other than travel time and subsistence pay;

(ii) 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;

(iii) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;

(iv) Industry or trade promotion;

(v) Political contributions or activities;

(vi) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the Contractor or Sub-contractor is required by Federal, State, or local law to provide such benefit; or

(vii) 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:

(a) Any Contractor or Sub-contractor, or any organization, association, or other representative of any Contractor or Sub-contractor likely to bid on or to perform a contract for public work which is subject to the particular prevailing wage determinations, and/or

(b) Any worker in the particular craft, classification, or type of work, who may be employed on a public work project subject to the particular prevailing wage determination, or any labor organization or other representative of such a person, including the recognized collective bargaining representative for the particular craft, classification, or type of work; and/or

(c) Any District or association or other representative of awarding bodies concerned with the administration of a public works contract or proposed contract, which is subject to the particular prevailing wage determination.

Helper. Any subjourneyman classification traditionally used to assist a journeyman. Under no circumstance may the Helper classification be used to replace statutorily required Apprentices.

Identify or Give Notice of Identity. This means to state the name, job title, address and current telephone number of a person or entity.

Inadequate Payroll Records. 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 is not certified, or certified by someone not an agent of the Contractor or Sub-Contractor; (3) A record remaining uncorrected for one payroll period, after the District has given the Contractor notice of inaccuracies detected by audit or record review. Provided, however, that prompt correction by a Contractor or Sub-Contractor will stop any duty to withhold if such inaccuracies do not amount one (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.

Intent to Defraud. Intent to defraud means the intent to deceive another person or entity, as defined in this article, and to induce such other person or entity, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property of any kind.

Initial Approval. The status of an District's LCP, which is given by the Director of the DIR, the date of which must be noted in the District's LCP documents.

Interim Determination. Those determinations of the Director issued between the quarterly updates.

Investigation. See Audit above.

Issue Date-Issuance. The date upon which copies of the determination of the Director are deposited in the mail.

Labor Commissioner. The Labor Commissioner is the Chief of the Division of Labor Standards Enforcement and include 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.

Labor Compliance Program (LCP). A labor compliance program initiated and enforced by a District in accordance with these regulations.

LCP Representative. The person, firm, or Third Party Administrator authorized by the District to enforce its LCP.

Liquidated Damages. Pursuant to Labor Code 1742.1, liquidated damages is the amount equal to the wages, or portion thereof, that remain unpaid sixty (60) days following the service of a civil wage and penalty assessment under Labor Code Section 1741 or a notice of withholding under Labor Code Section 1771.6(a)

Locality. Locality in which public work is performed means the county in which the public work is done in cases in which the contract is awarded by the State, and means the limits of the

political subdivision on whose behalf the contract is awarded in other cases.

Maintenance. Includes:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, [touch-up painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

Exception 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

Exception 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

(3) Landscape maintenance. Exception: Landscape maintenance work by sheltered workshops is excluded.

Mistake, Inadvertence, or Neglect. Mistake, inadvertence, or neglect in failing to pay the correct general rate of per diem wages means the lack of knowledge that any reasonable person would also be expected to have under the same or similar circumstances.

Nearest Labor Market Area. The nearest geographical area from which workers of the crafts, classifications, and types to be used in the performance and execution of the public work can be drawn for employment upon such public work.

Payroll Records. 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.

Person. Any individual, or legal entity, including a partnership, corporation, association, or any local, state, regional, national or international organization, public or private, or any District, or any agent or officer thereof, authorized to act for or on behalf of any of the foregoing.

Political Subdivision. Political subdivision includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.

Predetermined Changes. Definite changes to the basic hourly wage rate, overtime, holiday pay rates, and employer payments which are known and enumerated in the applicable collective bargaining agreement at the time of the bid advertisement date and which are referenced in the

general prevailing rate of per diem wages as defined in Section 16000 of these regulations. Contractors are obligated to pay up to the amount that was predetermined if these changes are modified prior to their effective date. Predetermined changes which are rescinded prior to their effective date shall not be enforced.

Prevailing Rate. Includes:

(1) The basic hourly rate being paid to a majority of workers engaged in the particular craft, classification or type of work within the locality and in the nearest labor market area, if a majority of such workers is paid at a single rate; if there is no single rate being paid to a majority, then the single rate (modal rate) being paid to the greater number of workers is prevailing. If there is no modal rate, then an alternate rate will be established by considering the appropriate collective bargaining agreements, Federal rates or other data such as wage survey data, including the nearest labor market area, or expanded survey as provided in Article 4 of these regulations;

(2) Other employer payments as defined in Section 16000 of these regulations and as included as part of the total hourly wage rate, from which the prevailing basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, then the Director may establish a prevailing employer payment rate by the same procedure outlined in subsection (1) above.

(3) The rate for holiday or overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, holidays and overtime (if any) included with the prevailing basic hourly rate of pay shall be prevailing.

Public Entity. For the purpose of processing requests for inspection of payroll records or furnishing certified copies thereof, "public entity" includes: the body awarding the contracts; the DAS, or the DLSE.

Public Funds. Includes state, local and/or federal monies. Note: Public funds do not include money loaned to a private entity where work is to be performed under private contract, and where no portion of the work is supervised, owned, utilized, or managed by an District.

Public Works. Public works means construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. Construction includes work performed during the design and pre-construction phases of construction of construction including, but not limited to, inspection and land surveying work. It also includes work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type, street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer of public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder charter or not. Public works includes the laying of carpet done under a building lease-maintenance contract and paid for out of public funds or the laying of carpet in a public building done under

contract and paid for in whole or in part out of public funds.

Respondent. Respondent means any person or entity subject to the proceedings set forth in an LCP's enforcement action.

Service upon a Contractor or Sub-contractor. This is the process of written notification mailed, first class postage to the last address of record for the Contractor or Sub-contractor listed with the State Contractors' License Board ("CSLB"), or the last known address of the available from the District, or in the case of the Sub-contractor, the last known address available from the Contractor. In the event there is no address of record with the CSLB, the District, or the Contractor, service shall be made pursuant to the Code of Civil Procedure Section 415.10 - 415.50, concerning the service of civil summons.

Serve upon the Labor Commissioner. Delivery of all documents including legal process to the Headquarters of the Labor Commissioner.

State Funded. A State Funded project, to which this LCP applies, means a public works project funded by either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004.

Sub-Contractor. A Sub-contractor includes licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works.

Substantial Interest. A substantial interest means an interest of twenty percent (20%) of a corporation, limited partnership or similar entity and includes an individual holding the position of responsible managing employee, qualifying responsible managing officer or general partner regardless of the percentage interest in the entity.

Third Party Contract Administrator. A Person or Firm under contract to the District to enforce the District's LCP.

Wage Survey. An investigation conducted pursuant to Labor Code Sections 1773 and/or 1773.4 to determine the general prevailing rate of per diem wages for the crafts/classifications in the county(ies) for which the survey questionnaire was designed.

Willful. A willful violation occurs when the Contractor or Sub-contractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

Worker. Worker includes laborer, worker, or mechanic.

Attachment A

Pre-Job Conference Checklist

State Funded School Facilities Project: _____

Pre-Job Conference Meeting Held: _____

at _____.

In accordance with the District's LCP, the following checklist is provided to the Contractor and listed Sub-contractors who attended a Pre-Job Conference to discuss their Labor Code obligations under the Contract with the District. Copies of the laws discussed will be provided.

1. The Contractor's duty to pay prevailing wages under Labor Code Section 1770, *et seq.*;
2. The Contractor's duty to employ registered apprentices on public works projects under Labor Code Section 1777.5;
3. The penalties for failure to pay prevailing wages and for failure to employ apprentices, including forfeitures and debarment under Labor Code Sections 1775, 1777.7 and 1813;
4. The requirement to maintain and submit copies of certified payroll records to the District as required 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 Sections 1735 and 1777.6, Government Code Section 12940 *et seq.*, and Title VII of the Civil Rights Act of 1964, as amended;
6. The prohibition against accepting or extracting a kickback from an employee's wages under Labor Code Section 1778;
7. The prohibition against accepting fees for registering any person for a public works project under Labor Code 1779, or for filling work orders on public works projects under Labor Code 1780;
8. The requirement that all employees be given an itemized wage deduction statement with each payment of wages as required by Labor Code Section 226, *et seq.*;
9. The requirement to list all Sub-contractors that are performing one-half of one percent ($\frac{1}{2}\%$) of the total amount of the Contractor's total bid as required by Public Contract Code Section 4104, *et seq.*;

10. The requirement that the Contractor be properly licensed in the State of California and to require all Sub-contractors to be properly licensed, and the penalty for employing workers while unlicensed as required by Labor Code Sections 1021 and 1021.5, and Business and Professions Code Section 7000, *et seq.*, under the State Contractors' License Law;

11. The prohibition against unfair competition as required under Business and Professions Code Sections 17200-17208;

12. The requirement that the Contractor be properly insured for Workers' Compensation under Labor Code Sections 1861 and 3700 *et seq.* and

13. The requirement that the Contractor abide by the Occupational Safety and Health Administration ("OSHA") laws and regulations that apply to the particular public works project.

It will be the Contractor's responsibility to ensure that all listed sub-Contractors and any substituted sub-Contractors comply with all of the laws listed on this checklist.

This checklist shall be signed by the Contractor's representative and the District's LCP representative and a representative of each Sub-contractor.

District/LCP Representative Name

Contractor Authorized Representative

Sub-contractor Authorized Representative

Sub-contractor Authorized Representative

Sub-contractor Authorized Representative

Sub-contractor Authorized Representative

Attachment B

Suggested Audit Procedures

An audit record is sufficiently detailed to verify compliance with the requirements of an LCP when the audit record displays that the following procedures were accomplished:

- (1) Audits of the obligation to secure workers' compensation means demanding written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers' Compensation Insurance Rating Bureau;
- (2) Audits of the obligations to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public works as to: whether contract award information was received, including an estimate of journey person 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 sent by the contractor or subcontractor to it for the training trust, or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade as being paid less than the journey person rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;
- (3) Audits 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 sent, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of canceled checks;
- (4) Audits of "illegal taking of wages" means inspection of written authorizations for deductions (listed in Labor Code Section 224) in the contractor or subcontractor's files and comparison to wage deduction statements furnished employees (Labor Code Section 226), together with an interview of several employees as to any payments not shown on the wage deduction statements;
- (5) Audits of the obligation to keep records of working hours, and pay not less than required by 8 CCR Section 16200 (a)(3)(F) for hours worked in excess of 8 hours per day and 40 hours per week are the steps for review and audit of Certified Weekly Payrolls under 8 CCR Section 16432;
- (6) Audits of the obligations to pay the prevailing per diem wage, means such steps for review and audit of Certified Weekly Payrolls which will produce a report covering compliance in the areas of:

(A) All elements defined as the "General Prevailing Rate of Per Diem Wages" in 8 CCR Section 16000, which were determined to be prevailing in the Director's

determination which was in effect on the date of the call for bids, available in its principal office, and posted;

(B) All elements defined as "Employer Payments" set forth in Section 16000 of these regulations, which were determined to be prevailing in the Director's determination which was in effect on the date of the call for bids, and pursuant to Labor Code Section 1773.2 was to be specified in the call for bids, made available in its principal office and posted.

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE SITE VISITATION INTERVIEW FORM
FORMA DE ENTREVISTA DEL SITIO SOBRE CONDECENCIA LABORARIA**

SITE NAME: _____ **DATE** _____
SITIO: _____ **FECHA:** _____

PROJECT NAME: _____

CONTRACT #: _____ **Interior / Exterior (circle)**

CONTRACTOR: _____
CONTRANTE: _____

SUBCONTRACTOR: _____
SUBCONTRATANTE _____

Person Interviewed: _____
Nombre de Persona Entrevistada _____

S/S Number _____ / _____ / _____
Numero de Seguro Social _____

Position Title: _____
Posición O Título del Entrevistado _____

Task Being Performed at Time of This Interview: _____
Clase de Labor Desempenando al Tiempo de Entrevista _____

Hourly Pay Rate: \$ _____
Salavrio por hora _____

OBSERVATIONS:

Site Inspector: _____ **Telephone** _____

Project Superintendent: _____ **Telephone** _____

Total number of workers observed on the visit: _____

Type of work observed: _____

Type of workers observed: _____

Was the worker believable? Yes No

Did the superintendent or foreman accompany you on the site? Yes No

Explain additional information received from the worker: _____

Interview Conducted by: _____

[illegible]

Attachment C

**Sample Letter Re: Notice of Deadlines for Forfeitures
(On District Letterhead)**

Date:

Contractor or Sub-contractor

Registered Mail,
return receipt
requested

Address
City, State, Zip

Re: Notice of Deadlines for Forfeiture

Dear Sir or Madam:

This document requests the Labor Commissioner of California to approve a forfeiture of money you otherwise would be paid. The District's LCP is asking the Labor Commissioner of California to agree, in 20 days, that the enclosed package of materials indicates that you have violated the law."

If you fail to respond to the District LCP's request that the Labor Commissioner approve a forfeiture by writing to the Labor Commissioner within 20 days of the date of service (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, the District LCP and [District] 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 20 day period, it will be considered.

If you change address, or decide to hire an attorney, it is your responsibility to advise both the District LCP and the Labor Commissioner by certified mail. Otherwise, notices will be served at your last address on file, and deadlines might pass before you receive such notices.

Sincerely,

District LCP

Enclosures
cc:

Attachment D

**DIR Form A-1-131
Public Works Payroll Reporting Form**

Form A 1-131 (New 2-80)
(form has been minimized 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

A public entity may require a more strict and/or more extensive form of certification.

Attachment F

Contract Language Regarding Applicability of LCP

The District shall include the following language in all State Funded projects to which its LCP is applicable.

Submission of Certified Payroll is a Condition Precedent to Receipt of Payment.

Contractor or Sub-contractor agrees that submission of Certified Payroll Records as well as all related or subsequent requests for supporting document made by this District or its LCP shall be a condition precedent to receipt of a progress, final, or retention payment. The District shall withhold any portion of the progress payment up to and including the entire progress payment until the Certified Payroll Records requirement is met by the Contractor or Sub-contractor. If the Contractor or Sub-contractor is determined to have failed to pay workers in compliance with the applicable prevailing wage sections of the Labor Code, the District's LCP, the District shall continue to withhold progress, final, or retention payments until sufficient funds have been withheld for payment of wages to workers and all applicable penalties imposed by the LCP.

Forfeiture for Failure to Comply with Written Record Request.

The Contractor or Sub-contractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting Certified Payroll Records or supporting documents. In the event that the Contractor or Sub-contractor fails to comply within the 10-day period, he or she shall, as a penalty to the District or its LCP, 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 DAS or the DLSE, 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 Sub-contractor to comply with this section.

Attachment E

Notice Inviting Bids

NOTICE IS HEREBY GIVEN that, at the time and place set forth herein, the Board of Trustees of the _____ School District ("District") will receive sealed bids for the award of a contract for construction of the following State Funded School Facilities project: _____ ("Project").

1. Qualified contractors may submit bids to the District at its main office located at _____, not later than _____, 2003, at which time any bids received shall be opened and publicly read. In accordance with Government Code Section 53068, any bids received after such time will be returned unopened to the bidder.

2. The District has initiated and enforces a Labor Compliance Program ("LCP") that has received initial [or final] approval from the Director of the Department of Industrial Relations ("DIR") in accordance with Labor Code 1770, *et seq.*, which requires the payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work for any State Funded School Facilities project.

Attachment G

IMPLEMENTATION PLAN

1. Labor Compliance Representative receives construction contract awards/work schedules from the Maintenance & Operations and the Facilities Departments.
2. Labor Compliance Representative participates in Pre-Job Conference.
3. Labor Compliance Representative provides site monitors with work schedules.
4. Site monitors, both District employees and others, conduct interviews and return interview sheets to Labor Compliance Representative.
5. Labor Compliance Representative enters information from interviews into database.
6. Labor Compliance Representative verifies information from certified payroll records.
7. Labor Compliance Representative notifies contractor in writing of any discrepancies with certified payroll records.
8. If clarification/correction is not received from the contractor within ten days, Labor Compliance Representative will commence an investigation.
9. 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.
10. Labor Compliance Representative prepares and submits public works violation reports to Labor Commissioner as required.
11. Labor Compliance Representative communicates on a regular basis with contractors, workers, building and trade organizations, and other community entities and in-service management to District personnel.
12. Labor Compliance Representative prepares and submits annual program reports to the District personnel and the Director of the Department of Industrial Relations.
13. Labor Compliance Representative manages all facets and is the primary contact for the District's Labor Compliance Program.
14. Labor Compliance Representative provides non-District site monitors with site visitation training and assigns projects when applicable.

Certified Payroll Verification Procedures

1. Upon receipt of Certified Payroll Reports from general/subcontractors once a week, or as required by District, compare information from the Labor Compliance visitation log to the contractors certified payroll and the prevailing wage schedule.

2. Compare name and social security number with trade classification listed.
3. Ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule
4. Check for employment of apprentices, correct rate of pay, and proper ratio to journey workers.
5. Contact the Contractor in writing and send by certified mail any inaccuracies in the verification of its certified payroll.
6. If clarification/correction is not received within ten (10) days from the contractor, the Labor Compliance Representative will commence an investigation.
7. Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
8. Retain all original interview forms and annotate the database as applicable.

Site Monitor Procedures

1. Receive construction site work schedule from Labor Compliance Representative.
2. Check in with site administrative office/site superintendent
3. Utilizing the Labor Compliance Site Visitation Interview form, Attachment B-3, conduct interviews with workers.
4. Note on your form any infractions you may observe while conducting the interview.
5. Return interview form to the Labor Compliance Representative.
6. Report any infractions you observed to the Labor Compliance Representative.
7. Record Site Visit on Log, Attachment B-4.

**Sample Letter Requesting Certified Payroll
[or Supporting Documents]**

Date

Name

Company Name

Address

City, CA Zip

Certified Mail

Return Receipt Requested

Re: District Project: _____ Labor Compliance Program ("LCP")
Request for Certified Payroll Records [or Supporting Documents]

Dear :

The _____ School District's ("District") Labor Compliance Program ("LCP") has reviewed the Certified Payroll Records ("CPR") submitted for the week ending _____. Upon review, it has been determined that the your company's records have not been submitted.

In accordance with Labor Code Section 1776 and the District contract, you are required to submit these documents within ten (10) days of the date of this letter. Under the above-cited authority, a hold has been placed on your progress [or final, or retention] payment until these records have been submitted and accepted by the LCP. If you fail to submit these records within the ten (10) days, an additional penalty may be imposed. This penalty is \$25.00 per calendar day (or portion thereof) for each worker, until strict compliance is achieved.

Please submit immediately the requested records [or documents] to the LCP at the address shown above.

Sincerely,

District LCP Representative

Enclosure

cc:

District Letterhead

Sample Notice of Violation of Prevailing Wage Laws

Date

Name

Company Name

Address

City, CA Zip

Certified Mail

Return Receipt Requested

Re: District Project: _____ Labor Compliance Program ("LCP")
Notice of Violation of Prevailing Wage Laws

Dear :

The _____ School District's ("District") Labor Compliance Program ("LCP") has reviewed the Certified Payroll Records ("CPR") submitted for the week(s) ending _____. Upon review of the submitted CPR and further investigation, it has been determined that prevailing wages have not been properly paid to all workers. Based on the review and investigation, the following violations have occurred.

A violation of Prevailing wages (Labor Code Section 1775).

In accordance with Labor Code Section 1775 and the District contract, it has been determined that prevailing wages in the amount of \$ _____ have not been paid. As a penalty for not paying prevailing wage, \$50.00 per calendar day (or portion thereof) per worker shall be forfeited from the progress [or final or retention amount] owed to you. Therefore, the total of \$ (prevailing wage underpayment) and \$ (penalty), or \$(Total of two numbers) is being withheld.

A violation of Certified Payroll Records (Labor Code Section 1776).

In accordance with Labor Code Section 1776 and the District contract, you have ten (10) days from the date of this letter in which to submit all documents that provide proof of correction of this (these) violation(s). If you fail to submit these records within the ten (10) days, an additional penalty may be imposed. This penalty is \$25.00 per calendar day (or portion thereof) for each worker, until strict compliance is achieved.

A violation of Overtime laws (Labor Code Section 1815).

In accordance with Labor Code Section 1813 and the District contract, a penalty of \$25.00 for each worker employed by the Contractor or Sub-Contractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week is violation of the Overtime provisions of Labor Code Section 1815.

[Optional] Penalties were not imposed, or were reduced because it was determined that the failure to pay prevailing wages, or failure to submit CPR, or the failure to register to

train apprentices was due to inadvertence, mistake or excusable neglect.

[Optional] Penalties were imposed by the LCP because it was determined that the failure to pay prevailing wages, or failure to submit CPR, or the failure to register to train apprentices was not due to inadvertence, mistake or excusable neglect.

If you believe that the withholding, penalties, or forfeitures imposed above are inaccurate, you may take one or more of the following actions to challenge this enforcement action.

Please respond within ten (10) days with all necessary records to correct the violations cited above and to provide proof of the correction to the undersigned. If you pay the violation amounts including penalties within the ten (10) days, the stated amounts will not be withheld from the progress [or final or retention] payment as stated.

Sincerely,

District LCP Representative

Labor Compliance Program <hr/> <hr/> <hr/> <hr/> Phone: Fax: Date:	<div style="text-align: center; vertical-align: middle;">(SEAL)</div>
	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 _____ (A Labor Compliance Program) 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 that the total amount of wages due is: \$ _____

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

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

LABOR COMPLIANCE PROGRAM

By: _____

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an Affected Contractor or Sub-contractor 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 60 days after service of the notice.

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

Labor Compliance Program
Review Office-Notice of Withholding of Contract Payments
Address
City, State

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 Sub-contractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written Request for Review.

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

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the Affected Contractor or Sub-contractor 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 (b), the LCP shall, upon receipt of a request from the affected Contractor or Sub-contractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the Contractor or Sub-contractor the opportunity to meet with the LCP'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 LCP's designee to attempt to settle a dispute regarding this notice must be transmitted to the LCP at the following address:

Liquidated Damages

In accordance with Labor Code Section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the Affected Contractor, Sub-contractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the Contractor or Sub-contractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

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

Enclosure

cc: Bonding Company via certified mail

Surety via certified mail

LABOR COMPLIANCE PROGRAM <hr/> Review Office - Notice of Withholding of Contract Payments <hr/> <hr/> <hr/> Phone: Fax: <hr/>	(SEAL)
Date:	

In Reply Refer to Case No.:

Notice of Transmittal

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

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

Also enclosed please find the following:

- ☐ Copy of Notice of Withholding of Contract Payments
- ☐ Copy of Audit Summary

LABOR COMPLIANCE PROGRAM

By: _____

cc: Prime Contractor
Subcontractor
Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270.

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

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

To: Contractor

Sub-contractor

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) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected Contractor or Sub-contractor 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 Sub-contractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy

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

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

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

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

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

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

Attention: _____

Request to Review Evidence

To: _____

From: _____

Regarding Notice of Withholding of Contract Payments Dated _____

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.: _____

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 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.

STATE OF CALIFORNIA - DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF APPRENTICESHIP STANDARDS

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 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 (c).

(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-third 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 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 or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

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

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

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain 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 telephone number of the contractor making the contribution.
 2. The contractor's license number.
 3. The name and address of the public agency that awarded the contract.
 4. The jobsite location, including the county where the work was performed.
 5. The contract or project number
 6. The time period covered by the enclosed contributions.
 7. The contribution rate and total hours worked by the apprenticeable occupation(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**

Name of Contractor:		Contractor's State License No.:
Contractor's Mailing Address -- Number & Street, City, Zip Code:		Area Code & Telephone No.:
Name & Location of Public Works Project:		Date of Contract Award:
		Date of Expected or Actual Start of Project:
Name & Address of Public Agency Awarding Contract		Estimated Number of Journeymen Hours:
Occupation of Apprentice	Number To Be Employed	Approximate Dates To Be Employed

Check One Of The Boxes Below

Please Note: Your election of options is not to be deemed a request for the immediate dispatch of apprentices. Contractors must make a separate request for actual dispatch.

Box 1

Box 2

Box 3

Box 4

Signature: _____

Typed Name _____

Title: _____

Date: _____

State of California
 Department of Industrial Relations
 P.O. Bo 420603
 San Francisco, CA 94142

TRAINING FUND CONTRIBUTIONS

California Apprenticeship
 Council

Name and Address of Contractor/Subcontractor making Contribution	Contractor's License Number		
	Contract or Project Number		
Name and Address of Public Agency Awarding Contract	Jobsite Location (Including County)		
	Period Covered by Contribution		
Classification(s) or Workers (Carpenter, Plumber, Electrician, Etc.)	Hours	Cont. Rate per Hour	Amount
Signature	Date		
Title	Area Code & Telephone Number		

CAC 2

PREVAILING WAGE HEARING REGULATIONS

PREVAILING WAGE HEARING REGULATIONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 8, SUBCHAPTER 6 (SECTIONS 17201 through 17270)

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.
- 17206. Access to Hearing Records.
- 17207. Ex Parte Communications.
- 17208. Intervention and Participation by Other Interested Persons.
- 17209. Representation.
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ARTICLE 1. GENERAL

17201. Scope and Application of Rules.

- (a) These Rules govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code, as well as any notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776. The provisions of Labor Code section 1742 and these Rules apply to all such assessments and notices served on a contractor or subcontractor on or after July 1, 2001 and provide the exclusive method for an Affected Contractor or Subcontractor to obtain review of any such notice or assessment. These Rules also apply to transitional cases in which notices were served but no court action was filed under Labor Code sections 1731-1733 prior to July 1, 2001, in accordance with Section 17270 (Rule 70) below.
- (b) These Rules do not govern debarment proceedings under Labor Code section 1777.1, nor proceedings to review determinations with respect to the violation of apprenticeship obligations under Labor Code sections 1777.5 and 1777.7, nor any criminal prosecution.
- (c) These Rules do not preclude any remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.
- (d) For easier reference, individual sections within these prevailing wage hearing regulations are referred to as "Rules" using only their last two digits. For example, this Section 17201 may be referred to as Rule 01.

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

17202. Definitions.

For the purpose of these Rules:

- (a) "Affected Contractor or Subcontractor" means a contractor or subcontractor (as defined under Labor Code section 1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code section 1741, or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to Labor Code section 1771.6, or to whom the Labor Commissioner or the Division of Apprentice Standards has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776;
- (b) "Assessment" means a civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to Labor Code section 1741, and it also includes a notice issued by either the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code section 1776;
- (c) "Awarding Body" means an awarding body or body awarding the contract (as defined in Labor Code section 1722) that exercises enforcement authority under Labor Code section 1726 or 1771.5;
- (d) "Department" means the Department of Industrial Relations;
- (e) "Director" means the Director of the Department of Industrial Relations;
- (f) "Enforcing Agency" means the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; *i.e.*, it refers to the Labor Commissioner when review is sought from an Assessment, the Awarding Body when review is sought from a Notice of Withholding of Contract Payments, and the Division of Apprenticeship Standards when review is sought from a notice issued by that agency that assesses penalties under Labor Code section 1776;
- (g) "Hearing Officer" means any person appointed by the Director pursuant to Labor Code section 1742(b) to conduct hearings and other proceedings under Labor Code section 1742 and these Rules;
- (h) "Joint Labor-Management Committee" means a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code).

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

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

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

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

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

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

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

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

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

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

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

(c) Where service of any notice, decision, pleading or other document is by first class mail, and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five days if the place of address is within the State of California, and 10 days if the place of address is outside the State of California but within the United States. However, this Rule shall not extend the time within which the Director may reconsider or modify a decision to correct an error (other than a clerical error) under Labor Code section 1742(b).

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

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

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

(a) Upon receipt of a Request for Review of an Assessment or of a Notice of Withholding of Contract Payments, the Director, acting through the Chief Counsel (*see* subpart (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 (cd) 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 therefor 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 BAW 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.

ATTACHMENT B

SCOPE OF LABOR COMPLIANCE CONSULTANT SERVICES

1) PURPOSE OF AGREEMENT

- a. CONSULTANT, upon notice to proceed from the DISTRICT shall provide Labor Compliance Program (“LCP”) related services as required for the implementation, enforcement, management, and operation of the DISTRICT’s Initially Approved Labor Compliance Program (LCP). A copy of the DISTRICT’s LCP is attached hereto as Attachment “A” and incorporated as part of this Agreement, and may be amended from time to time. CONSULTANT shall furnish and pay for all labor, materials, supervision, supplies and equipment necessary for the timely and efficient performance of such services.

2) BASIC SERVICES

- a. CONSULTANT shall provide the following basic services for the LCP, including but not limited to,

2.1 PRE-BID and PRE-JOB CONFERENCE

- a) The DISTRICT proposes that an optional Pre-Bid Conference may be held for all potential bidders. The CONSULTANT upon notice from the DISTRICT shall provide a Pre Bid orientation session for all prospective bidders regarding their obligations and duties under the LCP on each District project prior to receipt of sealed bids.
- b) After the award of contract for a PROJECT, and prior to the commencement of any work by the Contractor or its Subcontractors, CONSULTANT shall conduct all mandatory Pre-Job Conferences.
- c) CONSULTANT shall assist the DISTRICT in preparing the necessary labor compliance documents and suggested reporting forms to be provided to the Contractor and Subcontractors at the Pre-Job Conference including, but not limited to the following: a copy of the approved LCP, the checklist of Labor Law Requirements, Department of Industrial Relations website where applicable prevailing wage determinations can be obtained, 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)
- d) At the mandatory Pre-Job conference, the CONSULTANT shall provide and discuss the issues set forth in the Checklist of Labor Law Requirements of the DISTRICT’s LCP and be prepared to answer questions regarding the State labor law requirements applicable to the PROJECT, including, but not limited to the following: prevailing wage requirements, wage determinations, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to CONSULTANT, and apprenticeship requirements.

- e) CONSULTANT shall ensure that the Contractor's and all of the Subcontractor's representatives certify that they acknowledge and understand the DISTRICT's LCP and all of the State labor law requirements for the PROJECT.

2.2 CERTIFIED PAYROLL RECORDS

- a) CONSULTANT shall monitor Contractor and Subcontractors to ensure they maintain weekly certified payroll records (CPR) and submit CPR's to CONSULTANT.
- b) CONSULTANT shall review all submitted CPRs to ensure they are accompanied by a statement of compliance signed by the Contractor and each Subcontractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations and that the classifications set forth for each employee conform with the work performed.
- c) CONSULTANT shall review all CPR's to ensure the following: that the worker's rate for straight time hours equal or exceed the rate specified in the contract by reference to the Prevailing Wage Determinations for the class of work actually performed, overtime payments, fringe benefit payments, subsistence, travel, shift differential and other payments are made in accordance with the applicable Prevailing Wage Determinations and applicable California law.
- e) CONSULTANT shall confirm and ensure that Contractors and Subcontractors have Workers Compensation Insurance Coverage and that they are properly licensed.

2.3 APPRENTICESHIP REQUIREMENTS

- a) CONSULTANT shall ensure that the Contractor and all Subcontractors comply with the apprenticeship requirements set forth in the DISTRICT's LCP and Labor Code Section 1777.5
- b) CONSULTANT shall ensure that a separate DAS 140 Form is properly completed and submitted for each apprenticeable craft employed on the project.
- c) If the Contractor or Subcontractor is not required to make apprenticeship training contributions to the applicable apprenticeable program, CONSULTANT shall ensure the appropriate contributions are timely made to the California Apprenticeship Council and accompanied by the required CAC -2 Form.

2.4 AUDITS AND INVESTIGATIONS

- a) CONSULTANT shall conduct audits and investigations of CPR's to determine whether all workers on the PROJECT have been paid according to the applicable prevailing wage rates. These audits and investigations shall take place on a random basis or at the request of the Labor Commissioner or upon receipt of a complaint or when there is evidence that a violation may have occurred.
- b) CONSULTANT shall conduct on site interviews with workers on the PROJECT if there is evidence that a violation may have occurred or on a random basis or as requested by the DISTRICT.

- c) CONSULTANT shall conduct all such audits and investigations and prepare appropriate audit records in sufficient detail as set forth in the DISTRICT's LCP and Title 8, California Code of Regulations, section 16432.
- d) CONSULTANT shall prepare and maintain records documenting any audits or investigations in sufficient detail so that such records may be used by the DISTRICT in the event of a request for hearing, appeal, or litigation. The records must also demonstrate that a thorough and objective investigation took place.
- e) If an audit or an investigation reveals that a willful violation of the Labor Code (as set forth in the DISTRICT's LCP) has occurred, the CONSULTANT shall 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 (2) the classification of workers employed on the PROJECT and (3) any other information required under the LCP of the Labor Code.
- f) Any records from the investigation and audits and any other services provided pursuant to the LCP shall be maintained by the CONSULTANT for a period of three (3) years from the filing and recording of the Notice of Completion (NOC) with the San Bernardino County Auditor/Controller-Recorder. In the event of termination between the parties,

2.5 ENFORCEMENT ACTIONS

- a) CONSULTANT shall provide services to assist the DISTRICT in enforcing Labor Code section 1720 and the procedural regulations of the Department of Industrial Relations in a manner consistent with the practice of the Division of Labor Standards Enforcement (DLSE) and the regulations found in Title 8, California Code of Regulations, section 1600
- b) CONSULTANT's duties in assisting with the DISTRICT's enforcement responsibilities under the Labor Code and LCP include, but are not limited to the following:
 - i) Making written recommendations, after a full and complete investigation to the satisfaction of the CONSULTANT, to withhold contract payments and assess appropriate penalties for not paying the per diem prevailing wages.
 - ii) Making written recommendations to withhold contract payments and assess appropriate penalties when payroll records are delinquent or inadequate.
 - iii) Making written recommendations to withhold contract payments and assess appropriate penalties for failing to comply with the required apprenticeship requirements for the PROJECT.
 - iv) Making written recommendations for forfeitures and preparing the required file or report for the determination and approval of such forfeitures to the Labor Commissioner.
 - v) Making written recommendations regarding the debarment of any Contractors or Subcontractors found to be repeat violators of the Labor Code.

- c) After determination of the amount of forfeiture by the Labor Commissioner, CONSULTANT shall assist the DISTRICT in preparing and serving the appropriate notice of withholding of contract payments to the Contractor and/or Subcontractors.
- d) Should the affected Contractor or Subcontractor request review of a notice of withholding of contract payments, CONSULTANTS shall assist the DISTRICT and its legal counsel in preparing for such review and hearings including, but not limited to, preparing all documents and evidence and providing testimony at any such hearings.

2.6 OUTREACH ACTIVITIES

- a) The CONSULTANT shall communicate and conduct outreach activities relative to public information regarding the DISTRICT's LCP.
- b) Presentations to Contractors and Subcontractors at the optional Pre-Bid Conferences and mandatory Pre-Job Conferences.
- c) Ongoing communication with workers at the PROJECT when review of the CPRs reveals the possibility of prevailing wage violations.
- d) Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting with the DISTRICT.
- e) Providing advice and expertise to answer any questions from the DISTRICT's staff, Consultants, Contractors and Subcontractors relative to the terms, requirements and administration of the LCP.

2.7 ANNUAL REPORTING

- a) CONSULTANT shall prepare the required annual reports on the operation of the LCP and submit to the DISTRICT for approval prior to submittal to the Department of Industrial Relations.
- b) CONSULTANT shall assist the DISTRICT in applying for either extended approval or final approval of the DISTRICT's LCP.

ATTACHMENT C
INSURANCE REQUIREMENTS

1.1 COMPLIANCE WITH LAWS, WORKERS COMPENSATION INSURANCE, HOLD DISTRICT HARMLESS

Workers Compensation Insurance Required for this Agreement:

The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including workers compensation insurance laws. The CONSULTANT understands that, as an independent contractor, CONSULTANT is not covered by any type of DISTRICT insurance, including workers compensation insurance. The CONSULTANT shall provide, through insurance policies or self-insurance, workers compensation insurance coverage for its employees who provide services hereunder. The DISTRICT understands that the CONSULTANT may use independent contractors, volunteers or others not covered by the CONSULTANT's workers compensation coverage to provide services hereunder. The CONSULTANT shall advise such persons providing services hereunder at the direction of the CONSULTANT that workers compensation insurance is not provided by the DISTRICT, and the CONSULTANT shall hold the DISTRICT harmless from any and all claims for damages that may be asserted by such persons.

1.2 SELF-EMPLOYMENT, RESPONSIBILITY FOR MEDICAL INSURANCE AND COSTS

Medical Insurance for Self-Employed Required for this Agreement:

If the CONSULTANT is a self-employed individual, the CONSULTANT agrees to arrange, in lieu of workers compensation insurance, for insurance for or financial responsibility for any and all medical and related treatment, and to pay the cost of such treatment, including emergency treatment that may be provided that the CONSULTANT did not arrange for which may be required due to any injuries of any type that may be sustained by the CONSULTANT while performing services under this AGREEMENT. The CONSULTANT shall, prior to commencing services herein, provide the DISTRICT with satisfactory evidence of medical coverage as set forth in Paragraph 11.5, below. Cancellation or lack of medical coverage for the CONSULTANT shall not relieve the CONSULTANT of CONSULTANT's financial responsibility for the cost of medical and related treatment.

1.3 COMPREHENSIVE GENERAL LIABILITY

Comprehensive General Liability Insurance Required for this Agreement:

The CONSULTANT shall carry and maintain during the term of this AGREEMENT a policy of comprehensive General Liability with a limit of not less than \$500,000 per occurrence. The DISTRICT reserves the right to waive this General Liability insurance requirement and if so waived, the CONSULTANT shall hold the DISTRICT harmless from any and all claims for damages.

1.4 AUTO LIABILITY

Auto Liability Insurance Required for this Agreement:

The CONSULTANT shall confirm that all individual inspection staff shall carry and maintain personal Auto Liability for owned, hired and non-owned vehicles, for injury, damage and loss, including, but not limited to, premises and operations, contractual liability and personal injury that may arise from and in connection with the performance or nonperformance of CONSULTANT's services herein. The CONSULTANT shall hold the DISTRICT harmless from any and all claims for injury, damage, and loss.

1.5 PROFESSIONAL LIABILITY INSURANCE

Professional Liability Insurance Required for this Agreement:

The CONSULTANT shall carry and maintain during the term of this AGREEMENT a policy of professional liability insurance, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.

1.6 EVIDENCE OF COVERAGE, CANCELLATION OR MATERIAL CHANGES

Not later than ten (10) calendar days after the date of execution of this AGREEMENT and, in any case, prior to commencement of any of the CONSULTANT's services herein, the CONSULTANT shall furnish certificates of insurance evidencing the insurance coverage required above, including endorsements, to the DISTRICT Department administering the Agreement, which certificates shall provide that such insurance shall not be terminated or expire or be materially changed without thirty (30) calendar days written notice to the Department, and CONSULTANT shall maintain such insurance from the time that the CONSULTANT commences performance of services hereunder until CONSULTANT's completion of such services. Within sixty (60) calendar days of the commencement of this Agreement, the CONSULTANT shall furnish certified copies of the policies and all endorsements.

1.7 ADDITIONAL NAMED INSURED

All insurance policies, except for Workers Compensation shall contain additional endorsements naming the DISTRICT and its officers, employees, agents and volunteers as additional named insureds with respect to liabilities arising out of the performance of services hereunder.

1.8 WAIVER OF SUBROGATION RIGHTS

The CONSULTANT shall require the carriers of the coverages required above to waive all rights of subrogation against the DISTRICT, its officers, employees, agents, volunteers, contractors and subcontractors.

1.9 POLICIES PRIMARY AND NONCONTRIBUTORY

All policies required above shall be primary and noncontributory with any insurance or self-insurance programs carried or administered by the DISTRICT.

1.10 INSURANCE REVIEW

The above insurance requirements are subject to periodic review by the DISTRICT. The DISTRICT's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types or insurance coverage or coverage limits, provided that any such change is reasonable in light of past claims against the DISTRICT, inflation, or any other item reasonably related to the DISTRICT's risk. Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types or insurance coverage or higher coverage limits shall be made by amendment to this Agreement. The CONSULTANT agrees to execute any such amendment with thirty (30) calendar days of receipt.

CONSULTANT's Initials

Business Services

Accounting Services Fiscal Services Payroll

Purchasing Warehouse

"Quality Work by Quality People"

To: All Principals and Department Heads

Bulletin No. 05-019

From: Mohammad Z. Islam
Assistant Superintendent
Business and Finance

July 29, 2005

Subject: **Department of Justice Fingerprint and Criminal Background Investigation Requirements** (Ed Code Section 45125.1)

No Course of Study activity (Services or performances for student assemblies, classroom lectures or presentations which enhance student educational programs), *Non-Classified Expert* (Individuals or groups that provide a service for District staff) or *Consultant* services will be approved or should take place at your site until a **(DOJ) Fingerprint and Criminal Background Investigation form** has been filled out and submitted along with your request for services for approval to Business Services. Please plan ahead, as this must be **completed** and **approved** no less than three weeks prior to a regularly scheduled Board meeting to ensure Board approval before the date of service. **NO EXCEPTIONS.**

A photocopy of the form will be returned to your site with approval or denial.

For further clarification, please call 381-1164.

ATTACHMENT D

San Bernardino City Unified School District
777 N. F Street, San Bernardino, CA, 92410

Fingerprint and Criminal Background Check Certification

In accordance with Department of Justice (DOJ) fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq.

With respect to the Agreement dated _____, between the San Bernardino City Unified School District "DISTRICT" and the individual, company, or contractor named _____ "VENDOR," for provision of _____ services,
Please check all appropriate boxes and sign below:

REQUIREMENTS MET:

☐ A)

The VENDOR hereby certifies to the DISTRICT's governing board that it has completed the criminal background check requirements of Education Code (EC) section 45125.1 and that none of its employees that may come into contact with DISTRICT students have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

List below, or attach, all employee names that have successfully completed the fingerprinting and criminal background check clearance in accordance with the law.

SERVICES MAY BEGIN AFTER A PURCHASE ORDER (P.O.) IS ISSUED TO THE VENDOR.

~~O R~~

REQUEST FOR WAIVER:

IF YOU ARE REQUESTING A WAIVER, BE ADVISED THAT NO SERVICES ARE TO BE PROVIDED UNTIL SUCH WAIVER IS APPROVED BY THE DISTRICT AND A P.O. IS ISSUED.

☐ B) The VENDOR requests a waiver of the Department of Justice(DOJ) fingerprint and criminal background investigation for the following reason(s) permitted by Education Code section 45125.1 et seq.

- ☐ The VENDOR and its employees will have NO CONTACT with pupils. (No school-site services will be provided.)
- ☐ The VENDOR and its employees will have LIMITED CONTACT with pupils. (Attach information about length of time on school grounds, proximity of work area to pupil areas, whether VENDOR/its employees will be working by themselves or with others, and any other factors that substantiate limited contact.) [EC 45125.1(c)]
- ☐ The VENDOR and its employees WILL HAVE OTHER THAN LIMITED CONTACT with pupils but will assure that ONE(1) OR MORE of the following methods are utilized to ensure pupil safety. [EC 45125.2(a)]
- Check all methods to be used:
- ☐ 1) Installation of a physical barrier at the worksite to limit contact with pupils
- ☐ 2) Continual supervision and monitoring of all employees of the VENDOR by an employee of the VENDOR who has not been convicted of a serious or violent felony as ascertained by the DOJ
- ☐ 3) Surveillance of employees of the VENDOR by school personnel
- ☐ The services provided by the VENDOR are for an "EMERGENCY OR EXCEPTIONAL SITUATION, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable" [EC 45125.1(b)]

By signing below, under penalty of perjury, I certify that the information contained on this certification form and attached employee list(s) is accurate. I understand that it is the VENDOR's sole responsibility to maintain, update and provide the District with current "Fingerprint and Criminal Background Check Certification", along with the employee list, throughout the duration of VENDOR provided services.

Authorized VENDOR Signature _____ Printed Name _____ Title _____ Date _____

BOTH DISTRICT APPROVALS SHOWN BELOW ARE REQUIRED:

Office use only	WAIVER REQUEST:	APPROVED--- <input type="checkbox"/>	DENIED--- <input type="checkbox"/>
	By: _____	Date _____	
	Mohammad Z. Islam, Business Administrator, Business Services Division OR Other Authorized District Agent		
	WAIVER REQUEST:	APPROVED--- <input type="checkbox"/>	DENIED--- <input type="checkbox"/>
	By: _____	Date _____	
	Harold Vollkommer, Asst. Superintendent, Human Resources Division OR Other Authorized District Agent		

BUSINESS AND NON- INSTRUCTIONAL OPERATION

Policy No. 3323

DISABLED VETERAN BUSINESS ENTERPRISES

Project agreements for the construction and/or modernization of school facilities which are approved for funding by the State Allocation Board shall include the following language:

1. As required by the Education Code Section 17076.11, this Board has a participation goal for Disabled Veteran Business Enterprises of three percent, per year, of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District.
2. At the time of execution of a contract, the contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition for final payment under any contract for such project, the contractor shall provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.
3. The Superintendent or designee shall devise a process for the implementation of this policy as defined in the Education Code and shall make any necessary revision to keep the policy current with State legislation.

Adopted by the Board of Education: May 2, 2000

ATTACHMENT E

ATTACHMENT F

**LOCAL BUSINESS OUTREACH PROGRAM
BROCHURE AND FORM**

DON'T MISS OUT ON SBCUSD LOCAL BUILDING OPPORTUNITIES—

—ADD YOUR NAME TO OUR
MAILING AND EMAILING LIST.
CONTACT US TO REGISTER:

SBCUSD—Facilities Management
LOCAL BUSINESS OUTREACH PROGRAM
777 North F Street
San Bernardino, CA 92410
(909) 381-1238 Fax (909) 885-4218
susan.deleon@sbcusd.com

OR VISIT LBOP ON THE WEB @

www.sbcusd.k12.ca.us

AND CLICK ON Nutrition Services and Facilities Operations

SBCUSD FACILITIES CONTRACTS 6 MONTH LOOK AHEAD

Type	School Name
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Mods

Belvedere ES
Cajon HS
Thompson ES
Oehl ES

New

Monterey ES
New Curtis MS
Emmerton II ES

SDC

Adds

San Bernardino HS
Arrowview MS
King MS
San Gorgonio HS
Del Vallejo MS
Gold Valley MS
Shandin MS
Cajon HS
Pacific HS
Serrano MS

SBCUSD

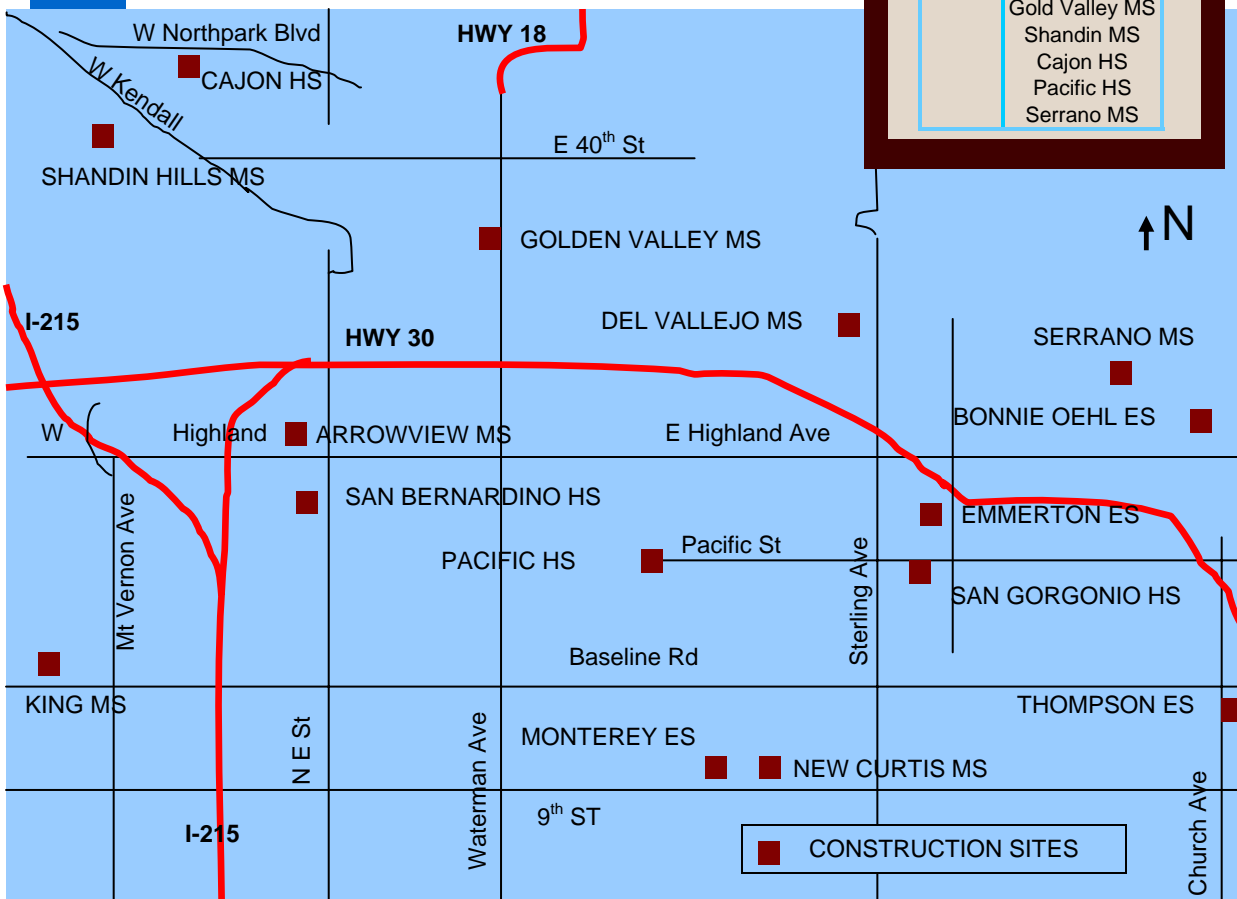


BUILDING SCHOOLS.

BUILDING EDUCATION.

BUILDING OPPORTUNITIES.

**LOCAL
BUSINESS
OUTREACH
PROGRAM**





Program Plan

MISSION

SBCUSD, in support of local businesses and its students, is implementing an outreach program to increase awareness and participation in its facilities contracts opportunities.

STRATEGY

SBCUSD is communicating program information in phases to leverage and strengthen existing relationships and build new ones

- Phase I— target existing district business and education partners
- Phase II—expand out to other local businesses citywide
- Phase III— embrace local businesses countywide

OPPORTUNITIES

SBCUSD is collaborating with existing industry associations, chambers, public agencies, to provide

- Information about contracting opportunities
- Training and dialogue to eliminate program barriers
- Network of industry partners for teaming opportunities



Program Qualifications

BUILDING SCHOOLS

SBCUSD Business Partnerships

To become a program partner, a local business must submit:



Proof of Locality (any one or more):

- Local business license
- Local business address
- Local residence



Program Registration Form

BUILDING EDUCATION

SBCUSD Education Partnerships

To be designated “ED Friendly,” a local business must either:



Volunteer to SBCUSD education programs (any one or more) :

- Time
- Talent
- Treasure



Partner or subcontract with a local business that is designated “ED Friendly”



Program Incentives

LOCAL BUSINESS NETWORKING

Industry, Association, Chamber Events

Build opportunities by networking with Construction Managers, Prime and General Contractors, and SBCUSD Facilities Management at events hosted with local chambers of commerce and industry associations. Meet and team with other local businesses for SBCUSD Facilities Contracts.

LOCAL BUSINESS TRAINING

Workshops, Brown Bags, Presentations

Take advantage of our educational partnerships with businesses, economic consortiums, redevelopment agencies, small and minority development centers to learn how to obtain insurance, qualify for industry certifications, and expedite contract pay applications.

LOCAL BUSINESS RECOGNITION

“ED Friendly” Business Designation

Be recognized for your support of SBCUSD students and education programs. Our unique “ED Friendly” logo on district vendor lists, contractor and subcontractor directories accessed by district purchasing, local contractors and professional services differentiates your business from the rest.



**BUILDING SCHOOLS.
BUILDING EDUCATION.
BUILDING OPPORTUNITIES.**

SBCUSD LOCAL BUSINESS OUTREACH PROGRAM



SBCUSD LBOP REGISTRATION

Company Information		Contact Information	
Company Name and Address		Name	Title/Position
		Cell phone - -	
		Office phone - - Fax - -	
Corporate Address (if different than local)		E-mail	
		Web Address	
Ownership Type (check type)	Employee Count	Gross Receipts	Small Business Certification (check type)
<input type="checkbox"/> Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Nonprofit <input type="checkbox"/> Other: (describe)		YR/\$	<input type="checkbox"/> SB <input type="checkbox"/> DVBE <input type="checkbox"/> other: <input type="checkbox"/> none Name on Certification: _____ Certifying Agency: _____
Business Goods and/or Services (CSI) (Check all that apply and circle or note specialty)			
<input type="checkbox"/> General Contracting (00)	<input type="checkbox"/> Doors and Windows (08)	<input type="checkbox"/> Electrical (16)	<input type="checkbox"/> Planning
<input type="checkbox"/> General Requirement (01)	<input type="checkbox"/> Finishes (09)	<input type="checkbox"/> Utilities	<input type="checkbox"/> Architect/Engineer
<input type="checkbox"/> Site work (02) Demo/remed	<input type="checkbox"/> Specialties (10)	<input type="checkbox"/> Communications/ IT	<input type="checkbox"/> Construction Mgmt
<input type="checkbox"/> Concrete (03)	<input type="checkbox"/> Equipment (11)	<input type="checkbox"/> Landscape/Irrigation	<input type="checkbox"/> CADD/Drafting
<input type="checkbox"/> Masonry (04)	<input type="checkbox"/> Furniture (12)	<input type="checkbox"/> Security	<input type="checkbox"/> Admin/office Graphic Design
<input type="checkbox"/> Metals (05)	<input type="checkbox"/> Spec Constr (13)	<input type="checkbox"/> Portable/mod facilities (lease/purchase)	<input type="checkbox"/> Accounting AP,AR, HR, Payroll
<input type="checkbox"/> Woods and plastics (06)	<input type="checkbox"/> Conveying systems (14)	<input type="checkbox"/> Real Estate/Appraisal/CEQA	<input type="checkbox"/> DSA, CEQA, CDE Specialty:
<input type="checkbox"/> Thermal and moisture (07)	<input type="checkbox"/> Mechanical (15)	<input type="checkbox"/> Inspection DSA certified: <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IP	<input type="checkbox"/> OTHER:(specify)
Local Business Program Qualifications To qualify as a local business complete #1 and #2 To be designated as an "ED Friendly" local business also complete #3			
1a. All above Registration information filled out <input type="checkbox"/> yes			
b. Deliver program information via: <input type="checkbox"/> USPS <input type="checkbox"/> E-mail			
2. Local Business (located within San Bernardino County) (check all that apply)(attach copy of documentation) <input type="checkbox"/> local business license <input type="checkbox"/> local business address <input type="checkbox"/> local residence <input type="checkbox"/> City of San Bernardino <input type="checkbox"/> County of San Bernardino/City: <input type="checkbox"/> Other:			
3. "ED Friendly" Designation (you must check at least one) <input type="checkbox"/> As a local business, contribute time, talent and/or treasure in support of SBCUSD education programs (attach copy of documentation) <input type="checkbox"/> Partner/Subcontract with other local businesses who are Ed Friendly (attach copy of documentation)		Contact name/tel	School/Co.

MAIL OR FAX TO: SBCUSD Facilities Management – LOCAL BUSINESS OUTREACH PROGRAM
 1257 Northpark Blvd, San Bernardino, CA 92407
 Tel (909) 881-8008 x 1308264 Fax (909) 495-1775